

## CONTRACT APPROVAL

### SUGGESTED MOTION:

Move to approve the following contracts submitted by respective department head, subject to State's Attorney approval, and authorize the Chairman to sign.

#### Received as of August 15, 2024:

- Barnes County Cost and Maintenance Agreement—hot mix asphalt overlay on Barnes County Highway 6 and Cass County Highway 6 from State Highway 32 to State Highway 38
- Red River Regional Dispatch Center—First amendment to the Red River Regional Dispatch Center Joint Powers Agreement
- Family HealthCare Center—Business Associate Agreement update for services with the Sheriff's Office




## Highway Department

Telephone: 701-298-2370  
Fax: 701-298-2395

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### MEMORANDUM

TO: Cass County Commission

FROM: Thomas Soucy, County Engineer 

DATE: August 9, 2024

SUBJECT: Consent Agenda Item for August 19, 2024 Commission Meeting: Cost and Maintenance Agreement – Barnes County – Hot Mix Asphalt Overlay on Barnes County Highway 6 & Cass County Highway 26 from State Highway 32 to State Highway 38

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Attached are the Cost and Maintenance Agreement Docs with Barnes County to complete Hot Mix Asphalt Overlay on Barnes County Highway 6 & Cass County Highway 26 from State Highway 32 to State Highway 38.

Barnes County expressed their desire to complete a joint application for the Flex Fund Grant on the roadways stated above. Our application was granted the necessary Flex Funds for 80% of the project costs. Cass and Barnes County will split the remaining 20% of construction costs as well as any engineering costs associated to this project.

This project was approved in our 2025 budget, as well as the engineering costs and is part of our 5 year plan.

**SUGGESTED MOTION:** AUTHORIZE CHAIRPERSON TO SIGN COST AND MAINTENANCE AGREEMENTS WITH BARNES COUNTY FOR THE ROAD IMPROVEMENTS ON THE CASS COUNTY HIGHWAYS STATED ABOVE SUBJECT TO STATE'S ATTORNEYS APPROVAL.

J:\Admin-Eng\Commission Corrsp\2024 Commission Correspondence\C26 Flex Fund Grant Cost Share\Agenda Memo Barnes County Cost Share Agreement (Flex Fund Grant).docx



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Highway Department      DATE OF REQUEST: 08-14-2024

COMPANY REQUESTING CONTRACT: Barnes County

BRIEF PROJECT DESCRIPTION: Cost and maintenance agreement for work on Cass 26 and Barnes 6

NEW CONTRACT    OR     CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

STATE'S ATTORNEY COMMENTS:

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**BARNES COUNTY, NORTH DAKOTA, AND  
CASS COUNTY, NORTH DAKOTA  
COOPERATIVE COST AND MAINTENANCE  
AGREEMENT**

**Hot Mix Asphalt Overlay  
Barnes County Highway 6 & Cass County Highway 26  
NDDOT Project # FXS-0206(057), PCN 24338**

**THIS AGREEMENT** made and entered into by and between the County of Barnes North Dakota, and the County of Cass, North Dakota, acting by and through their Boards of Commissioners.

**WITNESSETH:**

**WHEREAS**, the Barnes County Board of Commissioners and the Cass County Board of Commissioners believe that it is necessary to rehabilitate Barnes County Highway 6 and Cass County Highway 26, from ND Highway 32 to ND Highway 38; and

**WHEREAS**, North Dakota Century Code NDCC 54-40.3 authorizes the Barnes County Board of Commissioners and the Cass County Board of Commissioners to enter into agreements with any political subdivision of North Dakota.

**WHEREAS**, the Barnes County Board of Commissioners and the Cass County Board of Commissioners have determined it to be mutually beneficial for this hot mix asphalt overlay project to be let and constructed with each entity paying 20 percent of its rehabilitation construction costs and each entity paying 50 percent of the preliminary and construction engineering and administration costs.

**WHEREAS**, the State of North Dakota Flexible Transportation Fund Program shall pay 80% of the roadway construction improvements.

**WHEREAS**, the roadway improvements shall generally be described as: hot mix asphalt overlay on 4 miles of Barnes County Highway 6 and 6 miles of Cass County Highway 26, a 2-lane highway from ND Hwy 32 to ND Hwy 38.

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

**ARTICLE I - CONSTRUCTION**

**Section A. County to perform preliminary, surveying and plan preparation**

Barnes County shall lead engineering, surveying, and administration work. All work will be done in accordance with North Dakota Department of Transportation's policies.

**Section B. Direction, Supervision, and Inspection of Construction**

The construction work contemplated herein shall be under the direction and supervision of the Highway Superintendent of Barnes County.

**Section C. Plan Changes and Extra Work**

Any plan change or extra work performed hereunder shall become the responsibility of the respective Entity for which project the plan change or extra work was performed, and the total cost of plan changes or extra work shall be assigned, approved, and paid for by the Entity for which the plan change or extra work was performed.

**Section D. Cancellation of Agreement**

Each party to this agreement reserves the right to withdraw from and cancel this Agreement within 40 days prior to the opening of bids contemplated in Article I hereof.

**ARTICLE II - BASIS OF PAYMENT**

**Section A. Engineering**

Barnes County, as the lead agency, will facilitate the project surveying and preliminary engineering and design of the hot mix asphalt overlay. Barnes County will also contract with an engineering firm to perform construction observation and administration. These costs will be



split equally between Barnes County and Cass County and it is understood that Barnes County, as the lead agency, shall invoice Cass County as the different requirements contemplated herein are completed.

**Section B. Construction Costs**

Upon satisfactory completion of the project in accordance with Article I hereof, Barnes County shall make full payment to the selected contractor for the costs of constructing the project based on the final estimate of cost of the construction work item quantities. Barnes County will submit for reimbursement all eligible costs covered by NDDOT Flexible Transportation Fund. Cass County shall reimburse Barnes County for all contract obligations attributable to Cass County's share of the project upon receipt of copies of monthly partial estimates and final payment vouchers from Barnes County.

**ARTICLE III - GENERAL PROVISIONS**

**Section A. Contract Administration**

Barnes County will assume the administrative function in construction, inspection, documentation, contract payment, and any other function pertaining to the project, and will furnish Cass County with copies and supporting data for the project.

**Section B. Maintenance Responsibilities**

Following the conclusion of construction activities, each entity will take over full maintenance responsibilities for their respective portions of the project split at the County Line.

**Section C. Claims**

It is hereby understood and agreed that any and all employees and all other persons employed by each respective Entity in the performance of any work or services required or provided for herein shall be considered employees of the respective Entity only, and that any and all claims that may or might arise under the workers' compensation laws of either state on behalf of said

employees while so engaged, and any and all claims made by any third parties as a consequence of any act or omission on the part of said Entity's employees while so engaged on any of the work or services to be rendered herein by the respective Entity, shall in no way be the obligation or responsibility of the other Entity. Each Entity agrees to protect, hold harmless, defend, and indemnify the other Entity for any and all claims, causes of action, and damages of any nature whatsoever arising from, allegedly arising from, or related to the provision of work or services to the respective Entity by any third party under the terms of this Agreement or under any contracts awarded pursuant to the terms of this Agreement. Further, if any claim is asserted against either Entity by any third party for work or services provided under the terms of this Agreement or under contracts awarded pursuant to the terms of this Agreement, the Entity against which the claim is asserted agrees to immediately provide written notice of said claim to the other Entity, regardless of the nature of the claim or potential responsibility therefor.


**Section D. Approval**

Before this Agreement shall become binding and effective, it shall be approved by resolution of the Board of Commissioners of both Barnes County and Cass County.

IN TESTIMONY WHEREOF the parties have duly executed this agreement by their  
duly authorized officers and caused their respective seals to be hereunto affixed.


COUNTY OF BARNES

Approved as to Form and Execution

  
Barnes County States Attorney

BY   
Board Chair

DATE 

BY   
Witness

DATE 



COUNTY OF CASS

Approved as to Form and Execution

\_\_\_\_\_  
Cass County States Attorney

BY \_\_\_\_\_  
Board Chair

DATE \_\_\_\_\_

BY \_\_\_\_\_  
Witness

DATE \_\_\_\_\_

COUNTY OF BARNES

RESOLUTION

BE IT RESOLVED that the County of Cass enter into Agreement with the County of Barnes for the following purposes, to wit: to provide for payment by Cass County to Barnes County the costs attributable in the preliminary, design, and construction engineering, and contract payments of project: NDDOT Project # FXS-0206(057), PCN 24338

BE IT FURTHER RESOLVED that the proper County Officers are hereby authorized and directed to execute such cooperative construction agreement under the provisions of NDCC 54-40.3

CERTIFICATION

County of Barnes

I hereby certify that the foregoing Resolution is a true and correct copy of the resolution presented to and adopted by the Board of Commissioners of the County of Barnes at a duly authorized meeting thereof held on the 8<sup>th</sup> day of August, 2024 as shown by the minutes of said meeting in my possession.

  
County Auditor

COUNTY OF CASS

RESOLUTION

BE IT RESOLVED that the County of Cass enter into Agreement with the County of Barnes for the following purposes, to wit: to provide for payment by Cass County to Barnes County the costs attributable in the preliminary, design, and construction engineering, and contract payments of project: NDDOT Project # FXS-0206(057), PCN 24338

BE IT FURTHER RESOLVED that the proper County Officers are hereby authorized and directed to execute such cooperative construction agreement under the provisions of NDCC 54-40.3

CERTIFICATION

County of Cass

I hereby certify that the foregoing Resolution is a true and correct copy of the resolution presented to and adopted by the Board of Commissioners of the County of Cass at a duly authorized meeting thereof held on the \_\_\_\_\_ day of \_\_\_\_\_, 2024 as shown by the minutes of said meeting in my possession.

\_\_\_\_\_  
County Auditor

**Barnes County Highway 6 / Cass County Highway 26**

**FXS-0206(057) PCN 24338**

**Approximate Funding Splits**

Construction Costs:

Estimated Construction Costs = \$3,542,050 (20% Local, 80% Flex Fund)

Local Construction Costs = \$708,410 Max (Split by actual costs incurred on each corridor)

Flex Fund Construction Costs = \$2,833,640

Engineering Costs:

Preliminary Engineering Costs = \$50,000 (100% Local)

Construction Engineering Costs (Estimated) = \$280,000 (100% Local)

Estimated Total Local Costs = \$708,410 + \$50,000 + \$280,000 = **\$1,038,410**

Barnes County Estimated Local Split = **\$519,205**

(50% of Preliminary and Construction Engineering Costs + Construction Costs incurred on Barnes County Highway 6 estimated to be 50% of Construction Costs)

Cass County Estimated Local Split = **\$519,205**

(50% of Preliminary and Construction Engineering Costs + Construction Costs incurred on Cass County Highway 26 estimated to be 50% of Construction Costs)



**Robert W. Wilson**  
**County Administrator**

Telephone: 701-241-5770  
wilsonro@casscountynd.gov

**MEMO**

TO: County Commission

FROM: Robert W. Wilson

Date: August 13, 2024

Subject: First Amendment to the Joint Powers Agreement for the Red River Regional Dispatch Center

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On November 9, 2023, the Red River Regional Dispatch Center (RRRDC) Authority Board approved the first amendment to the RRRDC Joint Powers Agreement (JPA). The JPA amendment was brought to the RRRDC Executive Committee on November 22, 2023, and was asked to bring the amendment to each jurisdiction's respective board for approval. It has recently come to the County Administration's attention that the amendment was never formally approved by the Cass County Commission.

The request today is to approve the first amendment for the RRRDC JPA. The changes include requiring a supermajority if there's an option to purchase land the new RRRDC facility is to be built on. The previous agreement did not require a super majority.

**SUGGESTED MOTION: Approve the First Amendment to the Joint Powers Agreement for the Red River Regional Dispatch Center.**





**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

DEPARTMENT: Administration DATE OF REQUEST: 08-14-2024

COMPANY REQUESTING CONTRACT: Red River Regional Dispatch Center

BRIEF PROJECT DESCRIPTION: First Amendment to the Joint Powers Agreement

NEW CONTRACT OR  CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

STATE'S ATTORNEY COMMENTS:

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**FIRST AMENDMENT TO  
JOINT POWERS AGREEMENT  
(RED RIVER REGIONAL DISPATCH CENTER)**

THIS AMENDMENT is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF FARGO, a North Dakota municipal corporation, hereinafter called “Fargo”, the CITY OF WEST FARGO, a North Dakota municipal corporation, hereinafter called “West Fargo”, the CITY OF MOORHEAD, a Minnesota municipal corporation, hereinafter called “Moorhead”, the COUNTY OF CASS, (sometimes designated “Cass County Government), a corporate body and county under the laws of the State of North Dakota, hereinafter called “Cass County”, and CLAY COUNTY, a corporate body and county under the laws of the State of Minnesota, hereinafter called “Clay County”.

WITNESSETH:

WHEREAS, the parties hereto entered into a Joint Powers Agreement (the “Joint Powers Agreement”) effective January 1, 2023, regarding the governance, ownership, operation and maintenance of property and the public safety and related operations of the “Red River Regional Dispatch Center”, hereinafter referred to as “RRRDC”, which was previously established by a prior joint powers agreement dated as of July 11, 2001; and,

WHEREAS, the Board of Authority of the RRRDC has entered into a long-term lease agreement for the leasing by the RRRDC of certain land from the City of Fargo (the “RRRDC/Fargo Ground Lease”) located adjacent to the City of Fargo Public Safety Building located on 4630 15<sup>th</sup> Avenue North in Fargo and upon which land the RRRDC intends to construct certain improvements including construction of a new dispatch center building, said building and other improvements to be owned by the RRRDC with the land continued to be owned by the City of Fargo; and,

WHEREAS, the RRRDC/Fargo Ground Lease provides the RRRDC with more than one opportunity or option, during the course of the term of the lease including extensions thereof, for the RRRDC to purchase the land and/or to reject an offer to purchase the land from the City or its successors in interest; and,

WHEREAS, the Board of Authority has recommended to the Member Entities of the RRRDC that such decisions are sufficiently important to the RRRDC to warrant such decisions be included among the list that require a super-majority vote of the members of the Board of Authority, as set forth in Section 5.09 of the Joint Powers Agreement and that the Joint Powers Agreement be amended accordingly;

NOW, THEREFORE, the Joint Powers Agreement is hereby further amended as follows:

A. Section 5.09 is hereby amended to add subsection (j), to read as follows:  
“... (j) a decision by the RRRDC Authority Board either to purchase or to not purchase

certain land from the City of Fargo that is subject to a certain Ground Lease between the City of Fargo, as owner and lessor, to the RRRDC, as the lessee."

B. In all other respects, the Joint Powers Agreement, effective January 1, 2023, shall be and remain in full force and effect.

C. This First Amendment to the Joint Powers Agreement shall be effective as of the date and year first above written.

[Remainder of Page Left Blank – Signature Pages to Follow]

CITY OF FARGO,  
a North Dakota municipal corporation

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Timothy J. Mahoney, M.D., Mayor

ATTEST:

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Steven Sprague, City Auditor

CITY OF MOORHEAD  
a Minnesota municipal corporation

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Michelle (Shelly) Carlson, Mayor

ATTEST:

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Daniel Mahli, City Manager



COUNTY OF CASS,  
NORTH DAKOTA

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Chad M. Peterson, Chair  
Cass County Commission

ATTEST:

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Robert Wilson, County Administrator

CITY OF WEST FARGO,  
a North Dakota municipal corporation

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Bernie Dardis, Commission President

ATTEST:

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City Administrator

COUNTY OF CLAY, MINNESOTA

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Frank Gross, Chair  
Clay County Commission

ATTEST:

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Stephen Larson, County Administrator



**Robert W. Wilson**  
**County Administrator**

Telephone: 701-241-5770  
wilsonro@casscountynd.gov

**MEMO**

TO: County Commission  
FROM: Robert W. Wilson  
Date: August 13, 2024  
Subject: Family HealthCare Center Business Associate Agreement update

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The County has had a Business Associate Agreement with Family HealthCare Center (FHC) since 2014. The County recently engage additional services with FHC effective January 1, 2025, for jail medical services and FHC has requested an update to the Business Associate Agreement. The agreement is effectively the same with updates to the verbiage of the current HIPPA Privacy Statement and adding a provision for the County to terminate the agreement with or without cause provided a thirty days' written notice. The Cass County State's Attorney's Office has reviewed the agreement.

**SUGGESTED MOTION: Approve the updated Business Associate Agreement with Family HealthCare Center.**



**CONTRACT APPROVAL**

**REQUIRED BY DEPARTMENT:**

Administration/

DEPARTMENT: Sheriff's Office DATE OF REQUEST: 08-14-2024

COMPANY REQUESTING CONTRACT: Family Healthcare Center

BRIEF PROJECT DESCRIPTION: Business Associate Agreement for services at the Jail

     NEW CONTRACT OR   x   CONTRACT RENEWAL

**REQUIRED BY STATE'S ATTORNEY OFFICE:**

STATE'S ATTORNEY SIGNATURE: \_\_\_\_\_ DATE \_\_\_\_\_

STATE'S ATTORNEY COMMENTS:

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## BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (BAA) is entered by and between Family Healthcare Center, a North Dakota non-profit corporation (Covered Entity), and Cass County Sheriff's Office (Business Associate) (collectively, Parties).

### RECITALS

WHEREAS, Business Associate provides services (Services) to Covered Entity and Business Associate receives, has access to, or creates Protected Health Information (PHI) in order to provide those services; and

WHEREAS, the Covered Entity is subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations made known there under, as they may be amended from time to time; and

WHEREAS, HIPAA requires the Covered Entity to enter into a written agreement with the Business Associate to protect the privacy and security of PHI, and HIPAA prohibits the disclosure to or use of PHI by the Business Associate if such an agreement is not in place; and

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### Definitions

#### Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

#### Specific definitions:

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Cass County Sheriff's Office.



(b) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Family HealthCare.

(c) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(d) Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services.

### **Obligations and Activities of Business Associate**

Business Associate agrees to:

(a) Not use or disclose Protected Health Information as defined in and governed by the Health Insurance Portability Accountability Act (HIPAA) other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Mitigate, to the extent applicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

(d) Immediately report to Covered Entity any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. Such reports will include at least the following information:

- (1) the identity of each individual whose information was accessed, acquired, or disclosed during the improper use or disclosure;
- (2) a brief description of what happened;
- (3) the date of discovery of the improper use or disclosure;
- (4) the nature of the Protected Health Information that was involved (e.g., social security numbers, date of birth, etc.);
- (5) any steps individuals should take to protect themselves from potential harm resulting from the improper use or disclosure; and
- (6) a brief description of what the Business Associate is doing to investigate the improper use or disclosure, to mitigate harm to individuals, and to protect against any further incidents;



(e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. Contracts between business associates and business associates that are subcontractors are subject to these same requirements;

(f) Make available to Covered Entity Protected Health Information in a Designated Record Set as necessary to allow Covered Entity to satisfy its obligations under 45 CFR 164.524 to provide individuals with access to their Protected Health Information;

(g) Make available to Covered Entity Protected Health Information in a Designated Record for amendment(s) and incorporate any amendments made by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

(h) Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

(i) Make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations;

(j) To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s);

(k) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf Covered Entity, and otherwise comply with 45 CFR Part 160 and Part 164 with respect to such electronic Protected Health Information, to prevent uses or disclosures of Protected Health Information other than as provided for by this Agreement; and

(l) Report to Covered Entity any material attempted or successfully access, use disclosure, modification, or destruction of information or interference with system operations in an information system.





### **Permitted Uses and Disclosures by Business Associate**

- (a) Business Associate may only use or disclose Protected Health Information as necessary to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to the underlying service agreement between the parties, provided that such use of disclosure would not violate 45 CFR Part 160 and Part 164 if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. In addition to other permissible purposes, the Business Associate is authorized to use Protected Health Information to de-identify the information in accordance with 45 CFR 164.514(a)-(c).
- (b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administrations of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.
- (d) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (e) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity, consistent with 45 CFR 164.502(j)(l).

### **Obligations of Covered Entity**

Covered Entity shall:

- (a) Notify Business Associate of any limitation(s) in the Notice of Privacy Practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- (b) Notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.



(c) Notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

### **Permissible Requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

### **Terms and Termination**

(a) Term. The term of this Agreement shall become effective on the effective date of the underlying services agreement between the parties and remain in effect, unless otherwise terminated upon the earlier of:

- (1) Expiration of termination of the underlying services agreement; or
- (2) termination of this agreement for cause by the Covered Entity as authorized by subsection (b) below.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (1) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
- (2) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

(c) Termination by Business Associate with or without cause provided thirty (30) days' written notice is given.

(d) Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health





Information that is in possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- (2) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, the Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is not feasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information to those purposes that make the return or destruction impractical, for so long as Business Associate maintains such Protected Health Information and continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information.

### Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules and any other applicable law.
- (d) Exclusion from Limited Liability. To the extent Business Associate has limited its liability under the terms of the underlying agreement, weather with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, such limitation shall not apply to the following cost to the extent they arise from Business Associate or agents or subcontractors of the Business Associate's breach of its obligations relating to the use of Protected Health Information:
- (1) the cost of notifying patients of a breach of their Protected Health Information as required by 45CFR 164.400 et seq.;
  - (2) any civil monetary penalties, fines, or other damages resulting from the action of any state or federal government agency as a result of the breach;
  - (3) fees of counsel, forensic computer specialists, and other consultants used to assist the Covered Entity in responding to a breach of Protected Health Information and any subsequent investigation by a federal or state government agency;



(4) the defense of lawsuits brought by patients alleging invasion of privacy, and any liability resulting from such lawsuits (weather in the form of a judgment or settlement), provided that Business Associate shall have the opportunity to participate in the defense of such lawsuits and to approve any proposed settlement for which it would be financially responsible.

The obligations of Business Associate under this Section shall survive the termination of this Agreement for any reason.

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused this Agreement (or addendum) to be executed as follows.

COVERED ENTITY

BUSINESS ASSOCIATE

Family Healthcare Center

By: Margaret Asheim

Name: Margaret Asheim

Title: Chief Executive Officer

Date: 8/7/24

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

Name: \_\_\_\_\_

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

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