

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

March 28,2023

FROM

GEORGINA YOSHIOKA, Director, Department of Behavioral Health

SUBJECT

Revenue Agreement with Advocates for Human Potential, Inc., for the Behavioral Health County and Tribal Planning Grant to Develop and Plan for the Improvement of Infrastructure

RECOMMENDATION(S)

1. Approve Subcontractor Revenue **Agreement No. No. 23-207** (7469-CA) with Advocates for Human Potential, Inc., on behalf of the California Department of Health Care Services, for the Behavioral Health County and Tribal Planning Grant from the Behavioral Health Continuum Infrastructure Program, including non-standard terms, to develop and plan for the improvement of behavioral health infrastructure, in the amount of \$150,000, for the period of April 18, 2022 through March 31, 2023.
2. Authorize the Assistant Executive Officer, or the Director of the Department of Behavioral Health to execute and submit any subsequent non-substantive amendments for the Subcontractor Revenue Agreement, on behalf of the County, subject to review by County Counsel.
3. Direct the Assistant Executive Officer, or the Director of the Department of Behavioral Health to transmit the executed Subcontractor Revenue Agreement and any subsequent amendments to the Clerk of the Board of Supervisors within 30 days of execution.

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

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

This item does not impact Discretionary General Funding (Net County Cost). The Subcontractor Revenue Agreement (Subcontractor Agreement) for \$150,000 with Advocates for Human Potential, Inc. (AHP), which administers the funding for the Behavioral Health Continuum Infrastructure Program (BHCIP) for the Behavioral Health County and Tribal Planning Grant on behalf of the California Department of Health Care Services (DHCS), does not require a local match. Adequate appropriation and revenue have been included in the Department of Behavioral Health's (DBH) 2022-23 budget.

BACKGROUND INFORMATION

DBH is responsible for providing behavioral health and substance use disorder services to San Bernardino County residents who are experiencing major mental illness and/or substance use disorders. In order to further support these services, DBH is participating in the development of

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infrastructure and program planning related to the submission of applications for grant funding for multiple rounds of BHCIP funding. The BHCIP Round 2b grant is intended to support stakeholder preparation activities to plan for the acquisition and expansion of behavioral health infrastructure throughout the state, with funding provided through a Subcontractor Agreement with AHP on behalf of DHCS.

The BHCIP Round 2b grant award is one of six application rounds in which DBH was successful and awarded. It will be utilized to develop and plan for the improvement of infrastructure through the following seven components:

- Dedicating a space to provide services 24 hours a day, seven days a week to individuals with severe and persistent mental illness immediately or soon after release from jail.
- Expanding infrastructure for substance use disorder treatment services.
- Creating infrastructure for a stand-alone children's clinic to act as both a treatment clinic and as a teaching clinic with a dedicated children's psychiatry students teaching program for children with a serious mental illness.
- Creating a children's crisis residential program to help ensure care is provided in the least restrictive settings.
- Creating a care facility for individuals including older adults and persons with disabilities, who are experiencing homelessness or with unstable living situations who are too ill or frail to recover from an illness or injury in their usual living environment but are not ill enough for a hospital.
- Creating a residential care facility for the elderly where 24-hour non-medical care and supervision are provided.
- Enhancing existing outpatient programs to serve the elderly through a newly constructed site co-located with a recuperative care site and residential care facility for the elderly.

As it relates to the grant, DBH works closely with Riverside-San Bernardino County Indian Health, Inc. (RSBCIHI), a non-profit health care organization affiliated with nine tribes. During the community planning process, DBH does outreach to this organization and the Native American population for participation in the community planning efforts.

On February 24, 2022, the Chief Executive Officer authorized the Director of DBH, as the County Mental Health Director, to approve, sign, and submit an application and any necessary documents in order to receive a grant award for BHCIP Round 2b funds, on behalf of the County.

On September 27, 2022 (Item No. 22), the Board of Supervisors (Board) accepted the grant award from DHCS and the California Department of Social Services jointly, for the BHCIP Behavioral Health County and Tribal Planning Grant in the amount of \$150,000, for costs incurred from April 18, 2022 through December 31, 2022.

On November 16, 2022, DBH received notice from AHP that the grant term would be extended from December 31, 2022 through March 31, 2023. On December 20, 2022, DBH received the updated Subcontractor Agreement to change the term to April 18, 2022 through March 31, 2023. On February 13, 2023, DBH received another updated Subcontractor Agreement to

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update the milestone dates in Attachment D, as well as updating the Board Chair to Dawn Rowe.

The Subcontractor Agreement includes terms that differ from the standard County contract and omits certain County standard contract terms. The non-standard terms include the following:

1. The Subcontractor Agreement can only be terminated for cause by AHP or by either party upon a material breach.
 - The County standard clause allows the County the right to terminate for convenience with 30 days' notice.
 - Potential Impact: The County has no option to terminate the Subcontractor Agreement for any reason other than a material breach by AHP. If the County fails to comply with certain terms of the Subcontractor Agreement and fails to remedy such failure, AHP may terminate. The Subcontractor Agreement also allows AHP to make unilateral changes to certain provisions upon ten days' notice without County's consent. The County may incur additional expenses with no ability to pursue recourse against AHP.
2. Disputes are subject to binding arbitration with venue in California in any county chosen by AHP and the prevailing party is also entitled to costs and reasonable attorneys' fees.
 - The County standard clause allows for non-binding arbitration with each party to bear its own costs. The County standard contract also requires the venue for disputes to be the Superior Court of California, County of San Bernardino, San Bernardino District.
 - Potential Impact: Having a venue in any county of California along with potential payment of attorneys' fees and costs may result in additional expenses.
3. The County is required to defend, indemnify and hold harmless AHP and DHCS against certain third-party claims.
 - The County standard contract does not include any indemnification or defense by the County of a contractor.
 - Potential Impact: By agreeing to indemnify AHP and DHCS, 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 AHP and DHCS without such limitations and the County could be responsible to defend and reimburse AHP and DHCS for costs, expenses, and damages, which could exceed the total Subcontractor Agreement amount.

The original Subcontractor Agreement was received from AHP in July 2022, with a revision received in August 2022. During extended negotiations in November 2022 with AHP, in consultation with DHCS, DBH was informed of further pending revisions, which were received on December 20, 2022. During those same negotiations, it was clarified that instead of an agreement directly with DHCS, DBH would have a Subcontractor Agreement with AHP.

The version received in December 2022 required further changes, including updating the name of the Chair of the Board and the deliverables dates, which was finalized and received on February 13, 2023. This item is being presented at this time as this is the first Board date available following receipt of the final revised Subcontractor Agreement and required DBH

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program, fiscal, administrative and legal reviews. Approval by the Board at this time will have no impact on DBH's services and activities.

Recommendation No. 3 delegates authority to the Assistant Executive Officer, or the Director of the Department of Behavioral Health to return the Subcontractor Revenue Agreement, which will be signed by AHP after the Chair of the Board, along with any subsequent amendments, to the Clerk of the Board within 30 days of execution.

PROCUREMENT

N/A

REVIEW BY OTHERS

This item has been reviewed by Behavioral Health Contracts (Natalie Kessee, Contracts Manager, 388-0869) on March 1, 2023; County Counsel (Dawn Martin, Deputy County Counsel, 387-5455) on March 1, 2023; Finance (Christopher Lange, Administrative Analyst, 386-8393) on March 13, 2023; and County Finance and Administration (Cheryl Adams, Deputy Executive Officer, 388-0238) on March 13, 2023.

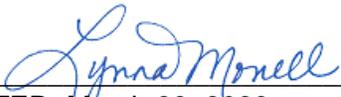
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Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: March 28, 2023



cc: DBH- Hoatson w/agree for sign
Contractor- C/O DBH w/agree
File- w/agree
LA 03/29/2023