



**Contra
Costa
County**

To: Board of Supervisors
From: David O. Livingston, Sheriff-Coroner
Date: August 18, 2015

Subject: AUTHORIZE THE SHERIFF-CORONER TO SUBMIT AN APPLICATION FOR SB 863 JAIL
CONSTRUCTION GRANT FUNDS

RECOMMENDATION(S):

1. RECEIVE a presentation and report from the Sheriff's Office on the status of the proposed West Contra Costa County Reentry, Treatment and Housing ("WRTH") facility project and the Senate Bill 863 Request for Proposal ("RFP") process.
2. ADOPT Resolution No. 2015/301, approving the County's proposal for SB 863 financing for the WRTH facility project (the "Proposal"), authorizing the Sheriff-Coroner to sign and submit the Proposal to the Board of State and Community Corrections, authorizing an adequate amount of available matching funds to satisfy the County's contribution to the WRTH facility project, approving the forms of the project documents deemed necessary by the state, and authorizing the appropriate signatories to execute those documents at the appropriate times.
3. APPROVE and AUTHORIZE the Sheriff-Coroner and County Administrator to make non-substantive edits to the Proposal and its attachments prior to submission to the Board of State and Community Corrections ("BSCC"), and to correct any technical deficiencies requested by the BSCC following submission.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **08/18/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: Candace Andersen, District II
Supervisor
Mary N. Piepho, District III
Supervisor
Karen Mitchoff, District IV
Supervisor

NO: John Gioia, District I
Supervisor

ABSENT: Federal D. Glover, District V
Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: August 18, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: Capt. Thomas Chalk, (510)
262-4225

cc:

FISCAL IMPACT:

The recommended Application (Attachment A) reflects an estimated project cost of \$90,625,000. Of this, \$195,000 are travel and other minor costs that are ineligible for state financing, leaving a balance of \$90,431,000 which represents the eligible project cost for the Application. Of that, \$80,000,000 would be paid by the state, \$7,261,000 by County Cash Match, and \$3,170,000 by County In-Kind Match. An "out-of-pocket" cash amount of \$6,911,000 must be funded by the County. This amount is determined as follows:

SB 863 Project Cost	\$90,431,000
Ineligible Project Costs (travel, printing, advertising)	<u>\$195,000</u>
Total Project Cost Including Ineligibles	\$90,625,000
Costs Already Paid or Budgeted by County	(\$3,715,000)
Costs to be Paid by State	<u>(\$80,000,000)</u>
Remaining County Cost NOT Including Future Existing Staff Cost	\$6,911,000

Breakdowns of these costs are summarized in Attachment G. Funds in the amount of \$6,911,000 are currently available as follows: Up to \$4.5 million from Sheriff's Plant Acquisition account (0111) and up to \$2.5 million from the 2011 Local Revenue Fund - Community Corrections account (AB 109) (0295/2982).

Beginning in FY 20/21, the estimated net increase to annual operating costs following the construction of the proposed facility is estimated to be \$4 million. This reflects a preliminary staffing model of 6 new Deputy Sheriff-40 Hour, 6 new Sheriff's Aide positions, transferring 31 Deputy Sheriff-40 Hour from the Martinez Detention Facility ("MDF") to the new WRTH, and a reduction in utility and maintenance costs estimated to be \$500,000.

The additional staff is needed to supervise inmate reentry programs. The transfer of 416 inmates from MDF to the WRTH and the closing of two housing units at MDF allow this transfer of staff. The reduced utility costs is estimated based on a projected energy savings of 30 to 40% with a newer facility and with MDF partially closed, and with a corresponding reduction in maintenance costs. Staff's proposed source of revenue to cover the increased cost is as follows:

Inmate Welfare Fund	\$56,000
Existing General Fund budget for Sheriff's Office	\$555,802
Sheriff's Office current AB 109 budgeted funds	\$1,329,780
Additional County General Funds	\$1,992,468
Annual net savings in facilities operating costs for MDF and WRTH	appx. \$500,000
TOTAL REVENUE	\$4,434,050

BACKGROUND:

The recommended actions provide for the County to take the steps necessary to seek funding in the amount of \$80 million from the Board of State and Community Corrections ("BSCC"). The funds will be used to build a proposed new facility at the West County Detention Facility ("WCDF") campus that adds 160 high security cells, and 48 high security, special use cells for mentally ill offenders. In addition to providing appropriate housing to address the unsafe, over-crowded housing at MDF, the WRTH will also establish a 19,274 square foot Reentry Service Center ("RSC") available to every inmate not only at the WRTH, but also the entire WCDF campus, and will consist of the following:

- A Rehabilitation and Reentry Services Center (7,690 sf),

- A Workforce Readiness Center (3,062 sf),
- A Child/Parent Contact Visitation Center (1,904 sf),
- A Medical and Psychiatric Services Clinic (2,045 sf), and
- A Non-Contact Visiting Center (650 sf).

The entire building is a two-level facility, each with mezzanines, with a total of 126,425 square feet.

SCOPE AND NEEDS ASSESSMENT:

The scope of the proposed WORTH facility was established based on a Needs Assessment that was recently completed this year by an independent consultant. The updated needs assessment must be submitted with the Sheriff's Application to the BSCC. Based on the new needs assessment, staff has determined that the optimum new proposed facility would add about 208 high-security cells, and would rely largely on support services from existing facilities, including intake and release, inpatient medical services, food services, laundry and warehouse storage. In addition to new beds, the new proposed facility would include space for inmate reentry programs and mental health treatment, as well as visitation and outpatient medical health care dedicated to the new housing units.

The SB 863 legislation provides for counties the size of Contra Costa County to receive up to \$80 million from the State with a requirement to contribute at least 10% of the total project cost, and meet other conditions of the award. It also requires the BSCC to distribute funds to counties competitively, giving preference to counties “ *seeking to replace compacted, outdated, or unsafe housing capacity....that provide adequate space for the provision of treatment and rehabilitation services, including mental health.* ” It further requires that additional preference be given to counties that are most prepared to begin, and have not received state financing through prior state programs (Assembly Bill 900 and Senate Bill 1022). Detailed scoring criteria is provided in the state's RFP.

The Contra Costa County Needs Assessment provides compelling evidence of the need for new construction to address a safety concern borne out of the outdated and insufficiently secure housing capacity for violent offenders. The average number of high security inmates in the County system is about 650, but just last month there were 719. The County's jail facilities provide only 53 high-security beds. The Needs Assessment also identifies a requirement for additional program space to better service and treat this class of inmate, and also to address the needs resulting from the AB 109 realignment of inmates from State prisons, which detain inmates for a much longer period of time than county jails have traditionally done prior to the realignment. The proposed new facility will provide these needs, resulting in better reintegration of inmates into society and a corresponding reduction in recidivism. The facility needs and the benefits of the proposed WORTH are documented in the recommended Application.

FUNDING PREFERENCE CRITERIA:

Approval of Resolution No. 2015/301 provides for the County to seek the maximum score for each scoring criteria. Criteria demonstrating readiness to proceed includes the completion of CEQA documentation. Completion of CEQA requires an expiration of a 30-day statute of limitations on the Board's approval of a Notice of Determination, which expires August 28, 2015. If no challenge is filed before then, the County receives the maximum score for CEQA completion. If a challenge is filed, the County loses 12 points out of 118 total. Below is additional information regarding the three criteria that is recommended for inclusion in the County's Application:

Assurance of Matching Funds: This is mandatory for any county seeking funding under SB 863. Recommended Action (2) results in identifying, as required by the BSCC, the County's entire, minimum match requirement of 10% of the project cost. Staff estimates the County's match of eligible project costs to be \$10.43 million, including the value of the land that the County receives credit for toward that match and which was recently appraised at a value of \$680,000. The Budget Summary (Attachment G) provides the budget details to be submitted with the Application. In adopting the Resolution of Recommendation (2), the Board resolves to make available an adequate amount of matching funds to satisfy the County's contribution to the project, to be a minimum of the 10% cash match equaling \$10,431,000, but also to cover ineligible and other required over-match funding that may occur, and to be derived exclusively from lawfully available funds of the County, compatible with the States' lease revenue bond financing. Staff currently estimates such funding requirement will be \$10.6 million.

Assurance of Adherence to State Agreements: This is the most significant of all County requirements. The State financing is predicated on the ability of the State Public Works Board (SPWB) to issue bond financing. This lease-revenue financing plan is ultimately implemented through eight related agreements. Resolution No. 2015/301 contains specific language required by the RFP, part of which essentially requires the Board to approve the form of five agreements, and to provide authorization for the County to eventually execute them in substantially the form in which they exist. The most substantial of the agreements is the form of the Project Delivery and Construction Agreement (the "PDCA", found in Attachment B), which defines the scope, cost and timeline of the proposed facility. That agreement contains three Exhibits providing the forms of a Ground Lease (Attachment B.1), a Right of Entry (Attachment B.2), a Facility Sublease (Attachment B.3), and a Facility Lease (Attachment B.4). The Ground Lease and Facility Sublease will provide security for the bonds that may be issued by the SPWB. The Right of Entry relates to the Ground Lease to provide state access to the construction site.

The sixth agreement is the BSCC Jail Construction Agreement (the "JCA", provided as Attachment C). Article 11 of the JCA form incorporates by reference the General Terms and Conditions published by the State Department of General Services as GTC-610 (Attachment D), which itself incorporates by reference the Contractor Certification Clauses published by the State Department of General Services as CCC-307 (Attachment E). The Agreements were developed for a predecessor jail funding program known as AB 900, and still reference that program; however the state has stipulated that the same form agreements will be used for the SB 1022 program. A summary of the seven related Agreements is provided in Attachment F for convenience.

If the County is awarded and meets the conditions of the SB 863 financing, the County and State would execute the agreements identified above, which will require further action by the Board of Supervisors. Only after that future action will the County be committed to constructing and staffing the facility. Note that the PDCA does, however, make provisions for termination and contingency events, which allow for the County and the State to exit that agreement, including:

- Prior to the County proceeding to bid, the State declines to issue bonds upon the State's good-faith determination that such financing is not feasible or appropriate; or
- The State and the County agree to terminate the PDCA if the County determines that it cannot proceed with the expansion after initial construction bids are received, but before any construction contract is awarded.

REQUIREMENTS OF BOARD RESOLUTION:

The State has required that counties submitting responses to the RFP adopt a resolution that includes certain assurances and attestations outlined in Section 6 of the Application Form. These are listed below:

- Name project officers
- Authorize a County authority to sign and submit the Application, including an Applicant's Agreement
- Approve the forms of the agreements to be later executed
- Assure the County will adhere to the terms of those agreements
- Assure that the County authorizes adequate matching funds using legal sources
- Safely staff and operate the facility within 90 days of completion
- Assure site control through fee simple ownership of the site, and no changing of terms while secured
- Attestation to \$680,000 as the current fair market land value of the new facility

Staff finds that each of these is achievable and reasonable, and would recommend such assurances be granted, as reflected in the attached Resolution No. 2015/301.

MILESTONES AND SOURCE OF FUNDS:

The RFP requires the County to meet specific milestones within certain timeframes to maintain compliance with the conditions of the award. After any Notice of Conditional Award (the "NCA") is granted by the State, the first deadline is the submittal of "Site Assurances" that the proposed facility site is owned by the County through fee simple land title, which must be provided within 90 days of the NCA. The County's real property due diligence has already been completed and is anticipated to be submitted with the Application. The remaining projected milestones for meeting the conditions of an award are based on an anticipated NCA date of November 12, 2015 and are shown in Attachment H.

The Fiscal Impact section above preliminarily identifies the funding sources to be used for the proposed project. Once the State executes the Board's approved agreements identified above, the County is authorized to begin spending funds for costs that are reimbursable by the State. However, the State will not reimburse for any eligible cost until a construction contract has been awarded, which is currently anticipated to occur in June of 2018. The State pledges to pay invoices within 60 days of submittal and will accept monthly invoicing. The State withholds 5% of the \$80 million until completion of an audit that affirms the completed facility has been made operational within 90 days of construction completion. This is scheduled to occur in March of 2020.

An accompanying chart (Attachment I) demonstrates the resultant cash flow requirements. While the total County outlay is estimated at \$10.6 million, it is estimated there will be a peak, temporary debt load of about \$13 million for approximately 8 months until all reimbursements have been made. The total cost shown in the chart excludes the \$3.71 million in costs already paid, or to be included in the County's future budget. As shown from the previously referenced table, the estimated total cost is \$90.63 million.

CONSEQUENCE OF NEGATIVE ACTION:

Negative action would result in the Sheriff's Office not being authorized to submit the Application or submitting a non-competitive Application should certain actions related to grant preference criteria not be adopted.

CHILDREN'S IMPACT STATEMENT:

No impact.

CLERK'S ADDENDUM

Speakers: Maria Alegria on behalf of Assemblymember Tony Thurmond (letter attached); Philip Kader, Chief Probation Officer; Terrence Cheung, Chief of Staff or Richmond Mayor Tom Butt; Judy Hermann, Ginger Edwards, S4R, Ujima; Joice Dementshuk, resident of San Pablo; James Mendez, resident of Hercules; Shawn Welch, CCC Deputy Sheriffs Association; Suzanne Llewellyn, resident of Walnut Creek; Marianne Callahan, resident of Concord; Antonio Medrano, Council Latino; Gene Glaze, Support 4 Recovery; Rochelle Pardue-Okimoto, CNA; Bob Lilly, International Brotherhood of Electrical Workers (IBEW) (handout attached); Anne Daniele, resident of Martinez; Diane Wear, resident of Richmond; Greg Feere, Contra Costa Building Trades Council; Gwen Watson, Social Justice Alliance; Peggy Black, resident of Walnut Creek; Joseph Partansky, Human Rights Advocate (handout attached); Lee Lawrence, Contra Costa Interfaith Supporting Community Organization (CCISCO); Michael Baldwin, CCISCO, CCCRJC; Michelle Jackson, CCISCO, Katherine Wade, CCISCO, Safe Return Home; Marilyn Langlois, resident of Richmond; ; Sung Ae Choi, resident of Richmond; Angie Junck, Immigrant Legal Resource Center; Lucy Riley, registered nurse; Teresa Pasquini, resident of El Sobrante; Douglas Dunn, resident of Antioch (handout attached); Reverend Brian K. Woodson, Sr., Faith Alliance For a Moral Economy; Elizabeth Llewellyn, CNA; Marie Walcek, CNA; Chance Grable, East Bay Alliance for a Sustainable Economy (EBASE); Jake Friedler, Faith Alliance for a Moral Economy; Katherine Cabanas; Willie Mims, East County NAACP, Pittsburg BPA; Margaret Ewing, CNA; Marcos Banales, resident of Richmond; Edith Pastrano, resident of Richmond; Tamisha Walker, Safe Return Project; Melvin Willis, Alliance of Californians for Community Empowerment (ACCE); David Sharples, resident of Richmond; Mieke Van Hout, CCISCO; Michael Parker, RPA; Nancy Kelly, Chair, Social Justice Council Unitarian Universalist Church, Kensington; Margaret Ewing, CNA; Vera Gomez, resident of Brentwood; Reverend Ramiro Flores, Pastor of St. Marks Catholic church; CCISCO; Raquel Perez, resident of Richmond; Reverend Will McGarvey, Social Justice Alliance of the KCCC; Claudia Jimenez, resident of Richmond; Gil Weisman, M.D., CCISCO; Donnell Jones, CCISCO; Maria E. Rivera; Phil Arnold, resident of Concord; Felix Golden, His Presence Church; Raquel Antolin, resident of Richmond; Juan Rostez, resident of Antioch; Jovana Fajardo, resident of Concord; Yuritzy Gomez, CCISCO; Texanita Bluitt, NAACP, BWOPA; Mister Phillips; Norie Clarke, Social Justice Council

Unitarian Universalist Church, Kensington; Rena Meyer-Dahlkamp (comments attached); LeSaunda Tate, resident of Richmond. The following people did not speak but left written comments for the Board's consideration (attached): Arlene Grimes, resident of Martinez; Tiffany Poudo, California Nurse's Association (CNA); Catherine Cabanas, CNA; Magdalena Meyers- Delkamp; Rena Meyers - Dahlkamp; Lauren Rettagliata, Chair, CCC Mental Health Commission. Chair Gioia expressed deep concerns regarding the availability of the local matching funds designated in the resolution and the ongoing funding should the project go forward. He said he believes the cost is higher than what is estimated and will certainly rise over time, especially with salary bargaining with the Sheriff's deputies staffing the facility. He is concerned that where the money will come from is not defined. He said he is not comfortable being unable to guarantee that the dollars for high-level program services will be there. He further felt that the citizens would prefer more beat officers in the community than a new facility. For these reasons he is unable to support the project. Resolution 2015/301 contains a paragraph in regard to appropriating a local match in funds, which requires a 4/5 vote. It being apparent this threshold cannot be met, staff provided a Revised Resolution 2015/301 without that stipulation. Supervisor Mitchoff reminded the Board and public that not having that clause meant a loss of 12 points in the scoring total for Contra Costa's application, placing us at a disadvantage in competing for the grant. Having heard from the public and discussing the matter, the Board: RECEIVED a presentation and report from the Sheriff's Office on the status of the proposed West Contra Costa County Reentry, Treatment and Housing ("WRTH") facility project and the Senate Bill 863 Request for Proposal ("RFP") process;

ADOPTED the Revised Resolution No. 2015/301, approving the County's proposal for SB 863 financing for the WRTH facility project (the "Proposal"), authorizing the Sheriff-Coroner to sign and submit the Proposal to the Board of State and Community Corrections, approving the forms of the project documents deemed necessary by the state, and authorizing the appropriate signatories to execute those documents at the appropriate times; APPROVED and AUTHORIZED the Sheriff-Coroner and County Administrator to make non-substantive edits to the Proposal and its attachments prior to submission to the Board of State and Community Corrections ("BSCC"), and to correct any technical deficiencies requested by the BSCC following submission.

ATTACHMENTS

Resolution No. 2015/301

Attachment A - SB 863 Application

Attachment B - Form of Project Delivery and Construction Agreement

Attachment B.1 - Form of Ground Lease

Attachment B.2 - Form of Right of Entry

Attachment B.3 - Form of Facility Sublease
Attachment B.4 - Facility Lease
Attachment C - Form of BSCC Jail Construction Agreement
Attachment D - DGS Terms and Conditions
Attachment E - DGS Contractor Certification Clauses
Attachment F - Summary Provisions of SB 863 Agreements
Attachment G - Budget Summary Table
Attachment H - Project Milestones
Attachment I - Cash Flow Requirements
SB 863 Facility - Detailed Operating Expenditures
DRAFT Functional Program Design
DRAFT Facility Program Design
DRAFT Jail Needs Assessment
August 3, 2015 - Letter from City of Richmond