

PURCHASE OF SERVICE AGREEMENT

THIS AGREEMENT is made and entered into between the **ST. LOUIS COUNTY BOARD OF COMMISSIONERS**, 320 West Second Street, Duluth, Minnesota 55802 , through its local Public Health and Human Services Department, hereinafter referred to as "County", and **CITY OF DULUTH WORKFORCE DEVELOPMENT (CDWD)**, 402 W. 1st St., Duluth, MN 55802, hereinafter referred to as "Provider", for the period of January 1, 2017 to December 31, 2017 .

WITNESSETH

WHEREAS, Funds have been made available to County from the Minnesota Department of Human Services for the purpose of providing **STATEWIDE MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP) EMPLOYMENT SERVICES** under Minnesota Statute 256J.50 and PL 104-193 and **DIVERSIONARY WORK PROGRAM SERVICES (DWP)** under Minnesota Statute 256J.95; and

WHEREAS, the County, through its Public Health and Human Services Department has identified a certain population in need of Employment Services; and

WHEREAS, the Provider represents they are qualified to provide these services.

WHEREAS, the County wishes to purchase such services from the Provider, hereinafter referred to as "purchased services"; and

WHEREAS, Provider has represented that it is fully, professionally qualified and duly licensed to render said services within the State of Minnesota; and

NOW THEREFORE, in consideration of the mutual understandings and agreements set forth in this Agreement, the County and Provider agree as follows:

I. TERM OF THE AGREEMENT

- A. This Agreement shall commence on January 1, 2017 and terminate on December 31, 2017.
- B. County agrees to pay and Provider agrees to the terms during the period January 1, 2017 through December 31, 2017, subject to the conditions set forth in this Agreement. The contract maximum for all Providers taken together under this Agreement, of which this Provider is one, is \$2,973,481.00 or actual allowable expenditures, whichever is less. Expenditures incurred by this Provider in rendering purchased services shall be **\$926,445.00** in accordance with Provider's line item budgets, attached hereto and incorporated herein as Exhibit B. County, in its sole discretion, may increase or decrease

these budget allocations during the course of the Agreement. However, total expenses shall not exceed \$2,973,481.00, for all Providers taken together.

- C. Provider agrees that all income earned by Provider in the provision of services funded entirely or in part by this Agreement shall be used by Provider for funding the level and type of purchased services, as specified in Exhibit A, entitled MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP), AND DIVERSIONARY WORK PROGRAM (DWP) GRANT SERVICES TO BE PROVIDED, attached hereto and incorporated herein.
- D. Provider agrees that upon termination of this Agreement, if revenues exceed allowable expenses or budgeted expenses, whichever is less, Provider shall refund the excess revenue to County. Budgeted expenses as specified in Exhibit B.
- E. This Agreement is subject to the provisions of the "Social Services Eligibility and Fee Schedule" as approved by County. Said Policies and Procedures are incorporated herein by reference. A copy of said Policies and Procedures is on file with the Director of the St. Louis County Public Health and Human Services Department (PHHS).

II. SERVICES TO BE PROVIDED

- A. Provider agrees to furnish during the period January 1, 2017 through December 31, 2017, specified services more particularly described in Exhibit A, to the identified target populations described in Exhibit C, entitled Eligibility for MFIP-DWP Grant Services, attached hereto and incorporated herein, and other approved services as outlined in the "Employment Services Manual", incorporated herein by reference.
- B. Purchased services shall be provided by:

City of Duluth Workforce Development
402 W. 1st St.
Duluth, MN 55802
- C. Purchased services shall be performed by staff who are professionally qualified in accordance with Provider's job descriptions and listings of professional qualifications.
- D. Provider shall keep current and on file client records, which identify individual progress, towards self-sufficiency, document client status, engagement and client costs attributable to client service utilization, as outlined in the program overview, Exhibit A.
- E. The general sequence of events in MFIP-DWP Employment Services are the following:
 - 1. The St. Louis County PHHS determines eligibility for MFIP.
 - 2. PHHS provides the client with an orientation which includes MFIP program requirements and the client selects a provider..
 - 3. The client is referred to an Employment Overview with the provider.

4. The client has an Assessment and Employability Determination completed.
5. Provider/client complete an Employment Plan with allowable activities based upon their program eligibility, assessments, needs and abilities.
6. Provider/client engage in an ongoing assessment with file documentation including completing the employability measures at least annually.
7. Provider case manages with regular reviews, following timeline guidelines set forth in the Employment Services Manual.
8. Provider will provide Equity Program opportunity information on a continuous basis.

III. MAXIS ACCESS

Exhibit G, entitled Maxis Access, attached hereto and incorporated herein, has been added to the agreement in order to facilitate the DHS opening MAXIS inquiry access for a limited number of DWP and MFIP employment services (ES) providers. County contracts with community agencies providing ES services must include language that makes the agency part of the welfare system; addresses data privacy and HIPAA requirements; ensures computers have updated security; and covers training requirements.

IV. PAYMENT PROCEDURES

- A. Payment for purchased services shall be according to procedures outlined in Exhibit D, entitled REPORTING REQUIREMENTS / PAYMENT PROCEDURES, attached hereto and incorporated herein, including:
 1. Fiscal Expenditure Report
 2. Program Report
 3. Billing
 4. Method of Payment
- B. County's obligation to reimburse Provider for costs incurred in providing purchased services is made subject to audit by County or its designee. Said audit shall be the final determination of reimbursable costs.
- C. Provider shall promptly reimburse to County any payments received in excess of required payments hereunder.
- D. County shall not be obligated to reimburse, nor shall Provider claim, for any services furnished or costs incurred by Provider which are not specifically provided for hereunder nor requested by County in writing during the term of this Agreement.
- E. Allowable expenditures - Non-Assistance Transportation- are limited to:
 1. Funds to repair cars used for travel to or from work or work-related activities. There should be an identified maximum limit for each vehicle repair.
 2. Car insurance

3. Licensing fees (not to include fines)
 4. Driver's training Transit passes
 5. Gas vouchers
- F. Provider acknowledges and agrees that DHS shall be the third party beneficiary and, as such, is an affected party under this contract and, as such, may recoup payments made by County to Provider in the event of breach of this contract if County does not recoup the payments.
- G. County and Provider agree that total Employment Services expenditures under this Agreement may not exceed the entire allocation of **\$926,445.00**. Notwithstanding the foregoing, in the event that other Employment and Training Providers for the same services do not expend their allocation under their respective Agreements with County, upon written notification to Provider, County may, in its sole discretion, increase Provider's allocation to an amount not to exceed \$2,973,481.00 when combined with the allocations of the other Providers, which is the total allocation in State and Federal funds made by County for this purpose. County and Provider agree that maximum expenditure under this Agreement may not exceed such increased allocation as provided for above, upon written notification by County to Provider.

VI. AUDIT, REPORTS, RECORDS, DISCLOSURES AND MONITORING PROCEDURES

- A. Provider shall keep complete books and records according to generally accepted accounting principles which shall fully document receipt and expenditures of the allocated amount. Provider agrees that within 180 days of the close of its fiscal year an audit shall be conducted which complies with the requirements of the Single Audit Act of 1984, P.L. 98-502 and Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Within thirty (30) days following its completion of said audit, a copy of the audit report must be forwarded to County. Provider shall also keep such books and records as are required by County to fulfill County's reporting responsibilities to the State of Minnesota and the United States Government.
- B. Provider shall retain books and records as required by Paragraph 4-a, above, for a period of six (6) years from the final date of the term of this Agreement. Provider shall make said books and records available for inspection or audit by County, or County's duly authorized designee, at reasonable hours. Said books and records shall be maintained at the City of Duluth Auditor Office, 411 W. 1st St., Room 107, Duluth, MN 55802.
- C. Provider shall allow personnel of County, DHS, and the U.S. Department of Health and Human Services access to Provider's records, at reasonable hours, in order to exercise

their right to audit Provider's records, monitor their services, and copy pertinent program and fiscal records.

- D. The books, records, documents and accounting procedures and practices of Provider which are relevant to this Agreement are subject to examination by County and the Minnesota State Auditor for a minimum of six (6) years from the final date of the term of this Agreement.

VII. DATA PRIVACY

- A. Confidentiality: The use or disclosure by any party or of any private information concerning a client in violation of any rule of confidentiality or for any purpose not directly connected with the administration of the County's or the Provider's responsibility with respect to these services is prohibited without the written consent of the client or responsible parent or guardian.
- B. Data Practices: To the extent Minn. Stat. § 13.05, subd. 11(a), applies to the Contract, all of the data created, collected, received, stored, used, maintained, or disseminated by Contractor in performing the County's functions is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. ch. 13, and Contractor must comply with those requirements as if it were a government entity. Contractor shall not provide public access to or release to the public or any third party any data relating to the Contract without the County's prior written approval. If Contractor receives a request for data relating to the Contract, Contractor shall forward the request to the County for response.
- C. HIPAA Compliance: The parties agree to comply in all respects with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), and its implementing regulations (45 CFR Parts 160-164), to ensure the integrity and confidentiality of protected health information. Should a party fail or refuse to honor its obligations pursuant to this section, the other party may terminate this Agreement with thirty (30) days written notice.
- D. The Provider agrees to defend, indemnify, and hold harmless the County authorizing services under this Agreement, its agents, officers, and employees from all claims arising out of, resulting from, or in any manner attributable to any violation of the Minnesota Government Data Practices Act, HIPAA, or any other data privacy statute or regulation including any legal fees or disbursements paid or incurred to enforce the provision of this section of the Agreement.

VIII. FAIR HEARING AND GRIEVANCE PROCEDURES

The Provider agrees to provide for a fair hearing and grievance procedure in conformance with and in conjunction with the Fair Hearing and Grievance Procedures established by administrative rules of the State Department of Human Services and Minnesota Statutes, Section 256.045, which are incorporated by reference into this Agreement.

IX. EQUAL EMPLOYMENT OPPORTUNITY, CIVIL RIGHTS AND NON-DISCRIMINATION

- A. Provider will comply with the Civil Rights Act of 1964, Title VII (42 USC 2000e); including Executive order No. 11246, and Title VI (42 USC 2000d); 42 USC 12101, et seq. (ADA), 28 CFR 35.101-35.190, Title IX of the Educational Amendments of 1982 as amended, Sections 503 and 504 of the Rehabilitation Act of 1973; Minnesota Statutes section 363A.02; Minnesota Human Rights Act at Minnesota Statute section 363.01 et. seq.; and all applicable federal and state laws, rules, regulations and orders prohibiting discrimination in employment, facilities and services. The Provider shall not discriminate in employment, facilities, and in the rendering of purchased services hereunder on the basis of race, color, religion, age, gender, sexual orientation, disability, marital status, public assistance status, creed, or national origin.
- B. It is St. Louis County's policy that all providers desiring to do business with the County adhere to the principles of Equal Employment Opportunity and Affirmative Action. This requires not only that the providers do not unlawfully discriminate in any condition of employment on the basis of race, color, sex, religion, national origin, or age but that they also take affirmative action to insure positive progress in Equal Opportunity Employment. To the extent practicable, the Provider certifies that it has received a certificate of compliance from the Commissioner of Human Rights pursuant to Minnesota Statutes, section 363A.36. This section only applies if the Agreement is for more than \$100,000.00 and the Provider has employed 40 or more employees within the State of Minnesota on a single working day during the previous 12 months.

X. BONDING, INDEMNITY AND INSURANCE

- A. **Bonding:** The Provider shall obtain and maintain at all times during the terms of this Agreement, a fidelity bond in the amount of \$ 0.00 covering the activities of each person authorized to receive or distribute monies under the terms of this Agreement.
- B. **Indemnity:** The Provider does hereby agree that it will defend, indemnify, and hold harmless the Department and the County against any and all liability, loss, damages, costs, and expenses which the Department or County may hereafter sustain, incur, or be required to pay:
 - 1. By reason of any applicant or eligible recipient suffering bodily or personal injury, death, or property loss or damage either while participating in or receiving the care and services to be furnished under this Agreement, or while on premises owned, leased, or operated by the Provider, or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the Provider or any officer, agent, or employee thereof; or
 - 2. By reason of any applicant or eligible recipient causing injury to, or damage to, the property of another person during any time when the Provider or any officer, agent, or employee thereof has undertaken or is furnishing the care and services called for under this Agreement; or
 - 3. By reason of any negligent act or omission or intentional act of the Provider, its agents, officers, or employees which causes bodily injury, death, personal injury, property loss, or damage to another during the performance of purchased

services, or as the result of the performance of purchased services, under this Agreement.

- C. Insurance: The following insurance must be maintained for the duration of this contract. A Certificate of Insurance for each policy must be on file with the St. Louis County Public Health and Human Service Department Contracts office within 10 days of execution of this contract and prior to commencement of any work under this contract. Provider shall secure an endorsement to each policy requiring a 10-day notice of cancellation for cancellation based upon non-payment of premiums to all named and additional insured, and a 30 day notice of cancellation for nonrenewal, or material change to all named and additional insured's. The County reserves the right to rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against Provider.

All insurance policies shall be open to inspection by the County, and copies of policies shall be submitted to the County upon written request. All subcontractors shall provide evidence of similar coverage.

1. General Liability Insurance

- a. \$500,000 when the claim is one for death by wrongful act or omission and \$500,000 to any claimant in any other case.

\$1,500,000 for any number of claims arising out of a single occurrence.
No less than \$2,000,000 Aggregate coverage.
- b. Policy shall include at least premises, operations, completed operations, independent contractors and subcontractors, and contractual liability and environmental liability.
- c. St. Louis County shall be named as an Additional Insured on a primary and non-contributory basis.

2. Business Automobile Liability Insurance

- a. \$500,000 for claims for wrongful death and each claimant

\$1,500,000 each occurrence

No less than \$2,000,000 aggregate
- b. Must cover owned, non-owned and hired vehicles.

3. Workers' Compensation

- a. Per statutory requirements, Certificate of Compliance must be executed and filed with St. Louis County.

- D. Non-compliance: St. Louis County reserves the right to rescind any contract not in compliance with these requirements and retains all rights thereafter to pursue any legal remedies against Provider.

XI. INFORMATION PRIVACY AND SECURITY CLAUSE

- A. Information Covered by this Provision: In carrying out its duties, Provider shall be handling one or more types of private information, collectively referred to as "protected information," concerning individual County clients. "Protected information," for purposes of this Agreement, includes any or all of the following:
1. Private data (as defined in Minn. Stat. '13.02, subd. 12), confidential data (as defined in Minn. Stat. §13.02, subd. 3), welfare data (as governed by Minn. Stat. §13.46), medical data (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
 2. Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §144.291-144.298]);
 3. Chemical health records (as governed by 42 U.S.C. §290dd-2 and 42 CFR §2.1 to §2.67);
 4. Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 CFR §164.501); and
 5. Other data subject to applicable State and Federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.
- B. Duties Relating to Protection of Information:
1. Duty to Ensure Proper Handling of Information: Provider shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of County. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 7-A (1-5).
 2. HIPAA Compliance: The parties agree to comply in all respects with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), its implementing regulations (45 C.F.R. Parts 160-64), and all rules, regulations, and controls affected or promulgated pursuant thereto, to ensure the integrity and confidentiality of Protected Health Information. The parties agree that as HIPAA and its rules and interpretations become effective, the parties shall execute amendments hereto, provide written assurances, implement policies and procedures, or take whatever other actions are necessary to comply with HIPAA.

Should a party fail or refuse to honor its obligations pursuant to this section, the other party may terminate the Agreement with thirty (30) days written notice.³
Minimum Necessary Access to Information: Provider shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by Provider shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the Federal government." See, respectively, 45 CFR §164.502(b) and 164.514(d), and Minn. Stat. §13.05 subd. 3.

4. Information Requests: Unless provided for otherwise in this Agreement, if Provider receives a request to release the information referred to in this Clause, Provider must immediately notify County. County shall give Provider instructions concerning the release of the data to the requesting party before the data is released.
5. Questionnaire for Access to SMI/SIR: In the event that Provider requests access to the Shared Master Index (SMI) or the DHS Systems Information Repository (SIR), Provider may utilize a questionnaire similar to this Agreement's Exhibit F, entitled "Questionnaire for Access to SMI and SIR" and submit it to the County Security Liaison.

C. Provider's Use of Information:

Provider shall:

1. Not use, or further disclose, protected information created, collected, received, stored, used, maintained or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.
2. Use appropriate safeguards to prevent use, or disclosure of, the protected information by its employees, subcontractors and agents other than as provided for by this Agreement. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information that it creates, receives, maintains, or transmits on behalf of County.
3. Agree to comply in all respects with the Minnesota Government Data Practices Act (MGDPA), Minnesota Statute Section 13.01-46. Provider shall further agree to comply with any requests of County which are necessitated by County's obligations under said Act. Provider's Executive Director is responsible for compliance with said Act.

4. Report to County any privacy and security incident of which it becomes aware. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 CFR Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached.
5. Consistent with this Agreement, ensure that any agents, including contractors and subcontractors, analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.
6. Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.

D. County's Duties:

1. Release only information which it is authorized by law or regulation to share with Provider.
2. Ensure that Provider agrees in writing to be bound by the same restrictions and conditions that apply to the use or disclosure by any party of any private information concerning a client in a violation of any rule of confidentiality or for any purpose not directly connected with the administration of County's or Provider's responsibility with respect to this Agreement, as it is prohibited without the written consent of the client or responsible parent or guardian.
3. Obtain any required consents, authorizations or other permissions that may be necessary for it to share information with Provider.
4. Notify Provider of limitation(s), restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitation(s), restrictions, changes or revocation may affect Provider's use or disclosure of protected information.
5. Not request Provider to use or disclose protected information in any manner that would not be permitted under law if done by County.

E. Disposition and/or Retention of Protected Information/Data upon Completion, Expiration, or Agreement Termination:

Upon completion, expiration, or termination of Agreement, Provider shall return or destroy all protected information received from County or created or received by

Provider for purposes associated with this Agreement. Provider shall retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if Provider is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, Provider shall extend the protection of the Information Privacy and Security Clause of this Agreement to the protected information not returned or destroyed, and refrain from further use of disclosure of such information for as long as Provider retrains the protected information.

F. Sanctions:

In addition to acknowledging and accepting the terms set forth in this Agreement relating to liability, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.

G. Additional Business Associate Duties:

To the extent Provider handles protected health information in order to provide health care-related administrative services on behalf of County and is a business associate of County, as that term is defined in HIPAA, Provider shall also:

1. Make available protected health information in accordance with 45 CFR §164.524.
2. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.526.
3. Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of protected health information available to the other Party and/or the Secretary of the United States Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.
4. Comply with any and all other applicable provisions of the HIPAA Privacy Rule and Security Standards, including future amendments thereto.
5. Document such disclosures of protected health information and information related to such disclosures as would be required for County to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
6. Provide to County information required to respond to a request by an individual for an accounting of disclosures of protected health information in accordance with 45 CFR §164.528.

XII. MAINTENANCE OF EFFORT AND EXPANSION OF SERVICES

The Provider hereby certifies that any federal funds to be used under this Agreement do not replace or supplant in any way state or local funds. The Provider certifies that the amount to be expended in this Agreement results in increased expenditures by the Provider for services of the type being purchased to individuals of the type included under the Purchase Agreement.

XIII. CONDITIONS OF THE PARTIES' OBLIGATIONS

- A. Before the termination date specified in this Agreement, the County may evaluate the performance of the Provider in regard to the terms of this Agreement to determine whether such performance merits renewal of this Agreement.
- B. Any alterations, variations, modifications or waivers of provisions of this agreement shall be valid only when they have been reduced to writing, duly signed, and attached to the original of this Agreement.
- C. In the event of a revision in federal regulations which might make this Agreement ineligible for federal financial participation, all parties will review this Agreement and renegotiate those items necessary to bring the Agreement into compliance with the new federal regulations.
- D. The Provider agrees to cooperate fully with the County and its designated representatives in the development and implementation of both qualitative and quantitative assessment of Provider's services. Evaluative data collected will be used by the County in its funding decisions and will be shared with the Provider and community.
- E. The Provider agrees that in any reports, news releases, public service announcements or publications regarding the Provider's program, the County will be identified as a funding source.

XIV. SUBCONTRACTING AND ASSIGNMENT

The Provider shall not enter into any subcontract for performance of any of the services contemplated under this Agreement nor assign any interest in the Agreement without prior written approval of the County and subject to such conditions and provisions as the County may deem necessary. The Provider shall be responsible for the performance of all subcontractors.

XV. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Provider as the agent, representative, or employee of the County for any purpose or in any manner whatsoever. The Provider is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

The Provider represents that it has, or will secure at its own expense, all personnel required in performing services under this Agreement. Any and all personnel of the Provider or other persons, while engaged in the performance of any work or services required by the Provider under this Agreement, shall have no contractual relationship with the County and shall not be considered employees of the County, and any and all claims that may or might arise under the Unemployment Compensation Act or the Workers' Compensation Act of the State of Minnesota on behalf of said personnel arising out of employment or alleged employment including, without limitation, claims of discrimination against the Provider, its officers, agents, contractors, or employees shall in no way be the responsibility of the County; and the Provider shall defend, indemnify, and hold the County, its officers, agents, and employees harmless from any and all

such claims irrespective of any determination of any pertinent tribunal, agency, County, commission, or court. Such personnel or other persons shall neither require nor be entitled to any compensation, rights, or benefits of any kind whatsoever from the County, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability, severance pay and PERA.

XVI. CANCELLATION, DEFAULT AND REMEDY

- A. This Agreement may be terminated under the following circumstances:
1. By mutual written Agreement of the parties;
 2. By either party with or without cause, by giving not less than thirty (30) days written notice, delivered by mail or in person to the other party, specifying the date of termination;
 3. In the event that any of the licenses held by the Provider Agency for providing purchased services under this agreement is denied, suspended, lapses, expires or is terminated, effective immediately without notice to the Provider;
 4. If the Provider shall fail or refuse or be unable to fulfill any obligations under this Agreement, this Agreement will terminate effective immediately upon written notice thereof to the Provider by the County, through the Department;
 5. Waiver of any default shall not be deemed to be 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 in writing, signed by an authorized representative of County upon resolution of County.

XVII. MERGER

- A. It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof, as well as any previous agreements presently in effect between the Provider and County relating to the subject matter hereof. All items referred to in this Agreement are incorporated or attached and deemed to be part of the Agreement.
- B. It is the intent of the parties that all provisions herein shall apply to any county relying upon same as a lead county for purposes of Minnesota Rules 9559.0040.

XVIII. SEVERABILITY

The provisions of this Agreement are severable. If a Court of law holds any paragraph, section, subdivision, sentence, clause or phrase of this Agreement to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such ruling shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, the parties shall immediately meet to negotiate a revised Agreement which does not violate the above referenced ruling.

XIX. DEPARTMENT OF HUMAN SERVICES AS THIRD PARTY BENEFICIARY

In accordance with Minnesota Statutes, Section 245.466, subdivision 3(1), the Commissioner of the Minnesota Department of Human Services is a third party beneficiary to this Agreement. The Provider specifically acknowledges and agrees that the Minnesota Department of Human

Services has standing to and may take any appropriate administrative action or may sue the Provider for any appropriate relief in law or equity, including, but not limited to, rescission, damages, or specific performance, of all or any part of the Agreement between the County and the Provider. The Provider specifically acknowledges that the County and the Minnesota Department of Human Services are entitled to and may recover from the Provider reasonable attorney's fees and costs and disbursements associated with any action taken under this section that is successfully maintained. This provision shall not be construed to limit the rights of any party to the agreement or any other third-party beneficiary, nor shall it be construed as a waiver of immunity under the Eleventh Amendment to the United States Constitution or any other waiver of immunity.

XX. OTHER CONDITIONS

- A. Compliance with Laws/Standards: Provider shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereinafter adopted pertaining to this Agreement or the facilities, programs, and staff for which Provider is responsible.
- B. Licenses: Provider shall procure, at its own expense, all licenses, permits or other rights required for the provision of services contemplated by the Agreement. Provider shall inform the County, through its Department, of any changes in the above within five (5) days of occurrence.
- C. 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 to this Agreement shall be venued in the State of Minnesota.
- D. By entering into the Agreement, Provider certifies that it has not been debarred or suspended by the federal government or the State of Minnesota pursuant to Federal Regulation 45 CFR 92.35 and Minnesota Statute 16C.03, subd. 2.

IN WITNESS WHEREOF, County and Provider agree to be bound by the provisions of this Agreement, said Agreement being effective from January 1, 2017 through December 31, 2017.

PROVIDER

COUNTY OF ST. LOUIS

Emily Larson
Mayor

Date: _____

Linnea B. Mirsch
Public Health & Human Services Director

Date: _____

Jeff Cox
City Clerk

Date: _____

Approved as to form and execution:

Benjamin M. Stromberg
Assistant County Attorney

Date: _____

Josh Bailey
City Auditor

Date: _____

Paula Reed
Manager, Workforce Development

Date: _____

Gunner Johnson
City Attorney

Date: _____

DW/ahs

**MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP),
AND DIVERSIONARY WORKPROGRAM (DWP)
GRANT SERVICES TO BE PROVIDED**

A. STATEWIDE MFIP EMPLOYMENT SERVICES:

All services are to be provided in accordance with the Employments Services Manuals which may have updated information and requirements through this contract period.

<http://www.dhs.state.mn.us/main/groups/manuals/documents/pub/dhs-290278.pdf>

MFIP participants must be participating in authorized activities which are described in the employment service manual and appropriate to their employment service status, assessments and needs. The overall objective of MFIP Employment Services is to move MFIP families toward long-term economic self-sufficiency.

The Provider of MFIP Services must be certified by the Minnesota Department of Jobs and Training as an Employment and Training Service Provider (ETSP) for the duration of this contract.

The general sequence of events in MFIP Employment Services follows:

1. The St. Louis County PHHS determines eligibility for MFIP.
2. PHHS provides the participant with an orientation which includes MFIP program requirements and the participant selects a provider.
3. The participant is referred to an Employment Services Overview with the provider.
4. The participant has an Assessment and Employability Determination completed.
5. Provider/participant complete an Employment Plan with allowable activities based upon their program eligibility, assessments, needs and abilities.
6. Provider/participant engage in an ongoing assessment with file documentation including completing the employability measures at least annually
7. Provider case manages with regular reviews, following timeline guidelines set forth in the Employment Services Manual.

Services to be provided by Employment Services to MFIP Participants:

Employment Overview: Provider shall focus on providing specific information of Employment Services and the Supportive Services available to help the participant to achieve self-sufficiency. This shall also be an opportunity to repeat the very important message that work will always pay. Provider shall convey the work focus of MFIP, the urgency and opportunity of obtaining employment, rewards and supports of work, the range of allowable work activities, rights, responsibilities and obligations of participants, family stabilization services available,

Exhibit A

requirements to comply with an employment plan, consequences for failure to meet requirements, family violence referral information, and availability of childcare and health care programs.

Assessment:

MFIP Employment Services focuses on helping participants make a successful attachment to the labor force as quickly as possible. The assessment supports this intent. The primary purposes are to:

- Use information from the assessment process to develop and update the Employment Plan.
- Assess the participant's ability to obtain and retain employment.
- Identify the participant's strengths and strategies for coping with issues that interfere with finding employment.
- Identify participants with barriers to obtaining and retaining employment that won't be overcome by 6 weeks of job search.

Employability Measures are to be taken at the participant's initial enrollment with the Provider and repeated at least annually. All other assessment guidelines included in the Employment Service Manual shall be followed.

Employment Plan: An Employment Plan (EP) is a social contract between the county/provider and each participant. The purpose of the plan is to identify for each participant the most direct path to unsubsidized employment or other forms of self-sufficiency, and any subsequent steps that support long-term economic stability. Allowable activities for these plans are based upon the participant's employment services status. All rules and guidelines for appropriate employment plans from the Employment Service Manual shall be followed.

Job Readiness: These are activities that help prepare participants for work by assuring that they are familiar with general workplace expectations and exhibit work behavior/attitudes to compete in the labor market. Part of the Job Readiness activity shall include structured job search seminars that encompass the many facets of the job search process.

Job Placement: Job development and placement activities to solicit unsubsidized job openings from public or private employers shall be provided as available and needed. Participants shall be assisted in discovering job openings, marketing themselves, and in securing job interviews for participants when needed.

On-the-Job Training (OJT): Permits voluntary participation by MFIP recipients. Payments are made to employers for ongoing job training costs that, during the period of training, must not exceed 50% of the wages paid by the employer to the participants. The payments are deemed to be in compensation for the extraordinary costs associated with the lower productivity of the participant during training. The limit on the length of OJT training would be based on the complexity of the job and the participant's previous work experience and training. Placement in an on-the-job training position with an employer is contingent upon the employer agreeing to retain the person upon satisfactory completion of the OJT training.

Supported Work

Supported work means a subsidized or unsubsidized work experience placement with a public or private sector employer which may include services such as individualized supervision and job coaching to support the participant on the job. This is a paid transitional work experience, designed to provide a continuum of employment assistance, including outreach, recruitment, program orientation, testing, assessment, job development, marketing, pre-worksite training,

Exhibit A

supported work experience, job coaching, post placement follow-up, extensive case management, referral services, transportation relating to these activities, and employment related expenses (work clothes etc.).

Community Work Experience Program (CWEP): Helps participants achieve self-sufficiency by enhancing their employability through meaningful work experience and development of job skills. CWEP placements can be used in conjunction with skills training, job search, and job readiness. To the extent possible, prior training and experience of a recipient shall be used in making appropriate work experience assignments. CWEP may be used for a particular participant after exhausting other employment and work activity options. Providers assist in the placement and monitor the participants' progress. Work sites developed under this section are limited to projects that serve a useful public service such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, community service, service to aged or disabled citizens, and child care. If a CWEP placement is secured, the Employment Plan must be reviewed at least each six (6) months of participation and be revised as necessary. All participants who participate in the CWEP shall be covered by the Injury Protection Program (IPP).

Training and Education:

MFIP has a focus on employment and long-term economic outcomes for families. Education and training can increase family income both in the short-term and in the long-term. Minnesota state law allows opportunities for education and training that will not always count in the federal Work Participation Rate. Participants must be given the opportunity to pursue education and training, whether or not those activities count toward the Work Participation Rate. Education and Training activities include English as a Second Language (ESL), Adult Basic Education (ABE), Functional Work Literacy (FWL), General Educational Development (GED), high school, and post-secondary education. This also includes job skills training directly related to employment. Employment plans including education and training must meet hourly requirements, if the education and training plan does not meet the hourly requirement; work with the participant to include additional work activities into the Employment Plan. Providers will provide program appropriate referrals and access to educational resources in the community.

Uncompensated Work Experience: Uncompensated work experience is an agency-initiated placement in a public, non-profit or private sector work site. Unpaid work experience shall be developed based on the opportunity to gain marketable skills and experience. The Injury Protection Program (IPP) shall cover participants who become injured while performing work under unpaid work experience. Uncompensated work is subject to the non-displacement agreement.

Coordination: Provider shall coordinate with, and refer participants to, other community agencies or groups for training, social and support services. Providers will coordinate with other Employment Service providers contracted with the county to assist participants in obtaining the services they need. Participants can choose to switch employment service providers and these requests will be honored by the providers unless a participant is currently in sanction.

B. THE DIVERSIONARY WORK PROGRAM (DWP):

All services are to be provided in accordance with the Employments Services Manuals which may have updated information and requirements through this contract period.

Exhibit A

<http://www.dhs.state.mn.us/main/groups/manuals/documents/pub/dhs-290278.pdf>

The Provider must meet with DWP participants that are referred to Employment Services (ES) within ten (10) days of the DWP participant's referral to ES.

The Provider and participants must complete an initial employment plan within these ten (10) days.

The Provider must notify the County financial worker (FW) within one (1) day that the employment plan has been completed.

The Provider administers a work-focused DWP-ES program with employment as the primary goal of the program.

The Provider should complete employment plans that are based on a participant's strengths.

The Provider should have, to the extent possible, a structured job search component that is intensive (i.e. full-time) and mirrors work place behavior (expects participants to arrive on a timely basis, dress appropriately, complete assignments, etc.)

When appropriate, a participant's employment plan should address non-work issues such as securing housing or child care, plus any health or disability issues, which would delay or prevent the participants from being fully engaged in work activities. In the event that these barriers are expected to last more than 30 days or otherwise meet family stabilization services requirements, the provider will assist the participant in documenting the barrier and, if appropriate, refer them to apply to transition to MFIP.

The Provider monitors participant participation and progress and apply sanctions (which result in disqualification from DWP when appropriate.)

C. DISPARITIES PROJECT:

The Disparity Project being operated by AEOA is available in Northern St. Louis County. The three main population areas and their surrounding communities are Ely, Hibbing, and the Quad Cities. The long term goal of disparity funding is to decrease the disparity in MFIP and DWP outcomes between Caucasian participants and participant of color. Activities that work towards this goal will be determined by the Provider, in ongoing discussion with the county, and may include such pursuits as creating a culturally competent employment service system, offering additional direct supports, developing new training and education programs, and community or employer outreach. Participants of color will be given the option to work with disparity-funding providers as space and funding allow.

CY 2017 MFIP- DWP Budget Justification
CITY OF DULUTH

Agency Name: City of Duluth Workforce Development		
Budget Period: January 1 – December 31, 2017		
Line Items	Estimated	Year End – Actual Cost
A) Direct Program		
1. Personnel (add rows as needed) – 8.15 FTE		
Employment Technician (job counselor) – 6.4 FTE	\$362,108	\$
Information Technician - 1.75 FTE	\$86,845	\$
2. Fringe Benefits (adjust as needed)		
Benefits – 8.15 FTE	\$208,156	\$
Payroll Taxes	\$	\$
Insurance	\$	\$
3. Overhead (adjust as needed)		
Space Rental and Utilities	\$59,058	\$
Printing and Advertising	\$	\$
Communications (copy/print)	\$1,800	\$
Travel/training	\$1,800	\$
Supplies	\$4,600	\$
4. Contractual Services	\$	\$
Direct Program	\$724,367	\$

Exhibit B

B) Administrative

1. Personnel (add rows as needed)	\$71,598	\$
Manager - .3 FTE	\$	\$
Operations Administrator - .4 FTE	\$	\$
Financial Analyst - .25 FTE	\$	\$
2. Fringe Benefits (adjust as needed)		
Benefits	\$32,414	\$
Payroll Taxes	\$	\$
Insurance	\$	\$
3. Other (add rows as needed)	\$	\$
Travel	\$992	
Administration	\$105,004	\$

C) Participant Support Services

1. Education	\$1,277	\$
2. Transportation	\$17,797	\$
3. Employment Related	\$8,000	\$
4. Other: (Add rows as needed)	\$	\$
Additional Participant Transportation	\$70,000	\$
Participant Support Services	\$97,074	\$
Total Budget (sum of A1 – C-4)	\$926,445	\$

ELIGIBILITY FOR MFIP-DWP GRANT SERVICES

The client has the responsibility of requesting and obtaining eligibility determination criteria from the St. Louis County Public Health and Human Services Department (PHHS) before utilizing services. Once the client has completed the MFIP application procedure, PHHS shall determine MFIP eligibility in accordance with applicable Federal and State law. PHHS shall decide the eligibility of a client within thirty (30) days of application for eligibility determination. The client shall be notified of his/her eligibility status and shall be referred to Provider within the said thirty (30) day time period. The Provider shall confirm that a client is eligible for MFIP and is thus eligible to receive prior to providing service. MFIP registrants are defined as persons who have applied for MFIP services and payments and who have been determined eligible by County for those services and payments. County shall not be responsible for services provided to clients prior to eligibility determination.

Any change in eligibility shall initiate a notice by either County or Provider within thirty (30) days to the other party. The client shall remain eligible for Provider's services for six (6) months after termination from MFIP.

REPORTING REQUIREMENTS / PAYMENT PROCEDURES

I. Fiscal Expenditure Report

- A. Provider shall submit signed expenditure reports monthly on DHS form 2902 substantiating the expenditures of MFIP-DWP funds in accordance with the Agreement, incorporated herein by reference .
- B. Changes in line item categories in excess of 10% shall be reviewed to assure that the intent of service delivery has been maintained in accordance with the Agreement.
- C. All changes from the operational categories to the non-operational category require prior approval by the St. Louis County Public Health and Human Services Department.
- D. Provider agrees to maintain additional statistical reports, including records of MFIP-DWP clients served, services received by each client, and the cost of such services, and to provide such reports to County or its representatives, as requested.
- E. Provider shall have an independent audit completed that complies with the requirements of a sub Provider under OMB Circular A-133 by an entity qualified to perform such audits. The audit report, including the management letter, shall be forwarded to County within thirty (30) days following its completion

II. Program Report

- A. Work Force one is the official source of program data and will be kept up to date on all case matters by the provider.
- B. The provider shall submit a report every other month throughout the contract period (February, April, June, August, October, and December) containing the following information:
 - 1. CASELOAD HISTORIC SUMMARY for contract period YTD (Case Assignment)
 - 2. CASELOAD CURRENT SUMMARY with the date it is pulled.
 - 3. ACTIVITY SUMMARY for the month prior to the report submission.
 - 4. EXIT SUMMARY for contract period YTD (Served)
 - 5. # of Successful Exits YTD (*can be totaled from Exit Summary*)
 - 6. # of Successful Training Completions YTD (*can be tabulated from Training Detail*)
 - 7. % of current caseload that is FSS (*can be tabulated from Demographic Current Info DHS Summary. All Categories except Child < 12 Months, Universal Client, Not Exempt, and Unaccounted For*)
 - 8. Number of Job Counselor FTEs being billed to MFIP/DWP funding
 - 9. # of Equity Eligible Clients (*Can be tabulated from Demographic Current Info DHS Summary. African American + American Indian/Alaskan + Multi Race categories*).
- C. A blank example report entitled, MOCK REPORT, is attached hereto and incorporated herein as Exhibit E.

Exhibit D

D. A Year End – Actual Cost budget will be submitted, via Exhibit B, to:

St. Louis County Public Health & Human Services
Debbie Waldriff, Financial Assistance Division Director
320 West 2nd Street, CCA101
Duluth, MN 55802

III. **Billing**

- A. The signed voucher with attached expenditure report (DHS 2902) shall serve as Provider's billing.
- B. All funds must be expended and billed by December 15, 2017.

IV. **Method of Payment**

Payments shall be made within 30 days after the expenditure report is received.

Exhibit E
MOCK REPORT

Provider Name:

Report Month:

date

CASELOAD HISTORIC SUMMARY

	Current Case Status							
Program	Total Served	Pending	Eligible, not Enrolled	Denied	Closed from Application	Enrolled	Exited	Successful Exits
DWP								
MFIP								
Total Cases								
Total Unique Persons								

date

CASELOAD CURRENT SUMMARY

Program	Total Served	Pending	Eligible, not Enrolled	Denied	Closed from Application	Enrolled	Exited	Successful Exits
DWP								
MFIP								
Total Cases								
Total Unique Persons								

Exhibit E
MOCK REPORT

dates		ACTIVITY SUMMARY			
Activity	Currently Open	Currently Closed	Successfully Completed	Category / Activity Total	Person Total
Trng/Educ 13+ Mo					
Trng/Educ up 12 Mo					
Education - Total					
Employed FT					
Employed PT					
Employment - Total					
Assessment					
Community Service					
GED Trng					
Holding					
Holding - Child Under 12 mo					
HS Completion					
Job Search					
Job Skills Trng Empl					
Local Flag					
Other					
Uncomp Work Exp					
Other - Total					
Enrollments - Total					

Exhibit E
MOCK REPORT

dates

Exit Summary

Exit Reason	Primary	Secondary	Exit Reason Total	Unique Person Total	Exit Success?
60 Months/Not Extended					
Administrative Separation					
Cannot Locate					
Completed Major Level Education (Not in Use)					
Completed Program Objective					Yes
Disqualified Drug Felon					
Disqualified Non-Compliance					
Entered Unsubsidized Employment					Yes
Extended III/Incapacitated					
Failure to File (HRF or Recertification)					
Found Exempt					
Found Unlikely to Benefit					
Fraud					
Moved from Area					
Moved from County					
Moved from State					
No Eligible Child					Yes
No Longer in Household					
Off Welfare					
Other					
Other Termination					
Referred to MFIP					
Refused to Continue					
Remained Employed					Yes
Returned to GA					

**Exhibit E
MOCK REPORT**

Sanction/Closed SSI/RSDI					
Unsubsidized Employment					Yes
Voluntary Separation					Yes
Total Exits					

Number of Successful Exits YTD
Number of Successful Training Completions YTD
NUMBER OF FTE MFIP Employment Counselors:
Current FSS Percentage
Current Equity Eligible Clients (African American or American Indian)

Exhibit F

Questionnaire for Access to SMI and SIR

- (a) Full Name:**
- (b) Position**
- (c) Supervisor's Name**
- (d) Work Location (building)**
- (e) ISP Associated with (agency name)**
- (f) County Associated with**
- (g) Do you have access to MNet?**
- (h) Do you have an X1 ID? (If so and known, please list)**
- (i) Can you bill MMIS?**

MAXIS ACCESS

I. Scope of Services

- A. The Provider shall provide all Services in accordance with all applicable federal and state laws, statutes, regulations, and guidelines. These include the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Deficit Reduction Act of 2005, and Minnesota Statutes Chapter 256J. In the event that these laws, statutes, regulations or guidelines are amended at any time during the Term of this Agreement, or any extensions or renewals, the Contractor shall comply with such amended laws, statutes, regulations, or guidelines.
- B. The Provider is responsible for all technical assistance necessary to maintain all software and hardware used to provide the purchased services under this Agreement, including virus protection and firewalls.
- C. The Provider will designate one staff as an Employment Services security liaison that will coordinate with the County MAXIS security liaison to request approval or termination of inquiry access to the MAXIS system ("MAXIS").
- D. The Provider will designate up to two staff in each service location as Data Specialists that will have inquiry access to MAXIS.
- E. The Provider will ensure all staff with inquiry access to MAXIS complete annual HIPAA training, and any other necessary training identified by the County.

II. Information Privacy and Security.

A. Information Covered by this Provision:

In carrying out its duties, Provider will be handling one or more types of private information, collectively referred to as "protected information," concerning individual DHS clients. "Protected information," for purposes of this Agreement, may include any or all of the following:

1. Private data (as defined in Minnesota Statutes § 13.02, subd. 12), confidential data (as defined in Minn. Stat. § 13.02, subd. 3), welfare data (as governed by Minn. Stat. § 13.46), medical data (as governed by Minn. Stat. § 13.384), and other non-public data governed by other sections in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
2. Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §§ 144.291-144.298]);
3. Chemical health records (as governed by 42 U.S.C. § 290dd-2 and 42 C.F.R. § 2.1 to § 2.67);
4. Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 C.F.R. § 160.103);

Exhibit G

5. Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17921(5)); and

6. Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

B. Duties Relating to Protection of Information.

1. Duty to ensure proper handling of information. Provider shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of DHS. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 2.a.

2. Minimum necessary access to information. Provider shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.

3. Information Requests. Unless provided for otherwise in this Agreement, if Provider receives a request to release the information referred to in this Clause, Provider must immediately notify DHS. DHS will give Provider instructions concerning the release of the data to the requesting party before the data is released.

C. Use of Information. Provider shall:

1. Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.

2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the protected information by its employees, subcontractors and agents other than as provided for by this Agreement. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic protected health information at rest and in transit that it creates, receives, maintains, or transmits on behalf of DHS.

3. Report to DHS any privacy or security incident regarding the information of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to DHS not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the PHI used or

Exhibit G

disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as DHS may reasonably request.

4. Consistent with this Agreement, and in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any agents (including contractors and subcontractors), analysts, and others that create, receive, maintain, or transmit protected health information on behalf of the business associate, enter into a business associate agreement with any subcontractors to agree in writing to be bound by the same restrictions, conditions, and requirements that apply to it with respect to such information.

a. Document such disclosures of PHI and information related to such disclosures as would be required for DHS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

b. Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.

c. In accordance with HIPAA, upon obtaining knowledge of a breach or violation by a subcontractor, take appropriate steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the agreement.

d. Not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by DHS.

III. Additional Business Associate Duties.

To the extent Provider handles PHI in order to provide health care-related administrative services on behalf of DHS and is a "Business Associate" of DHS as defined by HIPAA, Provider further agrees to:

A. Make available PHI in accordance with 45 C.F.R. § 164.524.

B. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.

C. Comply with the limited disclosure rules set forth in the HITECH Act, HIPAA, and the MGDPA. To the extent possible, disclosures should be in a limited data set, which is largely information with the patients' identifying information removed, "to the extent practicable." Pertinent identifiers include, name and social security number; street address, e-mail address, telephone and fax numbers; certificate/license numbers; vehicle identifiers and serial numbers; URLs and IP addresses; full face photos and any other comparable images; or medical record numbers, health plan beneficiary numbers, and other account numbers. If a limited data set is not feasible, or does not meet the use or disclosure, minimum necessary should be applied. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See, respectively, 45 C.F.R. §§ 164.514, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.

D. Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of PHI available to DHS and/or the Secretary of the United States

Exhibit G

Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.

E. Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws. Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.

F. To the extent Provider is to carry out one or more of DHS' obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to DHS in the performance of such obligation(s).

IV. DHS Use of Information. DHS shall:

A. Only release information which it is authorized by law or regulation to share with Provider.

B. Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with Provider.

C. Notify Provider of limitations, restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect Provider's use or disclosure of protected information.

D. Not request Provider to use or disclose protected information in any manner that would not be permitted under law if done by DHS.

V. Disposition of Data upon Completion, Expiration, or Agreement Termination.

Upon completion, expiration, or termination of this Agreement, Provider will return to DHS or destroy all protected information received or created on behalf of DHS for purposes associated with this Agreement. A written certification of destruction or return to Authorized Representative listed in 5.1 is required. Provider will retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if Provider is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, Provider will extend the protections of this Agreement to the protected information and refrain from further use or disclosure of such information, except for those purposes that make return or destruction infeasible, for as long as Provider maintains the information. Additional information for destruction and handling is available in the DHS Information Security Policy, Policy numbers 3.7, and 2.19, found at <http://edocs.dhs.state.mn.us/lfservlet/Legacy/DHS-4683-ENG>.

VI. Sanctions.

In addition to acknowledging and accepting the terms set forth in Clause 8, "Liability." Relating to liability, the parties acknowledge that violation of the laws and protections described above could result in limitations being placed on future access to protected information, in investigation and imposition of sanctions by the U.S. Department of Health and Human Services, Office for Civil Rights, and/or in civil and criminal penalties.