

**HENNEPIN COUNTY
IT CONSULTING SERVICES PROGRAM AGREEMENT**

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487 (“COUNTY”), and (CONTRACTOR’s name and address), (CONTRACTOR’s entity structure, e.g., a corporation organized under the laws of Minnesota) (“CONTRACTOR”).

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

This Agreement shall commence on [start date], and expire on [end date], unless terminated earlier in accordance with the provisions herein.

Execution of this Agreement does not guarantee that COUNTY will use CONTRACTOR for any minimum amount of service.

2. SERVICES TO BE PROVIDED

A. Services to be provided under this Agreement must be arranged through the following administrative process:

- (1) COUNTY may propose an engagement to CONTRACTOR and/or other vendors by communicating the terms of the proposed engagement in a “Scope of Services.”
- (2) CONTRACTOR may reply or not reply to any Scope of Services. If CONTRACTOR elects to respond, they can respond with an offer that includes: names, qualifications and/or resumes, and references of the resources to be assigned, billable hourly rates, and other information requested by COUNTY in the Scope of Services.
- (3) COUNTY may, thereupon, prepare a “Work Order,” for electronic signature by CONTRACTOR. No work shall commence until the Work Order has been signed by COUNTY.

COUNTY shall have the right to suspend or terminate any Work Order and the work provided by CONTRACTOR thereunder without prior notification and without termination of this Agreement. In such events, CONTRACTOR shall be paid for service rendered through the date of suspension or termination.

COUNTY shall have the right to request replacement of any CONTRACTOR personnel, at its sole discretion. Upon receiving COUNTY’s request to remove

and replace personnel from an engagement, CONTRACTOR shall immediately notify COUNTY when a suitable replacement would be available.

- B. CONTRACTOR represents and warrants that it will provide competent individuals with the skills, knowledge, training, certifications and licenses necessary to perform under this Agreement and every duly entered Work Order. Said individuals will perform in a diligent and professional manner, in strict compliance with all performance specifications and the Work Order, and in accordance with generally accepted industry standards.
- C. CONTRACTOR shall comply with COUNTY's rules, policy, and direction regarding use of COUNTY facilities. COUNTY may deny CONTRACTOR access to any COUNTY facility at any time and may remove any CONTRACTOR personnel from COUNTY facilities at any time and in COUNTY's sole discretion. CONTRACTOR shall not allow unauthorized personnel to use COUNTY facilities.

3. PAYMENT FOR SERVICES

CONTRACTOR shall be paid at the rate that is agreed to by the parties and set forth in the applicable Work Order. Upon meeting the payment contingencies set forth in the applicable Work Order, payment for services shall be made directly to CONTRACTOR upon the presentation of a claim as provided by law governing COUNTY's payment of claims and/or invoices. CONTRACTOR shall submit invoices no more frequently than monthly for services rendered. Payment shall be made within thirty-five (35) days from receipt of the invoice.

CONTRACTOR shall perform all services hereunder to the satisfaction of COUNTY, in accordance with the provisions herein, and in compliance with applicable law. If COUNTY determines that CONTRACTOR has not complied with the foregoing, COUNTY shall not have any obligation to pay CONTRACTOR for the non-complying services.

Except as expressly set forth in a Work Order, costs and expenses for travel, airfare, lodging, per diem, parking, mileage, ground transportation, and all other costs or expenses shall be paid by CONTRACTOR and not reimbursed by COUNTY.

Payments shall be made pursuant to the provisions herein and COUNTY's then applicable payment policies, procedures, rules and directions. COUNTY is not responsible for remedying fraudulent or unauthorized payments requested in CONTRACTOR's name.

Unless expressly approved in writing by COUNTY, CONTRACTOR shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by COUNTY. All invoices shall display a Hennepin County purchase

order number and be emailed to OBF.Internet@hennepin.us or sent to the following central invoice receiving address: PO Box 1388, Minneapolis, MN 55440.

COUNTY may withhold from any payment due to CONTRACTOR any amount which is due and owing COUNTY under this or any other agreement between the parties due to overpayment or as a result of an audit.

4. INDEPENDENT CONTRACTOR

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting CONTRACTOR as the agent, representative, or employee of COUNTY for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement. CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. CONTRACTOR's personnel and/or subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims related to or on behalf of any of CONTRACTOR's personnel, including without limitation, claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law (Minnesota Statutes Chapter 268) or the Minnesota Workers' Compensation Act (Minnesota Statutes Chapter 176) or claims of discrimination arising out of applicable law, against CONTRACTOR, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

5. NON-DISCRIMINATION

- A. In accordance with COUNTY's policies against discrimination, CONTRACTOR shall not exclude any person from full employment rights nor prohibit participation in or the benefits of any program, service or activity on the grounds of any protected status or class, including but not limited to race, color, creed, religion, national origin, sex, gender expression, gender identity, age, disability, marital status, sexual orientation, or public assistance status. No person who is protected by applicable law against discrimination shall be subjected to discrimination.
- B. COUNTY encourages CONTRACTOR to develop and implement a policy promoting diversity, equity, and inclusion in CONTRACTOR's workplace.

6. AFFIRMATIVE ACTION

- A. Exemptions. CONTRACTOR may be granted an exemption from the requirements of this Section for one of the following reasons:
- (1) Contract is for emergency or life safety-related purchases;
 - (2) CONTRACTOR has no facilities and has no more than one employee operating within the geographic boundaries of Hennepin County;
 - (3) CONTRACTOR had an average of forty (40) or fewer full-time/benefit-earning employees during the twelve (12) months preceding the submission of the bid, request for proposal or execution of this Agreement; or
 - (4) Pursuant to Hennepin County Board policy, the County Administrator or their designee granted an exemption.
- B. Requirements. In accordance with Hennepin County Board Resolution and subject to the applicable exemptions, if any, listed above, if this Agreement is for a sum over \$100,000 or is amended to exceed \$100,000, then CONTRACTOR shall abide by COUNTY's Affirmative Action requirements for COUNTY contractors. Those requirements, for purposes of this Agreement, are consistent with those imposed for state contractors pursuant to Minnesota Statutes, sections 363A.36 to .37 and Minnesota Rules, parts 5000.3200 to 5000.3600.
- C. Compliance; Remedies. Unless CONTRACTOR qualifies for an exemption (above), CONTRACTOR shall demonstrate compliance by submitting and maintaining a workforce certificate from the Minnesota Department of Human Rights (MDHR), unless COUNTY provides for alternative certification. CONTRACTOR shall remain in compliance with all applicable requirements through the term of this Agreement. CONTRACTOR shall also provide all compliance documentation requested by the MDHR or by COUNTY, and shall cooperate with all compliance activities, including but not limited to site visits. If CONTRACTOR fails to demonstrate good faith efforts to correct any identified Affirmative Action deficiencies or fails to submit requested reports or information required by COUNTY or the MDHR, or has engaged in discriminatory practices, COUNTY may consider this a violation of this Agreement and may exercise any remedies available to it in law or in equity, including, but not limited to, termination of this Agreement.

7. INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including attorney's fees, resulting directly or indirectly from any act or omission of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by

this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of CONTRACTOR personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of these provisions.

8. INSURANCE

A. With respect to the services provided pursuant to this Agreement, CONTRACTOR shall, at its sole expense, procure and maintain insurance of the types, and in the form and amounts described below from insurer(s) authorized to transact business in the state where services or operations will be performed by CONTRACTOR. Such insurance and required coverage shall be in forms acceptable to COUNTY. The insurance requirements described below shall be maintained uninterrupted for the duration of this Agreement and beyond such term when so required, and shall cover CONTRACTOR, and others for whom and/or to whom CONTRACTOR may be liable, for liabilities in connection with work performed for or on behalf of COUNTY, its agents, representatives, employees or contractors. CONTRACTOR is required to have and keep in force the following minimum insurance coverages or CONTRACTOR’s actual insurance limits for primary coverage and excess liability or umbrella policy limits, whichever is greater:

	REQUIRED INSURANCE COVERAGES	MINIMUM
(1)	<p style="text-align: center;"><u>Commercial General Liability (CGL)</u></p> <p style="text-align: right;">General Aggregate</p> <p style="text-align: right;">Products—Completed Operations Aggregate</p> <p style="text-align: right;">Personal and Advertising Injury</p> <p style="text-align: right;">Each Occurrence—Combined Bodily Injury and Property Damage</p> <p>Coverage shall be on an occurrence basis and include contractual liability coverage. Coverage shall be written on the most current ISO (Insurance Services Office, Inc.) CGL form or its equivalent.</p>	<p>\$2,000,000</p> <p>\$2,000,000</p> <p>\$1,500,000</p> <p>\$1,500,000</p>

(2)	<p style="text-align: center;"><u>Workers' Compensation and Employer's Liability</u></p> <p style="text-align: right;">Workers' Compensation Employer's Liability: Bodily injury by accident—Each Accident Employer's Liability: Bodily injury by Disease—Policy Limit Employer's Liability: Bodily injury by Disease—Each Employee</p> <p>If CONTRACTOR is based outside the state of Minnesota, coverage must comply with Minnesota law. COUNTY will accept self-insurance certificate of CONTRACTOR if CONTRACTOR is self-insured under Minnesota law. If CONTRACTOR is a sole proprietor, it is exempted from the above Workers' Compensation requirements to the extent provided by Minnesota law. In the event that CONTRACTOR should hire employees or subcontract this work, CONTRACTOR shall obtain the required insurance and submit an updated certificate.</p>	<p style="text-align: right;">Statutory \$500,000 \$500,000 \$500,000</p>
(3)	<p style="text-align: center;"><u>Professional Liability (PL/E&O)</u></p> <p style="text-align: right;">Per Claim Aggregate</p> <p>The professional liability insurance must be maintained continuously for a period of three (3) years after final acceptance of services or the expiration or termination of this Agreement, whichever is later. Coverage shall include liability arising from the errors, omissions or acts of CONTRACTOR or any entity for which CONTRACTOR is legally responsible in the providing of services under the Agreement. Throughout the term of the Agreement, the PL/E&O policy shall include full prior acts coverage.</p>	<p style="text-align: right;">\$1,000,000 \$2,000,000</p>
(4)	<p style="text-align: center;"><u>Automobile Liability</u></p> <p>If CONTRACTOR drives or operates an automobile in order to perform services under this Agreement, then CONTRACTOR shall maintain automobile liability and, if necessary, commercial umbrella insurance. Such insurance shall cover liability for bodily injury and property damage arising from the use or operation of any auto, including those owned, hired or otherwise operated or used by or on behalf of CONTRACTOR.</p>	<p style="text-align: right;">\$500,000</p>
(5)	<p style="text-align: center;"><u>Cyber Security and/or Privacy Liability</u></p> <p style="text-align: right;">Per Claim Aggregate</p> <p>Insurance shall cover claims, which may arise from failure of CONTRACTOR's security resulting in harm, including but not limited to computer attacks, unauthorized access, disclosure of not public, confidential or private data/information, transmission of a computer virus(es) and/or denial of service. The coverage may be endorsed on another form of liability coverage or written on a standalone policy.</p>	<p style="text-align: right;">\$2,000,000 \$2,000,000</p>

B. An umbrella or excess policy is an acceptable method to provide the required commercial general or automobile insurance coverage.

Coverage shall not include any exclusion or other limitations related to:

- (1) Scope of services;
- (2) Delays in project completion and cost overruns;

- (3) Persons or entities authorized to notify the carrier of a claim or potential claim; or
- (4) Mold, fungus, asbestos, pollutants or other hazardous substances.

The above establishes minimum insurance requirements. CONTRACTOR shall comply with any additional insurance requirements included in a Work Order. It is the sole responsibility of CONTRACTOR to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Upon written request, CONTRACTOR shall promptly submit copies of insurance policies to COUNTY.

CONTRACTOR shall ensure that all of CONTRACTOR's subcontractors (i) independently carry insurance appropriate to cover the subcontractors' exposures and that meet or exceed the Required Insurance Coverages set forth in the table above; (ii) are covered under the CONTRACTOR's policies; or (iii) or both. CONTRACTOR is responsible for monitoring its subcontractors' proof of insurance to ensure compliance with the foregoing obligations. Copies of certificates of insurance shall be maintained by CONTRACTOR and shall be supplied to COUNTY upon request.

CONTRACTOR shall not commence work until it has obtained required insurance and filed with COUNTY a properly executed Certificate of Insurance establishing compliance. The certificate(s) must name Hennepin County as the certificate holder, and as an additional insured for the commercial general liability and the automobile liability coverages required herein. The funding of deductibles and self-insured retentions (SIR) maintained by CONTRACTOR shall be the sole responsibility of CONTRACTOR. If the certificate form contains a certificate holder notification provision, the certificate shall state that the insurer will endeavor to mail to COUNTY thirty (30) day prior written notice in the event of cancellation/termination of any described policies; however, in the event the insurance carrier will not issue or endorse its policy(s) to comply with the notice provision in the preceding clause, CONTRACTOR shall assume such notice obligations. If CONTRACTOR receives notice of cancellation/termination from an insurer, CONTRACTOR shall email a copy of the notice to COUNTY within two (2) business days.

CONTRACTOR shall furnish to COUNTY updated certificates during the term of this Agreement as insurance policies expire. If CONTRACTOR fails to furnish proof of insurance coverages, COUNTY may withhold payments and/or pursue any other right or remedy allowed under contract, law, equity, and/or statute.

CONTRACTOR's or, as applicable, subcontractor(s)' required insurance shall be primary insurance and any insurance or self-insurance maintained by COUNTY shall be in excess of and non-contributory with CONTRACTOR's insurance. CONTRACTOR waives all rights against COUNTY, its officials, officers, agents,

volunteers, and employees for recovery of damages to the extent that damages are covered by insurance of CONTRACTOR. If necessary, CONTRACTOR agrees to endorse the required insurance policies to permit waivers of subrogation in favor of COUNTY.

If CONTRACTOR's subcontractor(s) independently carries insurance in accordance with the provisions herein, CONTRACTOR shall have a written agreement with its subcontractor(s) to pass-through all of the foregoing insurance obligations.

9. DUTY TO NOTIFY

CONTRACTOR shall promptly notify COUNTY of any demand, claim, action, cause of action or litigation brought against CONTRACTOR, its employees, officers, agents or subcontractors, which arises out of the services described in this Agreement.

CONTRACTOR shall also notify COUNTY whenever CONTRACTOR has a reasonable basis for believing that CONTRACTOR and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a demand, claim, action, cause of action, administrative action, criminal arrest, criminal charge or litigation arising out of and/or related to the services described in this Agreement.

10. DATA, SYSTEMS, AND INTELLECTUAL PROPERTY

- A. CONTRACTOR, its officers, agents, owners, partners, employees, volunteers and subcontractors shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable law, rules, regulations and orders relating to data or the privacy, confidentiality or security of data. For clarification and not limitation, COUNTY hereby notifies CONTRACTOR that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. CONTRACTOR shall promptly notify COUNTY if CONTRACTOR becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA or other data, data security, privacy or confidentiality laws, and shall also comply with the other requirements of this Section.

Classification of data, including trade secret data, will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" by CONTRACTOR does not necessarily make the data protected as such under any applicable law.

- B. In addition to the foregoing MGDPA and other applicable law obligations, CONTRACTOR shall comply with the following duties and obligations regarding County Data and County Systems (as each term is defined herein). As used herein, "County Data" means any data or information, and any copies thereof, created by CONTRACTOR or acquired by CONTRACTOR from or through COUNTY pursuant to this Agreement, including but not limited to handwriting,

typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, videos, or symbols, or combinations thereof.

If CONTRACTOR has access to or possession/control of County Data, CONTRACTOR shall safeguard and protect the County Data in accordance with generally accepted industry standards, all laws, and all then applicable COUNTY policies, procedures, rules and directions. To the extent of any inconsistency between accepted industry standards and such COUNTY policies, procedures, rules and directions, CONTRACTOR shall notify COUNTY of the inconsistency and follow COUNTY direction. CONTRACTOR shall immediately notify COUNTY of any known or suspected security breach or unauthorized access to County Data, then comply with all responsive directions provided by COUNTY. The foregoing shall not be construed as eliminating, limiting or otherwise modifying CONTRACTOR's indemnification obligations herein.

- C. COUNTY may, in its sole discretion, grant CONTRACTOR limited access to COUNTY computer/data systems, including but not limited to COUNTY computers, networks, databases, applications and/or environments, ("County Systems") exclusively for the purposes of performing services hereunder. County Systems may be owned by COUNTY or may be licensed by COUNTY from a third party. If COUNTY grants access to County Systems, CONTRACTOR and all CONTRACTOR personnel with access to County Systems: (i) shall secure and safeguard all access and authentication information related to County Systems, including but not limited to usernames, passwords, and other applicable authentication information related to County Systems access, ("Authentication Credentials"); (ii) shall not share or distribute Authentication Credentials with any individual; and (iii) shall comply with then applicable COUNTY data practices and security policies, procedures, rules and directions when accessing and using County Systems. Compliance with such requirements is supplemental to CONTRACTOR's duty to comply with applicable law and regulations and CONTRACTOR's ordinary duty of care in such situations.

For clarification and not limitation of the foregoing, CONTRACTOR's access to County Systems shall be subject to the following: (i) CONTRACTOR shall notify all personnel with access to County Systems of the obligations imposed by this Agreement; (ii) personnel performing on behalf of CONTRACTOR shall complete COUNTY approved data practices and security training as required by COUNTY; (iii) if CONTRACTOR utilizes its own systems, software or equipment in the performance of this Agreement, the same shall meet COUNTY's technical operating and security system requirements, including but not limited to installing and/or maintaining COUNTY approved firewalls, proxies, filters and other monitors and controls; (iv) CONTRACTOR shall immediately notify COUNTY of any known or suspected County System incidents or breaches, then comply with all responsive directions provided by COUNTY; and (v) if any

CONTRACTOR personnel with access to County Systems no longer requires said access and/or is no longer performing services hereunder, CONTRACTOR shall immediately notify COUNTY and ensure that said individual no longer has access to County Systems, including but not limited to deleting, eliminating and destroying all Authentication Credentials. COUNTY may terminate, deny or revoke access to County Systems at any time and without notice. Any notice required by the foregoing shall be provided to the COUNTY Contract Administrator (as identified in the CONTRACT ADMINISTRATION provisions below).

- D. CONTRACTOR confirms, transfers, assigns, and conveys to COUNTY all right, title, and interest in all intellectual property which CONTRACTOR may create, conceive, develop, or originate for COUNTY, either individually or jointly with others, and which arises out of the performance of this Agreement (“Work”), including but not limited to copyrights, patents, trade secrets, trademarks, service marks, and rights in data or other technology (“Intellectual Property Rights”). As applicable, Work shall be considered “works made for hire” as defined in the U.S. Copyright Act. To the extent any Work is not determined to be works made for hire, CONTRACTOR grants and assigns to COUNTY, without reservation, all right, title, and interest in and to said Work. As applicable and to the extent said grant and assignment does not convey all right, title, and interest to COUNTY, CONTRACTOR grants to COUNTY an unlimited, irrevocable, perpetual, royalty-free right and license to use, convey, and distribute the Work.

CONTRACTOR shall, upon request of COUNTY, execute all papers and perform all other acts necessary to assist COUNTY to establish, protect, and preserve COUNTY’s Intellectual Property Rights.

For clarification, each party shall retain ownership of intellectual property developed prior to or outside of this Agreement (“Pre-existing IP”). However, and as applicable, CONTRACTOR grants COUNTY a perpetual, irrevocable, royalty-free license to use Pre-existing IP for COUNTY’s business purposes.

CONTRACTOR warrants that, when legally required, CONTRACTOR shall obtain the written consent of both the owner and licensor to reproduce, publish, and/or use any material supplied to COUNTY including, but not limited to, software, hardware, documentation, and/or any other item. CONTRACTOR further warrants that any material or item delivered by CONTRACTOR will not violate the United States copyright law or any property right of another.

- E. Upon expiration or termination of this Agreement:
- (1) At the discretion of COUNTY and as specified in writing by the Contract Administrator, CONTRACTOR shall deliver to the Contract Administrator all County Data so specified by COUNTY.

- (2) COUNTY shall have full ownership and control of all such County Data. If COUNTY permits CONTRACTOR to retain copies of the County Data, CONTRACTOR shall not, without the prior written consent of COUNTY or unless required by law, use any of the County Data for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such County Data; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such County Data.
- (3) Except to the extent required by law or as agreed to by COUNTY, CONTRACTOR shall not retain any County Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law. In addition, CONTRACTOR shall, upon COUNTY's request, certify destruction of any County Data so specified by COUNTY.

F. CONTRACTOR agrees to comply with the provisions of the Non-Disclosure Agreement, attached as Attachment A.

11. RECORDS – AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Agreement. CONTRACTOR shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration or termination.

12. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

- A. CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations herein.
- B. CONTRACTOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by CONTRACTOR, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement.
- C. CONTRACTOR shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of

COUNTY. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with this Agreement. CONTRACTOR shall make contracts between CONTRACTOR and subcontractors available upon request. For clarification and not limitation of the provisions herein, none of the following constitutes assent by COUNTY to a contract between CONTRACTOR and a subcontractor, or a waiver or release by COUNTY of CONTRACTOR's full compliance with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between CONTRACTOR and subcontractors; (2) COUNTY's review, extent of review or lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.

- D. As required by Minnesota Statutes section 471.425, subd. 4a, CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of payment from COUNTY for undisputed services provided by the subcontractor, and CONTRACTOR shall comply with all other provisions of that statute.
- E. CONTRACTOR shall notify COUNTY in writing if another person/entity acquires, directly or indirectly, more than fifty percent (50%) of the voting power of the shares entitled to vote for directors of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. COUNTY reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

13. MERGER, MODIFICATION AND SEVERABILITY

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail. In addition, to the extent that CONTRACTOR includes any terms and conditions in its proposal which results in a Work Order that are inconsistent with the terms and conditions in this Agreement, including but not limited to terms relating to liability or indemnity, the terms and conditions in this Agreement shall govern.

CONTRACTOR and/or COUNTY are each bound by its own electronic signature(s) on this Agreement, and each agrees and accepts the electronic signature of the other party.

- B. Any alterations, variations or modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement, including but not limited to Indemnification, Insurance, Merger, Modification and Severability, Default and Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.
- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

14. DEFAULT AND TERMINATION

- A. If CONTRACTOR fails to perform any of the provisions of this Agreement, fails to administer the work so as to endanger the performance of the Agreement or otherwise breaches or fails to comply with any of the terms of this Agreement, it shall be in default. Unless CONTRACTOR's default is excused in writing by COUNTY, COUNTY may upon written notice immediately terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until CONTRACTOR's compliance. In the event of a decision to withhold payment, COUNTY shall furnish prior written notice to CONTRACTOR.
- B. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by CONTRACTOR. Upon notice to CONTRACTOR of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due COUNTY from CONTRACTOR is determined. Following notice from COUNTY of the claimed breach and damage, CONTRACTOR and COUNTY shall attempt to resolve the dispute in good faith.
- C. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- D. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.

- E. This Agreement may be terminated with or without cause by COUNTY upon thirty (30) days' written notice.
- F. If this Agreement or any Work Order expires or is terminated, with or without cause, by either party, at any time, CONTRACTOR shall not be entitled to any payment, fees or other monies except for payments duly invoiced for then-delivered and accepted deliverables/milestones pursuant to the applicable Work Order. In the event CONTRACTOR has performed work toward a deliverable that COUNTY has not accepted at the time of expiration or termination, CONTRACTOR shall not be entitled to any payment for said work, including but not limited to incurred costs of performance, termination expenses, profit on the work performed, other costs founded on termination for convenience theories or any other payments, fees, costs or expenses not expressly set forth in this Agreement.
- G. Upon written notice, COUNTY may immediately suspend or terminate this Agreement in the event any of the following occur: (i) COUNTY does not obtain anticipated funding from an outside source for this project; (ii) funding for this project from an outside source is withdrawn, frozen, shut down, is otherwise made unavailable or COUNTY loses the outside funding for any other reason; or (iii) COUNTY determines, in its sole discretion, that funding is, or has become, insufficient. COUNTY is not obligated to pay for any services that are provided or costs or expenses or obligations incurred or encumbered after the notice and effective date of the suspension or termination. In the event COUNTY suspends or terminates this Agreement pursuant to this paragraph, COUNTY shall pay any amount due and payable prior to the notice of suspension or termination except that COUNTY shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for services not then performed, costs, expenses or profits on work done.
- H. CONTRACTOR has an affirmative obligation, upon written notice by COUNTY that this Agreement may be suspended or terminated, to follow reasonable directions by COUNTY, or absent directions by COUNTY, to exercise a fiduciary obligation to COUNTY, before incurring or making further costs, expenses, obligations or encumbrances arising out of or related to this Agreement.

15. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term or termination of this Agreement do survive such term or termination. Such provisions include but are not limited to: INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA, SYSTEMS, AND INTELLECTUAL PROPERTY; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND TERMINATION; MEDIA OUTREACH; and MINNESOTA LAW GOVERNS.

16. CONTRACT ADMINISTRATION

In order to coordinate the services of CONTRACTOR with the activities of the (Name of County Department/Division) so as to accomplish the purposes of this Agreement, (Name and Title of Contract Manager), or successor (“Contract Administrator”), shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and CONTRACTOR. The parties acknowledge and agree that a different individual may be identified as the primary contact with respect to a specific Work Order. However, the Contract Administrator remains the only point of contact for matters related to the Agreement, including but not limited to notice.

Phone:

Email:

[THE FOLLOWING IS OPTIONAL:]

[NAME AND PHONE NUMBER (EMAIL IS HELPFUL IF AVAILABLE)] shall manage the agreement on behalf of CONTRACTOR. CONTRACTOR may replace such person but shall immediately give written notice to COUNTY of the name, phone number and email (if available) of such substitute person and of any other subsequent substitute person.]

17. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

- A. CONTRACTOR shall comply with all applicable law, conditions of any funding sources, regulations, rules and ordinances currently in force or later enacted.
- B. CONTRACTOR certifies that it is not prohibited from doing business with either the federal government or the state of Minnesota as a result of debarment or suspension proceedings. CONTRACTOR shall immediately notify COUNTY if CONTRACTOR is debarred or suspended during the term of this Agreement.
- C. If the source or partial source of funds for payment of services under this Agreement is from federal or state monies or from a federal, state or other grant source, CONTRACTOR is bound by and shall comply with applicable law, rules, regulations, applicable documentation, other COUNTY directives relating to the source and utilization of such funds, and, as applicable, the Federal Award Contract Provisions Addendum.

18. RECYCLING

COUNTY encourages CONTRACTOR to have a single-sort recycling program or provide recycling service for at least three types of materials, which may include food waste. COUNTY also encourages CONTRACTOR to educate employees about the recycling program.

19. NOTICES

Unless the parties otherwise agree in writing, any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing and shall be sent registered or certified mail. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to CONTRACTOR shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in CONTRACTOR's Form W-9 provided to COUNTY.

20. CONFLICT OF INTEREST

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict or potential conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether CONTRACTOR will or will not resign from the other engagement or representation. A conflict or potential conflict may, in COUNTY's discretion, be cause for termination of this Agreement.

21. MEDIA OUTREACH

CONTRACTOR shall notify COUNTY, prior to publication, release, or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY, by and through its Public Relations Officer or their designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities, and/or other forms of outreach created by, or on behalf of, CONTRACTOR (i) that reference or otherwise use the term "Hennepin County" or any derivative thereof in relation to this Agreement or the services performed hereunder; or (ii) that directly or indirectly relate to, reference, or concern the County of Hennepin, this Agreement, the services performed hereunder, or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

22. MINNESOTA LAWS GOVERN

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota.

23. COOPERATIVE PURCHASING

At the time of this Agreement Hennepin County is a signature party to: (1) a Joint Powers Purchasing Agreement with the counties of Anoka, Carver, Dakota, Olmsted, Ramsey, Scott and Washington (“Metro Cooperative Members”); and (2) a Joint Powers Purchasing Agreement with other signatory organizations located within Hennepin County (“Hennepin Cooperative Members”).

If agreed upon pursuant to a separate agreement between CONTRACTOR and any Hennepin or Metro Cooperative Member, the applicable Joint Powers Purchasing Agreement allows such Cooperative Member, subject to the terms of such Joint Powers Purchasing Agreement, to purchase the same or substantially similar services based upon terms that are the same or substantially similar to those set forth in this Agreement, including but not limited to price/cost. COUNTY shall have no obligation, liability or responsibility for any order or purchase made under the contract between a Hennepin or Metro Cooperative Member and CONTRACTOR.

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AGREEMENT

<signature page>

ATTACHMENT A: Non-Disclosure Agreement

This Attachment A – Non-Disclosure Agreement is attached to the Hennepin County IT Consulting Services Program Agreement, Contract No. _____ (the “Agreement”). The provisions herein are incorporated into and made a part of the Agreement and are, thereby, subject to the provisions in the Agreement. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed in the Agreement.

References to CONTRACTOR herein shall include CONTRACTOR’s personnel, including but not limited to CONTRACTOR’s employees, directors, officers, subcontractors, partners, volunteers and all other agents and representatives that may have access to County Data (as defined in the Agreement) or that may participate in or perform services related to the Project (said individuals may, collectively or individually, be referred to as “Personnel”).

The parties agree as follows:

1. CONTRACTOR shall access, use, control, protect and safeguard all County Data in compliance with the terms of the Agreement, generally accepted industry standards, all laws, and all then applicable COUNTY policies, procedures, rules and directions. To the extent of any inconsistency between any of the foregoing, CONTRACTOR shall notify COUNTY of the inconsistency and follow COUNTY direction.
2. CONTRACTOR shall control, protect and safeguard all County Data from unauthorized access. CONTRACTOR shall immediately notify COUNTY of any known or suspected security breach or unauthorized access to County Data, then comply with all responsive directions provided by COUNTY. The foregoing shall not be construed as eliminating, limiting or otherwise modifying CONTRACTOR’s indemnification obligations herein.
3. CONTRACTOR shall only access/use County Data as directed by COUNTY and as reasonable and necessary for performance under the Agreement.
4. Except as required by law or as directed in writing by COUNTY, CONTRACTOR: (i) shall not disclose, sell, market, distribute or otherwise make any County Data available to any third-party other than duly authorized Personnel as set forth herein; (ii) shall not obtain, access, view, use, copy, duplicate or replicate the County Data for any use or purpose other than performance under the Agreement; and (iii) shall not sell, exploit, or further develop the County Data.
5. CONTRACTOR shall restrict access to County Data to only those Personnel that need such access for the purpose of performance under the Agreement. CONTRACTOR shall maintain a list of individuals to whom County Data access is provided and shall make said lists available upon request.
6. Prior to receiving or acquiring any County Data, CONTRACTOR shall advise any Personnel that may have access to County Data of the obligations imposed by this Attachment. CONTRACTOR shall not permit any individual to access County Data unless and until the individual has executed an agreement sufficient: (i) to ensure compliance with the obligations

herein; (ii) to protect and safeguard the County Data; and (iii) to ensure protection of COUNTY's rights under this Attachment. CONTRACTOR shall make said agreements available upon request.

7. CONTRACTOR shall immediately notify COUNTY in the event CONTRACTOR receives a request or demand for data, including but not limited to a request/demand made under the MGDPA, subpoenas, Court Orders or other legal processes. CONTRACTOR shall cooperate with COUNTY, at COUNTY's request, in any lawful effort by COUNTY to contest the validity or scope of such request, demand, subpoena, Court Order or other legal process.

8. Nothing in this Attachment is intended to nor shall be construed as conveying to CONTRACTOR, either expressly or by implication, any right, title or interest in any County Data, including but not limited to any copyright, trade secret or other right, whether intellectual or otherwise.

9. For clarification and not limitation of the defense and indemnification obligations set forth in the Agreement, CONTRACTOR agrees to defend, indemnify, and hold harmless the COUNTY, its officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including attorney's fees, resulting directly or indirectly from: (i) CONTRACTOR's failure to duly use, control and safeguard County Data; (ii) CONTRACTOR's prohibited use, distribution, disclosure or sharing of County Data; (iii) CONTRACTOR's failure to comply with applicable law, including but not limited to the MGDPA; (iv) CONTRACTOR's breach of or failure to comply with any provisions of this Attachment; and (v) any other liability or claims related to the County Data, this Attachment or the Agreement.

10. CONTRACTOR acknowledges and agrees that it would be difficult to fully compensate the COUNTY or its constituents for damages resulting from the breach or threatened breach of the foregoing provisions and, accordingly, COUNTY will be entitled to seek injunctive relief, including without limitation temporary restraining orders, preliminary injunctions and permanent injunctions, to enforce such provisions. This provision with respect to injunctive relief will not, however, diminish CONTRACTOR's indemnification obligation or COUNTY's right to claim and recover damages.

11. The rights, duties and obligations established herein are in addition to the rights, duties and obligations set forth in the Agreement. Notwithstanding any provision in the Agreement, if there is a conflict between the terms of this Attachment and any other agreement, the terms of this Attachment shall prevail.

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