

JOINT POWERS AGREEMENT
City of Minot Park District and
City of Minot, North Dakota

THIS JOINT POWERS AGREEMENT (“Agreement”) is between the City of Minot, North Dakota, (the “City”) and the Board of Park Commissioners of the City of Minot (the “Park District”), both entities constituting political subdivisions under the laws of the State of North Dakota.

PRELIMINARY STATEMENT

The City of Minot is a Home Rule City organized and operated under its Home Rule Charter pursuant to Chapter 40-05.1, North Dakota Century Code. The Park District is a Parks and Recreation District organized under Chapter 40-49 of the North Dakota Century Code. Both the City and the Park District have authority to enter into a Joint Powers Agreement pursuant to Section 54-40.3-01 of the North Dakota Century Code.

The purpose of this Agreement is to provide for financial assistance to the Park District for construction of the future Magic City Discovery Center, a community facility to be located in Minot, North Dakota. Partial funding for these contemplated improvements and enhancements has been requested from the City of Minot, North Dakota, pursuant to Ordinance No. 4380, which was lawfully adopted by the City of Minot in June of 2011. Section 1 of Ordinance No. 4380 authorizes the City of Minot to allocate revenues collected from a city sales tax previously adopted, Ordinance No. 3560, for potential expenditures of upgrading, remodeling and constructing community facilities which include, but are not limited to, arenas, auditoriums, and facilities for conventions, tourist and sporting events conducted in the city. This authorization was for allocation of up to 30% of the proceeds collected on a yearly basis from the sales tax, and is contingent upon the City Finance Director further determining that there is sufficient funding derived from the sales tax to fund the City’s share of the current Northwest Area Water Supply Project and to complete the necessary construction for such project.

The City Council for the City of Minot, North Dakota, has considered the joint request of the Park District and the Children’s Museum of Minot, Inc., a North Dakota non-profit corporation (hereinafter “Children’s Museum”) with respect to construction of the future Magic City Discovery Center, a community facility to be located in Minot, North Dakota, and pursuant to a public hearing at its regular meeting on August 7, 2017, and the first reading of an ordinance at its regular meeting on September 4, 2018, has given tentative approval for financial support of this joint request from the Park District and Children’s Museum totaling one million dollars (\$1,000,000). This contribution of one million dollars (\$1,000,000) is contingent upon and subject to (1) completion and execution of this Joint Powers Agreement by the parties’ authorized representatives; (2) final passage of an appropriate Ordinance authorizing the foregoing and described Joint Powers Agreement, appropriation of the one million dollar (\$1,000,000) sum described herein for the year 2018, and the enterprise; (3) determination by the City Finance Director, in consultation with the City Council, that sufficient funds have been collected upon the city sales tax which will adequately fund the NAWWS project and further permit a distribution of one million dollars (\$1,000,000) to assist in the improvements and enhancements of the Park District property identified as the future Magic City Discovery Center

as specified in this Joint Powers Agreement; (4) the completion and execution of an agreement between the Park District and Children’s Museum which fully describes compliance with all of the responsibilities and obligations laid out in this Agreement; and (5) proof to the City Finance Director that, prior to disbursement of any monies by the City and no later than December 31, 2018, the Park District and/or Children’s Museum raised an additional five hundred thousand dollars (\$500,000) for the construction of the future Magic City Discovery Center to be located in Minot, North Dakota.

THEREFORE, for valuable consideration and pursuant to North Dakota Century Code Chapter 54-40.3, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Purpose. The purpose of this Agreement is to provide for funding for the construction of the future Magic City Discovery Center, a community facility to be located at 25 16th Avenue NE, Minot, North Dakota, which has a legal description of Lot 1, Grandview Park & Boulevard (“Property”). The Property is Park District property and under the supervision and jurisdiction of the Park District.

The public purpose for entering into this Agreement is to promote recreation opportunities to the community and surrounding areas residents and visitors, promote visitor attraction and economic development, and enhance the quality of life of the community and surrounding area residents.

2. Source of Funds. The Park District and the City agree that potential funding for these improvements and enhancements will be derived from the proceeds collected in 2017 under the city sales tax authorized by City Ordinance 3560 and 4380, and that the sum of one million dollars (\$1,000,000) will be awarded. The parties further specifically agree that the monetary sum of one million dollars (\$1,000,000) is also subject to the terms and provisions of Section 4, which is listed immediately below and is contained within the terms and provisions of this Agreement.
3. Effective Date and Term. This Agreement shall become effective on the date signed by the last party to sign the Agreement and following required approval and passage of an appropriate ordinance passed with two readings. With respect to the allocation of any sales tax proceeds from the City for the project and construction activity specified herein to the applicable Park District Property, this payment of one million dollars (\$1,000,000) shall be made during the year 2018. However, with reference to the potential and general use of the enhanced and improved park property supervised by the Park District and specified in this Agreement, the duration of these provisions shall be continuous and without a time limitation following the completed execution of this Agreement. (See Section 6 below).
4. Financing of Improvements and Enhancements. Both the City and the Park District understand and agree that the potential payments totaling one million dollars (\$1,000,000) under this Agreement are contingent upon full compliance with all of the following factors:

- (a) Completion and execution of this Joint Powers Agreement by the parties' authorized representatives;
 - (b) Final passage of an appropriate Ordinance authorizing the foregoing and described Joint Powers Agreement, appropriation of the one million dollar (\$1,000,000) sum described herein for the year 2018;
 - (c) Determination by the City Finance Director, in consultation with the City Council, that sufficient funds have been generated and received by the city sales tax which will adequately meet the requirements of Section 1 of City Ordinance 4380 and will also permit for adequate funding and construction of the Northwest Area Water Supply Project to the City of Minot;
 - (d) Completion and execution of an Agreement between the Park District and Children's Museum which fully describes compliance with the responsibilities and obligations outlined in this Joint Powers Agreement; and
 - (e) Proof, submitted prior to disbursement of any monies and on or before December 31, 2018, that the Park District and/or Children's Museum raised an additional five hundred thousand dollars (\$500,000) for the construction of the future Magic City Discovery Center. The proof shall be submitted to the City Finance Director in a form acceptable to the City Finance Director.
5. Title to Improvements and Administration, Management and Operation. Legal title to the Property previously described and constituted by future Magic City Discovery Center located in Minot, North Dakota, shall completely remain with the Park District. Additionally, the parties agree that the supervision of the administration, management and operation of the Magic City Discovery Center, as described throughout this Agreement, shall be under the complete direction and authority of the Park District.
6. General Use. Both the City and the Park District agree that based upon the construction of the future Magic City Discovery Center contemplated by this Agreement, said facility shall be operated as public facility and shall be made available to other public and private entities and individuals. The parties further agree that the future Magic City Discovery Center described herein shall be utilized for community activities and events that promote recreation opportunities to the community and surrounding areas residents and visitors, promote visitor attraction and economic development, and enhance the quality of life of the community and surrounding area residents. Furthermore, the uses of the facilities and properties shall be pursuant to the current terms of use of said facilities already adopted by the Park District, with the Park District and/or Children's Museum reserving the right to amend those terms of use, including fee amounts, from time to time.
7. Objectives, Projects, and Standards. The Park District agrees and understands that the following standards and requirements shall apply with respect to the \$1,000,000 sum disbursed by the City to the Park District:

- (a) The Park District shall ensure that all development activities by the Park District or Children's Museum are carried out in accordance with all federal, state, and local laws or regulations;
- (b) The Park District shall ensure that the City and Park District are permitted to inspect or audit the Children's Museum's records as may be necessary to ascertain its compliance with applicable laws and regulations as well as the conditions imposed in connection with this Agreement;
- (c) After execution of this Agreement and until completion of the Magic City Discovery Center project, the Park District shall ensure that the Children's Museum submits annual written reports relating to the construction project. The Park District shall ensure that each written report includes, at a minimum, general project information, milestone reviews, issues and/or risks, and project metrics.

In addition, for a period of ten (10) years after completion of the Magic City Discovery Center, the Park District shall ensure that the Children's Museum submits annual written reports indicating the various activities and programs provided. The Park District shall ensure that each written report includes, at a minimum, the date of such activities and programs, as well as the general identification of the entities or parties participating in the activities or programs.

Upon receipt of any written report by the Park District, as described previously, the Park District shall provide the written report to the City; and

- (d) The Park District shall monitor and ensure that the Children's Museum does not discriminate in its plans, programs, and activities on the basis of race, color, national origin, creed, religion, race age, sex, handicap, or any other basis which has been declared as discriminatory by federal or state cases or law.
8. Financial Administration – City. Both the City and the Park District agree that the disbursement of proceeds from the city sales tax in accordance with the terms and provisions of this Joint Powers Agreement shall be made through the Office of the City Finance Director. After full compliance with the contingent requirements described in Section 4, the distribution of one million dollars (\$1,000,000) shall be made by the City Finance Director. However, the City Finance Director shall only make payment after the Park District provides sufficient verified documentation (such as invoices, billings, or contracts) which the City Finance Director finds sufficient and in accordance with the improvements and enhancements described herein to the Park District property constituted as the future Magic City Discovery Center. Any payments made pursuant to this Agreement shall be disbursed to the Park District Board.
9. Liability and Insurance. The Park District will acquire appropriate liability and property insurance to cover the Park District Property specified in this Agreement to ensure the continued operation of such Property and to sufficiently cover any liability that might be imposed in connection with the operation of the future Magic City Discovery Center. In

these respects, the Park District shall adopt and enforce reasonable rules regarding liability insurance for users of such property or facilities.

The Park District shall also require the Children's Museum to secure an adequate insurance policy relating to the assets and liability issues that may arise with respect to the operation of the Magic City Discovery Center, including all costs, expenses, and attorneys' fees which may in any manner result from or arise with respect to the Magic City Discovery Center. The Park District shall also require and ensure that the Children's Museum agrees to defend, indemnify, and hold the City harmless for all claims, costs, expenses, and attorneys' fees incurred in any litigation relating in any way to the Magic City Discovery Center.

10. Miscellaneous.

- (a) The parties further agree that all site preparation and construction contracts utilizing the one million dollars (\$1,000,000) proceeds and derived from the city sales tax shall be entered into solely by the Park District and/or Children's Museum and shall be the sole responsibility of the Park District and/or Children's Museum.
- (b) This Agreement may be amended at any time and from time to time upon written agreement of the parties.
- (c) This Agreement is personal to the parties and neither the rights nor the obligations of either party may be assigned without the written consent of the other. This Agreement contains the parties' entire agreement and may not be varied except by an instrument in writing signed by the parties. This Agreement with respect to its validity and lawfulness shall be governed and construed under the laws of the State of North Dakota.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT

Dated this ___ day of _____, 20__.

Attest: CITY OF MINOT:

By: _____ By: _____
Kelly Matalka, City Clerk Shaun Sipma, Mayor

Dated this ___ day of _____, 20__.

Attest: MINOT PARK DISTRICT:

By: _____ By: _____
Ron Merritt, Director President