

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU,” or “Agreement”) is entered into this 20th day of July, 2023 (hereinafter referred to as the “Effective Date”), by and between Minot Public Schools (hereinafter referred to as the “MPS”), Minot State University (hereinafter referred to as the “MiSU”), and National Audubon Society, Inc. d/b/a Audubon Great Plains, whose post office address is 3002 Fiechtner Dr, Suite A, Fargo, North Dakota 58103 (hereinafter referred to as “Audubon”).

WHEREAS, Audubon is a tax-exempt organization, as described in section 501(c)(3) of the Internal Revenue Code, whose mission is to protect birds and the places they need, today and tomorrow; and

WHEREAS, Audubon is interested in restoring and preserving the land as native mixed-grass prairie, which will provide a variety of benefits including: 1) increasing biodiversity by providing habitats for a variety of birds and other wildlife species 2) water storage, filtration, purification, and flood mitigation; 3) regulating urban climates and pollution; 4) reducing energy use and carbon footprints; 5) increasing land prices and local property values; 6) and also providing an aesthetically pleasing restored nature area for local residents, visitors, and investors, which will create recreational opportunities, promote well-being, reduce stress, and boost mental and physical health; and all of these goals are in line with MPS and MiSU’s goals; and

WHEREAS, Audubon desires to work with MPS and MiSU on a project called the Native Prairie Garden Initiative (the “Initiative”), the purpose of which is to make improvements to certain parcels of property, or habitat management sites, in order to achieve the above-described goals; and

WHEREAS, MPS and MiSU are agreeable to working with Audubon on the Initiative to achieve said goals, subject to the terms and conditions set forth in this MOU; and

WHEREAS, in furtherance of the Initiative, Audubon will create and implement habitat management plan on land owned or controlled by the MPS; and

WHEREAS, MPS and MiSU will conduct necessary site preparations and grant Audubon access to the property for Audubon to implement a habitat management plan and conduct other activities in furtherance of the Initiative; and

WHEREAS, MPS and MiSU will endeavor to preserve and maintain the areas restored under this MOU for at least 10 years.

NOW THEREFORE, in consideration of the parties' mutual covenants contained in this MOU, and other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, MPS, MiSU and Audubon hereby agree:

1. **Exhibits**. The following exhibit is attached hereto and by reference made a part of this Agreement:

Exhibit A – Depiction and Area/Legal Description of Designated Habitat Restoration Site(s).

2. **Habitat Restoration Site**. The Minot Public School District owns a certain parcel of real property located within the boundaries of Ward County, North Dakota. This land shall be designated as a "Habitat Restoration Site." A depiction and legal description of said Habitat Restoration Site is attached hereto in Exhibit A.

3. **Site Plans**. Audubon shall, in consultation with MiSU and MPS will prepare a restoration site plan for the Habitat Restoration Site ("Site Plan"). The Site Plan will include detailed descriptions of proposed enhancements, restorations, and improvements for the site, including as appropriate: plans to plant, enhance, or preserve vegetation; install or build fences or other structures; install or construct landscaping; enhance or restore the natural habitats of birds and other wildlife species; implement water retention, filtration, purification, and flood control measures; stabilize banks and slopes and reduce erosion; and any other plans intended to create an aesthetically pleasing and ecologically beneficial area. The Site Plan should also describe any necessary preparations ("Site Preparations") that must be performed by MPS and MiSU before the Site Plan may be implemented, including without limitation, any required herbicide applications, mowing, or disking.

4. **Funding**. Audubon is a non-profit conservation organization. Audubon's obligation to implement and complete the Site Plan improvements is conditioned upon its receipt of sufficient funding.

5. **Approval by MPS and MiSU**. The Site Plan must be approved in writing by MPS and MiSU before Audubon commences implementation. If MPS and MiSU reasonably withhold approval of the Site Plan, and Audubon is unable to modify the Site Plan in such a way as to earn MPS and MiSU's approval, this MOU shall terminate and the parties shall be released from any obligations hereunder. MPS and MiSU covenants that it has all necessary authorization to enter into this agreement, to undertake the Site Preparations, to grant Audubon access to the Habitat Restoration Site, to authorize Audubon to implement and maintain the Site Plan improvements, and to permit any other actions set forth in this MOU.

6. **Site Preparations.** Upon approval of the Site Plan submitted by Audubon, MiSU shall commence, as soon as weather conditions will allow, with the necessary Site Preparations, before Audubon begins implementing the Site Plan improvements. Site Preparations must be completed in accordance with the Site Plan and to Audubon's reasonable satisfaction within one year after the date when MPS and MiSU issued its written consent and approval of the Site Plan.

7. **Enhancement Period.** A five year "Enhancement Period" shall commence upon Audubon's acceptance of the MiSU's completion of the Site Preparations. During the Enhancement Period, Audubon shall, at its own cost and expense, but subject to adequate funding, complete the preservations, enhancements, and improvements described in the approved Site Plan for the Habitat Restoration Site.

a. **Site Access.** MPS grants Audubon a license to access and enter the Habitat Restoration Site for the purpose of implementing and maintaining the Site Plan.

b. **Extension.** If the five-year Enhancement Period becomes an insufficient amount of time to implement the proposed improvements, due to unforeseen or unavoidable circumstances such as flood, drought, delay or unavailability of supplies, government restrictions, etc., the parties may agree in writing to extend the Enhancement Period.

c. **Failure to Implement Site Plans; Damage to Improvements.** If Audubon fails to complete the preservations, restorations, and improvements described in the approved Site Plan within the Enhancement Period (as extended), the MPS and MiSU may terminate this MOU, in which event Audubon will remove any of its equipment and other personal property from the Habitat Restoration Site. If MPS and/or MiSU performs unauthorized management or otherwise damages the restoration or improvement, MPS and/or MiSU shall be responsible to either restore the restorations or to pay for all expenses required for Audubon to rectify the damage.

8. **Ongoing Site Management.** After completion of the Site Plan improvements, Audubon shall deliver to MiSU and MPS a long-term habitat management plan or guidance on habitat management. The plan will recommend appropriate management tools and schedules to maintain the restored native habitat. MiSU and MPS will resume the exclusive control of the Habitat Restoration Site and agree to use its best efforts to maintain the improvements made by Audubon for 10 or more years in accordance with the long-term management plan or guidance. Audubon intends to continue to advise MiSU and MPS on proper habitat management after the completion of restoration. As resources permit, Audubon will also endeavor to work with MiSU and MPS to sponsor outdoor education programming or research at the Habitat Restoration Site.

MPS and MiSU retain the option to add amenities to the sites that are in general conformance with and enhance the site plans.

9. **Flooding Situations.** The parties understand that the Habitat Restoration Site is located within a floodplain and is therefore subject to occasional and unpredictable flooding outside of the parties' control. As a result, the parties agree to work cooperatively in flooding situations, by allowing for reasonable extensions of the deadlines contemplated in this MOU and working together to return to the status quo that existed before the flooding subject to the availability of sufficient funds to finance repairs. In the event that the Habitat Restoration Site is flooded, neither party shall be held liable to the other party for any loss or damage incurred as a result of the flood. Once the Enhancement Period has ended and the Park District has undertaken to maintain the improvements made to the Habitat Restoration Site, MPS and MiSU will use reasonable efforts to repair any minor damage to the improvements resulting from a flood, so long as sufficient funds are available to finance such minor repairs, but in no event shall MPS and MiSU be obligated to repair or replace improvements that have incurred substantial damage as the result of a flood.

10. **Marketing and Signage.** As part of its overall marketing and publicity effort for the Initiative, Audubon shall prepare signage and printed informational materials. Subject to approval of the Park District, Audubon will install informational signage at the Habitat Restoration Site and distribute printed information on the Initiative.

11. **Utility Services.** No utilities may be provided for or connected to the Habitat Restoration Site without the express written consent of MPS.

12. **Indemnification.** Audubon agrees to indemnify and hold harmless MPS and MiSU and any of its officers, employees, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to persons or property resulting from the negligent acts or omissions of Audubon, Audubon contractors', successors', or assigns' in connection with their use of the Habitat Restoration Site in furtherance of the Initiative, and Audubon shall, at Audubon's own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against MPS or in which MPS may be joined with other parties upon any such above-mentioned matter or claims. MPS agrees to indemnify and hold harmless Audubon and any of its officers, employees, directors, contractors, consultants, representatives, agents, and assigns from and against any and all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to persons or property resulting from the negligent acts or omissions of MPS, its employees, commissioners, or contractors in connection with the Habitat Restoration Site and Audubon's use thereof, and MPS shall, at its own cost and expense, defend any and all suits or actions (just or unjust) which may be brought against Audubon or in which Audubon may be joined with other

parties upon any such above-mentioned matter or claims. These mutual agreements to indemnify and hold harmless will include indemnity against all costs, expenses, and liabilities, including any attorney fees, reasonably incurred in or in connection with any such claims or proceedings brought thereof. This section will survive the termination of this MOU and any subsequent agreements of the parties contemplated herein.

13. **Assignment.** Neither party may transfer or assign this MOU, nor any rights or obligations under this MOU, without the express written consent of the other party.

14. **Amendments.** No amendment, modification, or waiver of any condition, provision, or term of this MOU will be valid or of any effect unless made in a writing signed by the party or parties to be bound, or a duly authorized representative, and specifying with particularity the extent and nature of such amendment, modification, or waiver. Any waiver by any party of any default of another party will not affect or impair any right arising from any subsequent default. Except as expressly and specifically stated otherwise, nothing herein will limit the remedies and rights of the parties thereto under and pursuant to this MOU.

15. **Governing Law.** This MOU will be controlled by the laws of the State of North Dakota. Any action brought as a result of any claim, demand, or cause of action arising under the terms of this MOU must be brought in an appropriate venue in the State of North Dakota.

16. **Merger Clause.** This MOU constitutes the entire agreement by and between the parties, and any other prior representations or agreements are deemed merged herein, and those not specified herein do not represent any agreements, promises, covenants, or representations on the part of either party hereto.

17. **Severability Clause.** Each provision, section, sentence, clause, phrase, and word of this MOU is intended to be severable. If any provision, section, sentence, clause, phrase, or word hereof is held by a court of competent jurisdiction to be illegal or invalid for any reason whatsoever, such illegality or invalidity will not affect the legality or validity of the remainder of this MOU.

18. **Grammatical Construction.** Whenever the singular number is used herein, the same will include the plural where appropriate, and the words of any gender will include any other genders where appropriate.

19. **Agreement Binding on Successors.** This MOU will be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors, and assigns.

20. **Headings.** Headings in this MOU are for convenience only and will not be used to interpret or construe its provisions.

IN WITNESS WHEREOF, the parties executed this MOU on the Effective Date:

Minot Public Schools

By: 

Its: Superintendent of Schools

Minot State University

By: 

Its: PRESIDENT

NATIONAL AUDUBON SOCIETY
(AUDUBON DAKOTA)

By: 

Its: Executive Director Audubon Great Plains

Exhibit A – Depiction and Area/Legal Description of Designated Habitat Restoration Site(s).

Habitat Restoration Site

?? acres located at an area within Minot, ND legally described as ??

