

AMERICAN RESCUE PLAN ACT AGREEMENT

Between County of Dakota and Minnesota State-Dakota County Technical College

This Agreement is between County of Dakota ("County") and Minnesota State, Dakota County Technical College, 1300 145th Street East, Rosemount, MN 55068, ("Recipient"). Recipient is a public, two-year technical college. This Agreement uses the word "parties" for both County and Recipient.

WHEREAS, on March 11, 2021, the American Rescue Plan Act (H.R. 1319), § 4001, ("ARPA") was signed into law providing federal funding relief for American workers, families, industries, and state and local governments; and

WHEREAS, on April 1, 2022, the United State Department of Treasury released final rules on allowed uses of funds and allocated \$350 billion for state, local, territorial, and Tribal governments from the American Rescue Plan Act Fund; and

WHEREAS, On June 14, 2021, the County received \$41,666,150 of their allocated \$83,332,300; and

WHEREAS, the County desires to allocate \$250,000 of its ARPA Fund allocation to Subrecipient to provide training that leads directly to viable jobs, and - where applicable - to offer a pathway for further education that may open up additional career opportunities; and

WHEREAS, all expenses are American Rescue Plan (ARP) State and Local Fiscal Recovery Funds (SLFRF) eligible under the expenditure category of provision of government services pursuant to Final Rule, 31 CFR Part 35, Subp. A, Section 35.6 (d) Providing Government Services – to the extent of a reduction in the recipient's general revenue (c)(3) of ARPA,

NOW THEREFORE, in consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. TERM

This Agreement is effective and enforceable on the date the last party executes this Agreement ("Effective Date") and upon completion of the outcomes as forth Section 2.1.

2. RECIPIENT'S OBLIGATIONS

- 2.1. General Description. Recipient shall provide the services generally described as EXHIBIT 1. Collectively, these are referred to as the "Services."
- 2.2. Conformance to Specifications. Recipient represents, covenants, and warrants it can and will perform the Services in a timely manner according to this Agreement.
- 2.3. Standard of Care. In the performance of the Services, Recipient shall use the care and skill a reasonable practitioner in Recipient's profession would use in the same or similar circumstances.
- 2.4. Ability to Perform. Recipient shall maintain staff, facilities, and equipment necessary to perform under this Agreement. Recipient shall promptly provide Notice to the County when it knows or suspects it may be unable to perform under this Agreement. The County shall determine whether such inability requires amendment or termination of this Agreement. No Notice of Default is required to terminate under this section.
- 2.5. Successors and Assigns. In order to continue Services under the Agreement and subject to

the County's prior written consent, in the event of a voluntary or involuntary dissolution, merger, sale, transfer, reorganization, acquisition or winding down of the Recipient's business, all rights, duties, liabilities, obligations, and provisions of this Agreement bind, benefit, and are assumed by the successors, legal representatives, trustees, or assigns of the Recipient as permitted by the County.

3. PAYMENT

- 3.1. Total Cost. County will pay Recipient a total amount not to exceed Two hundred fifty thousand and 00/100 Dollars (\$250,000.00) ("Agreement Maximum"). The Agreement Maximum is not subject to any express or implied condition precedent. The County is not required to pay for any minimum amount of any Services. It is the responsibility of the Recipient to work with and compensate Inver Hills Community College for any services they provide relative to this Agreement.
- 3.2. Compensation.
 - A. The County shall pay the Recipient for the Services in a lump sum.
 - B. The Recipient shall submit monthly accounting of the expenditure of the County's funds. Any funds not spent for the services outlined in Exhibit 1, will be subject to repayment.
- 3.3. Time of Payment. The County shall pay Recipient within 35 calendar days after the date of execution of the Agreement.
- 3.4. Interest on Late Payments. This provision is required by Minn. Stat. § 471.425. The County shall pay interest of 1 ½ percent per month or any part of a month to the Recipient on any undisputed amount that is not paid on time. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For unpaid balances of less than \$100, the County shall pay the actual interest penalty due the Recipient.
- 3.6. Payment for Unauthorized Claims.
 - A. Payment does not prevent the County from disputing an expenditure of the funds. Payment of a claim is not a waiver, admission, release, ratification, satisfaction, accord, or account stated by the County.
 - B. The County is not responsible for any interest, fee, or penalty if it withholds payment for failure to comply with any provision of this Agreement or during the pendency of an audit or inspection.
 - C. If the County requires an audit or inspection, the County does not have to pay any invoices until the audit or inspection is complete. Upon completion of the audit or inspection, the County will pay the Recipient pursuant to the time period for payment after receipt of an invoice.
 - D. The County may offset any overpayment or disallowance of claim by reducing future payments.

COMPLIANCE WITH LAWS/STANDARDS

- 4.1. General. Recipient shall abide by all Federal, State or local laws, statutes, ordinances, rules and regulations now in effect or hereafter adopted pertaining to this Agreement or to the facilities, programs, and staff for which Recipient is responsible. This includes, but is not limited to all Standard Assurances, which are attached and incorporated as Exhibit 2. Any violation of this section is a material breach of this Agreement. No Notice of default is required

to terminate under this section.

- 4.2. Minnesota Law to Govern. The laws of Minnesota govern all matters related to this Agreement, without giving effect to the principles of conflict of law. Venue and jurisdiction for any litigation related to this Agreement must be in those courts located within Dakota County, State of Minnesota or U.S. District Court, District of Minnesota.
- 4.3. Licenses. At its own expense, Recipient shall procure and maintain all licenses, certifications, registrations, permits, or other rights required to perform the services under this Agreement. Recipient shall furnish copies of the above to the County upon request. Recipient shall provide Notice to the County of any changes in the above within 5 calendar days of the change. Any violation of this section is a material breach of this Agreement. No Notice of Default is required to terminate under this section.

5. INDEPENDENT CONTRACTOR STATUS

Recipient is an independent Contractor. Nothing in this Agreement is intended to create an employer and employee relationship between the County and the Recipient. Recipient is not entitled to receive any of the benefits received by County employees and is not eligible for workers' or unemployment compensation benefits. Recipient also acknowledges and agrees that no withholding or deduction for State or Federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Recipient, and that it is Recipient's sole obligation to comply with the applicable provisions of all State and Federal tax laws.

6. NOTICES

- 6.1. Each Notice must be signed by the Authorized Representative. Notices may be signed electronically. Unless otherwise stated in a specific section of this Agreement, any notice or demand, (collectively, "Notice") must be in writing and provided to the Authorized Representative by at least one of the following:
 - A. Personal delivery, which is deemed to have been provided upon receipt as indicated by the date on the signed affidavit; or
 - B. Registered or Certified Mail, in each case, return receipt requested and postage prepaid, which is deemed to have been provided upon receipt as indicated by the date on the signed receipt, certification, or affidavit; or
 - C. Nationally or internationally recognized overnight courier, with tracking service with all fees and costs prepaid, which is deemed to have been provided upon receipt as indicated by the date on the signed receipt, certification, or affidavit; or
 - D. Except for Notices of Termination and Notices of Default, email, which is deemed to have been provided upon receipt as indicated by the date on a report generated by the outgoing email server indicating that the email was successfully sent, passed, or transmitted to the email server of the Authorized Representative's email address, or upon receiving an email confirming delivery to the Authorized Representative's email address.
- 6.2. If the Authorized Representative rejects or otherwise refuses to accept the Notice, or if the Notice cannot be provided because of a change in contact information for which no Notice was provided, then the Notice is effective upon rejection, refusal, or inability to deliver.

7. INDEMNIFICATION

- 7.1. General. To the greatest extent allowed by law, in the performance of or failure to perform this Agreement, Recipient shall indemnify, defend (in the case of third-party claims, with counsel satisfactory to County), and hold harmless the County, its officers, agents, and

employees, from and against any actual or alleged loss, litigation cost (including, but not limited to, reasonable attorney fees and costs and expenses of defense), costs, settlement, judgment, demands, damage, liability, lien, debt, injury, harm, fees, fines, penalties, interest, expenditure, diminution in value, disbursement, action, claim, proceeding, or dispute of any sort (collectively "Losses"), whether or not involving a third party, which are attributable to Recipient's, or Recipient's agents', independent Recipients', employees', or delegates', actual or alleged:

- A. Intentional, willful, or negligent acts or omissions; or
- B. Actions or omissions that give rise to strict liability; or
- C. Negligent or intentional misrepresentation, breach of warranty, covenant, Agreement, or subAgreement whether or not well-founded in fact or in law, known or unknown, foreseen or unforeseen, fixed or contingent and howsoever originating or existing, and whether or not based upon statute, common law, or equity. This indemnity provision survives expiration or termination of this Agreement.

7.2. Limitations. The indemnification obligations of this section do not apply to the extent that liability is the direct or proximate result of the County's negligence. This limitation is not a waiver on the part of the County of any immunity or limits on liability under Minn. Stat. Ch. 466, or other applicable State or Federal law.

7.3. Notice. The parties shall promptly provide Notice in writing and in reasonable detail of:

- A. Any demand, action, suit, or proceeding against the party providing Notice; or
- B. Any event or fact that may give rise to indemnification under section 7.1 by Recipient.

7.4. Control of Defense and Settlement. Recipient shall promptly provide Notice to the County of any proposed settlement, and Recipient may not, without County's prior written consent (which the County will not unreasonably withhold, condition, or delay), settle such claim or consent to entry of any third-party judgment. Nothing in this section precludes Recipient from allowing County from undertaking control of the defense.

8. INSURANCE

Recipient shall maintain policies of insurance as set forth in Exhibit 3 and pay all retentions and deductibles under such policies of insurance. Any violation of this section is a material breach of this Agreement. No Notice of Default is required to terminate under this section.

9. SUBCONTRACTING

9.1. Subcontracting Generally Prohibited. Recipient shall not assign or delegate any interest, right, duty, or obligation related to this Agreement without the County's prior written consent. The County may void any purported assignment, delegation, or subcontract in violation of this section. Recipient will utilize Inver Grove Hills Community College to satisfy the scope of this agreement. Prior to each term, recipient will notify the County in writing what services will be fulfilled by Inver Grove Hills Community College and the amount of funds remitted to it.

9.2. Notice to County. Recipient shall provide Notice to the County of any complaint, demand, action, proceeding, filing, lien, suit, or claim that Recipient has not paid or failed to timely pay any subcontractor. Notice must be provided no later than 10 calendar days after the date on which the Recipient first receives the complaint, demand, action, proceeding, filing, lien, suit, or claim.

9.3. Payment of Subcontractors. This section is required by Minn. Stat. § 471.425. Recipient shall pay subcontractor within 10 calendar days after the date on which the Recipient receives payment from the County for undisputed Services performed by the subcontractor. Recipient agrees to pay interest of 1½ percent per month or any part of a month to the subcontractor

on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For unpaid balances of less than \$100, the Recipient shall pay the actual interest penalty due the subcontractor.

9.4. A violation of any part of this section is a material breach of Agreement.

10. FORCE MAJEURE

Neither party shall be liable to the other party for any loss or damage resulting from a delay nor failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

11. DEFAULT

- 11.1. Notice of Default. Unless otherwise stated in a specific section of this Agreement, no event or circumstance constitutes a default giving rise to the right to terminate for cause unless and until a Notice of Default is provided to the defaulting party, specifying the particular event or circumstance, series of events or circumstances, or failure constituting the default and cure period, if any.
- 11.2. Cure Period. The party providing the Notice of Default has the option, but is not required, to give the other party an opportunity to cure the specified default. If an opportunity to cure is given, it must be specifically described in the Notice of Default, including any period in which to comply.
- 11.3. Withholding Payment. Notwithstanding any other provision of this Agreement, the County may, after giving Notice of Default, withhold, without penalty or interest, any payment which becomes due after Notice of Default is provided until the specified default is excused or cured, or the Agreement is terminated.

12. TERMINATION

- 12.1. Termination Without Cause. Either party may terminate this Agreement without cause upon 30 calendar days' Notice of Termination to the other party.
- 12.2. Termination for Cause or Material Breach. Either party may terminate this Agreement for cause by providing 7 calendar days' Notice of Termination to the other party, unless a different procedure or effective date is stated within the specific section of this Agreement under which the default occurs. In addition to other specifically stated provisions of this Agreement or as otherwise stated in law, events or circumstances constituting default and giving rise to the right to terminate for cause, unless waived, include but are not limited to:
 - A. Making material misrepresentations either in the attached exhibits and documents or in any other material provision or condition relied upon in the making of this Agreement;
 - B. Failure to perform Services or payment within the time specified in this Agreement;
 - C. Failure to perform any other material provision of this Agreement;
 - D. Failure to diligently and timely perform Services so as to endanger performance of the provisions of this Agreement;
 - E. The voluntary or involuntary dissolution, merger, sale, transfer, reorganization, acquisition or winding down of the Recipient's business.

- 12.3. Termination by County – Lack of Funding. The County may immediately terminate this Agreement for lack of funding. A lack of funding occurs when funds appropriated for this Agreement as of the Effective Date from a non-county source are unavailable or are not appropriated by the County Board. The County has sole discretion to determine if there is a lack of funding. The County is not obligated to pay for any Services that are performed after providing Notice of Termination for lack of funding. The County is not subject to any penalty or damages for termination due to lack of funding. No Notice of Default is required to terminate under this section.
- 12.4. Notice of Termination. The Notice of Termination must state the intent to terminate the Agreement and specify the events or circumstances and relevant Agreement provision warranting termination of the Agreement and whether the termination is for cause.
- 12.5. Duties of Recipient upon Termination. Upon the County providing of the Notice of Termination, and except as otherwise stated, Recipient shall:
- A. Discontinue performance under this Agreement on the date and to the extent specified in the Notice of Termination.
 - B. Complete performance of any work that is not discontinued by the Notice of Termination.
 - C. Cooperate with County with any transition of Services.
 - D. Cancel all orders and subAgreements to the extent that they relate to the performance of this Agreement.
 - E. Return all County property in its possession within 7 calendar days after the date on which the Recipient receives the Notice of Termination to the extent that it relates to the performance of this Agreement that is discontinued by the Notice of Termination.
 - F. Submit an accounting for Services satisfactorily performed prior to the effective date of termination within 35 calendar days of said date and return any unallocated funds.
 - G. Maintain all records relating to the performance of the Agreement as may be directed by the County in the Notice of Termination or required by law or this Agreement.
- 12.6. Duties of County upon Termination of the Agreement for Cause or without Cause. Upon delivery of the Notice of Termination, and except as otherwise provided, the County shall make final payment to Recipient in accordance with section 3.3 of this Agreement for Services satisfactorily performed.
- 12.7. Effect of Termination for Cause or without Cause.
- A. Termination of this Agreement does not discharge any liability, responsibility or right of any party that arises from the performance of or failure to adequately perform the provisions of this Agreement prior to the effective date of termination. Termination shall not discharge any obligation which, by its nature, would survive after the date of termination, including by way of illustration only and not limitation, the requirements set forth in Exhibit 1 (standard assurances) and the indemnity provisions of section 7.
 - B. The County shall not be liable for any Services performed after Notice of Termination, except as stated above or as authorized by the County in writing.

13. AGREEMENT RIGHTS AND REMEDIES

- 13.1. Rights Cumulative. All remedies under this Agreement or by law are cumulative and may be exercised concurrently or separately. The exercise of any one remedy does not preclude exercise of any other remedies.
- 13.2. Waiver. Any waiver is only valid when reduced to writing, specifically identified as a waiver, and signed by the waiving party's Authorized Representative. A waiver is not an amendment to the Agreement. The County's failure to enforce any provision of this Agreement does not waive the provision or the County's right to enforce it.

14. AUTHORIZED REPRESENTATIVE

14.1. The Authorized Representatives of the respective parties for purposes of this Agreement are as follows:

To Recipient:
Michael Berndt
President

Dakota County Technical College
1300 145th Street East
Rosemount, MN 55068
Telephone: 651-423-8000
Email michael.berndt@minnstate.edu

To the County:
Marti Fischbach
Community Services Director

Dakota County Community Services
1 Mendota Rd W., Ste 500
West St. Paul, MN 55118-4773
Telephone: 651-554-5742
Email: marti.fischbach@co.dakota.mn.us

- 14.2. The Authorized Representative, or his or her successor, has authority to bind the party he or she represents and sign this Agreement. The County's Authorized Representative shall have only the authority granted by the County Board. The parties shall promptly provide Notice to each other when an Authorized Representative's successor is appointed. The Authorized Representative's successor shall thereafter be the Authorized Representative for purposes of this Agreement.
- 14.3. In addition, Notices regarding breach or termination shall also be provided to:
Dakota County Attorney's Office
Civil Division
1560 Highway 55
Hastings, Minnesota 55033

15. LIAISON

15.1. The Liaisons of the respective parties for purposes of this Agreement are as follows:

Recipient Liaison: Robert Trewartha
Telephone: 651-423-8275
Email: Robert.trewartha@dctc.edu

County Liaison: Sarah Montgomery
Telephone: 651-554-5893
Email: Sarah.Montgomery@co.dakota.mn.us

- 15.2. The Liaison, or his or her successor, has authority to assist the parties in the day-to-day performance of this Agreement, ensure compliance, and provide ongoing consultation related to the performance of this Agreement. The parties shall promptly provide Notice to each other when a Liaison's successor is appointed. The Liaison's successor shall thereafter be the Liaison for purposes of this Agreement.

16. AMENDMENTS

Any amendments to this Agreement are only valid when reduced to writing, specifically identified as an amendment, and signed by both parties' Authorized Representative.

17. SEVERABILITY

The provisions of this Agreement are severable. If any provision of this Agreement is void, invalid, or unenforceable, it will not affect the validity and enforceability of the remainder of this Agreement unless the void, invalid, or unenforceable provision substantially impairs the value of the entire Agreement with respect to either party.

18. MERGER

18.1 Final Agreement. This Agreement is the final expression of the agreement of the parties. This Agreement is the complete and exclusive statement of the provisions agreed to by the parties. This Agreement supersedes all prior negotiations, understandings, or agreements. There are no representations, warranties, or provisions, either oral or written, not contained herein.

18.2 Exhibits. The following Exhibits and addenda, including all attachments, are incorporated and made a part of this Agreement:

- Exhibit 1- Requirements and Outcomes;
- Exhibit 2- Standard Assurances;
- Exhibit 3- Insurance Terms

By signing this Agreement, Recipient acknowledges receipt of all the above Exhibits and addenda, including all attachments. If there is a conflict between any part of any Exhibit and the body of this Agreement, the body of this Agreement will prevail. To the extent reasonably possible, the Exhibits will be construed and constructed to supplement, rather than conflict with, this Agreement, unless such construing or construction results in ambiguity.

If there is a conflict between any provision of an Exhibit and another Exhibit, the following is the order of precedence: Exhibit 1, Exhibit 2, Exhibit 3.

20. CONFIDENTIALITY AND SECURITY

20.1. "Protected Data" has the same meaning as Not Public Data as defined in Minn. Stat. § 13.02, subd. 8a. Trade Secret Data as defined in Minn. Stat. § 13.37, subd. 1(b) shall be identified by Recipient to County and included in the definition of Protected Data.

20.2. For purposes of this Agreement, all data created, collected, received, stored, used, maintained, or disseminated by Recipient in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act ("MGDPA"), Minn. Stat. Chapter 13 and its implementing rules, as well as any other applicable State or Federal laws on data privacy or security. Recipient must comply with and is subject to the provisions, remedies and requirements of the MGDPA as if it were a governmental entity.

20.3. Recipient acknowledges that the County may transmit Protected Data to Recipient in connection with Recipient's performance of this Agreement. Recipient shall not, at any time, directly or indirectly reveal, report, publish, duplicate, or otherwise disclose, to any third party in any way whatsoever any Protected Data, unless required or allowed by law. Recipient agrees to implement such procedures as are necessary to assure protection and security of Protected Data and to furnish the County with a copy of said procedures upon request.

20.4. Each party shall provide the other party with prompt Notice of a breach of the security of data as defined in Minn. Stat. § 13.055, subd. 1(a) or suspected breach of the security of data and shall assist in remedying such breach. Providing or accepting assistance does not constitute of waiver of any claim or cause of action for breach of Agreement.

20.5. Recipient shall cooperate with the County in responding to all requests for data. Recipient does not have a duty to provide access to public data to the public if the public data are available from the County, except as required by the provisions of this Agreement. The parties shall promptly notify each other when any third-party requests Protected Data related to this Agreement or Agreement Services. Recipient shall ensure that all subcontractors contain the same or similar data practices compliance requirements. All provisions of this Section apply to any subcontract.

20.6. This section survives expiration or termination of this Agreement.

21. AGREEMENT INTERPRETATION AND CONSTRUCTION

This Agreement was fully reviewed and negotiated by the Parties. Any ambiguity, inconsistency, or question of interpretation or construction in this Agreement shall not be resolved strictly against the Party that drafted the Agreement. It is the intent of the Parties that every section (including any subsection), clause, term, provision, condition, and all other language used in this Agreement shall be constructed and construed so as to give its natural and ordinary meaning and effect.

22. WAGE WITHHOLDING TAX

Pursuant to Minn. Stat. § 270C.66, County shall make final payment to Recipient only upon satisfactory showing that Recipient and any subRecipients have complied with the provisions of Minn. Stat. § 290.92 with respect to withholding taxes, penalties, or interest arising from this Agreement. A certificate by the Minnesota Commissioner of Revenue (Minnesota Department of Revenue Form IC-134, entitled "Withholding Affidavit for Recipients") satisfies this requirement with respect to the Recipient or subRecipient. Form IC-134 Form and Instructions are found at <https://www.revenue.state.mn.us/sites/default/files/2019-01/ic134.pdf>

23. ELECTRONIC SIGNATURES

Each party agrees the electronic signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as wet ink signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) indicated below.

Approved as to form:

COUNTY OF DAKOTA

Assistant County Attorney/Date
File No. KS-

By _____

Res. No. 21-215

Date of Signature _____

RECIPIENT

(I represent and warrant that I am authorized by law to execute this Agreement and legally bind the Agreementor)

By _____

Title _____

Date of Signature _____

Exhibit 1
Requirements and Outcomes
Workforce Mobility Program 2021-2022

Vision: This pilot program will provide free tuition for Dakota County residents in key identified in-demand industry sectors. Publicizing the program may help drive enrollments of individuals participating in workforce programs.

Marketing:

The program will be marketed throughout the county for optimal visibility. Marketing will include postcards from the colleges as well as press releases. The Colleges will develop the marketing materials with review by Dakota County Employment and Economic Assistance (E&EA) staff. The Dakota-Scott Workforce Development Board and Dakota County Communications will help promote the Workforce Mobility program through their channels.

Enrollments:

The free tuition program will be for Dakota County residents ages 18 and older. Prioritization will then be to residents:

- #1 - who are also enrolled in other county programs such as social services, SNAP, etc. and/or are in CDA housing
- #2 - who are not enrolled in programs who have **annual family** incomes under the 250% of poverty guideline. This will be based on self-attestation.

Cost Categories: The following outlines the initial plan for distribution of the grant. With approval of the County E&EA staff, there is flexibility to adjust enrollments amongst categories if student demand for the classes deems it necessary.

Training Opportunities	Cost	# Trained	Totals
CDL Class A	\$6,300	15	\$94,500
CNA	\$1,380: Includes textbooks, class supplies, and 1 test	35	\$48,300
Boiler Operator	\$550: Certification Prep course	10	\$5,500
Phlebotomy	\$1,884: Includes textbook and 1 test	14	\$26,376
Early Childhood & Youth Development Programs	\$770: Includes Intro to Early Childhood Education Course + Textbooks and Course Materials (about \$131)	15	\$11,550
Welding	\$1,127: Includes Welding Safety and Theory I, + textbooks, course materials & personal protective equipment	15	\$26,623
Emergency Medical Technician (EMT)	\$3,300 for the full program	8	\$26,400
Additional Costs			
Marketing (social media marketing and postcards targeted to Dakota County residents within the likely income range)	\$10,724		\$10,724
Total		112	\$249,973 (\$250,000)

Performance metrics: Outcomes to be measured for each program include:

- # of program applicants
- # of program applicants that qualify
- # of qualified program applicants who are accepted into the program
- # of qualified program applicants who are NOT accepted into the program but provided other support services from the county or the college
- # of program participants who complete the training
- Satisfaction survey for program participants that measures the extent to which they agree that key program design elements were delivered
- # of program completers who secure employment within 3 months of completion
- # of program completers who continue their education
- # of program completers who secure employment within 3 months of completion at a salary rate higher than last position

Outcome reports for the metrics above will be provided by DCTC to Dakota County on a monthly basis and with a final report and the conclusion of the program.

EXHIBIT 2 STANDARD ASSURANCES

1. **NON-DISCRIMINATION.** During the performance of this Agreement, the Recipient shall not unlawfully discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status or public assistance status. The Recipient will take affirmative action to ensure that applicants are employed and that employees are treated during employment without unlawful discrimination because of their race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status, or public assistance status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices which set forth the provisions of this nondiscrimination clause.

The Recipient will, in all solicitations or advertisements for employees placed by or on behalf of Recipient, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, disability, sexual orientation, age, marital status, veteran's status, or public assistance status.

No funds received under this Agreement shall be used to provide religious or sectarian training or services.

The Recipient shall comply with any applicable federal or state law regarding non-discrimination. The following list includes, but is not meant to limit, laws which may be applicable:

A. The Equal Employment Opportunity Act of 1972, as amended, 42 U.S.C. § 2000e *et seq.* which prohibits discrimination in employment because of race, color, religion, sex, or national origin.

B. Equal Employment Opportunity-Executive Order No.11246, 30 FR 12319, signed September 24, 1965, as amended, which is incorporated herein by reference, and prohibits discrimination by U.S. Government Recipients and subRecipients because of race, color, religion, sex, or national origin.

C. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.* and 45 C.F.R. 84.3 (J) and (K) implementing Sec. 504 of the Act which prohibits discrimination against qualified handicapped persons in the access to or participation in federally-funded services or employment.

D. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 *et seq.* as amended, and Minn. Stat. § 181.81, which generally prohibit discrimination because of age.

E. The Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d), which provides that an employer may not discriminate on the basis of sex by paying employees of different sexes differently for the same work.

F. Minn. Stat. Ch. 363A, as amended, which generally prohibits discrimination because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation, or age.

G. Minn. Stat. § 181.59 which prohibits discrimination against any person by reason of race, creed, or color in any state or political subdivision Agreement for materials, supplies, or construction. Violation of this section is a misdemeanor and any second or subsequent violation of these terms may be cause for forfeiture of all sums due under the Agreement.

H. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, 47 U.S.C. §§ 225, 611, with regulations at 29 C.F.R. § 1630, which prohibits discrimination against qualified individuals on the basis of a disability in term, condition, or privilege of employment.

I. Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, *et seq.* and including 45 CFR Part 80, prohibits recipients of federal financial assistance from discriminating on the basis of national origin which includes not discriminating against those persons with limited English proficiency.

J. Equal Protection of the Laws for Faith-based and Community Organizations-Executive Order No. 13279, signed December 12, 2002 and as amended May 3, 2018. Prohibits discrimination against grant seeking organizations on the basis of religion in the administration or distribution of federal financial assistance under social service programs, including grants and loans.

K. Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, with regulations at 41 C.F.R. Part 60-250, which prohibits discrimination in employment against protected veterans.

2. **DATA PRIVACY.** For purposes of this Agreement all data created, collected, received, stored, used, maintained, or disseminated by Recipient in the performance of this Agreement is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as any applicable Federal laws on data privacy. Recipient must comply with the applicable data management requirements as if it were a governmental entity. The remedies in Minn. Stat. § 13.08 apply to the Recipient. Recipient does not have a duty to provide access to public data to the public if the public data are available from the governmental agency (County), except as required by the terms of this Agreement. All subcontractors shall contain the same or similar data practices compliance requirements.

3. **RECORDS DISCLOSURE/RETENTION.** Recipient's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Agreement are subject to the examination, duplication, transcription, and audit by the County and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Agreement. The Recipient agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

4. **WORKER HEALTH, SAFETY AND TRAINING.** Recipient shall be solely responsible for the health and safety of its employees in connection with the work performed under this Agreement. Recipient shall make arrangements to ensure the health and safety of all subcontractors and other persons who may perform work in connection with this Agreement. Recipient shall ensure all personnel of Recipient and subcontractors are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Agreement. Each Recipient shall comply with federal, state, and local occupational safety and health standards, regulations, and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Recipient.

5. **RECIPIENT GOOD STANDING.** Recipient shall maintain Good Standing status with the Office of the Minnesota Secretary of State and shall notify County of any changes in Good Standing status within 5 calendar days of such change. Foreign business entities must maintain a certificate of authority (foreign corporations, limited liability companies, limited partnerships, and limited liability limited partnerships), or a statement of foreign qualification (foreign limited liability partnerships), or a statement of partnership authority (general partnerships). See Minn. Stat. §§ 303.03 (corporations); 322C.0802 (limited liability companies); 321.0902 and 321.0907 (foreign limited partnership); 321.0102(7) (foreign limited liability limited partnerships); 323A.1102(a) (foreign limited liability partnership); 321.0902 and 321.0907 (foreign general partnerships).

6. **RECIPIENT DEBARMENT, SUSPENSION, AND RESPONSIBILITY CERTIFICATION.** Federal Regulation 45 CFR 92.35 prohibits the State/Agency from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government. Similarly, Minn. Stat. § 16C.03, subd. 2 provides the Commissioner of Administration with the authority to debar and suspend vendors who seek to Agreement with the State/Agency. Vendors may be suspended or debarred when it is determined, through a duly authorized hearing process, that they have abused the public trust in a serious manner.

7. **PROHIBITED TELLECOMMUNICATIONS EQUIPMENT/SERVICES.** If Recipient is a subrecipient of federal grant funds under this Agreement, Recipient certifies that, consistent with Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232 (Aug. 13, 2018) (the "Act"), and 2 CFR § 200.216, Recipient will not use funding covered by this Agreement to procure or obtain, or to extend, renew, or enter into any contract to procure or obtain, any equipment, system, or service that uses "covered telecommunications equipment or services" (as that term is defined in Section 889 of the Act) as a substantial or essential component of any system or as critical technology as part of any system. Recipient will include this certification as a flow down clause in any agreement related to this Agreement.

By signing this Agreement, the Recipient certifies that it and its principals* and employees:

A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state, or local governmental department or agency; and

B. Have not within a three (3) year period preceding this Agreement: 1) been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or Agreement; 2) violated any federal or state antitrust statutes; or 3) committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

C. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for: 1) commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction; 2) violating any federal or state antitrust statutes; or 3) committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; and

D. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and

E. Shall immediately give written notice to the Authorized Representative should Recipient come under investigation for allegations of fraud or a criminal offense in connection with obtaining, or performing a public (federal, state, or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

*“Principals” for the purposes of this certification means officers; directors; owners; partners; and persons having primary management or supervisory responsibilities within a business entity (e.g. general manager; plant manager; head of a subsidiary, division, or business segment and similar positions).

Directions for Online Access to Excluded Providers

To ensure compliance with this regulation, identification of excluded entities and individuals can be found on the Office of Inspector General (OIG) website at https://oig.hhs.gov/exclusions/exclusions_list.asp

Attycv/Exh SA GPB-LSO-JET (Rev. 10-19)

**EXHIBIT 3
INSURANCE TERMS**

Recipient agrees to provide and maintain at all times during the term of this Agreement such insurance coverages as are indicated herein and to otherwise comply with the provisions that follow. Such policy(ies) of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the Agreement indemnity provisions. The provisions of this section shall also apply to all Subcontractors, Sub-subcontractors, and Independent Contractors engaged by Recipient with respect to this Agreement, and Recipient shall be entirely responsible for securing the compliance of all such persons or parties with these provisions.

APPLICABLE SECTIONS ARE CHECKED

1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than \$500,000. If Recipient is not required by Statute to carry Workers' Compensation Insurance, Recipient agrees: (1) to provide County with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Recipient from the requirement of obtaining Workers' Compensation Insurance; (2) to provide prior notice to County of any change in Recipient's exemption status under Minn. Stat. § 176.041; and (3) to hold harmless and indemnify County from and against any and all claims and losses brought by Recipient or any subcontractor or other person claiming through Recipient for Workers' Compensation or Employers' Liability benefits for damages arising out of any injury or illness resulting from performance of work under this Agreement. If any such change requires Recipient to obtain Workers' Compensation Insurance, Recipient agrees to promptly provide County with evidence of such insurance coverage.

2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Agreement), Independent Contractors, "XC&U" and Products-Completed Operations liability (if applicable). Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. An Insurance Services Office "Comprehensive General Liability" policy which includes a Broad Form Endorsement GL 0404 (Insurance Services Office designation) shall be considered to be an acceptable equivalent policy form.

Recipient agrees to maintain at all times during the period of this Agreement a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

Such Commercial General Liability policy and Umbrella or Excess Liability policy (or policies) may provide aggregate limits for some or all of the coverages afforded thereunder, so long as such aggregate limits have not, as of the beginning of the term or at any time during the term, been reduced to less than the total required limits stated above, and further, that the Umbrella or Excess Liability policy provides coverage from the point that such aggregate limits in the underlying Commercial General Liability policy become reduced or exhausted. An Umbrella or Excess Liability policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention for each occurrence does not exceed the amount shown in the provision below.

Recipient's liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Recipient to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed \$25,000 each occurrence.

Such policy(ies) shall name Dakota County, its officers, employees and agents as Additional Insureds thereunder.

3. Professional Liability. Professional Liability (errors and omissions) insurance with respect to its professional activities to be performed under this Agreement. This amount of insurance shall be at least \$1,500,000 per occurrence and aggregate (if applicable). Coverage under such policy may be subject to a deductible, not to exceed \$25,000 per occurrence. Recipient agrees to maintain such insurance for at least one (1) year from Agreement termination.

It is understood that such Professional Liability insurance may be provided on a claims-made basis, and, in such case, that changes in insurers or insurance policy forms could result in the impairment of the liability insurance protection intended for Dakota County hereunder. Recipient therefore agrees that it will not seek or voluntarily accept any such change in its Professional Liability insurance coverage if such impairment of Dakota County's protection could result; and further, that it will exercise its rights under any "Extended Reporting Period" ("tail coverage") or similar policy option if necessary or appropriate to avoid impairment of Dakota County's protection. Recipient further agrees that it will, throughout the one (1) year period of required coverage, immediately: (a) advise Dakota County of any intended or pending change of any Professional Liability insurers or policy forms, and provide Dakota County with all pertinent information that Dakota County may reasonably request to determine compliance with this section; and (b) immediately advise Dakota County of any claims or threats of claims that might reasonably be expected to reduce the amount of such insurance remaining available for the protection of Dakota County.

4. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by Recipient in connection with its performance under this Agreement. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least \$1,500,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy. **Unless included within the scope of Recipient's Commercial General Liability policy, such Business Automobile Liability policy shall also include coverage for motor vehicle liability assumed under this Agreement.**

Such policy, and, if applicable, such Umbrella or Excess Liability policy(ies), shall include Dakota County, its officers, employees and agents as Additional Insureds thereunder.

5. Additional Insurance. Dakota County shall, at any time during the period of the Agreement, have the right to require that Recipient secure any additional insurance, or additional feature to existing insurance, as Dakota County may reasonably require for the protection of their interests or those of the public. In such event Recipient shall proceed with due diligence to make every good faith effort to promptly comply with such additional requirement(s).

6. Evidence of Insurance. Recipient shall promptly provide Dakota County with evidence that the insurance coverage required hereunder is in full force and effect prior to commencement of any work. At least 10 days prior to termination of any such coverage, Recipient shall provide Dakota County with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of the Dakota County Certificate of Insurance, or in such other form as Dakota County may reasonably request, and shall contain sufficient information to allow Dakota County to determine whether there is compliance with these provisions. At the request of Dakota County, Recipient shall, in addition to providing such evidence of insurance, promptly furnish Agreement Manager with a complete (and if so required, insurer-certified) copy of each insurance policy intended to provide coverage required hereunder. All such policies shall be endorsed to require that the insurer provide at least 30 days' notice to Dakota County prior to the effective date of policy cancellation, nonrenewal, or material adverse change in coverage terms. On the Certificate of Insurance, Recipient's insurance agency shall certify that he/she has Error and Omissions coverage.

7. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financially responsible insurers licensed to do business in the State of Minnesota, and all such insurers must be acceptable to Dakota County. Such acceptance by Dakota County shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable. In all other instances, Dakota County shall have 15 business days from the date of receipt of Recipient's evidence of insurance to advise Recipient in writing of any insurer that is not acceptable to Dakota County. If Dakota County does not respond in writing within such 15 day period, Recipient's insurer(s) shall be deemed to be acceptable to Dakota County.

8. Noncompliance. In the event of the failure of Recipient to maintain such insurance and/or to furnish satisfactory evidence thereof as required herein, Dakota County shall have the right to purchase such insurance on behalf of Recipient, which agrees to provide all necessary and appropriate information therefor and to pay the cost thereof to Dakota County immediately upon presentation of invoice.

9. Loss Information. At the request of Dakota County, Recipient shall promptly furnish loss information concerning all liability claims brought against Recipient (or any other insured under Recipient's required policies), that may affect the amount of liability insurance available for the benefit and protection of Dakota County under this section. Such loss information shall include such specifics and be in such form as Dakota County may reasonably require.

10. Release and Waiver. Recipient agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Recipient. Recipient hereby releases Dakota County, its officers, employees, agents, and others acting on their behalf, from all claims, and all liability or responsibility to Recipient, and to anyone claiming through or under Recipient, by way of subrogation or otherwise, for any loss of or damage to Recipient's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of Dakota County or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

Recipient agrees to effect such revision of any property insurance policy as may be necessary in order to permit the release and waiver of subrogation agreed to herein. Recipient shall, upon the request of Dakota County, promptly provide a Certificate of Insurance, or other form of evidence as may be reasonably requested by Dakota County, evidencing that the full waiver of subrogation privilege contemplated by this provision is present; and/or, if so requested by Dakota County, Recipient shall provide a full and complete copy of the pertinent property insurance policy(ies).

Revised: 10/07

K/CM/Exh/Insure-Prof-Liability-CM.doc