Memorandum of Understanding Between the Oregon Department of Corrections and Disability Rights Oregon

Following Disability Rights Oregon's (DRO) review of the conditions of confinement at the Behavioral Health Unit of Oregon State Penitentiary, extensive internal review, and consultations with DRO, the Oregon Department of Corrections (ODOC) has committed to make the following changes to its management of adults in custody in the Behavioral Health Unit. ODOC has consulted with an expert retained by the Oregon Department of Justice and worked hard to create its own innovative plan to improve conditions on the Behavioral Health Unit, which is described in this Memorandum of Understanding.

ODOC believes that its planned improvements to the Behavioral Health Unit are reasonable, possible, and will improve outcomes for adults in custody assigned to the unit, though it does not concede that these changes are legally required or that its prior management of the unit violated the law. DRO commends ODOC for the changes that are planned and those that have already been made to improve conditions in the Behavioral Health Unit.

1. ODOC is committed to and will make good-faith efforts to reach the goal of adults in custody assigned to the Behavioral Health Unit receiving an average of 10 hours of structured time and 10 hours of unstructured time outside their cells each week. The 20 hours of time out of cell will not include time devoted to applying restraints, restrained escorts to activities, or securing adults in custody to program chairs.

    a. The structured time will include classes and treatment programs that are intended to treat the adult in custody's underlying illness and improve his chances for success in and out of the correctional system.

    b. The unstructured time out of cell will include, but not be limited to, free time for physical exercise, out-of-cell meals, phone calls, playing games, playing musical instruments, and other constructive and enriching self-directed recreational activities.

    c. ODOC will make good-faith efforts to ensure that each individual adult in custody's time out of cell does not fall significantly below 20 hours per week. These efforts will include consideration of a change to the individualized treatment plan, as discussed in paragraph 4 of this memorandum.

2. ODOC will make good-faith efforts to hire and retain sufficient Behavioral Health Services staff so that the Behavioral Health Unit will have qualified mental health professionals present on site, 13.5 hours each day (6:30 a.m. to 8:00 p.m.), excluding holidays. It is ODOC's intention to provide coverage seven days a week, excluding holidays. During overnight shifts, ODOC believes that mental health emergencies may be appropriately managed by staff consultation with an on-call physician, psychiatric nurse practitioner, or physician's assistant.

3. ODOC will ensure that each adult in custody in the Behavioral Health Unit has reasonable access to a psychiatric provider, as medically indicated.

4. ODOC will individually assess each adult in custody on the Behavioral Health Unit. ODOC will devise an individualized treatment plan of realistic and attainable goals for each adult in custody, with a focus on transferring to a less restrictive environment. The individualized treatment plan will identify the adult in custody's individual target behaviors, the skills needed to reach the adult in custody's goals, and how both mental health and security partners can help develop and reinforce those needed skills.

5. The individualized treatment plan described in paragraph 4 will contain a crisis prevention plan, which will be shared with security partners. The crisis prevention plan will contain any known "triggers" for the adult in custody and any known methods for both the adult in custody and ODOC to avoid those triggers.

6. The Behavioral Health Unit treatment team, consisting of a multidisciplinary team of both security and Behavioral Health Services staff, will monitor the adult in custody's individualized treatment plan on an ongoing basis. The treatment team's ongoing review will include any new incidents with respect to individual adults in custody, including misconduct, uses of force, behavioral concerns, and self-injurious behavior.

7. ODOC will take steps to expand the physical area occupied by the Behavioral Health Unit. The goal of this expansion is to create space on the Behavioral Health Unit for programming and visits with Behavioral Health Services staff, including confidential consultations whenever appropriate, and improve Behavioral Health Services staff's ability to prevent and respond to crisis in a timely manner.

8. ODOC will (and has already begun to) improve the training of security and clinical staff on the Behavioral Health Unit in dealing with adults in custody with mental illness, including interviewing techniques, medication side effects, and crisis intervention.

9. ODOC will (and has already begun to) structure early morning medication, meal, shower, and recreation schedules in a way that encourages adults in custody on the Behavioral Health Unit to participate in recreation and showering. ODOC will monitor the responses of the adults in custody to these changes to determine their effectiveness in furthering the goals described in paragraph 1 of this memorandum.

10. ODOC will (and has already begun to) acquire and maintain an improved and updated library of books readily available to adults in custody on the Behavioral Health Unit.

11. ODOC will (and has already begun to) acquire and maintain improved recreational and athletic equipment to offer a wider and more enriching variety of activities to adults in custody on the Behavioral Health Unit.

12. ODOC will (and has already begun to) make significant physical improvements on the Behavioral Health Unit to allow each adult in custody daily exposure to natural light, air, and a view of the outdoors and to improve the overall milieu, safety, and utility of the Behavioral Health Unit for adult in custody treatment and rehabilitation.

13. ODOC will acquire and install individual television sets in the Behavioral Health Unit cells. These television sets will be used for both programming provided and controlled by ODOC and entertainment that, when appropriate, is selected by the adult in custody.

14. ODOC will (or has already begun to) implement and track the following data in the Behavioral Health Unit:

    a. The actual hours of availability and adult in custody usage of structured and unstructured out-of-cell activity;

    b. Unusual Incident Reports in the Behavioral Health Unit, which include all uses of force and cell extractions;

    c. Occasions when an adult in custody's behavior that would otherwise justify intervention with force is deescalated due to the intervention of staff, including any time where a cell extraction is threatened but not employed ("suit up");

    d. Disciplinary Reports issued to adults in custody in the Behavioral Health Unit;

    e. The frequency of group therapy sessions;

    f. The number and duration of suicide watches and the number of instances of serious self-injurious behavior;

    g. The frequency and duration of an adult in custody's water being turned off to the cell ("dry cell status");

    h. The length of adult in custody placement in the Behavioral Health Unit; and

    i. The hours of relevant training provided to security and Behavioral Health Services staff working in the Behavioral Health Unit.

15. ODOC will provide DRO with periodic reports regarding the data identified in paragraph 14. ODOC will also provide DRO relevant supporting documentation if requested to the extent that the disclosure is allowed by law. ODOC will provide DRO with the above reports and supporting documentation on a quarterly basis, disaggregated monthly, for 48 months from the date of this memorandum, unless DRO serves as legal counsel in litigation against ODOC regarding conditions of confinement in the Behavioral Health Unit.

16. ODOC has committed to working with the expert retained by the Oregon Department of Justice to develop its plan for the Behavioral Health Unit and monitor the implementation of its plan. ODOC acknowledges and agrees to the communication plan with the expert that is separately set forth in the stipulations between DRO and the Oregon Department of Justice.

17. If, after reviewing the periodic reports discussed in paragraph 15 of this memorandum, DRO believes that ODOC's plan is not progressing at a reasonable pace or is failing to

produce the desired effect, DRO will contact ODOC and the Oregon Department of Justice to explore the collaborative development of an improvement plan with the assistance of the Oregon Department of Justice's expert.

18. To achieve the best outcome for the Behavioral Health Unit, ODOC is committed to an ongoing review of the Behavioral Health Unit. This ongoing review may involve modifications to the plan set forth above. If at any time within the next 48 months ODOC determines that changes to this plan are necessary for any reason, it shall promptly notify DRO of the need for modifications and provide DRO with the opportunity for input on any pending or anticipated changes to this plan.

ODOC commits to make good faith efforts to accomplish these above changes and to achieve these results. However, this memorandum shall not be enforceable in court and does not constitute a contract or other enforceable promise. ODOC's commitment to these aims includes a commitment to take reasonable steps to obtain funding, when needed, from the Oregon Legislative Assembly to accomplish this plan. If adequate funding is not authorized, ODOC will assess which of these goals, if any, it will pursue. While ODOC welcomes comment and cooperation from DRO, ODOC maintains that it has ultimate discretion to determine the time and the manner in which these changes and goals are pursued.

DRO understands this memorandum to reflect ODOC's intent and appreciates its commitment. However, this memorandum does not extinguish or alter the capacity of any adult in custody or other entity to redress alleged violations of law, nor of DRO's capacity to serve as legal counsel in such a case. DRO welcomes the commitments described above and looks forward to seeing the intended goals realized.

The provisions of this memorandum are understood to apply to the Behavioral Health Unit at the Oregon State Penitentiary. Conditions in other facilities or other housing units are not addressed by this memorandum.

Signed this 8th of January, 2016.

Bob Joondeph, DRO Executive Director

Colette S. Peters, ODOC Director