

**AGREEMENT BETWEEN LIBERTY HEALTHCARE
OF CALIFORNIA, INC. AND SAN BERNARDINO
COUNTY SHERIFF/CORONER/PUBLIC
ADMINISTRATOR
TO ADMINISTER THE EARLY ACCESS AND STABILIZATION SERVICES
PROGRAM FOR COUNTY JAIL INMATES**

This Agreement is entered into between the San Bernardino County by and through the Sheriff/Coroner/Public Administrator (“County”) and Liberty Healthcare of California, Inc., (“Liberty”) and is executed pursuant to the terms and conditions as set forth below (“Agreement”).

WHEREAS, the State of California, Department of State Hospitals (“CA DSH”) is responsible for returning to competency individuals charged with a felony who have been determined to be incompetent to stand trial by the California Superior Courts; and

WHEREAS, CA DSH has determined that Liberty shall assist it in restoring such individuals to competency and has entered into an agreement with Liberty for Early Access and Stabilization Services (“EASS”) whereby Liberty will provide services to CA DSH for EASS (“EASS Agreement”); and

WHEREAS, EASS will quickly commence treatment to restore individuals to competency using clinical treatment provided by Liberty, along with the facilities, personnel and other goods and services of the County, which would reduce the number of San Bernardino County inmates waiting for treatment at a state facility and restore them to competency at a County jail in a more timely manner; and

WHEREAS, as set forth in this Agreement, the County has agreed to provide Liberty access to portions of its West Valley Detention Center (“Jail”), together with other goods and services, to allow Liberty to provide the clinical programming which may restore competency to said individuals; and

WHEREAS, Liberty agrees to pay the County for the goods and services provided by the County as set forth below;

NOW THEREFORE, in consideration of those mutual understandings, the parties enter into this Agreement upon the following terms and conditions:

A. Duties of the County

1. To provide Liberty with physical access to the Jail and applicable County inmates in order that Liberty can provide services pursuant to the EASS Agreement.
2. To provide 1.425 full time equivalent (FTE) Deputy Sheriffs to escort EASS inmates to treatment areas and to provide security for Liberty staff while they are providing services, according to Liberty’s schedule.

3. To provide training for Liberty staff in all relevant security and jail policies of the County so that Liberty staff may function consistently with those policies.
4. To provide all necessary transportation for the inmates participating in the EASS program.
5. To provide full access to and full utilization by Liberty personnel of the Jail's Electronic Health Records (EHR) System during the term of this Agreement, and for seven (7) years thereafter, as well as access as required by the State of California or any other governmental or judicial entity, to all medical information of all individuals who have participated in the program, to the extent authorized by law.
6. To notify Liberty in advance of any inspections or reviews by any appropriate inspecting or reviewing entities.
7. To provide Liberty with a designated contact person and an additional back-up contact person that Liberty can reach twenty-four (24) hours per day seven (7) days per week for emergencies and other important occurrences or communications. The County will provide individuals who have the authority to act immediately when safety requires immediate action.
8. To comply with all federal and state laws pertaining to the administration of the jails and keeping of inmates. County shall provide the inmates participating in the EASS program with all items, services and supplies which are supplied to all inmates in Jail. Liberty will not be charged with, billed for or otherwise expected to provide inmates with the items the Sheriff is required to provide.
9. To provide and dispense oral psychotropic medications as prescribed by Liberty personnel, which costs will be reimbursed by Liberty to the County. To provide support, as necessary, for injectable medications administered by Liberty personnel.

B. Duties of Liberty

1. To provide EASS services in accordance with the EASS Agreement.
2. Liberty staff will comply with all standards per CA Title 15 and correctional community standards for mental healthcare as per National Commission on Correctional Healthcare (NCCHC).
3. To adhere to all the rules, policies and regulations of the Jail.
4. To appoint an individual, and a back-up for that individual, who will be available twenty-four (24) hours per day, seven (7) days per week, as a liaison to communicate with County on matters relating to this Agreement.
5. To provide treatment services consisting of mental illness management, to prescribe psychotropic medications, competency restoration, and other

components of the treatment program in compliance with applicable state law and regulations.

6. To comply with applicable state law and the terms of the EASS Agreement.
7. Liberty personnel shall remain in compliance with all applicable state and/or federal licensing requirements applicable to mental health providers.

C. Term and Termination

This Agreement shall commence on September 28, 2022 and continue until September 27, 2025, unless terminated earlier pursuant to this section.

Either party may terminate this agreement, with or without cause, upon written notice to the other party, such termination shall take effect 180 days after receipt of written notice.

Notwithstanding anything set forth above, Liberty may terminate or reduce the size of this Agreement at any time upon sixty (60) days advance written notice to County in the event its contract with CA-DSH is terminated or reduced.

D. Consideration

Liberty shall pay County \$33,333 per month for 1.425 FTE Deputy Sheriffs to provide support for the EASS staff, and it is subject to change. Such change(s) can include changes to Memoranda of Understanding approved by the County Board of Supervisors for County employees and other inflationary costs. County shall provide notice to Contractor of pending rate change(s). In addition, Liberty shall reimburse the County for its actual direct costs net of any rebates, discounts or other cost reductions for psychotropic medications that are administered to the inmates as prescribed by Liberty physicians pursuant to their participation in the EASS program. An invoice for the County's monthly costs for psychotropic medications that are administered to the inmates participating in the restoration program shall be submitted in writing monthly by the County to Liberty. Liberty shall pay County within 60 days of receipt of County's invoice for the above services and costs. With respect to payment to the County, this provision shall survive termination of this Agreement.

E. Relationship of the Parties—Independent Contractor

Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. Each party shall be responsible for providing all necessary unemployment and workers' compensation insurance for their respective employees.

F. Notices

Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised.

Notices to Liberty shall be sent to:

Liberty Healthcare of California, Inc.
Attn: President
401 E. City Ave., Ste. 820
Bala Cynwyd, PA 19004

Notices to the County shall be sent to:

San Bernardino County Sheriff's Department
Bureau of Administration/Contracts Unit
655 East Third Street
San Bernardino, CA 92415-0061

G. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto, pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties, and there are no representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement modification or waiver of this Agreement shall be binding unless executed in writing by authorized representatives of Liberty and the County Board of Supervisors to be bound thereby.

H. Contract Requirements

1. Legality and Severability

The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

2. Iran Contracting Act of 2010

In accordance with Public Contract Code section 2204(a), Liberty certifies that at the time the proposal is submitted, Liberty is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in

subdivision (b) of Public Contract Code section 2202.5, as applicable. Liberty understands that making a false certification may subject Liberty to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. **Liberty agrees that signing this Agreement shall constitute the required certification.**

3. Vendor Primary Contact

Liberty will designate an individual to serve as the primary point of contact, for the Agreement. Liberty will also designate a back-up point of contact in the event the primary contact is not available.

4. Change of Address

Liberty shall notify the County in writing of any change in mailing address within thirty (30) business days of the change.

5. Duration of Terms

This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

6. Time of the Essence

Time is of the essence in performance of this Agreement and of each of its provisions.

7. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

8. Mutual Covenants

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

9. County Representative

The Sheriff/Coroner/Public Administrator, or designee, shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor.

10. Licenses, Permits, and/or Certifications

Liberty shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations (including, but not limited to: CA Title 15 and correctional community standards for mental healthcare as per the National Commission on Correctional Healthcare (NCCHC) and Association of Community Human Service Agency (ACHSA) guidelines). Liberty shall maintain these licenses, permits, and/or certifications in effect for the duration of this Agreement.

11. Conflict of Interest

Liberty shall make reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Liberty shall make a reasonable effort to prevent employees, vendors, or members of its governing body from using their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. This provision shall not be construed to prohibit employment of persons with whom Liberty's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant. In addition, Liberty shall make reasonable efforts to ensure its officers, employees or subcontractors do not violate any applicable state or federal conflict of interest laws or regulations.

12. Improper Consideration

Liberty shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement. The County, by written notice, may immediately terminate any Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an Agreement has been awarded. Liberty shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Liberty. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

13. Damage to County Property, Facilities, Buildings or Grounds

Liberty shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, equipment, facilities, buildings or grounds caused by the willful or negligent acts of Liberty or employees or agents of Liberty. Such repairs shall be made immediately after Liberty becomes aware of such damage, but in no event later than thirty (60) days after the occurrence.

14. Drug and Alcohol-Free Workplace

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this agreement, Liberty agrees that Liberty and Liberty's employees, while performing service on County property, or while using County equipment:

a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.

b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.

c. Shall not sell, offer, or provide alcohol or a drug to another person.

This shall not be applicable to Liberty's employees who, as part of the performance of normal job duties and responsibilities, prescribe or administer medically prescribed drugs.

Liberty shall inform all employees that are providing their services pursuant to this Agreement on County property, or using County equipment, of the County's objective of a safe, healthful and productive workplace and the prohibition of drug or alcohol use or impairment from same while performing such service for the County. The County may terminate for default or breach of this agreement, if Liberty or Liberty's employees are determined by the County not to be in compliance with above.

15. Non-Discrimination

Liberty shall not in any way discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, sexual orientation, age, or military and veteran status. Liberty shall include a clause to this effect in all its pertinent subcontracts. Liberty and any subcontractors shall also comply with all applicable provisions of the Americans with Disabilities Act of 1990.

16. Employment Discrimination

During the term of the Agreement, Liberty shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, sexual orientation, age, or military and veteran status. Liberty shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act (Gov. Code 12900 et. Seq), the American with Disabilities Act of 1990 (42 U.S. C. S1210 et seq.) and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

17. Informal Dispute Resolution

In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. In the event of a dispute or a conflict among documents, the following shall be the precedence and order:

- a. First, the body of this Agreement.
- b. Second, all other written documentation and correspondence pertaining to this Agreement.

18. Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Liberty shall execute and comply with the attached Business Associate Agreement (Attachment A). Liberty further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Liberty for Services performed pursuant to this Agreement.

I. Indemnification and Insurance Requirements

Indemnification

Liberty agrees to indemnify, defend, (with counsel reasonably approved by County) and hold harmless the County and its authorized officers, employees, agents and volunteers (“Indemnitees”) from any and all claims, actions, losses, damages, and/or liability arising out of or in connection with any act, error or omission or any failure by Liberty to perform under this Agreement from any cause whatsoever, including any costs or expenses incurred by County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. Liberty’s indemnification obligation does not apply to the County’s “sole negligence” or “willful misconduct within the meaning of Civil Code Section 2782.

County agrees to indemnify, defend (with counsel reasonably approved by Liberty) and hold harmless Liberty and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of or in connection with any act, error or omission or any failure by County to perform under this Agreement from any cause whatsoever, including any costs or expenses incurred by Liberty on account of any claim except where such indemnification is prohibited by law. County’s indemnification obligation does not apply to Liberty’s “sole negligence” or “willful misconduct”.

In the event that Liberty and/or the County are determined to be comparatively at fault for any claim, action, loss or damage, which results from their respective obligations under this Agreement, the County and/or Liberty shall indemnify the other to the extent of its comparative fault.

Additional Insured

All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming the County and its officers, employees, agents and volunteers as additional insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for the County to vicarious liability but shall allow coverage for the County to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.

Waiver of Subrogation Rights

Liberty shall require the carriers of required coverages to waive all rights of subrogation against the County, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Liberty and Liberty's employees or agents from waiving the right of subrogation prior to a loss or claim. Liberty hereby waives all rights of subrogation against the County.

Policies Primary and Non-Contributory

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

Severability of Interests

Liberty agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Liberty and the County or between the County and any other insured or additional insured under the policy.

Proof of Coverage

Liberty shall furnish Certificates of Insurance to the County evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Liberty shall maintain such insurance from the time Liberty commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, Liberty shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.

Acceptability of Insurance Carrier

Unless otherwise approved by County Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII" or a surplus lines carrier that is authorized to do business

in California. Authorization to use any such surplus lines carriers shall be requested to, and approved by the County. Such authorization shall not be unreasonably withheld.

Deductibles and Self-Insurance Retention

Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by County Risk Management.

Failure to Procure Coverage

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by Liberty or County will invoice Liberty for County purchased insurance.

Insurance Review

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Liberty agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

Insurance Specifications

Liberty agrees to provide insurance set forth in accordance with the requirements herein. If Liberty uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Liberty agrees to amend, supplement or endorse the

existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, Liberty shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a State approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits, covering all persons providing services on behalf of Liberty and all risks to such persons under this Agreement. If Liberty has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to vendors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance

Liberty shall carry General Liability Insurance covering all operations performed by or on behalf of Liberty providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- d. Personal Injury
- e. Contractual liability
- f. \$2,000,000 general aggregate limit

Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements.

Professional Services Requirements

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work.

Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

Abuse/Molestation Insurance – Liberty shall have abuse or molestation insurance providing coverage for all employees for the actual or threatened abuse or molestation by anyone of any person in the care, custody, or control of any insured, including negligent employment, investigation and supervision. The policy shall provide coverage for both defense and indemnity with liability limits of not less than one million dollars (\$1,000,000) with a two million dollars (\$2,000,000) aggregate limit.

J. Correction of Performance Deficiencies

1. Failure by either party to comply with any of the provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement.

2. In the event of a non-cured breach, the other party may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:

a. Afford the alleged breaching party a time period within which to cure the breach; and/or

b. Terminate this Agreement..

K. Force Majeure

Either party shall not be liable for failure to perform or for any damages under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of either party. Such causes may include, but are not limited to, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, acts of the State or Federal government in their sovereign or contractual capacities, telecommunications disruptions, acts of third parties, including third party processors and unusually severe weather. Either party shall not be liable for any failure to act if it reasonably believed such action would have violated any law, rule

or regulation. Such nonperformance shall not be deemed to be a breach of this Agreement.

L. Electronic Signatures

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

*****END OF SECTION*****

San Bernardino County_____

Liberty Healthcare of California, Inc.

Curt Hagman, Chairman
Board of Supervisors

_____, M. D.
President

Date: _____

Date: _____