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Office of the Sheriff

Jesse Jahner, Sheriff

January 13th, 2025

Tony Grindberg, Chair

Cass County Commission

211 9th St. S.

Fargo, ND 58103

Commission Chair Grindberg,

On December 18th, 2024 I sent a request to the North Dakota Department of Corrections and Rehabilitation (NDDOCR) to inquire on housing Inmates at the Clay County Jail to help relieve some of our capacity issues at the Cass County Jail. On December 19th, 2024 NDDOCR responded indicating that we can move forward with the request. I reached out to Clay County Sheriff Mark Empting to work with him to begin drafting a contract between our two counties. On January 7th, 2025 the Clay County Commission unanimously approved the contract. Upon approval I sent the contract to the States Attorney's Office for a legal review and I was advised they did not have any concerns. I am respectfully asking the Commission Board to review and approve the contract. Approving the contract will allow us more Inmate housing options in closer proximity to Cass County allowing for easier access to court and Inmate medical needs if needed.

Suggested Motion

"Move to approve the Clay County Cass County Boarding MOU as presented to begin upon the date of approval."

Respectfully,

Jesse Jahner
Cass County Sheriff

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

**AGREEMENT BETWEEN THE COUNTY OF CASS (ND)
AND THE COUNTY OF CLAY (MN) FOR BOARDING INMATES AT THE CLAY COUNTY JAIL**

This Agreement ("Agreement") is made and entered into between the County of Clay, State of Minnesota, through the Clay County Sheriff's Office, hereinafter referred to as ("Clay County") and the County of Cass, State of North Dakota, through the Cass County Sheriff's Office, hereinafter referred to as ("Cass County").

WHEREAS, Cass County, wishes to contract with Clay County to temporarily board Cass County detainees ("Detainees") at the Clay County Jail ("Facility") to support any all-hazard events including a national security emergency, major fire or flood, catastrophic natural disaster, manmade (including terrorism) disaster, technological disasters by rendering a party's building(s) or surrounding area unsafe, temporarily unusable, or inaccessible, and facility projects or inmate population management requiring lessening the inmate population; and

WHEREAS, Clay County currently has limited open bed space available within the Facility and may need to limit the number of detainees at times based on their own facility needs.

NOW, THEREFORE, in consideration of the mutual undertakings and agreements hereinafter set forth, Clay County and Cass County agree as follows:

I. TERM AND OVERVIEW

This Agreement shall commence on January 1, 2025, and expire on December 31, 2026, unless terminated earlier in accordance with the provisions herein.

During the term of this Agreement, Cass County shall request the transfer of Detainees to the Facility by providing twenty-four (24) hours' notice to Clay County. Clay County shall notify Cass County within eight (8) hours of any request if it does not have an open bed available.

Cass County shall provide twenty-four (24) hours' notice to Clay County prior to transferring Detainees from the Facility to Cass County custody.

The parties shall cooperatively schedule timing and logistics for each agreed upon transfer to or from the Facility.

All actual costs associated with emergency medical or dental services provided outside of the Facility pursuant to paragraph II-3 of this Agreement, including transportation expenses, will be a reimbursable expense paid by Cass County to Clay County upon invoice to Cass County.

II. CLAY COUNTY DUTIES

Subject to the provisions herein, Clay County shall:

1. Accept and provide for the secure custody, care and safekeeping in the Facility of Detainees and house them in the Facility in accordance Clay County's policy for secure detention and in accordance with state and local laws, standards, policies, procedures, or court orders applicable to the operations of the Facility, and this Agreement. Except for the medical and dental care and services provisions below, Clay County shall notify Cass County in the event a Detainee needs transport of any kind and Cass County shall make necessary arrangements to meet the need.
2. Permit Cass County to transfer Detainees during the term of the Agreement based on available open beds at the time. Any such transfer shall be under the terms and condition of this Agreement.
3. Provide Detainees with the same level of medical care and services provided to Clay County inmates, including the transportation of and security for Detainees requiring removal from the Facility for medical treatment until Cass County can respond pursuant to paragraph III-3. Clay

County shall have the sole authority to determine whether any Detainees housed in the Facility require emergency medical and dental care. Clay County shall notify the Cass County authorized agent whenever a Detainee is removed from the Facility in order to provide emergency medical or dental treatment. All Detainees requiring emergency medical treatment will be treated according to the joint medical protocol established between Cass and Clay counties, which is attached hereto and incorporated herein as Exhibit A. The joint medical protocol shall also govern payment for all medical and dental appointments, prescription medications, hospital visits or admissions. Additionally, Clay County shall determine whether the Detainee has health, medical, dental or other insurance, then submit the same as applicable.

4. Admit Detainees upon receipt by Clay County of the booking sheet that Cass County uses in the ordinary course of its duties, which shall include a photograph, to establish the identity of the Detainee. This documentation must be presented by an authorized agent, personnel, or employee of Cass County and shall only release Cass County Inmates into the custody of Cass County's agents, personnel or employees and said release shall be conducted in accordance with Facility's release policies. The Facility will be available to accept Detainees twenty-four (24) hours per day.
5. Prison Rape Elimination Act Compliance
The parties must comply with the Prison Rape Elimination Act (PREA) of 2003 (Federal Law 42 U.S.C. 15601 et. seq.), with all applicable Federal PREA standards, and with all State policies and standards related to PREA for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within facilities/programs/offices owned, operated, or contracted.

III. CASS COUNTY DUTIES

Subject to the provisions herein, Cass County shall:

1. Transport all Detainees to and from the Facility, except in those cases where the Detainee is transported to a medical care facility for emergency medical or dental treatment pursuant to paragraph II-3 of this Agreement.
2. Provide Clay County with all necessary orders, writs, and other documentation prior to transferring a Detainee.
3. Clay County shall notify Cass County in the event a Detainee may require medical care and assistance away from the Facility. A Detainee needing hospitalization will be transported to Sanford Hospital or Essentia Hospital as soon as possible following a medical emergency. A Detainee admitted to the hospital will have a permanent transfer to the care and custody to Cass County. Cass County will take immediate custody of the detainee and provide security for said detainee in no more than four (4) hours.
4. Provide classification information to Clay County Jail on all Detainees to be boarded in Clay County prior to placement of Detainee in the Clay County Jail.

Notwithstanding Cass County's classification, Clay County shall classify the Detainee as indicated and required pursuant to Clay County's classification system.

5. Ensure any Detainee being transferred from Cass County Jail to the Clay County Jail has been screened for COVID19 at least seventy-two (72) hours prior to transfer. Cass County shall not transfer any Detainee who is known to be currently positive for COVID19.

IV. PAYMENT

1. Clay County shall invoice Cass County as follows:

A. Cass County shall pay Clay County a per diem rate per Detainee at the Facility (\$75/Day), plus medical, dental and prescription costs. The amount of said per diem shall be agreed upon, in writing, by the parties contemporaneously with the MOU activation.

B. All actual costs associated with emergency medical or dental services provided outside of the Facility pursuant to paragraph II-3 of this Agreement, including transportation expenses, will be a reimbursable expense paid by Cass County to Clay County upon invoice to Cass County. In the event Clay County incurs additional personnel costs in relation to transporting and/or providing secure custody, care and safekeeping during medical or dental treatment away from the Facility or during hearings or other legally required appointments. Cass County shall pay the actual costs for Facility's personnel's wages not to exceed the prevailing hourly wages, as applicable, at the rate of one and one half times. This will be in conjunction with Clay County's share of Medicare and PERA contributions being paid by Clay County to a similarly situated Clay County employee at the time such Clay County employee's services have been actually utilized to provide such services.

C. Clay County shall invoice Cass County at the end of each month.

2. Payments shall be made by Cass County within thirty (30) days after receipt of invoice from Clay County. The Invoice must state the Detainee's name, the dates the Detainee is incarcerated, and detail of any costs over and above the fixed per diem including but not limited to costs and expenses for medical or dental care and services according to the terms herein.
3. If the invoice is incorrect, defective, or otherwise improper, Cass County will exercise reasonable efforts to notify Clay County within ten (10) days of receiving the incorrect invoice. Upon receiving the corrected invoice from Clay County, Cass County will make payment within thirty (30) days.

V. CANCELLATION

This Agreement may be canceled by either party at any time with or without cause upon twenty-four (24) hours written notice to the other party. In the event Clay County cancels this Agreement and unless the parties otherwise agree, Cass County shall have seventy-two (72) hours from receipt of the written notice to take custody and control of all Detainees in Clay County's secure custody, care and safekeeping.

Termination of this Contact shall not discharge any liability, responsibility, or right of any party which arises from the performance of or failure to adequately perform this Agreement prior to the effective date of termination. Nor shall termination discharge any obligation, which by its nature would survive after the date of termination.

VI. ASSIGNMENT

Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party.

VII. AMENDMENTS

Any amendments to this Agreement shall be in writing, authorized and signed by both parties.

VIII. DATA PRACTICES

All data collected, created, received, exchanged, maintained, or disseminated because of this Agreement is governed by the Minnesota Government Data Practices Act, MN STAT. CHAPT. 13, including but not limited to Minnesota Statutes Section 13.05, Subd. 6, and the Minnesota Rules implementing the Act.

IX. INDEMNITY

Each party to the Agreement shall be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless, and defend the other, its officers and employees against any and all liability, loss, costs, damages, expenses, claims, or actions, including attorney's fees which the other, its officers and employees may hereinafter sustain, incur, or be required to pay, arising out of or by reason of any act or omission of the party, its agents, servants, or employees, in the execution, performance, or failure to adequately perform its obligations pursuant to this Agreement.

Under no circumstances shall a party be required to pay on behalf of itself and other parties, any amounts in excess of the limits on liability established in Minnesota Statutes Chapter 466 applicable to any one party. The statutory limits of liability for some or all of the parties may not be added together or stacked to increase the maximum amount of liability for any party.

X. MERGER

It is understood and agreed that the entire Agreement between the parties is contained here and this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items referred to in this Agreement are incorporated or attached and are deemed part of this Agreement.

XI. COMPLIANCE WITH LAWS/STANDARDS

1. Each party agrees to comply with all federal, state, and local laws, ordinances, rules, regulations and executive orders including but not limited to laws pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, gender, marital status, status with regard to public assistance, disability or age.
2. Clay County shall procure at its own expense, all licenses, permits, or other rights for the provision of the services contemplated herein.
3. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. All proceedings related to this Agreement shall be venued in the State of Minnesota.

XII. RECORDS/REPORTS

1. Clay County agrees to maintain records relating to all services provided to Detainees under the terms of this Contact according to Minnesota state statues and Clay County documents retention policy. Such records shall be made available for audit or inspection at any time upon request of Cass County or its authorized representative.
2. Clay County agrees to provide Cass County with written notice of all claims filed by any Cass County Detainee against it concerning boarding/detention services.
3. During the term of this Agreement, upon request by Cass County, Clay County shall submit to Cass County copies of all inspection reports completed by the Minnesota Department of Corrections or any other State of Federal agency dealing with the Detention Center.

XIII. INDEPENDENT CONTRACTOR STATUS

Clay County is to be and shall remain an independent contractor with respect to any and all work performed under this Agreement. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting Clay County as the agent, representative, or employee of Cass County for any purpose or in any manner whatsoever. Except for a claim that results directly from the act or omission of Cass County personnel, any and all claims that arise or may arise on behalf of Clay County, its agents, servants or employees as a consequence of any act or omission on the part of Clay County or its agents,

servants, employees while engaged in the performance of the Agreement shall in no way be the obligation or responsibility of Cass County.

XIV. PERFORMANCE/SUCCESSORS

1. Clay County shall not house Cass County Detainees hereunder at any facility other than the Facility.
2. Successors. Cass County and Clay County each binds itself and its successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives, and assigns of such other party, in respect to all covenants of this Agreement.

XV. FORCE MAJEURE

Neither party shall be liable to the other party for any loss or damage resulting from a delay or failure to perform due to unforeseeable acts or events outside the defaulting party's reasonable control, providing the defaulting party gives notice to the other party as soon as possible. Acts and events may include acts of God, acts of terrorism, war, fire, flood, epidemic, acts of civil or military authority, and natural disasters.

XVI. REMEDIES/WAIVER

1. All remedies available to either party under the terms of this Agreement or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of the other remedies.
2. Waiver for any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Agreement shall not be construed to be modification for the terms of this Agreement unless stated to be such in writing and signed by the authorized contacts of Cass County and Clay County specified in Section XVII herein.

XVII. CONTACTS

The authorized contacts for purposes of administration of this Agreement are Sheriff Mark Empting or designee for Clay County, 911 11th St. N., Moorhead, MN, 56560 and Sheriff Jesse Jahner or designee, 1612 23 Avenue North, Fargo, ND 58102.

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IN WITNESS WHEREOF, the undersigned governmental units by action of their governing bodies have caused this Agreement to be executed on the last date written below.

COUNTY OF CLAY

By: _____
Chair County Board

Date: _____

By: _____
County Administrator

Date: _____

By: _____
Clay County Sheriff

Date: _____

Reviewed by County Attorney's Office:

By: Brian Melton, County Attorney

Date: 12/24/24

COUNTY OF CASS

By: _____
Chair County Board

Date: _____

By: _____
County Administrator

Date: _____

By: _____
Cass County Sheriff

Date: _____

Reviewed by County Attorney's Office:

By: _____

Date: _____

EXHIBIT A

When a Detainee is transported to Clay County, Cass County will send medications the prisoner is taking and all necessary medical information. Clay County will provide medical, dental, and mental health treatment following their clinical protocols and procedures. Clay County shall obtain approval of Cass County before non-emergency medical, dental or psychiatric treatments are provided to a Detainee.

EMERGENCY ROOM VISITS

All medical emergencies will be transported to Sanford Hospital or Essentia Hospital by ambulance or by Clay County staff.

HOSPITAL ADMISSIONS

A Detainee needing hospitalization will be transported to Sanford Hospital or Essentia Hospital as soon as possible following a medical emergency. A Detainee admitted to the hospital will have a permanent transfer to the care and custody of Cass County.

HOSPITAL VISITS

A Detainee needing medical follow-up clinic visits or medical specialty clinic visits will be transported by Cass County staff. If Cass County is unable to transport Clay County will transport and invoice Cass County for expenses incurred (Medical expenses and staff wages).

MEDICAL RECORDS

Medical record information, including test results and prescriptions, will be shared between the two facilities .

TUBERCULOSIS SCREENING

Screening of Detainees by nurses within 14 days for tuberculosis will comply with Minnesota Statutes Section 144.455 pertaining to tuberculosis screening and follow-up practices.