

**MINOT AREA GROWTH BY INVESTMENT AND COOPERATION**

**MAGIC FUND**

**GENERAL POLICY GUIDELINES**

AS APPROVED BY THE CITY COUNCIL OF THE CITY OF MINOT ON:

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**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 Fund must support one or more of the following goals 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<sup>st</sup> 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.

## **FUND USES AND FISCAL CONTROLS**

### **A.**

Funds available through the MAGIC Fund for project financing connected to Primary Sector industries may be used to provide temporary or permanent financing of any cost related to the 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 grant and non-forgivable loan with a grant being no more than 30% of total financing except where an applicant can demonstrate through detailed financial documentation that project feasibility requires a higher percentage of grant to non-forgivable loan to meet a minimum, substantiated five year growth projection. These funds for use with Primary Sector industries will 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.

Funds available through the MAGIC Fund for capitalization of revolving loan funds (RLF) 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.

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.**

Any 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 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:

<b>Number</b>	<b>Expertise/Profession/Background</b>
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 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 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 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) A listing of all applications that were not approved.

- (5) 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.

## **APPLICATION PROCESSES**

The MAGIC Fund Screening Committee will 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.

Applicants 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 of funds for the proposed project**. If 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 committee may contract for professional advice/services to assist in its deliberations, **in addition to MADC which by contract with the city of Minot shall provide specified services and support to the 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 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 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 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 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 is necessary to capitalize on windows of opportunity. In that context, administration of the MAGIC Fund must be dynamic enough to insure 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 and policy guidance established and regularly updated by the 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 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 funds 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 to assure project feasibility, then consideration can be given by the Screening Committee.**

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

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

## **PROJECT TRACKING AND CONTRACTS**

The 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. 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 disbursement and be made enforceable by means of a written development contract between the City and the fund recipient.

A contract committee of four, consisting of a City Council representative, a City Finance representative, a MAGIC Fund Screening Committee representative, and a service provider representing the project, with the assistance of legal counsel, will structure each development contract and forward it to the City Council concurrent with the project being recommended for approval by the MAGIC Fund Screening Committee.

In reference to contracts with consultants and service providers, 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 contract shall provide for suitable collateral or security to protect the City’s interests and, in addition (or when necessary in lieu thereof), “pull-back” provisions. Development contracts should prescribe specific reporting requirements to be met by the grantee, including at a minimum:

- (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.