

Dakotas America, LLC

Engagement Agreement

Dated: February 21, 2020

1. Browning Public School District No. 9 (“Client”), agrees to engage Dakotas America, LLC (“DA”) to utilize federal New Markets Tax Credits (“NMTC”) allocations as a means to attract capital for the purpose of constructing improvements at its Browning, MT middle school and a new sports complex at its Browning, MT high school campus. The middle school improvements will be constructed at 901 South Piegan Street, Browning, MT, while the high school sports complex will be constructed at 105 US-89, Browning, MT. Both construction projects are collectively referred to herein as the “Project”. Client intends to utilize an NMTC financing structure that will require federal NMTC Allocation of up to \$15MM from DA. Proceeds of the Qualified Low-Income Community Investments (“QLICIs”) shall be utilized to pay for new construction of facilities, related equipment and furnishings, site preparation, certain development costs, transaction related expenses and requisite reserves. Client is anticipated to serve as the “Leverage lender” for the transaction and to make a loan (“Leverage Loan”) to an investment fund formed by the NMTC investor (“Fund”). The Leverage Loan will provide that the Leverage Lender shall forbear from exercising remedies during the seven year NMTC compliance period. Fund will use the proceeds of the Leverage Loan and the equity contributed by the NMTC investor to fund a qualified equity investment (“QEI”) in a certified subsidiary of DA (“DA Subsidiary”). DA Subsidiary will use substantially all of the proceeds of the QEI to extend the QLICIs to an unrelated Qualified Active Low-Income Community Business (“QALICB”). The structure and ownership of the QALICB shall be subject to the approval of NMTC counsel to DA and the NMTC investor. QALICB shall use the proceeds of the QLICIs to construct the Project, and in turn, the QALICB is expected to lease the Project to Client for the ongoing operating use of the Project. Client asserts that 100% of the QALICB’s tangible assets, 100% of the QALICB’s gross income, and 100% of the QALICB’s employees/services and business operations shall exist within Census Tract #30035940200, a tract deemed eligible for NMTC utilization pursuant to the U.S. Census Bureau’s 2011-2015 American Community Survey data. The tract is defined as severely distressed by virtue of being a non-metropolitan tract, and since it exhibits a poverty level of 47.9%, median family income of 45.0% and unemployment of 25% (or 3.01 times the national average). Client also represents that less than 5% of the QALICB’s tangible assets shall consist of non-qualified financial property, that none of the QALICB’s property will consist of collectibles, and that the QALICB and its tenant(s) shall not be engaged in any non-qualified business activities pursuant to NMTC eligibility provisions set forth in Section 45D of the Internal Revenue Code of 1986, as amended (“Code”). Client asserts that the Project is located within the boundaries of the Black Feet Indian Reservation, but the land upon which the Project is being undertaken is not tribally or federally owned and is owned Fee Simple by the Browning Public School District.

Client also represents that less than 5% of the QALICB’s tangible assets shall consist of non-qualified financial property, that none of the QALICB’s property will consist of collectibles, and that the QALICB and its tenant(s) shall not be engaged in any non-qualified business activities pursuant to NMTC eligibility provisions set forth in Section 45D of the Code. Client further asserts that none of the QALICB’s gross income will consist of rental income from residential housing.

2. This Agreement sets forth the terms and conditions under which DA will reserve allocation for the Project. However, nothing in this Agreement will create a binding commitment on behalf of DA or its affiliates to provide NMTC financing or other support to the Project. DA agrees to reserve up to \$15 million of its NMTC Allocation for such purposes on an interim basis and to make such allocation available to the DA Subsidiary subject to timely satisfaction of the following: (i) Client’s timely receipt of binding commitments for investment and financing sufficient to fund the QEI in form satisfactory to DA, (ii) a favorable recommendation by DA’s Advisory Board that the project is consistent with DA’s mission

and aligned with the needs of the low-income communities they represent, (iii) the final approval of the project investment or lending terms and any related documentation by DA’s Board of Directors, (iv) a conclusion that the transaction is being conducted with an eligible QALICB and that the loans constitute QLICs as required under Section 45D and its related rules and regulations, (v) full compliance with all applicable federal and state laws and regulations including, but not limited to, Section 45D of the Code and its related rules and regulations, (v) full compliance with all aspects of DA’s Allocation Agreement with the U.S. Treasury Community Development Financial Institutions Fund (CDFI Fund), (vi) the satisfaction of all requests for due diligence information and materials as may be required by DA, and (vii) the timely accomplishment of each and every “Milestone” set forth below as the transaction proceeds.

<u>Milestone</u>	<u>Achievement Date</u>
Receipt of a detailed Project description, Project Sources and Uses of Funds, and identification of the assets to be constructed/owned by the QALICB	3/1/2020
Receipt of evidence that Client has procured sufficient capital to provide levered debt, that when added to the amount of NMTC equity provided by the NMTC investor, shall support a \$15MM Qualified Equity Investment. The terms of the levered debt shall be acceptable to DA.	3/1/2020
DA Advisory Board Determination of Project Suitability	3/15/2020
Receipt of approval from Client’s local legal counsel to enter into the NMTC transaction , the proposed levered structure, selection of the QALICB entity, and verification of all requisite approvals from tribal, state or federal agencies; including but (i.e. Office of Public Instruction, County, and other agencies).	3/15/2020
Receipt of a conditional commitment from an NMTC equity Investor for a Qualified Equity Investment of no less than \$15 million, with a commitment to invest no less than \$15 million in DA Subsidiary, with terms and conditions that are fully acceptable to DA.	3/15/2020
Identification of an unrelated domestic corporation entity that shall serve as the QALICB entity, that is acceptable to DA.	3/15/2020
Receipt of evidence of formal approvals/resolutions from Client to enter into an NMTC transaction, including approvals of formal relationships with third-party QALICB entities, (such as ground and facility leases as deemed necessary to support the transaction). Client shall also approve any easement and shared use agreements as may be needed to facilitate QALICB operations.	3/15/2020

Receipt of evidence that Client has assembled a total amount of capital, that when combined with the NMTC financing, is sufficient to fund the Project in its entirety. To the extent that Client issues bonds or procures other marketplace debt to co-fund the Project, the terms and conditions associated with such debt shall be acceptable to DA and to the NMTC investor.

3/15/2020

Receipt of a financial model depicting the proposed NMTC transaction structure. This model will also include supplemental schedules depicting Client's seven year pro forma financial projections for the school district's entire operations, evidencing Client's capacity to service any and all outstanding debt, as well as any projected ongoing operating lease payments that will be owed to the QALICB as part of this transaction.

4/1/2020

Receipt of initial project construction-related due diligence materials, including plans and specifications, contractor qualifications, construction schedules, permits, soil reports, environmental reports, cultural studies, ALTA surveys, progress reports or other such construction related due diligence as DA or the NMTC investor may request.

4/1/2020

Receipt of preliminary confirmation from DA's NMTC counsel and the NMTC investor's counsel that the proposed NMTC transaction and structure satisfy all NMTC Program requirements as well as any and all Code requirements. This shall include an assessment as to whether the proposed Qualified Low-Income Community Investments and leverage loan shall constitute "true debt". In addition, the parties will have identified and concurred that all eligibility criteria has been met, as well as confirmation that QALICB property is located within the boundary of a Federally recognized Native American Reservation.

4/1/2020

Receipt of a comprehensive "But For" letter from the project sponsor, outlining how the project would not be able to proceed without the use of NMTCs, or alternatively, how low-income community impacts would be curtailed, deferred, or un-realized if the project scope was materially decreased due to the lack of sufficient NMTCs.

4/1/2020

Receipt of evidence that Client has received any necessary external approvals needed from state supervisory authorities or tribal entities, (if applicable and required) to enter into this transaction.

4/1/2020

Receipt of a first draft Agreed Upon Procedures Report from the Client's NMTC accountant, with representations acceptable to DA and to the NMTC investor.

5/1/2020

Development of a formal Community Benefits Agreement between DA and Client, with terms and conditions acceptable to DA. Such Agreement shall set forth community impact objectives to be achieved by the Project to serve the needs of low-income persons or the low-income community within which Project resides.

5/1/2020

Receipt of a formal “better rate and terms” letter from the Client/QALICB or a third party lender, evidencing that at least five or more rates or terms of the QLICIs are better than could be obtained in the marketplace. 5/1/2020

Final submission of copies of all due diligence material requested by DA and/or by the NMTC investor, including, but not limited to historic financial statements of the sponsor and guarantors, revised sources and uses of funds projections, updated pro forma financial projections, environmental reports, construction contracts, evidence of insurance, construction plans and designs, real estate title or lease information, comparable market rents letter, operating leases and lease commitments, permits, appraisal/valuation information, compliance documents and other such information as DA may deem necessary as part of its due diligence requirements (to be set forth more definitively within a formal “Closing Checklist”). 5/1/2020

In the event that QALICB anticipates using QLICI proceeds to reimburse Client or its affiliates for Project expenditures incurred prior to closing, any such reimbursed amount shall be subject to verification of the out-of-pocket costs incurred and shall be subject to the approval of DA and NMTC investor. Client shall furnish expense summaries, copies of invoices/pay applications, a certification of expense eligibility and other such information as DA or NMTC investor may require. 5/1/2020

Final DA underwriting approval 5/1/2020

Final drafts of transaction legal documents satisfactory to DA. 5/1/2020

Transaction closed. 5/15/2020

3. If any of the conditions set forth in Section Two above fail to be met on a timely basis, this Agreement may be terminated by DA, in its sole discretion, and DA shall have no further obligation to Client; provided however if any of the aforementioned conditions are not satisfied through no fault of Client, DA shall give the Client an additional 30 days to satisfy such condition. In addition, if in the sole judgment of DA, any of the Milestones set forth in Section Three above are not satisfied or not met by the respective date set forth opposite the Milestone due to the action or inaction by the Client, this Agreement shall immediately terminate and DA shall have no further obligation to the Client and Client shall have no rights to utilize any portion of DA’s NMTC Allocation. To the extent that the parties are progressing toward the transaction closing date in a satisfactory manner, DA shall have the option to modify the milestones in its sole determination. All parties acknowledge that time is of the essence. Client and DA also agree to use all commercially reasonable efforts to maximize the value of the NMTC for the benefit of the Project and the community that it serves.

4. DA shall reserve the right to require a third-party review of state and local tax related requirements that might affect the transaction economics or the tax filing requirements for the DA Subsidiary. DA will also require the establishment of reserves at the QALICB, the DA Subsidiary, or the Client for partial QLICI interest reserve equivalent to the summation of the annual administrative costs. DA shall require Client to provide a Project completion guarantee with terms and definitions acceptable

to DA. DA shall also require QLICI Payment Guarantees, environmental guarantees or indemnities and other assurances from the QALICB and/or the Client if deemed necessary by DA in order to mitigate the DA Subsidiary's economic risk. DA may also establish covenants within the QLICI Loan Agreements or require that the QALICB establish covenants within its formal agreements in order to mitigate risk and to waive any applicable sovereign immunity. DA may also require the establishment of minimum construction contingency amounts and construction monitoring requirements, including, but not limited to, requiring an independent construction inspector acceptable to DA.

5. Client shall be responsible for all third-party costs that DA incurs in connection with this Agreement and with attempting to close the transaction contemplated by this Agreement, including but not limited to legal and accounting costs related to the transaction (including, without limitation, the fees and expenses of any lawyers or accountants retained to determine any State of Montana registration/taxing/filing requirements for DA and the DA Subsidiary in connection with the transactions contemplated herein). All such third-party costs shall be the responsibility of Client even if this Agreement is terminated, and regardless of whether the NMTC transaction contemplated herein closes. Client shall also be responsible for impact studies and related costs. Although the third-party arrangements, including attorney-client and accountant-client relationships, shall run between the third party and DA, the payment arrangements shall, where possible, be structured such that Client is primarily responsible for the cost thereof. Client may delegate the responsibility for payment of such third-party costs to QALICB in the closing documents, but shall remain responsible therefor in the event of nonpayment by QALICB. For purposes of this paragraph, each of the persons and entities comprising Client in Paragraph 1 of this Agreement shall be jointly and severally responsible for the obligations and responsibilities contained within this paragraph.

6. Client agrees that it will also be responsible for all fees associated with services that it may independently engage with respect to this transaction, including but not limited to the Client's need for its own legal, accounting and tax opinions or services, financial consulting/capital placement support, or other services as may be desired by Client. Client shall also be independently responsible for all fees and transaction costs that are imposed by NMTC equity investors or lenders.

7. The Client understands and agrees that DA will be entitled to receive from DA Subsidiary, in consideration of the sub-allocation of \$15 million of NMTC Allocation made prior to the closing of the transactions, an amount equal to 4.0% of the total QEI (\$600,000.00), which amount shall be paid from the proceeds of such QEI. In addition, QALICB understands and agrees that the interest rate on the QLICIs may be set at a rate which allows DA to receive from DA Subsidiary an ongoing annual administrative amount of 0.75% of the total QEI amount (\$112,500.00). QALICB shall be responsible for any State franchise, excise, sales or use tax that may be applicable, now or hereafter assessed, for services rendered by DA or the DA Subsidiary. QALICB shall also be responsible for paying any annual charges imposed by the Fund that is established for this transaction, for reimbursing the CDE for any charges imposed by the NMTC investor for its ongoing administrative servicing actions that may be related to the transaction, for paying any future CDFI Fund fees should they arise, and for paying any ongoing extraordinary legal or accounting expenses that may be incurred should the QALICB fail to perform its loan repayment obligations. Subject to Paragraph 5 above, Client also agrees that all of the initial transaction-specific legal, accounting and transaction-related fees incurred by DA in connection with this transaction ("DA's Third Party Transaction Expenses") will be paid at the time of closing by Client or the QALICB, as set forth within closing documents. An estimate of all fees, expenses and costs relating to the transaction to be paid by Client and/or QALICB (excluding such costs to be paid with respect to other state or federal NMTC Allocation received by Client) is attached hereto as Schedule I.

9. With the execution of this Agreement, Client shall submit an up-front, non-refundable deposit of **\$25,000** to DA (the "Deposit"). If the transaction closes, such amount will be returned to Client immediately after closing or applied to towards Client's closing costs. If the transaction fails to close, the

Company will promptly pay to DA (or directly to its service providers) all of DA's Third Party Transaction Expenses within 30 days of receipt of third-party invoices submitted by DA and after application by DA of the Deposit; any portion of the Deposit not needed to pay DA's Third Party Transaction Expenses shall be returned to Client.

10. Client acknowledges that, prior to closing the NMTC transaction, the Internal Revenue Service or the U.S. Department of the Treasury Community Development Financial Institutions Fund may release regulations, revenue rulings, guidance or other directives with respect to engaging in transactions consistent with the purposes of Section 45D of the Code ("IRS Regulations, Rulings or Guidance" or "CDFI Fund Regulations, Rulings or Guidance"). In the event that DA determines that the structure of the NMTC transaction as contemplated herein is inconsistent with the IRS Regulations, Rulings or Guidance or the CDFI Fund Regulations, Rulings or Guidance, Client agrees to work together in good faith with DA to agree upon changes to the NMTC structure consistent with the IRS Regulations, Rulings or Guidance or the CDFI Fund Regulations, Rulings or Guidance. If DA and Client agree upon such changes to the NMTC structure and Client is diligently pursuing such changes, DA agrees to modify any milestones affected by such changes accordingly. If DA and Client are unable to agree upon such changes, this Agreement shall terminate and Client will be obligated to pay any amounts owing hereunder.

11. During the assembly of the transaction, in coordination with the Client, DA shall also reserve the right to conduct due diligence with Client's project and management team, public officials, community leaders, the proposed NMTC investor, or other CDEs that are involved in the transaction in order to further assess the potential community impact of the Project. DA will also reserve the right to conduct independent community impact studies as it deems necessary. Final approval of the transaction by DA will be conditioned upon favorable community impact findings by DA's Advisory Board and Governing Board.

12. If the NMTC Transaction closes, Client further agrees that DA or its affiliates may publicize such transaction in the form of press releases, web profiles, CDFI Fund reporting and other similar means. The types of information included in any publicity is expected to include total project cost, a description of the project and the community impacts of the project, underlying funding sources, and related information.

13. Client agrees to promptly provide information requested by DA to satisfy community impact and NMTC compliance and reporting requirements, both before and after the transaction closes, for the full duration of the seven-year NMTC tax credit period.

14. This Agreement contains the entire Agreement by and between the parties hereto concerning the matters set forth herein and supersedes any prior understanding or agreements between the parties. This Agreement may not be amended or modified except in writing by the parties. This Agreement is governed by the laws of the State of South Dakota, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Any action or proceeding arising out of this Agreement will be litigated in courts located in Minnehaha County, South Dakota. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Minnehaha County, South Dakota.

15. Waiver of Jury Trial. Client hereby waives its right to a jury trial of any claim or cause of action based upon or arising out of this Agreement, including contract claims, tort claims, breach of duty claims and all common law or statutory claims. Client represents that it has reviewed this waiver and it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court.

16. Client shall have 15 days of the date set forth above with which to accept this offer, after which, this offer shall immediately be deemed null and void, with no further obligations on the part of DA. If the terms of this Agreement are acceptable, please so indicate the Client's agreement in the space provided for this purpose below, whereupon this letter will constitute a legally-binding agreement as of the date of this Agreement with respect to Sections 5, 6, 8, 13, 14 and 15 of this Agreement.

Agreed to as of _____:

Browning School District No. 9

Dakotas America, LLC

By _____

Name: _____

Lin Van Hofwegen

Title: _____

Managing Director