

City of Minot



Ad Hoc Committee Meeting

Wednesday, November 2, 2022 at 2:30 PM

City Council Chambers, City Hall (515 2nd Ave SW)

Any person needing special accommodation for the meeting is requested to notify the City Clerk's office at 857-4752.

1. DISCUSSION OF THE MAGIC FUND GUIDELINES

Documents:

[MAGIC FUND GUIDELINES WORKING DOC_DRAFT_V2_11.01.2022.PDF](#)

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

GENERAL POLICY GUIDELINES

AS APPROVED BY THE CITY COUNCIL OF THE CITY OF MINOT ON:
June 2, 2003

AMENDED BY THE CITY COUNCIL:
February 6, 2006

AMENDED BY THE CITY COUNCIL:
April 6, 2009

AMENDED BY THE CITY COUNCIL:
December 3, 2018

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HISTORY AND GENERAL PURPOSE

In 1990, the voters of the City of Minot approved a portion of the 1-percent City sales tax for use in economic and industrial development. The funds accumulated for this purpose shall be called the Minot Area Growth by Investment and Cooperation (MAGIC) Fund.

The MAGIC Fund is intended to provide financing incentives to businesses that desire to expand or locate in the greater Minot trade area. The eligible uses of the Fund are financing projects to support business growth in the Primary Sectors, capitalization of revolving loan funds dedicated to addressing financing needs of small businesses not available through traditional financial institutions, and marketing directly connected to attraction of opportunities to accomplish business growth in the Primary Sectors and use of capitalized small business revolving loan funds (RLF).

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

- Create new jobs
- Save existing jobs
- Expand the local tax base
- Increase capital investment
- Improve the entrepreneurial climate of the region
- Enhance workforce solutions
- OPTION TO CONSIDER: Improve quality of life in the Minot area

~~which are to create new jobs, save existing jobs, expand the local tax base, increase capital investment, and improve the entrepreneurial climate of the region. In addition, the MAGIC Fund may be used for workforce development to attract workers to meet workforce deficiencies within the Primary Sectors and small business revolving loan funds supported by the Fund in the region.~~

~~No more than 10% of available funds in the MAGIC Fund account as of January 1^{*} of each year may be used during the calendar year for RLF Capitalization.~~

~~Annually, in December, the Mayor and City Council will consult with the Minot Area Development Corporation, Minot Area Chamber of Commerce and other established organizations with economic development and/or business development purposes to identify the Primary Sector industries and small business clusters which shall be the focus of uses of the MAGIC fund during the next calendar year.~~

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

City Council

FUND USES, LIMITS, AND FISCAL CONTROLS

MAGIC Funds may be used for the following programs, subject to limitations specified.

OPTION TO CONSIDER: adding in here language on the minimum threshold for the MAGIC Fund

A. FUND USES AND LIMITS

Funds available through the MAGIC Fund for project financing fall into ~~insert number~~ three categories.

Tier 1: Primary Sector Program

The goal of the Primary Sector Program is to facilitate the growth of the primary sector in the Minot area. The Primary Sector Program may be utilized by a primary sector business as defined in North Dakota Century Code 1-01-49.11. Additionally, the Primary Sector Program may be utilized by businesses which provide substantive support to the growth of the primary sector in the Minot area.

Up to ~~XX~~ % of available funding annually set aside for businesses that qualify as Primary Sector. This tier of funding should have no less than ~~\$X million~~ available at the beginning of the calendar year.

OPTION TO CONSIDER: No more than 25% of the unencumbered funds in MAGIC Fund Primary Sector as of January 1st each year may be used during the calendar year for a single proposal or applicant without a super majority of the Minot City Council.

Funds available ~~connected~~ to Primary Sector ~~industries~~ may be used to provide temporary or permanent financing of any cost related to the ~~eligible project relocation and/or establishment of a new business, or the expansion of an existing business~~ provided that temporary financing may only in the form of a non-forgivable loan while permanent financing may be in the form of a non-forgivable loan or combination of ~~forgivable loan grant~~ and non-forgivable loan with a grant being no more than ~~30%~~ 20% of total project financing. If ~~except where~~ an applicant can demonstrate through detailed financial documentation that project feasibility requires a ~~forgivable loan greater than 20% of total project financing, the application may be approved with a supermajority of the Minot City Council.~~ higher percentage of grant to non-forgivable loan to meet a minimum, substantiated five year growth projection. These funds for use MAGIC Fund with Primary Sector industries will ~~may~~ not be used for restructuring existing debt, unless it can be demonstrated that the restructuring will create definable, measurable ~~new jobs or save existing jobs.~~ benefits for the greater Minot trade area that meet at least one of the MAGIC Fund goals.

Tier 2: State of North Dakota Program Initiatives

Funds available through the MAGIC Fund for the Bank of North Dakota (BND) PACE Buydown Match Program shall be used to satisfy the local match requirements associated with BND’s PACE Program. If the applicant can demonstrate they will be able to exceed the upper ‘Minimum Investment’ or ‘Jobs Created’ thresholds of the BND’s PACE Program by at least 50%, the MAGIC Fund may be used as a forgivable loan. If the applicant cannot demonstrate that they will be able to exceed the thresholds, the MAGIC Fund shall be used as a non-forgivable loan with terms comparable to similar BND buydown match programs administered in the Minot area.

MAGIC Fund may be considered to satisfy the local match requirements associated with other state programs tied to key initiatives (i.e. workforce development).

Tier 3: Small Business Program

The goal of the Small Business Program is to support growth of new small businesses, enhance the entrepreneurial climate of the Minot area, and expand the local tax base.

Up to XX% of available funding annually set aside for capitalization of revolving loan funds dedicated to addressing financing needs of small businesses. This tier of funding should have no less than \$X million available at the beginning of the calendar year.

Funds available through the MAGIC Fund Small Business Program for capitalization of may be used to capitalize a revolving loan funds (RLF) to satisfy local match requirements associated with BND’s Flex PACE Program. MAGIC Fund Small Business Program proceeds may be supplemented with other state and federal sources to further capitalize the revolving loan fund to meet the demands of small business in the Minot area. BND Flex PACE Buydown Match Loan applications shall be considered and administered by the Souris Basin Planning Council (SBPC). **OPTION TO CONSIDER: cap needed here; need to determine what this is** must meet the following criteria:

- Be a match and/or complementing existing capitalization from other sources
 - Be no more than either can be demonstrated as being received from other sources or which is available in a mature RLF
 - Are governed by eligibility and underwriting standards which demonstrate (a) being more flexible and competitive than what is available from traditional financial institutions, (b) supports small businesses (as defined by the US Small Business Administration) in business clusters for which there is a demonstrated demand and/or need in Minot and the region, and (c) has a physical office in Minot
- Funds provided for RLF capitalization may be provided either as a grant or as a line of credit.

Tier 3: TBD

OPTIONS TO CONSIDER:

- Workforce Development Program
- Childcare Program

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~~—Automation Program~~

~~Small Business Program (expanding this to include Micro Grants)~~

~~Quality of Life Program~~

~~—Community Facilities~~

~~Urban Renewal Program~~

~~—Façade Improvement~~

~~—Urban Renewal Technical Support (Renaissance Zone, Tax Increment Financing (TIF),~~

~~Payments in Lieu of Taxes (PILOT))~~

Limits:

Businesses that don't qualify include the following: gaming establishments, retail trade, educational services, religious organizations, adult entertainment, public administration, food and beverage establishments, and hotels (lodging).

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

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

~~A company that meets or exceeds its contractual job creation/retention obligations specified in measurable benchmarks, and/or performance related benchmarks (ie. % annual growth in Minot) contained in the agreement for previous received funding may be eligible for additional funding from the MAGIC Fund for new expansion initiatives based on performance and measurable benchmark standards.~~

B. FISCAL CONTROLS

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

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

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

MAGIC Fund recipients are required to enter into a Business Incentive Agreement with the City of Minot which meets the requirements of North Dakota Century Code 54-60.1-03 (when applicable). A previous MAGIC Fund recipient that meets or exceeds its obligations under a previous Business Incentive Agreement may be eligible for additional funding from the MAGIC for new or expansion initiatives.
OPTION TO CONSIDER: what is the reapplication process?

MAGIC FUND SCREENING COMMITTEE

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

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

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

~~No officer, director, member, or employee of the MAGIC Fund Screening Committee, Minot Area Development Corporation (MADC), or City of Minot, may have an ownership position or financial interest in a business funded by the MAGIC Fund. Funding will not be considered until 12 months after an applicant's disqualification under this paragraph terminates.~~

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

include:

- (1) Independent financial accounting for all tax money spent during the reporting period from the economic development portion of City of Minot sales tax jobs development portion of the 40 percent "first penny" tax, by category of spending. This portion of the report will include MAGIC Fund balance information as of the report closing date.
- (2) An assessment of the performance of the programs funded through the MAGIC Fund using current jobs development/retention contracts, utilizing the "Project Tracking" guidance found in this policy.
- ~~(3)~~ ~~An assessment of the performance of the current contracts for all supporting services paid for by the 40 percent "first penny" tax revenue.~~
- ~~(4)~~(3) A listing of all applications that were not approved by the MAGIC Fund Screening Committee.
- ~~(5)~~(4) An assessment of the financial and management health of the MAGIC Fund, to include matters that are recommended for policy change and/or need redefinition.

CONFLICT OF INTEREST

OPTION 1:

Officers, directors, members or employees of the City of Minot, Minot Area Chamber EDC, MAGIC Fund Screening Committee or Minot City Council are to follow their established Conflict of Interest policies during the review of any MAGIC Fund application. Applicants shall disclose known conflicts of interest at the time of the application.

OPTION 2:

Applicants shall disclose known conflicts of interest at the time of the application to the Minot Area Chamber EDC or City of Minot Economic Development Department (for façade improvement grants). Applicants shall disclose if they or a member of their immediate family (parents, spouse, siblings, or children) are officers, directors, members or employees of the City of Minot, Minot Area Chamber EDC, MAGIC Fund Screening Committee or Minot City Council. Disclosures shall be indicated on application materials.

Additionally, if any director of the Minot Area Chamber EDC, member of the MAGIC Fund Screening Committee or member the Minot City Council has a conflict of interest, it shall be disclosed in a written letter or email, to the corresponding board, committee, or city council before the item is considered by the corresponding board, committee, or city council. A

conflicted board member, committee member, or city council member shall not participate in any activities to evaluate or debate the merits of a proposal. A conflicted board member, committee member, or city council member may present factual information regarding a proposal and may answer questions from other board member, committee members, city council members, or other agency staff involved in the evaluation of the application to the MAGIC Fund.

APPLICATION PROCESSES

~~The MAGIC Fund Screening Committee~~The lead agencies will shall develop application procedures and administrative processes that are comprehensive enough to protect the community interests, assuring prudent and accountable use of all funds, but are streamlined enough so as not to discourage potential applicants from seeking financial assistance.

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

At least one representative of the company with authority to represent the company applying for funding must present the application to the MAGIC Fund Screening Committee and respond to questions about the company and its job creation/retention, expansion/retention, and/or related plans. All applications and attendant paperwork must be submitted in sufficient time (according to the schedule adopted annually by the MAGIC Fund Screening Committee) to allow the MAGIC Fund Screening Committee to do its due diligence work.

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

MAGIC Fund participation in projects sponsored, supported or initiated by other political subdivisions is authorized consistent the goals and purposes of the MAGIC Fund. The MAGIC Fund

Screening Committee shall exercise discretion in considering applications for projects outside Ward County. The Committee may jointly participate with other political subdivisions in extending assistance to applicants. ~~With consent of the Committee, a political subdivision may serve as the applicant under these Guidelines.~~

The City Council will review and grant final approval for all projects that are proposed for funding through the MAGIC Fund. If a project is denied funding by any of the boards or committees which precede City Council action the project shall be deemed ineligible for consideration by the Minot City Council. recommended by the MAGIC Fund Screening Committee. The Committee has authority to disapprove applications. Applicants denied by the Screening Committee shall have the right to appeal the decision to the City Council but City Council approval such denied application shall require two-thirds vote of full City Council.

Confidentiality shall be observed for information of a personal nature, such as Social Security numbers and the like, both as a statutory obligation and as a matter of policy. Confidentiality of other information (including proprietary information and trade secrets) submitted to the lead agency Committee will be provided only upon a clear showing of the need for such confidentiality (giving due regard to the difficulty of proving the need for confidentiality without, at the same time, disclosing the information sought to be kept confidential).

When confidentiality is provided by the lead agency and subsequent approving authorities, their City, its obligation in that regard shall be limited to making reasonable good-faith efforts to preserve such confidentiality under the applicable North Dakota open meetings and open records laws (including, when permissible, the return of all copies of such information to the person who, or the entity which, submitted it). No absolute or unconditional guarantee of confidentiality will be made.

~~In cases when confidentiality has been provided, it is the desire of the City Council that there be a sufficient interval between the Committee "going public" on its recommendation and the Council acting on such recommendation, so as to allow meaningful time for the public to digest and comment upon the recommendation. However, the Committee may recommend to the Council that such interval be foreshortened or telescoped upon a finding of the Committee that:~~

- ~~(1) — the proposed project seems reasonably likely to generate more than one hundred full-time, desirable jobs;~~
- ~~(2) — the company involved in the project is a publicly traded company listed on the New York Stock Exchange or the NASDAQ Exchange, which has a history of successful operation and for which there is a consensus of stock analysts~~

of “hold” or better; and

- ~~(3) — such company provides a cogent written explanation to the MAGIC Fund Screening Committee of the need for expedited Council action after the Committee goes public, which explanation shall be made public at the same time as the Committee recommendation is made public.~~

APPLICATION REVIEW GUIDANCE

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

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

Regardless of the factors ultimately determined to be the basis by the application reviewers ~~Screening Committee~~ in recommending financing for an Applicant, there must be clear, measurable performance benchmarks which can be used to regularly monitor compliance and performance.

The ratio of public-supported funding versus private-supported funding on each project should be carefully scrutinized so that the MAGIC Fund does not take a disproportionate equity position in any particular project. ~~MAGIC Fund cannot contribute more than 50% of all costs for a project or activity contained in an application, and all~~ All funds (MAGIC Fund and matching

funds) authorized projected for the project and activity must be documented and verifiable. If an applicant can demonstrate through a justifiable business plan with clear minimum five-year growth projections that it needs a higher ~~than 50%~~ contribution of MAGIC Fund participation ~~than established through these MAGIC Fund Guidelines~~ to assure project feasibility, then consideration can be given by the ~~Screening Committee application reviewers. Final approval by supermajority (2/3 vote) of the City Council is necessary for projects which request a higher contribution of MAGIC Funds than established though these MAGIC Fund Guidelines.~~

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

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

OPTION TO CONSIDER: ad requirements for delivery of funding, authority levels, funding levels

PROJECT TRACKING AND CONTRACTS

The Business Incentive Agreement shall specify~~MAGIC Fund Screening Committee will institute~~ project tracking procedures for each project approved. The procedures for tracking will provide periodic feedback from the company receiving job creation/retention funding on the status of business operations. The Business Incentive Agreement shall establish~~Establishing~~ the specific frequency, content, and manner of presentation of these reports ~~will be under the direct control of the contract committee, which will assure that the project tracking and reporting requirements are established~~ prior to ~~loan funding~~ disbursement and be made enforceable ~~by means of a written development contract between the City and the fund recipient.~~

Standard Form (i.e. fillable blank) Business Incentive Agreements (or equivalent if Business Incentive Agreements are not applicable) shall be developed by the program’s lead agency for

the following programs to simplify and expedite the contracting process (i.e. Bank of North Dakota PACE Buydown Match).

For the Bank of North Dakota FlexPACE Buydown Match Loan program, an agreement shall be made between the City of Minot and Souris Basin Planning Council which governs the use of MAGIC Funds for capitalization of a revolving loan fund for small businesses who qualify for the Bank of North Dakota's FlexPACE Buydown program, administered by Souris Basin Planning Council, shall enter into a standard form agreement with Souris Basin Planning Council which meets the requirements of the Bank of North Dakota, City of Minot, and other entities which have contractual requirements stemming from the use of their funds for capitalization of the revolving loan fund for small businesses.

The A eContract eCommittee shall consist of four, consisting of a City Council representative, a City Finance representative, a ~~MAGIC Fund Screening Committee~~Minot Area Chamber EDC representative, and a ~~service provider~~person representing the project, with the assistance of legal counsel, ~~to will~~ structure each development contract and forward it to ~~Minot Area Chamber EDC Board, MAGIC Fund Screening Committee, and~~ the ~~Minot~~ City Council concurrent with ~~other project application materials~~the project being recommended for approval by the ~~MAGIC Fund Screening Committee~~.

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

To the extent appropriate under the circumstances of a particular project, its development contract shall call for the provision of detailed receipts and invoices as a precondition of the expenditure of funds by the City pursuant to the contract.

The contractBusiness Incentive Agreements shall provide for suitable collateral or security to protect the City's interests and, in addition (or when necessary in lieu thereof), "pullclaw-back" provisions. Development contracts shouldBusiness Incentive Agreements shall prescribe specific reporting requirements to be met by the grantee, including at a minimumrecipient of funds, in accordance with North Dakota Century Code 54-60.1-03.:

- (1) — The total annual salary paid out by the company in terms of job categories, such as executives, managers, supervisors, and line employees. See section C, Operating Procedures, for format.
- (2) — Number of employees receiving benefits, type of benefits provided, and dollar value of benefits. Examples include health insurance, life insurance, pensions,

~~vacations, sick leave, etc.~~

~~(3) — Value of annual goods and services purchased in the Minot trade area.~~

~~(4) — Benevolent activities, including volunteer hours of employees and services provided to the community.~~

Each project file should maintain a checklist that corresponds to the contract requirements to ensure all documentation is current and complete.

At the discretion of the City Council, an independent contractor shall review employment records at the company site and sign an affidavit of verification.

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