

USE RESTRICTION AGREEMENT

Between the

**State of Wisconsin
Department of Corrections**

And

**Milwaukee County
Department of Health & Human Services**

THIS USE RESTRICTION AGREEMENT (“**Agreement**”) is made and effective as of the _____ day of _____, 2023, by and between Milwaukee County (“**County**”) and THE STATE OF WISCONSIN (“**State**”).

<p>Recording Area _____</p> <p>Name and return address: _____</p> <p>NAME _____</p> <p>Title: _____</p> <p>Address: WI Department of Corrections</p> <p>PIN: _____</p>
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WITNESSETH:

WHEREAS, County is a county of the State of Wisconsin; and

WHEREAS, County is the sole owner in fee simple of certain real property (the “**Property**”) located in the City of Wauwatosa, Milwaukee County, Wisconsin, and more particularly described on Exhibit A hereto;

WHEREAS, the Legislature has provided that the Wisconsin State Building Commission (“**Commission**”) may authorize funds to assist counties in establishing or constructing secured residential care centers for children and youth and attached juvenile detention facilities (“**Grant Program**”); and

WHEREAS, pursuant to the 2017 Act 185, as amended by 2019 Act 8, (the “**Act**”) County applied for a grant under the Grant Program to pay for the costs of designing and constructing one of the following:

X A grant to pay 95 percent of the costs of designing and constructing a secured residential care center for children and youth.

A grant to pay 95 percent of the costs of designing and constructing a facility that houses both a secured residential care center for children and youth and a juvenile detention facility.

A grant to pay 100 percent of the costs of designing and constructing a secured residential care center or any portion thereof that is intended primarily for the holding and treatment of female juveniles . (“**Project**”); and

WHEREAS, pursuant to the Act the juvenile justice grant committee developed and submitted to the Joint Committee on Finance (“JCF”) a statewide plan recommending which county grant applications to approve (“Statewide Plan”); and

WHEREAS, on February 12, 2020 JCF approved the Statewide Plan; and

WHEREAS, on August 16, 2022 JCF amended the Statewide Plan to increase grant authorization for the Project.

WHEREAS, pursuant to 2017 Act 185 the State awarded a grant to County in an amount not to exceed 28,338,351 U.S. dollars (\$28,338,351) (“Grant”); and

WHEREAS, the Commission, at its meeting on February 27, 2020, determined that County has met all the conditions set forth by the Legislature and authorized the State to release funds to County for the design and construction of the Project in the City of Wauwatosa, Milwaukee County, consistent with the County’s SRCCCY Application and plans referenced therein (the “Plans”), in an amount not to exceed \$28,338,351 from the appropriation account under section 20.866 (1) (u) of the statutes, as a grant to County; and

WHEREAS, if the facility that is designed and constructed with funds from the Grant (“Facility”) on the Property, is not used for the purpose of a secured residential care center for children and youth and a juvenile detention facility, the Legislature requires the State to retain an ownership interest in the Facility equal to the amount of the State’s grant; and;

WHEREAS, Wisconsin Constitution, Article VIII, Section 7 establishes limited purposes for which general fund supported borrowing may be used and, as such, the Grant must result in the State acquiring an interest in property for public purposes;

NOW, THEREFORE, in consideration of the Grant, the premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, County and the State hereby agree as follows:

1. Grant; Purpose. County hereby voluntarily grants and conveys to the State, and the State hereby accepts, this use restriction over the Facility on the Property from the effective date hereof (the “**Term**”), which use restriction shall be of the nature and character and to the extent and on the terms and conditions set forth herein.

2. Restrictions. In furtherance of the foregoing, County covenants, on behalf of itself and its successors and assigns, which covenants shall run with and bind the Facility on the Property during the Term, that the Facility will be primarily used to secure and provide programming to children and youth in the State of Wisconsin, including a secured residential care center for children and youth and a juvenile detention facility and other purposes as may be authorized by the State from time to time and that any activity on or use of the Facility inconsistent with such primary use and the purpose of this Agreement is prohibited.

3. Reserved Rights. County hereby reserves to itself and its successors and assigns, all rights accruing from ownership of the Property, including the right to engage in, or permit or

invite others to engage in, all uses of the Property that are not expressly prohibited by or inconsistent with the purposes of this Agreement.

4. Rights of the State. To accomplish the purpose of this Agreement, the following rights are hereby granted to the State:

(a) The State shall have the right to enter upon the Property to access the Facility at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Agreement, as provided in Paragraph 5 hereof, provided that (except in cases where the State reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Agreement that would significantly impair the public purposes to be served by this Agreement) such entry shall be upon prior reasonable notice in writing to County.

(a) The State shall have the right to prevent any activity on or use of the Facility that violates the purpose and terms of this Agreement, as provided in Paragraph 5 hereof.

5. The State's Remedies.

(a) Acquisition of Ownership Interest. If the State reasonably determines that a material violation of Paragraph 2 of this Agreement has occurred or is threatened, then it shall give written notice to County of the same, and if the parties are unable to negotiate a remedy or alternate resolution, County shall have a sixty (60) day period after the receipt of an additional written notice from the State in which to cure such violation or, if such violation cannot be cured within such 60 (60) day period, then County shall commence diligent efforts to pursue cure of such violation. If County fails to either cure such a violation or commence and continue such diligent efforts to pursue a cure of such violation within sixty (60) days after receipt of notice to do so from the State and the State decides to exercise its remedy under this subparagraph (in lieu of exercising the remedies listed in subparagraphs (b) and (c) below), then the State shall deliver written notice to County, and County, within an additional thirty (30) days after delivery of such written notice, shall deliver to the State a quit claim deed in substantially the form attached hereto as Exhibit B, transferring a \$40,000,000 interest in the Facility to the State.

(b) Injunctive Relief. The State may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to enjoin the violation, by temporary or permanent injunction, and to require the restoration of the Facility to the condition that existed prior to such violation.

(c) Scope of Relief. The State's rights under this Paragraph 5 apply equally in the event of either actual or threatened violations of the terms of this Agreement. County agrees that the State shall be entitled to the injunctive relief described in Paragraph 5(b) hereof, both prohibitive and mandatory, in addition to such other relief to which the State may be entitled, including specific performance of the terms of this Agreement. The

remedies described in this Paragraph 5 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(d) Costs of Enforcement. All reasonable costs incurred by the State in successfully enforcing the terms of this Agreement against County, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, shall be borne by County.

(e) Forbearance. Forbearance by the State in exercising its rights under this Agreement in the event of any breach of any term of this Agreement by County shall not be deemed or construed to be a waiver by the State of such breach or of any subsequent breach of the same or any other term of this Agreement or of any of the State's rights under this Agreement. No delay or omission in the exercise by the State of any right or remedy upon any breach by County shall impair such right or remedy or be construed as a waiver.

(f) Waiver of Certain Defenses. County hereby waives any defense of laches, estoppel, or prescription.

(g) Acts Beyond County's Control. Notwithstanding anything to the contrary contained in this Agreement, the State shall not be entitled to bring any action against County for any change in use of the Facility resulting from causes beyond County's reasonable control, including, without limitation, fire, flood, storm, and earth movement; or from any action or inaction by County in order to comply with local, state, or federal laws or regulations.

(h) No Public Access. No right of access by the general public to any portion of the Property is granted by this Agreement.

6. Costs, Liabilities, Taxes, and Environmental Compliance.

(a) Costs, Legal Requirements, and Liabilities. County retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of liability insurance coverage in the minimum amount of \$1,000,000 (adjusted from time to time by the percentage change from the date hereof in the Consumer Price Index – All Urban Consumers, All Items, 1982-84 = 100, or if such index is no longer published, then a similar generally accepted index of price inflation). County remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Agreement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

(b) Taxes. County shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of this Agreement, and shall furnish the State with satisfactory evidence of payment upon request.

(c) Representations and Warranties. County represents and warrants that, to the best knowledge of County, there is no pending or threatened litigation in any way affecting, involving, or relating to the Property and no civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or the Project, nor do there exist any facts or circumstances that County believes would form the basis for any such proceedings, investigations, notices, claims, demands, or orders applicable to the Property or the Project.

(d) Control. Nothing in this Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the State to exercise physical or managerial control over the day-to-day operations of the Property, or any of County's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), or similar laws imposing legal liability on the owner or operator of real property.

7. Extinguishment; Condemnation.

(a) Extinguishment. If circumstances arise in the future that render the purpose of this Agreement impossible to accomplish, then this Agreement can be terminated or extinguished, whether in whole or in part, only by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the State shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Facility subsequent to such termination or extinguishment, shall be the original amount of the Grant.

(b) Condemnation. If all or any part of the Facility is taken by exercise of the power of eminent domain or acquired by purchase in-lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Agreement, in whole or in part, then County and the State shall act jointly to recover the full value of the State's interest in the Facility subject to the taking or in-lieu purchase and all direct or incidental damages resulting therefrom (the "Award"), from which Award the State shall be entitled to collect an amount equal to the original amount of the Grant, plus reasonable interest calculated from the date hereof, and any expenses reasonably incurred by the State in connection with the taking or in-lieu purchase; provided, however, that if the Award is less than such original Grant amount plus such reasonable interest, then the State shall be entitled to recover its pro rata share of the Award.

8. Subsequent Transfers. County agrees to incorporate the terms of this Agreement by reference in any deed or other legal instrument by which County divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. County further agrees to give written notice to the State of the transfer of any such interest at least thirty (30) days prior to the date of such transfer. The failure of County to perform any act

required by this Paragraph 8 shall not impair the validity of this Agreement or limit its enforceability in any way.

9. Estoppel Certificates. The State shall within thirty (30) days after its receipt of a written request by County therefor, execute and deliver to County, or to any party designated by County, an estoppel certificate, which certifies County's compliance with any obligations of County contained in this Agreement. Such certification shall be limited to the use being made of the Facility as of the State's most recent inspection. If County requests more current documentation, the State shall conduct an inspection, at County's expense, within twenty (20) days after its receipt of County's written request therefor and shall execute and deliver the requested certificate within ten (10) days after such inspection.

10. Termination. This Agreement shall not terminate except as expressly authorized by the State in writing.

11. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed as follows:

If to County:

Milwaukee County
901 N. 9th St. #303
Milwaukee, WI 53233
Attention: Corporation Counsel

If to the State: State of Wisconsin

Wisconsin Department of Corrections
3099 E. Washington Avenue
Madison, WI 53704

Attention: Director of Bureau of Budget and
Facilities Management
Division of Management Services

or to such other address or by such other means of common communication as either party from time to time may designate by written notice to the other.

12. Recording. The State shall record this Agreement in the office of the Register of Deeds for Milwaukee County, Wisconsin, and may re-record it at any time as may be required to preserve its rights under this Agreement. The State also shall record a release or satisfaction of this Agreement when fully performed or otherwise terminated.

13. General Provisions.

(a) Controlling Law. The interpretation and performance of this Agreement shall be governed by the internal laws of the State of Wisconsin.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed to effect the primary purpose of this Agreement and the public purposes to be served by the making of the Grant. If any provision in this Agreement is found to be ambiguous, then an interpretation consistent with the primary purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Agreement, or the application thereof to any person or circumstance, is found to be invalid, then the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to this Agreement and supersedes all prior discussions, negotiations, understandings, or agreements relating to such matters, all of which are merged herein.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of title in any respect.

(f) Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in with the Property during the Term.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Agreement terminate upon transfer of that party's interest in this Agreement (as to the State) or the Property (as to County), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this Agreement have been inserted solely for convenience of reference and shall have no effect upon its construction or interpretation.

(i) Amendment. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, County and the State may jointly amend this Agreement by a written instrument recorded in the office of the Register of Deeds for Milwaukee County, provided that any such amendment shall not diminish the purpose of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and delivered the same as of the day and year first above written.

[Signatures on next page]

COUNTY:

THE STATE:

MILWAUKEE COUNTY:

THE STATE OF WISCONSIN

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ACKNOWLEDGEMENT

State of Wisconsin
County of _____

This instrument was acknowledged before me on _____. 20__, by _____
as _____.

Notary Public, Wisconsin
My Commission (expires) (is) _____

ACKNOWLEDGEMENT

State of Wisconsin
County of _____

This instrument was acknowledged before me on _____. 20__, by _____
as _____.

Notary Public, Wisconsin
My Commission (expires) (is) _____

EXHIBIT A

Legal Description of the Property

[Insert Legal Description]

EXHIBIT B

Form of Deed

See Attached

