

Amended and Restated Intergovernmental Cooperation Agreement Creating WOODLAND ENHANCED HEALTH SERVICES COMMISSION

This Amended and Restated Intergovernmental Cooperation Agreement (“Amended and Restated Agreement”) is entered into under authority of Wis. Stat. § 66.0301 and is effective as of the date the last Member identified herein executes the Amended and Restated Agreement. The Amended and Restated Agreement is entered into by, among and between the Counties of Clark, Barron, Bayfield, Buffalo, Chippewa, Crawford, Douglas, Eau Claire, Florence, Oneida, Outagamie, Pepin, Portage, Price, Rock, Rusk, Taylor, and Wood each a duly organized and existing county of the State of Wisconsin (hereinafter collectively referred to as the “Initial Members”) and each county that may hereafter enter into the Amended and Restated Agreement in the manner hereinafter described (hereinafter collectively referred to as the “Additional Members” and together with the Initial Members, as the “Members”).

RECITALS

WHEREAS, Wis. Stat. § 66.0301(2) authorizes municipalities to contract with other municipalities for the receipt or furnishing of services or the joint exercise of any power or duty required or authorized by law; and

WHEREAS, each of the Initial Members are municipalities within the definition set forth in Wis. Stat. § 66.0301(1)(a); and

WHEREAS, Wis. Stat. § 66.0301(3) authorizes the Members to form a commission for the purpose of administering the Members’ contractual obligations set forth herein; and

WHEREAS, Wis. Stat. § 49.49(7) authorizes the formation of a commission such as that intended herein for purposes of operating a nursing home; and

WHEREAS, every county may exercise any organizational or administrative power, subject only to the constitution and to any enactment of the legislature which is of statewide concern and which uniformly affects every county pursuant to Wis. Stat. § 59.03 Wis. Stats.; and

WHEREAS, to give counties the largest measure of self-government under the administrative home rule granted to counties in Wis. Stat. § 59.03(1), Chapter 59 of the Wisconsin Statutes shall be liberally construed in favor of the rights, powers and privileges of counties to exercise any organizational or administrative power; and

WHEREAS, Wis. Stat. § 59.01 Wis. Stats., authorizes each county as a body corporate to make such contracts and to do such other acts as are necessary and proper to the exercise of the powers and privileges granted and the performance of the legal duties charged upon it; and

WHEREAS, Wis. Stat. § 59.51(1) provides that a county board may exercise any organizational or administrative power under Chapter 59 without limitation because of enumeration, and these powers shall be broadly and liberally construed and limited only by express language; and

WHEREAS, counties within the State of Wisconsin have found it increasingly difficult to find nursing home placements for their residents that have specialized physical and mental health needs that are complicated by the residents' challenging behaviors; and

WHEREAS, Clark County currently owns a facility known as Clark County Rehabilitation and Living Center ("CCRLC") that is licensed to operate, among other things, a skilled nursing facility and a facility for the developmentally disabled ("FDD"); and

WHEREAS, each of the Members are authorized to individually own, operate and manage a skilled nursing facility and FDD under authority granted under, among other statutes, Chaps. 50 and 150 of the Wisconsin Statutes; and

WHEREAS, Wis. Stat. § 49.49(7) authorizes the creation of a commission by and among counties and allows for the sharing of costs associated with the commission's operation of a skilled nursing facility; and

WHEREAS, the Members previously entered into an intergovernmental cooperation agreement ("Original IGA") that established the Woodland Enhanced Health Services Commission (the "Commission") that "owns," operates and manages the portion of CCRLC subject to the Original IGA; and

WHEREAS, the Members to this Amended and Restated Agreement are desirous of entering into this Amended and Restated Agreement for purposes of updating and otherwise amending the terms of the Original IGA that created the Commission; and

WHEREAS, only that portion of CCRLC that is licensed to operate a skilled nursing facility and FDD, all as will be more particularly set forth in a lease and administrative services agreement by and between Clark County and the Commission, is subject to the terms of this Amended and Restated Agreement and the Commission; and

WHEREAS, pursuant to Article 8 of the Original IGA, the Original IGA may be amended by unanimous consent of all Members; and

WHEREAS, this Amended and Restated Agreement is intended to serve as a complete replacement of the Original IGA and the Original IGA shall be of no further force and effect provided, however, that any Member obligations arising under the Original IGA shall continue and shall not terminate by virtue of this Amended and Restated Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 CREATION AND LEGAL STATUS

1.01 Creation. The Commission is formed by and on behalf of the Members to be known as the “Woodland Enhanced Health Services Commission” for the purpose of administering and executing this Amended and Restated Agreement and shall have the powers granted to it under this Amended and Restated Agreement.

1.02 Title to Commission Assets. Certain assets of CCRLC shall be made available to the Commission for the Commission’s use, as will be more particularly set forth in the lease and administrative services agreement by and between Clark County and the Commission. The assets of CCRLC shall not be considered the assets of the Commission unless explicitly set forth in an agreement between Clark County and the Commission. As it relates to Commission assets, except as otherwise provided in this Amended and Restated Agreement, the Commission shall have exclusive title to all of its property and no Member shall have an ownership interest in Commission property.

1.03 Compliance with Law. The Commission shall comply with all federal and state laws, rules, regulations, and orders applicable to this Amended and Restated Agreement, as well as with any duties or obligations that may from time to time be transferred to it from any of the Members consistent with this Amended and Restated Agreement.

1.04 Relationship of Members. The Members agree that no Member shall be responsible, in whole or in part, for the acts of the employees, agents and servants of any other Member, whether acting separately or in conjunction with the implementation of this Amended and Restated Agreement. The Members shall only be bound and obligated under this Amended and Restated Agreement as expressly agreed to by each Member. No Member may obligate any other Member.

1.05 Principal Office. The Commission shall maintain a principal office in Clark County, Wisconsin. The Commission may have such other offices, either within or without Clark County, Wisconsin, as may be designated from time to time by resolution of the Member Board.

1.06 Original IGA. This Amended and Restated Agreement shall serve as a complete replacement of the Original IGA. The Original IGA shall be of no further force and effect upon this Amended and Restated Agreement becoming effective provided, however, that any Member obligations that accrued under the Original IGA shall continue under this Amended and Restated Agreement and shall not be extinguished.

ARTICLE 2 PURPOSE AND AUTHORITY

2.01 Purpose. The purpose of the Commission shall be to organize and establish a multi-jurisdictional commission that shall: (1) lease, manage and operate a skilled nursing facility and facility for the developmentally disabled (“FDD”) within Clark County Rehabilitation and Living Center (“CCRLC”); (2) contract with Clark County to provide personnel and human resources

related to the administration and management of CCRLC; and (3) provide financial resources for operation of CCRLC, including any costs or services incidental thereto. The Member Board is hereby authorized to enter into any and all contractual relationships necessary to effectuate the purpose of the Commission.

2.02 Authority. The Commission is hereby empowered by the Members to take all action relating to the operation of CCRLC as a certified and licensed skilled nursing facility and FDD under the applicable Wisconsin Statutes, together with any and all actions necessary to effectuate the purpose and intent of this Amended and Restated Agreement.

ARTICLE 3 MEMBERS

3.01 Members. Each Member, together with any Additional Member admitted to the Commission pursuant to the procedures established herein, shall be considered a Member of the Commission.

3.02 Member Representative. Each Member shall have one (1) representative on the Member Board ("Member Representative"). The official representative of each Member shall be designated in the Member's customary manner of designation relating to committees or commissions. A Member shall notify the Commission of its representative by written notice to the Chair of the Member Board. Each official Member Representative must at all times be a current county board supervisor or current county executive. A Member Representative is empowered and authorized by the Member to take any and all action on behalf of the Member and otherwise legally bind the Member to obligations consistent with the terms of this Amended and Restated Agreement.

3.03 Voting Rights. Each Member shall have one (1) vote, which shall be cast by the Member Representative, on all business brought before the Member Board. Any Member Representative may call for a weighted vote on any matter of business brought before the Member Board, in which case the Member Representative of each Member shall be entitled to one (1) vote for each resident of a Member county that is in placement in CCRLC on the date of the vote.

3.04 Powers of Commission. Consistent with Article 2 above, the Commission's powers shall include the following, without limitation by enumeration:

- A. Establish the annual assessment rate ("Assessment Rate") for Members associated with the costs of care of residents placed in CCRLC on behalf of the Members.
- B. Establish the dues rate for Members as a condition for the continued operation of the Commission.
- C. Establish the terms and conditions, including but not limited to the consideration, relating to the Lease and Administrative Services Agreement by and between the Commission and Clark County related to CCRLC.

- D. Apply for and hold licensure for CCRLC.
- E. Acquire, own, hold, operate, maintain, lease, or sell real or personal property and dispose of, divide, or distribute any property.
- F. Incur debts, liabilities, or obligations consistent with the Commission's budget and as otherwise authorized by the Members.
- G. Cooperate with other public agencies.
- H. Sue and be sued in the name of the Commission.
- I. Be responsible for any liabilities that might be incurred through performance of this Amended and Restated Agreement and insure against any such liability.
- J. Engage auditors to perform independent audits of the financial statements and other activities of the Commission as required by law.
- K. Invest surplus funds or proceeds and adopt investment policy in connection with the funds or proceeds consistent with law.
- L. Purchase and maintain insurance to protect Members of the Member Board or officers or employees of the Commission from personal loss or accountability for any acts or omissions of the Commission.
- M. Exercise any power necessary to effectuate the intent and purpose of this Amended and Restated Agreement.

ARTICLE 4 MEMBER BOARD

4.01 Creation. There is hereby created a board comprised of all Member Representatives to be known as the Member Board. The Member Board shall be responsible for the governance of the Commission.

4.02 Powers and Duties of Member Board. The Member Board shall have the powers common to its Members and is authorized, in its own name, to do all acts necessary to exercise such common powers to fulfill the purposes of this Amended and Restated Agreement. In addition, the Member Board shall have the following powers and duties:

- A. Establish the Commission's annual budget.

- B. Pursuant to the Commission's budget, enter into leases or contracts necessary for the provision of services provided under this Amended and Restated Agreement.
- C. Establish the Assessment Rate.
- D. In coordination with Clark County, review the Commission's long-range capital plan related to CCRLC's building and property.

4.03 Limitation on Powers of Member Board. The Member Board shall not have the power to levy taxes or otherwise borrow funds from any source other than the Members.

4.04 Meetings of the Member Board.

- A. Annual Meeting. In each calendar year, an annual meeting of the Member Board shall be held during the month of August. The Chair or his/her designee shall give at least 30 days written or electronic notice of an annual meeting to each Member (voting and non-voting) at the address or electronic address of the Members shown in the records of the Commission. It shall be the responsibility of each Member to inform the Commission of its designated representative to act on behalf of a Member at such meeting.
- B. Agenda. The agenda for each Annual Meeting shall include, but not be limited to the following: set the budget for the following year, set the Assessment Rate for the following year, assess dues, elect officers and receive other reports or information that are in the interests of the Commission.
- C. Special Meetings. Special meetings of the Member Board may be called by the Chair. Special meetings shall be held on 5 days written notice from the Chair or his/her designee, which shall describe the business to be transacted at the meeting.
- D. Place of Meetings. All meetings of the Member Board shall be held within the State of Wisconsin.
- E. Quorum and Voting. A majority of Members shall constitute a quorum necessary to conduct business on behalf of the Member Board. Member Representatives may attend any Member Board meeting by remote communication provided that such remote attendance complies with Wisconsin's Open Meetings Law. Proxy voting shall not be allowed.
- F. Procedure. Meetings shall be conducted pursuant to Robert's Rules of Order unless some other procedure is approved by a two-thirds vote of Members present and voting.

- G. Adjournment. Meetings may be adjourned from time to time without further notice.

4.05 Assessment Rate. At the annual meeting of the Member Board, Clark County shall recommend an Assessment Rate to the Member Board, together with such other and further information necessary for the Member Board to consider the Assessment Rate. Thereafter, at the same meeting, the Member Board shall establish the Assessment Rate, which will provide the mechanism for funding the Commission's operations in the next fiscal year. The Assessment Rate shall consist of two (2) components:

- A. For all Members other than Clark County, the Assessment Rate shall be a uniform rate that is prorated to the Members as a daily rate based upon utilization and shall take into consideration the prorated expenses incurred by the Commission associated with a Member's placement of a resident in CCRLC, lease payments, operation costs, capital costs and any other expenses anticipated to be incurred in the next fiscal year. Information and figures contained within the Medicaid Cost Report applicable to CCRLC shall be utilized, to the extent possible, in establishing the expenses. The Commission may adopt a policy or policies clarifying the process for billing, payment and calculation of the Assessment Rate.
- B. For Clark County, the Assessment Rate shall consist of the sum of (1) the Assessment Rate assessed all other Members; plus (2) the difference between the sum total of the Assessment Rate proceeds for all Members and the actual costs of the Commission's operations ("Retroactive Assessment") after taking into account all revenue of the Commission, both received and anticipated. The Retroactive Assessment shall be determined retroactively based upon actual costs and revenues. Nothing herein shall be construed as limiting the Commission's ability to reconsider/audit the Retroactive Assessment if anticipated costs or revenues are different than actual costs or revenues.

The Member Board may adopt an Assessment Rate that is higher or lower than the calculation set forth herein.

4.06 Accounting and Reconciliation. Following the close of the previous fiscal year, Clark County shall undertake an accounting and reconciliation associated with the determination of the Retroactive Assessment. Clark County agrees that it shall be responsible for all costs associated with the accounting and reconciliation, together with all sums due and owing under the Retroactive Assessment.

4.07 Member Board Officers. At the annual meeting of the Member Board in every calendar year, the Member Board shall identify the Chair and elect a Vice Chair and Secretary from the membership of the Member Board. In addition to the foregoing officers, the Member Board shall designate a Recording Secretary, who may be a staff member.

- A. Selection and Term of Office. The Chair shall be the Member Representative from Clark County. The Member Board shall elect a Vice Chair and a Secretary from its membership. All officers shall serve one-year terms. Officers may be removed by majority vote of the Member Representatives provided, however, that the Chair may be removed only by Clark County in a manner consistent with Clerk County's appointment and removal process associated with boards and/or commissions.
- B. Vacancies. A vacancy in any office created by any cause shall be filled by the Commission Board at its next meeting held after such vacancy shall occur subject to the appointment process outlined in Section 4.08.A. above. The person selected to fill such vacant office shall serve the remainder of the term of the person leaving such office vacant.
- C. Powers and Duties of Officers.
1. Chair. The Chair shall preside at all meetings of the Member Board. The Chair or his/her designee is responsible for causing notice of each meeting of the Member Board to be given in compliance with the Wisconsin Open Meetings Law.
 2. Vice Chair. The Vice Chair shall exercise the duties of the Chair in the absence, vacancy or incapacity of the Chair.
 3. Secretary. The Secretary shall cause minutes of all meetings of the Member Board to be prepared with the assistance of the Recording Secretary.

4.08 Fiscal Agent. Clark County shall be the Commission's designated fiscal agent for purposes of receiving, distributing, paying and accounting for all funds of the Commission under this Amended and Restated Agreement. Clark County shall provide regular reports, in no event less than annually, to the Members relating to the finances of the Commission in form established by the Member Board from time to time. Clark County shall arrange for an annual audit of the Commission's books and records and report the audit results to the Member Board.

ARTICLE 5

ADMISSION AND REMOVAL OF MEMBERS

5.01 Admission of Members. The Commission may admit Additional Members upon unanimous consent of the then-current Members and upon such other terms and conditions as the Members shall unanimously determine.

5.02 Removal of Members. Any Member may be removed by two-thirds (2/3) vote of the Members. Any removal occurring hereunder shall be effective immediately. The Commission may adopt a policy or policies clarifying the additional processes and obligations surrounding the removal of a Member. A Member's removal does not impact any liability or responsibility of the Member for obligations that accrued while the Member was a Member of the Commission.

ARTICLE 6 LIABILITY AND INDEMNITY

6.01 Liability for Losses; Ownership of Profits. The Members understand and agree that any and all losses of the Commission are to be borne by the Members themselves consistent with the intent and purpose of Wis. Stat. § 66.0301, *et seq.*, and this Amended and Restated Agreement. Each Member further understands and agrees that it is financially responsible for the continuing operation of CCRLC so long as the Commission is a party to the contracts and agreements relating to CCRLC's operations and the Member continues to be a Member of the Commission.

6.02 Indemnity by Clark County. Notwithstanding the responsibility for losses set forth in Section 6.01 above, the Members understand and agree that Clark County has contractually agreed to indemnify and hold the Commission harmless from any and all fines, fees, forfeitures, suits, claims and/or causes of action relating to CCRLC's operations by virtue of a lease and administrative services agreement. Nothing herein nor in the lease and administrative services agreement shall be construed as limiting Clark County's indemnification obligations. Except for Clark County, no Member shall be liable to the Commission for any sums beyond sums established through dues and Assessment Rates as provided in this Amended and Restated Agreement.

ARTICLE 7 TERM OF AGREEMENT AND DISPOSITION OF ASSETS

7.01 Term of Agreement. The term of this Amended and Restated Agreement shall continue until terminated at any time by unanimous agreement of the then-current Members.

7.02 Continuation. This Amended and Restated Agreement shall survive the voluntary withdrawal of any Member.

7.03 Withdrawal of Member. Any Member may voluntarily withdraw from the Commission provided that such withdrawal shall be effective on December 31 of any year and further provided such Member gives the Commission notice of its withdrawal on or before August 1 of the year in which the withdrawal takes place. The Commission may adopt a policy or policies clarifying the additional processes and obligations surrounding the withdrawal of a Member. A Member's withdrawal shall have no effect on a Member's obligations under this Amended and Restated Agreement that accrued prior to the effective date of the withdrawal.

7.04 Disposition Upon Termination. If the Members unanimously agree to terminate this Amended and Restated Agreement, the Commission shall wind up its affairs as follows:

- A. All of the Commission's debts, liabilities and obligations and all expenses incurred in connection with the termination shall be paid first provided, however, that to the extent any debts are subject to proration based upon the Assessment Rate, such expenses shall be prorated consistent with the Assessment Rate; and

- B. Title to all remaining property and assets owned by the Commission shall be distributed among the Members as determined by the Member Board.

ARTICLE 8 AMENDMENT

This Amended and Restated Agreement may be amended at any time by unanimous consent of the Members acting by and through their authorized representatives. Amendments shall be in writing and shall become effective only after execution by duly authorized Member Representatives.

ARTICLE 9 MISCELLANEOUS

9.01 Fiscal Year. The Commission's fiscal year shall be January 1 to December 31.

9.02 Choice of Law and Venue. This Amended and Restated Agreement shall be construed according to the laws of the State of Wisconsin. Any lawsuit arising out of this Amended and Restated Agreement shall be venued exclusively in the State and Federal courts in Wisconsin.

9.03 Notices. Notices to Members under this Amended and Restated Agreement shall be sufficient if delivered to their Representatives and the office of the Clerk of the Member. Notices to the Commission under this Amended and Restated Agreement shall be sufficient if delivered to the Chair at the address of CCRLC.

9.04 Severability. Should any portion, term, condition or provision of this Amended and Restated Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of Wisconsin, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions and provisions shall not be affected thereby.

9.05 Agreement Complete. The foregoing constitutes the full and complete Amended and Restated Agreement of the Members. There are no oral understandings or agreements not set forth in writing herein.

9.06 Prohibition Against Assignment. Neither Members nor the Commission may assign any right, claim or interest it may have under this Amended and Restated Agreement.

9.07 Execution. This Amended and Restated Agreement shall be executed on behalf of each Member by the Member Representative pursuant to Article 8 of the Original IGA. This Amended and Restated Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

IN WITNESS WHEREOF, the parties have executed this Amended and Restated Agreement effective as of the day and year first written above.

On behalf of CLARK COUNTY:

On behalf of BARRON COUNTY:

By: _____
Its: _____

On behalf of BAYFIELD COUNTY:

By: _____
Its: _____

On behalf of CHIPPEWA COUNTY:

By: _____
Its: _____

On behalf of DOUGLAS COUNTY:

By: _____
Its: _____

On behalf of FLORENCE COUNTY:

By: _____
Its: _____

On behalf of OUTAGAMIE COUNTY:

By: _____
Its: _____

On behalf of PORTAGE COUNTY:

By: _____
Its: _____

On behalf of ROCK COUNTY:

By: _____
Its: _____

On behalf of TAYLOR COUNTY:

By: _____
Its: _____

By: _____
Its: _____

On behalf of BUFFALO COUNTY:

By: _____
Its: _____

On behalf of CRAWFORD COUNTY:

By: _____
Its: _____

On behalf of EAU CLAIRE COUNTY:

By: _____
Its: _____

On behalf of ONEIDA COUNTY:

By: _____
Its: _____

On behalf of PEPIN COUNTY:

By: _____
Its: _____

On behalf of PRICE COUNTY:

By: _____
Its: _____

On behalf of RUSK COUNTY:

By: _____
Its: _____

On behalf of WOOD COUNTY:

By: _____
Its: _____

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