



Jeffrey Babinski  
County Administrator

# HOUSTON COUNTY

304 South Marshall Street  
Caledonia, MN 55921  
TEL (507) 725-5827

Commissioners:  
District 1  
Jack Miller  
District 2  
Eric Johnson (Chair)  
District 3  
Robert Burns (Vice-Chair)  
District 4  
Teresa Walter  
District 5  
Greg Myhre

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## HOUSTON COUNTY BOARD OF COMMISSIONERS BOARD MEETING AGENDA

9:30, September 22, 2020, County Board Room, Historic Courthouse

**\*\*\*\*\*The meeting will be accessible to public participants via our conference call line at 312-626-6799 and entering meeting ID: 9270092494 and password 167773. Public attendees are requested to mute their line until addressed.\*\*\*\*\***

### CALL TO ORDER

### PLEDGE OF ALLEGIANCE

### APPROVE AGENDA

### APPROVE PREVIOUS MINUTES

- September 8 - Board Meeting
- September 15 –Board Meeting and Workgroup Session

### PUBLIC COMMENT

### COVID-19 Update from Public Health

### CONSENT AGENDA

(Routine business items enacted by one unanimous motion. Commissioners may request moving items on the consent agenda to the Action Item list if they desire discussion before taking action.)

- 1) Approve Claims, Human Service & License Center disbursements.
- 2) Affirm the following personnel actions:
  - i. Auditor/Treasurer Office
    1. Hire XX as a casual/temporary (67-day) employee at \$13.xx/hr to support 2020 election activity.

### ACTION ITEMS

- 1) Consider accepting the low bid for SAP 028-599-092 for a bridge replacement on Eitzen Creek Drive in Winnebago Township. (Pogodzinski)
- 2) Consider approving Resolution 20-XX Final Acceptance of Contract CP 2020-01 (A) – Bruening Rock Products, Inc. (Pogodzinski)
- 3) Consider approving the Community Support Program (CSP) Grant agreement with Minnesota Department of Human Services. (Pugleasa)

- 4) Consider reappointing Cindy Cresswell as County Assessor for a subsequent 4 year term. (Babinski)
- 5) Consider approving an updated Procurement Policy for Federal Grants. (Lapham)
- 6) Consider approving Resolution 20-45 2021 Preliminary Levy. (Lapham)
- 7) Consider approving Resolution 20-46 2021 Preliminary Budget. (Lapham)

#### **DISCUSSION ITEMS**

- 1) Administrator Updates
- 2) Commissioner Reports & Comments

#### **CLOSING PUBLIC COMMENT**

#### **ADJOURN**

# Houston County Agenda Request Form

Date Submitted: September 9, 2020

BOARD DATE: September 22, 2020

Person requesting appointment with County Board: Brian Pogodzinski

**Issue:**

Board approval needed to accept the low bid of Minnowa Construction in the amount of \$89,394.20, for SAP 028-599-092 for a bridge replacement on Eitzen Creek Drive in Winnebago Township.

**Attachments/Documentation for the Board's Review:**

Abstract for SAP 028-599-092 will be available September 9, 2020

**Justification:**

**Action Requested:**

Board approval to accept lowest responsible Bidder.

Language for Minutes: File No. XX - Commissioner \_\_\_\_\_ moved,  
Commissioner \_\_\_\_\_ seconded, unanimously carried to accept the low bid of Minnowa Construction, in the amount of \$89,394.20 for SAP 28-599-092 for Bridge Replacement on Eitzen Creek Drive in Winnebago Township.

For County Use Only			
<b>Reviewed by:</b>	_____ County Auditor	_____ County Attorney	_____ Zoning Administrator
	_____ Finance Director	_____ County Engineer	_____ Environmental Services
	_____ IS Director	_____ Other (indicate dept)	_____
<b>Recommendation:</b>			
<b>Decision:</b>			

All agenda request forms must be submitted to the County Auditor by 4:00 p.m. on Monday in order to be considered for inclusion on the following week's agenda. The Board will review all requests and determine if the request will be heard at a County Board meeting.



9/9/2020

## Houston County DOT Project Bid Summary

Project Name: SAP 028-599-092 Box Culvert  
Eitzen Creek Dr. 28J61  
Client: Houston County Department of  
Transportation  
Bid Opening: 09/09/2020 10:00 AM

Contract No.: 310  
Project No.: SAP 028-599-092  
Owner: Houston County Department of Transportation

Vendor Number	Business Name	Total Bid Amount
9652	Minnowa Construction	\$89,394.20
NA	Dirt Proz LLC	\$89,831.00
5393	Midwest Contracting, LLC	\$91,723.50
5559	Van Gundy Excavating	\$101,665.00
6080	Generation X Construction LLC	\$107,632.00
6139	ICON Constructors, LLC	\$110,287.00
na	Fitzgerald Excavating and Trucking Inc	\$111,753.00
6122	TJs Excavating & Process Works	\$133,292.80
70	Brennan Construction	\$201,585.00

# Houston County Agenda Request Form

Date Submitted: September 14, 2020

BOARD DATE: September 22, 2020

Person requesting appointment with County Board: Brian Pogodzinski

**Issue:**

To accept the Final for Project CP 2020-01 A with Bruening Rock Products for Maintenance Rock.

**Attachments/Documentation for the Board's Review:**

Final Contract Voucher (5 need to be signed)

(1-County Claim, 1 Contractor, 1-Auditor's office, and 2-Highway Dept)

**Justification:**

**Action Requested:**

Resolution for Final Acceptance needed for contract.

Language for Minutes:

Commissioner \_\_\_\_\_ moved, Commissioner \_\_\_\_\_ seconded, unanimously carried to approve Resolution 20-\_\_\_\_\_ Final Acceptance of Contract CP 2020-01 (A) – Bruening Rock Products, Inc. . Contact 302 is completed at a total cost of \$130,152.09

WHEREAS, CP 2020-01 (A) has in all things been completed, and the County Board being fully advised in the premises; and

THEREFORE, BE IT RESOLVED, the Houston County Board of Commissioners accepts said completed project for and on behalf of the Houston County DOT and authorize final payment as specified herein.

## For County Use Only

**Reviewed by:**

_____ County Auditor	_____ County Attorney	_____ Zoning Administrator
_____ Finance Director	_____ County Engineer	_____ Environmental Services
_____ IS Director	_____ Other (indicate dept)	

**Recommendation:**

**Decision:**

All agenda request forms must be submitted to the County Auditor by 4:00 p.m. on Monday in order to be considered for inclusion on the following week's agenda. The Board will review all requests and determine if the request will be heard at a County Board meeting.



Decorah, IA 52101

**Date:**

5937

## DECLARATION

I declare under the penalties of law that this account, claim or demand is just and correct and that no part of it has been paid.  
(Minn. Statutes, Section 471.38)

**Auditor-Treasurer**

**County Board Chair**

(Only used if the payment is to you)

# HOUSTON COUNTY DEPARTMENT OF TRANSPORTATION

1124 East Washington St.  
Caledonia, MN 55921

Project CP 2020-01 A - CP 2020-01 A Aggregate Stockpiled (Delivered) Bruening  
Final Payment No. 2



Contractor: Bruening Rock Products Inc.  
900 Montgomery St.  
Decorah, IA 52172

Contract No. 302  
Vendor No. 5937  
For Period: 8/12/2020 - 8/24/2020  
Warrant # \_\_\_\_\_ Date \_\_\_\_\_

## Contract Amounts

Original Contract	\$136,881.30
Contract Changes	\$0.00
Revised Contract	\$136,881.30

## Work Certified To Date

Base Bid Items	\$130,152.09
Backsheet	\$0.00
Change Order	\$0.00
Supplemental Agreement	\$0.00
Work Order	\$0.00
Material On Hand	\$0.00
Total	\$130,152.09

## Funds Encumbered

Original	\$136,881.30
Additional	N/A
Total	\$136,881.30

	Work Certified This Payment	Work Certified To Date	Less Amount Retained	Less Previous Payments	Amount Paid This Payment	Total Amount Paid To Date
CP 2020-01 A	\$0.00	\$130,152.09	\$0.00	\$123,644.49	\$6,507.60	\$130,152.09
Percent Retained: 0.0000%						
<b>Amount Paid This Final Payment</b>					<b>\$6,507.60</b>	


I hereby certify that a Final Examination has been made of the noted Contract, that the Contract has been completed,  
that the entire amount of Work Shown in this Final Voucher has been performed and the Total Value of the Work  
Performed

in accordance with, and pursuant to, the terms of the Contract is as shown in this Final Voucher.

Approved By

Approved By Bruening Rock Products Inc.

  
County/City Project Engineer

  
Contractor

9/15/2020  
Date

9/11/2020  
Date

## HOUSTON COUNTY DEPARTMENT OF TRANSPORTATION

1124 East Washington St.

Caledonia, MN 55921

Project No. CP 2020-01 A

Final Payment No. 2

Houston County DOT  
Certificate of Final Contract Acceptance

Low S.P. No.: CP 2020-01 A

Final Voucher No.: 2

Contract No.: 302

This is to certify that to the best of my knowledge, the items of work shown in the Statement of Work Certified herein have actually furnished in accordance with the Plans and Specifications. This Project has been completed in accordance with the Laws, Standards and Procedures of Minnesota as they apply to projects in this category, and if applicable, approved by the Federal Highway Administration.

Dated 9/15/2020  
County/City/Project Engineer

Signature

The undersigned Contractor hereby certifies that the work described has been performed in accordance with the terms of the Contract, and agrees that the Final Value of Work Certified on this Contract is \$130,152.09 and agrees to the amount of \$6,507.60 as Final Payment on this Contract in accordance with this Final Voucher.

Contractor Bruening Rock Products Inc.

By

And \_\_\_\_\_ And \_\_\_\_\_

State of Minnesota, Houston County DOT

On This 11 Day September, 2020, Before me appeared Christopher T. Wilder To me known to

(Individual Acknowledgment)

be the person who executed the foregoing Acceptance and Acknowledged that he/she executed the same as his free to act and deed

(Corporate Acknowledgment)

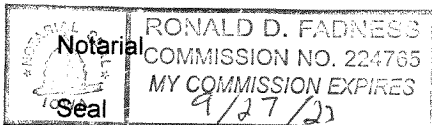
\_\_\_\_\_ And \_\_\_\_\_, to me personally known, who, being each by me duly sworn

each did say that they are respectively the Controller and \_\_\_\_\_ of the

the Corporation named in the foregoing instrument, and that the seal affixed to said instrument is the the corporation does not have a corporate seal Corporate Seal of said Corporation, and the said instrument was signed and sealed in behalf of said Corporation by authority of its

Board of Directors and said Christopher T. Wilder and

acknowledged said instrument to be the free act and deed of said Corporation.

My Commission as Notary Public in Winnebago County

Expires

9/27/23

Signature

Ronald D. Fadness

I hereby certify that a Final Examination has been made of the noted Contract, that the Contract has been completed, that the entire amount of Work Shown in this Final Voucher has been performed and the Total Value of the Work Performed in accordance with, the terms of the Contract is as shown in this Final Voucher. This Contract is hereby accepted in accordance with the Specification 1516. Final acceptance of the Contract will be effective upon full Execution, by the Contractor and the Department, of the "Certificate of Final Acceptance" included



**HOUSTON COUNTY DEPARTMENT OF TRANSPORTATION**

1124 East Washington St.

Caledonia, MN 55921

Project No. CP 2020-01 A

Final Payment No. 2

with the Final Voucher.

Dated \_\_\_\_\_ Signature \_\_\_\_\_ District  
Engineer

HOUSTON COUNTY DEPARTMENT OF TRANSPORTATION

1124 East Washington St.

Caledonia, MN 55921

Project No. CP 2020-01 A

Final Payment No. 2

**Houston County DOT  
Certificate of Final Acceptance  
County Board Acknowledgment**

Contract Number: 302  
Contractor: 5937 - Bruening Rock Products Inc.  
Date Certified: 8/24/2020  
Payment Number: 2

Whereas; Contract No. 302 has in all things been completed, and the County Board being fully advised in the premises, now then be it resolved; that we do hereby accept said completed project for and in behalf of the Houston County DOT and authorize final payment as specified herein.

Houston County DOT  
State of Minnesota

I, \_\_\_\_\_, County \_\_\_\_\_ within and for said county do hereby certify that the foregoing resolution is a true and correct copy of the resolution on file in my office.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

At \_\_\_\_\_, Minnesota

Signed By \_\_\_\_\_  
County \_\_\_\_\_

(SEAL)

**HOUSTON COUNTY DEPARTMENT OF TRANSPORTATION**

1124 East Washington St.

Caledonia, MN 55921

Project No. CP 2020-01 A

Final Payment No. 2

**CP 2020-01 A Payment Summary**

No.	From Date	To Date	Work Certified Per Payment	Amount Retained Per Payment	Amount Paid Per Payment
1	03/30/2020	08/11/2020	\$130,152.09	\$6,507.60	\$123,644.49
2	08/12/2020	08/24/2020	\$0.00	(\$6,507.60)	\$6,507.60
<b>Totals:</b>			<b>\$130,152.09</b>	<b>\$0.00</b>	<b>\$130,152.09</b>

**CP 2020-01 A Funding Category Report**

Funding Category No.	Work Certified To Date	Less Amount Retained	Less Previous Payments	Amount Paid This Payment	Total Amount Paid To Date
000	130,152.09	0.00	123,644.49	6,507.60	130,152.09
<b>Totals:</b>	<b>\$130,152.09</b>	<b>\$0.00</b>	<b>\$123,644.49</b>	<b>\$6,507.60</b>	<b>\$130,152.09</b>

**CP 2020-01 A Funding Source Report**

Accounting No.	Funding Source	Amount Paid This Payment	Revised Contract Amount	Funds Encumbered To Date	Paid To Contractor To Date
035	County Levy	6,507.60	136,881.30	136,881.30	130,152.09
<b>Totals:</b>		<b>\$6,507.60</b>	<b>\$136,881.30</b>	<b>\$136,881.30</b>	<b>\$130,152.09</b>

**HOUSTON COUNTY DEPARTMENT OF TRANSPORTATION**

1124 East Washington St.

Caledonia, MN 55921

Project No. CP 2020-01 A

Final Payment No. 2

**CP 2020-01 A Project Item Status**

Line	Item	Description	Units	Unit Price	Contract Quantity	Quantity This Payment	Amount This Payment	Quantity To Date	Amount To Date
<b>CSAH 11</b>									
5	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$10.539	2300	0	\$0.00	1968.62	\$20,747.29
<b>Totals For Section CSAH 11:</b>							<b>\$0.00</b>		<b>\$20,747.29</b>
<b>CSAH 19</b>									
6	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$10.539	2300	0	\$0.00	2182.65	\$23,002.95
<b>Totals For Section CSAH 19:</b>							<b>\$0.00</b>		<b>\$23,002.95</b>
<b>CSAH 31</b>									
7	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$9.669	1100	0	\$0.00	1169.7	\$11,309.83
<b>Totals For Section CSAH 31:</b>							<b>\$0.00</b>		<b>\$11,309.83</b>
<b>CSAH 5A</b>									
1	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$9.659	3400	0	\$0.00	3251.26	\$31,403.92
<b>Totals For Section CSAH 5A:</b>							<b>\$0.00</b>		<b>\$31,403.92</b>
<b>CSAH 5B</b>									
2	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$9.659	3300	0	\$0.00	3182.13	\$30,736.19
<b>Totals For Section CSAH 5B:</b>							<b>\$0.00</b>		<b>\$30,736.19</b>
<b>CSAH 8A</b>									
3	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$10.039	800	0	\$0.00	814.99	\$8,181.68
<b>Totals For Section CSAH 8A:</b>							<b>\$0.00</b>		<b>\$8,181.68</b>
<b>CSAH 8B</b>									
4	2211.509	STOCKPILE AGGREGATE, CLASS 5 (DELIVERED)	TONS	\$10.039	500	0	\$0.00	475.17	\$4,770.23
<b>Totals For CSAH 8B:</b>							<b>\$0.00</b>		<b>\$4,770.23</b>
<b>Project Totals:</b>							<b>\$0.00</b>		<b>\$130,152.09</b>



## Contractor Affidavit Submitted

Thank you, your Contractor Affidavit has been approved.

### Confirmation Summary

Confirmation Number: 0-785-646-880  
Submitted Date and Time: 11-Sep-2020 10:33:44 AM  
Legal Name: BRUENING ROCK PRODUCTS INC  
Federal Employer ID: 42-0632195  
User Who Submitted: Bruening Rock  
Type of Request Submitted: Contractor Affidavit

### Affidavit Summary

Affidavit Number: 157442048  
Minnesota ID: 6488964  
Project Owner: HOUSTON COUNTY DOT  
Project Number: CP 2020-01  
Project Begin Date: 27-Jul-2020  
Project End Date: 04-Aug-2020  
Project Location: HOUSTON COUNTY  
Project Amount: \$130,152.09  
Subcontractors: No Subcontractors

### Important Messages

A copy of this page must be provided to the contractor or government agency that hired you.

### Contact Us

If you need further assistance, contact our Withholding Tax Division at 651-282-9999, (toll-free) 800-657-3594, or (email) [withholding.tax@state.mn.us](mailto:withholding.tax@state.mn.us). Business hours are 8:00 a.m. - 4:30 p.m. Monday - Friday.

Please [print this page](#) for your records using the print or save functionality built into your browser.

# Houston County Agenda Request Form

**This form is not intended for the general public. It is intended for use by county department heads, representatives of other governmental units or vendors/agencies who contract with Houston County. Members of the public may address the Board during the Public Comment Period. (See Policy for Public Comment Period).**

**Date Submitted:** 9/17/2020

**Person requesting appointment with County Board:** John Pugleasa, Director Public Health & Human Services

**Will you be doing a power point or video presentation: \_\_\_\_\_ Yes \_\_\_\_\_ X NO**

**Issue:**

Two year Community Support Program (CSP) Grant agreement with Minnesota Department of Human Services. This grant provides funding for various services for individuals with an adult mental health diagnosis.

**Attachments/Documentation for the Board's Review:**

copy of agreement

**Justification:**

**Action Requested:**

Approve agreement as presented, authorize Board Chair to sign via DocuSign.

For County Use Only			
<b><u>Reviewed by:</u></b>		County Auditor	
		County Attorney	
		County Engineer	
		Other (indicate dept)	
		Zoning/Environmental Service	
		HR/Personnel	
<b><u>Recommendation:</u></b>			
<b><u>Decision:</u></b>			

All agenda request forms must be submitted to the County Auditor by 4:00 p.m. on Monday in order to be considered for inclusion on the following week's agenda. The Board will review all requests and schedule appointments as appropriate.

# Procurement Policy for Federal Grants

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## Purpose

The purpose of this policy is to establish standards for the procurement of supplies and other expendable property, equipment, real property and other services as required by Federal regulations. Federal Law imposes particular requirements on the use of federal funds, whether these funds are received directly from a Federal Agency or through a “pass-through entity”. Reference will be made to the County Purchasing policy requirements within this Policy as procedures for purchases need to conform to both. The intent of this policy is to provide a guideline that is to be followed. It is the responsibility of employees procuring Federal awards to follow procurement procedures applicable to state and local law and regulations, provided that the procurements conform to Federal law and standards as provided in the Uniform Grant Guidance (2 CFR § 200). As failure to comply with these regulations can result in loss of federal funding these requirements **must be** adhered to. (Refer to <http://www.ecfr.gov> Title 2, Subtitle A, Chapter II, Part 200, Subpart D to ensure each type of procurement is following Federal Policies and Procedures)

## Conflicts of Interest (2 CFR § 200.318)

No county elected official, employee, or agent shall participate in the selection, award, or administration of a contract or transaction if a real or apparent conflict of interest would be involved. Such a conflict would arise when the elected official, employee, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from the vendor selected for an award. The officials, employees, and agents of the County shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to sub agreements except for where the financial interest is not substantial or the gift is an unsolicited item of nominal value. Members of the County board of commissioners shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they have a direct or indirect financial or personal interest. Noncompliance with these requirements may result in disciplinary action, including termination of employment. *Refer to the Houston County's Employee Code of Ethics & Conflict of Interest Policy (Section 9.2) in the Houston County Personnel Policy for additional guidance.*

## Competition (2 CFR § 200.319)

Procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition and must be consistent with the standards as outlined in § 200.319. Written records are to be kept on file that sufficiently detail the history of the procurement, including small purchases.

In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposal must be excluded from competing for such procurements. Some other examples of situations considered to be restrictive of competition include but are not limited to:

1. Placing unreasonable requirements on firms in order for them to qualify to do business,
2. Requiring unnecessary experience and excessive bonding,
3. Noncompetitive pricing practices between firms or between affiliated companies,
4. Noncompetitive awards to consultants that are on retainer contracts,
5. Organizational conflicts of interest,
6. Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
7. Any arbitrary action in the procurement process.

The County must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preference in the evaluation of bids or proposals except in cases where applicable Federal statutes expressly mandate or encourage geographic preference, or state licensing law. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

Solicitations for goods or services need to include the following:

1. A clear and accurate description of technical requirements for the material, product or service and must not contain features which unduly restrict completion,
2. State the qualitative nature of the material, product or service to be procured,
3. Set forth the minimum, essential characteristics and standards it must conform to in order to satisfy the intended use,
4. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, "Brand name or Equivalent" descriptions may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand to be met by offers must be clearly stated, and
5. Identify all requirements and all factors to be used in evaluating bids.

Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the County, price, quality and other factors considered. Any or all bids or offers may be rejected when it is in the County's best interest to do so.

A list of persons, firms or products which are used in acquiring goods and services must be kept current and include enough qualified sources to ensure maximum open and free competition and must not preclude potential bidders from qualifying during the solicitation period.

### **Methods of Procurement (2 CFR § 200.320)**

#### Micro-Purchases

The acquisition of supplies or services when the aggregate dollar amount does not exceed \$10,000 (or \$2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). These purchases are typically standardized goods or services available from many resources. Such purchases do not require competitive bidding or detailed documentation. However pricing should be obtained from more than one supplier and this research is to be documented in the file. Whenever practical, micro purchases should be distributed equitably among qualified suppliers. *County Purchasing Policy limit is \$10,000.*

#### Small Purchases



Purchases larger than \$10,000 but less than the Simplified Acquisition Threshold (Currently \$150,000) require additional research and documentation, Price or rate quotations shall be obtained from an adequate number of qualified sources to ensure the selection process is competitive. *Refer to the County Purchasing Policy for purchases exceeding \$2,500 for further requirements. Minnesota Statute requires contracts estimated to have a value over \$100,000 to be made by sealed bids; the County Policy sets this limit at \$50,000. Minnesota law requires counties to consider the Cooperative Purchasing Venture (CPV) for purchase contracts expected to exceed \$25,000.*

#### Sealed Bids (formal advertising)

Bids are publicly solicited and a firm-fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest price. The sealed bid method is the preferred method for procuring construction contracts.

Sealed bidding is appropriate in the following circumstances:

1. A complete, adequate, and realistic specification or purchase description is available;
2. Two or more responsible bidders are willing and able to compete effectively for the business; and
3. The procurement lends itself to a fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

If sealed bids are used, the following requirements apply:

1. The invitation for bids shall be publicly advertised;
2. Bids must be solicited from an adequate number of known suppliers, providing them sufficient time to respond;
3. The invitation for bids must fully describe the items or services sought, so that the bidder may properly respond;
4. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
5. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
6. Any or all bids may be rejected if there is a sound, documented reason.

*Review County Policy and State of MN Bid requirements per MN Statute § 471.345.*

#### Competitive proposals

The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids or small purchase procedures. If this method is used, the following requirements apply:

1. Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
2. Proposals will be solicited from an adequate number of qualified sources;

3. The County shall evaluate responses to its solicitations and select awardees in accordance the requirements outlined in the above section entitled Competition along with the General requirements listed below.
4. Awards will be made to the responsible firm whose proposal is most advantageous to the program with price and other factors considered; and
5. The County may use the competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. A procurement process where price is not to be used as a stated selection factor can only be used in procurement of A/E professional services. It cannot be used to purchase other types of although A/E firms are a potential source to perform the proposed effort.

#### Noncompetitive Proposals

Procurement by noncompetitive proposals is procurement through solicitations of a proposal from only one source and may be used only when one or more of the following circumstances apply:

1. The item is only available from a single source;
2. The public exigency or emergency need for the item or service that will not permit a delay resulting from competitive solicitation;
3. The funding source specifically authorized the use of noncompetitive proposals; or
4. After solicitation of a number of sources, competition is determined inadequate.

#### **General Requirements (2 CFR § 200.318)**

The following requirements are applicable to all procurement transaction, regardless of size.

1. Procurement transactions shall be conducted in a lawful and ethical manner.
2. Ensure contractors are performing in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Contracts should only be awarded to responsible contractors who have the ability to perform successfully under the terms and conditions of the procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
3. Unnecessary/duplicative purchases are to be avoided.
4. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.
5. Where appropriate, an analysis is to be made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
6. Enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement of common or shared goods and services
7. Use of Federal excess and surplus property is encouraged in lieu of purchasing new equipment and property whenever feasible to reduce project costs,
8. Use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions.
9. Records must be maintained that sufficiently detail the history of the procurement. These records will include, but are not limited to the following: rational for the method of

procurement, selection of contract type, contractor selection of rejections, and the basis for the contract price.

10. Time and material type contracts may be used only after a determination is made that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Since the formula generates an open-ended contract price, a time- and materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Such a contract requires a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective costs controls. Time and material type contract means a contract whose cost to the entity is the sum of:
  - a. The actual cost of materials.
  - b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
11. The County is responsible for the settlement of all contractual and administrative issues arising out of procurements, which include, but are not limited to; source evaluations, protests, disputes and claims. These standards do not relieve the entity of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgement for that of the entity unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

#### **Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Firms ( CFR § 200.321)**

The County shall take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps include:

1. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
2. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
3. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
4. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
5. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
6. Requiring the prime contractor, if subcontracts are to be let, to observe the foregoing requirements.

### **Procurement (2 CFR § 200.322)**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### **Cost and Price Analysis (2 CFR § 200.323)**

Every procurement in excess of the Simplified Acquisitions Threshold, including contract modifications, must have a cost or price analysis performed. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Price analysis may be done by “comparison shopping” prices for standard goods or by having a number of vendors submit written bids in response to a detailed request for proposal. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability. The form and degree of analysis, is dependent on the particular procurement situation. The entity must make independent estimates before receiving bids or proposals. The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### **Federal Awarding Agency or Pass-through Entity Review (2 CFR § 200.324)**

The County will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements according to the requirements as outlined in § 200.324.

### **Bonding Requirements (2 CFR § 200.325)**

In cases of construction or facility improvement contracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the County's bonding requirements set forth in the County's purchasing Policy provided that the Federal awarding agency or pass-through entity had determined that the Federal interest is adequately protected. If a determination is not made, the minimum requirement set forth in § 200.325 are to be followed.

### **Contract Provisions (2 CFR § 200.326)**

Contracts must contain the applicable provisions described in Appendix II to Part 200-Contracts Provisions for non-Federal Entity Contracts Under Federal Awards. These provisions can be found at:

( <http://www.ecfr.gov/> Title 2 → Subtitle A → Chapter II → Part 200 → Subpart F → Appendix)

## Appendix II to Part 200

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a

contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

J) See §200.322 Procurement of recovered materials.

200.322: A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## 180.300

When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking SAM Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person

## State of Minnesota County Grant Contract Worksheet (Not Part of the Contract)

This worksheet contains private information and should not be reproduced or distributed externally without express written permission of the County. If you circulate this grant contract internally, only offices that require access to the tax identification number and all individuals/offices signing this grant contract should have access to this page.

Total Amount of Grant Contract \$ _____	
FinDeptID H55 _____	amount for state fiscal year _____:\$ _____
	amount for state fiscal year _____:\$ _____
FinDeptID H55 _____	amount for state fiscal year _____:\$ _____
	amount for state fiscal year _____:\$ _____

\_\_\_\_ Unspent encumbrances to be certified to meet future obligations in accordance with Minnesota Statutes, section 16A.28

Starts in fiscal year:	Vendor ID:
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SWIFT Grant# /Encumbrance #: GRK% \_\_\_\_\_ / \_30000 \_\_\_\_\_

Number/Date/Initials:

Individual signing certifies that funds have been encumbered as required by Minnesota Statutes, section 16A.15.

COUNTY Name and Address: Houston County

Soc. Sec. or Federal Employer I.D. No.:

Minnesota Tax I.D. No. (if applicable):



# Minnesota Department of Human Services County Grant Contract

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This Grant Contract, and all amendments and supplements to the contract ("CONTRACT"), is between the State of Minnesota, acting through its Department of Human Services, Behavioral Health Division ("STATE") and Houston County, an independent grantee, not an employee of the State of Minnesota, located at 304 S. Marshall Street, Room 104 Caledonia, MN 55921 ("COUNTY").

## RECITALS

STATE, pursuant to Minnesota Statutes, section 256.01, subdivision 2(a)(6) and 245.461 to 245.486 (the "Minnesota Comprehensive Adult Mental Health Act"), has authority to enter into contracts for the following services: create and ensure a unified, accountable, and comprehensive adult mental health system with services administered under Adult Mental Health Initiative and/or Community Support Program funding.

STATE, in accordance with Minnesota Statutes, section 13.46, is permitted to share information with COUNTY.

COUNTY represents that it is duly qualified and willing to perform the services set forth in this CONTRACT to the satisfaction of STATE.

THEREFORE, the parties agree as follows:

## CONTRACT

### 1. CONTRACT TERM AND SURVIVAL OF TERMS.

**1.1. Effective date:** This CONTRACT is effective on **January 1, 2021**, or the date that STATE obtains all required signatures under Minnesota Statutes, section 16B.98, subdivision 5, whichever is later.

**1.2. Expiration date.** This CONTRACT is valid through **December 31, 2022**, or until all obligations set forth in this CONTRACT have been satisfactorily fulfilled, whichever occurs first.

**1.3. No performance before notification by STATE.** COUNTY may not begin work under this CONTRACT, nor will any payments or reimbursements be made, until all required signatures have been obtained per Minn. Stat. § 16B.98, subd. 7, and COUNTY is notified to begin work by STATE's Authorized Representative.



**1.4. Survival of terms.** COUNTY shall have a continuing obligation after the expiration of CONTRACT to comply with the following provisions of CONTRACT: 9. Liability; 10. Information Privacy and Security; 11. Intellectual Property Rights; 13.1. State audit; and 14. Jurisdiction and Venue.

**1.5. Time is of the essence.** COUNTY will perform its duties within the time limits established in CONTRACT unless it receives written approval from STATE. In performance of CONTRACT, time is of the essence.

## **2. COUNTY'S DUTIES.**

**2.1 Duties.** COUNTY shall perform duties in accordance with **Attachment A**, County Duties, which is attached and incorporated into this CONTRACT.

**2.2 Accessibility.** Any information systems, tools, content, and work products produced under this CONTRACT, including but not limited to software applications, web sites, video, learning modules, webinars, presentations, etc., whether commercial, off-the-shelf (COTS) or custom, purchased or developed, must comply with the [Minnesota IT \(MN.IT\) Accessibility Standards](#), as updated on June 14, 2018. This standard requires, in part, compliance with the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D.

Information technology deliverables and services offered must comply with the MN.IT Services Accessibility Standards and any documents, reports, communications, etc. contained in an electronic format that COUNTY delivers to or disseminates for the STATE must be accessible. (The relevant requirements are contained under the "Standards" tab at the link above.) Information technology deliverables or services that do not meet the required number of standards or the specific standards required may be rejected and STATE may withhold payment pursuant to clause 3.2(a) of CONTRACT.

## **3. CONSIDERATION AND TERMS OF PAYMENT.**

**3.1 Consideration.** STATE will pay for all services satisfactorily provided by COUNTY under this CONTRACT.

**a. Compensation.** COUNTY will be paid in accordance with **Attachment B**, Budget, which is attached and incorporated into this CONTRACT.

1. Attachment B, "Budget", covers two full calendar years. The total budget amount indicated in Attachment B is to be dispersed over two calendar years. In calendar year 2021, COUNTY shall not invoice the STATE, and STATE shall not pay COUNTY, for more than half of the total budget amount indicated in Attachment B.
2. All expenditures must be for services or items necessary for the delivery of those services. "Capital" purchases are prohibited. Capital purchases are defined as something which has a useful life of more than one year and a per-unit acquisition cost which exceeds \$5,000 and is 1) land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, lease-purchase, exchange, or through capital leases; or 2) additions, improvements, modifications, replacements,

rearrangements, reinstallations, renovations, alterations, or repairs of the items listed above that materially increase their value or useful life.

3. COUNTY must obtain STATE written approval before changing any part of the budget. Notwithstanding Clause 16.1 of CONTRACT, revisions shall be done on a form provided by the STATE. Revisions are required when adding or removing a BRASS code from the budget or adding or removing a provider(s). Shifting of funds between budget line items does not require an amendment. Amendments are required when extending the end date or changing the total grant award, pursuant to Clause 16.1 of CONTRACT. If COUNTY's approved budget changes proceed without an amendment pursuant to this clause, COUNTY must record the budget change on a form provided by STATE.

- b. Travel and subsistence expenses.** Reimbursement for travel and subsistence expenses actually and necessarily incurred as a result of COUNTY's performance under this CONTRACT shall be no greater an amount than provided in the most current Commissioner's Plan (which is incorporated by reference), promulgated by the Commissioner of Minnesota Management and Budget as specified in the [Commissioner's Plan](#).<sup>1</sup> COUNTY shall not be reimbursed for travel and subsistence expenses incurred outside the geographical boundaries of Minnesota unless it has received prior written approval from STATE. Minnesota shall be considered the home state for determining whether travel is out of state.
- c. Total obligation.** The total obligation of STATE for all compensation and reimbursements to COUNTY shall not exceed **one hundred fifty five thousand, fourteen dollars (\$155,014)**.
- d. Withholding.** For compensation payable under this CONTRACT, which is subject to withholding under state or federal law, appropriate amounts will be deducted and withheld by STATE as required.

### 3.2. Terms of payment

- a. Advance.** The COUNTY will receive one initial payment of **nineteen thousand, three hundred seventy seven dollars (\$19,377)** pursuant to Minnesota Administrative Rule 9535.1740 at the start of the CONTRACT. The COUNTY is not eligible to receive a cash advance from the STATE in Year 2 of the CONTRACT.
- b. Invoices.** Payments shall be made by STATE promptly after COUNTY submits an invoice for services performed and the services have been determined acceptable by STATE's authorized agent pursuant to Clause 4.1. Invoices shall be submitted via quarterly SEAGR report (DHS-2557) and on the BRASS-Based Grant Fiscal Report (DHS-2895) specific to the grant, and according to the following schedule: **following each March 31, June 30, September 30, and December 31.**
- c. Reconciliation.** Within sixty (60) days of the end of the grant period, the STATE will complete a reconciliation of payments issued against expenditures reported by the COUNTY. If actual expenditures by the COUNTY are less than listed in the total approved program budget at the

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<sup>1</sup> <https://mn.gov/mmb/employee-relations/labor-relations/labor/commissioners-plan.jsp>

end of the CONTRACT, the STATE shall reduce the final payment so as not to exceed total expenditures.

#### **4. CONDITIONS OF PAYMENT.**

**4.1. Satisfaction of STATE.** All services provided by COUNTY pursuant to this CONTRACT shall be performed to the satisfaction of STATE, as determined at the sole discretion of its authorized representative, and in accord with all applicable federal, state, and local laws, ordinances, rules and regulations. COUNTY shall not receive payment for work found by STATE to be unsatisfactory, or performed in violation of federal, state or local law, ordinance, rule or regulation.

**4.2. Payments to subcontractors.** As required by Minn. Stat. § 16A.1245, COUNTY must pay all subcontractors, within ten (10) calendar days of COUNTY's receipt of payment from STATE for undisputed services provided by the subcontractor(s) and must pay interest at the rate of 1-1/2 percent per month or any part of a month to the subcontractor(s) on any undisputed amount not paid on time to the subcontractor(s).

**4.3. Administrative costs and reimbursable expenses.** Pursuant to Minn. Stat. § 16B.98, subd. 1, COUNTY agrees to minimize administrative costs as a condition of this grant. COUNTY shall ensure that costs claimed for reimbursement shall be actual costs, to be determined in accordance with 2 C.F.R. § 200.0 et seq., COUNTY shall not invoice STATE for services that are reimbursable via a public or private health insurance plan. If COUNTY receives funds from a source other than STATE in exchange for services, then COUNTY may not receive payment from STATE for those same services. COUNTY shall seek reimbursement from all sources before seeking reimbursement pursuant to CONTRACT.

#### **5. PAYMENT RECOUPMENT.**

COUNTY must reimburse STATE upon demand or STATE may deduct from future payments under this CONTRACT or future CONTRACTS the following:

- a. Any amounts received by COUNTY from the STATE for contract services which have been inaccurately reported or are found to be unsubstantiated;
- b. Any amounts paid by COUNTY to a subcontractor not authorized in writing by STATE;
- c. Any amount paid by STATE for services which either duplicate services covered by other specific grants or contracts, or amounts determined by STATE as non-allowable under the line item budget, clause 2.1(a);
- d. Any amounts paid by STATE for which COUNTY'S books, records and other documents are not sufficient to clearly substantiate that those amounts were used by COUNTY to perform contract services, in accordance with clause 1, COUNTY'S Duties; and/or
- e. Any amount identified as a financial audit exception.

#### **6. CANCELLATION.**

**6.1. For cause or convenience.** In accord with Minn. Stat. § 16B.04, subd. 2, the Commissioner of Administration has independent authority to cancel this CONTRACT. CONTRACT may be canceled by

STATE or COUNTY at any time, with or without cause, upon thirty (30) days written notice to the other party. The thirty (30) day notice may be waived, in writing, by the party receiving notice. In the event of such a cancellation, COUNTY shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed. STATE has the right to suspend or terminate this CONTRACT immediately when STATE deems the health or welfare of the service recipients is endangered, when STATE has reasonable cause to believe that COUNTY has breached a material term of the CONTRACT, or when COUNTY's non-compliance with the terms of the CONTRACT may jeopardize federal financial participation.

**6.2. Insufficient funds.** STATE may immediately terminate this CONTRACT if it does not obtain funding from the Minnesota Legislature, or other funding source; or if funding cannot be continued at a level sufficient to allow for the payment of the services covered here. Termination will be by written notice to COUNTY. STATE is not obligated to pay for any services that are provided after the effective date of termination. COUNTY will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed to the extent that funds are available. STATE will not be assessed any penalty if the CONTRACT is terminated because of the decision of the Minnesota Legislature, or other funding source, not to appropriate funds. STATE must provide COUNTY notice of the lack of funding within a reasonable time of STATE's receiving that notice.

**6.3. Breach.** Notwithstanding clause 6.1, upon STATE's knowledge of a curable material breach of the CONTRACT by COUNTY, STATE shall provide COUNTY written notice of the breach and ten (10) days to cure the breach. If COUNTY does not cure the breach within the time allowed, COUNTY will be in default of this CONTRACT and STATE may cancel the CONTRACT immediately thereafter. If COUNTY has breached a material term of this CONTRACT and cure is not possible, STATE may immediately terminate this CONTRACT.

## **7. AUTHORIZED REPRESENTATIVES, RESPONSIBLE AUTHORITY, and PROJECT MANAGER.**

**7.1. State.** STATE's authorized representative for the purposes of administration of this CONTRACT is **Gertrude Matemba-Mutasa** or successor. Phone and email: **gertrude.matemba-mutasa@state.mn.us, 651-431-6408**. This representative shall have final authority for acceptance of COUNTY's services and if such services are accepted as satisfactory, shall so certify on each invoice submitted pursuant to Clause 3.2.

**7.2. County.** COUNTY's Authorized Representative is **John Pogleasa** or successor. Phone and email: **507-725-5811, john.pogleasa@co.houston.mn.us**. If COUNTY's Authorized Representative changes at any time during this CONTRACT, COUNTY must immediately notify STATE.

**7.3. Information Privacy and Security.** COUNTY's responsible authority for the purposes of complying with data privacy and security for this CONTRACT is **Samuel Jandt** or successor. Phone and email: **507-725-5802, samuel.jandt@co.houston.mn.us**.

## **8. INSURANCE REQUIREMENTS.**

**8.1. Worker's Compensation.** The COUNTY certifies that it is in compliance with Minn. Stat. § 176.181, subd. 2, pertaining to workers' compensation insurance coverage. The COUNTY'S employees and agents will not be considered employees of the STATE. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees or agents are in no way the STATE'S obligation or responsibility.

## **9. LIABILITY.**

To the extent provided for in Minn. Stat. §§ 466.01-466.15, the COUNTY agrees to be responsible for any and all claims or causes of action arising from the performance of this grant contract by COUNTY or COUNTY'S agents or employees. This clause shall not be construed to bar any legal remedies COUNTY may have for the STATE'S failure to fulfill its obligations pursuant to this grant.

**10. INFORMATION PRIVACY AND SECURITY.** Information privacy and security shall be governed by the "Data Sharing Agreement and Business Associate Agreement Terms and Conditions" which is attached and incorporated into this CONTRACT as **Attachment C**, except that the parties further agree to comply with any agreed-upon amendments to the Data Sharing Agreement and Business Associate Agreement.

## **11. INTELLECTUAL PROPERTY RIGHTS.**

**11.1. Definitions.** Works means all inventions, improvements, discoveries (whether or not patentable or copyrightable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created or originated by COUNTY, its employees, agents, and subcontractors, either individually or jointly with others in the performance of the CONTRACT. Works includes "Documents." Documents are the originals of any data bases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by COUNTY, its employees, agents, or subcontractors, in the performance of this CONTRACT.

**11.2. Ownership.** STATE owns all rights, title, and interest in all of the intellectual property, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents created and paid for under this CONTRACT. The Works and Documents will be the exclusive property of STATE and all such Works and Documents must be immediately returned to STATE by COUNTY upon completion or cancellation of this CONTRACT. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." If using STATE data, COUNTY must cite the data, or make clear by referencing that STATE is the source.

### **11.3. Responsibilities.**

- a. Notification.** Whenever any Works or Documents (whether or not patentable) are made or conceived for the first time or actually or constructively reduced to practice by COUNTY,

including its employees and subcontractors, and are created and paid for under this CONTRACT, COUNTY will immediately give STATE's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon. COUNTY will assign all right, title, and interest it may have in the Works and the Documents to STATE.

- b. Filing and recording of ownership interests.** COUNTY must, at the request of STATE, execute all papers and perform all other acts necessary to transfer or record STATE's ownership interest in the Works and Documents created and paid for under this CONTRACT. COUNTY must perform all acts, and take all steps necessary to ensure that all intellectual property rights in these Works and Documents are the sole property of STATE, and that neither COUNTY nor its employees, agents, or subcontractors retain any interest in and to these Works and Documents.
- c. Duty not to infringe on intellectual property rights of others.** COUNTY represents and warrants that the Works and Documents created and paid for under this CONTRACT do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 9, COUNTY will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless STATE, at COUNTY's expense, from any action or claim brought against STATE to the extent that it is based on a claim that all or part of these Works or Documents infringe upon the intellectual property rights of others. COUNTY will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney's fees. If such a claim or action arises, or in COUNTY's or STATE's opinion is likely to arise, COUNTY must, at STATE's discretion, either procure for STATE the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of STATE will be in addition to and not exclusive of other remedies provided by law.

**12. OWNERSHIP OF EQUIPMENT.** The STATE shall have the right to require transfer of all equipment purchased with grant funds (including title) to STATE or to an eligible non-STATE party named by the STATE. If federal funds are granted by the STATE, then disposition of all equipment purchased under this grant contract shall be in accordance with OMB Uniform Grant Guidance, 2 C.F.R. § 200.313. For all equipment having a current per unit fair market value of \$5,000 or more, STATE shall have the right to require transfer of the equipment (including title) to the Federal Government. These rights will normally be exercised by STATE only if the project or program for which the equipment was acquired is transferred from one grantee to another.

## **13. AUDIT REQUIREMENTS AND COUNTY DEBARMENT INFORMATION.**

### **13.1. State audit.**

Under Minn. Stat. § 16B.98, subd. 8, the books, records, documents, and accounting procedures and practices of the COUNTY or other party that are relevant to the CONTRACT are subject to examination by STATE and either the legislative auditor or the state auditor, as appropriate, for a minimum of six

years from the CONTRACT end date, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

**13.2. Independent audit.** If COUNTY conducts or undergoes an independent audit during the term of this CONTRACT, a copy of the audit must be submitted to STATE within thirty (30) days of the audit's completion.

**13.3. Federal audit requirements and COUNTY debarment information.** COUNTY certifies it will comply with 2 C.F.R § 200.501 et seq., as applicable. To the extent federal funds are used for this CONTRACT, COUNTY acknowledges that COUNTY and STATE shall comply with the requirements of 2 C.F.R. § 200.331. Non-Federal entities receiving \$750,000 or more of federal funding in a fiscal year must obtain a single or program-specific audit conducted for that year in accordance with 2 C.F.R. § 200.501. Failure to comply with these requirements could result in forfeiture of federal funds.

**13.4. Debarment by STATE, its departments, commissions, agencies or political subdivisions.**

COUNTY certifies that neither it nor its principles are presently debarred or suspended by the State of Minnesota, or any of its departments, commissions, agencies, or political subdivisions. COUNTY's certification is a material representation upon which the CONTRACT award was based. COUNTY shall provide immediate written notice to STATE's authorized representative if at any time it learns that this certification was erroneous when submitted or becomes erroneous by reason of changed circumstances.

**13.5. Certification regarding debarment, suspension, ineligibility, and voluntary exclusion – lower tier covered transactions.**

COUNTY's certification is a material representation upon which CONTRACT award was based. Federal money will be used or may potentially be used to pay for all or part of the work under CONTRACT, therefore COUNTY must certify the following, as required by 2 C.F.R. § 180, or its regulatory equivalent.

**a. Instructions for Certification**

1. By signing and submitting this CONTRACT, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this CONTRACT is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and

voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages sections of rules implementing Executive Order 12549. You may contact the person to which this CONTRACT is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this CONTRACT that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**b. Lower Tier Covered Transactions.**

1. The prospective lower tier participant certifies, by submission of this CONTRACT, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this CONTRACT.



#### **14. JURISDICTION AND VENUE.**

This CONTRACT, and amendments and supplements, are governed by the laws of the State of Minnesota. Venue for all legal proceedings arising out of this CONTRACT, or breach of the CONTRACT, shall be in the state or federal court with competent jurisdiction in Ramsey County, Minnesota.

#### **15. CLERICAL ERRORS AND NON-WAIVER.**

**15.1. Clerical error.** Notwithstanding Clause 16.1, STATE reserves the right to unilaterally fix clerical errors contained in the CONTRACT without executing an amendment. COUNTY will be informed of errors that have been fixed pursuant to this paragraph.

**15.2. Non-waiver.** If STATE fails to enforce any provision of this CONTRACT, that failure does not waive the provision or STATE's right to enforce it.

#### **16. AMENDMENT, ASSIGNMENT, SEVERABILITY, ENTIRE AGREEMENT, AND DRAFTING PARTY.**

**16.1. Amendments.** Any amendments to this CONTRACT shall be in writing, and shall be executed by the same parties who executed the original CONTRACT, or their successors in office.

**16.2. Assignment.** COUNTY shall neither assign nor transfer any rights or obligations under this CONTRACT without the prior written consent of STATE.

##### **16.3. Entire Agreement.**

- a. If any provision of this CONTRACT is held to be invalid or unenforceable in any respect, the validity and enforceability of the remaining terms and provisions of this CONTRACT shall not in any way be affected or impaired. The parties will attempt in good faith to agree upon a valid and enforceable provision that is a reasonable substitute, and will incorporate the substitute provision in this CONTRACT according to clause 16.1.
- b. This CONTRACT contains all negotiations and agreements between STATE and COUNTY. No other understanding regarding this CONTRACT, whether written or oral may be used to bind either party.

**16.4. Drafting party.** The parties agree that each party individually has had an opportunity to review with a legal representative, negotiate and draft this CONTRACT, and that, in the event of a dispute, the CONTRACT shall not be construed against either party.

#### **17. PROCURING GOODS AND CONTRACTED SERVICES.**

**17.1. Contracting and bidding requirements.** COUNTY certifies that it shall comply with Minn. Stat. § 471.345.

**17.2 Debarred vendors.** In the provision of goods or services under this CONTRACT, COUNTY must not contract with vendors who are suspended or debarred in Minnesota or under federal law. Before entering into a subcontract, COUNTY must check if vendors are suspended or debarred by referencing

the Minnesota Department of Administration's [Suspended/Debarred Vendor Report](#). A link to vendors debarred by Federal agencies is provided at the bottom of the web page.

## **18. SUBCONTRACTS.**

COUNTY, as an awardee organization, is legally and financially responsible for all aspects of this award that are subcontracted, including funds provided to sub-recipients and subcontractors, in accordance with 45 C.F.R. §§ 75.351-75.352. COUNTY shall ensure that the material obligations, borne by the COUNTY in this CONTRACT, apply as between COUNTY and sub-recipients, in all subcontracts, to the same extent that the material obligations apply as between the STATE and COUNTY.

## **19. LEGAL COMPLIANCE.**

**19.1 General compliance.** All performance under this CONTRACT must be in compliance with state and federal law and regulations, and local ordinances. Allegations that STATE deems reasonable, in its sole discretion, of violations of state or federal law or regulations, or of local ordinances, may result in CONTRACT cancellation or termination and/or reporting to local authorities by STATE.

**19.2 Nondiscrimination.** COUNTY will not discriminate against any person on the basis of the person's race, color, creed, religion, national origin, sex, marital status, gender identity, disability, public assistance status, sexual orientation, age, familial status, membership or activity in a local commission, or status as a member of the uniformed services. COUNTY must refrain from such discrimination as a matter of its contract with STATE. "Person" includes, without limitation, a STATE employee, COUNTY's employee, a program participant, and a member of the public. "Discriminate" means, without limitation, to: fail or refuse to hire, discharge, or otherwise discriminate against any person with respect to the compensation, terms, conditions, or privileges of employment, or; exclude from participation in, deny the benefits of, or subject to discrimination under any COUNTY program or activity.

COUNTY will ensure that all of its employees and agents comply with Minnesota Management and Budget Policy #[1329](#) (Sexual Harassment Prohibited) and #[1436](#) (Harassment and Discrimination Prohibited).

**19.3 Grants management policies.** COUNTY must comply with required [Grants Management Policies and procedures](#) as specified in Minn. Stat. § 16B.97, subd. 4(a)(1). Compliance under this paragraph includes, but is not limited to, participating in monitoring and financial reconciliation as required by Office of Grants Management (OGM) [Policy 08-10](#).

**19.4 Conflict of interest.** COUNTY certifies that it does not have any conflicts of interest related to this CONTRACT, as defined by OGM [Policy 08-01](#). COUNTY shall immediately notify STATE if a conflict of interest arises.

## **20. OTHER PROVISIONS**

**20.1. No Religious Based Counseling.** COUNTY agrees that no religious based counseling shall take place under the auspices of this CONTRACT.

**20.2. Contingency Planning.** This section applies if COUNTY will be fulfilling Priority 1 or Priority 2 functions under this contract. A *Priority 1* function is a function that, for purposes of planning business continuity during an emergency or disaster, must continue 24 hours per day and 7 days per week, or be recovered within hours. A *Priority 2* function is a function that, for purposes of planning business continuity during an emergency or disaster, must be resumed within 25 hours to 5 days. Within 90 days of the execution of this CONTRACT, COUNTY and any subcontractor will have a contingency plan. The contingency plan shall:

- a. Ensure fulfillment of Priority 1 or Priority 2 obligations under this CONTRACT;
- b. Outline procedures for the activation of the contingency plan upon the occurrence of a governor or commissioner of the Minnesota Department of Health declared health emergency;
- c. Identify an individual as its Emergency Preparedness Response Coordinator (EPRC), the EPRC shall serve as the contact for STATE with regard to emergency preparedness and response issues, the EPRC shall provide updates to STATE as the health emergency unfolds;
- d. Outline roles, command structure, decision making processes, and emergency action procedures that will be implemented upon the occurrence of a health emergency;
- e. Provide alternative operating plans for Priority 1 or Priority 2 functions;
- f. Include a procedure for returning to normal operations; and
- g. Be available for inspection upon request.

**20.3. Open Meeting Law.** COUNTY must comply with all applicable requirements of the Open Meeting Law in Minnesota Statutes chapter 13D.

**20.4. Complaints.** COUNTY shall work cooperatively and proactively with STATE to resolve complaints received from an Individual; from an authorized representative; from a partnering entity; from a community organization; or from a state, federal, or other health oversight agency. STATE will provide technical assistance for process improvements related to complaints received.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

Signature Page Follows

By signing below, the parties agree to the terms and conditions contained in this CONTRACT.

**APPROVED:**

**1. STATE ENCUMBRANCE VERIFICATION**

*Individual certifies that funds have been encumbered as required by Minnesota Statutes, chapter 16A and section 16C.05.*

By: \_\_\_\_\_

Date: \_\_\_\_\_

Contract No: \_\_\_\_\_

**Distribution: (fully executed contract to each)**

Contracting and Legal Compliance Division

County

State Authorized Representative

**2. COUNTY**

*Signatory certifies that County's articles of incorporation, by-laws, or corporate resolutions authorize Signatory both to sign on behalf of and bind the County to the terms of this Agreement. County and Signatory agree that the State Agency relies on the Signatory's certification herein.*

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**3. STATE AGENCY**

By (with delegated authority): \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# ATTACHMENT A: COUNTY DUTIES

The following items will be evaluated throughout the contract period: 1/1/21-12/31/22.

Objective	Description of Tasks and Deliverables	Evaluation Method
<b>CSP only</b>		
Ensure that Community Support Plan services are planned and administered according to Minn. Stat. <a href="#">245.4712</a>	<ul style="list-style-type: none"> <li>Assure sufficient community support services are available to meet the needs of adults with SPMI in the county</li> </ul>	Twice yearly site visits
<b>AMHI and CSP</b>		
Work to achieve the mission statement described in the Minnesota Comprehensive Adult Mental Health Act Minn. Stat. <a href="#">245.461</a>	<ul style="list-style-type: none"> <li>Lived experience with mental illness guides the governance and services</li> <li>Brings together people with lived experience, providers, counties, tribes, MCOs and DHS to fully utilize all available resources to meet regional needs.</li> <li>Develops and provides an array of person centered services that builds on personal and cultural strengths.</li> <li>Utilizes a data driven model to evaluate the impact of services on health outcomes.</li> <li>Assures access, early intervention, coordination, and application of resources through creative partnerships.</li> </ul>	Twice yearly site visits
Ensure all revenue received by COUNTY and its contracted or subcontracted providers is managed according to Minnesota Rules chapter <a href="#">9535.1740</a> subd.3	<ul style="list-style-type: none"> <li>Submit quarterly fiscal reports / invoices to DHS for payment</li> </ul>	Twice yearly site visits
Ensure their contracted providers bill eligible insurance before accessing Adult Mental Health grant funding		Twice yearly site visits
Have a transition plan that complies with Minnesota Statute <a href="#">245.466 subd.3a</a>	<ul style="list-style-type: none"> <li>Transition plan for continuity of care in the event of contract termination with a community mental health center</li> <li>Transition plan for continuity of care in the event of contract termination with a community support services provider</li> </ul>	Twice yearly site visits
Complete all required data reporting and ensure their contracted providers are completing all required data reporting	<ul style="list-style-type: none"> <li>MHIS data reporting completed twice a year</li> <li>SSIS data reporting completed</li> <li>Supplemental spreadsheet reporting completed twice a year</li> <li>Effort made to have providers reporting into MHIS instead of the supplemental spreadsheet</li> </ul>	Twice yearly site visits

Meet the policy requirements from the <a href="#">Office of Grants Management</a> for all subcontracts that are over \$50,000	<ul style="list-style-type: none"> <li>• Grant monitoring plan for all subcontracts over \$50,000, including site visits and financial reconciliation</li> <li>• Conflict of interest assessed and documented</li> </ul>	Twice yearly site visits
Incorporate the <a href="#">National Culturally and Linguistically Appropriate Services (CLAS) Standards</a> into County administered services and contracts/agreements with community service providers	<ul style="list-style-type: none"> <li>• Demonstrated effort to provide effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural health beliefs and practices, preferred languages, health literacy, and other communication needs</li> </ul>	Twice yearly site visits

## Attachment B – Budget

Grant Budget Summary				
2895 BRASS Code Summary for:		Houston		
Funding Totals				
	CSP	AMHI	Moose Lake	TOTAL
TOTAL ALLOCATION	\$ 155,014	\$ -	\$ -	\$ 155,014
Requested Funding By BRASS Code				
BRASS CODE	CSP	AMHI	Moose Lake	TOTAL
402	\$ -	\$ -	\$ -	\$ -
403	\$ -	\$ -	\$ -	\$ -
408	\$ -	\$ -	\$ -	\$ -
416	\$ 12,000	\$ -	\$ -	\$ 12,000
418	\$ 13,000	\$ -	\$ -	\$ 13,000
420	\$ -	\$ -	\$ -	\$ -
431	\$ 15,500	\$ -	\$ -	\$ 15,500
434	\$ -	\$ -	\$ -	\$ -
436	\$ -	\$ -	\$ -	\$ -
437	\$ 8,500	\$ -	\$ -	\$ 8,500
438	\$ -	\$ -	\$ -	\$ -
443	\$ 39,000	\$ -	\$ -	\$ 39,000
446	\$ 2,000	\$ -	\$ -	\$ 2,000
451	\$ -	\$ -	\$ -	\$ -
452	\$ 1,500	\$ -	\$ -	\$ 1,500
454	\$ 2,000	\$ -	\$ -	\$ 2,000
468	\$ -	\$ -	\$ -	\$ -
469	\$ -	\$ -	\$ -	\$ -
474	\$ 1,014	\$ -	\$ -	\$ 1,014
491	\$ 5,500	\$ -	\$ -	\$ 5,500
493	\$ 55,000	\$ -	\$ -	\$ 55,000

**ATTACHMENT C –  
DATA SHARING AND BUSINESS ASSOCIATE AGREEMENT  
TERMS AND CONDITIONS**

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This Attachment sets forth the terms and conditions in which STATE will share data with and permit COUNTY to Use or Disclose Protected Information that the parties are legally required to safeguard pursuant to the Minnesota Government Data Practices Act ("MGDPA") under Minnesota Statutes, chapter 13, the Health Insurance Portability and Accountability Act rules and regulations codified at 45 C.F.R. Parts 160, 162, and 164 ("HIPAA"), and other Applicable Safeguards.

The parties agree to comply with all applicable provisions of the MGDPA, HIPAA, and any other Applicable Safeguard that applies to the Protected Information.

General Description of Protected Information That Will Be Shared: Adult Mental Health Initiative (AMHI) and/or Community Support Program (CSP) data for the term of the contract

Purpose for Sharing Protected Information and Expected Outcomes: Review of AMHI and/or CSP grantee projects to assure program integrity, quality, and effectiveness.

STATE is permitted to share the Protected Information with COUNTY pursuant to: Minnesota Data Practices Act under Minnesota Statutes, Chapter 13

It is expressly agreed that COUNTY is a "business associate" of STATE, as defined by HIPAA under 45 C.F.R. § 160.103, "Definitions." The Disclosure of Protected Health Information to COUNTY that is subject to the Health Insurance Portability Accountability Act (HIPAA) is permitted by 45 C.F.R. § 164.502(e)(1)(i), "Standard: Disclosures to Business Associates."

It is understood by COUNTY that, as a business associate under HIPAA, COUNTY is directly liable under the HIPAA Rules and subject to civil and, in some cases, criminal penalties for making Uses and Disclosures of Protected Health Information that are not authorized by contract or permitted by law. COUNTY is also directly liable and subject to civil penalties for failing to safeguard electronic Protected Health Information in accordance with the HIPAA Security Rule, Subpart C of 45 C.F.R. Part 164, "Security and Privacy."

**DEFINITIONS**

- A. "Agent" means COUNTY'S employees, contractors, subcontractors, and other non-employees and representatives.



- B. "Applicable Safeguards" means the state and federal safeguards listed in subsection 2.1.A of this Attachment.
- C. "Breach" means the acquisition, access, Use, or Disclosure of unsecured Protected Health Information in a manner not permitted by HIPAA, which compromises the security or privacy of Protected Health Information.
- D. "Business Associate" shall generally have the same meaning as the term "business associate" found in 45 C.F.R. § 160.103, and in reference to the party in the Contract and this Attachment, shall mean COUNTY.
- E. "Contract" means the Grant Contract between STATE and COUNTY to which this Attachment is attached.
- F. "Disclose" or "Disclosure" means the release, transfer, provision of access to, or divulging in any manner of information by the entity in possession of the Protected Information.
- G. "HIPAA" means the rules and regulations codified at 45 C.F.R. Parts 160, 162, and 164.
- H. "Individual" means the person who is the subject of protected information.
- I. "Privacy Incident" means a violation of an information privacy provision of any applicable state and federal law, statute, regulation, rule, or standard, including those listed in the Contract and this Attachment.
- J. "Protected Information" means any information, regardless of form or format, which is or will be Used by STATE or COUNTY under the Contract that is protected by federal or state privacy laws, statutes, regulations, policies, or standards, including those listed in this Attachment. This includes, but is not limited to, individually identifiable information about a State, county or tribal human services agency client or a client's family member. Protected Information also includes, but is not limited to, Protected Health Information, as defined below, and Protected Information maintained within or accessed via a State information management system, including a State "legacy system" and other State application.
- K. "Protected Health Information" is a subset of Protected Information (defined above) and has the same meaning as the term "protected health information" found in 45 C.F.R. § 160.103. For the purposes of this Attachment, it refers only to that information that is received, created, maintained, or transmitted by COUNTY as a Business Associate on behalf of STATE.
- L. "Security Incident" means the attempted or successful unauthorized accessing, Use, or interference with system operations in an information management system or application. "Security Incident" does not include pings and other broadcast attacks on a system's firewall, port scans, unsuccessful log-on attempts, denials of service, and any combination of the above,

provided that such activities do not result in the unauthorized exposure, viewing, obtaining, accessing, or Use of Protected Information.

- M. "Use" or "Used" means any activity involving Protected Information including its creation, collection, access, acquisition, modification, employment, application, utilization, examination, analysis, manipulation, maintenance, dissemination, sharing, Disclosure, transmission, or destruction. "Use" includes any of these activities whether conducted manually or by electronic or computerized means.

## **1. INFORMATION EXCHANGED**

- 1.1** This Attachment governs the data that will be exchanged pursuant to COUNTY performing the services described in the Contract. The data exchanged under the Contract will include: BRASS Code data by client including, but not limited to, demographic information such as age, sex, race, the number of people served, and information related to housing, employment, hospitalization, symptoms, and satisfaction with services reported by COUNTY and its SUBCONTRACTORS to STATE. Data is submitted via the Mental Health Information System (MHIS), the Social Services Information System (SSIS), and other encrypted spreadsheet as directed by the STATE.
- 1.2** The data exchanged under the Contract is provided to STATE by COUNTY and its SUBCONTRACTORS for: review of AMHI and/or CSP grantee projects to assure program integrity, quality, and effectiveness and to ensure COUNTY is meeting the terms of the Contract.
- 1.3** It is permissible to share the Protected Information between STATE and COUNTY pursuant to: the terms and conditions of the Contract and this Data Sharing and Business Associate Agreement in accordance with the Minnesota Data Practices Act under Minnesota Statutes, Chapter 13.

## **2. INFORMATION PRIVACY AND SECURITY**

COUNTY and STATE must comply with the MGDPA, HIPAA, and all other Applicable Safeguards as they apply to all data provided by STATE under the Contract, and as they apply to all data created, collected, received, stored, Used, maintained, or disseminated by COUNTY under the Contract. The civil remedies of Minn. Stat. § 13.08, "Civil Remedies," apply to COUNTY and STATE. Additionally, the remedies of HIPAA apply to the release of data governed by HIPAA.

### **2.1 Compliance with Applicable Safeguards.**

- A. State and Federal Safeguards.** The parties acknowledge that the Protected Information to be shared under the terms of the Contract may be subject to one or

more of the laws, statutes, regulations, rules, policies, and standards, as applicable and as amended or revised ("Applicable Safeguards"), listed below, and agree to abide by the same.

1. Health Insurance Portability and Accountability Act rules and regulations codified at 45 C.F.R. Parts 160, 162, and 164 ("HIPAA");
2. Minnesota Government Data Practices Act (Minn. Stat. Chapter 13);
3. Minnesota Health Records Act (Minn. Stat. § 144.291–144.34);
4. Confidentiality of Alcohol and Drug Abuse Patient Records (42 U.S.C. § 290dd-2, "Confidentiality of Records," and 42 C.F.R. Part 2, "Confidentiality of Substance Use Disorder Patient Records");
5. Tax Information Security Guidelines for Federal, State and Local Agencies (26 U.S.C. § 6103, "Confidentiality and Disclosure of Returns and Return Information," and Internal Revenue Service Publication 1075;
6. U.S. Privacy Act of 1974;
7. Computer Matching Requirements (5 U.S.C. § 552a, "Records Maintained on Individuals");
8. Social Security Data Disclosure (section 1106 of the Social Security Act: 42 USC § 1306, "Disclosure of information in Possession of Social Security Administration or Department of Health and Human Services");
9. Disclosure of Information to Federal, State and Local Agencies (DIFSLA Handbook, Internal Revenue Service Publication 3373);
10. Final Exchange Privacy Rule of the Affordable Care Act (45 C.F.R. § 155.260, "Privacy and Security of Personally Identifiable Information,");
11. NIST Special Publication 800-53, "Security and Privacy Controls for Federal Information Systems and Organizations," Revision 4 (NIST.SP.800-53r4), and;
12. All state of Minnesota ["Enterprise Information Security Policies and Standards."](#)<sup>2</sup>

The parties further agree to comply with all other laws, statutes, regulations, rules, and standards, as amended or revised, applicable to the exchange, Use and Disclosure of data under the Contract.

- B. Statutory Amendments and Other Changes to Applicable Safeguards.** The Parties agree to take such action as is necessary to amend the Contract and this Attachment from time to time as is necessary to ensure, current, ongoing compliance with the requirements of the laws listed in this Section or in any other applicable law.

## 2.2 COUNTY Data Responsibilities

### A. Use Limitation.

1. *Restrictions on Use and Disclosure of Protected Information.* Except as otherwise

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<sup>2</sup> See <https://mn.gov/mnit/government/policies/security/>

authorized in the Contract or this Attachment, COUNTY may only Use or Disclose Protected Information as minimally necessary to provide the services to STATE as described in the Contract and this Attachment, or as otherwise required by law, provided that such Use or Disclosure of Protected Information, if performed by STATE, would not violate the Contract, this Attachment, HIPAA, or state and federal statutes or regulations that apply to the Protected Information.

2. *Federal tax information.* To the extent that Protected Information Used under the Contract constitutes “federal tax information” (FTI), COUNTY shall ensure that this data only be Used as authorized under the Patient Protection and Affordable Care Act, the Internal Revenue Code, 26 U.S.C. § 6103(C), and IRS Publication 1075.

**B. Individual Privacy Rights.** COUNTY shall ensure Individuals are able to exercise their privacy rights regarding Protected Information, including but not limited to the following:

1. *Complaints.* COUNTY shall work cooperatively and proactively with STATE to resolve complaints received from an Individual; from an authorized representative; or from a state, federal, or other health oversight agency.
2. *Amendments to Protected Information Requested by Data Subject Generally.* Within three (3) business days, COUNTY must forward to STATE any request to make any amendment(s) to Protected Information in order for STATE to satisfy its obligations under Minn. Stat. § 13.04, “Rights of Subjects of Data,” subd. 4. If the request to amend Protected Information pertains to Protected Health Information, then COUNTY must also make any amendment(s) to Protected Health Information as directed or agreed to by STATE pursuant to 45 C.F.R. § 164.526, “Amendment of Protected Health Information,” or otherwise act as necessary to satisfy STATE or COUNTY’s obligations under 45 CF.R. § 164.526 (including, as applicable, Protected Health Information in a designated record set).

**C. Background Review and Reasonable Assurances of Agents.**

1. *Reasonable Assurances.* COUNTY represents that, before any Agent is allowed to Use or Disclose Protected Information, COUNTY has conducted and documented a background review of the Agent sufficient to provide COUNTY with reasonable assurances that the Agent will fully comply with the terms of the Contract, this Attachment and Applicable Safeguards.
2. **Documentation.** COUNTY shall make available documentation required by this Section upon request by STATE.

**D. Ongoing Responsibilities to Safeguard Protected Information.**

1. *Privacy and Security Safeguards.* COUNTY shall develop, maintain, and enforce policies, procedures, and administrative, technical, and physical safeguards that comply with the Applicable Safeguards to ensure the privacy and security of the Protected Information, and to prevent the Use or Disclosure of Protected Information, except as expressly permitted by the Contract and this Attachment.
2. **Electronic Protected Information.** COUNTY shall implement and maintain appropriate safeguards with respect to electronic Protected Information, and comply with Subpart C of 45 C.F.R. Part 164 (HIPAA Security Rule) with respect to to prevent the Use or Disclosure other than as provided for by the Contract or this Attachment.
3. *Monitoring Agents.* COUNTY shall ensure that any Agent to whom COUNTY Discloses Protected Information on behalf of STATE, or whom COUNTY employs or retains to create, receive, Use, store, Disclose, or transmit Protected Information on behalf of STATE, agrees in writing to the same restrictions and conditions that apply to COUNTY under the Contract and this Attachment with respect to such Protected Information, and in accordance with 45 C.F.R. §§ 164.502, "Use and Disclosure of Protected Health Information: General Rules," subpart (e)1)(ii) and 164.308, "Administrative Safeguards," subpart (b)(2).
4. **Encryption.** According to the state of Minnesota's "[Enterprise Information Security Policies and Standards](#),"<sup>3</sup> COUNTY must use encryption to store, transport, or transmit Protected Information and must not use unencrypted email to transmit Protected Information.
5. *Minimum Necessary Access to Protected Information.* COUNTY shall ensure that its Agents acquire, access, Use, and Disclose only the minimum necessary Protected Information needed to complete an authorized and legally permitted activity.
6. *Training and Oversight.* COUNTY shall ensure that Agents are properly trained and comply with all Applicable Safeguards and the terms of the Contract and this Attachment.

**E. Responding to Privacy Incidents, Security Incidents, and Breaches.** COUNTY will comply with this Section for all Protected Information shared under the Contract. Additional obligations for specific kinds of Protected Information shared under the Contract are addressed in subsection 2.2(F), "Reporting Privacy Incidents, Security

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<sup>3</sup> <https://mn.gov/mnit/government/policies/security/>

Incidents, and Breaches.”

1. *Mitigation of harmful effects.* Upon discovery of any actual or suspected Privacy Incident, Security Incident, and/or Breach, COUNTY will mitigate, to the extent practicable, any harmful effect of the Privacy Incident, Security Incident, and/or Breach. Mitigation may include, but is not limited to, notifying and providing credit monitoring to affected Individuals.
2. *Investigation.* Upon discovery of any actual or suspected Privacy Incident, Security Incident, and/or Breach, COUNTY will investigate to (1) determine the root cause of the incident, (2) identify Individuals affected, (3) determine the specific Protected Information impacted, and (4) comply with notification and reporting provisions of the Contract, this Attachment, and applicable law.
3. *Corrective action.* Upon identifying the root cause of any Privacy Incident, Security Incident, and/or Breach, COUNTY will take corrective action to prevent, or reduce to the extent practicable, any possibility of recurrence. Corrective action may include, but is not limited to, patching information system security vulnerabilities, sanctioning Agents, and/or revising policies and procedures.
4. *Notification to Individuals and others; costs incurred.*
  - a. **Protected Information.** COUNTY will determine whether notice to data subjects and/or any other external parties regarding any Privacy Incident or Security Incident is required by law. If such notice is required, COUNTY will fulfill the STATE’s and COUNTY’s obligations under any applicable law requiring notification, including, but not limited to, Minn. Stat. §§ 13.05, “Duties of Responsible Authority,” and 13.055, “Disclosure of Breach in Security.”
  - b. **Protected Health Information.** If a Privacy Incident or Security Incident results in a Breach of Protected Health Information, as these terms are defined in this Attachment and under HIPAA, then COUNTY will provide notice to Individual data subjects under any applicable law requiring notification, including but not limited to providing notice as outlined in 45 C.F.R. § 164.404, “Notification to Individuals.”
  - c. **Failure to notify.** If COUNTY fails to timely and appropriately notify Individual data subjects or other external parties under subparagraph (a), then COUNTY will reimburse STATE for any costs, fines, or penalties incurred as a result of COUNTY’s failure to timely provide appropriate notification.
5. *Obligation to report to STATE.* Upon discovery of a Privacy Incident, Security Incident, and/or Breach, COUNTY will report to STATE in writing as further specified in subsection 2.2(F).

- a. **Communication with authorized representative.** COUNTY will send any written reports to, and communicate and coordinate as necessary with, STATE's authorized representative or designee.
- b. **Cooperation of response.** COUNTY will cooperate with requests and instructions received from STATE regarding activities related to investigation, containment, mitigation, and eradication of conditions that led to, or resulted from, the Security Incident, Privacy Incident, and/or Breach, and all matters pertaining to reporting and notification of a Security Incident, Privacy Incident, and/or Breach.
- c. **Information to respond to inquiries about an investigation.** COUNTY will, as soon as possible, but not later than forty-eight (48) hours after a request from STATE, provide STATE with any reports or information requested by STATE related to an investigation of a Security Incident, Privacy Incident, and/or Breach.

6. *Documentation.* COUNTY will document actions taken under paragraphs 1 through 5 of this Section, and retain this documentation for a minimum of six (6) years from the date it discovered the Privacy Incident, Security Incident, and/or Breach or the time period required by Section H, whichever is longer. COUNTY shall provide such documentation to STATE upon request.

**F. Reporting Privacy Incidents, Security Incidents, and Breaches.** COUNTY will comply with the reporting obligations of this Section as they apply to the kind of Protected Information involved. COUNTY will also comply with Subsection 2.2(E), "Responding to Privacy Incidents, Security Incidents, and Breaches," above in responding to any Privacy Incident, Security Incident, and/or Breach.

1. *Protected Health Information.* COUNTY will report Privacy Incidents, Security Incidents, and/or Breaches involving Protected Health Information as follows:

- a. **Reporting Breaches to STATE.** COUNTY will report, in writing, any Breach involving Protected Health Information to STATE within five (5) calendar days of discovery, as defined in 45 C.F.R. § 164.410, "Notification by a Business Associate," subpart (a)(2), for all Breaches involving fewer than 500 Individuals, and immediately for all Breaches involving 500 or more Individuals. These reports shall include, at a minimum, the following information:
  - 1. Identity of each Individual whose unsecured Protected Health Information has been, or is reasonably believed by COUNTY, to have been accessed, acquired, Used, or Disclosed during the incident or Breach.
  - 2. Description of the compromised Protected Health Information.
  - 3. Date of the Breach.
  - 4. Date of the Breach's discovery.
  - 5. Description of the steps taken to investigate the Breach, mitigate its

impact, and prevent future Breaches.

6. Sanctions imposed on COUNTY's Agents involved in the Breach.
7. All other information that must be included in notification to the Individual under 45 C.F.R. § 164.404(c).
8. Statement that COUNTY has notified, or will notify, impacted Individuals in accordance with 45 C.F.R. § 164.404 and, upon the completion of said notifications, provide through documentation of the recipients, date, content, and manner of the notifications.

**b. Reporting Breaches to external parties.** COUNTY shall timely report all Breaches involving Protected Health Information to the impacted Individuals (as specified in 45 C.F.R. § 164.404), the U.S. Department of Health and Human Services (as specified in 45 C.F.R § 164.408, "Notification to the Secretary"), and, for Breaches involving 501 or more Individuals, to the media (as specified in 45 C.F.R. § 164.406, "Notification to the Media"). As soon as possible and no later than 10 (ten) business days prior to any report to the media required by 45 C.F.R. § 164.406, COUNTY shall draft and provide to STATE for its review and approval all Breach-related reports or statements intended for the media.

**c. Reporting Security Incidents that do not result in a Breach to STATE.** COUNTY will report, in writing, all Security Incidents that do not result in a Breach, but involve systems maintaining Protected Health Information created, received, maintained, or transmitted by COUNTY or its Agents on behalf of STATE, to STATE on a monthly basis, in accordance with 45 C.F.R § 164.314, "Organizational Requirements."

**d. Reporting other violations to STATE.** COUNTY will report, in writing, any other Privacy Incident and/or violation of an Individual's privacy rights as it pertains to Protected Health Information to STATE within five (5) calendar days of discovery as defined in 45 C.F.R. § 164.410(a)(2). This includes, but is not limited to, any violation of Subpart E of 45 C.F.R. Part 164.

**4. Other Protected Information.** COUNTY will report all other Privacy Incidents, Security Incidents, and/or Breaches to STATE.

**a. Initial report.** COUNTY will report all other Privacy Incidents, Security Incidents, and/or Breaches to STATE, in writing, within five (5) calendar days of discovery. If COUNTY is unable to complete its investigation of, and response to, a Privacy Incident, Security Incident, and/or Breach within five (5) calendar days of discovery, then COUNTY will provide STATE with all information under subsections 2.2(E)(1)–(4), of this Attachment that are available to COUNTY at the time of the initial report, and provide updated reports as additional information becomes available.

**b. Final report.** COUNTY will, upon completion of its investigation of and response to a Privacy Incident, Security Incident, and/or Breach, or upon



STATE's request in accordance with subsection 2.2(E)(5) submit in writing a report to STATE documenting all actions taken under subsections 2.2(E)(1)–(4), of this Attachment.

**G. Designated Record Set—Protected Health Information.** If, on behalf of STATE, COUNTY maintains a complete or partial designated record set, as defined in 45 C.F.R. § 164.501, "Definitions," upon request by STATE, COUNTY shall, in a time and manner that complies with HIPAA or as otherwise directed by STATE:

1. Provide the means for an Individual to access, inspect, or receive copies of the Individual's Protected Health Information.
2. Provide the means for an Individual to make an amendment to the Individual's Protected Health Information.

**H. Access to Books and Records, Security Audits, and Remediation.** COUNTY shall conduct and submit to audits and necessary remediation as required by this Section to ensure compliance with all Applicable Safeguards and the terms of the Contract and this Attachment.

1. COUNTY represents that it has audited and will continue to regularly audit the security of the systems and processes used to provide services under the Contract and this Attachment, including, as applicable, all data centers and cloud computing or hosting services under contract with COUNTY. COUNTY will conduct such audits in a manner sufficient to ensure compliance with the security standards referenced in this Attachment.
2. This security audit required above will be documented in a written audit report which will, to the extent permitted by applicable law, be deemed confidential security information and not public data under the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, "General Nonpublic Data," subd. 1(a) and 2(a).
3. COUNTY agrees to make its internal practices, books, audits, and records related to its obligations under the Contract and this Attachment available to STATE or a STATE designee upon STATE's request for purposes of conducting a financial or security audit, investigation, or assessment, or to determine COUNTY's or STATE's compliance with Applicable Safeguards, the terms of this Attachment and accounting standards. For purposes of this provision, other authorized government officials includes, but is not limited to, the Secretary of the United States Department of Health and Human Services.
4. COUNTY will make and document best efforts to remediate any control deficiencies identified during the course of its own audit(s), or upon request by STATE or other authorized government official(s), in a commercially reasonable

timeframe.

- I. **Documentation Required.** Any documentation required by this Attachment, or by applicable laws, standards, or policies, of activities including the fulfillment of requirements by COUNTY, or of other matters pertinent to the execution of the Contract, must be securely maintained and retained by COUNTY for a period of six years from the date of expiration or termination of the Contract, or longer if required by applicable law, after which the documentation must be disposed of consistent with subsection 2.6 of this Attachment.

COUNTY shall document Disclosures of Protected Health Information made by COUNTY that are subject to the accounting of disclosure requirement described in 45 C.R.F. 164.528, "Accounting of Disclosures of Protected Health Information," and shall provide to STATE such documentation in a time and manner designated by STATE at the time of the request.

- J. **Requests for Disclosure of Protected Information.** If COUNTY or one of its Agents receives a request to Disclose Protected Information, COUNTY shall inform STATE of the request and coordinate the appropriate response with STATE. If COUNTY Discloses Protected Information after coordination of a response with STATE, it shall document the authority used to authorize the Disclosure, the information Disclosed, the name of the receiving party, and the date of Disclosure. All such documentation shall be maintained for the term of the Contract or six years after the date of the Disclosure, whichever is later, and shall be produced upon demand by STATE.

- K. **Conflicting Provisions.** COUNTY shall comply with all applicable provisions of HIPAA and with the Contract and this Attachment. To extent that the parties determine, following consultation, that the terms of this Attachment are less stringent than the Applicable Safeguards, COUNTY must comply with the Applicable Safeguards. In the event of any conflict in the requirements of the Applicable Safeguards, COUNTY must comply with the most stringent Applicable Safeguard.

- L. **Data Availability.** COUNTY, or any entity with legal control of any Protected Information provided by STATE, shall make any and all Protected Information under the Contract and this Attachment available to STATE upon request within a reasonable time as is necessary for STATE to comply with applicable law.

## 2.3 Data Security.

- A. **STATE Information Management System Access.** If STATE grants COUNTY access to Protected Information maintained in a STATE information management system (including a STATE "legacy" system) or in any other STATE application, computer, or

storage device of any kind, then COUNTY agrees to comply with any additional system- or application-specific requirements as directed by STATE.

- B. Electronic Transmission.** The parties agree to encrypt electronically transmitted Protected Information in a manner that complies with NIST Special Publications 800-52, "Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations"; 800-77, "Guide to IPsec VPNs"; 800-113, "Guide to SSL VPNs," or other methods validated under Federal Information Processing Standards (FIPS) 140-2, "Security Requirements for Cryptographic Modules." As part of its compliance with the NIST publications, and the State of Minnesota's "Enterprise Information Security Policies and Standards," DATA SHARING PARTNER must use encryption to store, transport, or transmit any Protected Information. DATA SHARING PARTNER must not use unencrypted email to send any Protected Information to anyone, including STATE.
- C. Portable Media and Devices.** The parties agree to encrypt Protected Information written to or stored on portable electronic media or computing devices in a manner that complies with NIST SP 800-111, "Guide to Storage Encryption Technologies for End User Devices."

## **2.4 COUNTY Permitted Uses and Responsibilities.**

- A. Management and Administration.** Except as otherwise limited in the Contract or this Attachment, COUNTY may:
1. Use Protected Health Information for the proper management and administration of COUNTY or to carry out the legal responsibilities of COUNTY.
  2. **Disclose Protected Health Information for the proper management and administration of COUNTY**, provided that:
    - a. The Disclosure is required by law; or
    - b. The Disclosure is required to perform the services provided to or on behalf of STATE or the Disclosure is otherwise authorized by STATE, and COUNTY:
      - i. Obtains reasonable assurances from the entity to whom the Protected Health Information will be Disclosed that the Protected Health Information will remain confidential and Used or further Disclosed only as required by law or for the purposes for which it was Disclosed to the entity; and

- ii. Requires the entity to whom Protected Health Information is Disclosed to notify COUNTY of any instances of which it is aware in which the confidentiality of Protected Health Information has been Breached or otherwise compromised.

- B. Notice of Privacy Practices.** If COUNTY's duties and responsibilities require it, on behalf of STATE, to obtain individually identifiable health information from Individual(s), then COUNTY shall, before obtaining the information, confer with STATE to ensure that any required Notice of Privacy Practices includes the appropriate terms and provisions.
- C. De-identify Protected Health Information.** COUNTY may use Protected Health Information to create de-identified Protected Health Information provided that COUNTY complies with the de-identification methods specified in 45 C.F.R. § 164.514, "Other Requirements Relating to Uses and Disclosures of Protected Health Information." De-identified Protected Health Information remains the sole property of STATE and can only be Used or Disclosed by COUNTY on behalf of STATE and pursuant to the Contract or by prior written approval of STATE.
- D. Aggregate Protected Health Information.** COUNTY may use Protected Health Information to perform data aggregation services for STATE, and any such aggregated data remains the sole property of STATE. The COUNTY must have the written approval of STATE prior to using Protected Health Information to perform data analysis or aggregation for parties other than STATE.

## **2.5 STATE Data Responsibilities**

- A. STATE shall Disclose Protected Information to COUNTY only as authorized by law to COUNTY.
- B. STATE shall obtain any consents or authorizations that may be necessary for it to Disclose Protected Information with COUNTY.
- C. STATE shall notify COUNTY of any limitations that apply to STATE's Use and Disclosure of Protected Information—including any restrictions on certain Disclosures of Protected Health Information requested under 45 C.F.R. § 164.522, "Rights to Request Privacy Protection for Protected Health Information," subpart (a), to which STATE has agreed and that would also limit the Use or Disclosure of Protected Information by COUNTY.
- D. STATE shall refrain from requesting COUNTY to Use or Disclose Protected Information in a manner that would violate applicable law or would be impermissible if the Use or Disclosure were performed by STATE.

**2.6 Obligations of COUNTY Upon Expiration or Cancellation of the Contract.** Upon expiration or termination of the Contract for any reason:

- A. In compliance with the procedures found in the Applicable Safeguards listed in subsection 2.1.A, or as otherwise required by applicable industry standards, or directed by STATE, COUNTY shall immediately destroy or sanitize (permanently de-identify without the possibility of re-identification), or return in a secure manner to STATE all Protected Information that it still maintains.
- B. COUNTY shall ensure and document that the same action is taken for all Protected Information shared by STATE that may be in the possession of its Agents. COUNTY and its Agents shall not retain copies of any Protected Information.
- C. In the event that COUNTY determines that returning or destroying the Protected Information is not feasible or would interfere with its ability to carry out its legal responsibilities, maintain appropriate safeguards, and/or comply with Subpart C of 45 C.F.R. Part 164, it shall notify STATE of the specific laws, rules, policies, or other circumstances that make return or destruction not feasible or otherwise inadvisable. Upon mutual agreement of the Parties that return or destruction of Protected Information is not feasible or otherwise inadvisable, COUNTY will continue to extend the protections of the Contract and this Attachment to the Protected Information and take all measures possible to limit further Uses and Disclosures of the Protected Information for so long as it is maintained by COUNTY or its Agents.
- D. COUNTY shall document and verify in a written report to STATE the disposition of Protected Information. The report shall include at a minimum the following information:
  - 1. A description of all Protected Information that has been sanitized or destroyed, whether performed internally or by a service provider;
  - 2. The method by which, and the date when, the Protected Data were destroyed, sanitized, or securely returned to STATE; and
  - 3. The identity of organization name (if different than COUNTY), and name, address, and phone number, and signature of Individual, that performed the activities required by this Section.
- E. Documentation required by this Section shall be made available upon demand by STATE.
- F. Any costs incurred by COUNTY in fulfilling its obligations under this Section will be the sole responsibility of COUNTY.

**3. INSURANCE REQUIREMENTS**

- 3.1 Network Security and Privacy Liability Insurance.** COUNTY shall, at all times during the term of the Contract, keep in force a network security and privacy liability insurance policy. The coverage may be endorsed on another form of liability coverage or written on a standalone policy.

COUNTY shall maintain insurance to cover claims which may arise from failure of COUNTY's security or privacy practices resulting in, but not limited to, computer attacks, unauthorized access, Disclosure of not public data including but not limited to confidential or private information or Protected Health Information, transmission of a computer virus, or denial of service. COUNTY is required to carry the following **minimum** limits:

\$2,000,000 per occurrence

\$2,000,000 annual aggregate

**4. INTERPRETATION**

- 4.1 Any ambiguity in this Agreement shall be interpreted to permit compliance with all Applicable Safeguards.

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