



# Board Agenda Item 28

DATE: June 22, 2021

TO: Board of Supervisors

SUBMITTED BY: Margaret Mims, Sheriff-Coroner-Public Administrator

SUBJECT: Memorandum of Understanding with the United States Customs and Border Protection for the Housing of Federal Detainees

RECOMMENDED ACTION(S):

**Approve and authorize the Chairman to execute a Memorandum of Understanding with the United States Customs and Border Protection for the housing of Federal detainees in the County of Fresno Jail, effective June 22, 2021 through June 21, 2026.**

The United States Customs and Border Protection (CBP) has requested a Memorandum of Understanding (MOU) to designate the housing of up to six Federal detainees, at any one time, who may be arrested by the CBP. The rate under the recommended MOU is \$125 per bed, per day. The per diem rate is a firm-fixed per-diem rate for services that is not subject to adjustment for twelve months. It should be noted that the CBP requires that the local entity execute the MOU first. This item is countywide.

ALTERNATIVE ACTION(S):

If the recommended action is not approved by your Board, the Sheriff's Office will not be able to provide housing services to the CBP Federal detainees.

FISCAL IMPACT:

There could be a potential decrease in Net County Cost (NCC) associated with the recommended action as funding for the inmate bed costs is currently offset with NCC in the Sheriff's budget. The number of actual Federal detainees that may be housed is unknown at this time; therefore, no revenue from this agreement is included as part of this item. Upon your Board's approval, the Sheriff's Office will designate revenue received through this MOU as unbudgeted revenues that will offset NCC.

Based on revenue received from the prior MOU in FY 2019-20, sufficient appropriations and estimated revenue will be included in future requested budgets for the Sheriff-Coroner-Public Administrator Org 3111.

DISCUSSION:

The CBP has requested a MOU to designate the housing of up to 6 Federal detainees who may be arrested by the CBP for up to 72 hours at the Fresno County Jail. The detainees include individuals who are awaiting CBP determination of admissibility and/or further administrative immigration action.

The MOU provides a reimbursement of \$125 per bed per day. The number of Federal inmates requiring housing is unknown and as such, estimated revenue that may result from these charges is not included as a recommended budget adjustment at this time.

The recommended MOU incorporates by reference the following clauses: Prisoner Rape Elimination Act

(PREA), Service Contract Act of 1965, Statement of Equivalent Rates for Federal Hires, and Fair Labor Standards Act and the Service Contract Act - Price Adjustment.

Below is a brief explanation of the four clauses:

- PREA - enacted in 2003, this Federal law was created to eliminate sexual abuse in confinement facilities. The clause states the County will abide by Department of Homeland Security standards as published in the Federal register (70 Federal Register 45, March 7, 2014) including, but not limited to, the posting of PREA brochure/bulletin in each housing unit of the facility in English and Spanish languages.
- Service Contract Act of 1965 - requires general contractors and subcontractors performing services on prime contracts in excess of \$2,500 to pay service employees in various classes no less than the wage rates and fringe benefits found prevailing in the locality as determined by the Department of Labor, or the rates contained in a predecessor contractor's collective bargaining agreement. This is also known as Prevailing Wage.
- Statement of Equivalent Rates for Federal Hires - in compliance with the Service Contract Act of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency.
- Fair Labor Standards Act and the Service Contract Act - enacted in 1938 and applies to workers involved in interstate commerce. It sets standards with respect to working conditions, including such aspects as minimum wage and working hours. It has been periodically amended and adjusted to keep the standards relevant to the current working environment.

Should either party desire to terminate the MOU during the potential five-year term, the terminating party is to provide at least 30 days' advance written notice of its intention to terminate to the other party. The MOU also contains a non-appropriations termination provision that the County may exercise upon giving at least 30 days' advance written notice to CBP.

In 2017, the State Public Works Board (SPWB) required the County to enter into an agreement known as the Cooperation Agreement for the County to protect the federal tax-exempt status of the SPWB's forthcoming bonds that will finance the West Annex Jail (WAJ). Among other things under the Cooperation Agreement, the County agreed that, at the closing of the SPWB's bonds, the County will represent that the County expects not more than 15 beds in the WAJ project will be used for federal detainees at any one time. In connection with the SPWB's bonds, this limitation will apply, in aggregate, to Federal detainees under the recommended MOU and the County's 2017 Federal detainee housing agreement with the U.S. Department of Justice, U.S. Marshals Service.

REFERENCE MATERIAL:

BAI #23.1, April 4, 2017  
BAI #18, June 2, 2015  
BAI #26, May 19, 2015  
BAI #Addendum A, June, 15, 2010

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - CBP MOU

CAO ANALYST:

Yussel Zalapa