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Office of the Sheriff

Jesse Jahner, Sheriff

October 11, 2021

Mr. Chad Peterson – Chair
Cass County Commission

Chairman Peterson,

This letter contains a request to have three items submitted for consideration and action at the next available meeting of the Cass County Commission. All three items relate to contractual matters between the Cass County Jail and its vendors.

I am including separate packets for each of the three items which include detailed explanations and contract amendments that will require discussion and commission action. All three items are time sensitive.

Item #1 Contract with the DOCR to formalize payment to Cass County for DOCR sentenced inmates.

Item #2 Upcoming expiration of the Jail Commissary Contract with Turnkey.

Item #3 Amendment to the contract with Securus (inmate phone system), due to FCC action on rates.

I respectfully request the opportunity to discuss each of these items, and present options for the Commission to consider, at the next full meeting of the Commission.

Capt. Andrew Frobig
Jail Administrator

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Law Enforcement Center
1612 23rd Avenue North
P.O. Box 488
Fargo, North Dakota 58107-0488
Phone: 701-241-5800
Fax: 701-241-5806

Cass County Sheriff
Courthouse
211 9th Street South
P.O. Box 488
Fargo, North Dakota 58107-0488
Phone: 701-241-5800
Fax: 701-241-5805

Cass County Jail
450 34th Street South
Fargo, North Dakota 58103
Phone: 701-271-2900
Fax: 701-271-2967

Item #1. Contract between Cass County and ND Dept of Corrections and Rehabilitation

During the 2021 Legislative Session, HB 1112 was passed and signed into law. This bill amended ND Century Code 54-23.3-11, relating to the DOCR authority to refuse to admit inmates who have been sentenced to DOCR custody under a Prioritization of Admission Plan. The amendment established,

“If the plan includes the use of a local jail or correctional facility, the department shall negotiate the terms of the agreement with each facility. An agreement under this section must include a minimum daily rate per inmate, including medical costs, to be paid by the department to the governing body of the jail or correctional facility beginning the day after the department receives notice from the district court of an order placing an individual in the care and custody of the department and ending on the admission date provided by the department.”

In short, this law now requires the DOCR to pay for any days an inmate spends in the Cass County Jail, from the time the DOCR is formally provided the court sentencing document until they accept admission of the inmate. The law also requires a contract between both parties to set the rate, terms, and provide for compensation of medical expenses that are incurred by Cass County during any such period that the DOCR is responsible for paying daily rates.

The attached contract has been proposed by the DOCR to meet the requirements of this law. This version is the result of negotiations between Jail Administration and the DOCR over the past several weeks. The final version of the proposed contract establishes a daily rate of \$85.00 per day, which is consistent with the rate currently charged to other counties and to local municipal courts. The contract provides for payment of approved medical expenses and emergent medical expenses of DOCR sentenced inmates. The DOCR has cooperated with us to adjust language and clauses within this contract so that we would find it suitable for finalization. This final proposed contract is consistent with current practice and we are comfortable with the final language and stipulations.

Proposed Motion - *“Move to approve the proposed contract between Cass County and the ND Department of Corrections and Rehabilitation.”*

INTERGOVERNMENTAL SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its **Department of Corrections & Rehabilitation (DOCR), Division of Adult Services (DAS)** (DOCR) and **Cass County Jail** (CONTRACTOR);

1. TERM OF CONTRACT

The term of this contract is for a period of _____ months, commencing on the _____ day of **October, 2021**, and terminating on the 30th day of **June, 2023**.

2. SCOPE OF SERVICE

CONTRACTOR, in exchange for the compensation paid by DOCR under this contract, shall, at the request of DOCR, provide custody and care for: parole violators under the control of the North Dakota Parole Board through the DOCR Parole and Probation Division; probationers on temporary holds in lieu of revocation under the control of the DOCR Parole and Probation Division; inmates sentenced to the custody of DOCR who are awaiting transfer to DOCR under N.D.C.C. Section 54-23.3-11; and individuals subject to the Interstate Compact for Adult Offender Supervision under the supervision of DOCR (collectively defined as "Offenders").

The DOCR will not guarantee any offender population under this contract.

CONTRACTOR agrees to the following:

1. CONTRACTOR shall provide **Non-Programming Secure Correctional Housing** and shall accept and manage DOCR Offenders, including those with behavior problems, if CONTRACTOR is at operational status and not at maximum capacity. If CONTRACTOR determines CONTRACTOR does not have enough space or resources to continue to manage DOCR Offenders, CONTRACTOR may request the DOCR make alternate arrangements for the Offenders. Upon receipt of CONTRACTOR's request, the DOCR shall arrange for transport from Cass County Jail within 48 hours.
2. CONTRACTOR may provide internal work programs. Participation in internal work programs that require an Offender to be outside the secure perimeter must have prior authorization from the Director of Transitional Facilities.
3. CONTRACTOR shall adhere to Office of Juvenile Justice Delinquency Prevention (OJJDP) requirements.
4. CONTRACTOR shall comply with N.D.C.C. Ch. 12-44.1 Jail and Regional Correction Center laws and the North Dakota Correctional Facility Rules.

3. COMPENSATION

DOCR will pay for the services provided by CONTRACTOR under this contract an amount not to exceed **\$85.00** per Offender per day, to be paid **monthly**. **CONTRACTOR shall bill the DOCR for the day the Offender is admitted to the contract facility, but not the day of discharge from the facility.**

CONTRACTOR shall bill for correctional services provided on a monthly basis. CONTRACTOR shall list each DOCR Offender, the specific dates of confinement for each Offender, the total days to be reimbursed, the agreed upon rate per day, and the total amount billed (total days multiplied by the rate per day) in the invoice. CONTRACTOR shall include the full name (last, first and middle), and the name of the arresting or referring officer or agency. DOCR is not be liable for per diem costs for Offenders who are also held on other charges. DOCR shall submit payment within 30 days of receipt of invoice. CONTRACTOR shall submit invoice to the following for payment: *DOCR Business Office, PO Box 1898, Bismarck, ND 58502-1898 or by email to docrbusiness@nd.gov.*

4. AUTHORITY

This contract is entered into under Chapters 12-44.1, 12-47, and 54-23.3 of the North Dakota Century Code.

5. SUPPORT AND MEDICAL SERVICES

CONTRACTOR agrees to accept and provide for the custody, care, and safekeeping of Offenders in accordance with applicable federal, state and local laws, standards, policies, procedures, or court orders applicable to the operations of the facility.

1. The daily rate for services in this contract includes the cost of on-premises routine medical care. On-premises routine medical care includes non-prescription medication, and non-emergency medical, dental, and optical care.
2. DOCR shall pay for necessary, off-premises medical care for Offenders under the following conditions:
 - a. For non-emergency medical care and pharmaceutical (prescription) medications, the DOCR shall pay if
 - i. The DOCR Sr. Director of Nursing provides prior approval.
 - ii. The CONTRACTOR utilizes the DOCR pharmacy when directed by the DOCR Senior Director of Nursing.
 - iii. CONTRACTOR utilizes medical service providers that charge Medicaid rates.
 - b. For emergency medical care, the DOCR shall pay without prior approval if CONTRACTOR notifies the DOCR Sr. Director of Nursing as soon as possible after the emergency.
3. DOCR will not pay for any non-emergency dental, optical, or any other health or medical services unless CONTRACTOR has obtained the DOCR'S authorization prior to providing the services.
4. Prior to DOCR'S physical placement of an Offender with CONTRACTOR, CONTRACTOR may accept or deny placement of Offenders because of legitimate security concerns. Once CONTRACTOR has accepted an Offender, CONTRACTOR shall provide the Offender with necessary medical care in accordance with this contract.
5. The Director of the DOCR retains the authority to return Offenders from the contract facility to the DOCR or approve payment to provide the Offender with necessary medical care locally.
6. If the CONTRACTOR determines medical care is necessary for an Offender and the DOCR disagrees, the DOCR shall agree to (a) provide the medical care or (b) transport the Offender from the contract facility within 48 hours.
7. The contact information for the Senior Director of Nursing:

Jessica Wilkens
 Senior Director of Nursing
 PO Box 1898, 3100 Railroad Ave
 Bismarck, ND 58502-1898
 Phone: (701) 328-6685
 Email: jwilkens@nd.gov

6. LABOR

CONTRACTOR, or employee or agent of CONTRACTOR, may not solicit or hire for personal purposes any individual receiving services under this contract. CONTRACTOR, or its employees or agents may not solicit or receive volunteer labor or services for personal purposes from an individual receiving services under this contract.

7. FINANCIAL LIABILITY

If CONTRACTOR disregards obligations or willfully violates conditions of the contract, DOCR may reduce the compensation paid to CONTRACTOR for each violation, which DOCR may withhold from payments due under the "Compensation" section of the contract. In addition, CONTRACTOR may be subject to contract termination and debarment from future contracts for up to three years.

8. PRISON RAPE ELIMINATION ACT (PREA)

CONTRACTOR shall comply with the Prison Rape Elimination Act of 2003 ("PREA"), 42 U.S.C. § 15601 et.seq., and all applicable PREA Standards and DOCR Adult Services Policies related to PREA for the prevention, detection, monitoring, investigation, and eradication of any form of sexual abuse within CONTRACTOR facilities, programs, or offices, whether owned, operated or contracted. This includes the education of staff and offenders, conducting investigations, reporting incidents to DOCR, compiling incident data and aggregate data, and providing incident and aggregate data to DOCR on an annual basis. CONTRACTOR acknowledges that, in addition to its self-monitoring requirements, DOCR may conduct announced or unannounced compliance monitoring, including on-site monitoring. Failure to comply with PREA and applicable PREA Standards and DOCR Policies may result in termination of the contract.

9. DISCHARGE

CONTRACTOR may not release, discharge, or transfer an Offender from its physical custody, including release from custody or transfer to other correctional facility, law enforcement agency, governmental agency or institution, without

first notifying DOCR and receiving DOCR's approval. After obtaining authorization from DOCR for release from custody or transfer, CONTRACTOR shall complete any discharge paperwork, including victim notifications.

10. TRANSFER OF OFFENDERS TO THE DOCR

In the event that an Offender housed in CONTRACTOR'S facility causes serious institutional misconduct, becomes unmanageable, or becomes uneconomical for CONTRACTOR, CONTRACTOR may request that the Offender be transported to the DOCR. CONTRACTOR shall first notify the Warden of Transitional Facilities, Classification Director, or designee and request the Offender be transferred to the DOCR. CONTRACTOR shall provide a written report of the serious institutional misconduct within 24-hours to DOCR. In the event of an escape or attempted escape, CONTRACTOR shall immediately notify DOCR.

Serious institutional misconduct or incident reporting: For each of the following serious incidents, CONTRACTOR shall provide DOCR an immediate verbal report and a written report no later than 24 hours following the incident:

1. Any incident that results in escape, physical harm or the need for medical attention to any person.
2. A serious threat to the safety of any person for the security of the facility, including extensive property damage that could result in an escape or serious injury.
3. Use of controlled substances or alcohol.
4. Possession or use of a weapon.
5. Discharge of a firearm, chemical agent, ERD's, gas or munitions to control the behavior of one or more offenders.
6. A hostage situation.
7. The death of any person at the facility.
8. A disturbance involving two or more offenders.
9. The commission of, or the attempt to commit, a criminal offense.

11. MEDIA

[Intentionally Omitted]

12. TERMINATION OF CONTRACT

- A. Termination without cause. This contract may be terminated by mutual consent of both parties, or by either party with notice 30 days in advance.
- B. Termination for lack of funding or authority. DOCR may terminate this contract effective upon delivery of written notice to CONTRACTOR, or on any later date stated in the notice, under any of the following conditions:
 1. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. The contract may be modified by agreement of the parties in writing to accommodate a reduction in funds.
 2. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this contract or are no longer eligible for the funding proposed for payments authorized by this contract.
 3. If any license, permit or certificate required by law or rule, or by the terms of this contract, is for any reason denied, revoked, suspended or not renewed.

Termination of this contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

- C. Termination for cause. DOCR by written notice of default to CONTRACTOR may terminate the whole or any part of this contract:
 1. If CONTRACTOR fails to provide services required by this contract within the time specified or any extension agreed to by DOCR; or
 2. If CONTRACTOR fails to perform any of the other provisions of this contract, or so fail to pursue the work as to endanger performance of this contract in accordance with its terms.

The rights and remedies of DOCR provided in the above clause related to defaults by CONTRACTOR are not exclusive and are in addition to any other rights and remedies provided by law or under this contract.

13. FORCE MAJEURE

CONTRACTOR will not be held responsible for delay or default caused by fire, flood, riot, acts of God or war if the event is beyond CONTRACTOR'S reasonable control and CONTRACTOR gives notice to DOCR immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.

14. RENEWAL OPTION

DOCR may renew this Contract upon satisfactory completion of the initial Contract Term. DOCR reserves the right to execute up to 3 options to renew this Contract under the same terms and conditions for a period of 24 months each.

15. SEVERABILITY

If any term of this contract is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the contract did not contain that term.

16. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without DOCR'S express written consent. However, CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this contract and incorporates this contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor. CONTRACTOR does not have authority to contract for or incur obligations on behalf of DOCR.

17. NOTICE

All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

DOCR Joseph Joyce Warden of Transitional Facilities PO Box 1898, 3100 Railroad Ave Bismarck, ND 58502-1898 Phone: (701) 328-6789 Email: jrjoyce@nd.gov	CONTRACTOR Phone: (701) Email:
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Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. 32-12.2-04.

18. APPLICABLE LAW AND VENUE

This contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota.

19. SPOILIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify DOCR of all potential claims that arise or result from this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to DOCR the opportunity to review and inspect the evidence, including the scene of an accident.

20. INDEMNITY

DOCR and CONTRACTOR each agrees to assume its own liability for any and all claims of any nature including all costs, expenses and attorneys' fees which may in any manner result from or arise out of this agreement.

21. INSURANCE

CONTRACTOR has liability coverage pursuant to N.D.C.C. 32-12.1.

22. ATTORNEY FEES

In the event a lawsuit is instituted by DOCR to obtain performance due under this contract, and DOCR is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. 28-26-04, pay DOCR'S reasonable attorney fees and costs in connection with the lawsuit.

23. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

DOCR does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. DOCR does not waive any right to a jury trial.

24. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from DOCR under this contract that DOCR has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by DOCR. DOCR shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that DOCR determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C. § 44-04-18. The duty of DOCR and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract, or any extensions or renewals of it.

25. COMPLIANCE WITH RECORDS LAW

CONTRACTOR understands that, except for disclosures prohibited in this contract, DOCR must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this contract, except for records that are confidential under this contract, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. CONTRACTOR agrees to contact DOCR immediately upon receiving a request for information under the open records law and to comply with DOCR'S instructions on how to respond to the request.

CONTRACTOR acknowledges that its offender records are subject to the provisions of N.D.C.C. 12-44.1-28 and 12-47-36. CONTRACTOR shall comply with the provision of North Dakota's open records laws, subject to the restrictions and limitations of N.D.C.C. 12-44.1-28 and 12-47-36.

Files must be retained by CONTRACTOR for a period of six (6) years from the date of the offender's release from the program or the conclusion of any claim, litigation, or exception relating to the contract (25 years for sex offenders).

Inmate records may not be released directly to an inmate. Inmate medical, psychological, and treatment records are confidential and may only be disclosed in compliance with N.D.C.C. 12-47-36.

The DOCR Division of Adult Services is not a covered entity and is not subject to the provisions of the Health Insurance Portability and Accountability Act (HIPAA). The DOCR Division of Adult Services and CONTRACTOR also recognize that the DOCR Division of Adult Services consists of state adult correctional facilities and that in accordance with 45 C.F.R. Section 164.512(K)(5) of the Privacy Rule, an inmate's consent and authorization is not necessary for limited disclosure of protected health care information in accordance with the Privacy Rule and in the minimum necessary. The DOCR Division of Adult Services may execute a Business Associate Agreement with CONTRACTOR in conformity with the Privacy Rule if necessary in order for CONTRACTOR to maintain compliance with HIPAA.

DOCR, the Attorney General of the State of North Dakota, the Risk Management Division of the Office of Management and Budget, and the federal government and their duly authorized representatives, may have access to the books, documents, papers, and records of CONTRACTOR which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.

26. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation, and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this contract all licenses and permits required by law.

27. STATE AUDIT

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this contract are subject to examination by DOCR, the North Dakota State Auditor, or the Auditor's designee. CONTRACTOR will maintain all such records for at least three years following completion of this contract.

28. VENDOR ID

PeopleSoft Vendor ID number is: []

29. MERGER AND MODIFICATION

This contract constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this contract. This contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

30. EFFECTIVENESS OF CONTRACT

This contract is not effective until fully executed by both parties.

CONTRACTOR

STATE OF NORTH DAKOTA

County Jail

Department of Corrections & Rehabilitation

Its: _____
By: Chad Peterson
Title: Cass County Commission Chair
Date: October 18, 2021

Its: _____
By: Joseph Joyce
Title: Warden of Transitional Facilities
Date: _____

Its: _____
By: Michele Zander
Title: DOCR Chief Financial Officer
Date: _____