

MEMORANDUM OF AGREEMENT

Mental Health and Suicide Prevention Remedial Measures Implementation
Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

Whereas, Plaintiffs' Class Counsel and Defendant County of Sacramento (the "Parties") reached a settlement agreement in *Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN), with a Consent Decree approved by the Court on January 13, 2020; and

Whereas, in the first round monitoring reports (filed Jan. 20, 2021), the *Mays* court-appointed experts found that the County was not in compliance with Mental Health Care and Suicide Prevention provisions of the Consent Decree; and

Whereas, to assist the County in the task of implementation, the court-appointed experts identified "focus areas" in the first round monitoring reports – that is, issues that are urgent to class member well-being, are of critical importance to broader compliance efforts, and in many cases would be relatively easy to resolve with sufficient attention; and

Whereas, the second round monitoring reports (filed Oct. 4, 2021) documented insufficient progress on the identified "focus areas"; and

Whereas, the County is responsible for provision of a Sacramento County Jail ("Jail") Mental Health Care and Suicide Prevention system consistent with legal and constitutional requirements and the Remedial Plan measures set forth in the *Mays* Consent Decree, and as such, must ensure appropriate resources, services, oversight, performance expectations, and consequences for deficiencies in the delivery of Mental Health Care services, including by its contracted provider (UCD Department of Psychiatry & Behavioral Sciences); and

Whereas, Class Counsel sent written correspondence (the "Dispute Notice," attached as **Exhibit A**), dated October 29, 2021, demanding that the County take immediate, affirmative steps to implement foundational "focus area" remedial provisions regarding Mental Health Care and Suicide Prevention; and

Whereas, consistent with the Dispute Resolution provisions set forth in the Consent Decree, the parties notified by written correspondence the designated Dispute Resolution mediator, the Hon. Nathanael Cousins, about the dispute; and

Whereas, the Parties and court-appointed experts on Mental Health Care (Mary Perrien Ph.D.) and Suicide Prevention (Lindsay Hayes) participated in a video conference with Counsel for the Parties as well as representatives from the County Executive, Sheriff's Department, and Adult Correctional Health including Mental Health representatives on November 9, 2021, as part of the Dispute Resolution process; and

Whereas, the County provided additional information regarding its response to the issues raised in the Dispute Notice on November 15, November 22, December 6, December 27, 2021, February 8, 2022; and

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures *Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN)

Whereas, the Parties have had several additional communications to discuss specific policy revisions and staff training that are necessary to address “focus area” remedial provisions discussed in Class Counsel’s October 29, 2021 Dispute Notice; and

Whereas, the Parties agree that Jail population-related stressors impose substantial barriers to implementation of certain “focus area” remedial provisions discussed in Class Counsel’s October 29, 2021 Dispute Notice, including as related to inadequate staffing and physical plant deficiencies; and

Whereas, the Parties have previously agreed that “population reduction of the jails will facilitate compliance with th[e] Remedial Plan;” and

Whereas, the Parties have further agreed that if the “County is not fulfilling the provisions of this Remedial Plan due to staffing deficiencies, the parties will meet and confer regarding what steps to take to reduce the population of the jail, including available resources to facilitate population reduction;” and

Whereas, the County has acknowledged that “there is insufficient staff and space to support requirements within the remedial plan,” County Remedial Plan Status Report at 8 of 130 (Dkt. 152, Jan. 20, 2022); and

Whereas, Sacramento County is currently overseeing two assessments relevant to Jail population-related and physical plant deficiencies that are barriers to implementation of the Remedial Plan, as follows:

First, the County is overseeing an assessment of the Sacramento County Main Jail facility and the practicability of implementation of all *Mays* Consent Decree requirements (the “Facilities Report”). This assessment will include an analysis of the maximum incarcerated population that the Main Jail can support while meeting the terms of the Consent Decree;

Second, the County is overseeing a jail population assessment that will include policy and program recommendations to reduce the incarcerated population through lowering lengths of stay, bookings, and future jail reoccurrence, including through implementation of community programs (the “Jail Population Report”); and

Whereas, the findings from these two assessment reports will be publicly available when completed, and will inform the County’s efforts towards implementation of the *Mays* Consent Decree;

Whereas, the Parties agree that the County currently does not have a plan for reaching compliance with Consent Decree requirements related to the following issues raised in Class Counsel’s October 29, 2021 Dispute Notice: (1) remediation of physical plant deficiencies that prevent delivery of adequate health care services; (2) provision of

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures *Mays v. County of Sacramento* (Case No. 2:18-cv-02081-TLN-KJN)

adequate staffing to deliver adequate mental health care services; (3) provision of adequate acute mental health level of care services at a capacity to meet class member needs; and (4) provision of adequate Intensive Outpatient Program mental health level of care services at a capacity to meet class member needs;

Now therefore, the Parties enter into this Memorandum of Agreement with the following terms:

PROVISIONS RESOLVING ISSUES RAISED IN THE OCTOBER 29, 2021 DISPUTE NOTICE

MENTAL HEALTH CARE

Mental Health Treatment Delivery (EOP and Levels of Care System) (Focus Area #3)

1. **Enhanced Outpatient Program (EOP).** The County has implemented and will expand a new Enhanced Outpatient Program (EOP) level of care, to serve more *Mays* class members with serious mental illness. The EOP level of care is designed to reduce disciplinary write-ups, emergent incidents, and need for acute or IOP levels of care. EOP level of care services include regular clinical contact from an assigned case manager, care coordination with treatment partners, mental health treatment planning, crisis intervention, psychoeducation, and increased collaboration with custody to address housing, discipline or other issues that arise. The County will ensure that EOP services are adequate and that EOP capacity is sufficient to meet class member needs consistent with Consent Decree requirements. The Subject Matter Experts will monitor EOP programming, services, and capacity in all future monitoring activities.
2. **Levels of Care System.** The County has revised its mental health levels of care system to align with Consent Decree requirements. It has ceased to utilize, and will not utilize, Frequency of Service Study (FOSS) levels for purposes of the Jail's mental health levels of care system.
 - a. The Mental Health Care Subject Matter Expert has found that the historically-used FOSS levels “do not map well onto the acuity of a patient nor onto existing treatment programs,” and “do not address treatment planning” or “levels of mental health care which have specific timelines and expectations associated with them” in the Consent Decree.
 - b. On December 30, 2021, with input from the Subject Matter Expert and Class Counsel, the County finalized a revised Mental Health Policy No. 04-02, which establishes that “FOSS levels are not used to determine level of [mental health] services or timelines for care.” Instead, “level of and timelines for patient care will be determined by patient needs, clinical assessments, and assigned care location – Acute Psychiatric Unit (APU).

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

Intensive Outpatient Program (IOP), or Enhanced Outpatient Program (EOP).”

- c. The revised policy clarifies that the Jail may use FOSS levels solely for data collection and analysis purposes.
- d. The County will ensure that the system for assigning appropriate levels of care is accurate, effective, and consistent with Consent Decree requirements. The Subject Matter Experts will monitor this matter in all future monitoring activities.

Use of Force Policies and Practices, Class Members with Disabilities (Focus Area #4)

3. On February 4, 2022, the County, with input from the Subject Matter Expert and Class Counsel, completed revision of its Mental Health Policy No. 07-05 regarding Mental Health-Planned Uses of Force policy.
 - a. This policy is necessary to implement Remedial Plan requirements to employ de-escalation methods that take into account a class member’s mental health or adaptive support needs, utilize mental health staff involvement whenever possible prior to utilizing planned use of force, and requiring video documentation and supervisory review of Use of Force incidents.
 - b. Mental health staff will receive de-escalation and use of force training starting in late April/early May 2022, which will include training on relevant *Mays* Consent Decree provisions.
 - c. Adequacy of ACH Mental Health Policy No. 07-05 implementation, training and compliance with Consent Decree requirements regarding Use of Force practices will be monitored by the Subject Matter Experts.
4. The County will modify the Sheriff’s Office’s Operations Order *Use of the WRAP Restraint Device*, including based on input from the Subject Matter Experts and Class Counsel, to ensure compliance with all relevant Remedial Plan provisions. Use of force incidents, including all uses of the WRAP Restraint Device, will be monitored by the Subject Matter Experts.

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

SUICIDE PREVENTION

Suicide Prevention Policies (Focus Area #1)

5. Adult Correctional Health, with input from the Subject Matter Experts and Class Counsel, completed revision of its Suicide Prevention policies (Policy No. 01-15 and 02-05) in September 2021.
 - a. Adult Correctional Health provided a two-hour suicide prevention training to health care staff on several dates between December 2021 and February 2022. Training of custody staff rolled out in March 2022.
 - b. In February 2022, the County finalized a 4-6 hour suicide prevention training that covers essential aspects of the Remedial Plan as to suicide prevention. The County will utilize a multidisciplinary team to deliver this training to all newly hired mental health, medical, and custody staff. Such training will begin in June 2022 and will be provided on an ongoing basis as staff members are onboarded.
 - c. The County will adapt the new-staff suicide prevention training referenced in Paragraph (b), above, to cover all essential suicide prevention aspects of the Remedial Plan, including requirements set forth in this Agreement, to be delivered to all current mental health, medical, and custody staff who have not received the new-staff training. The training was reviewed and approved by the Subject Matter Experts. Training has begun and will continue until all staff members are trained.
6. The County will complete revision of the Sheriff's Office's Suicide Prevention policy, procedure, and training, including based on input from the Subject Matter Experts and Class Counsel, to ensure compliance with all relevant Remedial Plan provisions. The County's Suicide Prevention policies, procedures, and trainings will require the following, with appropriate documentation to show proof of practice:
 - a. Staff will offer patients on suicide precautions a shower at least daily, and upon reasonable request.
 - b. Staff will provide prompt assistance with hygiene and cleaning to patients on suicide precautions whenever circumstances warrant.
 - c. Staff will affirmatively offer patients on suicide precautions water at least every two hours, and upon request.
 - d. Staff will affirmatively offer patients on suicide precautions food at least consistent with normal daily meal provisions, and upon request (*e.g.*, if

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

they missed a meal due to their mental health or suicide observation status).

- e. Staff will provide patients on suicide precautions and held in a cell that does not have a toilet access to a toilet promptly upon request.

Addressing Overuse and Unnecessary Use of Safety Smocks (Focus Area #2)

7. Adult Correctional Health shall, with input from the Subject Matter Experts and Class Counsel, has finalized revisions to its suicide prevention policies, including to clarify that (a) decisions about the removal of clothing and the issuance of a safety smock to class members on suicide precautions will be under mental health staff authority based on the clinical judgement of a licensed clinician, (b) class members will have clothing restored prior to discharge from suicide precautions and as soon as clinically appropriate while on suicide precautions, and (c) mental health staff will conduct at least daily assessments of a patient's readiness for restoration of clothing and shall document reasons for continued use when indicated.
8. The Sheriff's Department's Suicide Prevention policy and procedure will be revised to align with Adult Correctional Health policy regarding use of safety smocks.
9. Staff compliance with safety smock policies to prevent overuse and/or unnecessary use of safety smocks will be subject to a documented quality assurance process for at least 12 months from the date of this Memorandum of Agreement, with quality assurance review at the monthly Suicide Prevention Subcommittee meetings.
 - a. Health care and custody supervisors will conduct at least weekly reviews of safety smock use to ensure proper implementation, with corrective action taken when warranted.
 - b. The Mental Health and Suicide Prevention Subject Matter Experts will monitor safety smock policy implementation and the quality assurance process to ensure compliance with relevant Consent Decree requirements.

Patient Confidentiality for Suicide Risk Assessments, Mental Health Clinical Encounters (Focus Area #3)

10. The County has fixed the inoperable telephone inside the designated mental health Interview Room in the Main Jail's intake area, and will take additional steps to improve confidentiality in the Main Jail intake screening area to the greatest extent possible given the deficient physical plant. The Subject Matter Experts will review and assess these modifications on future monitoring visits.

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

11. As an interim measure to mitigate physical plant deficiencies impacting delivery of care, the County is utilizing two confidential attorney visit booths on the Main Jail's third floor, to improve confidentiality of mental health appointments. These interim measures, along with other measures to address deficiencies in the confidentiality of mental health contacts, will be reviewed by the Subject Matter Experts during on-site monitoring.
12. As an interim measure to mitigate physical plant deficiencies impacting delivery of care, the County will relocate (i) staff currently using Main Jail office space and (ii) storage space to a nearby off-site location, to free up rooms and the Main Jail 3-West classroom that has been used as office space. These spaces will be repurposed for confidential individual treatment and group therapy for people in the Intensive Outpatient Program or otherwise requiring mental health treatment. The Subject Matter Experts will assess the adequacy of these spaces during upcoming monitoring visits.
13. The County acknowledges that above-identified interim steps will not be sufficient to facilitate full remediation of the legal and constitutional deficiencies identified in the *Mays* case and addressed in the Consent Decree. Issues regarding provision of patient confidentiality for suicide risk assessments and mental health clinical contacts will be addressed through continued Dispute Resolution processes related to physical plant and staffing deficiencies, as set forth on Pages 10-13, below.

Direct Observation of Class Members on Suicide Precautions (Focus Area #4)

14. On November 15, 2021, ACH ordered an end to use of Closed Circuit TV (CCTV) for purposes of observing class members on suicide precautions. The Mental Health Medical Director followed up with all psychiatry staff.
15. Adult Correctional Health, with input from the Subject Matter Experts and Class Counsel, finalized Policy No. 02-05 – Suicide Prevention Program on November 16, 2021, which removes CCTV observation and provides for direct observation consistent with Consent Decree requirements.
16. The Subject Matter Experts will evaluate implementation of suicide precaution observation practices during upcoming monitoring visits.

Appropriate Provision of Privileges and Property for Class Members on Suicide Precautions (Focus Area #5)

17. Adult Correctional Health shall, with input from the Subject Matter Experts and Class Counsel, finalized revisions to its suicide prevention policies to reflect Remedial Plan requirements regarding privileges and property for patients on suicide precautions. The Sheriff's Office's Suicide Prevention policy and procedure will be revised to align with Adult Correctional Health policy regarding

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

privileges and property for patients on suicide precautions. These policies specifically shall provide:

- a. Mental health staff shall have primary responsibility to determine, based on clinical judgment and on a case-by-case basis and in consultation with custody staff, the provision of:
 - Routine privileges (*e.g.*, visits, telephone calls, recreation) that are otherwise permitted based on a person's classification security level
 - Clothing and possessions (*e.g.*, books, slippers/sandals, eyeglasses) that are otherwise permitted based on a person's classification security level
- b. Patients placed on suicide precautions shall be re-evaluated at least daily to assess clinical readiness for personal and jail-issued possessions, clothing, and privileges.
- c. Placement on suicide precautions shall *not* preclude patients from receiving timely and regular access to (i) meals, (ii) liquids, (iii) prescribed medication, (iv) toilets, and (v) showers.
- d. The County shall ensure full implementation of the requirements as set forth in Paragraph 6, above.
- e. Class members on suicide precautions shall be allowed to attend scheduled court proceedings unless the clinician, based upon clinical judgment and in consultation with security staff, determines that transportation to court would adversely impact the individual's condition.
- f. The removal of property and/or privileges shall be documented with clinical justification in the patient's medical/mental health record and reviewed on a regular basis. Cancellation of privileges should be avoided whenever possible and utilized only as a last resort.
- g. Cell window coverings shall not be used on cells holding any class member on suicide precautions or awaiting an inpatient bed, unless there is a specific security need and then for only a period of time necessary to address such security need, consistent with Remedial Plan Section VII.J.
 - i. Placement of a patient in an opposite gender area (*e.g.*, male placed in suicide precautions cell in female intake area) does not constitute a "security need" for purposes of this remedial provision.

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

Decree Paragraphs 32-34. Class Counsel retains their right to pursue enforcement proceedings on these issues should dispute resolution procedures not lead to a supplemental memorandum of agreement or stipulation resolving any or all of these four issues. The parties nonetheless agree to the following:

MENTAL HEALTH CARE

Physical Plant Deficiencies Impeding Remedial Plan Implementation (Focus Area #1)

1. The County does not currently have a plan for remediation of physical plant deficiencies that prevent delivery of adequate health care services, among other essential components of the Remedial Plan (*e.g.*, ADA/Disability accessibility and program access requirements).
2. The County will take interim steps to mitigate physical plant deficiencies that adversely impact mental health care delivery, including as set forth in this Memorandum of Agreement (*e.g.*, *Patient Confidentiality for Suicide Prevention Assessments, Mental Health Clinical Encounters*, Pages 6-7, above).
3. The County will, by no later than December 1, 2022, develop a plan for remedying physical plant deficiencies that impede Consent Decree implementation, with input from relevant community stakeholders.
4. The Parties agree that a plan to remediate physical plant deficiencies must be paired with a plan containing jail population reduction measures, developed with input from relevant community stakeholders, as necessary to facilitate timely, cost-effective implementation of the Consent Decree. The County will, by no later than October 15, 2022 and with input from relevant community stakeholders, develop a plan for jail population reduction measures, to include funding and an implementation schedule for such measures.
5. Upon completion of the above-referenced plans, the Parties shall meet and confer, with the assistance of the Subject Matter Experts and the designated Dispute Resolution mediator, as appropriate, to discuss the adequacy and timeliness of the plan. The Parties may then enter into a supplemental memorandum of agreement on the matter or, if a dispute remains, may seek appropriate relief from the *Mays* court.

Staffing Deficiencies that Impede Remedial Plan Implementation (Focus Area #2)

6. The County does not currently have a plan for provision of adequate staffing to deliver adequate mental health care services, among other essential components of the Remedial Plan.
7. The Jail's Mental Health leadership was restructured in early December to more effectively complete Remedial Plan work and address mental health program

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

needs. The Mental Health Program Director position was eliminated and replaced by a Mental Health Manager who oversees two new supervisors, a Clinical Operations Supervisor and an Administrative Operations Supervisor.

8. *Mental Health/Disability Input in the Disciplinary Process Requirements.* The Parties agree that remedial provisions regarding Mental Health evaluations for the Jail disciplinary process are foundational to Consent Decree implementation, including as to requirements to generally exclude class members with serious mental illness from restrictive housing, to prevent class members from being punished for behavior related to a mental health or intellectual disability, and to avoid disciplinary measures that adversely impact the health and well-being of people with disabilities. Accordingly:
 - a. Mental Health Rules Violation Review procedures have been implemented on a limited basis at RCCC and Main Jail, with further mental health staffing allocated in the FY 2022/23 budget for implementation of this remedial plan provision.
 - b. The County shall fully implement Mental Health Policy No. 07-06 (Mental Health Rules Violation Review), with appropriate staffing, no later than September 1, 2022.
 - c. The County issued a Post Order designating the position of Chief Disciplinary Hearing Officer at each Jail facility in November 2021. The Chief Disciplinary Hearing Officer shall be in charge of reviewing all disciplinary write-ups and ensure consistency in disciplinary practices and procedures, with a primary focus being on issues related to mental health-related issues.
 - d. The Subject Matter Experts and Plaintiffs' counsel will monitor Mental Health Rules Violation Review policy implementation and related quality assurance processes to ensure compliance with relevant Consent Decree requirements.
9. *Intensive Outpatient Program Requirements.* The Parties agree that remedial provisions regarding implementation of the Intensive Outpatient Program (IOP) are foundational to Consent Decree implementation, including as to access to such level of care for class members who have higher security/classification factors, are who are women, and/or who are LGBTQI, as required by Remedial Plan Sections IV.F.4. and VII.F.2. and/or are women. Accordingly:
 - a. The County shall, no later than June 1, 2022, activate a new high-security classification female IOP program with a capacity of eight (8) class members who meet IOP criteria.

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

- b. The County shall, no later than September 1, 2022, activate a new high-security classification male IOP program with a capacity of twenty-four (24) class members who meet IOP criteria.
 - c. The County will continue to assess IOP need among the class member population, including for women, LGBTQI, and/or high-security classification individuals, and will take appropriate steps to provide IOP level of care for those who meet IOP criteria.
10. After Class Counsel sent its Dispute Notice on Mental Health/Suicide Prevention deficiencies, the County completed a staffing analysis that identifies the need for an additional 79 staff members to deliver mental health services at the Jail consistent with the Mental Health Care and Suicide Prevention requirements of the Consent Decree. The County's analysis acknowledges that prospective jail population "reduction programs could reduce the average daily population and associated staffing needs." The County will provide staffing plan updates to the Subject Matter Experts and class counsel regularly, and upon request.
11. Upon completion of the above-referenced plans regarding physical plant deficiencies and jail population reduction measures, the Parties shall meet and confer, with the assistance of the Subject Matter Experts and the designated Dispute Resolution mediator, as appropriate, to discuss the adequacy and timeliness of the County's staffing plan. The Parties may then enter into a supplemental memorandum of agreement on the matter or, if a dispute remains, may seek appropriate relief from the *Mays* court.

Mental Health Treatment Delivery (Acute and IOP Treatment Programs)

Acute Psychiatric Unit (APU) (Focus Area #3)

12. The County does not currently have a plan for provision of adequate acute level of care mental health services at the Jail.
13. The Subject Matter Experts have found, and the Parties agree, that continued use of the Main Jail 2P unit as the Acute Psychiatric Unit makes impossible provision of acute level of care in an adequate therapeutic milieu with appropriate treatment space, consistent with relevant Consent Decree requirements. The County will examine all possible methods to deliver acute psychiatric care to *Mays* class members, including in community facilities.
14. No later than June 1, 2022, the County will complete a feasibility analysis regarding the use of alternative space in existing County Jail facilities to provide Acute Psychiatric level of care to class members, to address – in whole or in part – the Jail's current Acute Psychiatric Unit deficiencies – specifically, (1) the lack of

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures

Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

adequate group therapy, (2) the lack of confidential individual treatment space, and (3) the persistent waitlist for admission.

15. Upon completion of the feasibility analysis, the Parties shall meet and confer, with the assistance of the Subject Matter Experts and the designated Dispute Resolution mediator, as appropriate, to discuss the County's plan to provide acute level of care to meet class member patient need, including with an adequate therapeutic milieu and appropriate treatment space, consistent with relevant Consent Decree requirements. The Parties may then enter into a supplemental memorandum of agreement on the matter or, if a dispute remains, may seek appropriate relief from the *Mays* court.
16. The County will discontinue use of beds with attachment points of any kind (including the existing beds with "handles" designed for restraint brackets) for Acute Psychiatric Unit (APU) patients.
 - a. As soon as feasible, and in any case no later than September 30, 2022, the County will safely eliminate the "handles" from at least 16 of the 17 existing Acute Psychiatric Unit patient rooms in the Main Jail 2P unit. If the County chooses to retain one Main Jail 2P APU room with restraint brackets, it will ensure that no patient who is "danger-to-self" or at risk of suicide is held in that room (except in cases where clinical restraints are being applied).
 - b. As part of the County's forthcoming plan to discontinue the Main Jail 2P unit as the APU, the County will ensure that *all* new APU beds are suicide-resistant and free of attachment points. The County may elect to install an anti-ligature restraint bed in the APU, after conferring with class counsel and the Subject Matter Experts to ensure appropriate measures against suicide.

Intensive Outpatient Program (IOP)

17. The County does not currently have a plan for provision of adequate IOP level of care mental health services at the Jail.
18. The County will produce a plan, by no later than July 1, 2022, to timely address IOP deficiencies – specifically, (1) the lack of treatment space for group therapy, structured activities, and confidential clinical contacts, and (2) the current lack of program capacity to meet the need. The County's plan shall include necessary steps (consistent with Paragraph 9, above) to ensure access to this level of care to class members who are women, are LGBTQI, and/or have higher security/classification factors, as required by Remedial Plan Sections IV.F.4. and VII.F.2.

MEMORANDUM OF AGREEMENT

Mental Health Care & Suicide Prevention – Core Remedial Plan Measures
Mays v. County of Sacramento (Case No. 2:18-cv-02081-TLN-KJN)

19. Upon completion of the plan, the Parties shall meet and confer, with the assistance of the Subject Matter Experts and the designated Dispute Resolution mediator, as appropriate, to discuss the adequacy and timeliness of the plan. The Parties may then enter into a supplemental memorandum of agreement on the matter or, if a dispute remains, may seek appropriate relief from the *Mays* court.

CONCLUSION

The provisions of this Memorandum of Agreement are designed to ensure compliance with the terms of the Remedial Plan in the *Mays* Consent Decree. The Parties agree that the relief contained herein is narrowly drawn, extends no further than necessary to ensure the protection of the federal rights of *Mays* class members, and is the least intrusive means necessary to accomplish those objectives.

The terms of this Memorandum of Agreement are subject to the monitoring and enforcement provisions set forth in the *Mays* Consent Decree.

This Agreement shall be deemed fully executed and effective when all Parties have executed it by signature.

Dated: May 27, 2022



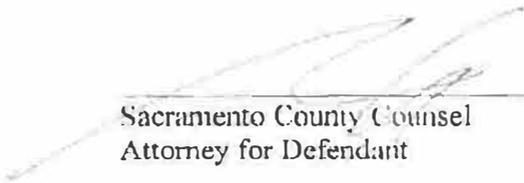
Aaron Fischer
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Dated: May 27, 2022



Margot Mendelson
Attorney for Plaintiffs

Dated: May 27, 2022



Sacramento County Counsel
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