SERVICES AGREEMENT
City of Minot and Minot Area Chamber EDC (MACEDC)

This Agreement is entered into on this ___ day of _________________, 2021, by and between the City of Minot (hereinafter “City”) and Minot Area Chamber EDC, a North Dakota non-profit corporation (hereinafter “Provider”).

WHEREAS, the Provider has agreed to provide solicitation of employment opportunities and business growth in primary sector businesses as defined by the North Dakota Century Code, and to undertake activities as requested by the City in support of addressing economic and job growth needs; and

WHEREAS, the City desires to hire Provider and to pay a not to exceed amount of $435,000 for the costs of Services.

NOW, THEREFORE, it is hereby agreed by and between the Parties as follows:

1. **Term.** The term of this Agreement shall be from January 1, 2022 through December 31, 2022. Upon a written agreement by both Parties, this Agreement may be extended.

2. **Scope of Services.** Provider agrees to provide the economic development services outlined in Exhibit 1, which is attached and incorporated into this Agreement by reference.

3. **Reports.** In July 2022 and January 2023, Provider shall submit a written report to the City, setting forth the specific activities and specific deliverables taken to achieve the obligations outlined in Exhibit 1 of this Agreement.

4. **Compensation.** City shall pay Provider for its services hereunder compensation of $435,000. Payment shall be made on a monthly basis with one-twelfth of the total annual contribution to be made on the first of each month, but only after receipt of a monthly invoice from Provider. In the event of termination of this Agreement, the City’s obligation to make payment to Provider as set forth herein shall immediately cease, with payment for the most recent month’s services prorated to the date of termination.

5. **LOIS Subscription.** In addition to the compensation outlined under Section 4, the City shall fund the required amount for an annual subscription to Location One Information System (LOIS), upon receipt of an invoice from Provider.

6. **Authority to Contract.** No part of this Agreement shall be construed to grant to Provider any authority to contract for, on behalf of, or incur obligations on behalf of the City.

7. **Termination.**
a. **Termination by Mutual Agreement.** This Agreement may be terminated by mutual consent of both parties executed in writing.

b. **Termination Without Cause.** This Agreement may be terminated by either party upon thirty (30) days’ written notice to the other party of the terminating party’s intent to terminate before the expiration of this Agreement.

c. **Termination for Cause.** City may terminate this Agreement effective upon delivery of written notice to Provider, or any later date stated in the notice:
   i. If Provider fails to provide Services required by this Agreement within the time specified or any extension agreed to by City; or
   ii. If Provider fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

d. The rights and remedies of City provided in this Section 7 are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

8. **Notice.** All notices or other communications required under this Agreement must be given by registered or certified mail and are complete on the date postmarked when addressed to the parties at the following addresses:

<table>
<thead>
<tr>
<th>City:</th>
<th>Provider:</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Minot</td>
<td>MACEDC</td>
</tr>
<tr>
<td>c/o City Manager</td>
<td>c/o Executive Director</td>
</tr>
<tr>
<td>P.O. Box 5006</td>
<td>P.O. Box 940</td>
</tr>
<tr>
<td>Minot, ND 58702</td>
<td>Minot, ND 58702</td>
</tr>
<tr>
<td><a href="mailto:cmgr@minotnd.org">cmgr@minotnd.org</a></td>
<td><a href="mailto:john@minotchamberedc.com">john@minotchamberedc.com</a></td>
</tr>
</tbody>
</table>

9. **Independent Entity.** Provider is an independent entity under this Agreement and is not a City employee for any purpose.

10. **Compliance with Law.** Provider agrees to comply with all applicable federal, state, and local laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. Provider’s failure to comply with this section may be deemed a material breach by Provider entitling the City to terminate in accordance with the Section 7(c) of this Agreement.
11. **Retention of Records and Audits.** Provider agrees to retain financial and program records in accordance with the State of North Dakota’s Retention of Records Policy. In the event Provider’s records are audited by a third party, Provider shall provide the City with the results of the audit within 30 days of receipt.

12. **Compliance with Public Records Laws.** Provider understands that, City must disclose to the public upon request any records it receives from Provider. Provider further understand that any records obtained or generated by Provider under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. Provider agrees to contact City promptly upon received a request for information under the public records law and, at no additional expense to City, comply with City’s instructions on how to respond to the request.

13. **Indemnification.** Provider agrees to defend, indemnify, and hold harmless the City, its officers, and employees, from and against any all claims, loss, damage, expense, and liability for injuries to persons and property, claimed or alleged to be caused for any reason while performing Services pursuant to this Agreement. Provider also agrees to reimburse the City for all costs, expenses, and attorneys’ fees incurred if the City prevails in an action against Provider in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Agreement.

14. **Insurance.** At its sole cost, Provider shall secure and keep in force during the term of this Agreement, from insurance companies authorized to do business in the state of North Dakota, the following insurance coverages: (1) commercial general liability, including premises or operations, contractual, and products or completed operations coverages, with minimum liability limits of $1,000,000 per occurrence; (2) automobile liability, including owned (if any), hired, and non-owned automobiles, with minimum liability limits of $250,000 per person and $1,000,000 per occurrence; (3) workers’ compensation coverage meeting all statutory requirements; and (4) Professional errors and omissions with minimum limits of $1,000,000 per claim and in the aggregate, Provider shall continuously maintain such coverage during the Agreement period and for three years thereafter. The City, its agent, officers, and employees shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, as an additional insured. The Provider’s duty to defend, indemnify, and hold harmless the City under this Agreement shall not be limited by
the insurance required in this Agreement. Provider shall furnish a certificate of insurance
evidencing the required coverages are in effect prior to commencement of this Agreement.
Failure to provide or to maintain insurance as required in this Agreement is a material breach
of contract entitling City to terminate this Agreement pursuant to Section 7(c).

15. **Successors in Interest.** The provisions of this Agreement shall be binding upon and shall
inure to the benefit of the Parties hereto, and their respective successors and assignees.

16. **Assignment.** Neither Party may not assign or otherwise transfer or delegate any right or duty
without the other party’s express written consent.

17. **Force Majeure.** Neither Party to this Agreement will be liable to the other Party for delays,
or direct and indirect costs resulting from any causes beyond the reasonable control or
contemplation for either Party.

18. **Severability.** If any term of this Agreement is declared by a court having jurisdiction to be
illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the
rights and obligations of the parties are to be construed and enforced as if the Agreement did
not contain that term.

19. **Attorneys’ Fees.** In the event a lawsuit is initiated by City to obtain performance due under
this Agreement, and City is the prevailing party, Provider shall, except if specifically
prohibited by law, pay City’s reasonable attorneys’ fees and costs in connection with the
lawsuit.

20. **Authority to Execute Agreement.** Each party represents and warrants that this Agreement has
been duly authorized, executed and delivered by it; that the undersigned representatives are
fully 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 each party, its successors and assigns in accordance with its
terms.

21. **Governing Law and Venue.** This Agreement shall be construed and interpreted both as to the
validity and performance of the Parties in accordance with the laws of the State of North
Dakota. In the event of any dispute hereunder the forum shall be in District Court, Ward
County, North Dakota. Each Party consents to the exclusive jurisdiction of such court and
waives any claim of lack of jurisdiction or forum non conveniens.
22. **Entire Agreement and Modification.** This Agreement, including the Attachments, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified in this Agreement. This Agreement may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.

23. **Effectiveness of Agreement.** This Agreement is not effective until fully executed by both Parties.

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**CITY OF MINOT, NORTH DAKOTA**

____________________________________
Shaun Sipma
Mayor

____________________________________
David Lakefield
Finance Director

**MINOT AREA CHAMBER EDC**

____________________________________
L. John MacMartin, President