

**SUBRECIPIENT AGREEMENT  
BETWEEN CITY OF MINOT (GRANTEE) AND DAKOTA COLLEGE AT BOTTINEAU  
(SUB-RECIPIENT) FOR THENATIONAL DISASTER RESILIENCE PROGRAM**

THIS AGREEMENT is entered into this 1<sup>ST</sup> day of November, 2021 by and between the City of Minot (the "Grantee") and Dakota College at Bottineau (the "Subrecipient") for the development and administration of the Center for Technical Education (CTE).

**I. Recitals**

WHEREAS, Pursuant to Public Law PL 113-2 (the Appropriations Act) and the Federal Register Notice dated June 7, 2016, at Federal Register / Vol. 81, No. 109, the U.S. Department of Housing and Urban Development ("HUD") awarded \$74.3 in Community Development Block Grant National Disaster Resilience (CDBG-NDR) funds to the City of Minot (Grantee) for activities authorized under Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.) and described in the City of Minot's National Disaster Resilience Competition Action Plan (the "Action Plan"); and

WHEREAS, the Grantee wishes to Dakota College at Bottineau (Subrecipient) to assist the city in their efforts to increase the community's economic resilience by providing a Center for Technical Education (CTE). The Grantee will provide up to \$3,400,000 of the Grantee's Federal NDR award, pursuant to this Subrecipient Agreement (the "Agreement"); and

WHEREAS, the CDBG-NDR funds made available for use by the Subrecipient under this Agreement constitute a subaward of the Grantee's Federal award, the use of which must be in accordance with requirements imposed by Federal statutes, regulations, and the terms and conditions of the Grantee's Federal award and this agreement; and

WHEREAS, the Subrecipient has legal authority to enter into this agreement, and the Subrecipient's governing body has duly adopted this Subrecipient Agreement dated November 1, 2021, authorizing the Subrecipient to enter this agreement with the Grantee, and by signing this agreement, to assure the Grantee that it will comply with all the requirements of the subaward described herein; and

WHEREAS, no funds will be made available under this Agreement until commitment prerequisites identified in the agreement have been met;

NOW, THEREFORE, the parties, for and in consideration of the sum to be paid by the Grantee, in the manner and at the time provided in this Agreement, and for other covenants and conditions contained in this Agreement, do hereby agree as follows:

**II. GENERAL AWARD INFORMATION:**

This Agreement is financed through a grant provided to the City of Minot by the United States Department of Housing and Urban Development (HUD) pursuant to authority of Title 1 of the Housing and Community Development Act of 1974 as amended (42 USC 5301 et. seq.) Public Law PL 113-2 (the Disaster Recovery Appropriations Act 2013) and the Federal Register Notice dated June 7, 2016, Community Development Block Grant National Disaster Resilience (CDBG-NDR)

The subaward from the Grantee to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in section I of this agreement and creates a Federal assistance relationship with the Subrecipient.

Federal Award Identification Number: B-13-MS-38-0002

CFDA Number: 14.272 CDBG-NDR

Federal Award Date: September 21, 2016

Subrecipient's unique entity identifier: 081182884

Federal award project description:

The City of Minot received approximately \$74.3 million from the National Disaster Resilience Competition (NDRC) to fund three NDRC projects: reduce flood risk and improve water management, build affordable resilient housing and neighborhoods, and foster economic resilience and diversification. This subrecipient agreement supports one of the critical unmet recovery needs in Minot addressing economic sustainability needs by creating access to job opportunities through technical education including one and two-year certificate programs, customized training programs for area businesses, associate degree programs and eventually college transfer programs.

**A. Contract Manager**

NDR Program Manager will serve as the City of Minot's primary contract manager for this project. NDR Program Manager may designate a day-to-day contract manager for the project. All reports, notices, and other communications required under or related to this sub-recipient agreement shall be directed to the individuals identified below. NDR Program Manager will be the final approver of project draw requests, notices to terminate the contract as provided herein, and will approve all changes except those that increase the total contract amount which must be approved by NDR Program Manager and by the City Council.

City of Minot Contract Manager:

NDR Program Manager, City of Minot

Address: PO Box 5006, Minot, ND 58703

Phone: 701-857-4108

Subrecipient:

Dr. Jerry Migler, Campus Dean

Dakota College at Bottineau, 105 Simrall Blvd Bottineau, ND 58318

Phone: 701-228-5480

Email: jerome.migler@dakoatcollege.edu

**B. List of Agreement Exhibits**

The Statement of work is contained in the Exhibits and attachments referenced in the table below. As attachments are completed they will be incorporated into the exhibits and attachments section of the agreement and will be initialed and dated by the respective contract managers. The following Exhibits are attached hereto and incorporated by reference into this agreement:

- Exhibit "A" which is proposed administrative and training services for the CTE
- Exhibit "B" which is the budget detailing planned uses of the CDB-NDR funds
- Exhibit "C" which is proof of site control either by ownership or lease
- Exhibit "D" which is timeline for all rehabilitation and equipping funded by CDBG-NDR
- Exhibit "E" which is affirmative marketing program for recruitment of CTE students
- Exhibit "F" which is the deed or lease demonstrating that the subrecipient has site control of the building in which the CTE shall be located

In accordance with 24 C.F.R. Part 570 (now in effect and as may be amended) and the terms and conditions of this agreement, the Subrecipient agrees to rehabilitate and equip the identified facility to commence operations as a CTE and to provide administration and training in the CTE as set forth in Exhibit "A" once rehabilitation has been completed and certificate of occupancy has been issued by the City for a minimum period of ten (10) years or the useful life of the capital improvements funded by CDBG-NDR whichever option is a longer period.

#### **C. Contract Amount**

The City shall provide funding assistance to Subrecipient for this project in an amount not to exceed \$3.4 million from CDBG-NDR funds to rehabilitate and equip the CTE to commence operations. This amount constitutes the City's participation and obligation in the performance and completion of work to be performed under this Agreement. Notwithstanding other provisions of this Agreement, failure by Subrecipient to complete the Project or perform or deliver the work, reports, supplies, pay requests, or services required by this Agreement may result in the withholding of payment under this Agreement. Funds will be disbursed for actual eligible costs incurred in connection with this Agreement. Subrecipient understands that this Agreement is funded by federal funds. In the unlikely event the federal funds supporting this Agreement become unavailable or are reduced, the City may terminate or amend this Agreement.

#### **D. Method of Payment**

The Subrecipient will submit to the Grantee requests for payment for activities funded under this agreement that are consistent with an approved budget. Each Request for Payment will be broken down into requested draws against the budget line items shown in Exhibit B.

Payment shall be made on an eligible cost reimbursement basis only (costs already incurred for demonstrated work done) and in such amounts and increments approved by the City's NDR Program Manager and the City's Finance Department for various phases of work following submission by Subrecipient of a proper request for payment, including applicable, accurate and complete supporting documentation that substantiates the payment request in accordance with the scope of work and the project budget. Pay requests will be submitted using a Request for Payment form to be provided by the City. The final request for payment must be approved by the Minot City Council before the final payment for the project can be made and will be subject to a final inspection of the project prior to the Council meeting.

The Grantee shall pay to the Subrecipient CDBG-NDR funds available under this agreement based upon information submitted by the Subrecipient for allowable costs permitted under this agreement and consistent with the approved budget. Payments will be made for eligible expenses actually incurred by the Subrecipient, not to exceed actual cash requirements. Payment will be made upon submission by

the Subrecipient of a properly executed Request for Payment, together with all supporting invoices, bills, time sheets, and other documents necessary to justify the payment.

#### **E. Fiscal Responsibility**

It is understood and agreed that the total amount of the funds used under this Agreement shall be used for the Project outlined in this Agreement. Should the Project not be completed, be partially completed, or completed at a lower cost than the original budget, the amount reimbursed to Subrecipient shall be only for the amount spent by Subrecipient for eligible project expenses. For any funds received under this Agreement for which expenditure is disallowed, Subrecipient shall reimburse those funds back to the City.

Subrecipient acknowledges that the funds being provided by the City for the Project are received by the City pursuant to the Housing and Community Development Act of 1974 as amended and that expenditures of these funds shall be in accordance with the provisions of the Act and all pertinent regulations issued by agencies of the federal government. Subrecipient agrees to comply fully with all federal, state, and local laws applicable to its operation, whether or not expressly referred to in this Agreement.

All activities funded with CDBG-NDR funds must meet the criteria for one of the CDBG program's National Objectives. The Subrecipient certifies that the activities carried out under this agreement shall meet the following national objective and satisfy the following criteria:  
Urgent Need.

Subrecipient must satisfy the requirements under 24 CFR 570.208(a)(3). Subrecipient shall maintain documentation to demonstrate compliance for a minimum of three years upon project completion or longer if so determined by HUD through statute, rules and/or regulations.

#### **F. Period of Performance**

The period of performance for all capital expenditure activities being funded under this agreement through CDBG-NDR shall commence on the contract date of November 1, 2021 and shall be completed by July 1, 2022 except for those activities required for closeout.

#### **G. Performance Goals and Timelines**

The Subrecipient shall complete the activities required under this agreement in accordance with the timeframes and performance goals associated with each of the activities with dates to be adjusted as required through the environmental review process. If necessary, dates will automatically be adjusted based on the date of issuance by HUD of the RROF. The goals and timelines shall be determined by the information provided and set forth in Exhibit E.

In addition, the Subrecipient will attend a mandatory kick-off meeting with the grantee within 21 days of the signed contract.

#### **H. Independent Contractor**

Nothing contained in this Agreement is intended to be construed in any manner as creating or establishing the relationship of employer/employee between the Parties. The Subrecipient shall at all times remain an independent contractor, with respect to the services to be performed under this Agreement. The Grantee shall be exempt from payment of all unemployment compensation, FICA, retirement, life or medical insurance, and Worker's Compensation Insurance.

#### **I. Contracting and Subcontractors**

With any contractor or subcontractor, Subrecipient must have a contract that complies with applicable HUD requirements and regulations. All work or services covered under this Agreement, which is contracted by the Subrecipient shall be subject to all provisions of this Agreement. Subrecipient shall require any third party to complete with all lawful requirements necessary to ensure the Project is carried out in accordance with the Agreement. Subrecipient shall not award any contract until their procurement policy has been reviewed and approved by the City and subsequent project procurement activities should be reviewed prior to release of procurement advertising.

#### **J. Debarment, Suspension, and Exclusion**

Subrecipient certifies to the best of its knowledge and belief that they are not presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from covered transactions by any federal department or agency. They have not, within a 3-year period preceding this Agreement, been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or perform a public (federal, state, or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property. They are not presently indicted or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in this Agreement and have not been terminated for cause or default on a public transition.

Subrecipient further certifies that it shall immediately notify the Grantee if, at any time during the term of this Agreement, it is debarred, suspended, declared ineligible or otherwise excluded from participation, and that it shall not enter into a subcontract with a person or organization that is debarred, suspended, declared ineligible, or voluntarily excluded from participation. The City may pursue available remedies in the event of such occurrence including immediate termination of this Agreement. The Subrecipient shall include without modification this Certification's language, entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" with all contractors and sub-contractors in all covered transactions and in all solicitations for covered transactions in accordance with 45 CFR Part 76.

#### **III. Center for Technical Education**

The National Disaster Resilience program focuses on disaster recovery and resilience. It is important to identify the resilience goals of this project and the process used to evaluate and determine the specific resilience elements for the affordable rental units. In the aftermath of the historic 2011 flood in Minot, the City has made efforts to respond to the economic needs of the City Minot which has been demonstrated was affected by the flood, evaluated the evolving economic challenges resulting from the flood, and the vagaries of the oil boom that further complicated the economic stability and potential resilient economic growth sustainability facing Minot.

Quality sustainable stable employment is frequently vulnerable during and after natural disasters and residents, especially low/moderate income, are particularly challenged because they do not have the resources to help them recover from disasters. The 2011 flood and its aftermath exposed the City's vulnerability to be able to recover economically and to sustain economic growth by the reality that it is

one of the few of the largest cities in North Dakota without a facility to provide skills training for residents to meet employment demands and to promote new commercial/industrial and small business diversity as a core part of a resilient strategy.

Dakota College at Bottineau has the demonstrated experience and expertise to develop, administer, and deliver training in a critically needed Center for Technical Education.

Investment in long-term resilience has proven to be a smart investment for communities and is essential for sustainable economic growth through diverse skills training opportunities.

#### **IV. Subrecipient Obligations**

As a condition of receiving this subaward, the Subrecipient shall secure site control of a building in which there is sufficient space to carry out the intended programs and services of the CTE as spelled out in the CDBG-NDR Action Plan. Site control shall be either in the form of lease at least 10 years in length or recorded deed citing ownership of the building in the name of the Subrecipient which shall be Exhibit "f" of this agreement. Also, as a condition of receiving this subaward, the Subrecipient shall manage and administer the development of the Center for Technical Education Project, including all required project procurement, design, preparation of plans and specifications for rehabilitation, preparation of bids for construction and equipping, actual construction, inspection and completion of the work described in this agreement. The Subrecipient shall complete the activities in a manner satisfactory to the Grantee and consistent with the terms of conditions of this agreement, all exhibits, and applicable Federal statutes and regulations.

##### **A. Prohibited Activities**

The Subrecipient may only carry out the activities described in this agreement. The Subrecipient is prohibited from charging to the subaward the costs of CDBG ineligible activities, including those described at 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this agreement for political activities, inherently religious activities, or lobbying.

##### **B. Subrecipient Obligations**

The Subrecipient agrees to comply with the following obligations prior to receipt of any funds:

1. Utilize normal and customary practices and procedures consistent with HUD's rules and regulations for the delivery of the Project and provide a level of service that is consistent with the level of service for similar programs administered by the Subrecipient exclusive of this agreement.
2. The Subrecipient will secure the services of an experienced and qualified Architect licensed to conduct business in the State of North Dakota to prepare detailed building plans and specifications for the rehabilitation of the building to house CTE. The Architect will be selected through a procurement process that meets HUD requirements. The Architect will prepare a detailed project budget reflecting estimated costs for the construction and prepare a milestone schedule for the project. The project budget for construction, site improvements and construction utilities will provide the necessary details to fully flesh-out project costs and these must be adequately and correctly accounted for in project draw requests. Guidance will be provided to subrecipient regarding project budget requirements. Subrecipient and their Architect will coordinate with the designated City of Minot personnel during the preparation of



the plans and specifications to ensure the final plans will meet HUD requirements and applicable City codes and ordinances, green building standards, and UFAS standards.

3. The subrecipient will identify all equipment for use in support of planned training programs and activities which are consistent with the intent and purpose of CTE as set forth in the CDBG-NDR Action Plan, will prepare a timeline for acquisition of all equipment, and costs estimates for such equipment to be line items in the project budget is part of Exhibit B. Subrecipient shall tag all such equipment with identifying information which includes purchased using HUD CDBG-NDR funds and tracking number which shall be recorded in a master record maintained by the Subrecipient and subject to periodic review by the City. Any equipment which is acquired using CDBG-NDR funds which during the 10 year period of CTE operate becomes obsolete, unusable, or similar condition warranting it being taken out of service, before any action is taken by the Subrecipient agreement to dispose of such equipment, the Subrecipient must obtain written permission from the City either from the Finance Director or the NDR Program Director.
4. Subrecipient may procure the services of a qualified construction manager and/or construction inspector to assist in the delivery of this project. Reasonable costs for these services will be included in the project budget in accordance with applicable HUD requirements and regulations.
5. Subrecipient must have written authorization to proceed with all contracts. Prior to awarding a contract using CDBG-NDR funds, Dakota College at Bottineau shall submit to the City all procurement documents such as advertisements for professional services, Invitation to Bids, Request for Qualifications, cost estimates prior to advertisement, cost reasonableness analysis or other actions to procure contractors for this project. In addition, Dakota College at Bottineau shall provide a copy of the Project Plans and Specifications for construction and the Cost Estimate prepared by Architect to the City's NDR Program Manager and/or another designated representative. Subrecipient and their Project Architect will meet with the City's NDR Program Manager, other designated representatives, and Dakota College at Bottineau Project Manager to review the plans and specifications for the project and project budget.
6. The Subrecipient will provide the Grantee with a copy of their procurement policy and procedures.
7. The Subrecipient will provide the City's NDR Program Manager and other designated representatives and Dakota College at Bottineau Project Manager with a copy of proposed contract documents, conditions of contract, and related documents prior to executing a contract.
8. Subrecipient must have a contract that complies with HUD regulations for all project procurements. All work or services covered by this Agreement shall be specified by written contract and subject to all provisions of this Agreement. Contracts may be reviewed by the City prior to execution.
9. Subrecipient shall adhere to the uniform administrative requirements as specified in 24 CFR 570.502.
10. Subrecipient shall adhere to all applicable environmental regulations prior to the expenditure of any CDBG-NDR funds.
11. Subrecipient shall comply with the requirements and standards of 2 CFR 200 et. seq. as applicable, including establishing and/or maintaining compliant accounting systems. Such systems will be subject to monitoring from time to time by the City of Minot and/or by HUD
12. Subrecipient shall comply with the City of Minot's indemnification and insurance requirements and provide insurance and evidence of insurance prior to the Kick-off Meeting.
13. Subrecipient shall provide to all appropriate and applicable parties involved in this project all notices and comply with laws, ordinances, building codes, and regulations of the City of Minot as needed to perform the project activities.

14. Subrecipient shall comply with and require all contractors and subcontractors paid with funds provided by this agreement to comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended 24 CFR Part 570 and Special Conditions for activities assisted pursuant to Title I of the Community Development Act of 1974 including Davis-Bacon.
15. Subrecipient shall comply with Conflict of Interest provision for HUD and the City of Minot and shall incorporate these provisions in all contractor and subcontractor agreements.
16. Subrecipient will prepare and submit to the City and the designated project manager by the NDR Program Manager, regular reports relating to the performance of this Agreement on a quarterly basis.
17. Subrecipient will provide an Affirmative Marketing Plan to the NDR Program Manager or designee for recruiting participants to attend CTE.
18. Upon completion of the project as described in this agreement and exhibits, and upon receiving the applicable certificate of occupancy issued by the City, the Subrecipient shall provide quarterly performance reports through the 10 year period to the Finance Director and the NDR Program Director with such reports including description of administrative, clerical, and instructional staff levels, number of enrolled students, and, if applicable, number of students who have completed programs with a description of defining the determination of program completion (i.e. diploma, certificate, etc.). Should the Certificate of Occupancy be issued within a calendar quarter, then the first report shall be filed for the subsequent calendar quarter including all activities in partial start-up quarter.

## **V. City Obligations**

The City shall disburse funds in a timely manner as described in this Agreement and will advise the Subrecipient promptly if there are concerns about the project and work with the Subrecipient to resolve issues of concern. The City will provide reasonable technical assistance to the Subrecipient to comply with applicable federal requirements and regulations governing the use of these federal funds. The City will facilitate the preparation of the environmental review and ensure all environmental review requirements as described in 24 CFR 58 are met. The City will comply with any applicable certifications that are included in the Exhibits.

## **VI. Amendments**

The City or Subrecipient may amend this Agreement provided that such amendments make specific reference to this Agreement and are executed in writing, signed by a duly authorized representative of both organizations. Such amendments shall not invalidate this Agreement nor relieve or release the City or the Subrecipient from its obligations under this Agreement. If any change orders are required, they will follow the Grantees change order policy.

## **VII. PERFORMANCE MONITORING & REPORTING**

### **A. Monitoring**

The Grantee shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure Subrecipient compliance with all the requirements of this agreement, including the timeframes and performance goals associated with the pre-occupancy and post-occupancy certificate activities.



Substandard performance as determined by the Grantee will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within 30 days after being notified in writing by the Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 CFR 200.207, suspend or terminate this agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

#### **B. Reporting, Documentation and Record Keeping**

In accordance with federal regulations, the City is responsible for ensuring the administration of the NDR program funds in accordance with all program requirements. The Subrecipient shall maintain documentation and records as required by federal statutes and rules, especially pertaining to HUD as well as any City of Minot requirements but under no circumstances shall record retention be less than three (3) years from close out of this agreement.

#### **C. Financial Records**

Subrecipient agrees to adhere to accounting principles and procedures, to utilize adequate internal controls and maintain necessary source documentation for all costs incurred as required in 2 CFR 200. Subrecipient further agrees to maintain an adequate accounting system that provides for appropriate grant accounting including calculation of program income. Subrecipient will adhere to applicable audit requirements as described and in accordance with 2 CFR 200 et. seq. In addition, Subrecipient will provide annual audit reports or annual audited financial statements to the City.

#### **D. Budget**

The Subrecipient shall complete all activities in this agreement in accordance with the proposed budget attached in Exhibit B and the subsequent detailed budget that will be prepared by the project architect and attached in Exhibit B. The budget shall identify activity delivery costs. The proposed budget will be amended once the project plans and specifications and project budget are completed by the Project Architect and reviewed by the respective project managers for the project, and become Exhibit B.

#### **E. Program Income**

Program income is defined in Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016 Notice. Subrecipient shall track all program income and provide annual documentation to the City of Minot to monitor program income. Prior to close-out the City will make a determination for the reuse of Program Income, that will continue to accrue until the close-out of the compliance period for the project. At the close of the compliance period, which is no less than ten (10) years from agreement closeout, the City will monitor the project to comply with HUD's program income and asset requirements. Should fees or related charges be levied in conjunction with training programs and activities carried out in and/or as part of CTE, such fees and related charges may be retained by the Subrecipient provided records are maintained demonstrating that such revenue is reinvested in support of CTE operations.

#### **F. Termination**

The Grantee may terminate this agreement, in whole or in part, upon 90 days' notice, if they determine that the Subrecipient has failed to comply with the terms, conditions, requirements, and provisions of this agreement and effort to correct these concerns have not been addressed in a reasonable amount of time. Failure to comply with this agreement, include (but are not limited to) the following:

1. Failure to comply with the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may become

- applicable at any time;
2. Failure of the Subrecipient to fulfill in a timely and proper manner its obligations under this agreement;
  3. Ineffective or improper use of funds provided under this agreement; or
  4. Submission by the Subrecipient to the Grantee reports that are incorrect or incomplete in any material respect.
  5. Failure to operate the CTE once certificate of occupancy is issued by the City with such failure determined by either classroom focused training consistent with a CTE not being provided and/or no evidence of students enrolled and actively participating in classroom focused training. An exception will be for any standard periods of time consistent with a college calendar (i.e. Spring break, Summer recess) provided that the Subrecipient has notified the City 90 days in advance through the City Finance Director and NDR Program Director of such planned time off.

The Grantee shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect and any other notifications required under 2 CFR part 200, subpart D. The Subrecipient shall have the opportunity to respond in writing to the Grantee with 30 days presenting documentation explaining why the basis for the termination should not occur. It is at the discretion of the Grantee as to whether or not to reverse the decision should the Subgrantee provided a written response and such decision shall also be in writing within 30 days of receipt of the Subgrantee's written response.

Upon termination, the Grantee retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to the Grantee any improper expenditures no later than thirty (30) days after the date of termination. For termination which occurs during the 10-year period after receipt of certificate of occupancy, all moveable equipment purchased through CDBG-NDR funds must be returned to the City and the Subgrantee shall also repay to the City a pro-rated cost of all CDBG-NDR capital improvements (pro-rating based on remaining percentage of 10 year or longer in which CTE is required to operate based on Termination date.) The Grantee may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations or requirements.

This agreement may also be terminated in whole or in part by either the Grantee or the Subrecipient, or based upon agreement by both the Grantee and the Subrecipient in accordance with the requirements in 2 CFR part 200, subpart D subject to a minimum 30 day written notice and should Subrecipient choose to terminate all repayment and/or moveable equipment requirements set forth in above paragraph shall apply.

#### **VIII. OTHER REQUIREMENTS TO COMPLY WITH FEDERAL STATUTES, REGULATIONS AND THE TERMS AND CONDITIONS OF THE FEDERAL AWARD**

The CDBG-NDR funds available to the Subrecipient through this agreement constitute a subaward of the Grantee's Federal award under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. This agreement includes terms and conditions of the Grantee's Federal award that are imposed on the Subrecipient, and the Subrecipient agrees to carry out its obligations in compliance with all the obligations described in this agreement.

The Subrecipient shall comply with all applicable provisions of the Housing and Community Development Act of 1974, as amended, and the regulations at 24 CFR part 570, as modified by the Federal Register notices that govern the use of CDBG-DR funds available under this agreement. These Federal Register notices include, but are not limited to, Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016 / Notice and Federal Register / Vol. 82, No. 150 / Monday, August 7, 2017 / Notice. Notwithstanding the foregoing, (1) the Subrecipient does not assume any of Grantee's responsibilities for environmental review, decision-making, and action, described in 24 CFR part 58 and (2) the Subrecipient does not assume any of the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient shall also comply with all other applicable Federal, state and local laws, regulations, and policies that govern the use of the CDBG-DR funds in complying with its obligations under this agreement, regardless of whether CDBG-DR funds are made available to the Subrecipient on an advance or reimbursement basis.

**A. Duplication of Benefits**

The Subrecipient shall not carry out any of the activities under this agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC 5155) and described in the Appropriations Act. The Subrecipient must comply with HUD's requirements for duplication of benefits, imposed by Federal Register notice on the Grantee, which are: Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016. The Subrecipient shall carry out the activities under this agreement in compliance with the Grantee's procedures to prevent duplication of benefits. Subrecipient shall complete a Duplication of Benefit Affidavit and sign a Subrogation Agreement.

**B. Drug-Free Workplace**

*Drug-free workplace.* Subrecipients must comply with drug-free workplace requirements in Subpart B of part 2429, which adopts the governmentwide implementation (2 CFR part 182) of sections 5152-5158 of the Drug- Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).

**C. Insurance & Bonding**

The Subrecipient shall comply with the bonding and insurance requirements of 2 CFR §200.325 and §200.310.

**D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards**

The Subrecipient shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200 except as provided in 24 CFR 570.502(a) and (b). These provisions include:

**1. Financial & Program Management**

The Subrecipient shall expend and account for all CDBG-DR funds received under this agreement in accordance with:

The requirements in 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management. Go to

<https://www.gpo.gov/fdsys/pkg/CFR-2014-title2-vol1/pdf/CFR-2014-title2-vol1-part200.pdf> for the specific requirements.

**2. Cost Principles**

Costs incurred, whether charged on a direct or an indirect basis, must be in conformance

with 2 CFR part 200, subpart E. All items of cost listed in 2 CFR part 200, subpart E, that require prior Federal agency approval are allowable without prior approval of HUD to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this agreement, except for the following:

- A. Depreciation methods for fixed assets shall not be changed without the approval of the Federal cognizant agency.
- B. Fines penalties, damages, and other settlements are unallowable costs to the CDBG program.
- C. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses (goods or services for personal use) regardless of whether reported as taxable income to the employees (2 CFR 200.445)
- D. Organization costs (2 CFR 200.455); and
- E. Pre-Award Costs, as limited by this agreement.

**E. Documentation and Record Keeping**

The Subrecipient shall establish and maintain records sufficient to enable the Grantee to (1) determine whether the Subrecipient has complied with this agreement, applicable Federal statutes and regulations, and the terms and conditions of the Grantee's Federal award and (2) satisfy recordkeeping requirements applicable to the Grantee. These records include the records described in Section I of this agreement, Scope of Service. At a minimum, the Subrecipient shall maintain records required by 24 CFR 570.506 as stated under Recordkeeping in Federal Register / Vol. 81, No. 109 / Tuesday, June 7, 2016 / Notice.

These records include but are not limited to: Records documenting compliance with the fair housing and equal opportunity requirements of the CDBG program regulations; Financial records as required by 24 CFR 570.502, and 2 CFR part 200, including records necessary to demonstrate compliance with all applicable procurement requirements; and Other records necessary to document compliance with this agreement, any other applicable Federal statutes and regulations, and the terms and conditions of Grantee's Federal award.

As required by 2 CFR 200.331(a)(5), the Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet its audit requirements under the Federal award. The U.S. Department of Housing and Urban Development, Inspectors General, the Comptroller General of the United States, and the City of Minot, or any of their authorized representatives, must have the right of access to any documents, papers, or other records which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents.

Prior to close-out of this agreement, the Subrecipient must transmit to the Grantee records sufficient for the Grantee to demonstrate that all costs under this agreement met the requirements of the Federal award. Subrecipient shall retain financial records, supporting documents, statistical records, and all other Subrecipient records pertinent to this agreement and Subrecipient's subaward for the longer of 3 years after the expiration or termination of this agreement, or 3 years after the submission of the Grantee's annual performance and evaluation report, as prescribed in § 91.520 of this title or in the applicable Federal Register notices governing the use of the funds, in which the specific activity is reported on for the final time, or such longer period as may be set forth by HUD in its rules and regulations.

The preceding requirement is however, subject to the following exceptions:

- Records for activities subject to the reversion of assets provisions at 24 CFR § 570.503(b)(7) or change of use provisions at 24 CFR § 570.505 must be maintained for as long as those provisions continue to apply to the activity, otherwise, records for real property and equipment acquired under this agreement must be retained for 3 years after final disposition;
- Records for individual activities for which there are outstanding loan balances, other receivables, or contingent liabilities must be retained until such receivables or liabilities have been satisfied;
- If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken;
- When the Subrecipient is notified in writing by HUD, the cognizant agency for audit as defined in 2 CFR 200.18, the oversight agency for audit as defined in 2 CFR 200.73, the cognizant agency for indirect costs as defined in 2 CFR 200.19, or the Grantee, the Subrecipient shall extend the retention period consistent with the notification;
- When records are transferred to or maintained by HUD or the Grantee, the 3-year retention requirement is not applicable to the Subrecipient;
- The retention period for the records pertaining to the earning of the program income (as defined in this agreement) starts from the end of the Grantee's fiscal year in which the program income is earned.

The Subrecipient must comply with 2 CFR §200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information HUD or the Grantee designates as sensitive or the Subrecipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

#### **F. Program Close-out**

Program Closeout is the process by which the Grantee determines that all applicable actions and all required work on the project including audits and resolution of any audit findings have been completed. Findings from City monitoring visits must be cleared prior to closeout. Subrecipient's obligation to the Grantee shall not end until all closeout requirements are completed.

The Subrecipient shall closeout its use of the CDBG-NDR funds and its obligations under this agreement by complying with the closeout procedures in 2 CFR § 200.343. Activities during this close-out period may include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records.

Notwithstanding the terms of 2 CFR 200.343, upon the expiration of this agreement, the Subrecipient shall transfer to the Grantee any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds, further, any real property under the Subrecipient's control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the subrecipient in the form of a loan) shall be treated in accordance with 24 CFR 570.503(b)(7).

#### **G. Audits, Inspections, and Monitoring**

The Subrecipient must be audited as required by 2 CFR part 200, subpart F when it is expected that the Subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

The Subrecipient shall permit the Grantee and auditors to have access to the Subrecipient's records and financial statements as necessary for the Grantee to meet the requirements of 2 CFR part 200. The Subrecipient must submit to monitoring of its activities by the Grantee as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of this agreement. This review must include: (1) reviewing financial and performance reports required by the Grantee; (2) following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the Grantee detected through audits, on-site reviews, and other means; and (3) issuing a management decision for audit findings pertaining to this Federal award provided to the Subrecipient from the Grantee as required by 2 CFR §200.521.

The Grantee may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits. The Grantee may require the Subrecipient to take timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this agreement, Grantee may impose additional conditions on the use of the CDBG-NDR funds to ensure future compliance or provide training and technical assistance as needed to correct noncompliance.

#### **H. Procurement and Contractor Oversight**

The Subrecipient shall comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this agreement. HUD's Buying Right CDBG-DR can be found at <https://www.hudexchange.info/resources/documents/Buying-Right-CDBG-DR-and-Procurement-A-Guide-to-Recovery.pdf>. The Subrecipient shall impose the Subrecipient's obligations under this agreement on its contractors, specifically or by reference, so that such obligations will be binding upon each of its contractors.

The Subrecipient shall maintain oversight of all activities under this agreement and shall ensure that for any procured contract or agreement, its contractors perform according to the terms and conditions of the procured contracts or agreements, and the terms and conditions of this agreement.

#### **I. Property Standards**

The Subrecipient shall also comply with the Property Standards at 2 CFR 200.310, 2 CFR 200.312, 2 CFR 200.314 through 2 CFR 200.316. The Subrecipient shall also comply with 2 CFR 200.313 Equipment, except that when the equipment is sold, the proceeds shall be program income, and equipment not needed by the Subrecipient for activities under this agreement shall be transferred to the Grantee for its CDBG-NDR program or shall be retained after compensating the Grantee. See also (R), Reversion of Assets.

#### **J. Federal Funding Accountability and Transparency Act (FFATA)**

The Subrecipient shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The grantee must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The



grantee must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

**K. Relocation, Real Property Acquisition, and One-for-one Housing Replacement**

The Subrecipient shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), 42 USC 4601 – 4655, 49 CFR part 24, 24 CFR part 42, and 24 CFR 570.606.

In addition to other URA requirements, these regulations (49 CFR § 24.403(d)) implement Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC § 5181, which provides that "Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the [URA] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act".

Subrecipient will minimize displacement of persons as a result of activities assisted with CDBG funds. In addition, if applicable, Subrecipient will:

1. Comply with Sections 301-304 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Chapter 61), and HUD implementing instructions at 24 CFR Part 42 and 24 CFR §570.606; and
2. Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42.

**L. Nondiscrimination**

The Subrecipient will comply with 24 CFR part 6, which implements the provisions of section 109 of title I of the Housing and Community Development Act of 1974 (Title I) (42 U.S.C. 5309). Section 109 provides that no person in the United States shall, on the ground of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Federal financial assistance.

The Subrecipient will adhere to the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) (Age Discrimination Act) and the prohibitions against discrimination on the basis of disability under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) (Section 504). Section 109 of the HCDA makes these requirements applicable to programs or activities funded in whole or in part with CDBG-DR funds. Thus, the Subrecipient shall comply with regulations of 24 CFR part 8, which implement Section 504 for HUD programs, and the regulations of 24 CFR part 146.

The Subrecipient shall ensure that its activities are consistent with requirements of Architectural Barriers Act and the Americans with Disabilities Act. The Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) requires certain Federal and Federally funded buildings and other facilities to be designed, constructed, or altered in accordance with standards that insure accessibility to, and use by, physically handicapped people. A building or facility designed, constructed, or altered with funds allocated or reallocated under this part after December 11, 1995, and that meets the definition of "residential structure" as defined in 24 CFR 40.2 or the definition of "building" as defined in 41 CFR 101-19.602(a) is subject to the requirements of the Architectural Barriers Act of 1968 (42 U.S.C. 4151-4157) and shall comply with the Uniform Federal Accessibility Standards (appendix A to 24 CFR part 40 for residential structures, and

appendix A to 41 CFR part 101-19, subpart 101-19.6, for general type buildings).

The Americans with Disabilities Act (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218 and 225) (ADA) provides comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, State and local government services, and telecommunications. It further provides that discrimination includes a failure to design and construct facilities for first occupancy no later than January 26, 1993, that are readily accessible to and usable by individuals with disabilities. Further, the ADA requires the removal of architectural barriers and communication barriers that are structural in nature in existing facilities, where such removal is readily achievable—that is, easily accomplishable and able to be carried out without much difficulty or expense.

The Subrecipient shall comply with the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352), as amended [if the Grantee is subject to 24 CFR part 570, subpart K, insert: “and 24 CFR 570.601 and 570.602”. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity funded by this agreement. The specific nondiscrimination provisions at 24 CFR 1.4 apply to the use of these funds. The Subrecipient shall not intimidate, threaten, coerce, or discriminate against any person for the purpose of interfering with any right or privilege secured by title VI of the Civil Rights Act of 1964 or 24 CFR part 1, or because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 24 CFR part 1. The identity of complainants shall be kept confidential except to the extent necessary to carry out the purposes of 2 CFR part 1, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

As a condition to the approval of this Agreement and the extension of any Federal financial assistance, the Subrecipient assures that the program or activities described in this Agreement will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1.

If the Federal financial assistance under this agreement is to provide for is in the form of personal property or real property or interest therein or structures thereon, the Subrecipient’s assurance herein shall obligate the Subrecipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the Subrecipient for the period during which Federal financial assistance is extended pursuant to the contract or application. This assurance gives the Grantee and the United States a right to seek judicial enforcement of the assurance and the requirements on real property.

In the case of real property, structures or improvements thereon, or interests therein, acquired with Federal financial assistance under this Agreement or acquired with CDBG-NDR funds and provided to the Subrecipient Under this Agreement, the instrument effecting any disposition by the Subrecipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

**Affirmative Action** - The Subrecipient agrees that it shall carry out pursuant to the Grantee's specifications an Affirmative Action Program in compliance with the President's Executive Order 11246 of September 24, 1966, as amended, and implementing regulations at 42 CFR chapter 60. The Grantee shall provide Affirmative Action guidelines to the Subrecipient to assist in the formulation of such program. The Subrecipient shall provide a copy of their plan for an Affirmative Action Program for approval prior to the release of funds under this agreement.

- i. **Women- and Minority-Owned Businesses (W/MBE):** The Subrecipient shall take the affirmative steps listed in 2 CFR 200.321(b)(1) through (5) to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible when the Subrecipient procures property or services under this agreement.
- ii. **Equal Employment Opportunity and Affirmative Action (EEO/AA) Statement:** The Subrecipient shall, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient, state that it is an Equal Opportunity or Affirmative Action employer.

#### **M. Labor and Employment**

The Subrecipient shall comply with the labor standards in Section 110 of the Housing and Community Development Act of 1974, as amended and ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this agreement shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 3141, *et seq.*), and 29 CFR part 1, 3, 5, 6, and 7, provided, that this requirement shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

The Subrecipient agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Subrecipient shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the Grantee for review upon request.

#### **N. Section 3 of the Housing and Urban Development Act of 1968**

The Subrecipient shall comply with the provisions of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 USC 1701u, and its implementing regulations at 24 CFR part 135. The Subrecipient shall include the "Section 3 clause" at 24 CFR 135.38 in every "Section 3 covered contract" (as defined in 24 CFR 135.5).

#### **O. Conduct**

The Subrecipient shall comply with the Hatch Act, 5 USC 1501 – 1508, and shall ensure that no funds provided, nor personnel employed under this agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.

In the procurement of supplies, equipment, construction, and services pursuant to this agreement, the Subrecipient shall comply with the conflict of interest provisions in 2 CFR 200.317 and 200.318. In all cases not governed by 2 CFR 200.317 and 200.318, the Subrecipient shall comply with the conflict of interest provisions in 24 CFR 570.611.

The Subrecipient certifies that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. It shall require that the language of paragraph (a) through (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is required by section 1352, title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**P. Religious Activities**

The Subrecipient agrees that funds provided under this agreement shall not be utilized for inherently religious activities prohibited by 24 CFR 570.200(j), such as worship, religious instruction, or proselytization.

**Q. Environmental Conditions**

Subrecipient shall not obligate nor expend funds for any choice-limiting Project activity under this Agreement until notified, in writing from the City, that the environmental review requirements pursuant to 24 CFR 570.604 have been satisfactorily completed for the Project activity(s) and that a HUD-approved Request for Release of Funds and certification has been issued. The City's written notice shall specify the date upon which SUBRECIPIENT may begin to obligate and expend funds under this Agreement. SUBRECIPIENT does not assume responsibility for undertaking the environmental review process under 25 CFR Part 52. However, SUBRECIPIENT shall provide the City with timely and accurate Project information as the City may require in order to cause the environmental review(s) to be satisfactorily undertaken. If there is a proposed change in the location or scope of a Project activity, SUBRECIPIENT shall not undertake any action to obligate or expend funds in connection with the proposed change without obtaining the City's prior written approval. Any such City approval shall be subject to City's sole determination as to whether the proposed change requires an additional environmental review and clearance before any funds may be committed or expended for the Project activity.

The Subrecipient must comply with the limitations in 24 CFR 58.22 even though the Subrecipient is not delegated the requirement under Section 104(g) of the HCD Act for environmental review, decision-

making, and action (see 24 CFR part 58) and is not delegated the Grantee's responsibilities for initiating the review process under the provisions of 24 CFR Part 52. 24 CFR 58.22 imposes limitations on activities pending clearance, and specifically limits commitments of HUD funds or non-HUD funds by any participant in the development process before completion of the environmental review. A violation of this requirement may result in a prohibition on the use of Federal funds for the activity.

The Subrecipient shall comply with the following requirements insofar as they apply to the performance of this agreement:

- Air quality. (1) The Clean Air Act (42 U.S.C. 7401 et. seq.) as amended; particularly section 176(c) and (d) (42 U.S.C. 7506(c) and (d)); and (2) Determining Conformity of Federal Actions to State or Federal Implementation Plans (Environmental Protection Agency—40 CFR parts 6, 51, and 93).
- Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, *et seq.*, as amended, including the requirements specified in Section 114 and Section 308 of the Federal Water Pollution Control Act, as amended, and all regulations and guidelines issued thereunder;
- Flood Disaster Protection – NA
- Lead-Based Paint  
The Subrecipient shall comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, J, K, and R, which apply to activities under this agreement.
- Historic Preservation – NA
- Release of Funds (ROF)

No funds may be encumbered prior to the completion of the Environmental Review. The Environmental Review Record (ERR) must be completed before any funds are obligated. The responsibility for certifying the appropriate ERR and ROF shall rest with the City. It is the responsibility of the Subrecipient to notify the City and to refrain from making any commitments and expenditures on the project until an ROF has been issued by the City.

#### **R. Use and Reversion of Assets**

The use and disposition of real property and equipment under this Agreement shall be in compliance with the requirements of 2 CFR Part 200 and 24 CFR 570.502, 570.503, and 570.504, as applicable, which include but are not limited to the following:

1. The Subrecipient shall transfer to the Grantee any CDBG funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Real property and personal property under the Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives pursuant to 24 CFR 570.208 until ten (10) years after expiration of this Agreement [or such longer period of time as the Grantee deems appropriate based on useful life of capital improvements and/or equipment]. If the Subrecipient fails to use CDBG-assisted real property in a manner that meets a CDBG National Objective for the prescribed period of time, the Subrecipient shall pay the Grantee an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, or improvement to, the property. Such

payment shall constitute program income to the Grantee. The Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the ten-year period [or such longer period of time as the Grantee deems appropriate].

3. In all cases in which equipment acquired, in whole or in part, with funds under this Agreement is sold, the proceeds shall be program income (prorated to reflect the extent to that funds received under this Agreement were used to acquire the equipment). Equipment not needed by the Subrecipient for activities under this Agreement shall be (a) transferred to the Grantee for the CDBG program or (b) retained after compensating the Grantee [an amount equal to the current fair market value of the equipment less the percentage of non-CDBG funds used to acquire the equipment].

## **IX. OTHER REQUIREMENTS IMPOSED BY GRANTEE**

Subrecipient will comply with HUD's requirements for new construction. The Subrecipient must meet the standards of a certified Green Building Program for the construction of the rental units. Subrecipient will use the Energy Star Standards.

Subrecipient will rebuild to model resilient building standards. Examples of such standards this Agreement contemplates the subrecipient will comply with include the I-Codes developed by the International Code Council (ICC), the Insurance Institute for Business 18 and Home Safety (IBHS) FORTIFIED home programs, and standards under development by the American National Standards Institute (ANSI) and the American Society of Civil Engineers (ASCE).

**CCR Registration.** No funds may be obligated or expended in any project activity except the administration activity until the Subrecipient provides Grantee with documentation of registration in the Central Contractor Registration (CCR) system. The CCR system may be accessed online at [www.sam.gov](http://www.sam.gov).



THE UNDERSIGNED, as authorized officials on behalf of the parties, have executed this Contract for Subrecipient Assistance, which shall be effective as of the date of execution hereof on behalf of the Grantee.

GRANTEE  
By: Shawn Sipma  
(signature)  
Name: Shawn Sipma  
Title: Mayor  
Date: 11/16/2021

SUBRECIPIENT  
By: St W. Shirley  
(signature)  
Name: STEVEN W. SHIRLEY  
Title: PRESIDENT- DAKOTA COLLEGE AT BOTTINEAU AND  
Date: 11-1-2021 MENOT STATE UNIVERSITY

**EXHIBIT A**  
**Center for Technical Education Project Proposal**

The National Disaster Resilience program focuses on disaster recovery and resilience. It is important to identify the resilience goals of this project and the process used to evaluate and determine the specific resilience elements for sustainable long term economic growth. In the aftermath of the historic 2011 flood in Minot, the City has made efforts to respond to needs identified as necessary to address to promote a sustainable resilient local economy which can be better positioned and suited to withstand adverse impacts from future disasters.

Local economies especially for smaller urban areas such as Minot are frequently vulnerable during and after natural disasters. Disasters such as the 2011 flood also expose vulnerabilities of the economies in small urban areas such as Minot to other factors such as the wide variations in ups and downs of jobs and investment resulting from the oil drilling related activities in North Dakota. It became evident as part of the City's assessment of unmet need that it was critically important for future viability of a sustainable economic growth strategy it is necessary to fill an existing void in creating a sufficient pool of skilled and trained workforce to establish a Center for Technical Education.

Subrecipient primary goal is Developing and Enhancing Community Economic Resilience. Subrecipient has proposed to construct, equip, and, once completed, administer a Center for Technical Education. Subrecipient through its history, track record, mission, and vision to have the capacity and capabilities to implement the planned CTE.

Subrecipient details below the administrative and training services to be provided in the CTE including jobs to be created and projected participants to be trained on an annual basis:



### Planning for a Career and Technical Education Center in Minot



Trinity Health Building at 120 Burdick Expressway in Minot – Proposed location for Minot Career and Technical Education Center

### National Disaster Resilience Program

Planning for a career and technical education (CTE) center in Minot dates back to 2015, when the City of Minot applied for funding from the National Disaster Resilience Competition. The purpose of this program is to provide grants to communities so that they can rebuild and recover from major disasters – in this case, the flood of 2011. The City was successful in receiving a \$74.3 million grant from the Department of Housing and Urban Development for a number of projects related to the goal of becoming a more resilient community. One of the projects approved within the overall funding request was that of a Center for Technical Education, which was described in the original grant as follows:

*Build a Center for Technical Education in Minot with laboratory and classroom space, a computer center, offices, and study areas by September 2021. Minot State University and Dakota College will provide programming and management for the Center for Technical Education, which will offer one- and two-year certificate programs, customized technical training for area businesses, associate degree programs, and eventually college transfer programs. MSU and Dakota College will work with schools to develop post-secondary training options for targeted career programs.*

The original funding amount allocated for this project was \$1,540,000. However, due to changes in project priorities in the larger grant, the City of Minot approved a reallocation of \$2 million in additional funds to the CTE Center project, for a total of \$3,540,000. The deadline for the expenditure of these funds is September 30, 2023. They become available just as soon as a suitable facility has been located and all legal concerns and other operational approvals have been completed as per the grant requirements. However, these funds cannot be used for building acquisition. They must be primarily used for renovation and start-up costs related to equipping a facility.

#### Need for a Postsecondary CTE Center in Minot

Of the 10 largest cities in North Dakota, only Minot and Jamestown do not have nearby access to postsecondary career and technical education programs. A rationale regarding the need for postsecondary CTE programs in Minot and the north central region of the state is documented in a white paper that has been shared with various community leaders and groups in the city of Minot.

#### Facility Location and Acquisition

A suitable facility for the CTE Center has been identified and agreements are in place for the purchase and operation of this facility, once all other necessary approvals have been documented. The property location is 120 Burdick Expressway and is currently owned by Trinity Health. Trinity Health plans to vacate the building as part of its relocation to a new health facility on the south side of Minot. The location of this facility close to downtown Minot is a key aspect of the Resiliency Grant, as the rehabilitation of this facility into a CTE Center will support the community's efforts to retain the vitality of the downtown area as Trinity Health relocates services and employees to its new location. Funding for the purchase of this property has been approved by the Minot City Council, with a grant of \$800,000 from the City's MAGIC Fund. Ownership of the property will be assumed by the Minot State University Foundation. Dakota College at Bottineau will then lease the facility from the Foundation through a formal agreement that covers an initial period of 10 years.

The property at 120 Burdick Expressway has three levels, with a total of 14,754 gross square feet. The property does have a large parking lot adjacent to the north entrance. The building is currently being used for administrative office functions by Trinity Health.

Conversion to a CTE Center will require a major renovation of the entire facility and the \$3,540,000 in Resilience Grant funds will cover these costs.

#### Operational Considerations

Dakota College at Bottineau would assume the responsibility of the day-to-day operations and management of the Center. It is anticipated that the CTE programs offered at the Center would primarily be at the associate in applied science and/or certificate levels, which is consistent with its mission. Depending on the program, Minot State University will be able to assist with general education courses and would also serve as the preferred transfer destination for program graduates possibly interested in completing a bachelor's degree.

A number of programs are currently being developed or modified for delivery at the CTE Center. These programs are Dealer Parts Management and Supply Chain Management, Dental Assisting, Dental Hygiene, Hospitality Management, Golf Course and Turf Management, Information Technology, Medical Assistant and Special Education Technician. However, this program mix may change as new needs are identified during the next two years.

On-going discussions have taken place, and continue to occur, with Minot Public Schools regarding ways in which programs at the new Center can serve high school students as well. However, the new Center would be primarily focused on postsecondary career and technical education programs.

An operational budget detailing both the costs for building renovations and the day-to-day operations of the Center has been developed and is available for review.

## EXHIBIT A - Benchmarking - Enrollment, Job Creation, Economic Impact

### Projected Enrollment for Benchmarking Purposes\*

(\* 1st year enrollment is highly dependent on the ability to begin marketing at least a year in advance of program start-up, this also holds for any new programs developed during the first 5 years)

Program	Hospitality	Info. Tech.	Supply Chain/ Logistics/Parts.Mgt.	Golf Course Mgmt.	Medical Asst.	Other new (Allied Health, CNA, HVAC, etc.) (increase by \$75,000 - 100,000 for each new program)	Total
Year 1	10	10	10	8	10	20	68
Year 2	20	20	20	15	20	40	135
Year 3	20	20	20	15	20	60	155
Year 4	20	20	20	15	20	80	175
Year 5	20	20	20	15	20	100	195

### Job Creation for Benchmarking Purposes (actual number of programs developed will depend on availability of appropriated, CTE and grant funds, which cannot be guaranteed at this time)

(For benchmarking purposes, the number of projected programs is reduced from the previous spreadsheet workbooks to reflect the possibility of reduced program funding from what is currently anticipated.)

FT Jobs Created by Employment at the Center (all with full benefits)	Year 1	Year 2	Year 3	Year 4	Year 5
Assumptions:	Assumes 5 programs	Assumes 5 programs	Assumes 6 programs	Assumes 7 programs	Assumes 8 programs
1 Center Director	1	1	1	1	1
1 Center Admin. Asst.	1	1	1	1	1
1 full-time faculty per CTE program	5	5	6	7	8
<b>Total FT Employment</b>	<b>7</b>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>

Projected Payroll (based on previously described salary projections, which include fringe benefit costs)

	\$ 529,000	\$ 544,870	\$ 636,216	\$ 730,303	\$ 827,212
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Using data from the Economic Policy Institute (website below), it is estimated that each job created at the college level has a multiplier effect of 1.82

<https://www.epi.org/publication/updated-employment-multipliers-for-the-u-s-economy/>

Using the figure of 1.82, the estimated additional jobs created by the CTE center are provided below

	12.74	12.74	14.56	16.38	18.2
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Assuming a minimum salary of \$30,000 and fringe benefits of \$15,000 per position, this equates to \$45,000 per each additional position. Collectively, the annual payroll benefits to the local economy are estimated below:

	\$ 573,300	\$ 573,300	\$ 655,200	\$ 737,100	\$ 819,000
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## EXHIBIT B/D - Project Budget and Timeline

### ONE-TIME MINOT CTE CENTER RENOVATION COSTS

EQUIPMENT, IT, PARKING		REMODELING (Items with * funded separately)	
Program FF&E	590,000	Phase 1 Env. Review*	\$ 35,000
Misc. Center FF&E	125,000	Phase 2 Env. Review*	\$ 65,000
Start-up IT	25,000	Construction @ \$150/sf	
Phone	25,000	@\$150 sf	\$ 2,663,100
IVN Classrooms	100,000	@\$180 sf	\$ 3,195,720
Parking Improvements	100,000	<b>TOTAL REMODELING @\$150 SF</b>	<b>\$ 2,663,100</b>
Signage and Security	50,000	<b>Contingency</b>	<b>\$ 100,000</b>
<b>TOTAL ONE-TIME AND FF&amp;E</b>	<b>\$1,015,000</b>	<b>Available One-time Renovation Costs</b>	<b>\$3.4 million</b>

### ESTIMATED AVAILABLE FUNDING

FOR ABOVE ITEMS \$636,900

Basement	5307 sf
1st floor	7048 sf
2nd floor	5399 sf
<b>Total sf</b>	<b>17754 sf</b>

### Timeline

CONSTRUCTION (City of Minot/Resilience Funding)		OPERATIONS (DCB Funding Sources)	
Chancellor/SBHE Approval of Lease Agreements	9/30/2021	Establish CTE Center	11/1/2021
Purchase of Trinity Health 120 Bldg. by MSUDF	10/15/2021	Advisory Committee	12/15/21
Posting of RFQ for Architectural Services	10/20/2021	Make final decisions regarding	1/1/2022
Lease agreements provided to City of Minot	10/21/2021	CTE programs to be offered in	3/1/2022
Architect RFQ's Due Date	11/10/2021	fall, 2023	
City Council Review/Approval of Subrecipient Agreement	11/15/2021	Establish program advisory committees	3/1/2022 5/15/2022
Architect Selected	11/30/2021	Develop Marketing Plan for	3/1/2022
Architect Planning/Design Process through	12/1/2021 3/31/2022	CTE programs	5/1/2022
Advertise for Construction Mgr. at Risk	2/15/2022	Begin marketing programs	7/1/2022
Select CMaR	3/15/2022	Advertising for Center Director and Admin. Support	5/1/2022
Advertise for Construction Bids	4/15/2022	Hire Director and Admin. Support	7/1/2022
Construction Bids Reviewed/Accepted	5/15/2022	Advertising for CTE Instructors	1/1/2023
Construction Begins	6/1/2022	CTE Instructors Hired	3/1/2023
25% Completion	9/1/2022		
50% Completion	12/1/2023		
75% Completion	2/1/2023		
Construction Completed	5/30/2023		
CTE Center Opens	8/1/2023		

## LEASE AGREEMENT

This Lease is effective the first day the property is acquired by the Lessor by and between:

**LESSOR:** Minot State University Development Foundation, a nonprofit corporation  
500 University Avenue West  
Minot, North Dakota 58701-0001

**LESSEE:** Dakota College at Bottineau  
105 Simrall Blvd.  
Bottineau, ND 58318

1. **PROPERTY:** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the following described real property located in Ward County, North Dakota commonly known as "120 Burdick Expressway East" (the "**Property**");

**Lot 7 LESS the South 75' of the West 50' thereof and Lots 8, 9, 10 and 11, Block 1,  
Ramstad's Fourth Addition to the City of Minot**

The Property shall include all buildings and improvements situated upon the Property (the "**Improvements**"). Unless indicated otherwise, all references to the Property shall be deemed to refer to the Property and all Improvements. Lessee has examined the Property and Lessee hereby accepts the Property in its present condition.

2. **TERM:** The initial term of this Lease shall be for approximately ten (10) years commencing on first day that Lessor has acquired title to the Property and expiring on a date ten years following the issuance of a certificate of occupancy following completion of all renovations by the Lessee unless sooner terminated as provided by this Lease.

2.1. **Renewal.** Following the initial term, this Lease will automatically renew for successive one-year periods (each a "**Renewal Term**") unless Lessor or Lessee notify the other party, in writing, of its election not to renew at least sixty (60) days prior to the end of the then-current term. Each Renewal Term shall be upon all the same terms and covenants as for the preceding term, except that the parties shall negotiate a rental fee for each Renewal Term prior to the beginning of each Renewal Term. The rental fee shall not increase by an amount greater than one percent (1%) for each year the lease has been in effect.

3. **RENT:**

3.1. **Base Rent.** Lessee covenants and agrees to pay to Lessor, without deduction or setoff of any kind, as base rental for use of the Property, the sum of Six Thousand Dollars (\$6,000.00) per year, in monthly installments of Five Hundred Dollars (\$500.00) due and payable in advance on first day of the month following the month in which the certificate of occupancy is issued and on the first day of each month thereafter during the term of this Lease.

3.2. **Additional Rent.** Lessee covenants and agrees to pay Lessor as additional rent ("Additional Rent") an amount equal to Lessor's cost to provide liability insurance for the Lessor on the Property and Improvements. Lessor shall obtain a general liability policy in the amount of \$2,000,000.00 or such greater or lesser amount as Lessor shall determine is appropriate to cover Lessor's liability risk. Lessor shall submit to Lessee an invoice for the actual cost of such liability coverage on an annual or more frequent basis. Lessee shall pay the amount of the invoice within 30 days of receipt of the same.

3.3. **Additional Payments.** It is expressly understood and agreed that the rent provided for under this Lease shall be absolutely net to Lessor throughout the term of this Lease free of any and all real estate taxes, costs, expenses, liabilities, charges or other deductions whatsoever with respect to the Property, it being the intent of the parties that by execution of this Lease, Lessee assumes every obligation with respect to the Property which the ownership thereof would entail and which, but for this Lease, would be borne by Lessor. Therefore, as additional rent for use of the Property, Lessee shall promptly pay:

3.3.1. **Renovation, Repairs and Alterations.** Landlord and Tenant acknowledge that Tenant will be remodeling and renovating the Property and Improvements for use as a CTE center. Tenant shall be in complete control of any and all renovation, construction, remodeling, repair and replacement of any kind or nature on the Property and shall pay all costs and expenses of any kind or nature associated with such renovation, construction, remodeling, repair and replacement. Neither Landlord's consent nor approval shall be required for any work done on the premises by the Tenant. Tenant shall perform all work on the Property in a good and workmanlike manner with appropriate materials and equipment and shall insure that no liens or claims by contractors, subcontractors, workers or materials are asserted or filed against the Property.

3.3.2. **Operating Expenses.** Lessee shall pay all Operating Expenses (as defined by this Lease) incurred with respect to the Property and any buildings or improvements thereon. The term "Operating Expenses" shall mean all costs and expenses of every kind and nature whether paid or incurred by Lessee or the Lessor with respect to the operation and maintenance of the Property such as (without limitation) repairs, replacements and maintenance of the buildings, structures, parking areas, landscaping, signage or lighting located upon the Property, all snow removal, lawn care, trash removal, landscaping, lighting.

3.3.3. **Utilities.** Lessee shall pay all charges for gas, electricity, water, sewer, telephones and internet services, alarm system monitoring, janitorial, garbage collection or other sanitary services and any other utilities supplied to the Property.

- 3.3.4. **Property Taxes.** The parties anticipate that the Property and Improvements will be "tax exempt" during the term of this Lease. Notwithstanding that anticipation, Lessee shall pay all real estate taxes and installments of special assessments levied against the Property before any fine or penalty is added for non-payment.
- 3.3.5. **Insurance.** Lessee shall obtain and maintain, at its expense, insurance coverage as required by section 12 of this Lease.

4. **USE:** The Property shall be exclusively occupied and used by Lessee for the sole purpose of operating a Career and Technical Education Center ("CTE Center") operated by Lessee. Lessee's operations shall comply with all federal, state and municipal laws and regulations governing such activities. If Lessee uses the Property for any purpose which causes the accessibility or other requirements of the Americans With Disabilities Act ("ADA") or the rules and regulations thereunder to be applicable to the Property or any building or improvement thereon, Lessee agrees, at Lessee's expense, to pay for any modification to the Property or any building or improvement thereon imposed by the ADA or the rules and regulations thereunder. Lessee shall not use or occupy or permit the use or occupancy of the Property or any part thereof for any purpose other than the sole purpose set forth herein nor shall Lessee permit the premises to be used in any unlawful manner or for any illegal purpose or in such a manner as to constitute a nuisance or violate the terms and conditions of any laws, rules, regulations and ordinances of applicable governmental authorities and their agencies or in any manner which would cause the Property or Improvements to be subject to property taxes.

4.1. **Reporting.** During the term of the Development Agreement, Lessee will provide to Lessor and to the City of Minot, quarterly status reports on January 10, April 10, July 10 and October 10 of each year. Said reports shall include: (i) the number of programs offered at the Center and a description of each program; (ii) the total number of students enrolled at the Center and the number of students in each program; (iii) the number of full-time and part-time employees employed at the Center; and (iv) such other information and documentation concerning the operation of the Center as the Lessor may reasonably require.

## 5. **REPAIRS AND ALTERATIONS:**

5.1. **General.** Throughout the term of this Lease or any extension thereof, Lessee will keep and maintain the Property and all appurtenances and improvements including (but not limited to) buildings, fixtures, facilities, equipment, sidewalks, curbs, gutters, parking areas, entrances, plumbing systems, electrical systems, ventilating systems, heat and air conditioning system, glass and windows, doors, ceilings, walls, floors, alarm/monitoring systems, etc. in a good state of repair and keep them free from waste or nuisance of any kind. Lessee shall, at its expense, remove the snow and ice from the sidewalks on the Property and shall keep the landscaping in good condition and repair. Lessee further agrees to deliver up and surrender to Lessor possession of the Property upon the expiration or other termination of this Lease in as good condition as when taken, ordinary wear and tear excepted. Lessee shall promptly report any defective condition to Lessor, in writing.

5.1.1. **Alterations and Improvements After Initial Remodel/Renovation.** After the Property has been remodeled and renovated by the Lessee, Lessee shall make no significant alterations in or additions or improvements to the Property (structural or otherwise) without the written consent of Lessor. In the event any permitted alterations, additions, or improvements in or to the Property are made by Lessee, Lessee covenants and agrees that Lessee will make all such alterations, additions or improvements to the Property at Lessee's own expense. In making such alterations, additions or improvements, Lessee shall cause such work to be done in a good workmanlike manner, with materials of equal quality to those now comprising the buildings or improvements on the Property, and without impairing the esthetic qualities, structural integrity or soundness of the buildings or improvements on the Property. Any such alterations, additions, or improvements shall also comply with all applicable laws and ordinances pertaining to such work and/or such use or occupancy. Any additions, alterations or improvements made by Lessee shall be done so in a good and workmanlike manner and shall become and remain part of the Property and remain the property of the Lessor upon termination of this Lease.

5.2. **Signs.** Lessee shall have the right to install and erect signs inside or outside the Property in conformity with local ordinances without the Lessor's consent or approval. Lessee shall have the right to remove any such signs provided that any damage caused by the erection and removal of such signs shall be repaired by Lessee at Lessee's expense.

5.3. **Trade Fixtures.** Lessee shall have the right to remove all Lessee's trade fixtures, furnishings and other personal property provided that the removal of such items shall be affected before expiration of the term of this Lease and all damage caused to the Property by such removal shall be repaired by Lessee at Lessee's expense. Subject to other provisions of this Lease, all Lessee's property not removed from the Property upon vacation or abandonment of the Property, expiration of the Term of Lease, or within fourteen (14) days of the termination of this Lease, for any cause whatsoever, shall conclusively be deemed to have been abandoned and may be appropriated, sold, stored, destroyed or otherwise disposed of by Lessor without notice to Lessee or any other person and without obligation to account therefor and Lessee shall pay Lessor upon demand for all expenses incurred in connection with the disposition of such property.

## 6. **SUBORDINATION:**

6.1. **Subordination to Development Agreement.** Lessee acknowledges that Lessor's ownership of the Property is subject to certain terms and conditions contained in an agreement by and between Lessor and the City of Minot, North Dakota (the "**Development Agreement**"). A copy of the Development Agreement shall be attached to this Lease as Exhibit A. It is understood and agreed that the terms of the Development Agreement shall supplement those of this Lease while such Development Agreement is in effect and that this Lease is subordinated to the terms and conditions of said Development Agreement. This subordination shall be self-operative and no further instrument of subordination shall

be required. Lessee shall, nevertheless, execute and deliver, from time to time, all instruments and certificates affirming and confirming such subordination that Lessor or the City may reasonably request. During the term of the Development Agreement and any extensions thereof, the City of Minot, North Dakota (the "City") shall be a third-party beneficiary of this Lease.

6.2. **Subordination to Mortgages.** Lessee acknowledges that Lessor may desire to place a mortgage upon all or part of the Property and the buildings and improvements thereon. It is understood and agreed that the mortgagee may require that this Lease be subordinated to said mortgage, in which event Lessee agrees to execute any document required by such mortgagee to evidence such subordination *provided*, however, that the mortgagee shall covenant, in writing, that the Lessee's interest under this Lease shall not be foreclosed in any action brought under such mortgage or in the event of the sale of the Property as a result of said action if at the time of bringing an action to foreclose or the time of said sale Lessee is not in default. It is further understood that the mortgagee may require Lessee to attorn to any purchaser of the Property in the event that the same is sold through foreclosure proceedings, Lessee agrees to waive any and all right to treat such foreclosure proceedings as a breach by Lessor.

7. **LIENS:** Lessee shall promptly pay and discharge all bills for labor and materials employed and used in the making of repairs and improvements upon the Property and shall not permit any lien(s) to be filed against the Property for work done or materials furnished Lessee. Should any lien(s) attach to the Property, Lessee shall, at its own cost and expense, within sixty (60) days after actual or constructive notice of such lien, cause any such lien(s) to be discharged or provide Lessor with a bond or other security to indemnify and hold harmless Lessor from any loss or expense therefrom, in amount and form acceptable to Lessor and Lessor. No provision hereof shall prevent Lessee from contesting any such lien, provided Lessee shall indemnify, defend and hold harmless the Lessor from any expense thereof and cause any such lien to be discharged prior to any foreclosure sale with respect to the enforcement thereof.

7.1. **Notice.** Lessee shall, at all times during its occupancy of the Property, post the following notice in a conspicuous place or places on the Property:

**NOTICE TO ALL CONTRACTORS, REPAIRMEN  
AND OTHERS PROVIDING SKILLS, LABOR OR  
MATERIALS TO THE IMPROVEMENTS OF THE PROPERTY:**

This is a leased property. The owner of this property has not, and will not approve any improvements or repairs without prior receipt of a valid lien waiver from the person or company providing any skill, labor or materials. Any improvements made to this property are made at the instance of the Lessee, and not at the instance of the owner. This property shall not be subject to lien by any person providing such skill, labor or materials pursuant to the provisions of N.D.C.C. chapter 35-27.



8. **CONDEMNATION AND CASUALTY:**

8.1. **Lessee's Property.** All trade fixtures, equipment, inventory and other personal property belonging to the Lessee, Lessee's agents or Lessee's guests, located in or about the Property, shall be at the sole risk of Lessee. Lessor shall not be liable for the theft or misappropriation, nor for any damage or injury thereto, nor for any damage or injury to Lessee, any of Lessee's officers, agents, employees, licensees, or other persons, or any property caused by fire, explosion, wind, water, rain, snow, frost, steam, gas, electricity, any acts of God, heat or cold, or by any act or neglect of any other Lessee or any person provided, however, Lessor shall not be relieved of liability for the negligence, intentional wrongful acts or omissions of Lessor, its agents and employees.

8.2. **Damage to or Destruction of Property.** If during the term of this Lease, the Property is destroyed or damaged in whole or in part by fire or other casualty (even if only part of the building other than the Property is damaged), Lessee shall promptly report such damage to Lessor in writing. Lessee shall promptly and diligently repair the Property and Lessor shall assign to Lessee any interest Lessor may have in insurance proceeds to accomplish such repair, unless the Lease is terminated as hereinafter provided. To the extent the Property is not useable for its intended purpose, rent shall be equitably abated until such repairs and restoration are made, or until the Lease is terminated as hereinafter provided; further provided, however, that if such fire or other casualty is caused by the fault or negligence of Lessee, its employees or agents, Lessee shall not be entitled to any such abatement. If the Property, or any part thereof is destroyed or damaged and the costs of repair or reconstruction are reasonably estimated to exceed the insurance proceeds paid or payable as a result of such damage or destruction, Lessor may, within ninety (90) days of such damage or destruction, elect to terminate this Lease by delivering written notice of termination to the Lessee.

8.3. **Eminent Domain.** If any part of the Property shall be taken or condemned by eminent domain or sale in anticipation thereof and such condemnation or sale renders the Property unsuitable for the business of Lessee, the term of this lease shall cease and terminate as of the date title to the Property vests in the condemning authority. All compensation awarded for any taking under the power of eminent domain, whether for the whole or a part of the Property, shall be the property of the Lessor, whether awarded as compensation for diminution in the value of the leasehold or to the fee of the Property or otherwise, and Lessee hereby assigns to Lessor all of Lessee's right, title and interest in and to any and all such compensation; *provided*, however, that Lessor shall not be entitled to any award properly belonging to Lessee, including, but not limited to, an award for the taking of Lessee's trade fixtures or furniture.

9. **DEFAULT:**

9.1. **Events of Default.** The following shall constitute events of default for purposes of this Lease:

(a) Lessee defaults in payment of rent, any additional charge or amount to be paid by Lessee as provided in this Lease and such default shall continue uncorrected for a period of ten (10) days after written notice to the Lessee.

(b) Lessee defaults in the prompt and full performance and observance of any of the terms and conditions of this Lease to be performed or observed by Lessee not relating to the payment of money and such default continues uncorrected for a period of thirty (30) days after written notice to the Lessee. If such default cannot be reasonably corrected within thirty (30) days, then Lessee shall have commenced correction of such default in good faith.

(c) Lessee violates any of the terms and conditions of the Development Agreement and such default continues uncorrected for a period of thirty (30) days after written notice to the Lessee. If such default cannot be reasonably corrected within thirty (30) days, then Lessee shall have commenced correction of such default in good faith.

(d) Lessee abandons or vacates the Property or a substantial portion thereof.

(e) Any execution, attachment or other order shall be issued upon or against Lessee's interest in the Property and shall continue for a period of thirty (30) days after Lessee has notice of such condition.

(f) Lessee becomes insolvent or makes a transfer in fraud of its creditors or an assignment for the benefit of its creditors.

(g) Lessee files a petition under any section or chapter of the Federal Bankruptcy Act as amended, or under any similar law or statute of the United States or any state thereof or Lessee is adjudged bankrupt or insolvent.

(h) A receiver or trustee is appointed for all or substantially all of the assets of Lessee.

**9.2. Lessor's Right Upon Default.** All rights, powers and privileges conferred upon the parties shall be cumulative of, but not restrictive to, those given by law. Accordingly, upon occurrence of an event of default, in addition to all rights and remedies allowed by law and equity, Lessor may, with or without further notice, terminate this Lease and Lessee's right to possession of the Property hereunder.

**9.3. Optional Performance by Lessor.** In addition to, but without limitation or qualification of any other right or remedy of the Lessor, should Lessee default in the performance of any covenant, condition or stipulation contained in this Lease (except those pertaining to the payment of rent or other sums), the Lessor may after thirty (30) days written notice to Lessee or without notice if, in the Lessor's opinion an emergency exists, perform the same for the account and at the expense of Lessee. The rights granted Lessor

pursuant to this section shall be permissive only and shall not be construed as requiring Lessor to perform any condition or covenant or correct any default.

9.4. **Termination.** Upon termination of this Lease, Lessee shall surrender possession and vacate the Property immediately and Lessor may enter into and repossess the Property with or without process of law and remove all persons and property therefrom in the same manner as if this Lease had not been made. For purposes of such entry and repossession, Lessee waives any notice provided by law or otherwise. In addition to the foregoing, Lessor may remove from the Property any and all property found therein without such repossession releasing Lessee from Lessee's obligations to pay sums required by this Lease.

9.5. **Lessee's Property.** Any and all property removed from the Property by Lessor may be handled, removed, stored or otherwise disposed of by Lessor, at Lessee's risk and expense, and Lessor shall in no event be responsible for the preservation or safekeeping thereof. Upon demand made by Lessor, Lessee shall pay any and all expenses incurred in connection with such removal and all storage charges against such property so long as the same shall be Lessor's possession or under Lessor's control. Any property remaining on the Property or in the possession of Lessor not retaken by Lessee within ten (10) days after written notice to Lessee shall be conclusively deemed to have been abandoned by Lessee.

9.6. **Force Majeure.** In the event Lessor or Lessee is delayed, hindered or prevented from performing any act or thing required hereunder, except for payment of monies, by reason of strikes, lockouts, labor troubles, casualties, failure or lack of utilities, governmental laws or regulations, riots, insurrection, war, pandemics, epidemics, acts of God, or other causes beyond the reasonable control of Lessor or Lessee, neither party shall be liable for the delay, and the period for the performance by either party shall be extended for a period equivalent to the period of such delay, *provided* that the party entitled to such extension shall give prompt notice to the other party of the occurrence or event.

## 10. **ASSIGNMENT:**

10.1. **Assignment by Lessee.** The Lessee may not, voluntarily or involuntarily, assign, encumber or sublet all or any part of the Property or any interest Lessee may have under this Lease without the prior written consent of Lessor. Any attempt to assign, encumber or sublet all or any part of the Property or any interest Lessee may have under this Lease without the prior written consent of Lessor shall be null and void. If the Development Agreement is then in effect, the prior written consent of the City shall also be required. In the event of any such permitted assignment or subletting, Lessee shall remain liable for the performance of all of the conditions and covenants on the part of Lessee to be performed under this Lease unless Lessor otherwise expressly consents in writing. Any assignment on the part of Lessee pursuant to this Lease shall be upon the express condition that the assignee shall, in consideration of such assignment, agree to assume, perform and be bound by all the terms, obligations and conditions on the part of Lessee under this Lease and that a copy of such executed assignment shall be delivered to Lessor within ten (10) days after

its execution. If the Development Agreement is then in effect, a copy of the assignment shall also be delivered to the City within ten (10) days after its execution.

**10.2. Assignment by Lessor.** In the event of any transfer of title to the Property by Lessor, the Lessor shall be freed and relieved from and after the date of such transfer and conveyance of all liability with respect to performance of any covenants or obligations on the part of Lessor contained in this Lease. Without further agreement or notice to Lessee, the transferee of such title shall be deemed to have assumed and agreed to observe and perform all obligations of the Lessor under this Lease during the transferee's ownership of the Property. Lessor may transfer Lessor's interest in the Property without the consent of Lessee and such transfer or subsequent transfer shall not be deemed a violation of Lessor's obligations under the terms of this Lease.

**11. ENTRY BY LESSOR:** Lessor reserves the right to enter the Property during normal business hours or at any time in case of emergency for the purpose of examining, repairing and protecting the Property or for the purposes of evaluating compliance with the terms of this Lease and/or the Development Agreement. During the last six (6) months of the term of this Lease, Lessor may enter the Property for the purpose for the purpose of exhibiting the Property to prospective Lessees.

**12. INSURANCE:**

**12.1. Casualty Insurance.** Lessee shall, at its sole cost and expense but for the mutual benefit of Lessor and Lessee as named insureds or Lessor as an additional insured, through an insurance company agreeable to Lessor or through the state of North Dakota's Risk Management Fund or through other "self-insurance" accepted by the Lessor in writing, keep the Property insured during the term of this Lease against loss or damage by fire and other risks embraced by coverage of the type now known as the broad form of extended coverage, in an amount not less than Four Million Six Hundred Thousand Dollars (\$4,600,000.00). Except as otherwise provided by this Agreement, the Development Agreement or otherwise agreed by the City, in writing, any insurance proceeds paid to the Lessee and/or the Lessor as a result of damage or destruction of the Property or Improvements shall be used to repair, rebuild and restore the Property. Lessee shall also, at its sole cost and expense, obtain and maintain during the term of this Lease insurance to cover physical loss of Lessee's personal property on the Property in amounts sufficient to cover Lessee's interest. Lessee expressly waives any right of recovery against the Lessor for any and all liability and expense for loss, damage or destruction of Lessee's property resulting from perils ordinarily covered by standard fire insurance policies notwithstanding that such damage may be due to the negligent acts or omissions of Lessor, Lessor's agents or employees.

**12.2. Liability Insurance.** Lessee at its sole cost and expense shall maintain insurance through the State Risk Management Fund as required or provided for by state statute. Lessor shall, for the benefit of Lessor, maintain:

- (a) comprehensive general liability insurance on an occurrence basis against claims for personal injury, including without limitation, bodily injury, death or property damage, occurring upon, in or about the Property and adjoining sidewalks, streets, and passageways, such insurance to afford immediate protection, at the time of the inception of this Lease, and at all times during the term of this Lease, having limits of not less than Two Million Dollars (\$2,000,000.00) for injury to all persons in any one incident and/or damages caused to all property in any one incident; and
- (b) public liability insurance on an occurrence basis against claims for personal injury, including without limitation, bodily injury, death or property damage, occurring upon, in or about the Property and adjoining sidewalks, streets, and passageways, such insurance to afford immediate protection, at the time of the inception of this Lease, and at all times during the term of this Lease, having limits of not less than Two Million Dollars (\$2,000,000.00) for injury to all persons in any one incident and/or damages caused to all property in any one incident.

Lessor's cost of such insurance shall be invoiced to Lessee as Additional Rent as provided for in Paragraph 3.2, above.

**12.3. Mandatory Provisions.** All policies of insurance required by this Lease:

- (a) shall specifically designate Lessor as an additional insured;
- (b) shall contain an agreement by the insurer that such policy will not be canceled without at least ten (10) days' prior written notice by certified mail to Lessor;
- (c) may be provided under a blank policy of insurance or by a combination of primary, excess, and umbrella policies; provided, however that (i) those policies must be absolutely concurrent in all respects regarding the coverage afforded by the policies, (ii) the coverage of any excess or umbrella policy must be at least as broad as the coverage of the primary policy, and (iii) the coverage afforded to Lessor hereunder shall in no way be limited, diminished, or reduced under such blanket policy or policies.
- (d) shall be self-insurance specifically agreed to in writing by the Lessor, or insurance issued by an insurer of recognized responsibility which is authorized to write insurance in the State of North Dakota and has current AM Best rating of no less than A or is otherwise acceptable to Lessor; or is provided by the state of North Dakota's Risk Management Fund..

**13. INDEMNIFICATION:** Lessee agrees that Lessor shall not be liable for any use to which the Property is put or any damage either to person or property due to injury, loss of life, loss or damage to or total destruction of property resulting from such use.

14. **ESTOPPEL CERTIFICATE:** Lessee will execute, acknowledge and deliver to Lessor, upon request, a certificate certifying:

- (a) This Lease is unmodified and in full force and effect or, if there have been modifications, that the Lease is in full force and effect as modified;
- (b) The dates on which basis rent and additional sums payable under this Lease have been paid; and
- (c) No notice has been received by Lessee of any default which has not been cured. It is the intent of the parties that any such certificate may be relied upon by any prospective purchaser or mortgagee of the Property or any part thereof.

15. **WAIVER:** Neither the failure on the part of Lessor or Lessee to enforce strictly all of the terms and provisions of this lease, nor acceptance of rent by Lessor, or payment of rent by Lessee, after breach by Lessee or Lessor, as the case may be, of any covenant or condition herein contained, nor any delay on the part of either party to enforce strictly the terms and provisions hereof shall operate as, or be deemed to be, a waiver of any rights or remedies which, under the terms of this lease or by law, may accrue to a party by reason of any subsequent breach of the terms and conditions hereof by the other party.

16. **NOTICES:** The parties can be notified by certified or registered mail or overnight delivery service with verification of delivery as follows:

Lessor	Lessee
Minot State University Development Foundation Attn: Rick Hedberg 500 University Ave. W. Minot ND 58707 (701) 858-3399	Dakota College at Bottineau Attn: Dr. Jerry Migler, Campus Dean 105 Simrall Blvd. Bottineau, ND 58318 701-228-5480

17. **CAPTIONS:** The titles and headings of this Lease are for convenience and reference only and shall not in any way be deemed a part of this Lease for the purpose of construing or interpreting the meaning thereof, or for any other purpose.

18. **RELATION OF PARTIES:** Nothing in this Lease shall cause Lessor to be construed as a partner, or joint venturer with Lessee, or otherwise associated with Lessee in the operation of any business located upon the Property.

19. **GOVERNING LAW:** This Lease shall be governed and interpreted under the laws of the State of North Dakota.

20. **BINDING EFFECT:** The terms, provisions, covenants and conditions of this Lease shall apply to, inure to the benefit of, and be binding upon the parties and their respective successors in interest, legal representatives and assigns unless otherwise expressly provided in this Lease.

21. **JOINT DRAFTING:** This Lease is the product of negotiation and preparation by and between the Lessor and Lessee and their respective attorneys. Accordingly, both parties shall be conclusively presumed to have jointly drafted this Lease, which shall be construed without regard to the rule that ambiguities in a document are to be construed against the drafter.

22. **SEVERABILITY:** If any provision of this Lease shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect. Further, the parties agree that this Lease shall be reformed to replace any such stricken provision(s) or part(s) with a valid and enforceable provision that comes as close as possible to expressing the intention of the provision or part stricken.

23. **ENTIRE AGREEMENT:** This Lease, including the exhibits or other writings referred to herein or delivered pursuant hereto, contains the entire agreement and understanding between Lessor and Lessee relating to the leasing of the Property and obligations of Lessor and Lessee. This Lease supersedes any and all prior or contemporaneous agreements and understandings between Lessor and Lessee, and shall not be modified or amended unless Lessor and Lessee consent in writing. If the Development Agreement is then in effect, the consent of the City shall also be required.

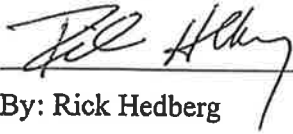
24. **COUNTERPARTS:** This Lease may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signatures by facsimile, .pdf document or other electronic means shall be as effective as delivery of original signatures.

**END OF PAGE**



**LESSOR:**

Minot State University Development  
Foundation, a nonprofit corporation




By: Rick Hedberg

its: Executive Vice President

**LESSEE:**

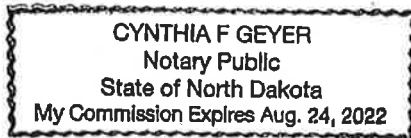
Dakota College at Bottineau

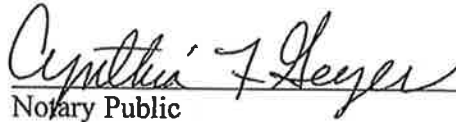


by Jerry Migler  
Campus Dean

STATE OF NORTH DAKOTA )  
COUNTY OF WARD )

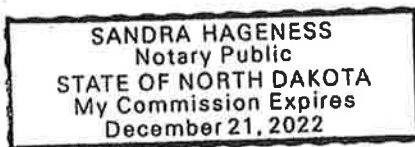
The foregoing Lease Agreement was acknowledged before me on October 20,  
2021 by Rick Hedberg, Executive Director of the Minot State University Development  
Foundation, a nonprofit corporation.



  
Notary Public

STATE OF NORTH DAKOTA )  
COUNTY OF Bottineau )

The foregoing Lease Agreement was acknowledged before me on October 19,  
2021 by Jerry Migler on behalf of Dakota College at Bottineau.



  
Notary Public

**EXHIBIT D**  
**Project Timeline**

# EXHIBIT B/D - Project Budget and Timeline

## ONE-TIME MINOT CTE CENTER RENOVATION COSTS

EQUIPMENT, IT, PARKING		REMODELING (Items with * funded separately)	
Program FF&E	590,000	Phase 1 Env. Review*	\$ 35,000
Misc. Center FF&E	125,000	Phase 2 Env. Review*	\$ 65,000
Start-up IT	25,000	Construction @ \$150/sf	
Phone	25,000	@\$150 sf	\$ 2,663,100
IVN Classrooms	100,000	@\$180 sf	\$ 3,195,720
Parking Improvements	100,000	TOTAL REMODELING @ \$150 SF	\$ 2,663,100
Signage and Security	50,000	Contingency	\$ 100,000
<b>TOTAL ONE-TIME AND FF&amp;E</b>	<b>\$1,015,000</b>	<b>Available One-time Renovation Costs</b>	<b>\$3.4 million</b>

## ESTIMATED AVAILABLE FUNDING

FOR ABOVE ITEMS \$636,900

Basement	5307 sf
1st floor	7048 sf
2nd floor	5399 sf
<b>Total sf</b>	<b>17754 sf</b>

## Timeline

CONSTRUCTION (City of Minot/Resilience Funding)		OPERATIONS (DCB Funding Sources)	
Chancellor/SBHE Approval of Lease Agreements	9/30/2021	Establish CTE Center	11/1/2021
Purchase of Trinity Health 120 Bldg. by MSUDF	10/15/2021	Advisory Committee	12/15/21
Posting of RFQ for Architectural Services	10/20/2021	Make final decisions regarding	1/1/2022
Lease agreements provided to City of Minot	10/21/2021	CTE programs to be offered in	3/1/2022
Architect RFQ's Due Date	11/10/2021	fall, 2023	
City Council Review/Approval of Subrecipient Agreement	11/15/2021	Establish program advisory committees	3/1/2022
Architect Selected	11/30/2021	Develop Marketing Plan for	5/15/2022
Architect Planning/Design Process	12/1/2021	CTE programs	3/1/2022
through	3/31/2022	Begin marketing programs	5/1/2022
Advertise for Construction Mgr. at Risk	2/15/2022	Advertising for Center Director	7/1/2022
Select CMaR	3/15/2022	and Admin. Support	5/1/2022
Advertise for Construction Bids	4/15/2022	Hire Director and Admin. Support	7/1/2022
Construction Bids Reviewed/Accepted	5/15/2022	Advertising for CTE Instructors	1/1/2023
Construction Begins	6/1/2022	CTE Instructors Hired	3/1/2023
25% Completion	9/1/2022		
50% Completion	12/1/2023		
75% Completion	2/1/2023		
Construction Completed	5/30/2023		
CTE Center Opens	8/1/2023		

## **EXHIBIT E – Marketing Plan**

Dakota College at Bottineau currently contracts with a North Dakota based marketing firm for guidance and support of its marketing and promotion activities. A major focus of the marketing firm during the past several years has been increasing the awareness of the college's career and technical education programs.

Given the college's positive experiences in working with its current marketing firm, and the firm's knowledge of the issues related to marketing and promoting postsecondary CTE programs, we plan to continue using this firm to develop a marketing plan specifically for the Minot CTE Center.

Once final decisions have been made in early winter, 2022, regarding the final mix of programs to offer at the Center in fall, 2023, the marketing firm will begin developing a plan specifically targeted at recruiting students for the new Center. It is anticipated that the marketing plan will be completed by late spring of 2022 and ready to launch in the summer of 2022.

Preliminary discussions have already begun with the college's marketing firm and the firm is looking forward to getting started on this effort.

## DEVELOPMENT AGREEMENT

This agreement is made effective May 3, 2021 by and between:

**MINOT STATE UNIVERSITY DEVELOPMENT FOUNDATION**  
a North Dakota nonprofit corporation  
500 University Ave W  
Minot, ND 58707-0001

and

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

### RECITALS

- A. Career and Technical Education Centers (CTEs) promote economic development and enhance the economic climate of the communities in which they are located by helping to prepare students to enter the workforce, retaining human talent and resources in the community, assisting the recruitment to and retention of businesses in the community, providing opportunities for training the incumbent workforce and providing the communities in which they are located with resources to more quickly adapt to changing workforce needs, thereby diversifying the local economy and increasing the welfare and prosperity of the people who live and work there.
- B. Despite its status as one of North Dakota's 10 largest cities, the City of Minot (the City) currently lacks a post-secondary CTE. For the reasons identified above, location and operation of a post-secondary CTE in the City would promote the general welfare, security and prosperity of the City, its inhabitants and surrounding communities.
- C. Minot State University Development Foundation (the Foundation) is a nonprofit corporation established to promote and stimulate financial support for the benefit of Minot State University and address the long-term priorities of the university.
- D. Dakota College at Bottineau (Dakota College) is a public college offering Associate of Applied Science programs in a variety of areas including (but not limited to) accounting technology,

bookkeeping, finance, human resource management, small business management, information technology, web design, paraprofessional education, medical assistant, paramedic technology, etc.

- E. Although its main campus is located in Bottineau, North Dakota, Dakota College is an affiliate campus of Minot State University and its operations are overseen by the Minot State University President. Through the sharing of facilities, technology and faculty, Dakota College offers 1-year and 2-year Career and Technical Programs in Minot, thereby benefitting the entire Minot region. Those programs also enable students who choose to earn a Bachelor's degree to make a seamless transition to Minot State University.
- F. Operation of a CTE Center is an enterprise (i.e. a project or undertaking that is especially difficult, complicated, or risky, or a systematic purposeful activity). Dakota College has the technology, faculty and resources to undertake that enterprise and operate a CTE Center at the Property under a lease with the Foundation.
- G. Article 3 of the City of Minot's Home Rule Charter authorizes the City to control its finances and fiscal affairs and engage in any utility or enterprise permitted by the constitution or not prohibited by statute.
- H. Minot City Ordinance Section 28.5-103 imposes a one percent (1%) sales tax. Minot Ordinance Section 28.5-108 dedicates a portion of sales tax proceeds to economic development.
- I. Minot City Ordinance Section 32-2 authorizes the City to donate money from city sales tax proceeds and/or other funds to certain private and/or nonprofit entities for the enhancement and improvement of community facilities or other enterprise activities that meet criteria established by the City for promotion or economic benefit, promotion of the City of Minot as a trade, service, recreation, tourism or manufacturing center, and other purposes.
- J. On September 18, 2020 the MAGIC Fund Steering Committee recommended approval of an \$800,000.00 grant to be used to purchase 120 Burdick Expressway East (the Property) in Minot, North Dakota (the Grant) for the operation of a CTE Center at the Property. The Grant constitutes less than twenty-five percent of the \$4.2 million it is estimated will be necessary to acquire and remodel the Property, equip, staff and commence operation of a CTE Center at the Property.
- K. The Foundation is willing to accept and utilize the grant proceeds to acquire the Property for the purpose of operating a CTE Center at that location (the Center). The Foundation is also

willing to enter into a lease agreement with Dakota College for the purpose of rehabilitating and operating the Center at the Property.

- L. After rehabilitation of the Center at the Property, the parties estimate that the operator of the Center will initially be able to offer 3 programs for approximately 50 students at the Center. The Center will also require instructors, an onsite manager, administrative staff support and part-time staff jobs employed by the operator of the Center. As the number of programs offered increases, both the student population and the number of full-time and part-time employees at the Center is also expected to increase.

**NOW, THEREFORE**, in consideration of the Parties' promises and other valuable consideration, the receipt and adequacy of which are acknowledged by each Party, the City and the Foundation **AGREE**, as follows:

1. **THE GRANT (\$800,000.00)**. The City agrees to extend a grant to the Foundation in the amount of Eight Hundred Thousand Dollars (\$800,000.00) (the "Grant") subject to the following conditions, all of which shall be satisfied unless waived by the City, in writing:

- 1.1. The execution and delivery of this Agreement by the Foundation and consummation of the transactions contemplated herein shall have been duly authorized by all requisite action on the part of the Foundation and this Agreement shall constitute a valid and binding agreement of the Foundation in accordance with its terms.
- 1.2. The Foundation shall be and remain duly qualified to do business in the State of North Dakota and have the power and authority to fully perform its obligations under this Agreement.
- 1.3. Grant proceeds shall be exclusively used to purchase the Property, which shall be used for the sole purpose of operating the Center as provided by this Agreement and the grant shall be funded directly to the closing agent which is closing the purchase of the Property.
- 1.4. The Foundation shall comply with federal, state, and local laws applicable to the Property, including, but not limited to, regulations, rules, ordinances, codes and decrees.

**2. OPERATION OF THE CENTER.**

- 2.1. The Foundation (or its Lessee under the terms of its Lease) commits to continue operation of the Center at the Property for a period of not less than ten (10) years after the earlier of (a) 1<sup>st</sup> day of the month following the date a certificate of occupancy is issued for the Center at the Property or (b) September 1, 2023 (the "Use Commencement



Date"). Failure of the Foundation (or its Lessee under the terms of its Lease) to continue operation of the Center at the Property for at least ten (10) years from the Use Commencement Date will be deemed to be a material breach of the terms and provisions of this Agreement. A memorandum of this Agreement, in a form acceptable to the City, shall be filed in the office of the Ward County Recorder by the City.

- 2.2. The Foundation (or its Lessee under the terms of its Lease) assumes sole responsibility for the condition, operation, maintenance and management of the Property or the Center. The City's sole obligation under this Agreement is distribution of the Grant funds to the Foundation. The City shall have no liability or responsibility for operation of the Property or the Center nor for costs, fees, claims, losses, damages or expenses of any kind, related to or arising out of operation of the Property or Center or the acts or omissions of the agents, employees, contractors or representatives of the Foundation or Dakota College in connection therewith. The Foundation will not represent to the public or any person that the Property or the Center is operated by the City or under its authority, control or supervision nor shall the Foundation authorize or permit Dakota College to do so.
- 2.3. The Foundation will lease the Property to Dakota College for a term not less than ten years (10 years) (the Lease). The Lease must:
- A. provide that the rights of the parties thereunder are subject and subordinate to the rights of the City and the provisions of this Agreement and the rights of the City hereunder, including (but not limited to) the provisions of section 6 of this Agreement;
  - B. prohibit the use of the Property for any purpose other than operation of the Center without the prior, written consent of the Foundation and the City;
  - C. prohibit the assignment or transfer, in whole or in part, voluntarily or involuntarily, of the lessee's rights under the Lease without the prior, written consent of the Foundation and the City;
  - D. prohibit the voluntary or involuntary attachment of any lien or encumbrance against the Property and require the lessee to secure a release or waiver of any lien or encumbrance that may attach to the Property as a result of the acts or

omissions of the lessee, its agents, employees or representatives within sixty (60) days of attachment; and

- E. prohibit any amendment or modification of the Lease without the written consent of the Foundation and the City;
- F. provide that the lease is triple net (NNN) to the Foundation with Dakota College being absolutely responsible for all renovation, improvement and modification costs, repairs, maintenance, replacements, operating costs, including but not limited to insurance as required by this Agreement, real estate taxes if any, and utilities of the Property and the Center. A copy of the lease in substantially its final form is attached hereto as Exhibit 1.

A copy of the duly-executed Lease (and any amendments thereto) shall be delivered to the City by the Foundation within ten days (10 days) of execution.

- 2.4. During the term of this Agreement or any extension thereof, the Foundation (or its Lessee under the terms of the Lease) shall promptly pay all real property taxes (if any) and special assessments (if any) levied with respect to the Property.
- 2.5. During the term of this Agreement or any extension thereof, the Foundation (or its Lessee under the terms of the Lease) shall not permit any liens to attach, voluntarily or involuntarily, to the Property or any part thereof except with the written consent of the City. The Foundation (or its Lessee under the terms of the Lease) shall discharge and/or satisfy of record, any lien attached to the Property without the written consent of the City within sixty (60) days after attachment or perfection, whichever occurs later. Legal action initiated by the Foundation or the Lessee to discharge or contest a lien attached to the Property within the sixty (60) days of attachment or perfection of the lien shall be sufficient to satisfy the Foundation's obligation hereunder, provided, that any lien against the Property shall be discharged no later than 30 days after any judgment affirming a lien becomes final. If the Foundation (or its Lessee under the terms of a Lease) fails to satisfy or discharge any such lien within 31 days after any judgment affirming the lien's perfection or attachment has been finalized, the City may declare the Foundation in breach of its obligations under this Development Agreement. If the Foundation delivers to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City as a result of the breach of this

Development Agreement, and the Property is subject to any lien, the Foundation may, at the Foundation's sole and absolute option: 1) satisfy the lien; or, 2) assign the City the Foundation's claim against the Lessee for Lessee's failure to keep the Property free from liens. If the Foundation exercises its option to assign its breach of lease claim to the City, the City's sole remedy for breach of the terms of this Development Agreement shall be to pursue the Lessee for its failure to keep the Property free from liens. If the Foundation does not assign its claim against Lessee to the City, or if the attached or perfected lien does not result in a breach of contract claim against the Lessee, the City may pursue claims against the Foundation to require the Foundation to satisfy the lien.

- 2.6. During the term of this Agreement or any extension thereof, the Foundation shall require its Lessee under the terms of the Lease to maintain the Property, including all buildings, structures and improvements, water, sewer and gas connections, pipes and mains, plumbing, heating and ventilation, and electrical systems, parking lots, driveways and sidewalks in good condition and repair, reasonable wear and tear excepted. The Foundation shall promptly and in a good and workmanlike manner make all necessary repairs, structural and otherwise, to the Property, complying in all cases with all applicable governmental regulations, laws or ordinances.
- 2.7. During the term of this Agreement or any extension thereof, the Foundation shall require its Lessee to secure and maintain one or more insurance policies:
  - A. insuring the buildings and improvements on the Property against loss or damage from perils customarily included in a standard form of fire and extended coverage in an amount not less than \$4,600,000.00.
  - B. insuring against claims for bodily injury, death, and property damage occurring upon the Property in an amount not less than \$2,000,000.00; and
  - C. comprehensive general public liability insurance policies for said claims in an amount not less than \$2,000,000.00.

If the Property is not subject to a lease, the Foundation shall insure the Property as provided in this section 2.7 (A)-(C), or shall execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City. If the Property, or any part thereof is destroyed or damaged, the Foundation shall deliver written notice thereof to the City within ten (10) days of the damage or

destruction. Except as provided by section 6.4, any insurance proceeds paid to the Foundation as a result of such damage or destruction shall be used by the Foundation to repair, rebuild and restore the Property unless otherwise agreed by the City, in writing. Within ten (10) days of the delivery of the deed to the Foundation, and from time to time thereafter as requested by the City, the Foundation shall provide a certificate of insurance evidencing all coverages as required by this section 2.7.

**3. REPORTING AND INSPECTION.**

- 3.1. Within ten (10) days of its delivery to the Foundation, the Foundation shall provide to the City a copy of the deed vesting title to the Property in the name of the Foundation, bearing the recording information affixed by the Ward County Recorder.
- 3.2. During the term of this Agreement or any extensions thereof, the Foundation (or its Lessee under the terms of the Lease) shall provide quarterly status reports to the City on January 10, April 10, July 10 and October 10 of each year. Said reports shall include: (i) the number of programs offered by the Center and a description of each program; (ii) the total number of students enrolled at the Center and the number of students in each program; (iii) the number of full-time and part-time employees employed at the Center; and (iv) such other information and documentation concerning the operation of the Center as the City may reasonably require.
- 3.3. The City shall, upon advance notice to the Foundation and its Lessee of not less than 24 hours, have the right to inspect the Property at any reasonable time for the purpose of evaluating compliance with the terms of this Agreement.

**4. SALE OR ASSIGNMENT.** Except as otherwise provided by this Agreement, the Foundation may not, voluntarily or involuntarily, sell the Property or assign all or any part of its rights or obligations under this Agreement without the City's prior, written consent provided, however, that the Foundation may assign its obligations to Dakota College under the Lease, which lease shall be deemed to have the City's prior written consent. Any attempt to sell the Property or assign all or any part of the Foundation's rights or obligations (except assigning its obligations to Dakota College as referenced in the preceding sentence) under this Agreement without the City's prior written consent provided shall be null and void.

**5. FORCE MAJEURE.** If a party cannot perform an obligation under this Agreement due to causes, facts, or circumstances beyond the control of such party, then the non-performance will

not be deemed to be an event of default. Such causes, facts or circumstances include but are not limited to war; insurrection; strikes; lock-outs; riots; floods; earthquake; public enemy; pandemics; epidemics; quarantine restrictions; governmental restrictions or priorities enacted subsequent to execution of this Agreement; litigation (including eminent domain actions); unusually severe weather; inability to secure necessary labor, materials, or tools; acts of another party; acts or failures to act of public or governmental agencies or entities (except acts or failures to act pursuant to this Agreement by the City will not excuse performance of the City), or other causes mutually agreed upon in writing and beyond the control or without the fault of the party claiming an extension of time to perform.

**6. TERMINATION.**

6.1. Failure to begin operation of the Center at the Property by the Use Commencement Date or continue operation of the Center at the Property for at least ten (10) years from the Use Commencement Date will be deemed to be a material breach of the terms and provisions of this Agreement. If the Center fails to begin to operate at the Property by the Use Commencement Date or ceases to operate at the Property (as defined by this Agreement) during the term of this Agreement or any extension thereof, the Foundation, upon demand by the City, shall execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City. For purposes of this Agreement, the Center shall be deemed to have ceased operation if two (2) of the following conditions are satisfied:

- A. the Center fails or ceases to have at least 50 students enrolled in the second year of operation, 100 students in the third year of operation, or an average of 150 students in years 4 -10 of operation;
- B. the Center fails or ceases to employ at least five (5) full-time employees- during the first year of operation, six (6) full-time employees during the second year of operation, or an average of seven (7) full-time employees during years 3 – 10 of operation;
- C. the Center fails or ceases to offer at least three (3) academic programs during the first year of operation, four (4) academic programs during the second year of operation, or an average of five (5) academic programs during years 3 – 10 of operation;

D. the Center fails or ceases to be operated by Dakota College or other party acceptable to the City; or

E. the Lease is terminated or breached and such breach is not cured within ninety (90) days.

- 6.2. The City may terminate this Agreement for cause under this section 6.2 if the Foundation materially fails to comply with any terms of this Agreement not addressed in section 6.1. If termination for cause is initiated under this section 6.2, the City shall give the Foundation written notice of default, specifying the non-compliance with the terms of this Agreement. The Foundation shall have thirty (30) days after receipt of such notice to either correct the non-compliance or, in the case of non-compliance that cannot be corrected in thirty (30) days, begin in good faith to correct such non-compliance and diligently proceed to complete such correction. If appropriate curing of the non-compliance issue does not occur within thirty (30) days after receipt of such notice, then the City may formally declare the Foundation to be in default of this Agreement. Upon a declaration of default, this Agreement shall terminate on the date specified in such notice. The Foundation, upon termination of this Agreement and demand by the City, shall execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City.
- 6.3. If all of the Property or such portion thereof as will substantially interfere with the Center's operation on the Property shall be condemned or taken by any governmental authority then the Foundation may elect to terminate this Agreement by delivering written notice of termination to the City. Such notice of termination must: (i) indicate that the Foundation is electing to terminate this Agreement pursuant to the terms of this section 6.3, (ii) state that the Foundation has, in good faith, determined that the condemnation or taking prevents or substantially interferes with the ability to operate the Center on the Property, (iii) identify the portion of the Property condemned or taken and the governmental authority exercising the taking or condemnation, (iv) identify the total amount of proceeds paid or payable to the Foundation as a result of such condemnation or taking, (v) be accompanied by payment to the City of all proceeds paid or payable to the Foundation as a result of such condemnation or taking and (vi) be accompanied by a

duly executed quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City.

- 6.4. If the Property or any part thereof is destroyed or damaged and the costs of repair or reconstruction are reasonably estimated to exceed the insurance proceeds paid or payable to the Foundation as a result of such damage or destruction, the Foundation may, within ninety (90) days of such damage or destruction, elect to terminate this Agreement by delivering written notice of termination to the City. Such notice of termination must: (i) indicate that the Foundation is electing to terminate this Agreement pursuant to the terms of this section 6.4, (ii) identify the date of occurrence and describe the damage or destruction to the Property, (iii) be accompanied by a written estimate of the cost of repair or reconstruction prepared by a neutral party, (iv) identify the total amount of insurance proceeds paid or payable to the Foundation as a result of such damage or destruction excluding, however, that portion of the insurance proceeds allocated by the insurer to equipment, inventory, furniture and personal property of the Foundation, (v) be accompanied by payment to the City of all insurance proceeds paid or payable to the Foundation as a result of such damage or destruction to the Property *less* those proceeds used by the Foundation to safeguard and secure the Property; and *less* those proceeds allocated by the insurer to equipment, inventory, furniture and personal property of the Foundation or its Lessee and (vi) be accompanied by a duly executed quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City.
7. **LIMITATION OF DAMAGES AND REMEDIES.** Notwithstanding any other provision of the Agreement, the Parties agree that the remedy available to the City for breach of this Agreement by the Foundation shall be an order of specific performance directing that the Foundation execute and deliver to the City a quit claim deed transferring the Foundation's entire right, title and interest in and to the Property to the City. In addition to the remedy described in the preceding sentence, if the Property: 1) has suffered a casualty loss which is covered by a policy of insurance; or, 2) has suffered a condemnation such that the Foundation has received a condemnation award; or 3) is subject to a lien and the Foundation has not elected to assign its claim against the Foundation's Lessee under paragraph 2.5, above or the attached or perfected lien does not result in a breach



of contract claim against the Foundation's Lessee, such remedy may include a provision requiring the Foundation to pay to the City any insurance proceeds received by the Foundation which have not been expended to safeguard or rehabilitate the Property; or a condemnation award received by the Foundation; or a requirement that the Foundation satisfy liens against the Property. In no event shall the Foundation be responsible to any party to this Agreement or any third party beneficiary of this Agreement for any monetary damages except as specifically provided for in this paragraph 7.

8. **RELATION OF PARTIES.** This Agreement does not constitute either party as the legal representative of the other for any purpose. 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.
9. **COOPERATION.** The parties have entered into this Agreement with the intention of cooperating with each other in performing the terms of this Agreement. To that end, each party agrees to perform its duties and obligations, to extent it may legally do so, in a manner that will best promote the interests of all the parties and render the highest benefit to the public concerned.
10. **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.
11. **AUTHORITY TO EXECUTE AND PERFORM 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 the Foundation, its successors and assigns in accordance with its terms. The Foundation 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 under any agreement, contract, judgment, order, rule or statute to which the Foundation is subject.

**12. NOTICES.** All notices, certifications, or communications 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 the City:           CITY OF MINOT  
PO Box 5006  
515 2nd Avenue SW  
Minot, North Dakota 58702-5006  
Attention: Shaun Sipma, Mayor  
Phone #: 701-857-4750  
Fax #: 701-857-4751

Copy to:           City Attorney  
PO Box 5006  
515 2nd Avenue SW  
Minot, ND 58702-5006  
Phone #: 701-857-4190  
Fax #: 701-857-4751

To the Foundation:   Minot State University Development Foundation  
500 University Avenue West  
Minot, ND 58707  
Attention: Executive Director/Vice President for Advancement  
Phone: 701.858.4483

Copy to:           McGee, Hankla & Backes, P.C.  
Attn: Jon W. Backes  
P.O. Box 998  
Minot, ND 58702-0998

**13. CONSTRUCTION OF AGREEMENT.**

- 13.1. This Agreement contains the entire agreement between the parties. No statements, promises or inducements made by any party or any agent of any party that are not contained in this Agreement shall be valid or binding.
- 13.2. This Agreement may be amended only by agreement of the parties evidenced in writing, signed by both parties to this Agreement.
- 13.3. 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.

- 13.4. If any provision of this Agreement shall be determined to be invalid, or inoperative or unenforceable, such determination shall not render any other provision(s) of this Agreement invalid, inoperative or unenforceable and, under such circumstances, the parties shall be deemed to have automatically inserted in substitution for such provision(s), an alternative provision(s) which is enforceable and bears as close a resemblance as possible to such provision(s) determined to be invalid, inoperative or unenforceable.
- 13.5. 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.
- 13.6. 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.
- 13.7. 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.
14. **WAIVER.** No delay or failure by any party to exercise any right under this Agreement and no partial single exercise of any right shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.
15. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto have all signed the same document. All counterparts shall be construed together and shall constitute one agreement.

**END OF PAGE**

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

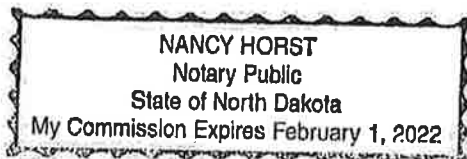
Attest:

Kelly Matalka  
By:  
City Clerk

CITY OF MINOT  
a North Dakota Municipal Corporation  
Shaun Sipma  
By: Shaun Sipma  
Mayor

The foregoing Development Agreement was acknowledged before me by Shaun Sipma, Mayor of the City of Minot and Kelly Matalka, City Clerk, on behalf of the City of Minot, North Dakota, a municipal corporation, on May 10, 2021.


Nancy Horst  
Notary Public  
My Commission Expires:



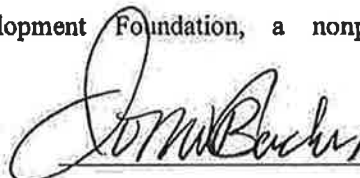
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IN WITNESS WHEREOF, Minot State University Development Foundation, a nonprofit corporation, has caused this Agreement to be duly executed and delivered as of the date first written above.

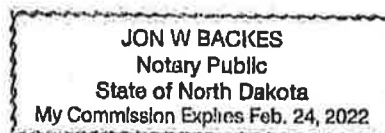
MINOT STATE UNIVERSITY DEVELOPMENT FOUNDATION  
a nonprofit corporation

  
By: Rick Hedberg  
Executive Director

The foregoing Development Agreement was acknowledged before me by Rick Hedberg on behalf of Minot State University Development Foundation, a nonprofit corporation, on May 5, 2021, 2021.



Notary Public  
My Commission Expires:



END OF INSTRUMENT