



## Legislation Text

---

**File #:** 2020-0462, **Version:** 1

---

**To:** Sonoma County Board of Supervisors

**Department or Agency Name(s):** General Services, Health Services

**Staff Name and Phone Number:** Caroline Judy-General Services, 565-8058; Barbie Robinson- Health Services, 565-7876

**Vote Requirement:** 4/5th

**Supervisory District(s):** First

**Title:**

Master Agreement for DHS Psychiatric Health Facility at 7440 Rancho Los Guilicos, Santa Rosa

**Recommended Action:**

- A) Delegate authority to Director, General Services Department to negotiate and execute a Master PHF Lease and Development Agreement, in form approved by County Counsel, with University Partners, LLC, and Crestwood Behavioral Health, Inc., for the leasing, design, construction, and maintenance-operations of a psychiatric health facility ("PHF") for the County at the former Valley of the Moon Children's Center at Los Guilicos and in substantial accord with the agreed Term Sheet included with this Board item.
- B) Make appropriate and necessary findings regarding competitive procurement for the leasing, design, construction, maintenance and operation of the PHF, and waiving further process.
- C) Determine that the proposed PHF Lease and Development Agreement and the PHF project are exempt from CEQA, including pursuant to CEQA categorical exemptions under Guidelines Section 15301 (existing facility; negligible expansion of use); Section 15303 (conversion of small structures and minor exterior modifications), and Section 15061(b)(3) (no possibility of significant effect), and authorize the recording of a Notice of Exemption for such.
- D) Delegate authority to Director, General Services Department to authorize change orders consistent with County Resolution 20-0092 and the California Public Contract Code.
- E) Delegate authority to Director, Health Services Department to negotiate and execute all instruments and take all actions needed for full implementation of the Treatment-Bed Services Agreement, in form approved by County Counsel.
- F) Adopt a budget resolution establishing a Capital Project for the PHF and transferring funding for the design and construction, and project management and making the necessary budget adjustments to the General Services Department FY 20-21 budget for maintenance of the PHF for the General Services Department.

(First District) (4/5<sup>th</sup> Vote Required)

**Executive Summary:**

**Purpose.** The Director of General Services and the Director of Department of Health Services (DHS), request Board consideration of the sub-agreements that collectively form a "Master Agreement" to deliver an urgently-needed inpatient psychiatric health facility ("PHF"), to be located at the former Valley of the Moon Children's Center (VOMCC) located at 7440 Los Guilicos Road, Santa Rosa and to provide for Crestwood

Behavioral Health, Inc., to operate the PHF and guarantee acute care psychiatric beds to County DHS. The four components of the Master Agreement include: the lease agreement, the development agreement, a maintenance agreement, and a 'treatment bed/services' agreement. The action before the Board provides delegated authority for these sub-agreements collectively.

The proposed Master Agreement will address the urgent need in the County for guaranteed psychiatric beds and services for acute mental health clients. Under the Master Agreement, the County would lease the subject facility to University Partners, LLC, as Tenant, which will arrange for Crestwood Behavioral Health, Inc., to use the property as a sixteen (16) bed PHF. After conducting necessary improvements on the Property, to be paid for by County, Crestwood would hire staff and operate the PHF. Upon determination of final construction costs after a specified period of due diligence, Department of Health Services (DHS) will provide all necessary funding for the design, entitlement, rehabilitation, construction and improvement of the building, subject to a maximum project cost to be contributed by the County (currently estimated to be of \$4,130,000), plus payment of County project management expenses estimated at \$495,600 for a total estimated County project cost of \$4,625,600.

Agreed upon terms and conditions of the Master Agreement are contained in the attached Term Sheet. Depending on continued due diligence and finalization of all deal points, the Master Agreement will be negotiated to incorporate the Term Sheet terms and conditions and other final provisions. The Treatment-Bed Services Agreement will be separately negotiated and executed at a later date in compliance with the term sheet.

Board approval of the Master Agreement will enable DHS to, among other things, meet its regulatory responsibilities and ensure quality, cost-effective acute mental health care in Sonoma County, in the most advantageous, expeditious, and cost-effective manner.

#### **Discussion:**

##### **Background: the County's Need for Acute Care Psychiatric Beds**

Under the state of California's Medicaid program known as Medi-Cal, counties are obligated to provide medically necessary psychiatric inpatient services to beneficiaries with serious and persistent mental illness. There are approximately 129,596 Sonoma County residents enrolled in Medi-Cal. In Fiscal Year 2019-2020, Sonoma County Behavioral Health served approximately 3,700 of those Medi-Cal beneficiaries under its Mental Health Plan ("MHP").

California has been experiencing a severe shortage of inpatient beds to serve individuals in need of short-term, acute psychiatric care that far exceeds the shortages faced by the rest of the nation. Between 1995 and 2016, California lost 30% of its acute psychiatric care bed capacity. Since the closing of the Norton facility in 2007 Sonoma County has had zero acute care beds dedicated to Sonoma County patients. While Aurora Behavioral Health Hospital opened a facility around 2012, it accepts patients from all northern California counties as well as the privately insured, which limits the availability of beds to Sonoma County. Furthermore, Aurora's inpatient services are not reimbursable under the Medi-Cal program for patients between 18 and 65.

Currently, patients in psychiatric crisis enter the system either through the emergency department of an acute care general hospital or the County's Crisis Stabilization Unit ("CSU"). Individuals who stabilize in those settings within 24 hours and can be safely discharged are linked to outpatient services and discharged. Individuals who

do not stabilize and require inpatient psychiatric treatment are transferred to inpatient psychiatric facilities as soon as a bed becomes available. The shortage of inpatient psychiatric hospital beds in Sonoma County and the lack of County-dedicated beds impacts the patients, the County and other community stakeholders in a number of ways. With the lack of available inpatient beds, patients remain in the hospital emergency room or the CSU until a bed becomes available. Not only does this deny hospital and CSU spaces for others in psychiatric crisis, these “overstays” come at a great cost to the local hospitals and the CSU. Approximately 40% of patients at the CSU end up needing to “overstay,” but Medi-Cal will not pay (reimburse) for CSU overstays. As a result, in Fiscal Year 2018-19 alone, the CSU generated \$12,273,684 in un-reimbursable services. Most importantly, the lack of available beds means patients with serious mental illness in crisis are delayed in getting treatment in the correct setting.

The lack of a dedicated PHF - and the number and duration of CSU overstays - is a concern raised by regulators and advocacy groups. The State of California Department of Health Care Services (“DHCS”), which regulates the County’s Mental Health Plan, has noted the issue as a possible violation of the County’s obligations under Medi-Cal and has required the County to address this concern. The County has been required to submit a Corrective Action Plan to DHCS and establishing a County-dedicated psychiatric health facility (“PHF”) is a component of that Plan. In addition, advocacy groups such as California Disability Rights have been monitoring the County’s situation and efforts to meet the psychiatric inpatient hospitalization requirements. These groups have raised the prospect of litigation over these issues.

Without a PHF that the County can rely on for access, the County currently cannot meet demand for psychiatric inpatient hospitalization. There simply are not enough beds in the area for the amount of persons needing acute care. DHS estimates that this shortage of acute inpatient beds impacts dozens of county residents every month. In addition, there are significant impacts on our law enforcement system where many individuals who are arrested could be better served in a PHF.

Opening a PHF within Sonoma County will close the gap in psychiatric crisis care continuum, improve client care, address negative impacts experienced by other local services and realize cost savings. DHS will have a resource, eligible for Medi-Cal payments, to which it can transfer individuals when crises exceed 24 hours. This will provide improved client care, increase the availability of CSU beds, reduce the impact of unreimbursed CSU episodes and significantly decrease the cost of acute hospitalizations.

### **Prior Efforts to Secure a PHF and operator**

County DHS has previously sought to establish a PHF in Sonoma County, but a PHF for County needs has not materialized. There are a limited number of providers/operators of PHFs in the Bay Area and Statewide. They include Crestwood, Telecare, and Exodus. Crestwood and Telecare are the largest and are located in the Bay Area. Exodus is located in Los Angeles. In 2009, Telecare and the County entered into a contract to establish and operate a PHF. Telecare did not deliver the facility. Given the limited number of provider/operators and the failed effort with Telecare, the County DHS has encouraged Crestwood to develop a PHF. For more than three years, Crestwood has been actively exploring suitable locations in Sonoma County for a potential 16-bed PHF. Due to challenges presented by site ownership and other factors, Crestwood could not consummate a deal on either of the two properties they have pursued to date.

### **Los Guilicos PHF**

In December 2019, the County initiated discussions with Crestwood regarding the feasibility of the County-

owned, former Valley of the Moon Children's Center on the Los Guilicos campus for use as a PHF. The former Valley of the Moon Children's Center has been vacant since 2009 and represents an underutilized asset in the County's property portfolio. Crestwood's facilities team and general contractor conducted due diligence on the property and delivered a not to exceed bid estimate to the County for the required renovations and project costs to convert the facility to a PHF. In late March/early April, Crestwood hired a contractor to perform a multi-day in depth assessment of the mechanical, electrical and plumbing systems of the building and provided the assessment to the County for review. Based on their due diligence, Crestwood has been able to provide a total project cost estimate. Due to questions regarding building code, site conditions, and other potential development requirements, the final total project cost estimate is not yet known.

DHS desires to rehabilitate the former VOMCC as soon as practicable to provide acute mental health services to members of the public. The VOMCC was built in 1976 and operated by the County as a children's shelter until the new shelter was built on adjacent grounds at Los Guilicos in 2006. The leased premises would include the VOMCC building of approximately 9,394 sq. ft. and a portion of surrounding grounds, together with associated parking lots and access drive way. Initial review of the Building indicates that it is in fair condition with functioning HVAC systems, average roof condition, and kitchen facilities. Most systems will require repair and extensive updating to comply with current codes and standards for Lessee's proposed use. Multiple building code changes have occurred since the building was originally designed and therefore tenant improvements are anticipated that will require significant upgrades to current codes and accessibility requirements. Lessee shall conduct a major rehabilitation of the building, but no increase to the current footprint of the building is expected. The trailer in the parking lot across from the building requires removal at County's cost.

### **Community Engagement**

On April 20, 2020 DHS and Crestwood held a virtual meeting with local leadership from the Los Guilicos area. DHS and Crestwood provided a presentation and question and answer session for the participants that included representatives from local businesses and the Oakmont Village Association (OVA). DHS and Crestwood took recommendations from these participants regarding next steps in Community Outreach.

On May 5, 2020, DHS and Crestwood joined the OVA Town Hall Meeting, a virtual event. Again, DHS provided an informational presentation regarding the proposed Sonoma County PHF and answered questions from Oakmont Village residents.

During these two events, participants appeared satisfied with answers to their concerns about the establishment of a PHF at the Los Guilicos property. The self-contained, mental health services provided by the PHF, along with DHS commitment to supporting the transition of clients from the facility to homes, did not raise concerns about the impact of the facility on the local community.

### **Proposed Master PHF Agreement**

Under a proposed Master PHF Lease and Development Agreement (Master Agreement), the County and Crestwood would agree to:

1. Lease terms and conditions, for site control and other real property terms and conditions. The material terms of the proposed lease include: lease term is 20 years, with a facility charge of \$19,248/month payable by Crestwood, to be increased annually at the rate of 2.25%. County to retain reversionary

- interest in improved building at end of lease term;
2. Project development terms and conditions to obligate construction of the needed improvements and upgrades to convert the facility to a PHF. All design and construction would be undertaken by Crestwood and its contractors, and the County would contribute up to a maximum amount agreed upon amount plus GSD FDM Project management expenses. A benefit of using the design/build delivery methodology is that the risk of all cost overruns, design or construction re-work requiring a change order will be the responsibility of Crestwood;
  3. Operations terms and conditions, for respective maintenance responsibility for the facility once improved; County will maintain major systems and structural components and charge Crestwood consistent with mutually agreed to schedule/cost allocation; and
  4. The terms of a separate Services/ Bed Agreement, to be entered into by DHS and Crestwood for the provision of no less than 14 of the 16 treatment beds dedicated for use by the County and corresponding services from Crestwood, at the rate of \$1,000/per bed/per day regardless of whether all beds are occupied.

Negotiated terms and conditions of the Master Agreement are outlined in the attached non-binding Term Sheet agreed upon with Crestwood. Upon resolution of open questions and deal points (including completion of all due diligence activities and subsequent construction cost estimates), a final Master Agreement will be negotiated and executed by the County and Crestwood. If the parties conclude that the project is not feasible within the existing budget then the agreement will terminate.

### **Lease**

The material terms of the lease are set forth in the Term Sheet attached hereto. Crestwood shall provide to County all plans describing all improvements needed to construct the PHF.

Crestwood is responsible for permit application, associated payments, and review for all permits, entitlements, and other regulatory requirements as required by all appropriate approval and entitling authority(ies), expected to be the Permit Sonoma, and the City of Santa Rosa for water and sewer connections, and fire code concerns. Crestwood will hire the design/build contractors directly for completion of the facility conversion and delivery of the PHF project. Crestwood will comply with prevailing wage, performance and labor and materials bonding, and claims procedures requirements.

### **Project Sources of Funding and Costs**

The total design, permitting and construction costs for building the PHF at the Premises is estimated to be \$4,625,600. Under the proposed Agreement, this number would be evaluated at several times and the County reserves the unilateral right to cancel the Agreement should the estimated costs increase. The following sources of funding are already secured for County to pay the Project Costs:

- \$625,000 in hospital funding from Kaiser, Sutter, and St. Joseph Health;
- \$500,000 in DHS fund balance transferred from County General Fund in FY18-19;
- \$3,005,000 from DHS Intergovernmental Transfer Fund Balance.
- The funds will be transferred into a Capital Project account along with funds (based upon 12% of the final total project cost) to ensure cost recovery to GSD-FDM for standard project management efforts

sufficient Project Management funds based upon 12% of the final total project cost.

County's obligation to reimburse Crestwood for all improvements and costs to convert the PHF shall not exceed the final agreed total project costs amount, with estimated completion no later than March 31, 2021.

### **CEQA**

The proposed PHF will reside in the existing VOMCC structure, with no change in building footprint and no major alterations to the facility exterior or parking areas. The 16-bed facility will remain small-scale in nature, with a small number of residents and corresponding numbers of staff. Onsite kitchen facilities will serve operations, and other services will be primarily onsite. Any additional activity or vehicle usage added by the PHF will be negligible compared to the activities and daily vehicular uses at Los Guilicos, due in part to the current Children's Center, alternative education, and other existing, regular operations at the campus.

Accordingly, the PHF project is exempt under the California Environmental Quality Act (CEQA) pursuant to various exemptions, including CEQA Guidelines Section 15301 (operation, repair, leasing, minor alteration of existing facilities involving negligible or no expansion of use) and Section 15303 (construction and conversion of existing small structures from one use to another with only minor exterior modifications), and will confirm same with Permit Sonoma once plans are nearer completion. A Notice of Exemption for the PHF project will be filed with the County Clerk following the Board's approval of the actions requested by this item.

### **Los Guilicos Campus Planning**

The County's Real Estate Master Plan included recommendations for the Los Guilicos campus noting that significant underutilized acreage existed with potential development opportunity. Agriculture, lodging and educational or youth related functions were described as promising assuming that demand would grow over time. As a portfolio best practice, the Los Guilicos campus should have a comprehensive master plan prior to the consideration of any new long term use on the property. However, given the limited Real Estate division resources resulting from COVID response, and the current focus on the Chanate property disposition, and the County Government Center, among many other assignments, it is unlikely that a comprehensive plan for Los Guilicos will be developed within the next several years without an increase in resources. The current opportunity to address the County's significant mental health need and occupy an otherwise vacant building is therefore worthy of Board consideration at this time prior to a comprehensive real estate master plan study.

### **Findings Regarding the Project and Competitive Procurement**

As further discussed above, in light of the financial costs due to lack of a reimbursable facility, the risks due to care concerns over use of the CSU and other settings, and now pressures to create psychiatric crisis beds that remove individuals from hospital emergency departments that must be fully available to serve patients who are COVID-19 positive and require medical care, DHS has determined that the County urgently needs a dedicated, 16-bed PHF. A facility with 16 beds or fewer qualifies for federal reimbursement, which would reduce the County's cost for these services by at least 50%.

There are a limited number of providers/operators of PHFs in California, and even fewer with proven experience in facility development and construction. Previous County efforts to work with some of those specialized operators have not been successful, through circumstances beyond the County's control. To overcome these challenges and find new solutions, the County has partnered with Crestwood to develop a

plan for a County-dedicated PHF in Sonoma County. For more than three years, Crestwood has been actively exploring and pursuing multiple, suitable locations for a 16-bed PHF. But due to issues with each site and the owners of the various properties, Crestwood has not been able to consummate a deal.

To overcome these challenges, the County and Crestwood identified the County-owned, former Valley of the Moon Children's Center on the Los Guilicos campus for use as a PHF. As part of a comprehensive proposal to include long-term commitment of beds to the County at agreed, capped rates, Crestwood has estimated a project cost and offered guarantees to limit County's overall costs for converting the facility to a PHF. The proposal would include Crestwood contributing approximately \$700,000 in start-up costs (hiring, orientation, training, and FF&E). Based on due diligence with its contractor, Crestwood estimates eight to ten months to complete and open the PHF. Under current County workloads and standard processes including competitive public bidding for design and build, Crestwood's estimated delivery time is at least six months faster than what the County could deliver. By using the expedited project delivery process and not competitively bidding the PHF, the Agreement will more quickly deliver urgently needed psychiatric care and produce savings to the County by, among other things, cutting short the monthly CSU non-reimbursement losses.

The Agreement would result in other cost savings and avoided risks. Under the Agreement the County would pay a daily bed rate for inpatient services of \$1,000, which (after Medi-Cal reimbursement) will be \$850 lower than County costs for Aurora hospital. Also, upon finalization of the agreed total project costs at the time development permits are initially issued, Crestwood would incur all subsequent risk for any cost overruns due to differing site conditions and other circumstances. Generally, design-build contractors do not provide such protections and County normally bears the risk of such cost overruns. This guarantee from Crestwood is made possible by the comprehensiveness and long-term business commitment reflected in the proposed Agreement: Crestwood is willing to entertain certain development risks and contribute front-end costs given, among other things, the commitment of the County's property at favorable terms and due to the County's long-term guarantee to use and pay for the majority of beds at the PHF.

Crestwood has specialized expertise and significant experience in development and operation of inpatient psychiatric facilities, including owning and operating five PHFs among their 34 mental health facilities in California. Crestwood has a dedicated design and construction management team responsible for facility conversions and improvements. The proposed PHF would consist of an "Institutional-3" (I-3) occupancy under applicable codes, which requires specialized knowledge in design and construction. Twenty of Crestwood's facilities are I-3 occupancies. In addition to state licensing, Crestwood's facilities are accredited by the Commission on Accreditation of Rehabilitation Facilities, which requires a higher standard of care. Crestwood provides patients with innovative recovery programs through a wide-range of wellness tools, peer, staff and natural supports, including evidence-based recovery practices.

### **Findings:**

Where in the public interest a competitive proposal would not produce any advantage to the County or where it would be unavailing, undesirable, or impractical, competitive solicitation and bidding requirements are not applicable and may be waived. (*Graydon v. Pasadena*, 104 Cal.App.3d 631.) In support of the proposed Agreement, the Board is asked to make the following findings:

1. All of the above statements are true and correct;
2. In accordance with *Graydon v. Pasadena* [104 Cal.App.3d 631], competitive bidding would not produce

an advantage to the County, but would instead among other things (1) delay delivery of psychiatric beds urgently needed to meet community health needs; (2) increase the cost of the PHF for such beds; (3) prolong excessive financial losses due to the current situation of non-reimbursable psychiatric care options; and (4) cause the County to be exposed to risks due to continuing reliance on the Crisis Stabilization Center and the general lack of alternatives for acute psychiatric services. Moreover, whereas leasing property through competitive process typically obtains highest value, the unique circumstances of the subject property are such that its best use is as an integral part of a comprehensive solution to secure the PHF needed by the County. To deliver a PHF on the needed time frame and to otherwise meet County needs-including a guarantee of long-term services, dedicated beds, and controlled bed rates-all project components need to be accounted for and integrated, including site control, design, construction, financing, and operations with an experienced developer/operator of acute psychiatric facilities. Given facility needs and considerations (layouts, treatment settings, programmatic equipment and spaces, etc.) specific to each PHF entity's operational model, a County-led design and build is not likely to produce a facility that would that could be immediately and efficiently usable by an eventual PHF operator. Enabling the eventual PHF operator to control key design and construction details and to deliver the facility they ultimately will run is the most efficient way to ensure an immediately-operational PHF. The County urgently needs a 16-bed PHF not only to meet the underlying community psychiatric care needs, but also to alleviate pressures on hospital resources due to the current Covid-19 pandemic. The proposed Agreement and foregoing standard competitive bidding processes represent the best option and would be most advantageous for achieving a comprehensive, timely, cost-effective, County-dedicated, and County-controlled PHF solution that is in the County's and public best interests; and

3. Competitive procurement of a PHF lessee, building design and construction contractor, and facility operator would be unavailing, undesirable and impractical and a waiver of general competitive procurement and leasing requirements and policies is appropriate in this case.

#### Prior Board Actions:

None

#### FISCAL SUMMARY

Expenditures	FY 19-20 Adopted	FY20-21 Projected	FY 21-22 Projected
Budgeted Expenses			
Additional Appropriation Requested	\$4,625,600	\$24,442	
<b>Total Expenditures</b>	<b>\$4,625,600</b>	<b>\$24,442</b>	
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			



Fees/Other	\$625,000	\$24,442	
Use of Fund Balance	\$4,000,600		
Contingencies			
<b>Total Sources</b>	<b>\$4,625,600</b>	<b>\$24,442</b>	

**Narrative Explanation of Fiscal Impacts:**

Establish FY 19-20 funding for a capital improvement project for a psychiatric health facility at Los Guilicos in the amount of \$4,625,600, including funding from Kaiser, Sutter and St. Joseph Health \$625,000; \$500,000 in DHS fund balance transferred from County General Fund in FY18-19; and \$3,005,000 from DHS Intergovernmental Transfer Fund Balance, and 12% of the total project cost for General Services project oversight \$495,600. FY 20-21 includes \$24,442 additional appropriations for General Services estimated annual maintenance costs to be reimbursed by Crestwood.

<b>Staffing Impacts:</b>			
<b>Position Title (Payroll Classification)</b>	<b>Monthly Salary Range (A-I Step)</b>	<b>Additions (Number)</b>	<b>Deletions (Number)</b>

**Narrative Explanation of Staffing Impacts (If Required):**

None

**Attachments:**

Attachment 1: Non-binding Term Sheet between the County of Sonoma and University Partners LLC dated May 13, 2020

Attachment 2: Budget Resolution

**Related Items "On File" with the Clerk of the Board:**

None