

**SUBRECIPIENT FUNDING AGREEMENT
MINNESOTA DEED CONTAMINATION CLEANUP GRANT PROGRAM
HOTEL MANKATO PROJECT**

THIS AGREEMENT, is entered into by and between the City of Mankato, a Minnesota municipal corporation, whose address is 10 Civic Center Plaza, Mankato, MN 56001 (hereinafter referred to as "City"), and Hotel Mankato, LLC, a Minnesota Limited Liability Company (hereinafter referred to as "Subrecipient").

WHEREAS, in cooperation with Subrecipient, the City applied to and received approval for funds in the amount of \$323,887.00 from the State of Minnesota, acting by and through its Department of Employment and Economic Development, Business and Community Development Division ("DEED") under its Contamination Cleanup Grant Program (the "Cleanup Grant"); and

WHEREAS, the City desires to award proceeds of the Cleanup Grant in the amount of \$323,887.00 (the "Subgrant") to Subrecipient, to assist Subrecipient with the development of the site on the real property located at 101 E. Main Street, 121 E. Main Street and 118 S. 2nd Street, Mankato, MN and shown on attached **Exhibit A** (the "Property") by funding a portion of the costs for the Hotel Mankato Project identified in the Cleanup Grant Agreement and Application to DEED described in Section 1 below (the "Project").

WHEREAS, the Subrecipient will provide no less than seventy five percent (75%) of the Project costs up to \$323,887.00 as the required local match under the Cleanup Grant (the "Match Funds").

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **AWARD.** The City awards the Subgrant to Subrecipient for cleanup activities as described in the Cleanup Program Grant Agreement No. CCGP-24-0016-Z-FY25 between the City and DEED attached to this Agreement as **Exhibit B** (the "Cleanup Grant Agreement") and the Application to DEED submitted on November 1, 2024, on file in the City's Office (the "Grant Application"), both of which are incorporated into this Agreement. In the event of a conflict between the Cleanup Grant Agreement, this Agreement and the Grant Application, the documents shall be deemed to be controlling in the following order: 1) the Cleanup Grant Agreement; 2) this Agreement; 3) the Grant Application. The Subgrant and Match Funds must be used exclusively to pay or reimburse actual project costs as reflected in the budget incorporated into the DEED Grant Agreement ("**Project**"). Administrative costs incurred by the Subrecipient are not eligible for reimbursement under this Agreement. Notwithstanding anything to the contrary, the Subrecipient understands and agrees that any reduction or termination of the Cleanup Grant will result in a like reduction or termination of the Subgrant, and that any material change in the timeline or scope of the Project must be approved in writing by the City and DEED.

DEED expects the Project to achieve the following benefits (the “**Project Benefits**”):

Local Tax Base Increase: \$566,738

New Jobs: 111 FTEs

Retained Jobs: 0 FTEs

Private Investment (construction costs): \$81,651,913

2. **PERFORMANCE.** The Subrecipient must comply with all requirements applicable to the City in the Cleanup Grant Agreement. Any action or inaction of Subrecipient which could result in a default under the Cleanup Grant Agreement will constitute noncompliance with this Agreement. If the City finds that there has been a failure to comply with the provisions of this Agreement or that reasonable progress on the Project has not been or will not be made, the City may take action to protect its interests, including refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed. If action to correct substandard performance is not taken by the Subrecipient within 30 calendar days, or such longer period specified by the City after written notice by the City, the City may terminate this Agreement.
3. **PERFORMANCE MONITORING.** The Subrecipient shall comply with all requirements in the DEED Grant Agreement and submit any reporting information on the Project or the Development that is requested by DEED or the City. City shall submit annual reports and a final report (on or before Jun 25th of each year) in the form required by DEED on the distribution of funds and the progress of the Project from the date of this Agreement through June 30th of each year. The City will monitor the Subrecipient’s performance against the Project Benefits per the Project’s application for DEED funds. If applicable, an approval from the Minnesota Pollution Control Agency or other appropriate State or Federal agency is required upon completion of cleanup activities.
4. **TIME OF PERFORMANCE.** Subrecipient must not begin work under the grant agreement until the grant agreement is fully executed. Subrecipient must provide invoices for eligible grant activities identified in the grant agreement so that the City can submit the first payment request to DEED before December 31, 2025, or the grant may be terminated. Subrecipient shall complete the Project on or before December 31, 2027 (the “End Date”). In order to ensure funds are drawn prior to the End Date, completed disbursement requests shall be received by the City at least forty-five (45) days prior to the End Date.
5. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City’s disbursement of any of the Subgrant proceeds.
 - A. The Subrecipient must have provided evidence satisfactory to the City showing that Subrecipient has site control of the Property.
 - B. The Subrecipient must have provided to the City such evidence of compliance with all of the provisions of this Agreement as the City may reasonably request.
6. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$323,887.00. The City will make disbursements only upon receipt of a written disbursement request in the form provided

by DEED (the "Disbursement Request") from Subrecipient acceptable to the City and DEED. Payment requests may be made no more than once per month and must be accompanied by itemized invoices from each provider to be paid or cost to be reimbursed, whether such costs are being reimbursed by the Subgrant or not, with specific reference to the eligible Project line item. The City will, upon its approval of the Disbursement Request, forward the Disbursement Request to DEED for approval. Upon DEED approval of the Disbursement Request and receipt by the City of the approved amounts of Cleanup Grant funds, the City will disburse the approved amount of Subgrant funds in accordance with the information provided in the Disbursement Request. In order to ensure that all funds are drawn prior to the City's Cleanup Grant Agreement term end date, all payment requests must be received by forty-five (45) days prior to the End Date. The Subgrant dollars are grant funds only and cannot be used, treated or converted into any type of loan.

7. **NOTICES.** Communication and details concerning this Agreement must be directed to the following Agreement representatives:

City:

Attn: Courtney Kramlinger
10 Civic Center Plaza
Mankato, MN 56001
Telephone: (507) 387-8711
E-mail: ckramlinger@mankatomn.gov

Subrecipient Contact Information:

Name: Bryan Sowers
Company: Hotel Mankato, LLC
Address: 931 Madison Avenue, Mankato, MN 56001
Phone:
E-mail:

8. **GENERAL CONDITIONS.**

A. **General Compliance.** The Subrecipient agrees to comply with all applicable federal, state and local laws and regulations governing the Project and Cleanup Grant funds provided under this Agreement, including without limitation all applicable OSHA regulations, especially the federal Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. 1910.120 and 29 C.F.R. 1926.65), Minnesota Statutes §§116J.551 - .559, and all federal Davis Bacon and related act requirements.

B. **Subcontracts.**

1. **Compliance with Laws.** The Subrecipient must require that contractors performing work being paid with the Subgrant funds comply with all applicable federal, state and local laws and regulations governing the Project.

2. **OSHA.** Subrecipient must require that contractors performing work being paid with the Subgrant funds be in compliance with all applicable OSHA regulations, especially the Federal Hazardous Waste Operations and Emergency Response Standards (29 C.F.R. 1910.120 and 29 C.F.R. 1926.65).

C. **Termination.** In the event the Cleanup Grant Agreement is terminated, this Agreement shall contemporaneously terminate. Upon termination, Subrecipient will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

D. **Independent Contractor.** Nothing contained in this Agreement is intended to, or may be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The Subrecipient will at all times remain an independent contractor with respect to the services to be performed under this Agreement. The City is exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance and workers' compensation insurance because the Subrecipient is an independent contractor.

E. **Indemnification and Hold Harmless.** The Subrecipient shall hold harmless, defend and indemnify the City and DEED from any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorneys' fees, that arise directly or indirectly out of the Subrecipient's, its contractor's or subcontractor's performance or nonperformance under this Agreement. Claims included in this indemnification include any claims asserted pursuant to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B; the Federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA) as amended, United States Code Title 42, Sections 9601 et. seq.; and the Federal Resource Conservation and Recovery Act of 1976 (RCRA) as amended, United States Code Title 42, Sections 6901 et. seq.

F. **Insurance.**

1. **Insurance Required.** During the term of this Agreement, Subrecipient and its contractors and subcontractors rendering services being paid with funds from this Agreement shall procure and maintain Public Liability and Automobile Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form with "Broad Form" property damage liability coverage, with XCU exclusion removed, in limits of not less than \$1,500,000 per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. Coverages of Subrecipient and its contractors/subcontractors shall include:

- a. Public liability including premises and operations coverage;
- b. Independent contractors' protective contingent liability;
- c. Personal injury;
- d. Owned, non-owned, and hired vehicles;
- e. Contractual liability covering customary construction contract and subcontract indemnity provisions;
- f. Products—completed operations; and
- g. Workers' Compensation coverage in required statutory limits. Policy shall carry an "all states" endorsement.

2. *Additional Insurance Requirements.* All insurance required in this Article shall be taken out and maintained in responsible insurance companies organized under the laws of the United States and licensed to do business in Minnesota. City shall be named as an additional insured under the Public Liability and Automobile Liability Insurance. City does not represent or guarantee that the types of limits or coverages provided above are adequate to protect Subrecipient's interests and liabilities.

3. *Certificates of Insurance.* Certificates showing that the above-described insurance is carried in the specified amounts shall be furnished to City prior to the disbursement of any of the Subgrant proceeds, and a certificate showing continued maintenance of such insurance shall be on file with City during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against City.

4. *Contractor/Subcontractor Evidence of Insurance.* The Subrecipient must not commence work until any and all contractors/subcontractors have obtained the required proof of insurance which clearly evidences required insurance coverages. If the Subrecipient fails to furnish proof of insurance coverages from the contractors/subcontractors when requested by the City, the City may withhold payments and/or pursue any other rights or remedy allowed under this Agreement, law, equity, and/or statute.

9. ADMINISTRATIVE REQUIREMENTS.

A. **Accounting Standards.** The Subrecipient agrees to maintain the necessary source documentation and enforce sufficient internal controls as dictated by generally accepted accounting practices to properly account for expenses incurred under this Agreement.

B. **Records.**

1. *Retention.* The Subrecipient shall maintain adequate financial records consistent with generally accepted accounting principles. Audits and records, including but not limited to all financial and environmental documents related to the funds provided under this Agreement, shall be accessible to authorized representatives of the City for purposes of examination and audit. In addition, the Subrecipient shall give DEED, the Legislative Auditor, and the State Auditor's Office, through any authorized representatives, access to and the right to examine all records, books, papers, and documents related to this Agreement for a minimum of six (6) years from the end of the Cleanup Grant Agreement term end date.

2. *Close-Out.* The Subrecipient's obligation to the City does not end until all close-out requirements are completed. Activities during this close-out period include: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and receivable accounts to the City), determining the custodianship of records and resolving audit findings.

C. **Procurement.** The Subrecipient must maintain an inventory record of all nonexpendable personal property procured with funds provided under this Agreement. Program income is income generated from grant-funded activities, including interest earned on grant funds. All unexpended program income must revert to the City upon termination of this Agreement.

10. MISCELLANEOUS.

A. **Assignability.** The Subrecipient may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the City; provided, however, that claims for money due or to become due to the Subrecipient from the City under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer must be furnished promptly to the City.

B. **Antitrust.** The Subrecipient hereby assigns to the State of Minnesota any and all claims for overcharges for goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

C. **Governing Law and Venue.** This Agreement will be governed by, and construed in accordance with, the laws of the State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in a court located in Blue Earth County, Minnesota.

D. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all of which taken together constitute one and the same agreement.

E. **Survival.** Any terms of this Agreement which by their nature extend beyond termination of this Agreement shall survive and bind the parties and their successors and assigns.

F. **Job Listing Agreement.** Minnesota Statutes §116L.66, subd.1, requires a business or private enterprise to list any vacant or new positions with the state workforce center if it receives \$200,000 or more a year in grants from the State. If applicable, the business or private enterprise shall list any job vacancy in its personnel complement with Minnesota Works.net at www.minnesotaworks.net as soon as it occurs.

G. **Government Data Practices.** The Subrecipient must comply with the Minnesota Government Data Practices Act, Minnesota Statute Chapter 13, as it applies to all data provided by City under this Agreement and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Subrecipient under this Agreement. The civil remedies of Minnesota Statute §13.08 apply to the release of the data referred to in this clause. If the Subrecipient receives a request to release the data referred to in this clause, the Subrecipient must immediately notify City. City will give the Subrecipient instructions concerning the release of the data to the requesting party before the data is released. The Subrecipient's response to the request shall comply with applicable law.

H. **Intellectual Property Rights.** In the event that Subrecipient secures a copyright protection on any of the materials, reports, or data created as part of the project, the Subrecipient agrees to and does hereby grant to the State of Minnesota and its officers, agents, and employees, acting within the scope of their official duties, a royalty-free, non-exclusive, and irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so for use by the State, its divisions, instrumentalities and local subdivisions, all material now or hereafter covered by any such copyright.

I. **Publicity.** Any publicity regarding the subject matter of this Agreement must identify the State of Minnesota as the sponsoring agency. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Subrecipient individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from

this Agreement. For DEED logos and formatting, please contact the State's Authorized Representative.

J. **Payment of Contractors and Subcontractors.** The Subrecipient must ensure that all contractors and subcontractors performing work covered by this Agreement are paid for their work that is satisfactorily completed.

K. **Conflict of Interest.** The State of Minnesota through City will take steps to prevent individual and organizational conflicts of interest in reference to Subrecipient per Minn.Stat. § [16B.98](#) and Department of Administration, Office of Grants Management, Policy Number 08-01 [Conflict of Interest Policy for State Grant-Making](#). When a conflict of interest concerning State grant-making and subsequent City grant-making is suspected, disclosed, or discovered, transparency shall be the guiding principle in addressing it.

Organizational conflicts of interest occur when:

- a Subrecipient is unable or potentially unable to render impartial assistance or advice to City due to competing duties or loyalties.
- a Subrecipient's objectivity in carrying out the grant is or might be otherwise impaired due to competing duties or loyalties.
- a Subrecipient has an unfair competitive advantage through being furnished unauthorized proprietary information or source selection information that is not available to all competitors.

Organizational conflicts include any individual part of the Subrecipient. Individual conflicts of interest occur when:

- a Subrecipient uses his/her status or position to obtain special advantage, benefit, or access to the Subrecipient's time, services, facilities, equipment, supplies, badge, uniform, prestige, or influence.
- a City employee is an employee or board member of a Subrecipient that is an immediate family member of an owner, employee or board member of the Subrecipient.

The City and the Subrecipient must act immediately upon any suggestion, inquiry, or intimation that an individual or organizational conflict of interest exists at any point in the grant process. Steps must be taken to identify and avoid or mitigate any potential conflicts. The conflict of interest guidelines continue throughout the life of the grant agreement.

The Subrecipient must complete and submit a Conflict of Interest Disclosure Form (See Exhibit D) indicating whether or not a perceived, potential, or actual conflict of interest exists. If the Subrecipient identifies an actual, potential or perceived conflict of interest on the form, the Subrecipient must identify and submit its conflict of interest avoidance or mitigation plan. City will review the form and the Subrecipient's individual or organizational conflict of interest avoidance or mitigation plan and other relevant facts, if needed, to determine if an actual, potential or perceived conflict of interest exists, as defined by policy or other relevant law. If it does, City will pursue appropriate actions to mitigate, neutralize, or avoid the potential, perceived or actual individual or organizational conflicts of interest. These may include, but not be limited to, termination of the grant agreement; disqualification from future grant awards, if it is determined that it improperly failed to disclose a known individual or organizational conflict of interest or misrepresented information regarding such conflict; revising the Subrecipient's duties so that the conflict is mitigated; allowing the Subrecipient to propose the exclusion of task areas that create a conflict, if appropriate; allowing the individual with the conflict to be

removed from taking any actions in relation to the grant agreement.

In cases where a perceived, potential, or actual individual or organizational conflict of interest is suspected, disclosed, or discovered by the Subrecipient throughout the life of the grant agreement, they must immediately notify City for appropriate action steps to be taken, as defined above.

All of the above provisions apply to any sub- subrecipients and applicable language must be included in the Subrecipient / sub-subrecipient agreements.

L. **Severability.** In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

M. **Entire Agreement.** This Agreement, including Exhibits A, B and C constitutes the entire Agreement between the City and Subrecipient and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereto.

City of Mankato

Hotel Mankato, LLC

By: _____
Susan MH Arntz, City Manager

By: _____
Bryan Sowers, Vice President

EXHIBIT A
PROPERTY MAP

Hotel Mankato Project Location



Date: October 2024

Author:



This information is for informational purposes only. The City of Mankato does not guarantee the accuracy of the information contained herein, and is not responsible for its use or misinterpretation.

EXHIBIT B
Cleanup Development Program
Grant Agreement No. CCGP-24-0016-Z-FY25

EXHIBIT C
Disbursement Request Form

EXHIBIT D
Conflict of Interest Disclosure Form

This form gives Subrecipients an opportunity to disclose any actual, potential or perceived conflicts of interest that may exist when receiving a grant. It is the Subrecipient's obligation to be familiar with the Office of Grants Management (OGM) Policy 08-01, Conflict of Interest Policy for State Grant-Making and to disclose any conflicts of interest accordingly.

All Subrecipients must complete and sign a conflict of interest disclosure form.

- ☐ I or my subgrant organization do NOT have an ACTUAL, POTENTIAL, or PERCEIVED conflict of interest.

If at any time after submission of this form, I or my grant organization discover any conflict of interest(s), I or my grant organization will disclose that conflict immediately to the appropriate agency or grant program personnel.

- ☐ I or my subgrant organization have an ACTUAL, POTENTIAL, or PERCEIVED conflict of interest. *(Please describe below):*

If at any time after submission of this form, I or my grant organization discover any additional conflict of interest(s), I or my grant organization will disclose that conflict immediately to the appropriate agency or grant program personnel.

Printed name: Bryan Sowers

Signature: _____

Title: Vice President

Organization: Hotel Mankato, LLC

Date: _____