



AGENDA STAFF REPORT

Agenda Item

ASR Control 10-000775

MEETING DATE: 07/20/10

LEGAL ENTITY TAKING ACTION: Board of Supervisors

BOARD OF SUPERVISORS DISTRICT(S): All Districts

SUBMITTING AGENCY/DEPARTMENT: Sheriff-Coroner (Approved)

DEPARTMENT CONTACT PERSON(S): Assistant Sheriff Jay LeFlore (714) 647-1804
HCA Deputy Director Robert Gates (714) 834-2021

SUBJECT: Agreement to House ICE Detainees in County Jail System

CEO CONCUR Concur	COUNTY COUNSEL REVIEW Approved Agreement to Form	CLERK OF THE BOARD Discussion 3 Votes Board Majority
-----------------------------	--	---

Budgeted: Yes **Current Year Cost:** Approx. \$31.2 Million (\$15.1 million is budgeted) **Annual Cost:** Approximately \$35 Million

Staffing Impact: No **# of Positions:** **Sole Source:** N/A

Current Fiscal Year Revenue: Approximately \$31.2 Million

Funding Source: FED: 100%

Prior Board Action: 3/2/10, Authorize Submittal of Proposal to ICE

RECOMMENDED ACTION(S):

1. Find that Final EIR 558, previously certified by the Board of Supervisors on June 20, 2000, regarding the Location of Near-Term Jail Facility: Theo Lacy Branch Jail Buildout and Operation, and Addendums IP97-136 and IP00-022, and Final EIR 564, previously certified by the Board of Supervisors on October 20, 1998, regarding the James A. Musick Jail Expansion and Operation, have been examined in relation to the proposed project; the proposed project’s environmental effects were fully analyzed and disclosed in these CEQA documents and the proposed project would not have any environmental effects beyond those analyzed and disclosed in these environmental documents; that (i) no substantial changes are proposed in the project that require major revisions of either EIR, (ii) no substantial changes have occurred to the circumstances under which the project is undertaken that require major revisions in either EIR, and (iii) there is no new information not known at the time of the EIRs that has become available that would increase or substantially decrease any of the environmental impacts disclosed therein, or that would render feasible any mitigation measures or alternatives in the EIRs that were determined to be infeasible; thus, these documents satisfy the requirements of CEQA and are approved for this project.
2. Approve and authorize the following individuals to execute the five-year Inter-Governmental Service Agreement (IGSA) with U.S. Immigration and Customs Enforcement (ICE) for detention and care of ICE detainees in the Orange County jail system: Sheriff-Coroner Executive Director Rick Dostal, Assistant Sheriff Jay LeFlore, Health Care Agency Deputy Director Robert Gates, and County Budget

Manager Michelle Aguirre.

3. Authorize the Sheriff-Coroner or her designee, with the concurrence of the Health Care Agency Director and the County Executive Officer or their designees, to make minor administrative revisions to the IGSA that do not materially change the provisions of the IGSA, and to make adjustments to the rates and prescription drug cost reimbursement amounts as necessary to cover costs.

SUMMARY:

The Sheriff-Coroner, Director, Health Care Agency and County Executive Officer request approval of the Inter-Governmental Service Agreement with U.S. Immigration and Customs Enforcement (ICE) to house up to 838 ICE detainees in the Orange County Jail System for a period of five years unless extended upon the agreement of both the County and ICE, or terminated earlier by either party.

BACKGROUND INFORMATION:

Background

In February 2010 the U.S. Immigration and Customs Enforcement (ICE), Office of Detention and Removal Operations, issued a Request for Proposal (RFP) for detention bed space and services for ICE detainees. ICE detainees are persons detained under the authority of the Immigration and Nationality Act and are held in custody to assure their presence throughout the administrative hearing process and possible removal from the United States pursuant to an order by the Federal government. ICE detainees do not have criminal charges pending. Most ICE detainees are former inmates who, at the time of their arrest, were unable to provide proof of their citizenship or legal residency. Once they have completed their sentence, the local jurisdiction turns them over to ICE to begin the administrative process to determine their citizenship status.

Currently, ICE does not have a sufficient number of beds for detainees in California and must transport them to other states at significant cost. Based on this need, ICE requested approximately 838 beds for housing male and female detainees in Orange County's jail system, plus transportation services, health services, and a voluntary work program within the jail facilities for detainees. In exchange, ICE will pay the County a per diem rate for services provided. According to ICE, establishment of a contract to house ICE detainees in Orange County jail facilities will reduce the time it takes to process detainees through deportation proceedings and will save funds that can be redirected to immigration enforcement.

Because the inmate population is currently below capacity and there are unused beds in the Orange County jail system, it is possible to accommodate the requested bed space without the early-release of inmates. Housing the ICE detainees in the Orange County jail system will generate additional revenue that will prevent the closure of more jail facilities and will help avoid significant cuts to core services in the Sheriff-Coroner Department and Health Care Agency. On March 2, 2010, your Board authorized a County negotiation team to submit a proposal and negotiate an agreement for ICE detainees to be housed at the Theo Lacy and James A. Musick jail facilities on a space available basis. The County negotiation team consisted of staff from the Sheriff-Coroner Department, Health Care Agency, County Executive Office and County Counsel. Negotiations are now complete and it is requested that your Board approve the Inter-governmental Services Agreement (IGSA) with ICE for the housing of ICE detainees in the Orange County jail system.

Inter-Governmental Service Agreement (IGSA)

The proposed IGSA provides for a total of 838 beds to be used for ICE detainees, with 472 located in the Theo Lacy Facility and 366 in the James A. Musick Facility. As specified in the proposed IGSA, Sheriff-Coroner Department staff will operate the ICE housing areas and provide all security and operational duties. The Health Care Agency (HCA) will provide medical and mental health services to detainees housed within the Orange County Jail System. ICE staff will monitor treatment of detainees, conduct the deportation process and perform administrative duties. The detainees will be housed on a space-available basis, according to the Sheriff's classification system. If the inmate population in the County jail system increases to the point at which there are not adequate detainee beds to meet the requirements of ICE, the number of ICE detainees will be reduced or the agreement can be terminated with 120 days notice.

The Sheriff's Department will be responsible for providing the basic needs of the detainees, including safekeeping, housing and subsistence. The services will be provided in compliance with all applicable laws, regulations, fire and safety codes, policies and procedures, consistent with those the Sheriff routinely affords other inmates. Only adult detainees will be housed in the County jail system. The Department will be responsible for ensuring the safety of detainees through a classification process that will assign detainees to housing with other detainees of similar background and criminal history.

The Sheriff's Department will have the right to refuse to accept, or request removal of, any detainee if: the detainee is determined through the Department's classification process to be an unacceptable risk to the safety and security of staff and/or other detainees; there is a lack of available or suitable housing to accommodate the classification of the detainee; there is a pre-existing relationship between the detainee and staff member (e.g., family, friend or former professional relationship) which may potentially cause a conflict or compromise the security of the facility and/or the staff member; or the detainee has a medical or mental health problem that requires care beyond the scope of the contractual level of care or in any instance that is best for the health and welfare of the detainee.

Medical and health care services for detainees will be provided by the Health Care Agency, including initial screening and physical examinations, on-site sick calls, over-the-counter medication and routine drugs and medical supplies. Access to specialized and emergency medical care will be available for all detainees by contract with outside providers. The costs of all specialized and emergency medical services provided off-site will be the responsibility of the Federal government, who will pay the off-site provider directly – the County will not incur any financial liability related to such services.

The Sheriff's Department will provide, as requested or authorized by ICE, necessary armed escort and transportation services for ICE detainees to and from designated locations. Escort services will be provided by at least two Sheriff's Department sworn personnel to transport detainees who are in the physical custody of the Sheriff's Department to ICE court hearings and administrative proceedings. All transportation costs will be reimbursed by the Federal government.

Facilities Requirements

ICE detainees will be housed in dormitory-style barracks at the Theo Lacy and James A. Musick jail facilities. Theo Lacy also has facilities to support detainees with medical issues and other special needs. One of the requirements of the RFP is to provide office space for ICE staff and court facilities to support deportation proceedings. Attachment A of the proposed IGSA details the proposed facility modifications, which are summarized below:

Theo Lacy: No new structures will be built. Portions of the interiors of certain existing buildings will be remodeled for office space and some minor improvements will be made in the interior of existing

barracks buildings to conform to Federal standards.

James A. Musick: New modular structures will be installed to accommodate three courtrooms, office space for ICE staff, and facilities to accept transferred detainees. In addition, minor improvements will be made to the barracks buildings to conform to Federal standards.

The Sheriff-Coroner will return to the Board at a later date to request approval of contracts for design and construction of the proposed facility modifications.

Initially, until court facilities are installed at James A. Musick, detainees will be transported to existing ICE court facilities to attend administrative hearings related to their immigration status. The Sheriff's Department will be reimbursed by the Federal Government for the cost of transporting the detainees.

Intake and Release

Intake of the detainees will take place at the Sheriff's Intake and Release Center (IRC). The detainees will be transferred to the Theo Lacy or James A. Musick jail facilities as soon as possible after processing is completed, but no longer than 72 hours after intake. ICE will not release detainees from County jail facilities into the local community. Most ICE detainees will be deported to their country of origin. The Sheriff's Department will either transfer detainees to ICE custody or transport detainees from the jail facilities to ICE Los Angeles-area Field Offices (includes Los Angeles, Santa Ana, San Bernardino and San Diego locations), where deportation or release of the detainees will occur.

Rates

The Federal government will pay the County a fixed per diem rate of \$118 per detainee housed in the Orange County jail system. Of this amount, \$23.85 will be allocated to HCA for medical and mental health services. The balance of funding received will be allocated to the Sheriff's Department for security and housing services. In addition, fixed hourly transportation escort/guard rates and transportation mileage rates are included in the proposed IGSA. For prescription drugs, the Federal government will reimburse the County the actual cost of the prescription drugs on a monthly basis. The County and ICE will monitor the actual cost utilization for prescription medications, and if costs are projected to exceed the amount specified in the IGSA (\$720,000 per year), the County will request a modification of the amount.

Implementation Schedule

The IGSA performance period begins upon the date of final signature by ICE and continues for five years unless extended by bi-lateral modification or terminated earlier by either the County or ICE upon 120 days written notice. ICE has requested that the first detainees begin to be accepted on August 9, 2010 in groups of 25 detainees per day for the first few weeks. Full capacity pursuant to the IGSA is anticipated to be reached by November 2010.

Common Questions

During discussions with interested parties, the following common questions and concerns have been raised:

1. Will detainees be released into the communities around the Theo Lacy and James A. Musick facilities?

No, detainees will not be released from any Orange County Jail facility. When requested by ICE, detainees will either be transferred to ICE custody or taken to Los Angeles-area ICE Field Offices (includes Los Angeles, Santa Ana, San Bernardino & San Diego locations) from which most will be

deported to their country of origin. Language to this effect is included in the proposed IGSA. In the case of Theo Lacy, ICE detainees will occupy beds that would otherwise be occupied by medium or minimum security County inmates. Medium and minimum security County inmates are released directly from Theo Lacy into the City of Orange. Therefore, housing ICE detainees at Theo Lacy will reduce the number of releases from Theo Lacy into the City of Orange.

2. There could be a perception that the Theo Lacy and/or James A. Musick facilities could become "federalized" facilities.

This cannot happen. The County retains ownership of the facilities. The Sheriff's Department will continue to operate the facilities. ICE will only have representatives on site to monitor treatment of detainees and to conduct the deportation process. The Sheriff will have the authority to reject detainees that pose a safety or security risk or that have medical conditions that cannot be accommodated in the jail system. Both the County and ICE have the option to terminate the agreement with 120 days notice.

3. Are detainees allowed more visiting hours than inmates, which could increase traffic and visitor attendance at the jails?

No. Detainees are allowed the same visiting privileges as County inmates.

4. Will the Sheriff have to early-release County inmates to make room for ICE detainees?

No. The County has 7,041 jail beds. The current jail population is approximately 4,800 inmates, leaving more than 2,200 empty beds in the County jail system. This proposed contract will increase the population in the jails to approximately 5,600, which still leaves approximately 1,400 empty beds.

CEQA Compliance

The proposed project is covered by Final EIR 558 for the Location of Near-Term Jail Facility: Theo Lacy Branch Jail Buildout and Operation, previously certified by the Board of Supervisors on June 20, 2000, and Addendums IP97-136 and IP00-022, and by Final EIR 564 for the James A. Musick Jail Expansion and Operation, previously certified by the Board of Supervisors on October 20, 1998. The circumstances of the project are substantially the same as the project analyzed within these prior California Environmental Quality Act (CEQA) documents, and EIR 558 and Addendums IP97-136 and IP00-022 and EIR 564 adequately address the effects of the proposed project. Your Board is required to examine the subject project to determine whether its environmental effects were fully analyzed and disclosed in these previous CEQA documents and whether the subject project would have any environmental effects beyond those analyzed and disclosed in the previous environmental documents. If your Board concurs, no further CEQA compliance is required as noted in Recommended Action #1. Detailed information about the project with regard to relevant environmental regulations including CEQA is included in the exhibit to this ASR.

FINANCIAL IMPACT:

The total estimated revenue to be received from the Federal government pursuant to the proposed IGSA is approximately \$31.2 million for FY 2010-11 (partial year) and approximately \$35 million per year ongoing. This revenue recovers costs incurred by the Sheriff's Department and HCA to provide the services set forth in the proposed IGSA.

The FY 2010-11 budget for Budget Control 060, Sheriff-Coroner, includes \$12.5 million for the services to be provided by the Sheriff's Department pursuant to the proposed agreement. Budget adjustments for the remaining \$12.7 million will be requested in the FY 2010-11 First Quarter Budget Report. The FY 2010-11 budget for Budget Control 042, Health Care Agency includes \$2.6 million for the services to be provided by the Health Care Agency pursuant to the proposed agreement. Budget adjustments for the remaining \$3.4 million will be requested in the FY 2010-11 First Quarter Budget Report or will be absorbed within the FY 2010-11 budget for Budget Control 042, Health Care Agency.

The facility remodeling and improvement costs resulting from implementation of the proposed IGSA total approximately \$6.1 million and will be funded from Budget Control 145, Revenue Neutrality Fund (\$5.7 million) and Budget Control 14Q, Sheriff-Coroner Construction and Facilities Fund (\$400,000). Budget adjustments related to the IGSA will be requested as part of the FY 2010-11 First Quarter Budget Report. The Sheriff's Department budget will reimburse Budget Control 145 for the facility and remodeling costs over a three-year period.

STAFFING IMPACT:

The Sheriff's Department and HCA will use existing filled positions and vacant positions, some of which are de-funded, to provide services required pursuant to the proposed IGSA. No new positions will be required.

REVIEWING AGENCIES:

County Executive Office, Health Care Agency, County Counsel

EXHIBIT(S):

CEQA Analysis

ATTACHMENT(S):

Inter-Governmental Service Agreement including Attachments A - I