

**SUBRECIPIENT AGREEMENT BETWEEN THE CITY OF HASTINGS AND THE
HASTINGS ECONOMIC DEVELOPMENT AND REDEVELOPMENT AUTHORITY
FOR COLLABORATION OF THE HASTINGS NON-PROFIT RELIEF PROGRAM**

The parties to this Agreement are the City of Hastings, a Minnesota municipal corporation (referred to herein as “City”), and the Hastings Economic Development and Redevelopment Authority in and for the City of Hastings, a public body corporate and politic under the laws of the State of Minnesota (hereinafter referred to as "HEDRA"), collectively referred to as “the Parties”. This Agreement is made pursuant to the authority conferred upon the parties by Minn. Stat. § 471.59.

RECITALS

WHEREAS, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law by President Trump on March 27, 2020; and

WHEREAS, the CARES Act established the Coronavirus Relief Fund (Fund) and appropriated \$150 billion to the Fund; and

WHEREAS, the Fund is to be used to make payments for specific uses to State and certain local governments; and

WHEREAS, the City received an allocation of approximately \$1.7 million of the Fund (the City of Hastings Allocation) from the State of Minnesota that must meet the eligibility criteria established by the U.S. Department of Treasury (Exhibit A); and

WHEREAS, Section 601(d) of the Social Security Act, as added by section 5001 of the CARES Act, requires States, Tribal governments, or units of local governments use the funds received to cover only those costs that (1) are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); (2) were not accounted for in the budget most recently approved as of March 27, 2020, for the local government; and (3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and

WHEREAS, the COVID-19 coronavirus pandemic has created emergency and exigent circumstances for individuals, families and businesses necessitating immediate response and implementation of programs to provide relief aid to impacted individuals, families, communities and business; and

WHEREAS, the creation of a small business relief grant program for nonprofit businesses is an eligible Fund expenditure to reimburse the costs of increased services needed by individuals and families and business interruption caused by required closures; and

WHEREAS, creation of the Hastings Non-Profit Relief Program (Program) was approved by the Hastings City Council on September 8, 2020 authorizing the City and HEDRA to implement the

Program on behalf of the City of Hastings, and HEDRA as the City's economic development authority, to be funded with up to \$50,000 of the City of Hastings Allocation; and

WHEREAS, the City of Hastings Allocation must be expended by November 15, 2020 or returned to Dakota County.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement, the City and the HEDRA agree with all of the recitals set forth above, and agree to the following:

I. Scope of Services to be provided by HEDRA

A. HEDRA agrees to act as the subrecipient for the City in the Hastings Non-Profit Relief Program (Program), for which the City received funds from the State of Minnesota and allocated them to the Program. As the subrecipient, HEDRA agrees to oversee the Program and processes.

B. HEDRA agrees to comply with federal procurement provisions to procure and enter into a contractual agreement with a qualified contractor, United Way of Hastings, a Minnesota nonprofit corporation (hereinafter referred to as "United Way"), to implement the Program.

C. HEDRA agrees to develop marketing materials and advertise the Program in collaboration with United Way and the City to reach as many eligible nonprofit businesses as possible to apply for the Program.

D. HEDRA agrees to oversee the work of United Way on every stage of the Program from applications development, to selection, review, and award of grants, to audit of grantees.

E. HEDRA agrees to receive the grant agreements and associated documentation from United Way, review each grant agreement and documentation for eligibility, and then submit to the City for distribution of funds to individual grantees (nonprofit businesses).

F. HEDRA shall keep detailed records of the Program and provide regular updates to the City.

G. Pursuant to Minn. Stat. §16C.05, subd. 5, HEDRA agrees that the City, the State Auditor, or any of their duly authorized representatives at any time during normal business hours and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of HEDRA and involve transactions relating to this Agreement. HEDRA agrees to maintain these records for a period of six years from the date of termination of this Agreement and will require the United Way to comply with this requirement.

II. Time of Performance

The services to be provided pursuant to the Agreement shall commence on or after September 21, 2020 and continue until all obligations have been satisfactorily fulfilled. Presently, the City of Hastings Allocation, including the portion thereof allocated to the Hastings Non-Profit Relief Program, must be expended by November 15, 2020, or returned to Dakota. The City and HEDRA acknowledge the COVID-19 coronavirus pandemic has created emergency and exigent

circumstances necessitating expedited response and implementation of programs, including the Program, to provide relief aid to impacted individuals, families, communities and businesses.

III. Duties of the City

In consideration of the performance of the duties and obligations of HEDRA, the City hereby authorizes HEDRA to compensate and reimburse United Way for the costs incurred in order to carry out its duties and obligations pursuant to this Agreement, which total amount shall not exceed 10% of the funds disbursed to nonprofit businesses under the Hastings Non-Profit Relief Program, up to a maximum of \$5,000.00.

IV. Financial Recordkeeping

HEDRA shall:

- A. Maintain records and documentation on reasonable and necessary administrative expenses.
- B. Submit a report on no later than November 10, 2020 identifying the amounts of all Program payment requests eligible for payment from the portion of the City of Hastings Allocation that is allocated to the Hastings Non-Profit Relief Program.
- C. Review all grant agreements and funding requests to each grantee (nonprofit business) to ensure compliance with program before submitting to the City for payment.

V. General Provisions

- A. Compliance with Laws. HEDRA shall abide by all federal, state or local laws, statutes, ordinances, rules and regulations now in effect or hereunder adopted pertaining to activities governed by the Agreement.
- B. Minnesota Law to Govern. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Minnesota, County of Dakota.
- C. Independent Contractor. HEDRA is an independent contractor and nothing herein shall be construed to create the relationship of employer and employee between the City and HEDRA or any employee of HEDRA or United Way. HEDRA shall at all times be free to exercise initiative, judgment and discretion as to how best to provide the services pursuant to this Agreement. HEDRA acknowledges and agrees that HEDRA is not entitled to receive any of the benefits received by City employees and is not eligible for workers or reemployment compensation benefits.
- D. Indemnification. Any and all claims that arise or may arise on behalf of HEDRA, its agents, servants, or employees as a consequence of any act or omission on the part of HEDRA or its agents, servants, or employees while engaged in the performance of this Agreement shall in no way be the obligation or responsibility of the City. HEDRA shall indemnify, hold harmless and defend the City, its officers and employees against any and all liability, loss, costs, damages,

expenses, claims or actions, including attorneys' fees which the city, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any negligent or willful act or omission of HEDRA, its agents, servants, or employee, in the execution, performance or failure to adequately perform HEDRA's obligations pursuant to this Agreement.

E. Waiver. Waiver of any default shall not be deemed a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement unless stated to be such.

F. Modifications. Any alterations, variations, modifications or waivers of the provisions of this Agreement, and incorporated attachments, shall only be valid when they have been reduced to writing and signed by authorized representatives of the City and HEDRA.

G. Severability. The provisions of this Agreement shall be deemed severable. If any part of this Agreement is rendered void, invalid, or unenforceable, such rendering shall not affect the validity or enforceability of the remainder of this Agreement unless the part or parts which are void, invalid, or otherwise unenforceable shall substantially impair the value of the entire Agreement with respect to either party.

H. Merger. This Agreement is the final expression of the agreement of the City and HEDRA and the complete and exclusive statement of the terms agreed upon and shall not supersede all prior negotiations, understandings or agreements. There are not representations, warranties, stipulations, either oral or written, not herein contained.

I. Assignment. HEDRA shall not enter into any subcontract for the performance of the services contemplated under this Agreement or assign any interest in the Agreement without prior written consent of the City and subject to such conditions as the City deems necessary. HEDRA shall be responsible for the performance of its subrecipient agreement with United Ways unless otherwise agreed in writing.

J. Records and Reports. HEDRA shall maintain all records as prescribed by applicable federal regulations. HEDRA further agrees to maintain records relating to all services provided by it pursuant to the Agreement and shall retain all such documentation for a period of six (6) years from the date services were last provided pursuant to this Agreement or longer if any audit in progress requires a longer retention period. Such records are subject to the examination, duplications, transcription and audit by the City, and Legislative or State Auditor, pursuant to Minn. Stat. §16C.05, subd. 5, and duly authorized officials and officers of the United States government.

K. Audits, Compliance with Single Audit Act. HEDRA understands that these funds are subject to the requirements under the Single Audit Act (31 U.S.C. §§ 7501-7507) and the related provisions of the Uniform Guidance, 2 C.F.R. § 200.303 regarding internal controls, §§ 200.330 through 200.332 regarding subrecipient monitoring and management, and subpart F regarding audit requirements.

L. Termination. If HEDRA materially fails to comply with any term of this Agreement, the City may take one or more of the actions identified in 24 CFR §85.43, as appropriate in the

circumstances. The City may terminate this Agreement in whole or in part for convenience, as provided in 24 CFR §85.44.

M. Rights and Remedies. All remedies available to either the City or HEDRA under the terms of this Agreement or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. Waiver of any default shall not be deemed a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be construed to modify the terms of this Agreement unless stated to be such in writing and signed by authorized representatives of the City and HEDRA.

N. Notices. Notification required to be provided pursuant to this Agreement shall be provided to the following named persons and addresses unless otherwise stated in the Agreement or in an amendment to this Agreement:

To City:
City Administrator
101 East 4th Street
Hastings, MN 55033

To HEDRA:
Executive Director
101 East 4th Street
Hastings, MN 55033

O. Liaison. To assist the parties in the day-to-day performance of this Agreement, a liaison shall be designated by the City and HEDRA. The parties shall keep each other continually informed.

P. Certifications. HEDRA certifies to the best of its knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid by or behalf of HEDRA to any person or persons for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreements.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with this federal contract, grant, loan, or cooperative agreement, HEDRA shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

3. HEDRA shall require that the language of this certification be included in the award documents for all the subawards at all tiers (including United Way subrecipient agreement, subgrants, and contracts) under grants, loans, and cooperative agreements and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this Agreement was made or entered. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by 31

U.S.C. §1332. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Q. Survivability. The right and obligations found in Section I (G) Audits; Section V(D) Indemnification, Section V(J) Records and Reports; and Section V(K) Audits shall survive expiration or termination of this agreement.

Dated _____, 2020.

City of Hastings, a Minnesota municipal corporation

By: _____
Mary Fasbender, Mayor

(SEAL)

By: _____
Julie Flaten, City Clerk

Hastings Economic Development and Redevelopment Authority in and for the City of Hastings, a public body corporate and politic under the laws of the State of Minnesota

Dated: _____, 2020

By: _____
Martha Sullivan, President

EXHIBIT A

FUNDING APPROVAL AGREEMENT BETWEEN CITY AND STATE OF MINNESOTA

{Insert City's Coronavirus Relief Fund Certification Form}