

CITY OF BISMARCK, NORTH DAKOTA
And
BURLEIGH COUNTY, NORTH DAKOTA
INFORMATION TECHNOLOGY SERVICES AGREEMENT

ARTICLE 1
RECITALS AND INTENT

1.1 This Agreement (“Agreement”) is made by and between the City of Bismarck (“City”) and Burleigh County (“County”), acting by and through their duly authorized representatives, and is effective on the date stated herein.

1.2 The County has requested information technology support (“IT”) for the County and desires to engage City to provide certain IT services in connection with the work assigned (“Services”).

ARTICLE 2
CONTRACTUAL RELATIONSHIP

2.1 The County agrees to employ the City, and the City agrees to perform, as an independent contractor, certain professional services on an as-needed basis pursuant to County issued task or work orders in accordance with the project described therein, except for the County’s highway department, social services department, and weed officer.

2.2 This Agreement shall serve as the general agreement for IT services under the terms and amounts listed on attached Exhibit A.

2.3 The Services to be provided under this Agreement are intended to include services within the scope of City’s IT department education, training and experience. At times, solutions may require the services beyond the scope of what the City provides. If there is an additional charge for this type of assistance, written notice will be provided to the County with the approval of the County Auditor before those services are engaged for vendors outside the City.

2.4 City shall comply with all applicable laws, rules and regulations governing all Services and any projects authorized by this Agreement.

ARTICLE 3
THE COUNTY’S RESPONSIBILITIES

3.1 The County shall provide to City all its criteria and requirements for any Project and all available information pertinent to the Project including previous reports. City may reasonably rely upon such information. County’s use of the hardware, software and network services under this agreement will follow all software agreements and user policies that City determines are necessary and communicated to County in order to comply with all agreements with third parties and for security measures for IT services. Any additional costs for software that requires a separate agreement with the County will be County’s responsibility. In order to prioritize and assign tasks as appropriate, all requests for IT services by County must be provided through SysAid. Large projects and upgrades should be provided to City in advance of each calendar year. If the upgrade or new software requires a large amount of staff time (i.e. 20 hours or more) or resources, County will be informed of that additional cost and time needed to complete those services.

The County is responsible for financing any hardware and software updates or upgrades that are required to maintain cybersecurity, network security, maintain warranty, and comply with IT policies and requirements. The City requires all hardware and software to be under warranty or under a software maintenance agreement. As a result, the City will not be able to troubleshoot any software or hardware that is out of warranty or does not comply with City policies and requirements.

All computer IT equipment must be approved by the City IT before purchase. This includes all software and hardware, including monitors, phones, tablets, laptops, or other hardware and software applications. If County purchases an unapproved device, the City may not be able to troubleshoot or maintain that software or hardware.

3.2 The County shall arrange for access to and make all provisions for City to enter upon public and private property as required for City to perform Services under this Agreement.

3.3 The County will examine City's studies, reports, sketches, drawings, specifications, proposals and other information submitted by City, consult with others as County deems appropriate, and render timely written approvals and decisions to the City. No new projects, major upgrades or hardware/software purchases will be supported by City unless those are approved by City Information Technology Department prior to purchase. If a purchase is done outside of this process, it or any hardware on which it runs will not be allowed to connect to the City's infrastructure nor hold the City responsible for supporting this with City staff, including network services. Purchases by County should be planned in advance and communicated to City to ensure proper resources are available. Exhibit A reflects the current server and use capacity. If more services or server space is needed for County, they will be required to pay for that additional need. If County's unauthorized purchase causes damage to the network or otherwise requires City to remedy any damage from a virus or unauthorized purchase, the County will pay the costs to return the system back to the same functionality prior to the unauthorized purchase. County is aware that the services under this Contract are for maintenance and support for existing IT needs. Any upgrades or new systems would need to be approved in advance by City with timeframes and personnel needs planned through the City's process and information technology governance council (ITGC), whose description and process is attached in Exhibit B. City usually makes those plans in advance of the beginning of each calendar year for the entire year.

3.4 The County shall give prompt written notice to City whenever County becomes aware of any development that affects the scope or timing of City's Services or of any defect or nonconformance in the Services of the City or work of the Contractor.

ARTICLE 4 PROFESSIONAL'S COMPENSATION

4.1 Invoices for Services performed under a task order may be submitted to County by City quarterly. Invoices will be due and payable within thirty (30) days after receipt.

4.2 No statement, term or provision in any invoice, bill or statement submitted to County by City will be construed to waive, amend or modify any term or provision of this Agreement.

ARTICLE 5 INDEMNIFICATION AND INSURANCE

5.1 The parties will indemnify, defend and hold harmless the other party, its directors, officers, agents and employees against claims, demands or causes of action; and all costs, losses, liabilities, expenses and judgments incurred in connection therewith, including attorneys' fees and court costs, brought by any other third party, based upon, in connection with, resulting from, arising out of, or occasioned by the acts, omissions or conduct of the party, its officers, agents, or employees in the execution or performance of this Agreement.

5.2 The parties shall each obtain and maintain, throughout the term of the Agreement, General Liability insurance with a limit of not less than \$1,000,000 general aggregate.

ARTICLE 6 DURATION, EXTENSION AND TERMINATION

6.1 This agreement shall be for a term of one (1) year and shall be eligible to renew for additional terms of one (1) year annually upon the written agreement of both parties. Time is of the essence in the performance of this Agreement.

6.2 This agreement may be terminated by either party for cause if either party fails substantially to perform through no fault of the other and does not commence correction of such non-performance within fifteen (15) business days of written notice and diligently complete the correction thereafter. Upon delivery of such notice, the City shall, unless the notice states otherwise, immediately discontinue all Services, proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to the Services, and deliver to the County all instruments

of service produced under this Agreement. Upon termination, the County will owe the City for all compensation earned under this Agreement to date of termination, without termination expenses.

ARTICLE 7
MISCELLANEOUS

7.1 This Agreement shall be effective upon its execution by the City and the County, and shall remain in full force until all obligations under this Agreement have been fulfilled, unless sooner terminated as provided herein.

7.2 This Agreement shall be construed and enforced for all purposes pursuant to the laws of the State of North Dakota. Venue shall be exclusively in the state courts of proper jurisdiction of Burleigh County, North Dakota.

7.3 This Agreement is non-assignable. Neither the City nor the County shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other.

7.4 This Agreement represents the entire agreement between the City and the County with respect to the subject matter hereof and supersedes and merges all prior negotiations, representations, discussions or agreements, either written or oral, with respect to the subject matter hereof.

7.5 This Agreement may be amended only by written instrument signed by duly authorized representatives of both the City and the County. The County's payment of invoices or statements shall not be deemed as the County's acceptance of any term or provision that amends or modifies this Agreement or the task order under which payment is made.

7.7 No consent or waiver, express or implied, by either party to this Agreement, to or of any breach of default by the other in the performance of any obligations under this Agreement shall be deemed or construed to be a consent or waiver to or of any other or future breach or default by such party. Failure on the part of any party to this Agreement to complain of any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such party hereunder.

7.8 If a provision of this Agreement, or the application thereof to any person or circumstances, is rendered or declared illegal for any reason or shall be invalid or unenforceable, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law. The parties agree to negotiate in good faith for a proper amendment to this Agreement in the event any provision hereof is declared illegal, invalid or unenforceable.

7.9 All notices required or permitted hereunder shall be in writing and shall be deemed delivered three (3) days after deposit with the United States Postal Service, certified mail, return receipt requested, addressed to the respective other party at the addresses shown below:

If to City: Dmitriy Chernyak, Finance Director
 dchernyak@bismarcknd.gov
 PO Box 5503
 Bismarck, ND 58502-5503

If to County: Leo Vetter, Auditor
 levetter@nd.gov
 PO Box 5518
 Bismarck, ND 58506-5518

7.10 The headings and captions used in this Agreement are for convenience only and shall not affect in any way the meaning or interpretations of the provisions set forth herein.

7.11 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

IN WITNESS WHEREOF, this Agreement is hereby executed as of the last date set forth below.

COUNTY OF BURLEIGH, NORTH DAKOTA

By: _____ Date: _____
County Chairperson

ATTEST:

APPROVED AS TO FORM:

County Auditor

State's Attorney

CITY OF BISMARCK, NORTH DAKOTA

By: _____ Date: _____
Michael Schmitz, President City Commission

ATTEST:

APPROVED AS TO FORM:

City Administrator

City Attorney

City of Bismarck
 Billing for IT Service to Burleigh County - Exhibit A
 For Calendar Year 2023

Note: ALL requests for services MUST be submitted through SysAid and/or ITGC

	2022	2023
Annual Service Charges		
IT Services - Minimum Charge (includes ClearPass and Aruba Central)	\$ 95,156	\$ 118,191
Cybersecurity Initiative (ClearPass, Aruba Central, etc.)	-	9,500
Equipment Use Allocation	2,500	2,500
Total Annual Service Charges	<u>97,655</u>	<u>130,191</u>
 Continuous Annual Costs		
Microsoft Licensing Costs (Microsoft SQL, Windows, Server, and RDS Licensing)	\$ 4,000	\$ -
AS400 CPU Time (Continue)	475	475
WAN Access Charge / Fiber Costs (Annual)	5,325	5,325
Network Infrastructure Costs (Annual)	1,279	1,279
Total Continuous Annual Costs	<u>9,800</u>	<u>5,800</u>
 Total Costs to County (excluding on-call and variable license costs)	<u>\$ 107,455</u>	<u>\$ 135,991</u>
 Services Outside of Regular Work Schedule (8am - 5pm) / On-Call		
Minimum 2-hour charge for on-call (after hours)	\$ 138	\$ 170
Hourly overtime charge (after minimum 2-hour charge)	\$ 69	\$ 85

Note: The City of Bismarck is no longer providing Microsoft Office licensing for Burleigh County based on Burleigh County decision