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2 A.B., by and through TRUEBLOOD, et al., v. DSHS, et al., No. 14-cv-01178-MJP

3 **Second Revised Agreement Resolving Plaintiffs' Pending Motions and Establishing a**
4 **Settlement Negotiation Process**

5 **1. Introduction**

6 In consideration of the Parties' commitment to uphold this Court's Orders to provide timely
7 competency evaluations and restoration services, the Parties seek approval of a framework to settle
8 Plaintiffs' claims in this case. This proposal addresses (i) the most immediate opportunities to
9 secure expedited relief for Plaintiffs; (ii) resolution of Plaintiffs' outstanding motions; and (iii) a
10 process to negotiate and hopefully develop a subsequent comprehensive settlement agreement to
11 reform the current forensic mental health care system. Parties appreciate that reforming the
12 forensic mental health system necessarily requires consideration of civil inpatient and community
13 mental health services. Therefore, the process for negotiating reforms will include examination of
14 these aspects of the state's mental health care system. If appropriate, reforms of the broader mental
15 health care system may be included or referenced in the subsequent agreement for which the
16 Parties will ultimately seek Court approval. We appreciate the breadth of this undertaking and the
17 challenges that may present themselves along the way. The Parties recognize Defendants' failure
18 to provide timely competency evaluation and restoration services in violation of the civil rights of
19 class members. Thus, this Agreement contains measurable deadlines that, if missed without good
20 cause, can trigger meaningful consequences. Moreover, the Parties understand that should this
21 process fail to yield measurable results in the timeframe contemplated by this settlement, Plaintiffs
22 anticipate moving the Court for further and appropriate remedies.
23

1 **2. Immediate Actions: Use of Building 27 Instead of Expanding the Yakima**
2 **Competency Restoration Center**

3 a. Parties agree that the Yakima Competency Restoration Center (hereinafter “YCRC”) will not
4 be expanded. Instead, subject to approval of all necessary permits and licensing requirements,
5 space currently leased for the provision of evaluation and treatment services through December
6 2017 in one half of Building 27 (hereinafter “Building 27 space”) on the grounds of Western
7 State Hospital will be used to serve class members. For three years following approval of this
8 Agreement by the Court, the Department agrees to use the Building 27 space as intended in
9 this Agreement, and during that time the Department shall seek leave of the Court if it wishes
10 to use the Building 27 space for a purpose other than that intended by the Agreement. Parties
11 anticipate further negotiation and determination of the Department’s use of Building 27 in the
12 reform plan contemplated by this Agreement.

13 b. Defendants will use funds intended for the YCRC expansion for the operation of the Building
14 27 space, contingent on approval of all necessary permits and licensing requirements and on
15 the Court authorizing contempt fines to cover necessary construction costs. If the Court does
16 not authorize contempt fines to be used for this purpose, Defendants will not be obligated under
17 this Agreement to operate services for class members in Building 27, will not be restricted
18 under this Agreement from pursuing expansion at YCRC, and Parties will meet to consider
19 whether an alternative agreement can be reached.

20 c. The Parties agree to utilize the renovation process developed by the Court Monitor in
21 coordination with AustinCina architectural firm (hereinafter the “Monitor’s Plan”). *See*
22 Building 27 space Timeline provided by Court Monitor, and attached as Exhibit A. In order
23 to open beds in the Building 27 space in accordance with the Monitor’s Plan before the
conclusion of the Systems Improvement Agreement at Western State Hospital, the Parties

1 agree that Building 27 will be licensed and operated as a Residential Treatment Facility (the
2 same licensure and model employed at YCRC and Maple Lane). However, instead of
3 contracting to a third party for the provider services, the Department will operate and manage
4 the Building 27 Residential Treatment Facility (hereinafter “RTF”). The Department agrees
5 to hire the staff necessary to be ready to operate Building 27 as an RTF. Nothing in this
6 Agreement prevents or limits the authority of the Department from contracting, in accordance
7 with statutory and collective bargaining requirements, for services needed to operate Building
8 27 as an RTF.

9 d. The Parties request that the Court distribute the funds necessary to complete construction
10 required under the Monitor’s Plan from the contempt funds held by the Court for the benefit
11 of class members. Funds shall be distributed directly to the Court Monitor, Project Manager,
12 or Contractor, or as otherwise directed by the Court Monitor.

13 e. In order to allow construction on Building 27 as set forth by the Monitor’s Plan, the Department
14 agrees to execute a lease of the Building 27 space to the chosen Contractor and/or the entity
15 chosen by the Court Monitor as the Project Manager overseeing the construction project. The
16 lease will terminate upon acceptance of the Building 27 space by the State of Washington as
17 described below. In order to ensure that the State of Washington is adequately protected from
18 liability exposure, receives a building that is safe and usable for patients, and ensure that
19 renovations to the building meet all relevant codes and regulations, as well as to ensure that
20 the construction process meets all industry standards, the Parties agree that the renovation and
21 construction process shall be performed in accordance with the following conditions:

22 i) The State of Washington has the authority to approve the scope of work, approve all
23 phases of design, and may participate in all design meetings.

1 ii) The Contractor will warrant that all work conforms to the requirements of the Contract
2 Documents and is free of any defect in equipment, material, or design furnished, or
3 workmanship performed by Contractor for a period of one year. All warranties are to
4 be executed, in writing, for the benefit of the State of Washington.

5 iii) The building permit and final occupancy permit will be the responsibility of the
6 Contractor or Project Manager. Contractor or Project Manager shall obtain permits,
7 certificates, and approvals from all applicable regulatory agencies and authorities
8 having jurisdiction (AHJ), to include the City of Lakewood, Department of Health
9 (DOH), West Pierce Fire Department, and others as required by law. Permitting and
10 licensing for the treatment program will be the responsibility of the Department.

11 iv) Contractor and/or Project Manager shall defend, indemnify, and hold the State of
12 Washington and Architect/Engineer harmless from and against all claims, demands,
13 losses, damages, or costs including but not limited to damages arising out of bodily
14 injury or death to persons and damage to property, caused by or resulting from the
15 negligence of the Contractor or subcontractors.

16 v) The Project Manager and/or Contractor shall coordinate utility outages and any
17 disruptions to WSH patients with a minimum of 1-week of notice to the State of
18 Washington. The Project Manager and/or Contractor must remain aware that WSH
19 patients are served in the other side of Building 27 and outages must not jeopardize
20 patient care or safety.

21 vi) The Project Manager and/or Contractor shall protect from damage all existing
22 structures, equipment, improvements, utilities, and vegetation at or near the project site.
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1 associated loss of projected bed capacity. This modification is intended to operate only during
2 the time periods where the Department's expanded bed capacity would have been otherwise
3 available to serve class members, but because of this Agreement, that bed capacity will not be
4 available.

5 c. The two time periods impacted by this agreed change include: (1) beginning from the time
6 when the YCRC expansion would have opened, and ending when the newly agreed-to bed
7 capacity at the Building 27 space opens, and (2) beginning when the necessary renovations to
8 the Building 27 space would have been completed, had funding been appropriated in a biennial
9 capital budget during the 2017 legislative session such that additional bed capacity would have
10 been added to the previously expanded YCRC capacity.

11 1. The first period shall begin six months from the date the Department delayed
12 expansion to begin negotiation of this Agreement with Plaintiffs. This delay began on
13 September 21, 2017, and therefore the first period shall begin on March 21, 2018. The
14 period shall end 65 days after the Contractor has made at least 24 beds at Building 27
15 available for use, regardless of Defendants' staffing or patient assignment decisions. If 24
16 beds are made available at Building 27 before the 6-month period expires, there shall be
17 no modification to the contempt fines for the first period.

18 2. The second period shall begin on February 1, 2019, the date on which the Building
19 27 space bed capacity would have been added to expanded YCRC capacity, only if the
20 legislature provides all of the 17-19 funds requested for the capital improvements that
21 would have been used for Building 27, the 17-19 operating funds necessary to operate
22 Building 27, and the 17-19 operating and capital funds for the other beds identified in the
23 earlier Department proposal, as specified in Exhibit B, by June 30, 2018, or by the end of

1 the 2018 legislative session, whichever is later. Under the circumstances that funds are
2 appropriated for capital improvements for Building 27, but those improvements have
3 instead been paid by the Court, the Department shall request transfer of those funds to an
4 existing Department capital project with the purpose of serving class members' needs,
5 other than YCRC or Maple Lane. Any such transfer would be subject to required approval
6 by the Office of Financial Management and legislative review. If such a transfer cannot be
7 accomplished, the Department shall allow the funds to lapse, but shall request
8 appropriation of those funds in a future budget for the purpose of creating additional
9 competency services capacity.

10 3. Mirroring the structure of the contempt fines, the proposed modification shall be
11 calculated on a per bed, per day basis. Contempt fines shall be reduced during the two
12 periods specified above by calculating the beds that would have otherwise been available,
13 and reducing contempt fines by \$1000 per bed, per day.

14 4. For the first period, contempt fines shall be reduced by a maximum of 24 beds per
15 day, until the period ends, or until replacement bed capacity opens at the Building 27 space.

16 5. For the second period, contempt fines shall be reduced by a maximum of 24 beds
17 per day until further modification of contempt fines is requested by the Parties, or until
18 further order of the Court.

19 **B. Enhanced Contempt Fines Motion Withdrawn**

20 a. Plaintiff's Third Motion for Contempt sought increased fines from Defendants for each person
21 who did not receive timely in-hospital competency services. Plaintiffs sought to increase the
22 amounts from \$500 to \$1,000 per day per person for each of the first six days of delay; from
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1 \$1,000 to \$2,000 for 7-13 days of delay; \$3,000 for days 14-20; and \$4,000 for every day of
2 delay from 21 days on (“increased rate”.) Defendants contested those increases.

3 b. Through the term of this Agreement, Defendants agree that they will continue to pay in
4 accordance with the existing court orders, and as modified by this Agreement. If Parties cannot
5 reach the subsequent agreement contemplated herein, or if the Court finds that Defendants
6 have not followed the terms of this Agreement, Plaintiffs may renew the Third Motion for
7 Contempt and set an expedited hearing or noting date in consultation with the Court. The
8 briefing, argument and evidence already provided will be used should this motion be renewed,
9 but each party will have the option to provide a six page update two court days prior to the
10 hearing or noting date.

11 c. This Agreement has no effect on contempt fines relating to the failure to provide timely in-jail
12 competency evaluations, which will continue as directed by the Court’s order.

13 d. Nothing in this Agreement relieves Defendants of their ongoing duty to comply with this
14 Court’s orders.

15 **4. Process for Pursuing a Comprehensive Settlement**

16 a. At the end of the negotiation period described herein, the Parties’ goal is to provide this Court
17 with a proposed settlement that, if fully implemented, will resolve the issues in this case and
18 bring Defendants into substantial compliance with this Court’s orders. Given the decades of
19 increasing referrals for competency and restoration services, the persistent difficulty in hiring
20 certain critical staff, and other factors that have long contributed to this problem, the Parties
21 know this is a bold statement. We hope to craft a similarly bold solution that details proposed
22 investments in services to divert individuals with behavioral health disorders from the criminal
23 justice system. For example, Parties intend to explore opportunities to provide access to

1 appropriate behavioral health services which are designed to dramatically reduce the number
2 of individuals with mental illness entering the criminal justice system. Parties' stated goals are
3 to articulate a vision for significant changes to achieve timely competency evaluation and
4 restoration services, to collaborate on a plan to implement those changes, and to discuss how
5 to prepare relevant funding requests for additional resources necessary to fund these changes.
6 Parties are committed to coming together to discuss, negotiate, and design solutions that will
7 truly fix this problem.

8 b. Should negotiations be successful, designing such a system will take significant time and
9 resources, and it will take years of sustained and focused efforts by the Parties and relevant
10 stakeholders¹ to fully implement the plan. During the negotiation and planning process, the
11 Parties will provide the Court and Court Monitor regular updates as appropriate within the
12 boundaries of settlement discussions and will seek input on the options considered during the
13 negotiating and planning phase. If a plan is substantially developed by agreement of the Parties,
14 it will be presented to the Court so that a fairness hearing may be held. If the Court finds the
15 settlement substantially addresses the needs of the class in a fair, reasonable, and adequate
16 manner, the next stage will be to pursue funding by the Legislature during the 2019 legislative
17 session. Parties acknowledge that appropriating adequate funding to substantially implement a
18 subsequent settlement agreement is outside of the Parties' authority to direct or control, and
19 that adequate funding may not be appropriated in a single biennium. Parties believe that this
20 refocusing of efforts from litigation of piecemeal issues to collaborative efforts over a sustained
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¹ Specific stakeholders are described and listed in Section 5(e).
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1 period of time is the best way to reach compliance and provide class members with competency
2 evaluation and restoration services within constitutional timeframes.

3 c. Parties agree to use best efforts in this process, to negotiate in good faith, and if successful, to
4 file with the Court a subsequent agreement designed to achieve substantial compliance with
5 this Court's Orders.

6 d. Parties anticipate that if a subsequent agreement is achieved, it will have a significant impact
7 on the state's budget. Parties' proposed timeline for negotiating a subsequent agreement and
8 securing approval of that agreement from this Court is designed with this fiscal reality in mind.

9 In order to negotiate the terms of the potential subsequent agreement and secure an approval
10 Order from this Court prior to the submission of the governor's budget for the 2019-2021
11 biennium the parties agree as follows:

12 1. Parties will endeavor to accomplish the goals of this Agreement on or before
13 November 1, 2018.

14 2. Should either party have concerns about how the negotiations are progressing, the
15 parties agree to meet in-person, at least once, to discuss the specific concerns and
16 make a good faith effort to resolve any disputes prior to filing a motion or seeking
17 relief with the Court.

18 3. If at any point during the negotiations either Party believes that the negotiations
19 have reached a genuine impasse, either Party may notify the Neutral² of their belief
20 that negotiations have reached an impasse. The Neutral shall provide further
21 directions to the Parties. In the event that the Neutral agrees the negotiations have
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² The engagement of a Superior Court Judge to act as a Neutral is discussed in more detail below in section 4(j).

1 reached an impasse, the Neutral shall recommend that the Parties discontinue
2 negotiations, and the Parties shall immediately notify the Court of this
3 development. Nothing in this Agreement shall obligate either Party to enter into a
4 subsequent agreement should negotiations be unsuccessful.

5 4. Parties intend that the above-mentioned negotiations will result in a subsequent
6 agreement that will bring Defendants into compliance with this Court's previous
7 Orders. The Parties acknowledge that fiscal realities may require that a subsequent
8 agreement, if achieved, will necessarily be reflected in multiple phases of budget
9 submissions, rather than one package to be included in the Governor's 2019-2021
10 biennial budget. Parties further acknowledge they lack authority to direct the
11 legislature to make fiscal appropriations that may be necessary to implement a
12 subsequent agreement. But should a subsequent agreement be reached, the Parties
13 agree to collaborate in good faith to seek legislative support to adopt appropriate
14 funding.

15 5. Parties agree that the timeline of activities proposed below is a tentative schedule
16 and subject to change by agreement of the parties in light of stakeholder
17 unavailability, constraints on Parties created by the 2018 legislative session, or
18 other good cause.

19 6. In order to negotiate the terms of a subsequent agreement and, if successful, secure
20 an Order from this Court approving said agreement prior to the submission of the
21 governor's 2019-2021 biennial budget the parties will:

22 A. Meet frequently to learn from stakeholders, negotiate terms, and inform
23 stakeholders of progress. Parties acknowledge that they lack authority to direct

1 or control the participation or actions of key stakeholders to this Agreement, but
2 agree to seek their participation in good faith. These meetings will include, at a
3 minimum:

- 4 1. Within one week of the next Court hearing on January 17, 2018– one full
5 day of in-person negotiation;
- 6 2. January through March – one full day in-person negotiation every other
7 week and two in-person, web, or phone based stakeholder listening
8 sessions each month;
- 9 3. April through July – one full day in-person negotiation and one web or
10 phone based negotiation each month; and
- 11 4. Throughout – additional meetings as needed of small workgroups
12 comprised of members of the negotiation team and other necessary
13 stakeholders to solicit feedback from stakeholders as described in more
14 detail below.

15 B. Focus on the following tasks with a goal to meet the following interim deadlines
16 on or before the dates listed below, subject to change based on good cause and
17 agreement of the parties:

- 18 1. January 1, 2018 – May 4, 2018 – Parties attempt to negotiate the key
19 principles and substantive elements of a subsequent agreement;
- 20 2. Within two weeks of approval of this Agreement – Parties identify
21 necessary stakeholders and devise strategy for stakeholder
22 communications and meetings. Invites are sent to the necessary
23 stakeholders as identified by the parties to solicit input on issues and

1 solutions they have and to begin scheduling in-person, web, or phone
2 based meetings;

3 3. January 15, 2018 – March 31, 2018 – Stakeholder issue and solution input
4 meetings are conducted;

5 4. April 1, 2018 – April 30, 2018 – Parties participate in two full-day
6 negotiations to discuss stakeholder issues and solution input, to be
7 incorporated into a confidential draft containing key principles and
8 substantive elements of a subsequent agreement by May 4, 2018 as
9 referenced below;

10 5. By May 4, 2018 – If the parties are continuing to move toward developing
11 a subsequent agreement, then all key principles and substantive elements
12 will have been agreed to by the parties and are detailed in writing in an
13 initial confidential draft of a subsequent agreement;

14 6. By June 8, 2018 – If the confidential draft outlined above is achieved,
15 Parties present to stakeholders regarding these key principles and
16 substantive elements and solicit feedback;

17 7. June 11, 2018 – July 31, 2018 – Parties consider, incorporate, or otherwise
18 respond to feedback received from stakeholders about key principles and
19 substantive elements. As appropriate, feedback is incorporated into the
20 subsequent agreement;

21 8. By August 1, 2018 – assuming the parties’ negotiations are successful, the
22 language of the subsequent agreement is finalized and circulated to the
23 Parties;

- 1 9. August 10, 2018 – all signatures on a subsequent agreement have been
2 secured;
- 3 10. August 16, 2018 – the joint motion for primary approval of the subsequent
4 agreement and a proposed notice process for a related fairness hearing is
5 filed with the court;
- 6 11. August 31, 2018 – a motion for preliminary approval and notice process
7 is noted for court consideration;
- 8 12. September 7, 2018 – the last day for an order granting preliminary
9 approval and notice process in order to provide a 30 day notice period;
- 10 13. September 8, 2018 – October 7, 2018 – notice period;
- 11 14. October 12, 2018 – deadline to send electronically or postmark written
12 objections or notice of intent object in person at the fairness hearing;
- 13 15. October 17, 2018 – Parties file their response to written objections and
14 declarations confirming completion of approved notice process;
- 15 16. Week of October 22, 2018 – Fairness hearing to be held on a date to be
16 determined by the court;
- 17 17. November 1, 2018 –Should a subsequent agreement be reached as
18 outlined above, a court order must be issued by this date in order to meet
19 state budgeting timelines and include relevant provisions regarding that
20 negotiated agreement in the Governor’s budget submission to the
21 legislature. Should the Court alter or amend the subsequent agreement of
22 the Parties in its court order, the State of Washington reserves the right to
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1 appropriately challenge that order and/or exercise its discretion in putting
2 forth a budget as it sees fit.³

3 e. Engaging the stakeholders and managing this schedule over a relatively compressed period of
4 time will take considerable effort, therefore the Parties agree to jointly seek approval from the
5 Court to expend the Court's contempt fees on employees to help in this process.

6 f. Plaintiffs seek funding for an individual to assist class counsel in providing meaningful input
7 to and oversight of the contempt-funded services and processes. Plaintiffs are relying primarily
8 upon the class counsel to perform these services while performing the more typical job of class
9 counsel: assessing Defendants' compliance with the law and either negotiating a resolution to
10 this case or bringing motions to enforce the Court's orders. Plaintiffs respectfully request that
11 a small portion of the contempt fines be provided to DRW to hire a fulltime staff person to
12 meet individually and with groups of various stakeholders across the state including class
13 members and people at imminent risk of becoming class members, courts, defense counsel,
14 prosecutors, community and jail mental health providers, jail staff, law enforcement, and local
15 and state policy and budget makers to:

- 16 1. Inform class members and other stakeholders of the current status of the case;
- 17 2. Learn about how to best spend the growing fines in a manner that will support
18 people with mental illness to avoid criminal justice involvement and/or incarceration that
19 stems from it;

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23 ³ Items 10 through 17 shall only occur should the parties successfully achieve item 9: a fully signed (by all Parties)

1 3. Oversee a second Request for Information process to help determine which
2 intercepts and interventions should be the focus of additional Requests for Proposals for
3 contempt fines;

4 4. Educate stakeholders about the availability and process for accessing contempt
5 funding and contempt-funded services and processes;

6 5. Serve as a point person to work with the Court Monitor and her experts
7 overseeing subsequent RFP processes that will disperse contempt fines;

8 6. Assess the impact of the implementation of contempt-funded services and
9 processes;

10 7. Understand how the contempt-funded services and processes fit with the changing
11 landscape of Defendants' mental health system;

12 8. Inform the Court, Court Monitor and her experts, and Parties about the impact
13 contempt-funded services and processes have had on class members and the rest of the
14 mental health system that is designed to meet class members' needs;

15 9. Develop relationships and regularly communicate with regional and state actors to
16 fully understanding the regional variations and how they fit within the statewide system
17 as well as educating those various regional and state actors on how emerging services fit
18 within the historic service delivery system; and

19 10. Assist stakeholders to coordinate and message the status of the mental health
20 system to policy and budget makers to ensure the benefits reached through contempt-
21 funded projects and the other proposed reforms to the mental health system negotiated in
22 this case are maintained and expanded in a sustainable manner.
23

1 g. Defendants seek funding for an individual to serve as a full-time Project Manager for the
2 negotiations and agreement described herein. The Project Manager will create and manage a
3 comprehensive project plan that tracks all tasks and deliverables. The Project Manager will
4 provide reports on progress on the project plan at intervals described within the Agreement
5 and as requested by either Party or the Court. The Project Manager will be responsible for
6 coordinating meetings outlined in the Agreement, compiling information gathered in meetings,
7 preparing materials for use by the project team in developing proposals and recommendations,
8 and other tasks as jointly agreed to by the Parties.

9 h. Parties will request that the positions described above be funded. The request will be that each
10 position is funded by the Court's contempt fund for two years to allow for work throughout
11 the negotiation process, notice period, 2019 legislative session, and a transition period
12 following the legislative session to work on rollout of the subsequent agreement or transition
13 to other permanent hires. Either or both Parties may ask the Court to continue funding such
14 positions beyond this point.

15 i. Parties will seek permission to be reimbursed for individualized expenses that may be incurred
16 by the participation of class members and their family members. Class members and their
17 family members are the most important people in this process but often do not have day jobs
18 that allocate time and pay for their transportation and participation in these meetings. The
19 Parties would like to be able to assist people who may have limited resources for transportation,
20 child care, days off from work, or accommodation needs that require additional costs.
21 Therefore, the Parties will request the Court authorize reimbursement from contempt funds for
22 per diem stipends or actual cost reimbursement, whichever best meets the needs of the
23 individual class members or their family members.

1 j. The Parties jointly recognize their history of contentious litigation, the complexity and
2 challenges of this negotiation, and the importance of success. Therefore, the Parties jointly
3 ask the Court to assist them by facilitating access to a Washington State Superior Court Judge,
4 Judge Beth Andrus, to serve as a Neutral to assist the Parties through this negotiation process.
5 In accordance with the nature of this settlement negotiation process, and in order to foster open,
6 honest, and fruitful negotiations, the Neutral shall treat the negotiations as confidential.
7 Information shared by the Neutral, including with the Court and the Court Monitor, will be
8 limited to that specified in this Agreement, or as agreed to by the Parties. The Neutral shall be
9 permitted to engage with the Court Monitor in order to learn the history of the litigation, the
10 issues presented in the case, and other information necessary to effectively serve in the Neutral
11 role.

12 **5. Compliance Measures**

- 13 a. Compliance with this Agreement shall be measured by the Parties' good faith efforts towards
14 achieving both the immediate actions outlined in this proposal as well as a subsequent
15 agreement. As acknowledged above in 4. d. 3. the Parties recognize they cannot guarantee any
16 specific action or outcome by the Washington State Legislature.
- 17 b. In the event that the Superior Court Judge assigned to act as the Neutral during the negotiation
18 process described in this Agreement determines that either party is not participating in the
19 process in good faith or not making reasonable efforts to comply with the terms of this
20 Agreement, the Neutral may make a recommendation to the Court to find that party in contempt
21 with the order approving this negotiation process.

22 **6. Additional Stipulations**

- 23 a. During the term of this Agreement, the Department will continue work in key areas designed
to provide relief to class members. Key initiatives currently in progress include:

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Disability Rights Washington
315 5th Avenue South, Suite 850
Seattle, Washington 98104
(206) 324-1521 · Fax: (206) 957-0729

1 1. Continued collaboration on enhancements to triage—in order to identify and assess the
2 most acute class members for expedited admission to a treatment facility, the Department
3 will train and distribute the complete guidebooks for prosecutors and defense attorneys as
4 well as jail mental health staff.

5 2. Continued development and implementation of the Forensic Data System—in order to
6 further streamline the evaluation process and enhance the data tracking abilities of the
7 Department’s forensic services the Department will deploy the new data system. The Court
8 Monitor has been engaged as a member for the advisory committee for the build and testing
9 of each of the 15 modules of the system.

10 3. Pilot of Telehealth solutions—The Department continues work to establish and test secure
11 videoconferencing links between the state hospitals, forensic evaluators, and county jails
12 that will allow greater capacity to conduct timely forensic evaluations. The Department is
13 coordinating with judges to foster acceptance of this technology.

14 4. Prosecutorial Diversion—The Department continues work with its three pilot sites to
15 improve diversion options for class members.

16 b. Milestones and progress in each of these areas will be reported in the monthly reports filed
17 with the Court Monitor. The Department will continue to pay the previously ordered contempt
18 fines, which are calculated based on the Department’s performance. These continued contempt
19 fines ensure there is no reason for the Department to delay available compliance efforts during
20 the term of this Agreement.

21 **5. Additional Terms**

22 a. No filings – The Parties agree to refrain from filing any contested motions prior to November
23 1, 2018 or the termination of this Agreement as otherwise described herein, except for a

1 possible motion to enforce the terms of this Agreement if a Party believes the other Party is
2 not complying with the terms of this Agreement. Nothing in this Agreement limits the Court's
3 authority to issue a show cause order *sua sponte*.

4 b. Monthly updates – During the period prior to the possible filing of a subsequent agreement for
5 preliminary approval by the Court, the Parties will provide monthly updates to the Court and
6 the Court Monitor addressing: 1) the status of negotiations; and, 2) the scope of work parties
7 intend to focus and report on in their next status update.

8 c. Status Hearings – The Court will continue to receive updates on the negotiations through status
9 hearings conducted every two months. These status hearings will provide an opportunity for
10 the Court to address any concerns and give Parties guidance into their negotiations.

11 d. Court and Court monitor involvement – Throughout this process the Parties will remain
12 cognizant of the Court's comments regarding the Court Monitor being an officer of the Court
13 and the limited role of the Court and its officers in settlement negotiations, and will limit or
14 incorporate the Court and the Monitor's participation accordingly. In order to make good use
15 of the Court Monitor's knowledge, experience, and expertise, the Parties will meet with the
16 Court Monitor throughout the negotiation process to receive information and opinions from
17 the Court Monitor. The Court Monitor will not share what is discussed in these meetings with
18 the Court. The Parties will limit these meetings to receipt of information from the Court
19 Monitor and will not engage in substantive negotiation of the agreement with the Court
20 Monitor present.

21 e. Stakeholders – Given the prevalence of mental illness, many residents of Washington are
22 touched by Washington's mental health system. The system is vast and includes many non-
23 state actors. It also touches upon and directly affects many other systems. Therefore, any

1 negotiations to achieve timely competency evaluation and restoration services will require
2 engaging numerous state and local stakeholders, including representatives from various levels
3 of state and local government. The Parties will involve stakeholders, especially class members
4 and legislative partners, in this process of negotiating and developing a subsequent agreement.

5 Stakeholders include, but are not limited to:

- 6 1. Class members;
- 7 2. Class members' families;
- 8 3. State Legislators;
- 9 4. Labor organizations;
- 10 5. Mental health provider agencies and advocates;
- 11 6. Behavioral Health Organizations and advocates;
- 12 7. Law enforcement;
- 13 8. Local jails;
- 14 9. State and municipal courts;
- 15 10. Prosecuting attorneys;
- 16 11. Defense attorneys;
- 17 12. Homeless and housing providers and advocates;
- 18 13. Employment support providers and advocates;
- 19 14. Individual clinicians;
- 20 15. Education programs for needed clinicians;
- 21 16. Other departments of the administration outside DSHS, including the Governor's
22 Health Sub-Cabinet;
- 23 17. Local Legislators and Executives; and

1 18. Washington residents.

2 f. The Parties may seek permission to utilize services of a third-party entity, such as the
3 Behavioral Health Council, to help support the administrative aspects of the stakeholder work
4 contemplated by this Agreement. If the Parties agree to utilize these services, the parties shall
5 jointly solicit the Court for funding from the contempt monies.

6 g. Amendment – This Agreement may be modified or amended only by written agreement signed
7 by or on behalf of all Parties with notice to and approval by the Court.

8 h. Waiver – The provisions of this Agreement may be waived only by an instrument in writing
9 executed by the waiving Party, upon notice to and approval by the Court. The waiver by any
10 Party of any breach of this Agreement shall not be deemed or be construed as a waiver of any
11 other breach, whether prior, subsequent or contemporaneous of this Agreement.

12 i. Construction – None of the Parties hereto shall be considered to be the drafter of this
13 Agreement or to any provision thereof for the purpose of any statute, case law, or rule of
14 interpretation or construction that would or might cause the provision to be construed against
15 the drafter thereof.

16 j. Counterparts – This Agreement may be executed by exchange of executed faxed or .PDF
17 signature pages, and any signature transmitted in such a manner shall be deemed an original
18 signature. This Agreement may be executed in two or more counterparts, each of which shall
19 be deemed to be an original, but all of which when taken together shall constitute one and the
20 same instrument.

21 k. Binding Effect – This Agreement binds and inures to the benefit of the Parties hereto, their
22 assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans,
23

1 predecessors, and transferees, and their past and present shareholders, officers, directors,
2 agents and employees.

3 1. Further Assurances – Each of the Parties agree, without further consideration, and as part of
4 finalizing the Agreement hereunder, that they will in good faith promptly execute and deliver
5 such other documents and take such other actions as may be necessary to consummate the
6 subject matter and purpose of the Agreement.

7
8 DATED: February 5, 2018.

9
10 s/ David R. Carlson

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| ID | Task Name | Duration | Start | Finish | Predecessors | September | October | November | December | January | February | March | April | | | | | |
|----|---|-----------------|---------------------|---------------------|--------------|---------------------------------------|---------|----------|----------|---------|----------|-------|-------|--|--|--|--|--|
| 1 | WSH BLDG. 27 WEST WING COMPETENCY RESTORATION PROGRAM | 145 days | Mon 9/11/17 | Fri 3/30/18 | | [Gantt bar from 9/11/17 to 3/30/18] | | | | | | | | | | | | |
| 2 | Program vendor selection process | 18 days | Mon 9/11/17 | Wed 10/4/17 | | [Gantt bar from 9/11/17 to 10/4/17] | | | | | | | | | | | | |
| 3 | Prepare and send RFQ to select list of program vendors | 10 days | Mon 9/11/17 | Fri 9/22/17 | | [Gantt bar from 9/11/17 to 9/22/17] | | | | | | | | | | | | |
| 4 | Review submittals and select candidates to interview | 3 days | Mon 9/25/17 | Wed 9/27/17 | 3 | [Gantt bar from 9/25/17 to 9/27/17] | | | | | | | | | | | | |
| 5 | Interview candidates | 0 days | Wed 9/27/17 | Wed 9/27/17 | 4 | [Gantt bar from 9/27/17 to 9/27/17] | | | | | | | | | | | | |
| 6 | Selection and award of contract | 5 days | Thu 9/28/17 | Wed 10/4/17 | 5 | [Gantt bar from 9/28/17 to 10/4/17] | | | | | | | | | | | | |
| 7 | General contractor selection for pre-construction services | 20 days | Mon 9/11/17 | Fri 10/6/17 | | [Gantt bar from 9/11/17 to 10/6/17] | | | | | | | | | | | | |
| 8 | Prepare & send RFQ to select list of general contractors | 3 days | Mon 9/11/17 | Wed 9/13/17 | | [Gantt bar from 9/11/17 to 9/13/17] | | | | | | | | | | | | |
| 9 | Review submittals and select three to interview | 3 days | Thu 9/14/17 | Mon 9/18/17 | 8 | [Gantt bar from 9/14/17 to 9/18/17] | | | | | | | | | | | | |
| 10 | Interview candidates | 0 days | Mon 9/18/17 | Mon 9/18/17 | 9 | [Gantt bar from 9/18/17 to 9/18/17] | | | | | | | | | | | | |
| 11 | Selection and award of pre-construction services contract | 2 days | Thu 10/5/17 | Fri 10/6/17 | 10,6 | [Gantt bar from 10/5/17 to 10/6/17] | | | | | | | | | | | | |
| 12 | Design Development Phase | 25 days | Mon 10/9/17 | Fri 11/10/17 | | [Gantt bar from 10/9/17 to 11/10/17] | | | | | | | | | | | | |
| 13 | Revisions to floor plan to meet budget and program | 10 days | Mon 10/9/17 | Fri 10/20/17 | 6,11 | [Gantt bar from 10/9/17 to 10/20/17] | | | | | | | | | | | | |
| 14 | Identify construction methods, furnishings, fixtures & equipment | 10 days | Mon 10/9/17 | Fri 10/20/17 | 6,11 | [Gantt bar from 10/9/17 to 10/20/17] | | | | | | | | | | | | |
| 15 | Order long-lead items | 15 days | Mon 10/23/17 | Fri 11/10/17 | 13 | [Gantt bar from 10/23/17 to 11/10/17] | | | | | | | | | | | | |
| 16 | Prepare in-depth cost analysis | 10 days | Mon 10/23/17 | Fri 11/3/17 | 14 | [Gantt bar from 10/23/17 to 11/3/17] | | | | | | | | | | | | |
| 17 | Construction Documents | 35 days | Mon 11/6/17 | Fri 12/22/17 | | [Gantt bar from 11/6/17 to 12/22/17] | | | | | | | | | | | | |
| 18 | Prepare construction/permit documents to 50%. Include ROM | 20 days | Mon 11/6/17 | Fri 12/1/17 | 16 | [Gantt bar from 11/6/17 to 12/1/17] | | | | | | | | | | | | |
| 19 | Prepare construction/permit documents to 75%. Include ROM | 10 days | Mon 12/4/17 | Fri 12/15/17 | 18 | [Gantt bar from 12/4/17 to 12/15/17] | | | | | | | | | | | | |
| 20 | Prepare construction/permit documents to 100%. | 5 days | Mon 12/18/17 | Fri 12/22/17 | 19 | [Gantt bar from 12/18/17 to 12/22/17] | | | | | | | | | | | | |
| 21 | Permitting and Contract | 25 days | Mon 12/4/17 | Fri 1/5/18 | | [Gantt bar from 12/4/17 to 1/5/18] | | | | | | | | | | | | |
| 22 | Prepare demolition application/review/issuance | 5 days | Mon 12/4/17 | Fri 12/8/17 | 18 | [Gantt bar from 12/4/17 to 12/8/17] | | | | | | | | | | | | |
| 23 | Prepare tenant improvement application/review/issuance | 15 days | Mon 12/18/17 | Fri 1/5/18 | 19 | [Gantt bar from 12/18/17 to 1/5/18] | | | | | | | | | | | | |
| 24 | Prepare documents for DOH Construction Review Services/approval | 15 days | Mon 12/18/17 | Fri 1/5/18 | 19 | [Gantt bar from 12/18/17 to 1/5/18] | | | | | | | | | | | | |
| 25 | Award cost-plus w/guaranteed maximum GC contract | 3 days | Mon 12/25/17 | Wed 12/27/17 | 20 | [Gantt bar from 12/25/17 to 12/27/17] | | | | | | | | | | | | |
| 26 | Construction | 80 days | Mon 12/11/17 | Fri 3/30/18 | | [Gantt bar from 12/11/17 to 3/30/18] | | | | | | | | | | | | |
| 27 | Demolition and rough-in work | 20 days | Mon 12/11/17 | Fri 1/5/18 | 22 | [Gantt bar from 12/11/17 to 1/5/18] | | | | | | | | | | | | |
| 28 | Construction thru Substantial Completion | 50 days | Mon 1/8/18 | Fri 3/16/18 | 23,24,27,20 | [Gantt bar from 1/8/18 to 3/16/18] | | | | | | | | | | | | |
| 29 | Project Closeout & program vendor "move in" | 10 days | Mon 3/19/18 | Fri 3/30/18 | 28 | [Gantt bar from 3/19/18 to 3/30/18] | | | | | | | | | | | | |
| 30 | Program in operations | 0 days | Fri 3/30/18 | Fri 3/30/18 | 29 | [Gantt bar from 3/30/18 to 3/30/18] | | | | | | | | | | | | |

AustinCina Architects, ps

Attachment B – List of Prior Plans for Capital and Operations Funding of Forensic Beds

The following budgetary commitments are required in order for the Department to be eligible for the second period of contempt fines reduction. Per the terms of the agreement, these funds must be provided by June 30, 2018, or by the end of the 2018 legislative session, whichever is later. These commitments are based on the Trueblood Plan previously proposed by the Department, and filed with the Court as Dkt. # 414-8.

| Operating Funds |
|--|
| <p>To be eligible for the second period of contempt fines reduction, operating funds must be provided for the previously renovated 45 beds at WSH. These beds were identified in prior filings as:</p> <ul style="list-style-type: none"> a. WSH S4 (15 Beds) b. WSH F3 (30 Beds) |
| Capital Funds |
| <p>To be eligible for the second period of contempt fines reduction, capital funds must be provided for the additional bed space previously identified by the Department as necessary for reaching compliance. The funds required are limited to the pre-design, design, and construction activities that can be completed within the remainder of the 17-19 biennium. These beds were identified in previous filings as:</p> <ul style="list-style-type: none"> a. ESH 1N3 (25 beds) – Construction will begin, but may not complete in FY 17-19. b. WSH New (30 Beds) – Construction may begin, but will not complete in FY 17-19. c. WSH New (30 Beds) – Construction may begin, but will not complete in FY 17-19. d. Predesign of Building 29 (In support of up to 205 future beds) |

Because the commitment contemplated by this Agreement are required to be made by June 30, 2018, or by the end of the 2018 legislative session, the commitments contemplated by the Agreement include only the capital and operating funds that would be used through the end of state fiscal year 18-19.