



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-6

For the meeting of: December 6, 2016

Date: November 21, 2016
To: Board of Supervisors
From: Amy S. Nilsen, County Administrative Officer *AN*
Subject: Cooperation Agreement for the Juvenile Hall Replacement Project

RECOMMENDATION(S):

That the Board of Supervisors:

1. Authorize the Chief Probation Officer to execute a Cooperation Agreement with the State Public Works Board relating to issuance of bonds for financing of the Juvenile Hall Replacement Project, based on the attached template provided by the state, after review by County Counsel, the Treasurer-Tax Collector and the County Administrative Officer; and
2. Authorize the Chief Probation Officer to execute any necessary amendments to the final Cooperation Agreement after review by County Counsel, the Treasurer-Tax Collector and the County Administrative Officer.

SOURCE OF FUNDING: General Fund

DISCUSSION:

In 2007, Senate Bill-81 ("SB-81") (Chapter 175, Statutes of 2007) established the Local Youthful Offender Rehabilitative Facilities Construction Financing Program to enhance the capacity of California counties to provide appropriate rehabilitative and supervision services to youthful offenders. In 2011 the Humboldt County Board of Supervisors initiated the acceptance of the conditional financing award with the State of

Prepared by: Cheryl Dillingham

CAO Approval *E. Shuman*

E. Shuman

REVIEW:

Auditor _____ County Counsel *Sm* Human Resources _____ Other _____

TYPE OF ITEM:

- Consent
- Departmental
- Public Hearing
- Other _____

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor *Fennell* Seconded by Supervisor *Bass*

Ayes *Sundberg, Fennell, Lovelace, Bohn, Bass*
Nays _____
Abstain _____
Absent _____

PREVIOUS ACTION/REFERRAL:

Board Order No. E-2, C-11, C-15

Meeting of: 10/28/2008, 12/10/2013, 8/16/2016

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *Dec. 6, 2016*

By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

California for the SB-81 Juvenile Hall Replacement Project. On August 20, 2016 your Board awarded the Juvenile Hall Replacement construction project.

The local cash match for the Juvenile Hall Replacement project includes funding from tax-exempt obligations. These funds come from two financing plans, the first was approved by your Board on April 10, 2012 and the second was approved on April 12, 2016. The funds from the first financing plan have been covering the costs of the design phase of the project and will cover a portion of the construction phase. The funds from the 2016 financing will be used only for the construction phase of the project. The 2016 financing plan includes interim period financing which will allow the county to only borrow what is needed to cover actual expenditures on capital projects. These funds will be borrowed from the county pool and paid back at a future date through the issuance of tax-exempt obligations.

The county was required to submit evidence of a "Construction Contract Award" in order for the state to proceed with arranging their portion of project financing which may include the issuance of lease revenue bonds. As part of this final approval process, the California Department of Finance reviewed the funding sources for the county's local match. The state has now determined that because the county portion of the project includes tax-exempt financing a Cooperation Agreement is required. The purpose of the Cooperation Agreement is to outline the roles and responsibilities of the state and county as they relate to the issuance of tax-exempt obligations by both parties. The state will not complete the final approval process, and issue the county a Notice to Proceed to Award, until the Cooperation Agreement has been executed. Once the state's Notice to Proceed to Award is received, the county can issue the awarded contractor a Notice to Proceed.

The state and county are still finalizing the Cooperation Agreement and there are no Board meetings the last two weeks of December. Staff is asking that the Chief Probation Officer be authorized to execute a Cooperation Agreement that is based on the attached template provided by the state in order to expedite the state's issuance of a Notice to Proceed to Award. Your Board has previously authorized the Chief Probation Officer to sign specific documents related to the Humboldt County Juvenile Hall Replacement project in order to facilitate completion of the project. Delays in the issuance of a Notice to Proceed could result in increased costs or the need to re-bid the project. Additionally staff is asking that the Chief Probation Officer be authorized to execute amendments to the final Cooperation Agreement to facilitate quicker processing if the state requires changes thereto.

FINANCIAL IMPACT:

The requested action has no financial impact. Failure to execute a Cooperation Agreement with the state will result in the loss of \$12.93 million in state funding for replacement of the county's existing juvenile hall facility.

This action supports your Board's Strategic Framework, Core Roles, by providing for infrastructure.

OTHER AGENCY INVOLVEMENT:

State of California

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to authorize execution of the Cooperation Agreement for the Juvenile Hall Replacement Project. However, this is not recommended since doing so could cause the loss of funding scheduled and provided by the state program for construction of the new facility.

ATTACHMENTS:

Cooperation Agreement Template

COOPERATION AGREEMENT

This COOPERATION AGREEMENT (the "Cooperation Agreement"), is executed and entered into as of _____, 2016, by and between the STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA, an entity of state government of the State of California (the "Board"), and THE COUNTY OF HUMBOLDT, a political subdivision of the State of California (the "County").

WITNESSETH:

WHEREAS, pursuant to Article 3 of Chapter 1.5 of Division 2.5 of the California Welfare and Institutions Code (commencing at Section 11970), the Board is authorized to finance the acquisition, design and construction of a youthful offender rehabilitative facility approved by the Board of State and Community Corrections (the "SB 81 Local Youthful Offender Rehabilitative Facility Financing Program");

WHEREAS, the County has proposed to construct a juvenile hall facility, the Humboldt County Juvenile Hall Replacement Project, to be located at _____, _____, CA, (the "Project") pursuant to the SB 81 Local Youthful Offender Rehabilitative Facility Financing Program;

WHEREAS, the County is contributing funding to pay a portion of the costs of the Project (the "County Funding Contribution") and has issued, tax-exempt obligations (the "County's Private Placement Financing"), which are secured by rental from an asset other than the Project, and some of the proceeds have been, and will be, applied to fund a portion of the County Funding Contribution;

WHEREAS, the Board intends to assist in the oversight and financing of the Project, subject to satisfaction of certain conditions and requirements of the Board, and the Board may in its sole, reasonable discretion, issue lease revenue bonds for the Project (the "Board Bonds");

WHEREAS, in connection with the issuance of the Board Bonds and County's Private Placement Financing, a tax or arbitrage certificate (each, a "Tax Certificate") will be delivered, containing certain covenants and restrictions which will continue to exist until the complete retirement of the Board Bonds or County's Private Placement Financing (including any tax-exempt bonds refunding such obligations), whichever is later;

WHEREAS, the Board and the County desire to agree with respect to certain ongoing restrictions to be contained in the Tax Certificates and to agree with respect to certain other matters contained herein;

NOW, THEREFORE, THE BOARD AND THE COUNTY HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions. Capitalized terms used in this Cooperation Agreement and not otherwise defined shall have the following meanings:

(a) “Lease Arrangement” means any leasehold or similar possessory interest of a defined physical area within the Project.

(b) “Private Business Use” has the meaning given to such term in Section 141(b)(1) of Title 26 of the United States Code and related Treasury Regulations, including Section 1.141-3 of Title 26 of the Code of Federal Regulations (“C.F.R.”).

(c) “Services Contract” means any contract for services to be rendered with respect to the Project (such as a food concession agreement) that does not satisfy one of the safe harbor provisions of Revenue Procedure 97-13 (or subsequent formal guidance) and is not otherwise excluded from constituting Private Business Use under Revenue Procedure 97-13 (or subsequent formal guidance) or 26 C.F.R. Section 1.141-3.

SECTION 2. Cooperation The County’s Funding Contribution, part of which has been, and will be, funded by the County’s Private Placement Financing, is required to be approved by various state agencies as detailed in the SB 81 Local Youthful Offender Rehabilitative Facility Financing Program and related laws and regulations. The County acknowledges and agrees that the County’s Private Placement Financing has been issued before the Board Bonds and is not incompatible with the Board Bonds. The Board and the County desire to cooperate and achieve agreement as to certain federal tax law compliance matters to help ensure the Board will be able to issue the Board’s Bonds in its normal and customary manner. To this end, the County agrees to provide all necessary and desired certifications that may be reasonably required by the Board regarding the portion of the County Funding Contribution that has been, or will be, funded with proceeds of the County’s Private Placement Financing.

SECTION 3. Allocation. The Board and the County hereby agree that they shall utilize the allocation methodology described in Exhibit A for purposes of the Federal income tax restrictions with respect to the Board Bonds and the County’s Private Placement Financing.

SECTION 4. General Tax Compliance. The County will not undertake any action that adversely affects the exclusion from gross income of the interest paid or to be paid on any of the Board Bonds or the County’s Private Placement Financing. The County will cooperate with the Board regarding the Board’s post issuance tax responsibilities with respect to the Board Bonds and abide by the restrictions of the Tax Certificates and this Cooperation Agreement with respect to the Board Bonds and the County’s Private Placement Financing. If the County shall fail to keep, observe or perform the foregoing covenants, the Board may exercise any and all remedies available pursuant to law to enforce such covenants and the County agrees to pay to the Board all damages recoverable at law that the Board may incur by reason of such failure of the County to keep, observe or perform such covenants.

SECTION 5. Private Business Use Compliance. In the Tax Certificates, the County will make certain covenants relating to Private Business Use of the Project. In furtherance of those covenants, the County covenants that no more than the lesser of 10% (or 5% for unrelated use) or \$15 million of the proceeds of the Board Bonds and the County's Private Placement Financing, respectively, or of the Project allocated to such proceeds has been or will be used in the aggregate for any activities that constitute a Private Business Use. The County will actively monitor Private Business Use at the Project. The County will not allow any Private Business Use at the Project (including, but not limited to, a Lease Arrangement or Services Contract) that is in addition to the Private Business Use previously approved by the Board as set forth in Exhibit B hereto absent obtaining consent of the Board.

SECTION 6. Post Issuance Compliance; Including Recordkeeping. The County understands that post issuance compliance with the restrictions contained in the Tax Certificates for the Board Bonds and County's Private Placement Financing is required to ensure that interest on the Board Bonds and County's Private Placement Financing remains excluded from gross income for federal income purposes. In furtherance thereof, the County hereby agrees to:

(a) Assign responsible personnel of the County to monitor and ensure compliance with the restrictions contained in the Tax Certificates;

(b) Provide adequate training to responsible County personnel to ensure compliance with the Tax Certificates and this Cooperation Agreement;

(c) Have County personnel regularly review the restrictions of the Tax Certificates and this Cooperation Agreement and establish adequate record retention and calendaring mechanisms internally to ensure that the County will be able to establish post issuance compliance with the restrictions of the Tax Certificates and this Cooperation Agreement. In particular, the County will maintain records detailing the expenditure and investment of proceeds derived from County's Private Placement Financing, as provided in the Tax Certificates.

(d) Regularly consult with the Board regarding any issues that arise regarding post issuance compliance (including any failure or anticipated failure to expend proceeds derived from County's Private Placement Financing during the periods described in the Tax Certificates or any changes in use of the Project). The County understands that the use of the Project must be monitored throughout the term to maturity of the Board Bonds and County's Private Placement Financing, and records must be retained by the County to the date specified in the Tax Certificates regarding any contracts or other arrangements, including any Lease Arrangement and Services Contract, relating to use of the Project.

SECTION 7. IRS Audit Responsibilities. Except as otherwise provided, the Board shall be responsible for managing any Internal Revenue Service examination of any of the Board Bonds, and the County shall be responsible for managing any Internal

Revenue Service examination of the County's Private Placement Financing. For any such examination of Board Bonds, the Board will take the leadership responsibility, but the County agrees to be actively involved.

SECTION 8. Amendment. All amendments to this Cooperation Agreement shall be in writing and signed by the parties hereto.

SECTION 9. Notices. All notices and communications hereunder shall be in writing and shall be deemed to be duly given if received or sent by first class mail, as follows:

If to the County:

County of Humboldt
825 Fifth Street
Eureka, CA 95501
Attention: CAO

If to the Board:

State Public Works Board of the State of California
915 L Street
Sacramento, California 95814
Attention: Executive Director

SECTION 10. Severability. If any section, paragraph, sentence, clause or provision of the Cooperation Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, sentence, clause or provision shall not affect any of the remaining provisions of the Cooperation Agreement.

SECTION 11. Governing Law. This Cooperation Agreement shall be construed and governed in accordance with the laws of the State of California.

SECTION 12. Execution. The Cooperation Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, the Board and the County have caused the Cooperation Agreement to be executed each on its behalf as of the day and year first above written.

STATE PUBLIC WORKS BOARD OF THE STATE OF CALIFORNIA:

By: _____
Koreen H. van Ravenhorst
Deputy Director

COUNTY OF HUMBOLDT:

By: _____
William Damiano
Chief Probation Officer
*(Pursuant to the Authority Granted
by the Humboldt County Board of
Supervisors on _____, 2016)*

DRAFT

Exhibit A

Allocation of Project Expenditures

Expenditures for the Project will be allocated pro rata between proceeds derived from the Board Bonds and County's Private Placement Financing.

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