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DATE: December 14, 2023

TO: Milwaukee County Board of Supervisors

FROM: Margaret C. Daun, Corporation Counsel
Karen L. Tidwall, Deputy Corporation Counsel

SUBJECT: Compatibility of Third-Party Milwaukee County Jail Audit Authorized in 2024 Budget and File No. 23-834 Requesting MCSO's Milwaukee County Jail Plans and Reports

On May 31, 2023, the Board adopted a resolution requesting that the Milwaukee County Sheriff's Office (MCSO) provide "a research and analysis plan and initial baseline report about the operation of the Milwaukee County Jail (MCJ) to establish a foundation of understanding to inform future policy decisions and studies, to promote well-informed, thoughtful, and respectful engagement, and to balance transparency and accountability with the need to manage legal risks and legal privileges." (See File No. 23-554.) It included a request to identify sources and provide a plan to analyze best practices in occupant mental healthcare.

In accordance with File No. 23-554, the Initial Report and Suggested Plans for the MCJ (MCJ Report) was submitted to the Board in August and addressed: (1) the organizational structure of the entire MCSO including all staff positions and their respective duties and responsibilities; (2) population and staffing information, challenges, and factors that impact those challenges; (3) third-party vendor services utilized at the MCJ including all medical and mental health care services; (4) external monitoring of the MCJ; (5) relevant policies, procedures, and practices information including all MCSO policies related to healthcare; (6) discretion and legal requirements information; and (7) a summary about the MCSO budget process and the allocation of resources. (See File No. 23-834.)

In October 2023, an amendment to the County Executive's 2024 budget was proposed, asking for two hundred fifty thousand dollars (\$250,000) to hire a third-party to conduct an audit of the MCJ. As ultimately adopted in the 2024 Budget, the Amendment requested the Audit Services Division (ASD) to develop a scope of work and plan for an external audit focused on "operations, policies, and procedures to ensure procedural best practices are being followed that comport with state and federal laws, rules and regulations," with the first requirement for the auditor to report out on any recommendations "that may lead to a reduction in the number of in-

custody deaths.” The Department of Administrative Services – Procurement Division is expected to help to issue a Request for Proposal for qualified external auditors.

On November 9, File No. 23-834 was referred to the OCC for an opinion on whether the requests of the MCSO in the MCJ Report resolution and the directives in the Audit Amendment are legally or procedurally incompatible.

The OCC’s opinion is that there is no inherent conflict between these two reviews, nor is there any direct or indirect legal or procedural conflict among these items. That said, the OCC notes that the two reviews may reach similar conclusions and/or overlap in some areas.

We note that the Milwaukee County Sheriff’s constitutional powers and duties include the management and operation of the MCJ.¹ The Sheriff may choose her “own ways and means of performing” those duties consistent with the degree of care requisite to the reasonably adequate protection of the occupants in our care. *See Milwaukee Deputy Sheriffs' Ass'n v. Milwaukee Cnty.*, 2016 WI App 56, ¶ 18, 370 Wis. 2d 644, 658, 883 N.W.2d 154, 161; *Kocken v. Wisconsin Council 40, AFSCME, AFL-CIO*, 2007 WI 72, ¶¶ 31-33, 301 Wis. 2d 266, 280–81. No court has issued any binding opinion construing these powers and authorities and their intersection (or possible conflict, in the judgment of the Sheriff) with an audit, whether conducted by ASD or an external third-party auditor.

¹ The duties of the sheriff *excluded* from constitutional protection have been described as mundane and common administrative duties. *Heitkemper v. Wirsing*, 194 Wis. 2d 182, 193, 533 N.W.2d 770 (1995).

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