

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

June 14, 2022

FROM

WILLIAM L. GILBERT, Director, Arrowhead Regional Medical Center

SUBJECT

Grant Subcontract Agreement with Advocates for Human Potential, Inc. to Support Behavioral Health Mobile Crisis and Non-Crisis Services

RECOMMENDATION(S)

1. Approve the Grant Subcontract **Agreement No. 22-408**, including non-standard terms, with Advocates for Human Potential, Inc. to support behavioral interventional services, for revenue in the estimated amount of \$180,000, retroactively beginning on February 15, 2022 through February 14, 2023.
2. Authorize the Director of Arrowhead Regional Medical Center to execute and submit the Grant Subcontract Agreement with Advocates for Human Potential, Inc. and all required supporting materials, as well as any non-substantive amendments necessary on behalf of the County, subject to review by County Counsel.
3. Direct the Director of Arrowhead Regional Medical Center to transmit all documents in relation to the execution of the Grant Subcontract Agreement with Advocates for Human Potential, Inc., including non-substantive amendments, to the Clerk of the Board of Supervisors within 30 days of execution by all parties.

(Presenter: William L. Gilbert, Director, 580-6150)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

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) as this is a Revenue Subcontract Agreement (Agreement). The revenues from this Agreement are estimated to be \$180,000. Sufficient appropriation and revenue have been included in the Arrowhead Regional Medical Center (ARMC) 2021-22 recommended budget and will be included in future recommended budgets.

BACKGROUND INFORMATION

On December 2021, ARMC applied for Grant funding with the California Department of Health Care Services (DHCS) to fund the San Bernardino Justice Intervention Work Group Project, a local initiative of the State's Behavioral Health Justice Intervention Services (BHJIS) Project. DHCS has contracted with Advocates for Human Potential, Inc. (AHP), as the Administrative Entity to assist DHCS in overseeing and implementing the (BHJIS) Project. Funding to support BHJIS was awarded to DHCS by the Substance Abuse and Mental Health Services

**Grant Subcontract Agreement with Advocates for Human Potential, Inc.
to Support Behavioral Health Mobile Crisis and Non-Crisis Services
June 14, 2022**

Administration (SAMHSA) through the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSAA).

DHCS has allocated \$16.25 million of SAMHSA and CRRSAA funds for BHJIS. The purpose of BHJIS is to support local and statewide efforts to improve first responder, law enforcement, and other community efforts to address behavioral health crises.

BHJIS provides funding to help local communities address critical intervention points through which individuals with mental health and substance use disorders can be diverted from criminal justice involvement. Funds may be used for a wide array of collaborative planning, development activities, and training. Funds may also be used for first-year implementation, including hiring or contracting with behavioral health clinicians and/or peers to be embedded with law enforcement, emergency medical technicians, or other first responders when responding to community situations, or integration of harm reduction, reentry support, and diversion strategies.

Approval of this Agreement with AHP will allow ARMC to work collaboratively with County and regional partners through the Department of Behavioral Health (DBH) Criminal Justice Consensus Committee to develop an operational plan of how the agencies can improve the continuity of care and provide improved services to behavioral health patients transitioning from the justice system. ARMC will receive reimbursements on a quarterly basis, based on meeting deliverables of staffing and capacity building (collaboration, coordination, and planning with area partners).

This retroactive Agreement has a pre-determined term that was pre-determined prior to the award and is non-negotiable. This is the first opportunity to bring this agreement to the Board of Supervisors for approval, after ARMC received the agreement on May 17, 2022.

The Agreement is AHP's standard subcontract agreement that it enters with all providers of the BHJIS Project, that is non-negotiable, includes the following non-standard terms that differ from the standard County contract:

1. County is required to notify AHP prior to any legally required disclosure of confidential information under the Agreement.
 - The County standard contract does not require notice.
 - Potential Impact: The County will need to be aware of its obligation to notify AHP prior to any disclosure of confidential information, including in response to a Public Records Act request.
2. All writings, discoveries, inventions, patents, products or other materials developed in the course of ARMC's work under the agreement will be considered works made for hire and the property of DHCS. Additionally, the County irrevocably assigns to DHCS ownership of and all rights of copyrights, trademark, and any other rights in intellectual property and rights in the work developed by ARMC under this Agreement.
 - The County standard contract does not address ownership of work developed by the County.
 - Potential Impact: Any product developed by ARMC in the course of its work under the Agreement will be owned by DHCS, and the County will be unable to claim any ownership interest in such products.

**Grant Subcontract Agreement with Advocates for Human Potential, Inc.
to Support Behavioral Health Mobile Crisis and Non-Crisis Services
June 14, 2022**

3. There is no right to terminate the Agreement for convenience.
 - The County standard contract allows either party to terminate the contract with 30 days written notice.
 - Potential Impact: The County is unable to terminate the Agreement prior to the expiration date of the agreement. Doing so would constitute a breach of the agreement.
4. The County is required to maintain workers' compensation and employer's liability insurance as required by state law, automobile liability coverage with \$1,000,000 combined single limits, commercial general liability insurance of not less than \$1,000,000 per occurrence for bodily injury and property damage, and shall name AHP as an additional insured. The agreement does not include any of the standard County insurance requirements.
 - The County standard contract does not impose any insurance requirements on the County, and instead requires the other party to carry appropriate insurance at limits and under conditions determined by the County's Risk Management Department.
 - Potential Impact: The County will need to ensure that it maintains the required insurance coverages for the term of the Agreement and to name AHP as an additional insured. Because the Agreement lacks the standard County insurance provisions, the County has no assurance that AHP will be financially responsible for claims that may arise where AHP is responsible for such claims.
5. The County agrees to indemnify AHP and DHCS for any costs, losses, or claims resulting from (1) the County's failure to maintain the required insurances, (2) any injury to persons or property caused by an act or omission of the County, (3) any failure on the County to comply with applicable government requirements and requirements of law, (4) any failure by County to satisfy all claims for labor, equipment, materials, and other obligations relating to the performance of the work, (5) any actual or alleged infringement of intellectual property rights, (6) and any actual or alleged disclosure of any trade secrets. The County is also required to indemnify for the foregoing acts attributable to the County's employees, consultants, agents, and subcontractors engaged to perform the work under the Agreement.
 - The County standard contract does not contractually require the County to indemnify the other party under any circumstance.
 - Potential Impact: If a claim is filed against AHP or DHCS by a third party that falls within the scope of this indemnification provision, the County would be contractually obligated and financially responsible for defending and indemnifying AHP or DHCS for such claims. Additionally, by agreeing to indemnify AHP, 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 without such limitations and the County would be responsible to defend and reimburse AHP for costs, expenses, and damages, which could exceed the total contract amount. It should be noted that AHP is similarly obligated to defend, indemnify, and hold harmless the County.
6. Any dispute arising under the Agreement must be resolved through arbitration in California.
 - The County standard contract does not require arbitration and venue of disputes is in the San Bernardino County Superior Court, San Bernardino District.

**Grant Subcontract Agreement with Advocates for Human Potential, Inc.
to Support Behavioral Health Mobile Crisis and Non-Crisis Services
June 14, 2022**

- Potential Impact: The Agreement requires binding arbitration for all disputes between the parties. Disputes that might otherwise be settled in small claims court would incur arbitration costs that would exceed the costs of a small claims action. Arbitration decisions are not appealable.
7. Attorney's fees and costs are awardable to the prevailing party in arbitration.
- The standard contract provides that each party shall bear their own costs and attorney's fees regardless of who is the prevailing party.
 - Potential Impact: If either party institutes arbitration related to the Agreement, the prevailing party will be entitled to recover reasonable attorneys' fees, which could exceed the total contract amount.
8. The County agrees to allow AHP to inspect its facilities and systems, and make available for review its books and records to enable AHP to monitor compliance with the terms of the Agreement and to conduct audits of the County.
- The County standard contract does not permit the other party to audit the County's compliance.
 - Potential Impact: If an audit determines that the County failed to comply with the terms of the Agreement, AHP may demand that the County return funds that AHP determines was improperly paid. The County's failure to repay within 30 days will result in the unpaid balance accruing interest at the rate equal to the monthly average of the rate received on investments in the Pooled Money Investment Fund commencing on the date that an audit or examination finding is mailed to the County.
9. AHP limits its liability to the total dollar amount of work properly performed by ARMC up to the effective date of termination, and disclaims liability for any special, indirect, incidental, consequential, or punitive damages.
- The standard County contract contains no limitations of liability.
 - Potential Impact: AHP caps its liability to the County as stated above. Claims could exceed the liability cap and the contract amount leaving the County financially liable for the excess. In the event the County sustains any special, indirect, incidental, consequential, or punitive damages, such damages will not be recoverable against AHP.
10. The Business Associate Addendum is AHP's standard agreement that does not include indemnification for the disclosure or misuse of protected health information and requires the County to make its employees and agents available at no cost to AHP to testify as witnesses or otherwise, in the event of litigation against AHP based upon the claim violation of Health Insurance Portability and Accountability Act (HIPAA) which involve the actions or inactions of the County.
- The County standard Business Associate Agreement requires the contractor to indemnify the County for claims regarding the use, access, maintenance or disclosure of protected health information, including expenses incurred in complying with notifications.
 - Potential Impact: Any liability that the County may incur from a data breach exposing protected health information, or the misuse of protected health information would be subject to the limitations cap set forth in the Agreement. Additionally, if an action is commenced against AHP for a HIPAA violation, the

**Grant Subcontract Agreement with Advocates for Human Potential, Inc.
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June 14, 2022**

County would be financially responsible in making its employees and agents available for testimony.

ARMC recommends approval of this agreement, including the non-standard terms, as it will provide for the safety, health, and social service needs of County residents by increasing the availability of behavioral interventional services throughout the County.

PROCUREMENT

Not applicable.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Charles Phan, Deputy County Counsel, 387-5455) on May 19, 2022; ARMC Finance (Chen Wu, Finance and Budget Officer, 580-3165) on May 25, 2022; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-5423) on May 25, 2022.

**Grant Subcontract Agreement with Advocates for Human Potential, Inc.
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June 14, 2022**

Record of Action of the Board of Supervisors
San Bernardino County

APPROVED (CONSENT CALENDAR)

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

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: June 14, 2022



cc: ARMC- Gilbert w/agree
Contractor- C/O ARMC w/agree
File- w/agree
LA 06/17/2022