

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS  
OF SAN BERNARDINO COUNTY  
AND RECORD OF ACTION**

May 21, 2024

**FROM**

**GEORGINA YOSHIOKA, Director, Department of Behavioral Health**

**SUBJECT**

Program Funding Agreement/Grant Acceptance for the Behavioral Health Continuum Infrastructure Program – Crisis and Behavioral Health Continuum

**RECOMMENDATION(S)**

1. Approve the Program Funding **Agreement No. 24-390** and its related attachments and exhibits, including non-standard terms, with Advocates for Human Potential, Inc., on behalf of the California Department of Health Care Services, relating to the Behavioral Health Continuum Infrastructure Program – Crisis and Behavioral Health Continuum Grant, in the amount of \$51,410,844, effective upon execution through June 30, 2027.
2. Approve the Facility Access **Agreement No. 24-391**, which specifies that any behavioral health services facility operating on the property located at 13333 Palmdale Road in Victorville must comply with Welfare and Institutions Code sections 5960 through 5960.45, and accept Medi-Cal beneficiaries for a minimum of 30 years unless any change in use of the facility is approved by the California Department of Health Care Services.
3. Approve the Regulatory **Agreement No. 24-392** and Declaration of Restrictions between San Bernardino County and the State of California, represented by the Department of Health Care Services, to restrict the use of certain portions of the County-owned real property (portion of Assessor's Parcel Number 3105-191-11) located at 13333 Palmdale Road in Victorville for the provision of grant-funded behavioral health services for a minimum of 30 years, commencing from the date a certificate of occupancy is issued for new facilities constructed on certain portions the property or the date of a notice of completion is recorded for the rehabilitation or expansion of existing facilities on certain portions the property, provided that the Chair of the Board of Supervisors shall have the authority to revise Exhibit A to such agreement to identify the specific portions of the property to be restricted and to execute such revised agreement, subject to County Counsel review.
4. Authorize the Chair of the Board of Supervisors, Assistant Executive Officer, Director of the Department of Behavioral Health, or Director of the Project and Facilities Management Department to execute and submit the Regulatory Agreement and Declaration of Restrictions as referenced in Recommendation No. 3, any attachments and exhibits to the Program Funding Agreement, any non-substantive amendments to the Program Funding Agreement and its related attachments and exhibits or any additional or supplemental documentation, including compliance certifications, subject to review by County Counsel.
5. Direct the Director of the Department of Behavioral Health to transmit the Regulatory Agreement and Declaration of Restrictions, any attachments and exhibits to the Program Funding Agreement, any subsequent non-substantive amendments to the Program Funding Agreement and its related attachments and exhibits to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Georgina Yoshioka, Director, 252-5142)

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**COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES**

**Promote the Countywide Vision.**

**Operate in a Fiscally-Responsible and Business-Like Manner.**

**Ensure Development of a Well-Planned, Balanced, and Sustainable County.**

**Provide for the Safety, Health and Social Service Needs of County Residents.**

**FINANCIAL IMPACT**

This item does not impact Discretionary General Funding (Net County Cost). The recommended Program Funding Agreement (PFA) of \$51,410,844 for the Behavioral Health Continuum Infrastructure Program Crisis and Behavioral Health Continuum (BHCIP) grant is funded by the California Department of Health Care Services (DHCS). BHCIP requires the Department of Behavioral Health (DBH) to provide a match in the amount of \$4,341,650, which will be met and funded by 2011 Realignment funds. Adequate appropriation and revenue have been included in DBH's 2023-24 budget and will be included in future recommended budgets.

**BACKGROUND INFORMATION**

DBH is responsible for providing mental health and substance use disorder (SUD) services to San Bernardino County (County) residents experiencing severe mental illness and/or a SUD. The DHCS BHCIP grant will support DBH in expanding the treatment of the complex SUD needs for residents in the county and in addressing the associated risk of homelessness for this population countywide. The DHCS BHCIP grant provides capital infrastructure funds to construct real estate assets to expand the continuum of care.

With this funding, DBH will increase capacity for serving county residents in need of behavioral health and/or SUD services, with a commitment to serve the most vulnerable individuals – including those experiencing homelessness. The funding will also provide these services to Medi-Cal beneficiaries through the proposed capital expansion and construction project.

On January 24, 2023 (Item No. 19), the Board of Supervisors (Board) approved the submission of the BHCIP grant application to DHCS, in the amount of \$51,731,501.

On January 24, 2023 (Item No. 46), the Board approved the Purchase and Sale Agreement and Joint Escrow Instructions for the acquisition of 29.47 acres, improved with nine single story buildings, totaling about 17,770 square feet of building area, located at 13333 Palmdale Road in the City of Victorville (Property), for the purchase price of \$2,000,000. On December 29, 2023, the County closed escrow through the Chicago Title Company, officially acquiring the Property.

Certain portions, estimated to total approximately 6.55 acres of the Property, will be used to establish a Comprehensive Treatment Campus (Campus). The BHCIP Grant funds will enable the modernization and expansion of those portions of the Property, establishing new structures thereon to form the Campus, which will serve both adults (aged 18 and older) and youth (12-17 years of age). The facilities to be constructed include:

- An 18-bed Adult Withdrawal Management Treatment Facility with Incidental Medical Services and DHCS/American Society of Addiction Medicine Level of Care.
- A 14-bed Adolescent Psychiatric Residential Treatment Facility.
- A 16-bed Adolescent Residential SUD Treatment Facility.
- A 36-bed Adult Residential SUD Treatment Facility.
- A Community Wellness Center.

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- An outpatient clinic serving both adults and youth.

The Comprehensive Treatment Campus will serve approximately 900 individuals annually.

On June 23, 2023, DBH received notification from DHCS that it had been conditionally selected to receive \$51,410,844 in BHCIP funding for the Comprehensive Treatment Campus project. The conditional award is contingent on confirmation of match, a clean title report and acceptance of the terms of encumbrance on certain portions of the Property.

On February 2, 2024, DBH received notification from Advocates for Human Potential, Inc. (AHP), the third-party administrator for the grant, that the PFA for the County's BHCIP grant funds was ready for review and execution. On March 15, 2024, AHP provided DBH with a revised PFA for review and execution. Due to further negotiations between the parties, AHP updated and provided a revised final PFA to DBH on May 9, 2024.

The PFA with AHP contains non-standard County terms as follows:

1. If the PFA is not terminated early, on June 30, 2027, the PFA automatically expires concurrently with the expiration of the contract between DHCS and AHP unless DHCS accepts an assignment of AHP's duties and obligations pursuant to the PFA prior to the expiration date.
  - Under the County standard contract, the County must approve any assignment of the contract.
  - Potential Impact: If the PFA is not assigned to DHCS prior to the expiration date and the contract is not extended, the PFA will terminate regardless of either party's duties and obligations under the PFA.
2. The County does not have the right to terminate the PFA, however AHP and DHCS may terminate the PFA with 30 days' notice to the County.
  - Under the County standard contract, the County has the right to terminate the contract, for any reason, with 30-days written notice of termination without any obligation other than to pay amounts for services rendered and expenses reasonably incurred prior to the effective date of termination.
  - Potential Impact: The County does not have the right to terminate the PFA for convenience.
3. If there is a dispute arising out of the PFA, the non-prevailing party shall pay the prevailing party's reasonable costs and attorney's fees.
  - The County standard contract requires each party to bear its own costs and attorney fees, regardless of who is the prevailing party.
  - Potential Impact: If there is a dispute arising out of the PFA, and the County does not prevail in the dispute, then the County may have to pay AHP or DHCS' reasonable costs and attorney's fees.
4. The County agrees the venue for any litigation to be in state or federal court in Sacramento.
  - The County standard contract provides for venue to be in the Superior Court of California, San Bernardino County, San Bernardino District.

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- Potential Impact: The County may incur additional legal costs if there is litigation in Sacramento.
5. The County is required to indemnify, defend, and hold harmless AHP and DHCS against all claims arising out of the County's performance under the PFA and for any acts attributable to the County's subcontractors, including contractors, suppliers and laborers.
    - The County standard contract indemnity provision requires the contractor to indemnify, defend and hold the County harmless from third party claims arising out of the acts, errors or omissions of any person.
    - Potential Impact: AHP is not required to defend, indemnify, or hold the County harmless from any claims. If the County is sued for any claim, the County may be solely liable for the costs of defense and damages, which could exceed the total PFA amount.
  6. The PFA does not contain the standard County insurance requirements.
    - Standard County policy requires inclusion of the standard County insurance requirements in contracts unless otherwise approved by the Risk Management Department.
    - Potential Impact: The County is not aware of the insurance in place by AHP and therefore cannot evaluate its adequacy in terms of providing protection to the County.
  7. The PFA states that AHP and DHCS shall not be liable for any special, consequential, or punitive damages; indirect or consequential damages; or for any loss of goodwill, profits, data or loss of use arising out of the performance or breach of the PFA.
    - The County standard contract does not include a limitation of liability for contractors.
    - Potential Impact: The limitation of liability will limit any damages the County could recover from AHP or DHCS in any lawsuit.

The PFA incorporates, as an attachment to the PFA, a Facility Access Agreement which restricts any facility operating on certain portions of the Property to comply with Welfare and Institutions Code section 5960-5960.45, provide specific behavioral health services, and accept Medi-Cal beneficiaries. This agreement is for a minimum of 30 years unless DHCS approves any change in use of the facility.

The PFA also requires the recordation of a Regulatory Agreement and Declaration of Restrictions (DOR), Attachment H (including its own Exhibit A and Exhibit B) to the PFA, by June 30, 2024, which will restrict the use and transfer of certain portions of the Property (Restricted Portions) for at least 30 years, commencing from the date a certificate of occupancy is issued for new facilities constructed on the Restricted Portions, or the date of a notice of completion is recorded for the rehabilitation or expansion of existing facilities on the Restricted Portions. Per the DOR, any facility on the Restricted Portions of the Property must be utilized for grant-funded behavioral health services and must accept Medi-Cal beneficiaries as patients. Exhibit A to the form of DOR attached to the PFA states that the legal descriptions for the Restricted Portions of the Property will be mutually agreed after execution of the PFA but by no later than June 30, 2024.

The Project and Facilities Management Department and the County Surveyor's Office are in the process of developing the legal descriptions for the Restricted Portions of the Property, which is

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estimated to total approximately 6.55 acres (or approximately 22% of the Property) based on the anticipated location of new buildings to be constructed, as well as the existing buildings that will be rehabilitated. Restricting a portion of the Property will allow DBH to use the remainder of the Property for other programs. Once the legal descriptions for the Restricted Portions have been finalized, the Chair of the Board, through the delegated authority in the Recommendations, would execute an amendment to the PFA by June 30, 2024, to update Exhibit A to the form of the DOR to identify the actual Restricted Portions. The Chair of the Board, pursuant the authority granted in the Recommendations, would then execute the actual DOR by June 30, 2024, which would be recorded as a use restriction on the Restricted Portions.

As AHP provided the final version of the PFA on May 9, 2024, the item is being presented at this time as this is the first available Board date, following all the necessary and required DBH program, fiscal, administrative, and legal reviews. Approval of this item will allow DBH to formally accept the grant award to participate in the BHCIP, and approve the PFA, which will be effective upon execution.

**PROCUREMENT**

Not applicable.

**REVIEW BY OTHERS**

This item has been reviewed by Behavioral Health Contracts (Ellayna Hoatson, Contracts Supervisor, 388-0858) on May 10, 2024; County Counsel (Dawn Martin, and Agnes Cheng, Deputies County Counsel, 387-5455) on May 14, 2024; Project and Facilities Management (Donald Day, Director, 387-5224) on May 6, 2024; Risk Management (Greg Ustaszewski, Staff Analyst II, 386-9008) on May 7, 2024; Finance (Paul Garcia, Administrative Analyst, 386-8392) on May 15, 2024; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on May 15, 2024.

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Record of Action of the Board of Supervisors  
San Bernardino County

**APPROVED (CONSENT CALENDAR)**

Moved: Curt Hagman   Seconded: Joe Baca, Jr.  
Ayes: Col. Paul Cook (Ret.), Dawn Rowe, Curt Hagman, Joe Baca, Jr.  
Absent: Jesse Armendarez

Lynna Monell, CLERK OF THE BOARD

BY   
DATED: May 21, 2024



cc:    DBH - Rivas-Ordaz w/agrees for sign  
      Contractor - c/o DBH w/agree  
      File - w/agree  
CCM   05/22/2024