

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-4

Urgent Routine

AGENDA DATE April 16, 2013

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval of the Final Acceptance of the Construction of the Juvenile Commitment Facility with Roebbelen Contracting, Inc. of El Dorado Hills, California; and Related Actions

STAFF RECOMMENDATIONS:

1. Approve the final acceptance and completion of the construction of the Juvenile Commitment Facility with Roebbelen Contracting, Inc. of El Dorado Hills, California.
2. Approve the final contract with Roebbelen Contracting, Inc. of El Dorado Hills, California as follows:

Original Contract:	\$14,983,000
Change Orders:	<u>541,581</u>
Total Contract:	\$15,524,581

(Continued on Page 2)

FISCAL IMPACT:

On March 31, 2009, the Board of Supervisors acknowledged an award of up to \$18 million from the State of California to build a Juvenile Youth Treatment Facility (YTF) with funds under the Department of Corrections 2007 Local Youthful Offender Rehabilitative Construction Funding (SB 81) and directed staff to negotiate a contract with the State.

(Continued on Page 2)

BOARD ACTION AS FOLLOWS:

No. 2013-145

On motion of Supervisor Monteith, Seconded by Supervisor Withrow

and approved by the following vote,

Ayes: Supervisors: O'Brien, Withrow, Monteith, De Martini and Chairman Chiesa

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

STAFF RECOMMENDATIONS: (Continued)

3. Authorize the Project Manager, on behalf of the Board of Supervisors as the Awarding Authority, to sign the completion documents, record the Notice of Completion, release retention less withholdings, and process all remaining close out activities for the above contract and the Juvenile Commitment Facility Project.

4. Authorize the Chairman of the Board to send a letter of appreciation to Roebbelen Contracting, Inc. and Lionakis, Inc. for the successful completion of the new facility.

FISCAL IMPACT (Continued):

On September 20, 2011, the Board of Supervisors adjusted the project budget at the time of the award of the construction project as a result of bids coming in below the estimate; the total Project Cost was reduced from the Financing Plan estimate of \$24,232,528 to \$22,713,828. This budget adjustment resulted in a net savings of \$1,518,700 for the State of California. The primary sources of cash match the County has committed to the Juvenile Commitment Center project includes funding of \$1,725,000 of Public Facility Fees (PFF), funding of \$2,732,528 from the Criminal Justice Facilities Fund, and a non-cash match from land valued at \$1,775,000 at the site where the new facility is being constructed.

The Board of Supervisors' approved SB 81 Project Budget is described below:

Juvenile Commitment Center Sources	Amount
State Funding	\$16,481,300
Detention Public Facility Fees	\$1,450,000
Criminal Justice Public Facility Fees	\$275,000
Criminal Justice Facilities Fund	\$2,732,528
Land	\$1,775,000
Total	\$22,713,828

Juvenile Commitment Center Uses	Amount
Cash Uses for Design/Construction	\$20,938,828
Non-Cash Uses for Land/Site Acquisition	\$1,775,000
Total	\$22,713,828

At this time, staff is requesting the Board of Supervisors approve the final contract with Roebbelen Contracting, Inc. of El Dorado Hills, California for the final contract cost of

\$14,983,000. During the course of construction, the Project Manager processed change order requests totaling \$541,581, consistent with the County's Change Order Policy, which increased the final contract cost from \$14,983,000 to \$15,524,581.

While the final close-out of all activities is nearing completion the Project Manager estimates the total project cost will not exceed \$21,757,109, with the project being completed on time and *significantly* under the approved budget of \$22,713,828. The savings are derived from the original design and bid day savings of \$1,518,700 and additional savings in the amount of \$956,719 in Youthful Offender Rehabilitative Construction (SB-81) funding back to the State of California from savings in the construction contingency. At the time of Final Completion of the Juvenile Commitment Facility the total State savings of SB-81 funding is \$2,475,419. The Board of Supervisors approved County cash match included in the Project Budget was not increased at the time of Final Completion.

As the awarding authority, the Board of Supervisors is also requested to authorize the Project Manager to sign the completion documents, record the Notice of Completion effective March 28, 2013, release retention less withholdings, and process all remaining closeout activities for the above contracts and the project. As part of the closeout activities, the County will be withholding \$65,550 from Roebbelen Contracting, Inc. for incomplete work on the Project. Consistent with applicable law, the Project Manager will be withholding this amount to allow certain minor punch list items to be completed after the filing of the Notice of Completion. The withholding payment of up to \$65,550 will be made to Roebbelen upon completion of the mutually agreed upon withholding punch list items (final completion items).

DISCUSSION:

Stanislaus County partnered with the State of California to build a 60-bed Juvenile Commitment Center at 2215(A) Blue Gum Avenue, Modesto, CA. On March 31, 2009, the Board of Supervisors acknowledged an award up to \$18 million from the State of California Corrections Standards Authority for the construction of a 60-Bed Juvenile Youth Treatment Facility and directed staff to negotiate a contract with the State to build the Juvenile Youth Treatment Facility (YTF) with funds under the Department of Corrections 2007 Youthful Offender Rehabilitative Facility Construction Funding Program (SB-81). The State of California is required to sell bonds to provide construction financing for the program. The bonds for this Project were sold by the State in March, 2013.

On January 12, 2010, the Board of Supervisors authorized the Project Manager to negotiate and sign contracts and work authorizations necessary to manage schematic design including construction management, professional services and other project related costs. On January 12, 2010, the Board of Supervisors approved retaining the Lionakis, Inc. firm for professional design services for the development of plans and

Approval of the Final Acceptance of the Construction of the Juvenile Commitment Facility with Roebbelen Contracting, Inc. of El Dorado Hills, California; and Related Actions
Page 4

specifications for the construction of the new Juvenile Commitment Facility, not to exceed \$1.9 million. On August 3, 2010, the Board approved the schematic design as prepared by Lionakis, Inc. The project consisted of a stand-alone 46,998 square foot Juvenile Commitment Facility with the required outdoor recreation yard, a new parking lot to accommodate the facility staff and visitors, and a small amount of landscaping. The Juvenile Commitment Facility included one 30-bed housing unit and two 15-bed housing units with a mix of single and double sleeping rooms, and 4-bed dormitory-type rooms. The facility includes code required medical screening, interview rooms, classrooms, multi-purpose space, a culinary program classroom, food service and various support spaces for staff services.

On September 20, 2011, the Board of Supervisors approved the award of the construction contract for the Juvenile Commitment Center to Roebbelen Contracting, Inc. in the lump sum of \$14,983,000. The Project met a significant milestone of Substantial Completion on February 11, 2013. Final Completion of the Construction Contract with Roebbelen Contracting, Inc. occurred on March 28, 2013. Occupancy of the building by youth offenders is scheduled to occur prior to June 28, 2013.

A tremendous multi-year effort by the Board of Supervisors, County staff and State partners, along with the Lionakis Design Team and the Roebbelen Construction Team, resulted in the successful completion of the first statewide Local Youthful Offender Rehabilitative Construction Funding (SB 81) Commitment Facility. The project was completed on time, and within the previously approved project budget. A public dedication event will be held on June 7, 2013 to celebrate the successful completion of this milestone partnership project between the County and State of California.

Schedule

Final Completion of the Construction Contract with Roebbelen Contracting, Inc. occurred on March 28, 2013. A public dedication event is scheduled to be held on June 7, 2013. Occupancy of the building will occur prior to June 28, 2013 consistent with the State guidelines and Board approved Probation Transition Plan. Consistent with the Board of Supervisors approved Transition Plan, an access driveway has recently been completed meeting the final obligation the County has to the State.

POLICY ISSUES:

Approval of this action promotes the Board's priorities of A Safe Community and Efficient Delivery of Public Services by making the most cost effective and efficient use of County resources to complete a project that enhances a large scale capital project for the County.

Approval of the Final Acceptance of the Construction of the Juvenile Commitment Facility with Roebbelen Contracting, Inc. of El Dorado Hills, California; and Related Actions
Page 5

STAFFING IMPACT:

Existing County Capital Projects and Probation Department staff will coordinate to complete the closeout of the project. The Probation Department will implement the Transition Plan upon final completion of the Project as previously approved by the Board of Supervisors.

CONTACT PERSON:

Patricia Hill Thomas, Chief Operations Officer. Telephone: (209) 525-6333.

**ATTACHMENTS AVAILABLE
FROM YOUR CLERK**



Stanislaus, County Recorder
 Lee Lundrigan Co Recorder Office
DOC- 2013-0032908-00
 Wednesday, APR 17, 2013 14:39:21
 Ttl Pd \$0.00 Rcpt # 0003365055
 LLP/R2/1-1

RECORDING REQUESTED BY
 AND RETURN TO:

Stanislaus County
 Chief Executive Office
 Attn: Patricia Hill Thomas
 1010 10th Street, Suite 6800
 Modesto, California 95354

NOTICE OF COMPLETION
Juvenile Commitment Center: Roebbelen Contracting, Inc.

NOTICE IS HEREBY GIVEN:

- 1) That Stanislaus County is the owner of real property ("Property") in paragraph 3, below.
- 2) That Stanislaus County awarded a construction contract to Roebbelen Contracting, Inc. for a work of improvement on the Property described in Paragraph 3, below.
- 3) That the Property herein referred to is situated in the State of California, County of Stanislaus, City of Modesto and is described as follows:

 APN 081-012-006 2215(A) Blue Gum Avenue, Modesto, California 95358
- 4) That the full name and address of the Owner of said Property is as follows: Stanislaus County c/o Chief Executive Office, Attn: Patricia Hill Thomas, 1010 10th Street, Suite 6800, Modesto, CA 95354.
- 5) That the nature of the title of the stated Owner is: in fee.
- 6) The name of the original contractor for said work of improvement is Roebbelen Contracting, Inc. of El Dorado Hills, California.
- 7) That on March 28, 2013 a work of improvement on the real property herein is described was completed.

VERIFICATION

I, Patricia Hill Thomas, declare that I am the Chief Operations Officer/Assistant Executive Officer of Stanislaus County, and that the County is the owner of the property described above. I have read the foregoing notice and know the contents thereof, and the same is true of my knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 16, 2013 at Modesto, California.

Patricia Hill Thomas

Patricia Hill Thomas
 Chief Operations Officer/Assistant Executive Officer
 of Stanislaus County

Notarization is not required
 for recording a Notice of Completion.
 See Civil Code Section 3093 and Government Code Section 27287.

JP

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (“Agreement and Release”), made and entered into this **16th** day of **April, 2013**, by and between the County of Stanislaus (“County”), and **Roebelen Contracting, Inc.** (“Contractor”), whose place of business is at **1241 Hawks Flight Court, El Dorado Hills, California 95762**.

RECITALS

- A. County and Contractor entered into Contract (the “Contract”) for construction of the County of Stanislaus **Juvenile Commitment Center** located at **2215A Blue Gum Avenue, Modesto, California 95358**.
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between County and Contractor as follows:

- 1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ 14,983,000
Modified Contract Sum	\$ 15,524,581
Payment to Date	\$ 13,913,127.89
Liquidated Damages	\$ 0
Payment Due Contractor	\$ 1,611,453.11
- 2. Subject to the provisions of this Agreement and Release, County will forthwith pay to Contractor the sum of One Million Six Hundred Eleven Thousand Four Hundred Fifty-Three Dollars and Eleven Cents (\$1,611,453.11) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with County as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against County arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 65 00. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against County, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 65 00. Nothing in this Agreement and Release shall limit or modify Contractor’s continuing obligations described in Paragraph 6 of this Document 00 65 00.
- 4. The following claims submitted under Document 00 70 00 (General Conditions), Article 12, are disputed (hereinafter, the “Disputed Claims”) and are specifically excluded from the operation of this Agreement and Release.

Claim No.	Date Submitted	Description of Claim	Amount of Claim
None	None	None	None

5. Consistent with California Public Contract Code §7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 65 00, Contractor hereby releases and forever discharges County, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless County, any of the County's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 65 00.
8. Contractor hereby waives the provisions of California Civil Code §1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.
11. All rights of County shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

*** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING ***

COUNTY OF STANISLAUS

By: Patricia Hill Thomas
Signature

Name: Patricia Hill Thomas
Print

Its: Chief Operations Officer/Assistant Executive Officer
Title

ROEBBELEN CONTRACTING, INC.

By: Robert McLean
Signature

Name: Robert McLean
Print

Its: EVP
Title

REVIEWED AS TO FORM:

Dated: 4/11/13, 2013

By: John P. Doering
John P. Doering, County Counsel

END OF DOCUMENT

RECORDING REQUESTED BY
AND RETURN TO:

Stanislaus County
Chief Executive Office
Attn: Patricia Hill Thomas
1010 10th Street, Suite 6800
Modesto, California 95354

NOTICE OF COMPLETION
Juvenile Commitment Center: Roebbelen Contracting, Inc.

NOTICE IS HEREBY GIVEN:

- 1) That Stanislaus County is the owner of real property ("Property") in paragraph 3, below.
- 2) That Stanislaus County awarded a construction contract to Roebbelen Contracting, Inc. for a work of improvement on the Property described in Paragraph 3, below.
- 3) That the Property herein referred to is situated in the State of California, County of Stanislaus, City of Modesto and is described as follows:

APN 081-012-006 2215(A) Blue Gum Avenue, Modesto, California 95358
- 4) That the full name and address of the Owner of said Property is as follows: Stanislaus County c/o Chief Executive Office, Attn: Patricia Hill Thomas, 1010 10th Street, Suite 6800, Modesto, CA 95354.
- 5) That the nature of the title of the stated Owner is: in fee.
- 6) The name of the original contractor for said work of improvement is Roebbelen Contracting, Inc. of El Dorado Hills, California.
- 7) That on March 28, 2013 a work of improvement on the real property herein is described was completed.

VERIFICATION

I, Patricia Hill Thomas, declare that I am the Chief Operations Officer/Assistant Executive Officer of Stanislaus County, and that the County is the owner of the property described above. I have read the foregoing notice and know the contents thereof, and the same is true of my knowledge. I declare under penalty of perjury that the foregoing is true and correct. Executed on April 16, 2013 at Modesto, California.

Patricia Hill Thomas
Chief Operations Officer/Assistant Executive Officer
of Stanislaus County

AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS

THIS AGREEMENT AND RELEASE OF ANY AND ALL CLAIMS (“Agreement and Release”), made and entered into this **16th** day of **April, 2013**, by and between the County of Stanislaus (“County”), and **Roebelen Contracting, Inc.** (“Contractor”), whose place of business is at **1241 Hawks Flight Court, El Dorado Hills, California 95762**.

RECITALS

- A. County and Contractor entered into Contract (the “Contract”) for construction of the County of Stanislaus **Juvenile Commitment Center** located at **2215A Blue Gum Avenue, Modesto, California 95358**.
- B. The Work under the Contract has been completed.

AGREEMENT

NOW THEREFORE, it is mutually agreed between County and Contractor as follows:

- 1. Contractor will not be assessed liquidated damages except as detailed below:

Original Contract Sum	\$ 14,983,000
Modified Contract Sum	\$ 15,524,581
Payment to Date	\$ 13,913,127.89
Liquidated Damages	\$ 0
Payment Due Contractor	\$ 1,611,453.11
- 2. Subject to the provisions of this Agreement and Release, County will forthwith pay to Contractor the sum of One Million Six Hundred Eleven Thousand Four Hundred Fifty-Three Dollars and Eleven Cents (\$1,611,453.11) under the Contract, less any amounts withheld under the Contract or represented by any Notice to Withhold Funds on file with County as of the date of such payment.
- 3. Contractor acknowledges and hereby agrees that there are no unresolved or outstanding claims in dispute against County arising from the Contract, except for the claims described in Paragraph 4 of this Document 00 65 00. It is the intention of the parties in executing this Agreement and Release that this Agreement and Release shall be effective as a full, final and general release of all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities of Contractor against County, and all if its agents, employees, consultants, inspectors, representatives, assignees and transferees, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 65 00. Nothing in this Agreement and Release shall limit or modify Contractor’s continuing obligations described in Paragraph 6 of this Document 00 65 00.
- 4. The following claims submitted under Document 00 70 00 (General Conditions), Article 12, are disputed (hereinafter, the “Disputed Claims”) and are specifically excluded from the operation of this Agreement and Release.

Claim No.	Date Submitted	Description of Claim	Amount of Claim
None	None	None	None

5. Consistent with California Public Contract Code §7100, Contractor hereby agrees that, in consideration of the payment set forth in Paragraph 2 of this Document 00 65 00, Contractor hereby releases and forever discharges County, and all of its agents, employees, consultants, inspectors, assignees and transferees from any and all liability, claims, demands, actions or causes of action of whatever kind or nature arising out of or in any way concerned with the Work under the Contract.
6. Guarantees and warranties for the Work, and any other continuing obligation of Contractor, shall remain in full force and effect as specified in the Contract Documents.
7. Contractor shall immediately defend, indemnify and hold harmless County, any of the County's Representatives, Project Manager, and all of their agents, employees, consultants, inspectors, assignees and transferees, from any and all claims, demands, actions, causes of action, obligations, costs, expenses, damages, losses and liabilities that may be asserted against them by any of Contractor's suppliers and/or Subcontractors of any tier and/or any suppliers to them for any and all labor, materials, supplies and equipment used, or contemplated to be used in the performance of the Contract, except for the Disputed Claims set forth in Paragraph 4 of this Document 00 65 00.
8. Contractor hereby waives the provisions of California Civil Code §1542, which provide as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.
9. The provisions of this Agreement and Release are contractual in nature and not mere recitals and shall be considered independent and severable, and if any such provision or any part thereof shall be at any time held invalid in whole or in part under any federal, state, county, municipal or other law, ruling, or regulation, then such provision, or part thereof shall remain in force and effect only to the extent permitted by law, and the remaining provisions of this Agreement and Release shall also remain in full force and effect, and shall be enforceable.
10. Contractor represents and warrants that it is the true and lawful owner of all claims and other matters released pursuant to this Agreement and Release, and that it has full right, title and authority to enter into this instrument. Each party represents and warrants that it has been represented by counsel of its own choosing in connection with this Agreement and Release.
11. All rights of County shall survive completion of the Work or termination of the Contract, and execution of this Agreement and Release.

*** CAUTION: THIS IS A RELEASE - READ BEFORE EXECUTING ***

COUNTY OF STANISLAUS

By: Patricia Hill Thomas
Signature

Name: Patricia Hill Thomas
Print

Its: Chief Operations Officer/Assistant Executive Officer
Title

ROEBBELEN CONTRACTING, INC.

By: Robert McLean
Signature

Name: ROBERT McLean
Print

Its: EVP
Title

REVIEWED AS TO FORM:

Dated: 4/11/13, 2013

By: John P. Doering
John P. Doering, County Counsel

END OF DOCUMENT