

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

September 24, 2024

FROM

SHANNON D. DICUS, Sheriff/Coroner/Public Administrator

SUBJECT

Contracts for the Administration of the Jail Based Competency Treatment Program

RECOMMENDATION(S)

1. Approve **Revenue Contract No. 24-904** with the California Department of State Hospitals (State Agreement No. 24-79008-000) to administer a Jail Based Competency Treatment Program for inmates at the West Valley Detention Center for a maximum reimbursement of \$45,160,512, for the period starting retroactively on July 1, 2024, through June 30, 2027, with the option to extend the term for two additional one-year periods.
2. Approve **Contract No. 24-905** with Liberty Healthcare of California, Inc., including non-standard terms, to provide evaluation and restoration of mental competency services to inmates at the West Valley Detention Center admitted into the Jail Based Competency Treatment Program, at a cost not to exceed \$15,792,528, retroactively from July 1, 2024, through June 30, 2027, with the option to extend the term for two additional one-year periods.

(Presenter: Kelly Welty, Chief Deputy Director, 387-3760)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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

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

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost). The State of California (State) Department of State Hospitals (DSH) will reimburse the Sheriff/Coroner/Public Administrator (Department) a maximum of \$45,160,512 for both the direct and indirect costs associated with administering the Jail Based Competency Treatment (JBCT) Program. Costs include the designated space, personnel, and services, including medication, for the care of up to a daily maximum of 64 patient inmates admitted into the JBCT Program for the period of July 1, 2024, through June 30, 2027.

The contract with Liberty Healthcare of California, Inc. (Liberty) provides for the clinical personnel and services necessary to evaluate and restore mental competency to patient inmates admitted into the JBCT Program at West Valley Detention Center (WVDC). The maximum contract amount of \$15,792,528 includes services for up to 64 patient inmates for the period of July 1, 2024, through June 30, 2027. All costs of the JBCT Program will be funded through the Revenue Contract with DSH, and both the expenses and revenue associated with

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this contract have been included in the Department's 2024-25 Budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

DSH is responsible for restoring the competency of individuals charged with a felony and found incompetent to stand trial by the California Superior Court (Court). Once an individual is committed to a DSH facility for treatment, the facility has 90 days to make a written report to the Court concerning the defendant's progress toward restoration of mental competence. Currently, DSH has insufficient beds, creating lengthy waiting lists of jail inmates throughout the State who are in need of mental competency restoration services, including those in county.

To address this shortage, DSH has contracted with the Department since 2015 to provide continued access to WVDC to administer the JBCT Program and provide San Bernardino County inmates, as ordered by the Courts, with evaluation and restoration of competency treatment services similar to those provided in State mental hospitals. This program allows inmates to begin treatment sooner and significantly decreases the time these individuals remain incarcerated due to faster adjudication of their criminal charges.

On March 23, 2021 (Item No. 64), the Board of Supervisors (Board) approved the latest contracts for the administration of the JBCT Program, Contract No. 21-203 with DSH, retroactively to January 1, 2021 through December 31, 2023, for a maximum reimbursement amount of \$75,445,851; and Contract No. 21-204 with Liberty, retroactively to March 1, 2021 through December 31, 2023, for a maximum cost of \$25,864,776.

On July 11, 2023 (Item No. 45), the Board approved Amendment No. 1 to Contract No. 21-203 with DSH to reduce the number of beds from 146 to 64 with a corresponding reduction in the maximum reimbursement amount of \$14,285,591 from \$75,445,851 to \$61,160,260, with no change to the period of January 1, 2021 through December 31, 2023. In the same Item, the Board approved Amendment No. 1 to Contract No. 21-204 with Liberty, reducing the contract amount by \$4,581,657, from \$25,864,776 to a new not to exceed total amount of \$21,283,119, with no change to the period of March 1, 2021 through December 31, 2023, with the option to extend the term for two additional one-year periods.

On December 19, 2023 (Item No. 90), the Board approved Amendment No. 2 to Contract 21-203 with DSH to increase the maximum reimbursement amount by \$7,292,304 from \$61,160,260 to \$68,452,564, and extending the term by six months, for a new total contract period of January 1, 2021 through June 30, 2024. In the same Item, the Board approved Amendment No. 2 to Contract No. 21-204 with Liberty, increasing the Contract cost by \$2,878,949, from \$21,283,119 to a new not to exceed total amount of \$24,162,068, and extending the term by six months, for a new total contract period of March 1, 2021 through June 30, 2024, with the option to extend the term for one additional one-year period. Due to the reduction of beds the Department held seven unfunded JBCT Program positions vacant.

Approval of Recommendation No. 1 will allow the Department to continue the JBCT Program with reimbursement from DSH, for 55 allocated and 9 unallocated beds (billable when occupied), in the WVDC sheltered housing unit for use by Liberty, and will provide office space, furniture and security for Liberty's personnel. Routine inmate healthcare, including medications, will be provided through the Department's existing pharmacy, medical records and medical service delivery systems. To meet the operational needs of this contract, the Department will maintain a combination of safety and professional employees assigned to the Program. This

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includes holding a total of nine currently unfunded JBCT Program positions vacant until a new funding source is identified. At the end of the contract, assuming no further renewals, the Department will transfer incumbents from DSH contract-funded positions to existing vacant budgeted positions or delete positions through attrition.

Approval of Recommendation No. 2 will allow for Liberty to continue the provision of a team of specialized detention facility licensed clinical personnel to work approximately 40 hours per week, and provide JBCT Program patient inmates with treatment services such as mental competency evaluation and restoration, mental illness management, prescription of psychotropic medications, physical/mental/social stimulation, and other components required by applicable State law and regulations. Additionally, Liberty's personnel will comply with the State's reporting requirements on the progress of the program's patient inmates.

The contract with Liberty contains terms and conditions that differ from the standard County contract including, but not limited to, the following:

1. The contract with Liberty calls for mutual indemnification of the parties and requires the County to indemnify Liberty based upon comparative fault.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify Liberty, the County could be contractually waiving the protection of sovereign immunity. Claims that may otherwise be barred against the County, time limited, or expense limited could be brought against Liberty without such limitations and the County could be responsible to defend and reimburse Liberty for costs, expenses, and damages, which could exceed the total contract amount.
2. The contract does not require Liberty to meet all of the County's insurance standards as required by County Policies 11-05, 11-07, and 11-07SP. Specifically, the contract with Liberty calls for a mutual waiver of subrogation rights.
 - The County's standard contract requires contractors to carry certain insurance coverage as determined by the County's Department of Risk Management, and for contractors to add the County as an insured in their policies and to waive the right to subrogation.
 - Potential Impact: The agreement will require the County and Liberty to waive each other's subrogation rights. No waiver of subrogation may allow Liberty's insurer to bring suit against the County, which could result in expenses to the County that exceed the total amount of the contract.

While as to the contract with Liberty, these are notable exceptions to the County's standard contract language, the Department recommends approval of both of the contracts in order to provide County inmates, as ordered by the Courts, with evaluation and restoration of competency treatment services similar to those provided in State mental hospitals. County Counsel and Risk Management have reviewed and provided input on both the DSH standard agreement and the proposed contract with Liberty.

The contract with DSH for the period of July 1, 2024, through June 30, 2027, including two one-year options to extend the term, can be cancelled by DSH with a 30-day advance written notice or by the County with a 50-day advance written notice. The proposed contract with Liberty for the period of July 1, 2024, through June 30, 2027, includes two one-year options to extend the

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term provided that an extension of the County's contract with DSH is approved. The Liberty contract can be terminated by either party with a 30-day advance written notice.

PROCUREMENT

The Purchasing Department (Purchasing) concurs that a non-competitive justification exists for the uninterrupted continuation of specialized treatment services developed and delivered by Liberty since 2017, as required by DSH, for patient inmates at the County's WVDC.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Miles Kowalski, Deputy County Counsel, 387-5455) on September 4, 2024; Purchasing (Jason Cloninger, Lead Buyer, 387-0321) on September 4, 2024; Risk Management (Gregory Ustaszewski, Staff Analyst, 396-9008) on September 4, 2024; Finance (Erika Rodarte, Administrative Analyst, 387-4919) on September 9, 2024; and County Finance and Administration (Robert Saldana, Deputy Executive Officer, 387-5423) on September 10, 2024.

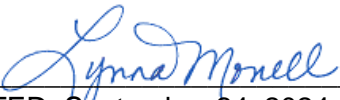
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: September 24, 2024



cc: Sheriff - Welty w/agrees for sign
 Contractor - c/o Sheriff w/agree
 File - w/agree
CCM 09/26/2024