



Board Agenda Item 8

DATE: December 3, 2024

TO: Board of Supervisors

SUBMITTED BY: John Zaroni, Sheriff-Coroner-Public Administrator

SUBJECT: Amendment to Agreement with California Forensic Medical Group, Incorporated

RECOMMENDED ACTION(S):

Approve and authorize the Chairman to execute Amendment XII to Agreement with California Forensic Medical Group, Incorporated (CFMG) for Jail medical and behavioral health care services for the Sheriff-Coroner-Public Administrator's Office detention facilities, extending the term by two years, seven months and two optional one year terms, commencing on December 4, 2024, to June 30, 2029, and increasing the maximum by \$204,178,155, to a total of \$394,375,054.

There is no additional Net County Cost associated with the recommended action. Approval of the recommended action will extend the County's agreement with CFMG for medical and behavioral health care services provided at the Jail for an additional two years, and seven months, with two optional one-year terms. This item is countywide.

ALTERNATIVE ACTION(S):

There is no practical alternative under the circumstances. If the recommended action is not approved, the Sheriff's Office will be without a Jail medical and behavioral health care agreement. In such an event, the County would also be in violation of the Remedial Plan approved as part of the Consent Decree in Hall, et. al. v. County of Fresno.

FISCAL IMPACT:

There is no additional Net County Cost associated with the recommended action. At this time, going into the second quarter of FY 2024-25, the Sheriff's Office has sufficient appropriations and anticipated revenues included in the Department's Org 3111 FY 2024-25 Adopted Budget; however, it is expected that the Sheriff's Office working with the CAO's Office will return to your Board for a mid-year budget adjustment due to the increase in costs associated with the recommended amendment. Approval of the recommended action will increase the Sheriff's agreement maximum by \$204,178,155, for a total of \$394,375,054. The yearly breakdown is as follows:

12/3/24 - 6/30/25 - \$23,444,167
7/1/25 - 6/30/26 - \$42,090,000
7/1/26 - 6/30/27 - \$44,085,000
7/1/27 - 6/30/28 - \$46,179,750
7/1/28 - 6/30/29 - \$48,379,238
Total - \$204,178,155

Staff will monitor appropriations within Org 3111 and adjustments will be brought to your Board if needed.

The recommended amendment provides that during the two years, seven months and two optional one-year term extensions the County will pay for:

- All skilled nursing costs for adult inmates who are cared for at off-site facilities (commonly called “Congregate Care” costs) at approximately \$2,190,000 per year .

The estimated cost for Congregate Care is \$10,037,500 for the term of the Amendment. The yearly breakdown is as follows:

12/3/24 - 6/30/25 - \$1,277,500
7/1/25 - 6/30/26 - \$2,190,000
7/1/26 - 6/30/27 - \$2,190,000
7/1/27 - 6/30/28 - \$2,190,000
7/1/28 - 6/30/29 - \$2,190,000
Total - \$10,037,500

On August 4, 2020, the Board approved Amendment II to Agreement A-18-169 to increase staffing for CFMG from 120 to 159.6. The additional staffing provided COVID screening, testing and other medical services related to COVID. The additional staffing costs were funded by CARES/ARPA funding. Amendment III, Amendment V, and Amendment VI, all approved by the Board, extended the continuation of the additional staffing and funding associated with CFMG’s COVID-related services. Amendments VIII, IX, X and XI included the COVID-related medical services and extended the agreement terms to conduct negotiations for a new contract.

Approval of the recommended action will extend the continuation of the additional staffing and CARES/ARPA funding associated with CFMG’s COVID-related services.

DISCUSSION:

On April 3, 2018, the Board approved Agreement No. A-18-169 with CFMG (Agreement), to provide medical and behavioral health care services to the adult incarcerated individuals detained in the County Sheriff Adult Detention Facilities identified as North Annex, Main, and South Annex Jails (Jail).

On April 28, 2020, the Board approved Amendment I to the Agreement to allow the Sheriff’s Office to approve pre-payments and accept a 1% discount for the months of May, June, July, and August of 2020.

On August 4, 2020, the Board approved Amendment II to the Agreement for additional temporary staffing from July 16, 2020, to December 30, 2020 for medical services to address the need for testing and treatment(s) for Jail inmates due to the COVID-19 pandemic and the ongoing spread of COVID-19 in the Jail.

On March 23, 2021, the Board approved Amendment III to the Agreement to increase the maximum compensation provided under the Agreement by \$5,261,182, to a total of \$129,627,204, to pay for an additional six months of COVID-19 testing and treatment(s) for jail inmates due to the COVID-19 pandemic (January 1, 2021, to June 30, 2021), and provide for pharmaceutical costs.

On February 1, 2022, the Board approved Amendment IV to the Agreement to increase the maximum compensation provided under the Agreement by \$120,000, to a total of \$129,747,205 to pay for a Medication Assisted Treatment (MAT) Care Coordinator to identify Opioid Use Disorder (OUD) inmates upon intake and enroll them in MAT services while incarcerated in the Fresno County Jail.

On March 22, 2022, the Board approved Amendment V to the Agreement to increase the maximum

compensation provided under the Agreement by \$6,702,382 to a total of \$136,449,588 to pay for an additional twelve months (July 1, 2022, to June 30, 2023) of COVID-19 testing and treatment(s) for jail inmates and pay COVID-19 related pharmaceutical and congregate living costs, with no change to the term of July 1, 2018, to June 30, 2023.

On November 29, 2022, the Board approved Amendment VI to the Agreement to increase the maximum compensation provided under the Agreement by \$6,147,900 to a total of \$142,597,488 to continue to provide COVID-19 testing and treatment through June 30, 2023, provide reimbursement for COVID-19 related pharmaceutical costs in excess of the pharmaceutical cap discussed in Section VI of the Agreement, and allow for the reimbursement of COVID-19 related staffing and treatment of inmates within the congregate living system. Due to the Omicron variant surge, services related to detection and treatment of COVID-19 were not being reduced, and staff estimated there would be an additional cost of \$6,147,900 for the remainder of FY 2022-23.

On May 23, 2023 (retroactive to February 1, 2023) the Board approved Amendment VII to the Agreement to increase the maximum compensation provided under the Agreement by \$53,125 to a total of \$142,650,613 to extend funding to pay for a MAT Care Coordinator to identify OUD inmates upon intake and enroll them in MAT services while incarcerated in the Jail.

On June 20, 2023, the Board approved Amendment VIII to the Agreement to increase the maximum compensation provided under the Agreement by \$16,358,514 to a total of \$159,009,127 and extend the term of the Agreement to December 31, 2023.

On November 28, 2023, the Board approved Amendment IX to the Agreement to increase the maximum compensation provided under the Agreement by \$16,358,514 to a total of \$175,367,641 and extend the term of the Agreement to June 30, 2024.

On June 18, 2024, the Board approved Amendment X to the Agreement to increase the maximum compensation provided under the Agreement by \$8,179,257 to a total of \$183,546,898 and extend the term of the Agreement to September 30, 2024.

On September 24, 2024, the Board approved Amendment XI to the Agreement to increase the maximum compensation provided under the Agreement by \$6,650,001 to a total of \$190,196,899 and extend the term of the Agreement to December 3, 2024.

Amendment XII

Approval of the recommended action will further extend the term of the Agreement by a potential four years and seven months and approve an increase in compensation of \$204,178,155 to a total compensation of \$394,375,054, to pay for the additional potential four year and seven-month term for Jail medical and behavioral health care services. The recommended amendment provides for an increase per year after the first seven months of the term of the base compensation by a percentage equal to five percent for years 2 and 3; for years 4 and 5, the recommended amendment provides for an increase at a minimum of three and a half percent (3.5%) or the National Consumer Price Index (CPI), whichever is greater, not to exceed five percent (5%).

The recommended amendment provides that moving forward, the County will pay for all Congregate Care costs for adult inmates who are cared for at off-site facilities. The recommended amendment provides that any new referrals to such off-site skilled nursing facilities shall be made by Contractor with the concurrence of County's Health Officer. CFMG is currently responsible for these costs under the Agreement. The Department estimates that the cost to the County to pay for these services for the remaining potential term of the Agreement, as extended, would be approximately \$2,190,000 per year, and \$10,037,500 for the term of the Amendment.

The recommended amendment also updates the Scope of Services to more accurately reflect current practices at the Jail and current legal requirements for providing medical and behavioral health care.

The recommended amendment updates the insurance requirements as follows:

1. Commercial General Liability has increased from One million dollars (\$1,000,000) per occurrence and an aggregate of Four Million dollars (\$4,000,000) to Three Million dollars (\$3,000,000) per occurrence and an aggregate of Six Million dollars (\$6,000,000).
2. Professional Liability has decreased from Five million dollars (\$5,000,000) per occurrence and an aggregate of Ten Million dollars (\$10,000,000) to Three Million dollars (\$3,000,000) per occurrence and an aggregate of Six Million dollars (\$6,000,000).

Risk Management identified significant risk exposures with the services performed by CFMG, and recommended additional insurance requirements. However, after much negotiation, CFMG stated they would not agree to making them a contractual obligation. FSO believes that the benefits of entering into the recommended amendment outweigh these risks, and is accepting this insurance as a prudent business decision.

The recommended amendment changes the liquidated damages provision from \$2,500 per day for each separate violation to \$15,000 per month for each metric under the liquidated damages provision with compliance that falls below 80%, \$7,500 per month each metric under the liquidated damages provision with compliance that falls between 80-90% and \$0 for anything above 90%. It also changes the second portion of the liquidated damages provision, for staffing level requirements. In the recommended amendment, when any of a list of specified staffing categories falls below 93% of the contracted hours, CFMG must pay a staffing reimbursement equal to the average fully loaded hourly rate times the number of hours below 93% of the contracted hours. In the event that staffing levels fall below 95% for 120 days or more in a six (6) month period, the minimum staffing threshold for liquidated damages shall automatically increase to 94%. This does not include high level positions, i.e., Director of Nursing, Medical Director, etc. If, at any time during the term of the Agreement, staffing levels fall below 95% for 120 days or more in a second six (6) month period, the minimum staffing threshold for liquidated damages shall increase to 95%. From that point forward for the remaining term of the Agreement, any staffing level below 95% shall be reimbursable to the County.

Should a high-level position be vacant for more than a 120-day period CFMG must pay a staffing reimbursement equal to the average fully loaded hourly rate times the number of hours of the contracted hours. The agreement currently provides that for each separate violation of any staffing level requirement CFMG must reimburse the County the fully loaded daily salary rate of any unfilled position per day of violation.

The recommended amendment modifies a portion of the indemnification provision to add that CFMG is not obligated to provide insurance coverage to the extent of willful or negligent acts or omissions by the County.

Wellpath is undergoing a financial restructuring to improve its financial position by selling its Recovery Solutions business and reorganizing Wellpath Correctional Healthcare to reduce their current debt. Wellpath has filed for Chapter 11 bankruptcy protection to facilitate these transactions. Wellpath's financial challenges stem from the COVID-19 pandemic, increased labor costs, and broader economic factors which include high inflation and rising interest rates. Despite these challenges, the company remains committed to providing quality patient care for their clients.

REFERENCE MATERIAL:

BAI #26, September 24, 2024
BAI #23, June 18, 2024
BAI #40 November 28, 2023
BAI #30 June 20, 2023
BAI #22 May 23, 2023
BAI #25 November 29, 2022
BAI #35 March 22, 2022
BAI #16 February 1, 2022
BAI #23 March 23, 2021
BAI #5, August 4, 2020
BAI #30.1, April 28, 2020
BAI #8.1, April 3, 2018

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Amendment XII with CFMG (Jail)

CAO ANALYST:

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