

**SUB-RECIPIENT FUNDING AGREEMENT
CONTAMINATION CLEANUP GRANT PROGRAM
SOFIDEL AMERICA EXPANSION PROJECT**

THIS AGREEMENT, effective as of the date of attestation by the City Clerk (“Effective Date”), is entered into by and between the CITY OF DULUTH, a Minnesota municipal corporation (“the City”), and SOFIDEL AMERICA CORP, a Florida corporation (the “Subgrantee”).

WHEREAS, in cooperation with Subgrantee, the City applied to and received approval for funds in the amount of \$2,399,086.00 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 \$2,399,086.00 (the "Subgrant") to Subgrantee, to assist Subgrantee with the expansion project on the real property described on attached **Exhibit A** (the “Property”) by funding a portion of the costs of those elements of the development identified in the Special Conditions of the Cleanup Grant Agreement identified below (the “Project”).

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 Subgrantee for assessment and/or clean-up activities as are described in Grant Agreement No. CCGP-24-0020-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 Planning and Economic Development Office, both of which are incorporated into this Agreement and are hereinafter referred to as (the "Documents"). In the event of a conflict between the Cleanup Grant Agreement, this Agreement and the Grant Application to DEED, the documents shall be deemed to be controlling in the following order: 1) Grant Agreement No. CCGP-24-0020-Z-FY25; 2) this Agreement; and 3) the Grant Application. The Subgrant and Match Funds must be used exclusively to pay or reimburse only expenses authorized under the Cleanup Grant Agreement. Administrative costs incurred by the Subgrantee are not eligible for reimbursement under this Agreement. Notwithstanding anything to the contrary, the Subgrantee 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 as set forth in the Documents must be approved in writing by the City and DEED.

2. **PERFORMANCE.** The Subgrantee must comply with all requirements applicable to the City in the Documents. Subgrantee’s default under the Documents 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 Subgrantee within 30 calendar days, or such

longer period specified by the City's Manager of Economic Development and DEDA (the "Manager") after written notice by the City, the City may terminate this Agreement.

3. **TIME OF PERFORMANCE.** Subgrantee must complete the Project and the Development on or before August 14, 2026. In order to ensure that all funds are drawn prior to the City's Cleanup Grant Agreement term end date, all payment requests from Subgrantee to the City must be received by the City at least 45 days prior to said term end date. The City is not obligated to pay for any Project costs incurred thereafter. It is expected the Project will begin as described in the Documents. Subgrantee must make at least one payment request on or before December 31, 2025.

4. **CONDITIONS PRECEDENT TO DISBURSEMENT.** The following requirements are conditions precedent to the City's disbursement of any of the Subgrant proceeds.

A. The Subgrantee must have provided evidence satisfactory to the Manager showing that Subgrantee has title in fee simple or site control of the Property as required by the Documents or otherwise meets the requirements of DEED.

B. The Subgrantee must have provided to the Manager such evidence of compliance with all of the provisions of this Agreement and the Documents as the City may reasonably request.

C. The Subgrantee is bound to financial and performance reporting requirements as specified in Exhibit B.

5. **DISBURSEMENT.** It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed the sum of Two Million Three Hundred and Ninety-nine Thousand and Eighty-six Dollars (\$2,399,086.00) payable from Fund 235. The City will make disbursements only upon receipt of a written payment request in the form provided by DEED (the "Payment Request Form") from Subgrantee acceptable to the City and DEED. Payment requests may be made no more than once per month and must be accompanied by invoices supporting the reimbursement of Subgrantee of Approved Project Costs and such other documentation related thereto as shall be reasonably requested by the Manager. The Payment Request Form must have attached all invoices from each provider to be paid or cost to be reimbursed. The City will, upon its approval of the Payment Request Form and supporting documentation, forward it to DEED for approval. Upon DEED approval of the Payment Request Form 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 Payment Request Form. The final payment request must be submitted with 60 days completion of the Project, and no later than December 31, 2026. Subgrant funds cannot be used as match for any other grant or program and cannot be used, treated, or converted into any type of loan.

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

THE CITY: City of Duluth
Attn: Manager of Economic Development, Tricia Hobbs
411 W. 1st Street

Duluth, MN 55802
(218) 730-5322

Subgrantee: Sofidel America, Corp.
Attn: Simone Giacomelli
100 N. Central Avenue
Duluth, MN 55807
218-283-3890

7. **GENERAL CONDITIONS.**

A. **General Compliance.** The Subgrantee 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) and when applicable all federal Davis Bacon and related act requirements.

B. **Subcontracts.**

1. *Compliance with Laws.* The Subgrantee 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.* Subgrantee 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).

3. *Payment of Contractors and Subcontractors.* Subgrantee must provide evidence that all contractors and subcontractors performing work under this Agreement are paid for work that is satisfactorily complete.

C. **Termination.** In the event the Cleanup Grant Agreement is terminated, this Agreement shall contemporaneously terminate. Upon termination, Subgrantee 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. Subgrantee and its officers, agents or employees shall not be considered an employee of the City for any purpose or in any manner whatsoever. The Subgrantee will at all times remain an independent contractor with respect to the services to be performed under this Agreement. Any and all claims that may or might arise on behalf of Grantee arising out of employment or alleged employment, including without limitation, claims of discrimination shall in no way be the responsibility of the City. Grantee and its officers, agents, or employees shall not be entitled to claim or collect from the City any compensation or rights or benefits of any kind whatsoever, including but not limited to, hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the City shall not, in any way, be responsible to defend, indemnify or save harmless Grantee, its officers, agents or employees from liability or judgments arising out of the intentional or negligent acts or omissions of Grantee while performing the work specified hereunder.

E. **Indemnification and Hold Harmless.** To the extent permitted by law, the Subgrantee shall defend, indemnify, and hold the City and DEED, their employees, officers, and agents, harmless from and against any and all liability, claims, actions, suits, charges, damages, losses, costs, expenses, and judgments whatsoever, including reasonable attorneys' fees, asserted

by itself or any other person or persons, that arise directly or indirectly out of the Subgrantee'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. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466. This Section shall survive the termination of this Agreement for any reason.

F. Insurance.

1. *Insurance Required.* During the term of this Agreement, Subgrantee 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, 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. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. The insurance requirements of this paragraph may be met by augmenting an industry-standard liability policy with an "umbrella" policy, the combined limits of which meet those requirements. Coverages of Subgrantee 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. The City shall be named as an additional insured under the Public Liability and Automobile Liability Insurance

3. *Certificates of Insurance.* Certificates showing that the above-described insurance is carried in the specified amounts shall be furnished to the 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 the City during the term of this Agreement. The form of each certificate of insurance shall contain an unconditional requirement that the insurer notify the 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 the City will render any such change or changes in said policy or coverages ineffective as against the City.

4. *Contractor/Subcontractor Evidence of Insurance.* The Subgrantee 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 Subgrantee 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.

G. Time is of the essence. Subgrantee must comply with all the time requirements described in this Agreement. In the performance of this Agreement, time is of the essence.

8. **ADMINISTRATIVE REQUIREMENTS.**

A. **Accounting Standards.** The Subgrantee 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. *Inspections and Retention.* 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 Subgrantee 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 years from the end of the Cleanup Grant Agreement term end date. The Grantee must retain all records pertinent to this Agreement or transaction until conclusion of the latest of (a) six years after the conclusion of this Agreement; (b) six years from the end of the Cleanup Grant Agreement, receipt and approval of all final reports; or (c) six years from the end of the required period of time to satisfy all state and program retention requirements.

2. *Data Practices Act.* The Subgrantee must comply with the Minnesota Government Data Practices Act, Chapter 13.

3. *Close-Out.* The Subgrantee'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 Subgrantee 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.

9. **BUSINESS SUBSIDY AGREEMENT.** A. **Description of Subsidy.** The business subsidy provided to Subgrantee consists of the award of 2,399,086.00 described in this Agreement.

B. **Need for Subsidy.** Without the award provided pursuant to this Agreement, the costs of cleanup and remediation of the Project are not economically feasible without such assistance that, therefore, but for the award to be provided for hereunder, the Project could not be reasonably expected to be undertaken in the foreseeable future.

C. **Public Purpose.** The public purpose of the award to be provided pursuant to this Agreement is to assess and clean-up the site, in connection with construction of the Project that will create jobs that pay a livable wage, enhance the City's tax base, and achieve redevelopment

on sites which would not be developed without assistance. In accordance with §116J.994, subdivision 4, the City has determined after a public hearing that the creation or retention of jobs is a goal of this development/redevelopment effort.

D. **Business Subsidy Goal.** Achievement of the Business Subsidy Goal in accordance with Minnesota Statutes §116J.994 shall be measured as follows: Subgrantee agrees that on or before December 31, 2027, it shall have constructed the Project on the Property in accordance with this Agreement (the “Business Subsidy Goal”). On the Compliance Date, the Subgrantee shall have:

1. Maintained (80) permanent, non-contract, non-seasonal FTE jobs; and
2. Created at least One Hundred and Sixty new jobs at the Project site, having a base wage of not less than \$18.00 per hour, exclusive of benefits.

E. **Reporting Requirement.** On or before March 1st of each year following the commencement of this Agreement, Subgrantee shall file with the City and for two (2) years after the Benefit Date, reports on forms developed by the Minnesota Department of Employment and Economic Development (“DEED”) setting forth Subgrantee’s progress in meeting the Business Subsidy Goal during the preceding Reporting Period. Said report shall include the information required in Minnesota Statute §116J.994, subdivision 7, and shall be accompanied by such documentation as the Manger reasonably request in writing. All such reports shall be signed on behalf of Subgrantee by an officer of Subgrantee with authority to bind Subgrantee.

G. **Penalty.** If City does not receive the reports described in Paragraph E of this Section, it will send to Subgrantee a warning by certified mail within one week of the required filing date. If within 14 days of the post marked date of the warning the reports are not made, Subgrantee agrees to pay City a penalty of \$100 for each subsequent day until the report is field, up to a maximum of \$1,000.

H. **Special Event of Default if Business Subsidy Goals Not Met.** Subgrantee agrees that if the Business Subsidy Goal of Project construction is not met by December 31, 2027, and as determined in the reasonable discretion of the City, the City shall have cause of action to recover the reasonable and necessary cleanup costs, or any other remedy available to it.

I. **Additional Enforcement.** In the event that Subgrantee shall fail for any reason whatsoever to meet the reporting requirements of Paragraph F of this Section fully and completely and in a timely manner as required, said failure shall be deemed to be a material breach of the terms and conditions of this Agreement and, in addition to the rights and remedies available to City pursuant to Paragraph G, City shall be entitled to withhold any payment due from City under this Agreement and to withhold the performance of any obligation owed by City under this Agreement until Subgrantee’s reporting obligations pursuant to this Section have been fully complied with. Further, City shall be entitled to reimbursement for any reasonable costs, including the value of staff time and attorneys’ fees and costs, incurred by City to secure Subgrantee’s compliance with the reporting requirements.

J. **Other Financial Assistance.** In addition to the award provided under this Agreement, the Subgrantee has received or expects to receive as part of this Project the following financial assistance from other “grantors” as defined in the Business Subsidy Act: \$ 1,680,000 JCF Grant, and \$3,120,000 in MIF; and tax increment finance in the amount up to \$14,308,195.

K. **Continued Operations Covenant.** Subgrantee agrees to own and operate the Property and the Project for at least nine (9) years after the Benefit Date (the “Continued Operations Covenant”).

10. **MISCELLANEOUS.**

A. **Assignability.** The Subgrantee may not assign or transfer any interest in this Agreement (whether by assignment or novation) without the prior written consent of the Manager; provided, however, that claims for money due or to become due to the Subgrantee 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 Subgrantee 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. **Relationship of the Parties.** It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners, joint ventures, or joint enterprise between the parties hereto or constituting either party as an agent, representative or employee of the other for any purpose or in any manner whatsoever.

D. **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 St. Louis County, Minnesota.

E. **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.

F. **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.

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

11. **REIMBURSEMENTS.** The Subgrantee shall provide the full amount required for the Project in the form of a local match for the grant funds being provided pursuant to the Cleanup Grant. Subrecipient agrees to complete all proceedings necessary to provide the local match of the Cleanup Costs at or before the time the local match is needed for Cleanup Costs.

[Remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed intending to be bound thereby.

CITY OF DULUTH

SOFIDEL AMERICA CORP., a
Florida corporation

By: _____
Its Mayor

By: _____
Its: _____

Date: _____

Date: _____

Attest:

Its City Clerk

Date: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney

EXHIBIT A

Legal Description of the Property

Lot 2, Block 1, Lake Superior Paper Division, except minerals

Lot 3, Block 1, Lake Superior Paper Division, except that portion described as follows: Commencing at a capped square tube noted on the plat and located at the intersection of the center line of Polk Street and the East line of 55th Avenue West (also known as Central Avenue) the Point of Beginning; thence North 00 degrees 00 minutes 01 seconds East along East line of 55th Avenue West (also known as Central Avenue) a distance of 282.80 feet; thence North 89 degrees 59 minutes 56 seconds East a distance of 250.00 feet; thence South 00 degrees 00 minutes 01 seconds West a distance of 282.80 feet, more or less, to the center line of Polk Street, thence South 89 degrees 59 minutes 58 seconds West along the center line of Polk Street 250.00 feet, more or less, to the Point of Beginning, And also except minerals.

Lot 1, Block 2, Lake Superior Paper Division, except minerals.

St. Louis County

PIDs:010-2806-00020, 010-2806-00030, 010-2806-00040

Exhibit B
Cleanup Grant Agreement