



Information Technology

Telephone: 701-241-5750
ITD@casscountynd.gov

MEMO

TO: County Commission
FROM: Bob Henderson, IT Director
DATE: November 13th, 2023
SUBJECT: GIS Enterprise Agreement

Chairman Peterson and members of the Commission:

Enclosed is a provided quote for expanding our ESRI ArcGIS license to an Enterprise Agreement.

As discussed during my budget hearings, the use of GIS has been expanding over the county over the past years. We have been able to keep up with this growth by providing as-needed software expansions, modules, and the like at a per-module cost. However, as we continue to grow, migration to an Enterprise Agreement compared to an ala-carte solution is not only more fiscally prudent, but also provides us with a large variety of tools, workflow options, and integrations that we do not have today.

Attached is the paperwork for Cass County to enter into this agreement. ESRI licenses their software by total population of the area in question. However, through negotiations, we have been able to lower this count down so that we are not re-billing citizens for areas already covered by other agreements through Fargo and West Fargo as much as possible.

This contract locks in our pricing for 3 years.

SUGGESTED MOTION:

Approve the presented contract with ESRI for ArcGIS Enterprise.

Bob Henderson
Information Technology Director



CONTRACT APPROVAL

REQUIRED BY DEPARTMENT:

DEPARTMENT: Information Technology DATE OF REQUEST: November 13, 2023

COMPANY REQUESTING CONTRACT: Environmental Systems Research Institute, Inc.

BRIEF PROJECT DESCRIPTION: ArcGIS license to an Enterprise Agreement

NEW CONTRACT OR CONTRACT RENEWAL

REQUIRED BY STATE'S ATTORNEY OFFICE:

STATE'S ATTORNEY SIGNATURE: *Mathis Naumann* DATE 11/17/2023

STATE'S ATTORNEY COMMENTS:

Approved as to form.



October 2, 2023

Ms. Kay Anderson
County of Cass
211 9th St S
Fargo, ND 58103

Dear Kay,

The Esri Small Municipal and County Government Enterprise Agreement (SGEA) is a three-year agreement that will grant your organization access to Esri term license software. The EA will be effective on the date executed and will require a firm, three-year commitment.

Based on Esri's work with several organizations similar to yours, we know there is significant potential to apply Geographic Information System (GIS) technology in many operational and technical areas within your organization. For this reason, we believe that your organization will greatly benefit from an Enterprise Agreement (EA).

An EA will provide your organization with numerous benefits including:

- A lower cost per unit for licensed software
- Substantially reduced administrative and procurement expenses
- Complete flexibility to deploy software products when and where needed

The following business terms and conditions will apply:

- All current departments, employees, and in-house contractors of the organization will be eligible to use the software and services included in the EA.
- If your organization wishes to acquire and/or maintain any Esri software during the term of the agreement that is not included in the EA, it may do so separately at the Esri pricing that is generally available for your organization for software and maintenance.
- The organization will establish a single point of contact for orders and deliveries and will be responsible for redistribution to eligible users.
- The organization will establish a Tier 1 support center to field calls from internal users of Esri software. The organization may designate individuals as specified in the EA who may directly contact Esri for Tier 2 technical support.
- The organization will provide an annual report of installed Esri software to Esri.
- Esri software and updates that the organization is licensed to use will be automatically available for downloading.
- The fee and benefits offered in this EA proposal are contingent upon your acceptance of Esri's Small Municipal and County Government EA terms and conditions.

- Licenses are valid for the term of the EA.

This program offer is valid for 90 days. To complete the agreement within this time frame, please contact me within the next seven days to work through any questions or concerns you may have.

To expedite your acceptance of this EA offer:

1. Sign and return the EA contract with a Purchase Order or issue a Purchase Order that references this EA Quotation and includes the following statement on the face of the Purchase Order:

"THIS PURCHASE ORDER IS GOVERNED BY THE TERMS AND CONDITIONS OF THE ESRI SMALL MUNICIPAL AND COUNTY GOVERNMENT EA, AND ADDITIONAL TERMS AND CONDITIONS IN THIS PURCHASE ORDER WILL NOT APPLY."

Have it signed by an authorized representative of the organization.

2. On the first page of the EA, identify the central point of contact/agreement administrator. The agreement administrator is the party that will be the contact for management of the software, administration issues, and general operations. Information should include name, title (if applicable), address, phone number, and e-mail address.
3. In the purchase order, identify the "Ship to" and "Bill to" information for your organization.
4. Send the purchase order and agreement to the address, email or fax noted below:

Esri	e-mail: service@esri.com
Attn: Customer Service SG-EA	fax documents to: 909-307-3083
380 New York Street	
Redlands, CA 92373-8100	

I appreciate the opportunity to present you with this proposal, and I believe it will bring great benefits to your organization.

Thank you very much for your consideration.

Best Regards,

Jason Fetch



Quotation # Q-474333

Date: October 2, 2023

Customer # 152216 Contract # ENTERPRISE AGREEMENT

County of Cass
Information Technology Dept
211 9th St S
Fargo, ND 58103

ATTENTION: Kay Anderson
PHONE: (701) 241-5762
EMAIL: andersonk@casscountynod.gov

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: OAMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/2/2023 To: 12/31/2023

Material	Qty	Term	Unit Price	Total
168180	1	Year 1	\$85,000.00	\$85,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
168180	1	Year 2	\$85,000.00	\$85,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
168180	1	Year 3	\$85,000.00	\$85,000.00
Populations of 100,001 to 125,000 Small Government Enterprise Agreement Annual Subscription				
159166	1		\$5,000.00	\$5,000.00
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription - Year 1				
159166	1		\$5,000.00	\$5,000.00
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription - Year 2				
159166	1		\$5,000.00	\$5,000.00
ArcGIS Hub Premium ArcGIS Online Community Annual Subscription - Year 3				
159168	1		\$1,000.00	\$1,000.00
ArcGIS Hub Premium Additional 1000 ArcGIS Online Community Creator Annual Subscription - Year 1				

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Jason Fetch	Email: jfetch@esri.com	Phone: 651-454-0600 x2331
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The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

FETCHJ

This offer is limited to the terms and conditions incorporated and attached herein.



Quotation # Q-474333

Date: October 2, 2023

Customer # 152216 Contract # ENTERPRISE AGREEMENT

County of Cass
Information Technology Dept
211 9th St S
Fargo, ND 58103

ATTENTION: Kay Anderson
PHONE: (701) 241-5762
EMAIL: andersonk@casscountynynd.gov

Environmental Systems Research Institute, Inc.
380 New York St
Redlands, CA 92373-8100
Phone: (909) 793-2853
DUNS Number: 06-313-4175 CAGE Code: OAMS3

To expedite your order, please attach a copy of this quotation to your purchase order.
Quote is valid from: 10/2/2023 To: 12/31/2023

Material	Qty	Term	Unit Price	Total
159168	1		\$1,000.00	\$1,000.00
ArcGIS Hub Premium Additional 1000 ArcGIS Online Community Creator Annual Subscription - Year 2				
159168	1		\$1,000.00	\$1,000.00
ArcGIS Hub Premium Additional 1000 ArcGIS Online Community Creator Annual Subscription - Year 3				

Subtotal:	\$273,000.00
Sales Tax:	\$0.00
Estimated Shipping and Handling (2 Day Delivery):	\$0.00
Contract Price Adjust:	\$0.00
Total:	\$273,000.00

Esri may charge a fee to cover expenses related to any customer requirement to use a proprietary vendor management, procurement, or invoice program.

For questions contact: Jason Fetch	Email: jfetch@esri.com	Phone: 651-454-0600 x2331
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The items on this quotation are subject to and governed by the terms of this quotation, the most current product specific scope of use document found at <https://assets.esri.com/content/dam/esrisites/media/legal/product-specific-terms-of-use/e300.pdf>, and your applicable signed agreement with Esri. If no such agreement covers any item quoted, then Esri's standard terms and conditions found at <https://go.esri.com/MAPS> apply to your purchase of that item. If any item is quoted with a multi-year payment schedule, then unless otherwise stated in this quotation, Customer is required to make all payments without right of cancellation. Third-party data sets included in a quotation as separately licensed items will only be provided and invoiced if Esri is able to provide such data and will be subject to the applicable third-party's terms and conditions. If Esri is unable to provide any such data set, Customer will not be responsible for any further payments for the data set. US Federal government entities and US government prime contractors authorized under FAR 51.1 may purchase under the terms of Esri's GSA Federal Supply Schedule. Supplemental terms and conditions found at <https://www.esri.com/en-us/legal/terms/state-supplemental> apply to some US state and local government purchases. All terms of this quotation will be incorporated into and become part of any additional agreement regarding Esri's offerings. Acceptance of this quotation is limited to the terms of this quotation. Esri objects to and expressly rejects any different or additional terms contained in any purchase order, offer, or confirmation sent to or to be sent by buyer. Unless prohibited by law, the quotation information is confidential and may not be copied or released other than for the express purpose of system selection and purchase/license. The information may not be given to outside parties or used for any other purpose without consent from Esri. Delivery is FOB Origin for customers located in the USA.

Esri Use Only:

Cust. Name _____
Cust. # _____
PO # _____
Esri Agreement # _____



**SMALL ENTERPRISE AGREEMENT
COUNTY AND MUNICIPALITY GOVERNMENT
(E214-4)**

This Agreement is by and between the organization identified in the Quotation ("**Customer**") and **Environmental Systems Research Institute, Inc. ("Esri")**.

This Agreement sets forth the terms for Customer's use of Products and incorporates by reference (i) the Quotation and (ii) the Master Agreement. Should there be any conflict between the terms and conditions of the documents that comprise this Agreement, the order of precedence for the documents shall be as follows: (i) the Quotation, (ii) this Agreement, and (iii) the Master Agreement. This Agreement shall be governed by and construed in accordance with the laws of the state in which Customer is located without reference to conflict of laws principles, and the United States of America federal law shall govern in matters of intellectual property. The modifications and additional rights granted in this Agreement apply only to the Products listed in Table A.

**Table A
List of Products**

Uncapped Quantities

Desktop Software and Extensions (Single Use)

ArcGIS Desktop Advanced
ArcGIS Desktop Standard
ArcGIS Desktop Basic
ArcGIS Desktop Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Publisher, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Software and Extensions

ArcGIS Enterprise (Advanced and Standard)
ArcGIS Monitor
ArcGIS Enterprise Extensions: ArcGIS 3D Analyst, ArcGIS Spatial Analyst, ArcGIS Geostatistical Analyst, ArcGIS Network Analyst, ArcGIS Schematics, ArcGIS Workflow Manager, ArcGIS Data Reviewer

Enterprise Additional Capability Servers

ArcGIS Image Server

Developer Tools

ArcGIS Runtime Standard
ArcGIS Runtime Analysis Extension

Limited Quantities

One (1) Professional subscription to ArcGIS Developer
Two (2) ArcGIS CityEngine Single Use Licenses
500 ArcGIS Online Viewers
500 ArcGIS Online Creators
62,500 ArcGIS Online Service Credits
500 ArcGIS Enterprise Creators
7 ArcGIS Insights in ArcGIS Enterprise
7 ArcGIS Insights in ArcGIS Online
100 ArcGIS Location Sharing for ArcGIS Enterprise
100 ArcGIS Location Sharing for ArcGIS Online
5 ArcGIS Parcel Fabric User Type Extensions (Enterprise)
5 ArcGIS Utility Network User Type Extensions (Enterprise)
5 ArcGIS Trace Network User Type Extensions (Enterprise)

OTHER BENEFITS

Number of Esri User Conference registrations provided annually	4
Number of Tier 1 Help Desk individuals authorized to call Esri	4
Maximum number of sets of backup media, if requested*	2
Five percent (5%) discount on all individual commercially available instructor-led training classes at Esri facilities purchased outside this Agreement	

*Additional sets of backup media may be purchased for a fee

Customer may accept this Agreement by signing and returning the whole Agreement with (i) the Quotation attached, (ii) a purchase order, or (iii) another document that matches the Quotation and references this Agreement ("**Ordering Document**"). **ADDITIONAL OR CONFLICTING TERMS IN CUSTOMER'S PURCHASE ORDER OR OTHER DOCUMENT WILL NOT APPLY, AND THE TERMS OF THIS AGREEMENT WILL GOVERN.** This Agreement is effective as of the date of Esri's receipt of an Ordering Document, unless otherwise agreed to by the parties ("**Effective Date**").

Term of Agreement: Three (3) years

This Agreement supersedes any previous agreements, proposals, presentations, understandings, and arrangements between the parties relating to the licensing of the Products. Except as provided in Article 4—Product Updates, no modifications can be made to this Agreement.

Accepted and Agreed:

(Customer)

By: _____
Authorized Signature

Printed Name: _____

Title: _____

Date: _____

CUSTOMER CONTACT INFORMATION

Contact: _____

Telephone: _____

Address: _____

Fax: _____

City, State, Postal Code: _____

E-mail: _____

Country: _____

Quotation Number (if applicable): _____

1.0—ADDITIONAL DEFINITIONS

In addition to the definitions provided in the Master Agreement, the following definitions apply to this Agreement:

"Case" means a failure of the Software or Online Services to operate according to the Documentation where such failure substantially impacts operational or functional performance.

"Deploy", "Deployed" and "Deployment" mean to redistribute and install the Products and related Authorization Codes within Customer's organization(s).

"Fee" means the fee set forth in the Quotation.

"Maintenance" means Tier 2 Support, Product updates, and Product patches provided to Customer during the Term of Agreement.

"Master Agreement" means the applicable master agreement for Esri Products incorporated by this reference that is (i) found at <https://www.esri.com/en-us/legal/terms/full-master-agreement> and available in the installation process requiring acceptance by electronic acknowledgment or (ii) a signed Esri master agreement or license agreement that supersedes such electronically acknowledged master agreement.

"Product(s)" means the products identified in Table A—List of Products and any updates to the list Esri provides in writing.

"Quotation" means the offer letter and quotation provided separately to Customer.

"Technical Support" means the technical assistance for attempting resolution of a reported Case through error correction, patches, hot fixes, workarounds, replacement deliveries, or any other type of Product corrections or modifications.

"Tier 1 Help Desk" means Customer's point of contact(s) to provide all Tier 1 Support within Customer's organization(s).

"Tier 1 Support" means the Technical Support provided by the Tier 1 Help Desk.

"Tier 2 Support" means the Esri Technical Support provided to the Tier 1 Help Desk when a Case cannot be resolved through Tier 1 Support.

2.0—ADDITIONAL GRANT OF LICENSE

2.1 Grant of License. Subject to the terms and conditions of this Agreement, Esri grants to Customer a personal, nonexclusive, nontransferable license solely to use, copy, and Deploy quantities of the Products listed in Table A—List of Products for the Term of Agreement (i) for the applicable Fee and (ii) in accordance with the Master Agreement.

2.2 Consultant Access. Esri grants Customer the right to permit Customer's consultants or contractors to use the Products exclusively for Customer's benefit. Customer will be solely responsible for compliance by consultants and contractors with this Agreement and will ensure that the consultant or contractor discontinues use of Products upon completion of work for Customer. Access to or use of Products by consultants or contractors not exclusively for Customer's benefit is prohibited. Customer may not permit its consultants or contractors to install Software or Data on consultant, contractor, or third-party computers or remove Software or Data from Customer locations, except for the purpose of hosting the Software or Data on Contractor servers for the benefit of Customer.

3.0—TERM, TERMINATION, AND EXPIRATION

3.1 Term. This Agreement and all licenses hereunder will commence on the Effective Date and continue for the duration identified in the Term of Agreement, unless this Agreement is terminated earlier as provided herein. Customer is only authorized to use Products during the Term of Agreement. For an Agreement with a limited term, Esri does not grant Customer an indefinite or a perpetual license to Products.

3.2 No Use upon Agreement Expiration or Termination. All Product licenses, all Maintenance, and Esri User Conference registrations terminate upon expiration or termination of this Agreement.

3.3 Termination for a Material Breach. Either party may terminate this Agreement for a material breach by the other party. The breaching party will have thirty (30) days from the date of written notice to cure any material breach.

3.4 Termination for Lack of Funds. For an Agreement with government or government-

owned entities, either party may terminate this Agreement before any subsequent year if Customer is unable to secure funding through the legislative or governing body's approval process.

3.5 Follow-on Term. If the parties enter into another agreement substantially similar to this Agreement for an additional term, the effective date of the follow-on agreement will be the day after the expiration date of this Agreement.

4.0—PRODUCT UPDATES

4.1 Future Updates. Esri reserves the right to update the list of Products in Table A—List of Products by providing written notice to Customer. Customer may continue to use all Products that have been Deployed, but support and upgrades for deleted items may not be available. As new Products are incorporated into the standard program, they will be offered to Customer via written notice for incorporation into the Products schedule at no additional charge. Customer's use of new or updated Products requires Customer to adhere to applicable additional or revised terms and conditions in the Master Agreement.

4.2 Product Life Cycle. During the Term of Agreement, some Products may be retired or may no longer be available to Deploy in the identified quantities. Maintenance will be subject to the individual Product Life Cycle Support Status and Product Life Cycle Support Policy, which can be found at <https://support.esri.com/en/other-resources/product-life-cycle>. Updates for Products in the mature and retired phases may not be available. Customer may continue to use Products already Deployed, but Customer will not be able to Deploy retired Products.

5.0—MAINTENANCE

The Fee includes standard maintenance benefits during the Term of Agreement as specified in the most current applicable Esri Maintenance and Support Program document (found at <https://www.esri.com/en-us/legal/terms/maintenance>). At Esri's sole discretion, Esri may make patches, hot fixes, or updates available for download. No Software other

than the defined Products will receive Maintenance. Customer may acquire maintenance for other Software outside this Agreement.

a. Tier 1 Support

1. Customer will provide Tier 1 Support through the Tier 1 Help Desk to all Customer's authorized users.
2. The Tier 1 Help Desk will be fully trained in the Products.
3. At a minimum, Tier 1 Support will include those activities that assist the user in resolving how-to and operational questions as well as questions on installation and troubleshooting procedures.
4. The Tier 1 Help Desk will be the initial point of contact for all questions and reporting of a Case. The Tier 1 Help Desk will obtain a full description of each reported Case and the system configuration from the user. This may include obtaining any customizations, code samples, or data involved in the Case.
5. If the Tier 1 Help Desk cannot resolve the Case, an authorized Tier 1 Help Desk individual may contact Tier 2 Support. The Tier 1 Help Desk will provide support in such a way as to minimize repeat calls and make solutions to problems available to Customer's organization.
6. Tier 1 Help Desk individuals are the only individuals authorized to contact Tier 2 Support. Customer may change the Tier 1 Help Desk individuals by written notice to Esri.

b. Tier 2 Support

1. Tier 2 Support will log the calls received from Tier 1 Help Desk.
2. Tier 2 Support will review all information collected by and received from the Tier 1 Help Desk including preliminary documented troubleshooting provided by the Tier 1 Help Desk when Tier 2 Support is required.
3. Tier 2 Support may request that Tier 1 Help Desk individuals provide verification of information, additional information, or answers to additional questions to

supplement any preliminary information gathering or troubleshooting performed by Tier 1 Help Desk.

4. Tier 2 Support will attempt to resolve the Case submitted by Tier 1 Help Desk.
5. When the Case is resolved, Tier 2 Support will communicate the information to Tier 1 Help Desk, and Tier 1 Help Desk will disseminate the resolution to the user(s).

6.0—ENDORSEMENT AND PUBLICITY

This Agreement will not be construed or interpreted as an exclusive dealings agreement or Customer's endorsement of Products. Either party may publicize the existence of this Agreement.

7.0—ADMINISTRATIVE REQUIREMENTS

7.1 OEM Licenses. Under Esri's OEM or Solution OEM programs, OEM partners are authorized to embed or bundle portions of Esri products and services with their application or service. OEM partners' business model, licensing terms and conditions, and pricing are independent of this Agreement. Customer will not seek any discount from the OEM partner or Esri based on the availability of Products under this Agreement. Customer will not decouple Esri products or services from the OEM partners' application or service.

7.2 Annual Report of Deployments. At each anniversary date and ninety (90) calendar days prior to the expiration of this Agreement, Customer will provide Esri with a written report detailing all Deployments. Upon request, Customer will provide records sufficient to verify the accuracy of the annual report.

8.0—ORDERING, ADMINISTRATIVE PROCEDURES, DELIVERY, AND DEPLOYMENT

8.1 Orders, Delivery, and Deployment

- a. Upon the Effective Date, Esri will invoice Customer and provide Authorization Codes to activate the nondestructive copy protection program that enables Customer to download,

operate, or allow access to the Products. If this is a multi-year Agreement, Esri may invoice the Fee up to thirty (30) calendar days before the annual anniversary date for each year.

- b. Undisputed invoices will be due and payable within thirty (30) calendar days from the date of invoice. Esri reserves the right to suspend Customer's access to and use of Products if Customer fails to pay any undisputed amount owed on or before its due date. Esri may charge Customer interest at a monthly rate equal to the lesser of one percent (1.0%) per month or the maximum rate permitted by applicable law on any overdue fees plus all expenses of collection for any overdue balance that remains unpaid ten (10) days after Esri has notified Customer of the past-due balance.

- c. Esri's federal ID number is 95-2775-732.

- d. If requested, Esri will ship backup media to the ship-to address identified on the Ordering Document, FOB Destination, with shipping charges prepaid. Customer acknowledges that should sales or use taxes become due as a result of any shipments of tangible media, Esri has a right to invoice and Customer will pay any such sales or use tax associated with the receipt of tangible media.

8.2 Order Requirements. Esri does not require Customer to issue a purchase order. Customer may submit a purchase order in accordance with its own process requirements, provided that if Customer issues a purchase order, Customer will submit its initial purchase order on the Effective Date. If this is a multi-year Agreement, Customer will submit subsequent purchase orders to Esri at least thirty (30) calendar days before the annual anniversary date for each year.

- a. All orders pertaining to this Agreement will be processed through Customer's centralized point of contact.

- b. The following information will be included in each Ordering Document:

- (1) Customer name; Esri customer number, if known; and bill-to and ship-to addresses
- (2) Order number
- (3) Applicable annual payment due

9.0—MERGERS, ACQUISITIONS, OR DIVESTITURES

If Customer is a commercial entity, Customer will notify Esri in writing in the event of (i) a consolidation, merger, or reorganization of Customer with or into another corporation or entity; (ii) Customer's acquisition of another entity; or (iii) a transfer or sale of all or part of Customer's organization (subsections i, ii, and iii, collectively referred to as "**Ownership Change**"). There will be no decrease in Fee as a result of any Ownership Change.

- 9.1** If an Ownership Change increases the cumulative program count beyond the maximum level for this Agreement, Esri reserves the right to increase the Fee or terminate this Agreement and the parties will negotiate a new agreement.
- 9.2** If an Ownership Change results in transfer or sale of a portion of Customer's organization, that portion of Customer's organization will transfer the Products to Customer or uninstall, remove, and destroy all copies of the Products.
- 9.3** This Agreement may not be assigned to a successor entity as a result of an Ownership Change unless approved by Esri in writing in advance. If the assignment to the new entity is not approved, Customer will require any successor entity to uninstall, remove, and destroy the Products. This Agreement will terminate upon such Ownership Change.



www.casscountynd.gov

Office of the Sheriff

Jesse Jahner, Sheriff

November 13, 2023

Mr. Chad Peterson, Chair
Cass County Commission
Via email

Chairman Peterson,

I am submitting correspondence from the Burleigh County Sheriff's Department regarding a rate increase at their county jail for 2024, and an amended contract that includes the new rate of \$100 per day effective January 1, 2024.

Burleigh County is a facility that we periodically use to house prisoners for Cass County in an effort to remain at or under our authorized capacity. This rate increase was expected and was budgeted for in the 2024 budget.

Please add this contract amendment to the commission agenda for approval and signatures. We have no issues if this is included as part of the consent agenda. I will be out of town for the next commission meeting, but can arrange for someone else to appear if the commission would like to have this added on the regular agenda.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew Frobig".

Capt. Andrew Frobig
Jail Administrator

Cass County Sheriff
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



CONTRACT APPROVAL

REQUIRED BY DEPARTMENT:

DEPARTMENT: Sheriff's Office DATE OF REQUEST: 11-16-2023

COMPANY REQUESTING CONTRACT: Burleigh County Sheriff's Department

BRIEF PROJECT DESCRIPTION: Inmate housing agreement

 NEW CONTRACT OR x CONTRACT RENEWAL

REQUIRED BY STATE'S ATTORNEY OFFICE:

STATE'S ATTORNEY SIGNATURE: *Martin Nauman* DATE 11/17/2023

STATE'S ATTORNEY COMMENTS:

Approved as to form.



BURLEIGH COUNTY SHERIFF'S DEPARTMENT

KELLY LEBEN
SHERIFF

November 1, 2023

Sheriff Jesse Jahner
PO Box 488
Fargo, ND 58107

Dear Sir,

I am writing to you today in your official capacity as a contract holder for prisoner housing at the Burleigh Morton Detention Center (BMDC). Per our letter dated March 29, 2023, our facility will be implementing a new rate increase effective January 1, 2024. Effective that date, your new daily rate will increase from \$75 to \$100. Please sign the updated contract and return to:

Cpt Lisa Wicks
Burleigh Morton Detention Center
PO Box 2499
Bismarck, ND 58502-2499

Please do not hesitate to reach out with any questions or concerns. Thanks!

A handwritten signature in black ink, appearing to read "Kelly Leben".

Kelly Leben, Sheriff
Burleigh County

COURTHOUSE

514 E. Thayer • PO Box 1416
Bismarck, ND 58502-1416
P 701-222-6651 • F 701-221-6899

www.facebook.com/BurleighCountySheriffsDepartment

BURLEIGH MORTON DETENTION CENTER

4000 Apple Creek Road • PO Box 2499
Bismarck, ND 58502-2499
P 701-255-3113 • F 701-258-5319

INMATE HOUSING AGREEMENT AT BMDC

The parties to this contract are Burleigh County, acting through the **Burleigh Morton County Detention Center** (BMDC) and the _____, hereinafter referred to as Contracting Agency;

WHEREAS, BMDC and thereby Burleigh County is authorized, by law, to have charge and custody of the county jail and county prisoners or inmates; and

WHEREAS, the Contracting Agency desires to designate the BMDC as a place of confinement for the incarceration of one or more inmates lawfully committed to its custody; and

WHEREAS, BMDC is desirous of accepting and keeping in its custody such inmates in the BMDC for a rate of compensation and covenants mutually agreed upon by the parties hereto;

WHEREAS, North Dakota Century Code and other North Dakota law, as amended, authorizes any county to contract with any other county, city or agency to perform any government service, activity or undertaking which each Contracting Agency is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this agreement as authorized and provided for by North Dakota Century Code and other North Dakota law, as amended,

NOW, THEREFORE, in consideration of the above and forgoing recitals, the payments to be made, the mutual promises and covenants herein contained, and for other good and valuable, consideration, the parties hereto agree as follows:

1. DEFINITIONS

The term "Inmate": means any individual, whether in pretrial, unsentenced, or sentenced status, as defined by the BMDC.

The term "Day": One prisoner day shall be each day or portion thereof which a prisoner appears in custody on the BMDC inmate records management system. Each Contracting Agency shall be charged for each prisoner who is detained in the BMDC on a charge and/or conviction from the Contracting Agency.

2. TERMS

The term of this contract is for a period beginning on January 1, 2024 and expiring on December 31, 2024. This agreement remains in effect unless terminated in writing by either party pursuant to paragraph #3 of this agreement.

3. TERMINATION

This agreement may be terminated by either party, on written notice from either party to the other party, delivered by regular mail, to the contact person identified herein, provided that termination shall become effective thirty (30) days after receipt of such notice, unless an emergency situation requires the immediate relocation of the Contracting Agency's inmates. Within said thirty (30) days the Contracting Agency agrees to remove its inmates from the BMDC. Termination does not excuse financial obligations incurred prior to the notice or during the thirty (30) day window subsequent to delivery of the notice.

BMDC deems an inmate of the Contracting Agency abnormally burdensome or abnormally dangerous the BMDC may refuse receipt of the inmate, or if the condition develops after BMDC's initial receipt of custody, notify the Contracting Agency of the determination and direct the Contracting Agency to appear at the BMDC and resume custody of the inmate. Additionally, Contracting Agency has pursuant to this agreement agreed to hold harmless and indemnify the BMDC.

10. RIGHT OF INSPECTION

The Contracting Agency acknowledges that BMDC shall be obligated to manage, maintain, and operate its facility consistent with all applicable federal, and state laws and regulations, being subject to inspection by the DOCR Office of Facility Inspections. The Contracting Agency has the right to inspect, at all reasonable times, all BMDC housing areas where the Contracting Agency's inmates are being held in order to determine if BMDC maintains standards of confinement acceptable to the Contracting Agency and that such inmates are treated equally regardless of race, religion, color, creed or nation origin.

11. FURLOUGHS, PASSES AND WORK RELEASE

BMDC agrees that no early release or alternatives to incarceration, including furloughs, passes, or electronic home detention, shall be granted to any inmate housed pursuant to this agreement without written authorization by the committing court, and notification of contracting agency.

12. INMATE PROPERTY

The Contracting Agency agrees that the Contracting Agency may only transfer to BMDC, limited amounts of prisoner personal property, consisting of the clothing being worn by the person, non-dangerous items held on their person, and a purse or small day pack.

13. INMATE PROPERTY NOT ACCEPTED

The Contracting Agency acknowledges that BMDC will not accept any excess inmate property, or dangerous items into the facility, (during or after the transfer of custody). The Contracting Agency acknowledges the following are items that will not be accepted; guns, knives, edged weapons, dangerous weapons, tools, large backpacks, luggage, bags, bicycles, alcohol, chemicals, explosives, perishable food items, any unidentified substance and electronics other than cell phone. The Contracting Agency acknowledges that the BMDC supervisors have the authority to refuse any questionable item they feel poses a safety or security risk to the facility and staff.

The Contracting Agency agrees that refused items of inmate property are to be removed from BMDC by the transporting officer, at the time of the officer's departure; following the transfer of custody. Abandoned items on BMDC property will not be the responsibility of BMDC.

14. RESPONSIBILITY FOR OFFENDERS CUSTODY

BMDC agrees it is primarily responsible for the day to day care, custody and control of the Contracting Agency's inmates when they are within the BMDC facility. The Contracting Agency agrees that the Contracting Agency is responsible for law enforcement staffing to provide security, supervision and court procedure documentation during Contract Agency prisoner appearances before the Contracting Agencies court, through the ITV court held within BMDC. The Contracting Agency acknowledges it is responsible for transport, and security of its inmates related to any services or court appearances needed outside of the BMDC.

21. MERGER AND MODIFICATION

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

22. INDEMNIFICATION

Contracting Agency will defend, indemnify, and hold harmless the BMDC, Burleigh County, and their respective employees and officers from any and all claims of any nature arising out of this agreement, except damages directly caused by the neglect of any of the BMDC or Burleigh County employees and /or officers. Contracting Agency will also defend, indemnify, hold harmless BMDC, Burleigh County, and their respective employees and officers for all costs, expenses, and attorney’s fees incurred in the establishing and litigating the indemnification coverage provide in this section. The obligation in this section shall continue after termination of the contract, and during any extension or renewal of it.

23. FORCE MAJEURE

Neither party shall be held responsible for default caused by fire nature, acts of God or war if the event is beyond the party’s control and the affected party provides reasonable prompt notice of the event causing the delay or default or which is reasonably expected to cause delay or default.

24. INUREMENT CLAUSE

The parties agree that all of the rights, remedies and liabilities hereunder imposed upon either of the parties will extend to their heirs, administrators, successors and assigns.

25. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

26. UNENFORCEABLE PROVISION

In case any provision in this agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby and such provision shall be ineffective only to the extent of such invalidity, illegality or unenforceability.

27. MAILING ADDRESSES AND CONTACT PERSON

All notices, reports and correspondence to the respective parties of this agreement shall be mailed to the following:

Burleigh Morton County Detention Center: 4000 Apple Creek Road, P. O. Box 2499,
Bismarck, ND 58502-2499.

Primary contact person is Sheriff Kelly Leben.

Secondary contact person is Major Trent Wangen.

Contracting Agency:

Primary contact person is:

Secondary contacts:

IN WITNESS WHEREOF, the above and forgoing agreement has been executed by the parties hereto and made effective on the day and year first above written.

Burleigh Morton County Detention Center Administrator
Burleigh County Sheriff Kelly Leben

Date

Contracting Agency

Signature Contracting Agency

Title

Print Name

Date