AMENDED JOINT POWERS AGREEMENT BY AND BETWEEN THE
CITY OF MINOT AND MINOT PARK DISTRICT

(Appoint-A-Lot Program)

This Joint Powers Agreement (Agreement) is made and entered into this _____ day of
__________, 2021 (“Effective Date”), by and between the City of Minot, North Dakota (City), and the
Minot Park District (District). By entering into this Agreement, the City and District intend to amend and
supersede the Joint Powers Agreement entered into by the parties on July 19, 2016 establishing the Adopt-
A-Lot Program to 1) clarify requirements under federal law; 2) add properties to the program; and 3) attached and incorporate Exhibit A into this Agreement, which contains aerial photographs of the properties included in the program.

Given the foregoing, and in consideration of the mutual promises and agreements contained herein, the
parties hereby agree as follows:

Unless specifically provided herein, this Agreement shall amend and replace the Joint Powers Agreement
the parties entered into on July 19, 2016, and shall serve as their agreement regarding all activities taking
place on and properties involved in the Adopt-A-Lot Program. Nothing contained herein shall invalidate or
nullify any actions taken by the parties prior to the effective date hereof.

1. **City Authority:** The City is a municipal corporation established according to Title 40 of the North
   Dakota Century Code. The City is governed under the council form of government and has adopted
   a home rule charter authorized by Chapter 40-05.1 of the North Dakota Century Code. The home
   rule charter includes powers enumerated in N.D.C.C. § 40-05.1-06, including the power to acquire,
   hold, operate, and dispose of property within or without the corporate limits; the power to lay out
   or vacate streets, alleys, and public grounds, and to provide for the use, operation, and regulation
   thereof; and the power to contract with other governmental entities or agencies with respect to any
   local program, project, or works.

2. **District Authority:** The District is established under chapter 40-49 of the North Dakota Century
   Code and governed by a board of park commissioners. Among other powers, the District is
   authorized to acquire land, construct improvements, and operate parks and recreational facilities,
   including a proposed Adopt-A-Lot Program.
3. **Authority for Joint Powers Agreement:** This Agreement is entered into between the parties according to the provisions of Chapter 54-40.3 of the North Dakota Century Code for the cooperative or joint administration of any power or function that is authorized by law or assigned to one or either party.

4. **Purpose:** The purpose of this Agreement is to provide for the cooperative implementation of the Adopt-A-Lot Program by identifying real property, owned by the City of Minot, upon which the District shall be permitted to develop, implement, and operate the Adopt-A-Lot Program.

5. **Adopt-A-Lot Program Overview:** The City and District agree that the City will designate specific properties for use in the Adopt-A-Lot Program, and the District will develop, implement, and operate the Adopt-A-Lot Program for the purpose of establishing community-managed open spaces that have a strong function in at least one community use, such as active recreation, passive recreation, food production, education, visual relief from the built environment, or gathering space for formal or informal community gatherings with any and all uses subject to HUD rules and regulations governing flood buyout properties and any deed restrictions on the designated properties. The community-managed spaces described in the previous sentence shall be referred to throughout this agreement as “community gathering spaces.” The City and District agree that it is mutually beneficial to implement the Adopt-A-Lot Program to establish and promote community-managed open spaces such as community gardens, community art, and parks. The City and District agree that private use and recreation, composting, keeping or raising of any animals, or other uses that will disrupt the neighborhoods surrounding the designated community-managed open spaces shall be prohibited, and any permanent structures except structures permitted under HUD rules and regulations for flood buyout properties. The City and District agree that establishing the Adopt-A-Lot Program will promote visitor attraction and economic development while enhancing the quality of life to the Minot community and surrounding area residents. The real property designated for the Adopt-a-Lot Program shall remain vested in the City. However, the administration, management, and operations of the Adopt-a-Lot Program shall be under the control of the District, and the District shall remain responsible and liable for all District obligations. Nothing in this Agreement shall be interpreted as imposing or transferring to the City any responsibility or liability for the Adopt-a-Lot Program.

6. **Property:** The City agrees to lease the following real property, specifically described below and depicted on the attached Exhibit A (hereinafter referred to as “Property”), located in the City of
Minot, County of Ward, State of North Dakota, to the District, for purposes of developing, implementing, and maintaining the Adopt-A-Lot Program:

a. Lot 9, Elmwood Addition (1524 Burdick Expy. E.)
b. Lot 13, Elmwood Addition (1530 Burdick Expy. E.)
c. Lot 15, Elmwood Addition (1534 Burdick Expy. E.)
d. Lot 17, Elmwood Addition (1602 Burdick Expy. E.)
e. Lot 19, Elmwood Addition (1604 Burdick Expy. E.)
f. Lot 21, Elmwood Addition (1614 Burdick Expy. E.)
g. Lot 27, Elmwood Addition (1618 Burdick Expy. E.)
h. Lot 39, Elmwood Addition (1720 Burdick Expy. E.)
i. Lot 41, Elmwood Addition (1722 Burdick Expy. E.)
j. Lot 43, Elmwood Addition (1726 Burdick Expy. E.)
k. An UNPLATTED portion of SEC 27-155-83 E131' OF W745' OF S334' NWNW A 1.0 in LEITE'S SUBDIVISION
l. WITHEMS S/D OUTLOT 12 SEC 23-155-83 LOTS 1, 2, 3 & 13, 14, 15
m. ROACHS FIRST ADDITION LOTS 4, 5, 6, 7, 8, 9, 10 BLOCK 2

7. **Term and Rent:** This Agreement is effective upon approval of the parties’ governing boards and execution by both parties. The City or the District may terminate this Agreement at any time it should be determined by it that public necessity and convenience require it to do so, by serving upon the City or the District a written notice of its election so to terminate, which notice shall be served at least 30 days prior to the date in the notice named for such termination. The District will be allowed to use the Property free of cost for the sole purpose of developing, implementing, and operating the Adopt-A-Lot Program.

8. **Repairs and Maintenance:** The District agrees to maintain the Property at its sole cost and expense, to keep the Property safe and in good order and condition at all times, and will quit and surrender possession of the Property peaceably and in the same condition as the Property was received at the commencement of this Agreement. The District further agrees to leave the Property free from all nuisance and dangerous and defective conditions, including weeds. The City shall be the sole judge of the quality of maintenance and the condition of the Property, and upon written notice by the City, stating in general terms how and in what manner the maintenance is required, the District shall be required to perform such required maintenance. If the District fails to do so,
then the City shall have the right, but not the obligation, to perform this maintenance, the cost of which shall be borne by the District.

9. **City Approval:** The District shall deliver written notice to the City Manager of each event that could occur on the Property and each structure that could be placed upon the Property except that no structure may be permanent and any temporary structure shall require approval of the City of Minot Flood Plain Manager. The District shall include the following information in its written notice to the City Manager:
   a. Identification of the event to be held and/or structure proposed to be installed by the District;
   b. General size of the event and/or dimensions of such structure; and
   c. General location with points of reference of the proposed event or structure that clearly conveys the site area and location.

The City Manager and Flood Plain Manager for structures shall have 10 days upon receipt of such written notice in which to serve a written objection to the event or structure upon the District. If the City Manager does not object to the event, the District may proceed with their proposed project. If the Flood Plain Manager does not approve of the structure then the structure shall not be installed and there is no appeal. If the City Manager objects to the project in writing within 10 days of his receipt of the District’s written notice, the District may appeal the City Manager’s objection to the City Council. The City Manager’s objection can be overturned by the majority of the City Council.

10. **City Duties, Functions, and Obligations:** The City shall have the following duties, functions, and obligations:
   a. To lease the Property for purposes of developing, implementing, and maintaining the Adopt-A-Lot Program; and
   b. To maintain to the extent, it deems necessary, any roadway or parking area adjacent to each community gathering space as part of the City’s general maintenance.

11. **District Duties, Functions, and Obligations:** The District shall have the following duties, functions, and obligations:
   a. To develop, implement, and operate Adopt-A-Lot program;
   b. To have each community gathering space, upon completion, open to the general public as the District shall determine, limited however, to the hours of each day and the times during
the year, when such community gathering space is open to the general public as determined by the District.

c. To keep and maintain, or supervise, each such community gathering space to ensure it is in appropriate form for viewing by the general public, including, but not limited to, the general daily maintenance and cleaning so as to maintain the proper general appearance.

d. To take appropriate steps necessary, when such temporary structures are available and open to the public, to ascertain that the approaches of the entry ways of each structure are safe and free from obstructions and reasonably convenient for patrons desiring to enter.

e. To pay any and all costs, expenses, wages, etc. for such personnel as the District may utilize in connection with the operation and maintenance of each such community gathering space.

f. To ensure all community gathering spaces are landscaped and to maintain trees, lawn, and shrubbery.

12. **Assignment:** The City and the District agree that this Agreement is not assignable, except as permitted in writing by the City.

13. **Liability:** The parties agree that each party is responsible and assumes liability for its own acts and those of its employees and agents. Nothing in this Agreement is intended to transfer any risk or alter, limit or otherwise modify the application of any governmental or other immunity or defense available to the parties or their officers, employees or agents. Any and all services or activities performed according to this Agreement shall be deemed for public and governmental purposes and the parties intend that all privileges, protections, defenses, immunities, and damage limitations afforded by law shall fully apply.

14. **Insurance:** The District shall, at its expense, maintain insurance in full force and effect during the term of this Agreement. The insurance policy shall be the standard commercial general liability insurance coverage and shall include personal injury and property damage coverage.

The District shall promptly, upon execution of this Agreement, furnish to the City appropriate certificates of insurance evidencing coverage effected and to be maintained for the term of this Agreement. The insurance policy shall not be subject to cancellation or material change except after notice to the City by registered mail at least thirty (30) days prior to the date of such cancellation or material change. Where any policy has normal expirations during the term of this Agreement, written evidence of renewal shall be furnished to the City at least thirty (30) days prior
to such expiration. “Endeavoring to provide” thirty (30) days’ notice of cancellation or change in the policy is not an acceptable endorsement.

15. **Default:** In the event that the District shall default in the performance of any of the terms or conditions agreed to be kept and performed by the District, then in that event, the City may terminate and end this Agreement, immediately, and the District may remove all persons and property from the subject Property. This paragraph does not preclude the City from terminating this Agreement as otherwise provided herein.

16. **Notices:** Any notices that are required herein, or which either the City or the District may desire to serve upon the other, shall be in writing and shall be deemed served when delivered personally, or when deposited in the United States mail, postage-prepaid, return receipt requested, addressed to the City at City Manager’s Office, P.O. Box 5006, Minot, ND 58701, or the District at Executive Director, P.O. Box 538, Minot, ND 58702. Notice may also be delivered by e-mail to the City and to the District by delivering an e-mail to the City Manager’s email address or the District Executive Director’s e-mail address. E-mail notice shall be deemed served only when the receiving party confirms receipt of the email by either sending a read receipt or other affirmative response to the other party confirming receipt of the email. An out-of-office reply or other automatic e-mail response shall not be considered a received e-mail under this section.

17. **Waiver:** Waiver by the City of any default in performance by the District of any of the terms, covenants, or conditions contained herein shall not be deemed a continuing waiver of that default or any subsequent default.

18. **Compliance with Laws and City Direction:** The District agrees to comply at its sole cost and expense with all laws, ordinances, rules, and regulations that may pertain or apply to the Property and its use, whether now in existence or hereafter promulgated. The District further agrees to abide by all lawful requests and demands of the City.

   a. **Separation of Church and State:** The Parties understand that federal and state law requires separation of church and state, and that if with respect to any structures erected upon, or events held upon, a community gathering space results in any court challenge with respect to separation of church and state, the City shall not be obligated to defend that portion of this Agreement and the District shall indemnify and hold the City harmless in
regard to the lawsuit to the fullest extent permissible under North Dakota Law. The District further understands that the City may refuse permission to cause any such structure to be erected (or remain), or event to take place, upon the Property, notwithstanding the provisions of this Agreement.

b. **Discrimination:** The Parties understand that federal and state law prohibits discrimination based on race, color, national origin, religion, sex, age, mental or physical disability, family status, marital status, financial status, or employment. The Parties agree that no activities may occur, or structures erected, on the subject Property that discriminates against a protected class. The District understands that the City may refuse permission to cause any such structure to be erected (or remain), or event to take place, upon the Property that discriminates against a protected class. The District understands that in the event a discrimination lawsuit is filed concerning a community gathering space, the District shall indemnify and hold the City harmless in regard to the lawsuit to the fullest extent permissible under North Dakota Law.

19. **Separate Contracts Required:** This Agreement does not permit the District to operate concessions, nor to lease or rent community gathering spaces, without a separate contract. The Parties may, at a later date, provide by separate contract the relative rights, duties and functions of the parties with respect to concessions, leases, rentals and the net income thereof. Until such time as such contract is executed by the parties hereto, the District may, but is not required to, install and operate such concessions as it may desire and retain the income therefrom provided that the income covers expenses connected with maintenance of properties under this agreement. Any income which exceeds coverage of costs associated with maintenance of the properties under this agreement is Program Income pursuant to HUD rules and regulations, and must be promptly paid to the City upon receipt by the District. Upon entering any such contract which involves generating income, the District shall inform the City of such contract and provide the City with an accounting of the income and expenses provided that the income covers expenses connected with maintenance of properties under this agreement. Any income which exceeds coverage of costs associated with maintenance of the properties under this agreement is Program Income pursuant to HUD rules and regulations, and must be promptly paid to the City upon receipt by the District. Upon entering any such contract which involves generating income, the District shall inform the City of such contract and provide the City with an accounting of the income and expenses. If the District enters into any separate contract concerning the Property with a third-party, they are required to inform the third-
party that the City has the right to terminate this Agreement with 30 days’ notice should be
determined by the City that public necessity and convenience requires termination.

20. **City Right of Entry:** The District agrees that the City, its agents or employees, may enter upon
the Property at any time for the purpose of inspection, digging test holes, making surveys, taking
measurements, and doing similar work necessary for the preparation of plans for construction of
buildings or improvements on the premises, with the understanding that the work will be performed
in such a manner as to cause a minimum of interference with the use of the Property by the District.

21. **Termination:** Termination by either the City or the District should be completed as provided in
paragraph 7. Notwithstanding the process outlined in paragraph 7, upon termination of this
Agreement by either party, the District shall, at its sole expense, ensure the Property is returned to
the state it was in at the commencement of this contract.

22. **Finances:** The City and the District agree that the District shall maintain true and accurate
accounting of all funding associated with the Adopt-a-Lot Program.

23. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties. This
Agreement may be modified only in writing in a document approved and executed by the parties.
The Parties agree that if any part of this Agreement should be held unenforceable for any reason,
the unenforceable provision shall be considered severed from the Agreement, and the remainder of
the Agreement shall remain in full force and effect.

**CITY OF MINOT:**

Approved by City Council on _____________, 2021.

Attest:__________________________________

City Clerk – Kelly Matalka               Mayor – Shaun Sipma

Date:__________________________________
MINOT PARK DISTRICT:

Approved by Minot Park District on _____________, 2021.

Attest:_______________________________ ________________________________
Manager – Ron Merritt President – Cliff Hovda

Date:_________________________________
EXHIBIT A

This exhibit contains aerial photographs generally depicting the lots that are available for the Adopt-a-Lot program as of the effective date of the Amended Joint Powers Agreement By and Between the City of Minot and the Minot Park District to Create the Adopt A Lot Program.

Lot 9, Elmwood Addition (1524 Burdick Expy. E.); Lot 13, Elmwood Addition (1530 Burdick Expy. E.); Lot 15, Elmwood Addition (1534 Burdick Expy. E.); Lot 17, Elmwood Addition (1602 Burdick Expy. E.); Lot 19, Elmwood Addition (1604 Burdick Expy. E.); Lot 21, Elmwood Addition (1614 Burdick Expy. E.); Lot 27, Elmwood Addition (1618 Burdick Expy. E.); Lot 39, Elmwood Addition (1720 Burdick Expy. E.); Lot 41, Elmwood Addition (1722 Burdick Expy. E.); Lot 43, Elmwood Addition (1726 Burdick Expy. E.)
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