

## GRANT FUNDING AGREEMENT

This Grant Agreement ("Agreement") is made this 20<sup>th</sup> day of March, 2023, by and between the City of Minot and Souris Basin Planning Council, a 501(c)(4) corporation and a regional planning council under N.D.C.C. ch. 54-40.1 ("Grantee").

WHEREAS, Grantee submitted a grant application dated March 9, 2022, seeking two million dollars from the MAGIC Fund for the Business Accelerator Fund (BAF) which was previously established by Grantee with funds from the City of Minot's MAGIC Fund;

WHEREAS, the MAGIC Fund Screening Committee recommended approval a grant in the amount of \$780,000 to Grantee on April 22, 2022;

WHEREAS, the City Council approved the MAGIC Fund Screening Committee's recommendation to approve the grant in the amount of \$780,000 to Grantee at the May 2, 2022 City Council meeting;

WHEREAS, Grantee submitted a grant application dated February 2, 2023 attached and incorporated into this Agreement as Exhibit A ("Grant Application"), seeking \$805,300 dollars from the MAGIC Fund for the Business Accelerator Fund (BAF) which was previously established by Grantee with funds from the City of Minot's MAGIC Fund;

WHEREAS, the MAGIC Fund Screening Committee recommended approval a grant in the amount of \$805,300 to Grantee on February 17, 2023;

WHEREAS, the City Council approved the MAGIC Fund Screening Committee's recommendation to approve the grant in the amount of \$805,300 to Grantee at the March 20, 2023 City Council meeting;

WHEREAS, Grantee agrees to comply with the terms and conditions of the grant as described herein;

NOW THEREFORE, in consideration of the grant and other good and valuable consideration, the parties agree as follows:

### I. Amount and Use of Grant Funds

A. Grant Amount. The City of Minot will provide Grantee with a grant, as specifically described below, to be used for the purposes described in paragraph I.B. herein ("Grant"). Grant funds may not be transferred, either partially or completely, to any other entity or person. Any earnings derived from the grant funds shall be used by Grantee solely to support the purposes of the grant.

1. The City of Minot shall provide Grantee funding up to \$805,300 until expended for the purposes of this agreement.

B. Grant Purposes. Grantee shall use the Grant for the purposes of continuing the Souris Basin Business Accelerator Fund, attached and incorporated into this Agreement as Exhibit D and incorporated herein ("Grant Project"). Grantee shall not use any portion of the funds disbursed through this Agreement for any purpose other than described in the Grant Application.

C. Use of Funds. Grantee has provided the City of Minot with a detailed outline of how funds will be used in the Grant Project. The Grant funds are restricted to fund only the Grant Project as described in the Grant Application and summarized above in paragraph I.B. Grantee shall utilize Bank of North Dakota PACE and Flex PACE dollars as the source of complementing existing capitalization. Grantee

shall lend funds to businesses that 1) meet the definition of a small business, as defined by the U.S. Small Business Administration and 2) in a business cluster for which there is demonstrated demand and/or need in the region.

D. Program Administration. Grantee understands and agrees that it is solely responsible for the administration of the Grant Program, including but not necessarily limited to, monitoring and servicing loans relating to the Grant Program, ensuring compliance with any applicable terms, rules, and/or regulations relating to the Grant Program, and/or enforcing the terms of any agreement(s) relating to the Grant Program.

E. Grant Term. This Agreement shall become effective on the date signed by the last party to sign the Agreement and shall continue in effect through December 31, 2023, unless extended or terminated pursuant to this Agreement.

F. Grant Payment. After execution of this Agreement, the City of Minot will pay the grant funds for the Grant Project as follows:

1. Grantee shall send City of Minot Finance Director documentation establishing that the loan has been approved by Grantee's Loan Review Committee and the Bank of North Dakota at least five (5) business days prior to an applicable closing.

2. City of Minot Finance Director, or his or her designee, after review of documents and confirmation that the documents and request are in conformance with the approved Grant Application and Grant Program, shall provide the requested funds to the Bank of North Dakota prior to the loan closing.

3. If the loan does not close, Grantee shall request Bank of North Dakota return funds to City of Minot as soon as it is determined the loan will not be closed.

4. Requested funding may be withheld if the information provided to the City of Minot Finance Director does not comply with the requirements of this Agreement or in the event of a breach of any of the terms of this Agreement by Grantee.

## **II. Reporting and Record Keeping Requirements**

A. Compliance with Laws. Grantee agrees that it and any agents shall comply with all applicable federal, state, and local laws, regulations, and rules.

B. Record Keeping. Grantee shall maintain financial and other records that specifically show the use of the Grant exclusively for the purposes of the Grant Project. Grantee shall maintain such records for the period required by the State of North Dakota's retention period or for at least three (3) years after the end of the Grant Term, whichever timeframe is longer. Any records relating to the Grant Project shall be available for the City of Minot's inspection, at no expense to the City of Minot, during the period of this Agreement and the retention period thereafter.

C. Status Reports. The Grantee shall submit quarterly status reports relating to the expenditure of the Grant and the progress of the Grant purposes. Grantee will utilize its monthly Loan Status Reports for project reporting which shall include the fund balance, loans originated, performance of loans, projections for next quarter, and a portfolio risk assessment. Status reports should be sent to:

callie.burns@minotnd.org and david.lakefield@minotnd.org. Grantee shall submit status reports within thirty (30) days of the end of each calendar quarter. Grantee shall also make its personnel available at the reasonable request of the City of Minot to discuss expenditures, records, and the progress of the Grant Project. Additionally, Grantee shall provide an annual report showing the benefit and impact of the program until the end of the grant term.

D. Notice Requirements. Grantee shall provide written notice to the City of Minot within three (3) business days if there is a change in the Grantee's organizational status or if the Grant Project is cancelled or delayed. Grantee shall provide written notice to the City of Minot within three (3) business days of any significant change in the Grantee's governance, programs, or services that may impact the Grant Project or any changes in any key personnel.

### **III. Return of Grant Funds to the City of Minot**

A. Failure to Comply to this Agreement. In the event the City of Minot determines that the Grantee has failed to comply with the terms of this Agreement or any other Agreement between the City of Minot and Grantee, Grantee, upon receipt of written notice from the City of Minot of said default, shall immediately return all unexpended Grant funds as of the date of the default, to the City of Minot and the City of Minot may, among other legal remedies available, terminate this Agreement.

### **IV. Miscellaneous**

A. Amendment. This Agreement may not be modified or amended except by a written instrument signed by both parties.

B. Entire Understanding. This Agreement and its Exhibits contain the entire understanding of the parties and supersede all agreements or understandings, written or oral, made prior to the execution of this Agreement.

C. Paragraph Headings. The paragraph headings contained in this Agreement are included solely for the convenience of reference of the parties and shall not in any way affect the meaning or interpretation of any of the provisions of this Agreement.

D. Execution of Agreement. Grantee agrees to execute and return this Agreement to the City of Minot within 14 business days from the date of this Agreement.

E. Assignment. Neither party may assign this Agreement or any of its rights, benefits, interests, or obligations hereunder to any third party or entity and this Agreement may not be involuntarily assigned or assigned by operation of law, without the prior written consent of the other party and any purported assignment without such consent will be void.

F. Relation of Parties. This Agreement does not constitute either party as the legal representative of the other for any purpose whatsoever. Neither party has authority to assume or create any obligation whatsoever, express or implied, on behalf or in the name of the other party, nor to bind the other party in any manner whatsoever.

G. Compliance with Public Records Laws. Grantee understands that, the City of Minot must disclose to the public upon request any records it receives from Grantee. Grantee further understands that any records obtained or generated by Grantee under this Agreement may, under certain circumstances, be open to the public upon request under the North Dakota public records law. At no additional cost to the City of Minot, Grantee agrees to contact the City of Minot promptly upon receiving a request for information

under the public records law and to comply with the City of Minot's instructions on how to respond to the request.

H. Notice. All notices required or permitted hereunder shall be in writing and sent via mail or electronic means as provided below. Any such notice will be effective upon receipt. Any party may change its responsible officer or its address by written notice to the other party.

Souris Basin Planning Council:

Souris Basin Planning Council  
PO Box 2024  
Minot, ND 58702-2024  
Email: [briselda@sourisbasin.org](mailto:briselda@sourisbasin.org) (preferred method of communication)

City of Minot:

City of Minot  
c/o Finance Director  
PO Box 5006  
Minot, ND 58702  
Email: [finance@minotnd.gov](mailto:finance@minotnd.gov)

I. Laws of Governance. This Agreement is to be governed by and construed under the laws of the State of North Dakota.

J. Indemnification. Grantee agrees to indemnify and hold Grantor harmless from and against claims, damages, losses and expenses (including, but not limited to, reasonable attorney fees), attributable to bodily injury, sickness, disease and death, destruction of tangible property, or any other claims, damages, losses and expenses caused by: a) the providing of funds by Grantor to Grantee or the non-funding of such funds under a Default scenario described above, b) the negligent or willful acts or omissions of Grantee or Grantee's employees, subcontractors or volunteers, or c) Grantee's breach of this Agreement.

K. Severability. If a Court finds any part of this Agreement to be invalid, the remainder of this Agreement shall not be invalidated. Any part of any section found to be invalid shall not invalidate the remaining part of said section, and the invalid section may be reformed to be valid and enforceable to the extent allowed by law.

L. Waiver. No course of dealing between the parties or any failure or delay by the City of Minot in exercising any rights or remedies available to it shall operate as a waiver of any of the City of Minot's rights or remedies and no single or partial exercise of any rights or remedies shall operate as a waiver or preclude the exercise of any other rights or remedies.

M. Authority. Grantee represents and warrants that it has the authority to enter into this Agreement and to perform its obligations hereunder. Grantee also represents and warrants that the person who executes this Agreement on its behalf has the necessary authority to bind Grantee.

N. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

IN WITNESS WHEREOF, the City of Minot and Grantee have caused this Agreement to be executed,

effective as of the day and year first written above.

City of Minot

Thomas M. Ross

By: Thomas M. Ross

Title: City of Minot Mayor

Mikayla McWilliams

By: Mikayla McWilliams

Title: City Clerk

Souris Basin Planning Council

B. Hernandez

By: Briselda Hernandez

Title: Executive Director