

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

**May 9, 2023**

**FROM**

**LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office**

**SUBJECT**

Community Care Expansion Preservation Program Fund

**RECOMMENDATION(S)**

1. Approve the Community Care Expansion Preservation Program Implementation Plan to preserve and prevent the closure of critical residential adult and senior care facilities primarily for qualified residents that are applicants or recipients of Supplemental Security Income/State Supplementary Payment or Cash Assistance Program for Immigrants.
2. Approve the Community Care Expansion Preservation Program – Program Funding **Agreement No. 23-333**, including non-standard terms, with Advocates for Human Potential, Inc. in the not to exceed amount of \$13,833,106 for the period of May 9, 2023 through June 30, 2027.
3. Authorize the Chief Executive Officer to execute the Community Care Expansion Preservation Program – Program Funding Agreement, and the Chief Information Officer to execute the California Department of Social Services Confidentiality and Security Compliance Statement included in the Community Care Expansion Preservation Program – Program Funding Agreement.
4. Accept the allocation from the California Department of Social Services Community Care Expansion Preservation Program Fund in the not to exceed amount of \$13,833,106.
5. Authorize the Auditor-Controller/Treasurer/Tax Collector to establish the restricted fund to account for the Community Care Expansion Preservation Program Fund and post the necessary budget adjustments for 2022-23, as detailed in the Financial Impact Section (Four votes required).
6. Authorize the Chief Executive Officer, County Chief Operating Officer, or County Chief Financial Officer to execute and submit any non-substantive amendments, or any additional or supplemental documentation as may be required by the California Department of Social Services or Advocates for Human Potential, Inc. in connection with the allocation from the Community Care Expansion Preservation Program Fund, subject to review by County Counsel.
7. Direct the Chief Executive Officer, County Chief Operating Officer, or County Chief Financial Officer to transmit the Community Care Expansion Preservation Program – Program Funding Agreement referenced in Recommendation No. 3, and any amendments in relation to Recommendation No. 6 to the Clerk of the Board of Supervisors within 30 days of execution.

(Presenter: Matthew Erickson, County Chief Financial Officer, 387-5423)

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

**Promote the Countywide Vision.**

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**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.**

**FINANCIAL IMPACT**

Approval of this item will not result in the use of Discretionary General Funding (Net County Cost).

The Community Care Expansion (CCE) Program – Program Funding Agreement (Agreement) is for \$13,833,106 and 25% of the total amount will be paid to the County within 30 days of acceptance of the Agreement. In addition, \$787,891 will be contributed by the County's American Rescue Plan Act (ARPA) funding source as part of the CCE matching requirement for its Capital Projects Program. The table below reflects the budget adjustments requested to proceed with allocations for 2022-23:

<b>Funds/Cost Center</b>	<b>Commitment Item</b>	<b>Description</b>	<b>Action</b>	<b>Amount</b>
1100001076	40408955	State Grants	Increase	\$13,833,106
1100001076	40509194	ARPA Recovery Fund Distribution	Increase	\$787,891
1100001076	53003305	Contribution to Other Agencies	Increase	\$5,061,067
1100001076	52002000	Operating Expenses	Increase	\$7,484,964
1100001076	52002445	Other Professional & Specialized Services	Increase	\$2,074,966

**BACKGROUND INFORMATION**

The CCE Preservation Program is an effort initiated by the California Department of Social Services (CDSS), with an approximate budget of \$249 million, made available through noncompetitive allocations to counties that have opted into the program. The program provides two forms of direct financial assistance to eligible Adult Residential Facilities (ARF), Residential Care Facilities for the Elderly (RCFE), and Residential Care Facilities for the Chronically Ill (RCFCI):

- **Operating Subsidy Payments (OSP):** Funds may be used to preserve and avoid the closure of ARFs, RCFEs, and RCFCIs through operational financial support.
- **Capital Projects (CP):** Funds may be applied to physical repairs or required upgrades to ARFs, RCFEs, and RCFCIs to prevent closure and/or meet licensing requirements.

The County recognizes the vital role that ARFs, RCFEs, and RCFCIs play in providing care to vulnerable populations within the community. To ensure the ongoing reliability and sustainability of the long-term care continuum, the County has agreed to participate in the CCE Preservation Program. CDSS is partnering with Advocates for Human Potential, Inc. (AHP) to implement and provide administration for this initiative, and to provide technical assistance for CCE.

This item will authorize the County to accept the CCE Preservation Program allocation in the amount of \$13,833,106. The funding consists of \$5,954,197 in OSP, which must be obligated by June 30, 2027, and exhausted by June 30, 2029; and \$7,878,909 in CP, which must be obligated by June 30, 2024, and exhausted by December 31, 2026. The County Administrative Office (CAO), through its ARPA Team, will be responsible for the administration, dissemination,

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and monitoring of funds to existing licensed adult and senior care facilities. The CAO will work in partnership with the Project and Facilities Management Department and Department of Aging and Adult Services-Public Guardian, with input from the Department of Behavioral Health.

This effort will not only support existing facilities in continuing to provide care to their current clients, but it will help also alleviate the homelessness issue in the County, as facilities will be able to improve conditions which will allow them to serve individuals at their full capacity. Furthermore, guidelines and program tools have been developed by the CAO for proper planning and management of funds and projects.

OSP funds are available to address a facility's deficits associated with the day-to-day operations (e.g., staffing, utilities, security, maintenance). The intent of OSP funds is to preserve and avoid the closure of facilities, as well as to increase the acceptance of new residents, including prioritized populations. CP funds are available to preserve facilities in need of critical repairs or required upgrades, thereby potentially preventing facility closure. Funds can be applied to physical repairs and upgrades to the property (inside or outside) and to ensure facilities are compliant with licensing standards.

While the OSP and CP funds have different obligation and exhaustion dates, the County will proceed with both simultaneously in an effort to provide immediate assistance to facilities in need and prevent imminent closures.

Approval of Recommendation No. 3 allows the delegation for execution of the Agreement, which includes the CDSS Confidentiality and Security Compliance Statement, by the Chief Executive Officer as the Program Representative, and execution of the Confidentiality and Security Compliance Statement the Chief Information Officer as the Designated Information Security Officer. This delegation is required by CDSS as the CCE Preservation Program will be administered by the CAO. By executing the Agreement and signing the CDSS Confidentiality and Security Compliance Statement, the County acknowledges that the information resources maintained by CDSS and provided to the County may be confidential, sensitive, and/or personal and requires special precautions to protect it from wrongful access, use, disclosure, modification, and destruction.

The Agreement with AHP contains the following non-standard County contract terms:

1. If the Agreement is not extended, renewed, or terminated early and either party still has obligations to the other, on June 29, 2027, at 11:59 p.m. the Agreement is automatically assigned to CDSS and the term of the Agreement extended one year.
  - Under the County standard contract, the County must approve any assignment of the contract.
  - Potential Impact: If the Agreement is assigned to CDSS and extended one year this could impact the County's duties and responsibilities under the Agreement.
2. The County does not have the right to terminate the Agreement, however AHP and CDSS may terminate the Agreement for cause or with 30 days' notice to the County.
  - The County standard contract gives the County 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 Agreement for convenience.
3. If there is a dispute arising out of the Agreement, 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 Agreement, and the County does not prevail in the dispute, then the County may have to pay AHP or CDSS' reasonable costs and attorney's fees.
  4. If a dispute arises, the parties agree to try to resolve it through informal mediation and if that is not successful, binding arbitration. This requirement does not apply to CDSS, only AHP and the County.
    - The County standard contract does not provide for mediation or binding arbitration.
    - Potential Impact: The Agreement requires binding arbitration for all disputes with AHP. Binding arbitration decisions are generally not appealable.
  5. 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.
    - Potential Impact: The County may incur additional legal costs if there is litigation in Sacramento.
  6. The County is required to indemnify, defend, and hold harmless AHP and CDSS against all claims arising out of the County's performance under the Agreement 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 Agreement amount.
  7. The Agreement 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.
  8. The Agreement states that AHP and CDSS shall not be liable for any special, consequential or punitive damages; indirect or incidental damages; or for any loss of goodwill, profits, data, or loss of use arising out of the performance or breach of the Agreement.

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- 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 CDSS in any lawsuit or arbitration.

The CAO recommends approval of the Agreement, including all non-standard terms, as it will provide funding to support ARFs, RCFEs, and RCFCIs who provide care to vulnerable populations within the community.

**PROCUREMENT**

Not applicable.

**REVIEW BY OTHERS**

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on April 21, 2023; Auditor-Controller/Treasurer/Tax Collector (Charlene Huang, Accounting Manager, 382-7022) on March 9, 2023; Risk Management (Victor Tordesillas, Director, 387-5564) on April 27, 2023; Finance (Joon Cho, Administrative Analyst, 387-5402) on March 7, 2023; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) 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: May 9, 2023



cc: CAO - Erickson w/agree for sign  
Contractor - C/O CAO w/agree  
File - w/agree  
CCM 05/12/2023