



M E M O

**County
Administrator**

Robert W. Wilson
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TO: County Commissioners
FROM: Tracy Peters, HR Director / Assistant County Administrator
DATE: March 15, 2023
SUBJECT: Youthworks MOU

Historically, Cass County has contracted with Youthworks for Attendant Care and Shelter Care for the county and the Human Service Zone. As a result of 2021 legislative changes, youth in Attendant Care and youth in Shelter Care cannot be co-mingled. Therefore, Youthworks has continued providing Attendant Care but no longer provides Shelter Care.

Because Cass County, West Fargo, and Fargo all utilize the Attendant Care services, the agreed upon cost of services and budgeted amounts for 2023 are as follows:

Cass County: \$60,000
City of Fargo: \$25,000
City of WF: \$30,000
Total: \$115,000

Earlier this year, Youthworks informed all entities, their cost of operation increased to \$170,000 for 2023. The City of Fargo, West Fargo, and Cass County worked together to modify the agreement and re-allocate the cost of this service. That new cost allocation is as follows:

Cass County: \$95,000
City of Fargo: \$40,000
West Fargo: \$35,000
Total: \$170,000

Attached is a draft of the MOU with these new cost allocations contained in Attachment A.

SUGGESTED MOTION: Authorize the Chair to sign the MOU with Fargo, West Fargo, and Youthworks and authorize a budget adjustment pursuant to the terms of the amended MOU.

PO Box 2806
211 Ninth Street South
Fargo, North Dakota 58108

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CONTRACT APPROVAL

REQUIRED BY DEPARTMENT:

DEPARTMENT: Administration DATE OF REQUEST: 03-14-2023

COMPANY REQUESTING CONTRACT: Youthworks

BRIEF PROJECT DESCRIPTION: Attendant care services

NEW CONTRACT OR CONTRACT RENEWAL

REQUIRED BY STATE'S ATTORNEY OFFICE:

STATE'S ATTORNEY SIGNATURE: _____ DATE _____

STATE'S ATTORNEY COMMENTS:

GRANT AGREEMENT

This Agreement is made by and between the North Dakota Department of Corrections and Rehabilitation and its Division of Juvenile Services (DJS) (STATE), the North Dakota Association of Counties (NDACo), city and county jurisdictions as listed in Attachment A (JURISDICTIONS) and Youthworks (GRANTEE).

WHEREAS, DJS has determined the Attendant Care services referred to in the paragraph below entitled "Scope of Services" form an appropriate basis for the expenditure of Federal grant funds (CFDA number 16.540) from the Office of Juvenile Justice and Delinquency Prevention (OJJDP); and

WHEREAS, NDACo has agreed to assist DJS in obtaining, coordinating, and administrating these services; and

WHEREAS, JURISDICTIONS propose to identify and support GRANTEE as an agency authorized to provide services for youth picked up by law enforcement that need a temporary placement option;

WHEREAS, Youthworks (GRANTEE) is an appropriate agency to provide Attendant Care services for delinquent youth as defined in the North Dakota Attendant Care Program Guidelines (Guidelines), as well as short-term shelter services for Children in Need of Services (CHINS).

NOW, THEREFORE, the parties agree as follows:

AGREEMENT

I. TERM OF THE AGREEMENT

The term of this agreement shall be from January 1, 2023 – December 31, 2023.

II. SCOPE OF SERVICES

The GRANTEE shall:

1. Provide a placement facility that law enforcement can access twenty-four hours a day, seven days a week for youth ages 10-17 who need a non-secure short-term placement either due to delinquency (Attendant Care) or for Children in Need of Services (shelter). This includes space for youth to recreate, eat and engage with staff during wake hours, and sleeping space.
2. Provide services to delinquent youth in conformance with all provisions of the Guidelines, including the development of policies and procedures for the supervision of youth.
3. Screen youth for appropriateness, including assessing for immediate mental health needs, history of violence and/or sexual aggression, and current affect and behavior.
4. Notify the Juvenile Court of any youth placed in the facility within 24 hours of being placed.

5. Provide for an assessment of youth while at the facility, release arrangements, short-term case management support and/or counseling for youth exiting the facility to reduce the likelihood of further contact with law enforcement.
6. Submit to NDACo all reports and documentation required by the Guidelines;
7. Allow NDACo to conduct on-site programmatic monitoring of the Attendant Care services, as required pursuant to federal guidelines.

Youth may need to be medically-cleared prior to entry into the facility and/or may not be appropriate due to aggressive behaviors that are likely to occur while at the facility (threatening or aggressive behavior, or non-compliance with the staff).

In the event that more than two youth are referred for placement at the same time, GRANTEE will make every effort to take the additional youth. GRANTEE may provide services to other agencies seeking to place youth, but priority will be given to the JURISDICTIONS. GRANTEE will bill a daily rate to those agencies that are not part of this agreement and will track all money collected for purposes of subsequent contract periods.

III. COMPENSATION

DJS, through NDACo, shall provide reimbursement to the GRANTEE for Attendant Care services outlined in the Guidelines. JURISDICTIONS shall provide funding to GRANTEE to cover Attendant Care expenses not eligible for reimbursement pursuant to the Guidelines as well as the costs associated with providing shelter services for CHINS, as outlined in Attachment A.

The GRANTEE agrees to account for any and all grant funds that may be in possession of the GRANTEE throughout the term of this grant and to return any unexpended funds within 30 days after final closing of the grant. JURISDICTIONS may elect to roll any unexpended funds into the subsequent contract period, as applicable.

GRANTEE will provide a credit in any subsequent contract period for the amount collected by agencies utilizing the site that are not part of the agreement.

IV. GRANTEE ASSURANCES

The GRANTEE agrees to comply with North Dakota Century Code chapters 27-20.2, 27-20.3, and 27-20.4, and the grant conditions and assurances established by OJJDP for sub-grant recipients of federal funds as detailed in the Office of Justice Programs Financial Guide and associated Federal Circulars.

The GRANTEE agrees to comply (and will require any subgrantees or contractors to comply) with any applicable federal nondiscrimination requirements, which may include the Omnibus Crime Control and Safe Streets Act of 1968 (34 USC § 10228(c) & 10221(a)); the Juvenile Justice and Delinquency Prevention Act of 2002 (34 USC § 11182(b)); 28 CFR Part 42 (U.S. Department of Justice Regulations – Nondiscrimination; Equal Employment Opportunity; Policies and Procedures), including Title VI of the Civil Rights Act of 1964, as amended, Section 815(c)(1) of the Justice System Improvement Act of 1979, Equal Employment Opportunity Program Guidelines, Section 504 of the Rehabilitation Act of 1973, as amended, and the Age Discrimination Act of 1975; the

Americans with Disabilities Act of 1990 (42 USC §§ 12131-34); Title IX of the Education Amendments of 1972 (20 USC §§ 1681, 1683, 1685-86); and 28 CFR Part 38 (U.S. Department of Justice Regulations – Partnerships with Faith-Based and Other Neighborhood Organizations).

To ensure compliance with the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964, GRANTEE agrees to take steps to ensure the persons with Limited English Proficiency (LEP) have meaningful access to its programs. Meaningful access may entail providing language assistance, including oral and written translation, where necessary. GRANTEE is encouraged to consider the need for language services for LEP persons both in developing its budgets and in conducting its programs and activities. Additional assistance and information regarding LEP obligations can be found at <http://www.lep.gov>.

The GRANTEE agrees to designate a civil rights contact person who has lead responsibility in insuring that all applicable civil rights requirements, assurances, and conditions are met and who shall act as a liaison in all civil rights matters with the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs and the Office for Civil Rights, Office of Justice Programs.

The GRANTEE will inform the public and subgrantees of affected persons' rights to file a complaint of discrimination with the Office for Civil Rights, Office of Justice Programs for investigation. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office for Civil Rights, Office of Justice Programs and the North Dakota Department of Corrections and Rehabilitation, Division of Juvenile Services (DJS).

The GRANTEE will develop an Equal Employment Opportunity Plan (EEOP) and submit an EEOP Utilization Report to the Office for Civil Rights, Office of Justice Programs, if it is a government agency or private business that is receiving an award of \$25,000 or greater and has 50 or more employees. The GRANTEE, if not required to submit an EEOP Utilization Report, will certify that it is exempt from this requirement by submitting an EEOP Certification Form. The EEOP Utilization Report or Certification Form, as applicable, should be submitted via the EEO Reporter Tool found at: <https://ojp.gov/about/ocr/eeop.htm>.

The GRANTEE shall not retaliate against individuals for taking action or participating in action to secure rights protected by the above referenced laws.

V. AUTHORITY TO CONTRACT

The GRANTEE shall not have the authority to contract on behalf of or incur obligations on behalf of NDACo, DJS, or JURISDICTIONS without written approval of NDACo, DJS, and JURISDICTIONS. If such subcontract is approved, it shall acknowledge the binding nature of this agreement, and incorporate this agreement, together with its attachments as

appropriate.

VI. INDEPENDENT ENTITY

The GRANTEE shall perform as an independent entity under this agreement. The GRANTEE, its employees, agents or representatives are not employees of NDACo, DJS, or JURISDICTIONS. No part of this agreement shall be construed to represent the creation of an employer/employee relationship.

VII. AUDIT RESPONSIBILITY

The GRANTEE agrees to keep such financial records as are required for sub-grants of OJJDP grant awards, as detailed in the Office of Justice Programs, Financial Guide and associated Federal Circulars. These records shall be made available to NDACo, DJS, and JURISDICTIONS, or their agents, upon request at any time during normal business hours. The GRANTEE agrees to include these funds in the annual audit of its organization, and further agrees to allow NDACo, DJS, or JURISDICTIONS or their agents, to conduct an audit at the expense of NDACo, DJS or JURISDICTIONS, or their agents.

VIII. RETENTION/PRIVACY OF RECORDS

The GRANTEE agrees to retain the financial records identified in paragraph VII above, for a period of ten years or until an audit is completed and closed, whichever occurs later. The GRANTEE further agrees to assure the privacy and confidentiality of client records in conformance with all applicable State and federal laws and regulations. The GRANTEE understands that except for the records that are confidential or that have been identified as exempt, this Agreement, and any records generated pursuant to this Agreement may be subject to disclosure under applicable state and federal law.

IX. TERMINATION OF AGREEMENT

If, the GRANTEE shall fail to fulfill in a timely and proper manner its obligations under this agreement, NDACo, DJS, or JURISDICTIONS shall thereupon have the right to terminate this agreement by giving written notice 30 days prior to termination to the GRANTEE of such termination. Notwithstanding a termination pursuant to this paragraph, the GRANTEE shall not be relieved of liability to NDACo, DJS or JURISDICTIONS, and NDACo, DJS, or JURISDICTIONS may withhold any payment otherwise due to the GRANTEE.

DJS, NDACo, and JURISDICTIONS may also terminate this Agreement upon delivery of written notice to the GRANTEE, or on any later date stated on the notice under any of the following conditions:

- a. If funding from federal, state, or other sources is not obtained and continued at levels sufficient for the services specified in the Agreement. The Agreement may be modified by the consent of the parties in writing to accommodate any reduction in funds;
- b. If federal or state laws or rules are modified or interpreted in a way that the funding or services are no longer allowable or appropriate or are no longer eligible for funding or payment authorized by this Agreement;
- c. If any license, permit or certificate required by rule or law, or by the terms of the

Agreement between the parties, is for any reason denied, revoked, suspended or not renewed.

X. INTERACTING AND MODIFICATION

This agreement constitutes the entire agreement between the GRANTEE, NDACo, DJS and JURISDICTIONS. No alteration or amendment shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

XI. APPLICABLE LAW

This agreement shall be governed by and construed in accordance with the laws of the state of North Dakota.

XII. CAPTIONS

The captions or headings in this agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this agreement.

XIII. EXECUTION AND COUNTERPARTS

This agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

XIV. NOTICES

All notices, certificates or other communications shall be sufficiently given when delivered or mailed, postage prepaid, to the parties at their respective places of business.

XV. ASSIGNMENT

This agreement shall not be assigned or transferred without the expressed written consent of the parties.

XVI. SUCCESSORS IN INTEREST

The provisions of the agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective successors and permitted assigns.

XVII. FORCE MAJEURE

The GRANTEE shall not be held responsible for delay or default caused by fire, riot, acts of God and war and other events that are beyond the GRANTEE's reasonable control, provided notice is given to NDACo, DJS, and JURISDICTIONS of any such delay or default.

XVIII. SEVERABILITY

The parties agree that if any term or provision of this agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular term or provision held to be invalid.

XIX. INDEMNITY

GRANTEE agrees to defend, indemnify, and hold harmless the State of North Dakota, its agencies, officers and employees (STATE), NDACo, and JURISDICTIONS from and against claims based on the vicarious liability of the STATE or its agents, NDACo or JURISDICTIONS, but not against claims based on the STATE'S, NDACo's or JURISDICTIONS' contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by GRANTEE for the STATE, NDACo or JURISDICTIONS under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary. Any attorney appointed to represent the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. GRANTEE also agrees to reimburse the STATE, NDACo and JURISDICTIONS for all costs, expenses and attorneys' fees incurred if the STATE, NDACo or JURISDICTIONS prevails in an action against GRANTEE in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

XX. INSURANCE

If GRANTEE is a political subdivision, then GRANTEE shall have liability coverage pursuant to N.D.C.C. 32-12.1. If GRANTEE is not a political subdivision then GRANTEE shall secure and keep in force during the term of this Contract and GRANTEE shall require all subcontractors, prior to commencement of an agreement between GRANTEE and the subcontractor, to secure and keep in force during the term of this Contract, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

1. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
2. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
3. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Contract.

The insurance coverages listed above must meet the following additional requirements:

1. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the GRANTEE.
2. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A- "or better by A.M. Best Company, Inc., provided any excess

- policy follows form for coverage. Less than an “A- “rating must be approved by the STATE. The policies shall be in form and terms approved by the STATE.
3. The duty to defend, indemnify, and hold harmless the STATE, NDACo, and JURISDICTIONS under this Contract shall not be limited by the insurance required in this Contract.
 4. The State of North Dakota and its agencies, officers, and employees (STATE), NDACo and JURISDICTIONS shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The STATE, NDACo and JURISDICTIONS shall have all the benefits, rights and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this Contract or by the contractual indemnity obligations of the GRANTEE.
 5. A “Waiver of Subrogation” waiving any right to recovery the insurance company may have against the STATE, NDACo, and JURISDICTIONS.
 6. The GRANTEE shall furnish a certificate of insurance to the undersigned State and JURISDICTIONS representative prior to commencement of this Contract. All endorsements shall be provided as soon as practicable.
 7. Failure to provide insurance as required in this Contract is a material breach of contract entitling the STATE, NDACo and JURISDICTIONS to terminate this Contract immediately.
 8. GRANTEE shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. GRANTEE shall provide on an ongoing basis, current certificates of insurance during the term of this Contract. A renewal certificate will be provided 10 days prior to coverage expiration.

XXI. SPOILATION

GRANTEE shall promptly notify STATE, NDACo, and JURISDICTIONS of all potential claims that arise or result from this Contract. GRANTEE 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 STATE, NDACo, and JURISDICTIONS the opportunity to review and inspect the evidence, including the scene of an accident.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY,
AND VOLUNTARY EXCLUSION FOR LOWER TIER COVERED TRANSACTIONS**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 28 C.F.R. Part 67, Section 67.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988, Federal Register (pages 19160-19211).

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name of Grantee

Signature of Authorized Official

Date

Printed Name and Title of Authorized Official

Signatures

In Witness Whereof the parties hereto have entered into this Agreement as evidenced by their signatures below:

For the Department of Corrections and Rehabilitation – Division of Juvenile Services:

Lisa Bjergaard, Director

Date

For the North Dakota Association of Counties:

Aaron Birst, Executive Director

Date

For Cass County:

Commission Chair

Date

For City of Fargo:

Mayor

Date

For City of West Fargo:

Mayor

Date

ATTACHMENT A

| Jurisdictions | Monthly Contribution (due on the 1st/15th of each month and every month thereafter in the 2023 calendar year starting on January 1st/15th of 2023) | Total Contribution for the 2023 Calendar Year |
|---------------------------|---|--|
| Cass County | \$7,916.70* | \$95,000.00 |
| City of Fargo | \$3,333.33* | \$40,000.00 |
| City of West Fargo | \$2,916.70* | \$35,000.00 |

***Monthly amount was rounded to the nearest cent.**