

INTERGOVERNMENTAL RELATIONS COMMITTEE

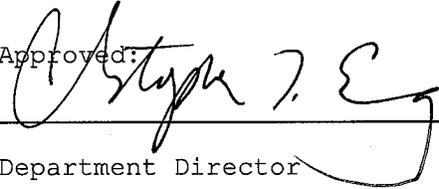
14-0105R

RESOLUTION AUTHORIZING THE PROPER CITY OFFICIALS TO ENTER INTO AN AGREEMENT WITH AND ACCEPT FUNDS FROM ST. LOUIS COUNTY TO PROVIDE MINNESOTA FAMILY INVESTMENT PROGRAM AND DIVERSIONARY WORK PROGRAM EMPLOYMENT AND TRAINING SERVICES IN AN AMOUNT NOT LESS THAN \$856,315 AND UP TO \$102,503 AS A PERFORMANCE BASED ALLOCATION FOR THE PERIOD JANUARY 1, 2014 THROUGH DECEMBER 31, 2014.

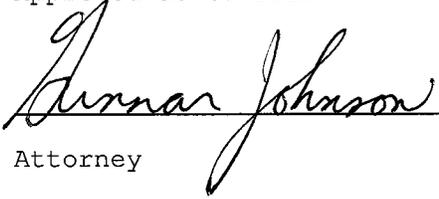
CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute and implement a contract, in substantially the form and containing substantially the terms of that contract on file in the office of the city clerk as Public Document No. _____, with, and accept funds from, St. Louis County to provide Minnesota family investment program and diversionary work program employment and training services in an amount not less than \$856,315 and up to \$102,503 as a performance based allocation for the period January 1, 2014 through December 31, 2014. Monies received under this agreement will be deposited in and paid from Fund 268 (workforce development), Agency 031 (grants division), Organization 6235 (MFIP) and 6236 (DWP).

DA
Approved:

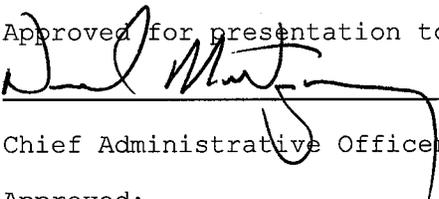

Department Director

Approved as to form:


Attorney

DWD DRH:met 02/24/2014

Approved for presentation to council:


Chief Administrative Officer

Approved:


Auditor

STATEMENT OF PURPOSE: This resolution is to authorize proper city officials to enter into an agreement and accept funds from St. Louis County in order to

provide employment and training services to participants in the Minnesota Family Investment Program (MFIP) and Diversionary Work Program (DWP) in an amount not less than \$856,315 as shown in the budget which comprises Exhibit B of the agreement, for the period January 1, 2014 through December 31, 2014. Monies received under this agreement will be deposited in and paid from Fund 268 (Workforce Development), Agency 031 (Grants Division), Organization 6235 (MFIP) and 6236 (DWP). No city matching funds are required. The contract amount represents a decrease from the contract amount of \$895,456 for calendar year 2013. The contract also adds a performance based allocation which must be earned. The total amount available for this purpose is \$102,503. The actual amount earned depends on the number of providers whose outcomes entitles them to a share of the performance based allocation, as described in section I.B.1. of the Agreement.

GRANT AGREEMENT

THIS AGREEMENT, by and between **ST. LOUIS COUNTY BOARD OF COMMISSIONERS**, 320 West Second Street, Duluth, Minnesota 55802 (hereinafter referred to as "County"), and the **CITY OF DULUTH**, 332 City Hall, 402 West First Street, Duluth Minnesota 55802 (hereinafter referred to as "Provider"), for the period January 1, 2014 through December 31, 2014.

WITNESSETH:

WHEREAS, Funds have been made available to County from the Minnesota Department of Human Services for the purpose of providing **STATEWIDE MINNESOTA FAMILY INVESTMENT PROGRAM (MFIP) EMPLOYMENT SERVICES (BRASS 237)** under Minnesota Statute 256J.50 and PL 104-193 and **DIVERSIONARY WORK PROGRAM SERVICES (DWP)** under Minnesota Statute 256J.95; and

WHEREAS, County has allocated funds for social service grants to provider agencies during the year of 2014; and

WHEREAS, Provider has applied for such social service grants to be used for the purpose of rendering certain specified services; and

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

WHEREAS, Provider's application has been accepted under the conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises, covenants, and agreements contained herein, the parties do mutually agree as follows:

I. ACCEPTANCE OF GRANT

A. County agrees to pay and Provider agrees to accept a Grant during the period January 1, 2014 through December 31, 2014, subject to the conditions set forth in this Agreement. The contract maximum for all Providers taken together under this Grant, of whom this Provider is one, is \$2,885,094.00 or actual allowable expenditures, whichever is less. Expenditures incurred by this Provider in rendering Grant Services shall be \$856,315.00 in accordance with Provider's line item budgets, attached hereto and incorporated herein by reference as Exhibit B. County, in its sole discretion, may increase or decrease these budget allocations during the course of the Grant period. However, total expenses shall not exceed \$2,885,094.00, for all Providers taken together.

B. Performance-based allocation:

1. Minnesota Statutes, section 256J.626, subdivision 4, requires counties and nations/tribes to have a Biennial Service Agreement (BSA) approved by the Minnesota Department of Human Services (DHS) to receive consolidated funds for for the Minnesota Family Investment Program (MFIP). As a part of the BSA, St. Louis County was required to submit a Performance Improvement Plan (PIP) because it did not meet the Expected Work Participation Rate (WPR), incorporated incorporated herein as Exhibit G. The PIP allocation for the WPR for CY 2014 is \$102,503.00, of which \$33,181.00 is set aside for the City of Duluth. In order to receive this allocation, The Employment and Training Providers will need to meet

the expected WPR as individual providers. The time period that will be reviewed for the Agency rate will be from January 1, 2014 through September 30, 2014 and be based on the MN Department of Employment and Economic Development (DEED) WPR published in those months. The allocation will be distributed in the 4th quarter. If an agency does not meet the WPR its portion of the Performance-based allocation will be divided among the agencies that do meet the WPR. See exhibit H, entitled "MFIP Annualized Self-Support Index and Work Participation Rate for 2013, For Determination of 2014 Performance-Based Funds", incorporated herein. County, in its sole discretion, may increase or decrease these budget allocations during the course of the Grant period.

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

II. SERVICES TO BE PROVIDED

- A. Provider agrees to furnish during the period January 1, 2014 through December 31, 2014, specified services (hereinafter referred to as "Grant Services" and more particularly described in Exhibit A attached hereto and incorporated herein by reference) to the identified target populations described in Exhibit C, "Eligibility for MFIP-DWP Grant Services", and other approved services as outlined in the "Employment Services Manual".
- B. Grant Services shall be provided by:

**City of Duluth , Workforce Development Division
402 West First Street
Duluth, Minnesota 55802**
- C. Grant Services shall be performed by staff that is professionally qualified in accordance with Provider's job descriptions and listings of professional qualifications.
- D. Provider shall keep current and on file, client records which identify individual progress on the "Client-Focused Outcomes" as identified in Exhibit E, and client costs attributable to client service utilization, as outlined in the program overview, Exhibit A, "Minnesota Family Investment Program (MFIP), and Diversionary Work Program (DWP) Grant Services to be Provided."
- E. The general sequence of events in MFIP-DWP Employment Services is the following:
 - 1. The St. Louis County Public Health and Human Services Department (PHHS) determines eligibility for MFIP.

2. PHHS provides the job seeker with an orientation which includes MFIP program requirements.
3. The client is referred to an Employment Overview and selects Provider.
4. The job seeker has an Assessment and Employability Determination completed.
5. Provider/client complete an Employment Plan with a six (6) week job search.
6. Provider/client engage in an ongoing assessment with file documentation.
7. Provider case manages with regular reviews and three (3) month updates on the Employment Plan.

III. MAXIS ACCESS

Exhibit I, entitled "Maxis Access", has been added to the agreement in order to facilitate the Department of Human Services (DHS) opening MAXIS inquiry access for a limited number of Diversionary Work Program (DWP) and Minnesota Family Investment Program (MFIP) employment services (ES) providers. County contracts with community agencies providing ES services must include language that makes the agency part of the welfare system; addresses data privacy and HIPAA requirements; ensures computers have updated security; and covers training requirements.

IV. PAYMENT PROCEDURES

- A. Payment for Grant Services provided shall be according to procedures outlined in Exhibit D, attached hereto and incorporated herein by reference, including:
 1. Fiscal Expenditure Report
 2. Program Report
 3. Billing
 4. Method of Payment
- B. County's obligation to reimburse Provider for costs incurred in providing Grant Services is made subject to audit by County or its designee. Said audit shall be the final determination of reimbursable costs.
- C. Provider shall promptly reimburse to County any payments received in excess of required payments hereunder.
- D. County shall not be obligated to reimburse, nor shall Provider claim, for any services furnished or costs incurred by Provider which are not specifically provided for hereunder nor requested by County in writing during the term of this Agreement.
- E. Provider acknowledges and agrees that the Minnesota Department of Human Services (DHS) shall be the third party beneficiary and, as such, is an affected party under this contract and, as such, may recoup payments made by County to Provider in the event of breach of this contract if County does not recoup the payments.
- F. County and Provider agree that total Employment Services expenditures under this Agreement may not exceed the entire grant of \$856,315.00. Notwithstanding the foregoing, foregoing, in the event that other Employment and Training Providers for the same services do not expend their allocation under their respective Agreements with County, upon written notification to Provider, County may, in its sole discretion, increase Provider's Provider's allocation to an amount not to exceed \$2,885,094.00, when combined with the the allocations of the other Providers, which is the total allocation in State and Federal funds made by County for this purpose. County and Provider agree that maximum

expenditure under this Agreement may not exceed such increased allocation as provided for above, upon written notification by County to Provider.

V. AUDIT AND RECORD DISCLOSURES

- A. Provider shall keep complete books and records according to generally accepted accounting principles which shall fully document receipt and expenditures of the Grant amount. Provider agrees that within 180 days of the close of its fiscal year an audit shall be conducted which complies with the requirements of the Single Audit Act of 1984, P.L. 98-502 and Office of Management and Budget (OMB) Circular No. A-133, Audits of States, Local Governments, and Non-Profit Organizations. Within thirty (30) days following its completion of said audit, a copy of the audit report must be forwarded to County. Provider shall also keep such books and records as are required by County to fulfill County's reporting responsibilities to the State of Minnesota and the United States Government.
- B. Provider shall retain books and records as required by Paragraph 4-a, above, for a period of six (6) years from the final date of the term of this Agreement. Provider shall make said books and records available for inspection or audit by County, or County's duly authorized designee, at reasonable hours. Said books and records shall be maintained at the City of Duluth, 402 West First Street, Duluth, Minnesota 55802.
- C. Provider shall allow personnel of County, the Minnesota Department of Human Services (DHS), and the U.S. Department of Health and Human Services access to Provider's records, at reasonable hours, in order to exercise their right to audit Provider's records, monitor their services, and copy pertinent program and fiscal records.
- D. The books, records, documents and accounting procedures and practices of Provider which are relevant to this Agreement are subject to examination by County and the Minnesota State Auditor for a minimum of six (6) years from the final date of the term of this Agreement.

VI. INSPECTION AND EVALUATION

- A. County, or its duly authorized designee, may, at any time, evaluate the performance of Provider in regard to the terms of this Agreement to determine whether such performance merits continuation of this Agreement.
- B. County, or its duly authorized designee, may conduct periodic site visits to determine compliance with this Agreement and to evaluate the quality of services provided by Provider pursuant to this Agreement.
- C. County reserves the right to survey service recipients and other interested persons to determine the level of satisfaction with the Grant Services provided pursuant to this Agreement. Provider agrees to cooperate with County in the conduct of any such survey or evaluation.

VII. BONDING, INDEMNITY AND INSURANCE CLAUSE

- A. **Bonding:** The Provider shall obtain and maintain at all times during the terms of this Agreement, a fidelity bond in the amount of \$ 0.00 covering the activities of each person authorized to receive or distribute monies under the terms of this Agreement.

B. Indemnity: The Provider does hereby agree that it will defend, indemnify, and hold harmless the Department and the County against any and all liability, loss, damages, costs, and expenses which the Department or County may hereafter sustain, incur, or be required to pay:

1. By reason of any applicant or eligible recipient suffering bodily or personal injury, death, or property loss or damage either while participating in or receiving the care and services to be furnished under this Agreement, or while on premises owned, leased, or operated by the Provider, or while being transported to or from said premises in any vehicle owned, operated, leased, chartered, or otherwise contracted for by the Provider or any officer, agent, or employee thereof; or
2. By reason of any applicant or eligible recipient causing injury to, or damage to, the property of another person during any time when the Provider or any officer, agent, or employee thereof has undertaken or is furnishing the care and services called for under this Agreement; or
3. By reason of any negligent act or omission or intentional act of the Provider, its agents, officers, or employees which causes bodily injury, death, personal injury, property loss, or damage to another during the performance of purchased services under this Agreement.

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

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

1. General Liability Insurance

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

\$1,500,000 for any number of claims arising out of a single occurrence.

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

2. Business Automobile Liability Insurance

- a. \$500,000 for claims for wrongful death and each claimant
\$1,500,000 each occurrence
No less than \$2,000,000 aggregate
- b. Must cover owned, non-owned and hired vehicles.

3. Workers' Compensation

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

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

VIII. INFORMATION PRIVACY AND SECURITY CLAUSE

A. **Information Covered by this Provision:** In carrying out its duties, Provider shall be handling one or more types of private information, collectively referred to as "protected information," concerning individual County clients. "Protected information," for purposes of this Agreement, includes any or all of the following:

- 1. Private data (as defined in Minn. Stat. '13.02, subd. 12), confidential data (as defined in Minn. Stat. §13.02, subd. 3), welfare data (as governed by Minn. Stat. §13.46), medical data (as governed by Minn. Stat. §13.384), and other non-public data governed elsewhere in the Minnesota Government Data Practices Act (MGDPA), Minn. Stats. Chapter 13;
- 2. Health records (as governed by the Minnesota Health Records Act [Minn. Stat. §144.291-144.298]);
- 3. Chemical health records (as governed by 42 U.S.C. §290dd-2 and 42 CFR §2.1 to §2.67);
- 4. Protected health information ("PHI") (as defined in and governed by the Health Insurance Portability Accountability Act ["HIPAA"], 45 CFR §164.501); and
- 5. Other data subject to applicable State and Federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information

B. **Duties Relating to Protection of Information:**

- 1. **Duty to Ensure Proper Handling of Information:** Provider shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of County. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 7-A (1-5).

2. **HIPAA Compliance:** The parties agree to comply in all respects with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), its implementing regulations (45 C.F.R. Parts 160-64), and all rules, regulations, and controls affected or promulgated pursuant thereto, to ensure the integrity and confidentiality of Protected Health Information. The parties agree that as HIPAA and its rules and interpretations become effective, the parties shall execute amendments hereto, provide written assurances, implement policies and procedures, or take whatever other actions are necessary to comply with HIPAA. Should a party fail or refuse to honor its obligations pursuant to this section, the other party may terminate the Agreement with thirty (30) days written notice.
3. **Minimum Necessary Access to Information:** Provider shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure by Provider shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the Federal government." See, respectively, 45 CFR §164.502(b) and 164.514(d), and Minn. Stat. §13.05 subd. 3.
4. **Information Requests:** Unless provided for otherwise in this Agreement, if Provider receives a request to release the information referred to in this Clause, Provider must immediately notify County. County shall give Provider instructions concerning the release of the data to the requesting party before the data is released.
5. **Questionnaire for Access to SMI/SIR:** In the event that Provider receives a request for access to the Shared Master Index (SMI) or the DHS Systems Information Repository (SIR), Provider may utilize a questionnaire similar to this Agreement's Exhibit F.

C. Provider's Use of Information:

Provider shall:

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

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

D. County's Duties:

County shall:

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

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

Upon completion, expiration, or termination of Agreement, Provider shall return or destroy all protected information received from County or created or received by Provider for purposes associated with this Agreement. Provider shall retain no copies of such protected information, provided that if both parties agree that such return or destruction is not feasible, or if Provider is required by the applicable regulation, rule or statutory retention schedule to retain beyond the life of this Agreement, Provider shall extend the protection of the Information Privacy and Security Clause of this Agreement

to the protected information not returned or destroyed, and refrain from further use of disclosure of such information for as long as Provider retains the protected information.

F. Sanctions:

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

G. Additional Business Associate Duties:

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

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

IX. EQUAL EMPLOYMENT OPPORTUNITY AND CIVIL RIGHTS CLAUSE

- A. Provider shall comply with the Civil Rights Act of 1964, Executive Order No. 11246, the Minnesota Human Rights Act, and all applicable Federal and State laws, rules, regulations and orders prohibiting discrimination in employment, facilities and services. Provider shall not discriminate in employment, facilities, or in the rendering of Grant Services hereunder on the basis of race, color, religion, age, sex, disability, marital status, public assistance status, creed or national origin.

- B. Provider shall comply with Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 794), all requirements imposed by applicable Federal regulations (45 CFR Part 84), and all guidelines and interpretations issued pursuant thereto.

X. INDEPENDENT CONTRACTOR

Provider is an independent contractor and not an employee or agent of County. No statement contained in this Agreement shall be construed so as to find Provider to be an employee or agent of County. Provider, its officers, employees and agents shall be entitled to none of the rights, privileges or benefits of County employees. Nothing contained herein is intended nor shall be construed as in any manner creating or establishing a relationship of co-partners between the parties or as constituting Provider, its officers, employees or agents, as the agent, representative or employee of County for any purpose or in any manner, whatsoever.

XI. SUBCONTRACTING AND ASSIGNMENT

- A. Provider shall not subcontract for the performance of any of Provider's obligations under this Agreement without the prior written consent of County, nor shall this Agreement be assigned without the prior written consent of County. Any subcontract or assignment shall be subject to the legal, fiscal and programmatic requirements of this Agreement. Provider shall continue to be responsible for the performance of the obligations of this Agreement despite any subcontract or assignment.
- B. Provider shall provide all services required hereunder by and through its own employees. Provider shall not provide any services hereunder by means of subcontracts with individuals or entities not regularly employed by Provider without the prior written consent of County.

XII. CANCELLATION, DEFAULT AND REMEDY

- A. This Agreement shall continue in effect until terminated by either party, with thirty (30) days advance, written notice delivered to the other party, served on the Supervisor of Contract Services, Public Health and Human Services Department, Government Services Center, 320 West Second Street, Room 410, Duluth, Minnesota 55802 on behalf of County and on the on the Manager, City of Duluth Workforce Development Division, 332 City Hall, 402 West First Street, Duluth, Minnesota 55802 on behalf of Provider.
- B. In the event of default by Provider, County may cancel this Agreement immediately by sending written notice of cancellation to Provider at its principal business address, notwithstanding the provisions of Paragraph XI-A, above. The failure of Provider, including the failure of any employee of Provider, to abide by any of the terms, conditions, or requirements expressed in this Agreement shall constitute a default if not corrected within thirty (30) days of receipt of written notice of deficiency from County.
- C. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of County upon resolution of County.
- D. It is understood and agreed that in the event that funding resources to County are reduced, reduced, the obligations of each party hereunder may be modified or terminated.

- E. This contract may be extended for a period of three (3) months, at the option of County. If County desires to extend the term of the contract, it shall notify Provider in writing at least twenty (20) days before the expiration of the contract. All terms of this contract shall remain in effect pending execution of a contract amendment, execution of a new contract or notice of termination as provided under section XI-A.

XIII. SINGLE INSTRUMENT, MODIFICATION, LEGALITY

- A. It is understood and concurred that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements, negotiations, or understandings between the parties relating to the subject matter hereof. It is the intent of the parties that the provisions herein will apply to any county relying upon same as a lead county contract for purposes of Minnesota Statute 256.0112, subd. 6.
- B. Any alterations, variations, modifications or waivers of provisions of this Agreement shall be valid only when reduced to writing, duly signed, executed by authorized representatives of the parties, and attached to the original of this Agreement.
- C. The provisions of this Agreement are severable. If a Court of Law holds any paragraph, section, subdivision, sentence, clause or phrase of this Agreement to be contrary to law, or contrary to any rule or regulation having the force and effect of law, such ruling shall not affect the remaining portions of this Agreement. However, upon the occurrence of such event, the parties shall immediately meet to negotiate a revised Agreement that does not violate the above-referenced ruling. In signing this Agreement, Provider does not waive rights under State or Federal Law.

XIV. FAIR HEARING, APPEAL

Provider shall maintain a fair hearing grievance procedure which shall insure prompt response to client concerns and shall include right of appeal by the client to County. The decision of County in any grievance appeal or the decision of the Commissioner of the Minnesota Department of Human Services (DHS) in the event that County's decision is appealed, shall be binding on Provider.

XV. MAINTENANCE OF EFFORT AND EXPANSION OF SERVICES

Provider certifies that the amount to be expended in this Agreement results in increased expenditures by Provider for services of the type being purchased to individuals of the type included under the Agreement.

XVI. CONDITIONS OF THE PARTIES' OBLIGATIONS

- A. In the event of a revision in Federal regulations which might make this Agreement ineligible for Federal financial participation, all parties shall review this Agreement and renegotiate those items necessary to bring the Agreement into compliance with the new Federal regulations.
- B. Provider agrees to cooperate fully with County and its designated representatives in the development and implementation of Provider's services. Evaluative data collected shall be used by County in its funding decisions and shall be shared with Provider and the community

XVII. PUBLIC INFORMATION

Provider agrees to identify County as a funding source in any reports, news releases, public service announcements, or publications regarding Provider programs funded by County.

XVIII. COMPLIANCE WITH INJURY PROTECTION PROGRAM (IPP) REQUIREMENTS

The contracted agency agrees to comply with Minnesota Statutes 2003, 256J.68 injury protection for work experience participants. The contracted agency shall perform all tasks necessary to implement IPP activities that relate to work site injury and subsequent referral of an injured participant to a medical provider for treatment of a possible work related injury or condition. The contracted agency shall also conduct activities necessary to properly process and submit an IPP claim. All IPP claims, medical provider bills, required forms and supporting documentation shall be forwarded to the County agency. Prior to assigning a participant to an unpaid work experience work site, the contracted agency shall ensure that: the program participant shall receive appropriate safety training and information required for this position and; the work site is in compliance with Occupational Safety and Health Administration (OSHA) and the Minnesota Department of Labor and Industry Safety Standards.

XIX. LIMITED ENGLISH PROFICIENCY CONTRACT LANGUAGE CLAUSE

Section 601 of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, provides that no person shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Section 602 authorizes and directs federal agencies that are empowered to extend federal financial assistance to any program or activity "to effectuate the provisions of section 601 by issuing rules, regulations, or orders of general applicability." Accordingly, Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency ("LEP") was issued. 65 FR 50121 (August 16, 2000). Under the order, every federal agency that provides financial assistance to non-federal entities must publish guidance on how their recipients can provide meaningful access to LEP persons and thus comply with Title VI regulations forbidding funding recipients from restricting an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives or the program as respects individuals of a particular race, color, or national origin. Based on the above obligations, all vendors and contractors with service agreements with St. Louis County Public Health & Human Services (St. Louis County) must develop methods of delivering services to persons with LEP as well as train staff who work directly with persons with LEP.

XX. WAIVER

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

XXI. FINAL AGREEMENT

This Agreement is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings, or agreements. There are no representations, warranties, or stipulations either oral or written not herein contained.

IN WITNESS WHEREOF, County and Provider agree to be bound by the provisions of this Agreement, said Agreement being effective from January 1, 2014 through December 31, 2014.

PROVIDER

COUNTY OF ST. LOUIS

Don Ness, Mayor
Date: _____

Ann M. Busche,
Public Health & Human Services Director
Date: _____

Jeffrey Cox, City Clerk
Date: _____

Approved as to form and execution:

Wayne Parson, City Auditor
Date: _____

Patricia I. Shaffer , Assistant County Attorney
Date: _____

Don Hoag,
Workforce Development , Division Manager
Date: _____

Approved as to form:

Gunnar Johnson , City Attorney
Date: _____

Federal Tax ID #41-6005105

Exhibit A

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

A. STATEWIDE MFIP EMPLOYMENT SERVICES:

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

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_016957#

Services provided to assist MFIP participants to become employed or self-sufficient. These mandatory and supportive services include service coordination and case management functions, consultation and advocacy services, and activities associated with obtaining a job such as on-the-job training, work experience, educational activities, functional work literacy, and transportation assistance.

- Orientation
- Employability Services Overview
- Initial Assessment
- Job Support Plan
- Secondary Assessment
- Employment Plan
- Job Readiness
- Job Placement
- On-the-Job Training
- Coordination/Referral
- Grant Diversion Services
- Community Work Experience Program (including procedures for implementing the
- Injury Protection Program (IPP)
- Functional Work Literacy Training

MFIP families must be participating in authorized activities which include: orientation, assessments, job search, job support, employment, employment and training, or social services approved in an employment or job search plan, or attendance at an appeal hearing.

The overall objective of MFIP Employment Services is to move MFIP families toward long-term economic self-sufficiency by utilizing the most direct path to unsubsidized employment.

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

The general sequence of events in MFIP Employment Services follows:

- St. Louis County Public Health and Human Services Department (PHHS) determines eligibility for MFIP
- PHHS provides the job seeker with an orientation which includes MFIP program requirements
- The client is referred to an employment overview and selects a provider
- The job seeker has initial assessment, which includes the Employability Measure Tool, and initial employability determination completed

Exhibit A

- The client/provider complete a job support plan with eight- (8) week job search
- A secondary assessment is completed if the above plan is not successful
- An employment plan with steps to achieve the goal is negotiated

Orientation: This shall state the need for immediate employment; work incentives; mandate to participate; consequences for failure to comply; rights, responsibilities, obligations; services available.

Employment Overview: Career Counselors shall focus on providing specific information of Employment Services and the Supportive Services available to help the participant transition to work. This shall also be an opportunity to repeat the very important message that “work pays”. Career Counselors shall convey the work focus of MFIP, the urgency and opportunity of obtaining employment, requirements for training, the expectation, rewards and supports of work, the range of allowable work activities, rights, responsibilities and obligations of participants, consequences for failure to meet requirements, family violence referral information, availability of childcare and health care programs.

Assessment: This procedure is a review and documentation of participants’ ability to obtain and retain employment, prior education and employment, and ability to communicate using the English language. The participant’s strengths, barriers and strategies for coping with issues that may interfere with finding employment and the provision of refresher courses as needed shall also be reviewed. This is completed for those job seekers who have barriers to employment that shall not be overcome by the allowable job search time and related support activities. For those that are unable to secure suitable employment in the allowable job search time, State authorized assessment tools such as the MFIP Self Screen and Brief Screening Tool for Special Learning Needs along with other assessments shall be administered by trained staff to assist in the identification of chemical and mental health issues, learning problems and various other issues. Participants shall be told the purpose of screening and how the information shall be used to identify and overcome barriers to employment. Utilizing the appropriate intervention level, those participants identified as needing a professional assessment shall be referred to a qualified professional.

Employment Plan: This plan, developed under the guidance of a Career Counselor, includes the employment goal, activities and steps necessary to reach the employment goal, time frame necessary to achieve the goal, hours of participation and time line for each activity, expectations and measures used to determine satisfactory progress, meetings with the job counselor, documentation and verification requirements, and support services available. Activities may include continued job search, ESL, GED, work experience, On-the-Job Training (OJT), and short-term training. Whenever job search is included in an Employment Plan, participants shall be required to participate in a structured job search seminar developed by the City of Duluth Workforce Development Division, an important and central job search activity. It is a continuum of organized, intensive and supervised activities that help identify work skills, develop soft skills, build confidence and provide peer support.

Job Readiness: These are activities that help prepare job seekers for work by assuring that they are familiar with general workplace expectations and exhibit work behavior/attitudes to compete in the labor market. Part of the Job Readiness activity shall include stand-alone workshops in addition to participation in the City of Duluth Workforce Development Division’s structured job search seminar that encompasses the many facets of the job search process.

Job Placement: Job development and placement activities to solicit unsubsidized job openings from public or private employers shall be provided as available and needed. Job seekers shall

Exhibit A

be assisted in discovering job openings, marketing themselves, and in securing job interviews for job seekers when needed.

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

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

Training/Education: This activity includes funding training programs with a proven benefit to clients with little or obsolete skills. In order to receive funding for training, clients are required to do a fair amount of research on their desired occupation before approval is granted. All clients requesting training funds complete a standard "Request for Training" form which requires the following information: (1) the job they are seeking and if training is necessary to obtain this job; (2) a list of training options including where training is available; (3) the result and length of training; (4) average class sizes and program cost; (5) start and end date of preferred training option; (6) the reasons for selecting the school; (7) documentation on wages before and after training; (8) where full-time jobs are available; (9) projected job growth; and (10) skills required to perform the job. Clients then sign the form attesting their work goals can only be met with the training, they can meet the entrance requirements of the program, they are likely to finish the training based on assessments, previous education, work history and motivation, and when they finish training they intend to enter full-time employment in the field of training. This procedure ensures that the client is fully aware of the labor market information and opportunities surrounding a particular program and also that the proposed training meets the needs of the client. Short-term training is preferred, but with adequate documentation, programs up to 24 months can be considered. Clients shall be notified of the requirement to work a minimum of 20 hours while attending school. Employment must be secured before the start of the training program.

Adult Basic Education/Remedial Training: For clients testing at a reading and/or math proficiency below the eighth grade level, referrals to instructing entities shall be made as appropriate: basic education instruction shall provide these skills for the first time, and remedial education shall involve repetition of such instruction previously given to the client.

Exhibit A

Volunteer/Community Services: Clients shall be strongly encouraged to participate in volunteer and community service as a means to gather work skills and experience. Volunteer service is initiated by the client themselves and shall improve a participant's employability and assist them to move into regular employment.

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

Self- Employment Investment Demonstration (SEID): The activity involves referral to local entrepreneurial agencies for those clients who express a clear interest in starting their own business. This activity may include technical advice and training in small business development and assistance in securing seed capital for start-up costs. Activities designated as part of an approved SEID initiative shall be included on the Employment Plan.

Coordination: Career Counselors shall coordinate with, and refer job seekers to, other community agencies or groups for training, social and support services.

These services shall be provided in a manner that complies with the Employment and Training Program Sections of the current Local Service Unit Plan for St. Louis County and State Policy as specified in relevant DHS/DEED Instructional Bulletins.

B. THE DIVERSIONARY WORK PROGRAM (DWP):

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

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_016957#

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

The ES provider and job seekers must complete an initial employment plan within this ten (10) days.

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

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

The ES provider should complete employment plans that are based on a job seeker's strengths.

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

Exhibit A

When appropriate, a job seeker's employment plan should address non-work issues such as securing housing or child care, plus any health or disability issues, which would delay or prevent the job seekers from being fully engaged in work activities.

The ES provider monitors job seeker participation and progress and apply sanctions (which result in disqualification from DWP when appropriate.)

MFIP and DWP Families who are working or in job search and have received MFIP assistance in at least three (3) of the last six (6) months prior to their case closing, may be eligible for **Transition Year Benefits**. Funding comes from State and Federal sources.

C. **FAMILY STABILIZATION SERVICES (FSS):**

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

http://www.dhs.state.mn.us/main/idcplg?IdcService=GET_DYNAMIC_CONVERSION&RevisionSelectionMethod=LatestReleased&dDocName=id_016957#

Case management of FSS shall be the responsibility of ES providers and the regional Integrated Integrated Services Project (ISP) shall serve as the primary referral source. Job counselors shall shall conduct assessments on each intake, as is already done with all MFIP clients, and shall maintain monthly contact with FSS clients from then on. Ongoing communication between financial financial workers, job counselors, and ISP advocates shall be required. The employment plan developed by the job counselor for FSS clients shall include assessment of strengths and barriers, barriers, identification of specific family circumstances that impact the plan, employment goals, when appropriate, appropriateness of referral to the ISP project, and identification of services, supports, education, training, and accommodations, as appropriate; the plan shall be reviewed by by job counselors every six (6) months to determine the need for additions, deletions, or revisions. revisions.

Exhibit B

**CUMULATIVE BUDGET BY MONTH
Minnesota Family Investment Program
(including Family Stabilization Services),
Diversionary Work Program**

Organization: City of Duluth Workforce Development Division
 Contract Period: January 1, 2014 – December 31, 2014
 Consolidated Fund Budget Total: \$856,315 (MFIP & Diversionary Work Program)
 PIP Allocation Direct Bonus (No Admin) \$33, 181.00

Diversionary Work Program:

	Jan 14	Feb 14	Mar 14	Apr 14	May 14	Jun 14
Program	7,675	15,350	23,025	30,700	38,375	46,050
Admin	970	1,940	2,910	3,880	4,850	5,820
Total	8,645	17,290	25,935	34,580	43,225	51,870

	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14
Program	53,725	61,400	69,075	76,750	84,425	91,120
Admin	6,790	7,760	8,730	9,700	10,670	11,640
Total	60,515	69,160	77,805	86,450	95,095	102,760

MFIP:

	Jan 14	Feb 14	Mar 14	Apr 14	May 14	Jun 14
Program	55,680	111,360	167,040	222,720	278,400	334,000
Admin	7,110	14,220	21,330	28,440	35,550	42,660
Total	62,790	125,580	188,370	251,160	313,950	376,740

	Jul 14	Aug 14	Sep 14	Oct 14	Nov 14	Dec 14
Program	389,760	445,440	501,120	556,800	612,480	668,195
Admin	49,770	56,880	63,990	71,100	78,210	85,360
Total	439,530	502,320	565,110	627,900	690,690	753,555

Exhibit C

ELIGIBILITY FOR MFIP-DWP GRANT SERVICES

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

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

Exhibit D

REPORTING REQUIREMENTS / PAYMENT PROCEDURES

I. Fiscal Expenditure Report

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

II. Program Report

- A. Provider shall maintain monthly statistical reports.
- B. Provider agrees to cooperate with County in implementation of quantitative and qualitative evaluation of Grant Services.

III. Billing

- A. The signed voucher with attached expenditure report shall serve as Provider's billing.
- B. All Grant funds must be expended and billed by December 15, 2014.

IV. Method of Payment

Payments shall be made monthly after the contract is fully executed.

Exhibit E

CLIENT-FOCUSED OUTCOMES

The ultimate goal for all MFIP clients is attaining employment leading to self-sufficiency. This shall be accomplished through the activities and services outlined in Exhibit A.

Client focused outcomes leading to this ultimate goal of self-sufficiency include:

- Awareness of the labor market and opportunities it holds
- An advanced level of skill in job search activities
- A higher self-awareness and confidence from fully understanding the steps to self-sufficiency
- Knowledge of the supports available to maintain self-sufficiency

Exhibit F
Questionnaire for Access to SMI and SIR

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

Exhibit G
MFIP Performance Improvement Plan 2014

Performance Measure Bonuses			
St. Louis County		Janet Eichholz	
		218-471-7525 eichholzj@stlouiscountymn.gov	
Self-Support Index		Work Participation Rate	
Met measure	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Met Measure	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Bonus amount	\$102,5003	Bonus amount	\$102,5003

A. SELF-SUPPORT INDEX (S-SI)

Answer if your County/Nation/Tribe was below the expected range.

What was your biggest challenge in reaching the S-SI, that is, in getting people employed at least 30 hours per week while on MFIP/DWP or leaving cash assistance with earnings or Supplemental Security Income (SSI)? What new strategies or modifications of existing approaches are you planning to try? In what ways can DHS provide support, guidance or resources to help you reach your Range of Expected Performance (please describe in detail)?

Challenge(s)	NA
Approaches(current and proposed)	NA
DHS support, guidance or resources	NA

B. TANF WORK PARTICIPATION RATE(WPR)

Answer if your County/Nation/Tribe did not meet the WPR target. **NOTE: You are not required to respond to this section if your county/nation/tribe would have reached the WPR target if you had not been negatively impacted by the 30% cap on education.**

What was your biggest challenge in reaching the WPR? What new strategies or modifications of existing approaches are you planning to try? In what ways can DHS provide support, guidance or resources to help you reach the WPR (please describe in detail)?

Challenge(s)	Challenges include: <ul style="list-style-type: none"> ▪ Keeping on task with entering qualifying activities in WF1 ▪ Tying participant needs with activities ▪ Lack of supported work funding ▪ Lack of transportation resources ▪ Broad-based cultural challenges for American Indians and African Americans
---------------------	---

Exhibit G

<p>Approaches(current and proposed)</p>	<p>Approaches include:</p> <ul style="list-style-type: none"> ▪ E&T agencies setting and monitoring staff expectations ▪ Continued joint efforts between SLC and Providers, including progress reports and feedback. ▪ Targeted E&T services for self-identified American Indians and African Americans ▪ Employment mentoring in SLC ▪ Use of “New Leaf” program for offenders ▪ Early Learning Scholarships ▪ Focus on participants obtaining GED or learning goals ▪
<p>DHS support, guidance or resources</p>	<p>It has been a hardship on participants and an increased barrier to providers not to have funding resources for Supported Work. Supported Work gave many participants the opportunity for skill building, job connections and increased employability. Also, with SLC having such a large geographical area, reliable and available transportation is always an employment issue.</p> <p>In the past few years we have seen the availability of DHS staff to give area specific guidance and help. Our “who do we call” resource has nearly evaporated. The employment landscape has changed dramatically in the last few years and will continue to do so. It would be beneficial for a strong partnership with DHS to be in place to meet these challenges.</p>



Minnesota Department of **Human Services**

**Minnesota Family Investment Program
Annualized Self-support Index and
Work Participation Rate for 2013
(For Determination of 2014 Performance-Based Funds)**

Published July 2013

Minnesota Department of Human Services

Transition Support Quality Services Division, 651-431-3936 and

Transition to Economic Stability Division, 651-431-4000

444 Lafayette Road North

St. Paul, MN 55155

Minnesota Department of Human Services MFIP Reports

Exhibit H

About This Information

The information reported here is used to award performance-based funds for the 2014 calendar year. For more information on the performance-based funds, see the following section of the Minnesota Statutes: <http://www.revisor.leg.state.mn.us/stats/256J/626.html>.

The Annualized Three-year Self-support Index for Counties and Tribes for the period of April 2012 through March 2013

This measure tracks whether eligible adults are working an average of 30 or more hours per week or no longer receiving MFIP or DWP cash assistance during the quarter three years from a baseline quarter. Adults who left MFIP after reaching 60 counted months and those who left due to 100 percent sanction are only counted as a success if they worked an average of 30 hours per week in their last month of eligibility or began receiving Supplemental Security Income after MFIP or DWP cash assistance ended. For further information on this measure, see Evaluation Note #15, *Updated Information on the MFIP Self-support Index* available at: <http://edocs.dhs.state.mn.us/lfservlet/Legacy/DHS-4064O-ENG>.

The annualized three-year Self-support Index is the weighted average of the quarterly values published in the MFIP Management Indicators Report in Indicator 6a from April 2012 to March 2013. The first column of data in the report displays the average quarterly number of adults in the county or tribe. Also included is the weighted average of quarterly values of the Range of Expected Performance for each county and tribe which determines if the county or tribe performed above, below, or within the expected range. The ranges are determined for each county and tribe using a statistical technique to account for characteristics of their caseload and the economic conditions in their local area. For further information see Evaluation Note #19, *Leveling the Playing Field: A Regression Model for Comparing the Effectiveness of TANF Employment Services Across Minnesota Counties and Tribal Programs* available at: <http://edocs.dhs.state.mn.us/lfservlet/Legacy/DHS-4064U-ENG>.

The final column on the spreadsheet details whether a county or tribe performed above, within, or below the range of expected performance for that county or tribe. Counties and tribes that performed below their range of expected performance will not receive an additional 2.5% of their MFIP Consolidated Fund allocation until a Performance Improvement Plan (PIP) is completed and approved by the department. Counties and tribes that performed within or above their range of expected performance earned an additional 2.5% of their MFIP Consolidated Fund allocation.

The Annualized TANF Work Participation Rate (WPR) of Counties and Tribes for the period of April 2012 through March 2013

This measure identifies the percentage of federal TANF cases that were fully engaged in employment or employment-related activities from April 2012 through March 2013, per federal work activity requirements. More information on the WPR and its history can be found in Evaluation Note #18, *The TANF Work Participation Rate* available at: <http://edocs.dhs.state.mn.us/lfservlet/Legacy/DHS-4064T-ENG>.

In determining the TANF WPR target for counties, the department uses the definition in Minnesota Statutes section 256J.626, subdivision 7. The federal TANF WPR target is 50% reduced by the Caseload Reduction Credit (CRC). Federal law allows states to reduce their WPR target by the CRC which is a measure of how much the state's TANF and separate state program caseload has fallen relative to Federal Fiscal Year (FFY) 2005. As a result of the CRC for the previous year, there is a 1% reduction making this year's county WPR target 49%. The first column in this report displays the average monthly number of adults in the county or tribe.

Counties that achieved a 49.0% or higher TANF Work Participation Rate for the 2012-2013 year or had a five percentage point increase from the 2011-2012 year earned an additional 2.5% of their Consolidated Fund allocation. Counties that did not meet either of these thresholds will not receive the additional 2.5% of their Consolidated Fund allocation until a Performance Improvement Plan (PIP) is completed and approved by the department. The last column on the spreadsheet identifies those counties or tribes that qualify for performance-based funds and those counties or tribes that must complete a PIP and have it approved by the department before they qualify for the performance-based funds.

Exhibit H

Annualized Three Year Self-support Index and Range of Expected Performance for Determination of 2014 Performance-based Funds (Annualized April 2012 through March 2013)

County	Average Quarterly Number of Adults	Actual Three Year Self-support Index	Range of Expected Performance		Above, Within, or Below, Expected Performance
			Lower Limit	Upper Limit	
Aitkin	111	0.758	0.713	0.814	Within
Anoka	2,290	0.709	0.703	0.738	Within
Becker	257	0.753	0.712	0.781	Within
Beltrami	505	0.688	0.614	0.672	Above
Benton	255	0.748	0.666	0.76	Within
Big Stone	24	0.646	0.714	0.847	Below
Blue Earth	364	0.708	0.695	0.764	Within
Brown	108	0.852	0.795	0.862	Within
Carlton	153	0.794	0.742	0.828	Within
Carver	185	0.828	0.713	0.777	Above
Cass	189	0.768	0.650	0.739	Above
Chippewa	61	0.790	0.718	0.805	Within
Chisago	195	0.840	0.751	0.802	Above
Clay	402	0.756	0.686	0.744	Above
Clearwater	61	0.717	0.655	0.78	Within
Cook	21	0.793	0.733	0.867	Within
Cottonwood	78	0.814	0.752	0.83	Within
Crow Wing	421	0.780	0.708	0.787	Within
Dakota	1,764	0.693	0.691	0.719	Within
Dodge	83	0.761	0.736	0.839	Within
Douglas	165	0.782	0.766	0.821	Within
Faribault-Martin	196	0.764	0.756	0.803	Within
Fillmore	92	0.777	0.760	0.846	Within
Freeborn	253	0.751	0.754	0.814	Below
Goodhue	220	0.767	0.736	0.794	Within
Grant	41	0.833	0.761	0.868	Within
Hennepin	10,350	0.604	0.603	0.632	Within
Houston	118	0.772	0.749	0.836	Within
Hubbard	113	0.757	0.694	0.78	Within
Isanti	237	0.803	0.701	0.776	Above
Itasca	352	0.705	0.740	0.788	Below
Jackson	45	0.866	0.755	0.831	Above
Kanabec	146	0.802	0.752	0.825	Within
Kandiyohi	344	0.784	0.712	0.79	Within
Kittson	9	0.917	0.686	0.86	Above
Koochiching	72	0.761	0.673	0.812	Within
Lac Qui Parle	25	0.786	0.752	0.869	Within
Lake	49	0.831	0.758	0.838	Within
Lake of the Woods	18	0.767	0.673	0.863	Within
Le Sueur	135	0.781	0.771	0.828	Within
McLeod	176	0.851	0.810	0.857	Within
Mahnomen	63	0.560	0.512	0.63	Within
Marshall	26	0.838	0.723	0.861	Within
Meeker	106	0.847	0.786	0.843	Above
Mille Lacs	154	0.748	0.703	0.795	Within
Morrison	181	0.782	0.755	0.809	Within
Mower	283	0.748	0.723	0.784	Within
Nicollet	245	0.722	0.695	0.764	Within

Exhibit H

Annualized Three Year Self-support Index and Range of Expected Performance for Determination of 2014 Performance-based Funds (Annualized April 2012 through March 2013)

County	Average Quarterly Number of Adults	Actual Three Year Self-support Index	Range of Expected Performance		Above, Within, or Below, Expected Performance
			Lower Limit	Upper Limit	
Nobles	171	0.817	0.781	0.839	Within
Norman	55	0.810	0.752	0.839	Within
Olmsted	979	0.757	0.748	0.796	Within
Otter Tail	289	0.823	0.755	0.809	Above
Pennington	79	0.854	0.727	0.802	Above
Pine	305	0.787	0.758	0.812	Within
Pipestone	66	0.864	0.728	0.816	Above
Polk	275	0.708	0.672	0.732	Within
Pope	35	0.705	0.669	0.805	Within
Ramsey	7,908	0.588	0.568	0.596	Within
Red Lake	33	0.777	0.648	0.807	Within
Redwood	88	0.800	0.726	0.805	Within
Renville	92	0.796	0.737	0.843	Within
Rice	348	0.769	0.751	0.818	Within
Roseau	36	0.848	0.733	0.822	Above
St Louis	1,514	0.673	0.647	0.695	Within
Scott	424	0.807	0.714	0.765	Above
Sherburne	348	0.786	0.711	0.77	Above
Sibley	60	0.829	0.746	0.83	Within
Stearns	872	0.747	0.713	0.776	Within
Steele	203	0.716	0.708	0.78	Within
Stevens	24	0.872	0.652	0.805	Above
SWHHS*	200	0.814	0.743	0.813	Above
Swift	45	0.812	0.719	0.831	Within
Todd	114	0.815	0.707	0.792	Above
Traverse	21	0.762	0.632	0.822	Within
Wabasha	71	0.715	0.689	0.773	Within
Wadena	135	0.719	0.687	0.772	Within
Waseca	97	0.769	0.744	0.817	Within
Washington	797	0.738	0.699	0.74	Within
Watonwan	58	0.748	0.713	0.83	Within
Wilkin	26	0.750	0.772	0.871	Below
Winona	186	0.730	0.712	0.776	Within
Wright	342	0.791	0.737	0.779	Above
Yellow Medicine	35	0.738	0.699	0.836	Within
Leech Lake Band	293	0.517	0.541	0.616	Below
Minnesota Chippewa	211	0.550	0.531	0.605	Within
Red Lake Band	856	0.551	0.557	0.624	Below
White Earth Band	263	0.576	0.535	0.606	Within

* Southwest Health and Human Services (SWHHS) is the new name for Lincoln, Lyon, Murray, and Rock counties

Exhibit H

TANF Work Participation Rate for Determination of 2014 Performance-based Funds
(Annualized April 2012 through March 2013)

County	Average Monthly Number of Adults	Last Year's Annual Rate April 2011 - March 2012	Annual Rate April 2012 - March 2013	Eligible for 2014 Performance-Based Funds
Aitkin	25	55.8%	39.1%	No
Anoka	538	49.6%	49.5%	Yes
Becker	54	51.9%	46.6%	No
Beltrami	203	33.0%	30.0%	No
Benton	72	52.4%	53.6%	Yes
Big Stone	4	31.0%	36.0%	Yes
Blue Earth	80	49.3%	52.2%	Yes
Brown	25	66.3%	62.9%	Yes
Carlton	39	44.3%	48.0%	No
Carver	36	52.8%	53.3%	Yes
Cass	44	49.8%	53.5%	Yes
Chippewa	19	42.8%	43.7%	No
Chisago	37	55.3%	54.2%	Yes
Clay	92	45.1%	41.8%	No
Clearwater	15	35.8%	57.9%	Yes
Cook	4	49.3%	22.1%	No
Cottonwood	26	49.6%	44.3%	No
Crow Wing	85	36.2%	42.9%	Yes
Dakota	460	53.8%	58.5%	Yes
Dodge	17	48.4%	44.0%	No
Douglas	37	66.1%	64.9%	Yes
Faribault-Martin	34	69.3%	54.6%	Yes
Fillmore	26	58.1%	49.5%	Yes
Freeborn	61	41.1%	41.7%	No
Goodhue	54	55.9%	53.9%	Yes
Grant	13	60.0%	67.7%	Yes
Hennepin	3,016	38.3%	37.4%	No
Houston	20	44.3%	36.9%	No
Hubbard	16	54.7%	40.2%	No
Isanti	51	62.9%	57.6%	Yes
Itasca	53	41.8%	36.7%	No
Jackson	11	62.2%	72.1%	Yes
Kanabec	19	50.6%	51.6%	Yes
Kandiyohi	90	53.8%	48.1%	No
Kittson	2	50.0%	54.9%	Yes
Koochiching	18	40.1%	33.1%	No
Lac Qui Parle	4	35.6%	71.3%	Yes
Lake	5	43.3%	39.6%	No
Lake of the Woods	4	71.3%	70.3%	Yes
Le Sueur	32	55.8%	52.4%	Yes
McLeod	34	43.5%	53.0%	Yes
Mahnomen	22	57.5%	50.9%	Yes
Marshall	6	44.0%	55.4%	Yes
Meeker	12	57.4%	51.3%	Yes
Mille Lacs	34	49.8%	50.2%	Yes

Exhibit H

TANF Work Participation Rate for Determination of 2014 Performance-based Funds
(Annualized April 2012 through March 2013)

County	Average Monthly Number of Adults	Last Year's Annual Rate April 2011 - March 2012	Annual Rate April 2012 - March 2013	Eligible for 2014 Performance-Based Funds
Morrison	35	35.9%	50.8%	Yes
Mower	84	48.2%	39.3%	No
Nicollet	82	41.9%	40.8%	No
Nobles	40	64.0%	62.0%	Yes
Norman	11	43.8%	29.0%	No
Olmsted	269	45.6%	48.0%	No
Otter Tail	62	52.3%	52.5%	Yes
Pennington	20	47.0%	48.5%	No
Pine	54	53.2%	56.7%	Yes
Pipestone	13	48.0%	47.2%	No
Polk	60	35.1%	46.0%	Yes
Pope	9	59.4%	71.7%	Yes
Ramsey	2,037	46.5%	46.1%	No
Red Lake	5	59.2%	38.9%	No
Redwood	14	46.4%	44.6%	No
Renville	13	34.1%	47.6%	Yes
Rice	79	32.1%	34.0%	No
Roseau	11	66.1%	62.2%	Yes
St Louis	351	36.8%	38.4%	No
Scott	96	57.1%	65.4%	Yes
Sherburne	61	38.7%	49.9%	Yes
Sibley	11	62.0%	57.7%	Yes
Stearns	214	43.7%	45.5%	No
Steele	62	41.9%	42.1%	No
Stevens	4	72.2%	40.8%	No
SWHHS*	64	51.4%	56.8%	Yes
Swift	16	56.4%	49.4%	Yes
Todd	23	38.3%	46.8%	Yes
Traverse	3	50.3%	63.9%	Yes
Wabasha	12	41.9%	45.1%	No
Wadena	25	53.6%	48.5%	No
Waseca	23	47.1%	56.2%	Yes
Washington	172	51.9%	51.5%	Yes
Watsonwan	19	38.9%	63.4%	Yes
Wilkin	7	45.8%	75.4%	Yes
Winona	54	32.9%	43.8%	Yes
Wright	90	35.1%	45.8%	Yes
Yellow Medicine	6	43.2%	66.6%	Yes
Leech Lake	68	18.5%	15.6%	No
MCT	318	15.3%	20.2%	No
Red Lake	254	13.1%	12.6%	No
White Earth	44	18.4%	13.5%	No

* Southwest Health and Human Services (SWHHS) is the new name for Lincoln, Lyon, Murray, and Rock counties.

Exhibit I

MAXIS ACCESS

I. Scope of Services

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

II. Information Privacy and Security.

A. Information Covered by this Provision:

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

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

Exhibit I

5. Electronic Health Records (as governed by Health Information Technology for Economic and Clinical Health Act (HITECH), 42 USC 201 note, 42 USC 17921(5)); and
6. Other data subject to applicable state and federal statutes, rules, and regulations affecting the collection, storage, use, or dissemination of private or confidential information.

B. Duties Relating to Protection of Information.

1. Duty to ensure proper handling of information. Grantee shall be responsible for ensuring proper handling and safeguarding by its employees, subcontractors, and authorized agents of protected information collected, created, used, maintained, or disclosed on behalf of DHS. This responsibility includes ensuring that employees and agents comply with and are properly trained regarding, as applicable, the laws listed above in paragraph 2.a.
2. Minimum necessary access to information. Grantee shall comply with the "minimum necessary" access and disclosure rule set forth in the HIPAA and the MGDPA. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See, respectively, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
3. Information Requests. Unless provided for otherwise in this Agreement, if Grantee receives a request to release the information referred to in this Clause, Grantee must immediately notify DHS. DHS will give Grantee instructions concerning the release of the data to the requesting party before the data is released.

C. Use of Information. Grantee shall:

1. Not use or further disclose protected information created, collected, received, stored, used, maintained, or disseminated in the course or performance of this Agreement other than as permitted or required by this Agreement or as required by law, either during the period of this Agreement or hereafter.
2. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of the protected information by its employees, subcontractors and agents other than as provided for by this Agreement. This includes, but is not limited to, having implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic

Exhibit I

protected health information at rest and in transit that it creates, receives, maintains, or transmits on behalf of DHS.

3. Report to DHS any privacy or security incident regarding the information of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410. For purposes of this Agreement, "Security incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to DHS not more than 7 days after learning of such non-permitted use or disclosure. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the PHI used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as DHS may reasonably request.
4. Consistent with this Agreement, and in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any agents (including contractors and subcontractors), analysts, and others that create, receive, maintain, or transmit protected health information on behalf of the business associate, enter into a business associate agreement with any subcontractors to agree in writing to be bound by the same restrictions, conditions, and requirements that apply to it with respect to such information.
 - a. Document such disclosures of PHI and information related to such disclosures as would be required for DHS to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
 - b. Mitigate, to the extent practicable, any harmful effects known to it of a use, disclosure, or breach of security with respect to protected information by it in violation of this Agreement.
 - c. In accordance with HIPAA, upon obtaining knowledge of a breach or violation by a subcontractor, take appropriate steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the agreement.
 - d. Not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by DHS.

III. Additional Business Associate Duties.

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

- A. Make available PHI in accordance with 45 C.F.R. § 164.524.
- B. Make available PHI for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.
- C. Comply with the limited disclosure rules set forth in the HITECH Act, HIPAA, and the MGDPA. To the extent possible, disclosures should be in a limited data set, which is largely information with the patients' identifying information removed, "to the extent practicable." Pertinent identifiers include, name and social security number; street address, e-mail address, telephone and fax numbers; certificate/license numbers; vehicle identifiers and serial numbers; URLs and IP addresses; full face photos and any other comparable images; or medical record numbers, health plan beneficiary numbers, and other account numbers. If a limited data set is not feasible, or does not meet the use or disclosure, minimum necessary should be applied. The collection, creation, use, maintenance, and disclosure of protected information shall be limited to "that necessary for the administration and management of programs specifically authorized by the legislature or local governing body or mandated by the federal government." See, respectively, 45 C.F.R. §§ 164.514, 45 C.F.R. §§ 164.502(b) and 164.514(d), and Minn. Stat. § 13.05 subd. 3.
- D. Make its internal practices, books, records, policies, procedures, and documentation relating to the use, disclosure, and/or security of PHI available to DHS and/or the Secretary of the United States Department of Health and Human Services (HHS) for purposes of determining compliance with the Privacy Rule and Security Standards, subject to attorney-client and other applicable legal privileges.
- E. Comply with any and all other applicable provisions of the HIPAA Privacy Rule, Administrative, and Security Standards, including future amendments thereto. Develop written policies and procedures for safeguarding and securing PHI and complying with HIPAA and the HITECH Act, and other privacy laws. Designate a privacy official to be responsible for the development and implementation of its policies and procedures as required by 45 C.F.R. Part 164, Subpart E.
- F. To the extent Grantee is to carry out one or more of DHS' obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to DHS in the performance of such obligation(s).

IV. DHS Use of Information. DHS shall:

- A. Only release information which it is authorized by law or regulation to share with Grantee.
- B. Obtain any required consents, authorizations, or other permissions that may be necessary for it to share information with Grantee.

Exhibit I

- C. Notify Grantee of limitations, restrictions, changes, or revocation of permission by an individual to use or disclose protected information, to the extent that such limitations, restrictions, changes or revocation may affect Grantee's use or disclosure of protected information.
- D. Not request Grantee to use or disclose protected information in any manner that would not be permitted under law if done by DHS.

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

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

VI. **Sanctions.**

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