



**Contra  
Costa  
County**

To: Board of Supervisors  
From: David O. Livingston, Sheriff-Coroner  
Date: February 7, 2017

Subject: AUTHORIZE THE SHERIFF-CORONER TO SUBMIT AN APPLICATION FOR SB 844 JAIL  
CONSTRUCTION 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 844 Request for Proposal ("RFP") process.
2. ADOPT Resolution No. 2017/44, approving the County's proposal for SB 844 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: **02/07/2017** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: Candace Andersen, District II Supervisor  
Diane Burgis, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

NO: John Gioia, District I  
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: February 7, 2017

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

Contact: Capt. Thomas Chalk,  
(925) 313-2692

By: June McHuen, Deputy

cc:

## FISCAL IMPACT:

### **Physical Plant:**

- **\$95.2 million** - Total Project Cost
  - **\$70.0 million** - SB 844 Jail Funding Program
  - **\$22.0 million** - Cash Match
    - \$15.0 million General Fund Reserve (Unassigned)
    - \$4.5 million Sheriff's Plant Acquisition account (0111) (existing General Fund appropriation)
    - \$2.5 million 2011 Local Revenue Fund (AB 109)
  - **\$3.2 million** - In-Kind Match (Land Value, project oversight, transition planning, etc.)

### **Future Operating Costs (in 2017 dollars) (\$5,058,738):**

- Detention Staffing (**\$2,152,104**)
- Rehabilitation and Reentry Services (Services to be provided by Community Based Organization via Request for Proposals) (**\$1,907,034**)
- Adult Education and Vocational Services (CCC Office of Education) (**\$241,600**)
- Psychiatric Services – CCC Detention Health (**\$750,000**)

## BACKGROUND:

The recommended actions provide for the County to take the steps necessary to seek funding in the amount of \$70 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 (416 replacement beds total. These beds will replace 420 existing beds at MDF, resulting in a net reduction of 4 beds to the County's rated capacity. In addition to providing appropriate housing to address the unsafe, over-crowded housing at MDF, the WRTH will also establish a 20,127 square foot Reentry Service Center ("RSC") available to every inmate not only at the WRTH, but also the entire WCDF campus, and include the following (not a complete listing):

- A Rehabilitation and Reentry Services Center (7,845 sf)
- A Workforce Readiness Center (3,570 sf),
- A Child/Parent Contact Visitation Center (2,125 sf),
- A Medical and Psychiatric Services Clinic (2,352 sf), and
- A Non-Contact Visiting Center (750 sf).

The entire building is a two-level facility, each with mezzanines, with a total of 118,907 square feet.

## **SCOPE AND NEEDS ASSESSMENT:**

The scope of the proposed WRTH facility was established based on a Needs Assessment that was completed in August 2015 by an independent consultant. 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 844 legislation provides for counties the size of Contra Costa County to receive up to \$70 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, Senate Bill 1022, and Senate Bill 863). 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 660, 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 WRTH are documented in the recommended Application (Attachment A).

## **FUNDING PREFERENCE CRITERIA:**

Approval of Resolution No. 2017/44 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 (NOD). The NOD related to this Project has been filed with the State Clearing House and Governor’s Office of Planning and Research. The County’s SB 844 Application includes a letter from County Counsel assuring CEQA documentation is complete and final. 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 844. Recommended Action (2) results in identifying, as required by the BSCC, the County's entire, minimum match requirement of 10% of the project cost, and any other cost above that amount to needed for the total project cost. Staff estimates the County's match of eligible project costs to be \$25.2 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, which is 26% of the total project cost. The Budget Summary (Attachment G) provides the budget details to be submitted with the Application. In adopting Resolution No. 2017/44, 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 \$8 million, but also to cover all project costs including 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 estimates such funding requirement will be \$21.8 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. 2017/44 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 similar form agreements will be used for the SB 844 program.

If the County is awarded and meets the conditions of the SB 844 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. 2017/44.

## **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 this Application. The remaining projected milestones for meeting the conditions of an award are based on an anticipated NCA date of July 10, 2017 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 design-build contract has been awarded, which is currently anticipated to occur in January of 2019. The State pledges to pay invoices within 60 days of submittal and will accept monthly invoicing. The State withholds 5% of the \$70 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 September of 2021.

There are cash flow requirements to consider. While the total County outlay is estimated at \$21.8 million, it is estimated there will be a peak, temporary debt load of about \$25 million for approximately 8 months until all reimbursements have been made. This is only a rough estimate until a detailed cash flow analysis can be completed.

#### 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:***

***Cecilia Valdez, Mayor of San Pablo; Antonio Medrano, American Civil Liberties Union (ACLU); Maricar Tan, RN, Contra Costa Regional Medical Center; Amy Scott-Slovick, California Nurses Association (CNA); Andrew Dadko, CNA; Rochelle Pardue, El Cerrito City Council; Margaret Ewing, resident of Canyon; Kathleen Sullivan, Black Women Organized for Political Action (BWOPA); Phil Arnold, IWF; Julia Thompson Gallego, resident of San Ramon; Genny Zentella, resident of San Pablo; Blanca Retano (translated by Edith Pastrano); Jovanka Beckles, Richmond City Council; Jerry Elstes, resident of Richmond; Emilia Bermudez, Alliance of Californians for Community Empowerment (ACCE); Gabriel Haaland, SEIU 1021; Tanisha Walker, Safe Return Program; Harry Baker, SEIU 1021; Eduardo Martinez, resident of Richmond; Melvin Willis, ACCE; Nancy Ybarra, Contra Costa Interfaith Supporting Community Organization (CCISCO); Kristi Laughlin, Faith Alliance for a Moral Economy, EBASE; Bob Lane, Faith Alliance; Lua Riley, resident of Richmond; Lizzy Gore, resident of Richmond; Claudia Jimenez, resident of Richmond; Juan Lozano, ACCE; David Brazil, Faith Alliance for a Moral Economy; Juan Reardon, Richmond Progressive Alliance (RPA); Duane Chapman, Chair, Mental Health Commission; Sean Casey, Executive Director, First 5 Contra Costa; Maria Alegria, resident of Pinole; Diddo Clar, CCC Democratic Party Secretary; Nancy Kelly, Unitarian-Universalist Church Social Justice Council; Lauren Rettagliata; Jim Foley, IBEW 302; Lee Lawrence, League of Women Voters, Diablo Valley; Rita Xavier, League of Women Voters, West CCC; Zuleika Godinez, Ensuring Opportunity Campaign; Rita Barouch, resident of Richmond; Douglas Dunn, resident of Antioch***

*(handout); Edith Pastrano, resident of Richmond; Jessica Penegrinar, Concilio Latina; Patricia Ponce, resident of San Pablo; Lee Turner, resident of Richmond; Ankush Ganapathy, ACCE; Donnell Jonel, Ceasefire; Caudelaria Martinez, CCC Racial Justice Coalition; Indigo Mateo, resident of Antioch; Peggy Kroll, resident of Danville; Melissa Crosby, resident of Richmond; Jesus Pimentel; Jovana Fajardo, ACCE.*

*The following did not speak but left written comments (attached): Wendy Kate Collins, resident of Martinez; David Kahler, National Alliance on Mental Illness; Donald Specter, Prison Law Office; Jane & Michael Larkin, residents of Walnut Creek; high school students from West County.*

## ATTACHMENTS

Resolution No. 2017/44

Attachment A - SB 844 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 844 Agreements

Attachment G - Budget Summary Table

Attachment H - Project Milestones

SB 844 Facility - Detailed Operating Expenditures

Jail Needs Assessment

PowerPoint Presentation