

**VOLUNTARY AGREEMENT  
BY AND BETWEEN THE STATE OF WISCONSIN  
DEPARTMENT OF HEALTH SERVICES,  
AND  
\_\_\_\_\_ County [Sheriff] for  
Competency Restoration in \_\_\_\_\_ County Jail**

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This Agreement ("Agreement") is made and entered into by and between the State of Wisconsin Department of Health Services ("DHS"), and \_\_\_\_\_ County, Wisconsin ("the County"), hereinafter collectively referred to as "the parties."

**WHEREAS**, Wis. Stat. § 971.14(5)(a)1. provides that a Court shall commit a criminal Defendant that it finds not competent to proceed but likely to become competent to DHS for custody and treatment to competency; and,

**WHEREAS**, that statute provides that the DHS shall determine whether the defendant may appropriately receive treatment to competency in a County jail; and,

**WHEREAS**, the DHS has determined that treatment to competency of certain individuals may be appropriate in the County's Jail.

**NOW, THEREFORE**, in consideration of the mutual responsibilities and considerations set forth herein and in any Exhibits attached hereto and incorporated herein by reference, DHS and County agree as follows:

**1. TERM OF AGREEMENT**

The Term of this Agreement is from **June 1, 2018 to June 1, 2020**.

**2. SCOPE OF THIS AGREEMENT**

The Agreement and any Exhibits and/or Attachments to this Agreement constitute the entire understanding between the parties. The order of precedence is as follows: a. Laws, regulations and policies of the State.

b. This Agreement, including all exhibits, attachments, appendices, and addenda to the Agreement. Any conflict in terms shall be governed by the highest listed source.

**3. FUNDING**

Payment for services provided in accordance with the terms of this Agreement shall not exceed \$\_\_\_\_\_.

County and the DHS agree to renegotiate this Agreement or any part thereof in such circumstances as:

- Significant reduction in the monies available affecting the substance of this Agreement;
- Changes required by court action, or by changes to State law or regulations that substantially change the type of services delivered under this Agreement;
- Implementation of any new program or policy initiative that is not specifically mandated by Federal or State laws, rules or regulations.

Failure to agree to a renegotiated Agreement under these circumstances is cause for termination of this Agreement.

**4. DESCRIPTION OF WORK**

This Agreement supports treatment to competency of designated inmates in the custody of the County Jail who have been determined by the Court to be not competent to proceed at trial, but likely to become competent if treatment is provided.

a. The County shall provide, at its own expense, the care and treatment it would otherwise provide to any inmate in the Jail.

- b. DHS will reimburse the County for professional mental health services provided by the County or its subcontractors in furtherance of the inmate's Court-ordered treatment to competency. Mental health services include psychotropic medications the County provides to the inmate which have been prescribed by a qualified physician, and psychiatric evaluations by the County or its subcontractors in furtherance of the inmate's mental health care. Appendix A, attached, outlines reimbursement for allowable mental health services. Any services beyond those outlined in Appendix A must be approved by the DHS contract administrator.
- c. The County also agrees to provide access in the Jail to the designated Jail inmates for DHS staff and/or DHS subcontractors for purposes of providing treatment in furtherance of the Court ordered treatment to competency. The County agrees to provide a suitable space in the jail for treatment to competency programming to occur, this space should support individual counseling between the Jail inmate and the provider of service.

## **5. INVOICING AND PAYMENTS**

Invoices will be provided to DHS on a monthly basis. The Invoice shall note services and medications provided. Payment shall be for all services and medications approved by DHS during that period, as detailed in Appendix A.

### **a. Invoice and Payment Schedule**

Invoices will be submitted by the County to the DHS Agreement Administrator. Invoices must be detailed on an individual inmate basis.

### **b. Allowable Costs**

DHS will reimburse the County for the costs in accordance with Appendix A, attached hereto. Invoices must include the cost of any psychotropic medication provided.

## **6. CANCELLATION AND TERMINATION**

### **a. Termination for Cause**

Either party may terminate this Agreement after providing the other party with ten (10) calendar day's written notice of the right to cure a failure to perform under the terms of this Agreement unless the other party cures its failure within the 10 day notice period.

Upon the termination of this Agreement each party shall be released from all obligations to the other party arising after the date of the termination or expiration, except for those that by their terms survive such termination or expiration.

### **b. Termination for Convenience**

Either party may terminate this Agreement at any time, without cause, by providing a written notice to the other party at least ninety (90) days in advance of the intended date of termination.

In the event of termination for convenience by the County, the County shall be entitled to receive compensation for any payments owed under the Agreement only for deliverables that have been approved and accepted by DHS. Treatment to competency of the inmates in the Jail shall continue under this Agreement and the inmates will remain in the custody of the Jail, if and until DHS, in its sole discretion, makes other provision for the inmates.

### **C. Compensation**

In the event of termination for convenience by DHS, the County shall be entitled to receive compensation for any payments owed under the Agreement for deliverables that have been approved and accepted by

DHS and may be compensated for partially completed Services that have value for DHS going forward. In this event, the County may be compensated only for the actual services provided.

DHS shall be entitled to a refund for services paid for but not received or implemented, such refund to be paid within 30 days' written notice to the County requesting the refund.

## **7. NON-APPROPRIATION**

DHS reserves the right to cancel this Agreement in writing, in whole or in part, without penalty, if the Wisconsin Legislature, United States Congress, or any other direct funding entity contributing to the financial support of this Agreement fails to appropriate funds necessary to complete the Agreement. The County reserves the right to cancel this Agreement in writing, in whole or in part, without penalty, if the Brown County Board of Supervisors fails to appropriate funds necessary to complete the Agreement.

## **8. CONFIDENTIAL, PROPRIETARY, AND PERSONALLY IDENTIFIABLE INFORMATION**

In connection with the performance of work hereunder, it will be necessary for DHS to disclose to County certain information that is considered to be Confidential, Proprietary, or containing Personally Identifiable Information ("Confidential Information"). The County shall not use such Confidential Information for any purpose other than the limited purposes set forth in this Agreement, and all related and necessary actions taken in fulfillment of the obligations herein. The County shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement.

In connection with the performance of work hereunder, it will be necessary for County to disclose to the DHS certain information that is considered to be Confidential, Proprietary, or containing Personally Identifiable Information ("Confidential Information"). The DHS shall not use such Confidential Information for any purpose other than the limited purposes set forth in this Agreement, and all related and necessary actions taken in fulfillment of the obligations herein. The DHS shall hold all Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, and agents who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement.

*Indemnification:* In the event of a breach of this Section by County, County shall indemnify and hold harmless the DHS and the State and any of its officers, employees, or agents from any claims arising from the acts or omissions of the County, and its Subcontractors, employees and agents, in violation of this Section, including but not limited to, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section.

In the event of a breach of this Section by the DHS, the DHS shall indemnify and hold harmless the County and any of its officers, employees, or agents from any claims arising from the acts or omissions of the DHS, and its Subcontractors, employees and agents, in violation of this Section, including but not limited to, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the County in the enforcement of this Section.

*Equitable Relief:* The County acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the DHS, which injury will not be compensable by money damages and for which there is not an adequate remedy available by law. Accordingly, the parties specifically agree that the DHS, in its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such

breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

The DHS acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the County, which injury will not be compensable by money damages and for which there is not an adequate remedy available by law. Accordingly, the parties specifically agree that the County, in its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

#### **9. NOTICE AND CHANGE OF CONTACT INFORMATION**

Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested. In the event the County updates contact information, the County shall inform DHS of such change in writing within ten (10) Business Days. DHS shall not be held responsible for payments delayed due to the County's failure to provide such notice. In the event the DHS updates contact information, the DHS shall inform County of such change in writing within ten (10) Business Days.

#### **10. EXAMINATION OF RECORDS**

DHS shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on County's premises, any of the County's records involving transactions directly pertinent to this Agreement. If the material is on computer data storage media, the County shall provide copies of the data storage media or a computer printout of such if DHS so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the County shall not exceed the actual cost to the County. This provision shall survive the termination, cancellation, or expiration of this Agreement.

#### **11. APPLICABLE LAW**

This Agreement shall be governed by the laws of the State of Wisconsin. The County shall at all times comply with and observe all federal and state laws, rules and regulations, and policies and procedures relating to the provisions of services under this Agreement.

#### **12. BREACH NOT WAIVER**

A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or default other than the event or default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the County under this Agreement shall not constitute a waiver of default, evidence of proper County performance, or Acceptance of any defective item or work furnished by the County.

#### **13. AGREEMENT AMENDMENT**

This Agreement may not be modified or amended except by mutual Agreement of both parties in writing.

#### **14. SEVERABILITY**

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.

**15. SOVEREIGN IMMUNITY**

Nothing in this Agreement shall be construed to constitute a waiver of the State’s sovereign immunity under the Eleventh Amendment to the United States Constitution and Article IV, Section 27 of the Wisconsin Constitution.

**16. ENTIRE AGREEMENT**

This Agreement, including all documents incorporated herein by reference, constitutes the final and complete Agreement of the Parties in connection with the subject matter hereof, and supersedes all prior and contemporaneous Agreements, understandings, negotiations, and discussions, whether oral or written, by the Parties. This Agreement shall be construed as a fully integrated Agreement. There are no warranties, representations, or Agreements among the parties in conjunction with the subject matter hereof, except as specifically set forth or referred to herein.

**17. RESPONSIBILITY FOR ACTIONS**

The County shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the County nor any of the foregoing parties has authority to act or speak on behalf of DHS. The DHS shall be solely responsible for its actions and those of its agents, employees, or Subcontractors under this Agreement, and neither the DHS nor any of the foregoing parties has authority to act or speak on behalf of the County.

**18. STATE TAX EXEMPTION**

DHS is exempt from payment of Wisconsin sales or use tax on all purchases.

**19. FORCE MAJEURE**

Neither party shall be in Default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case, the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

**20. PARTIES’ CONTACT INFORMATION**

Communications to either the County or DHS shall be provided in the manner(s) indicated herein. The parties reserve the right to make changes to the contact information by giving ten (10) days’ written notice to the other.

<b>County Program Manager</b>	Name: Address: Phone: Email:
<b>DHS Agreement Administrator</b>	Name: Holly Audley Address: 1 W. Wilson St. Rm 850, Madison, WI 53707 Phone: 608-266-2862 Email: <a href="mailto:HollyO.Audley@dhs.wisconsin.gov">HollyO.Audley@dhs.wisconsin.gov</a>

This Agreement may be executed in two or more counterparts, each of which will be deemed an original.

IN WITNESS WHEREOF, DHS and the County have executed this Agreement as of the day and year first above written.

\_\_\_\_\_  
County Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
DHS Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Holly O. Audley  
Printed Name

## APPENDIX A

The Department of Health Services will reimburse the County for costs of mental health services provided by the County (or County contracted healthcare provider) while the inmate is in the custody of the County Jail.

Services eligible for reimbursement include psychiatric evaluations, medication monitoring, other supportive mental health services including crisis intervention services, and psychotropic medications. Services need to be provided by qualified professional staff.

### Reimbursement Rates

<u>Service</u>	<u>Reimbursement Rate</u>
Psychiatric Evaluation (including documentation)	\$200 for the Evaluation
Medication Monitoring (including documentation)	\$50 per 15 minute service
Supportive Mental Health Services crisis services)	Dependent upon credential level of (including provider; Reimbursed based on Wisconsin Medicaid rates (see <a href="http://www.forwardhealth.wi.gov">www.forwardhealth.wi.gov</a> )
Psychotropic Medications	Actual cost