



Board Agenda Item 31.1

DATE: April 25, 2017

TO: Board of Supervisors

SUBMITTED BY: Margaret Mims, Sheriff-Coroner

SUBJECT: Agreements with the United States Marshals Service for the Housing of Federal Detainees in Fresno County Jail (Modifies April 4, 2017 Approved Agenda Item)

RECOMMENDED ACTION(S):

1. **Retroactively authorize the Sheriff-Coroner, or her authorized representative, to submit the County's application to the U.S. Department of Justice, United States Marshals Service (USMS) for a new Detention Services Intergovernmental Agreement (IGA) No. 97-02-0015 for the County's housing of federal detainees in the Fresno County Jail (New IGA No. 97-02-0015), using the web-based Federal Intergovernmental Agreement system;**
2. **Approve the USMS template form of new IGA, and authorize the Chairman to approve and execute the New IGA No. 97-02-0015, including any additional terms or conditions that the Chairman may deem necessary or advisable, all of which is subject to approval as to accounting form by the Auditor-Controller/Treasurer-Tax Collector and approval as to legal form by County Counsel;**
3. **Approve form of Amendment No. 1 to Detention Services Intergovernmental Agreement No. 97-02-0015 (Amendment No. 1 to New IGA), relating to the West Annex Jail, to amend the New IGA No. 97-02-0015, and authorize the Chairman to approve and execute Amendment No. 1 to New IGA, including any additional terms or conditions that the Chairman may deem necessary or advisable, all of which is subject to approval as to accounting form by the Auditor-Controller/Treasurer-Tax Collector and approval as to legal form by County Counsel; and**
4. **Approve form of Amendment No. 1 to Detention Services Intergovernmental Agreement No. 97-02-0015 (Amendment No. 1 to Current IGA), relating to the West Annex Jail, to amend the current USMS Detention Services Intergovernmental Agreement No. 97-02-0015, dated June 16, 2010 (Current IGA No. 97-02-0015), and authorize the Chairman to approve and execute Amendment No. 1 to Current IGA, including any additional terms or conditions that the Chairman may deem necessary or advisable, all of which is subject to approval as to accounting form by the Auditor-Controller/Treasurer-Tax Collector and approval as to legal form by County Counsel.**

On April 4, 2017, the Board approved an item that gave most of the recommended approvals sought in these recommendations. But since then, the Sheriff-Coroner's Office determined that it may take longer than originally anticipated to obtain approvals from the USMS to satisfy the State Department of Finance (DOF), as discussed below. Therefore, this item seeks two sets of approvals (both the ratification of the original Board approvals on April 4, 2017 of action items 1-3, above and the Board approval of action item 4, above); those two sets of approvals would be on dual tracks to ensure the maximum opportunity for moving the West Annex Jail project forward.

There is no additional Net County Cost associated with these actions. The County, through the Sheriff-Coroner's Office, and the USMS have had agreements to house federal detainees since 1984. The current Detention Services Intergovernmental Agreement No. 97-02-0015 (IGA), dated June 16, 2010,

reimburses the Sheriff-Coroner's Office at a rate of \$104.00 per day, per federal detainee, plus the cost of \$37.00 per hour, and mileage, for transportation to and from a medical facility for an estimate of 400 "Federal beds." The actual number of federal detainees in the Jail currently is approximately 100 per day.

The new rate under the proposed application is \$130.00 per day (including transportation to and from a medical facility and, now, the local federal courthouse), per federal detainee, and would be a single fixed rate for a period from the effective date of the proposed new IGA forward for thirty-six (36) months. After thirty-six (36) months, if a per-diem rate adjustment is desired, the County shall submit a request for a rate adjustment to the USMS; and if that results in a subsequent new IGA, then that subsequent new IGA would set the new rate. The proposed new IGA would be for an estimate of 145 "Federal beds."

The County is working with the State on its SB 1022 financing of the West Annex Jail project. The SB 1022 bonds are expected to have a 15-year life following project completion.

County staff are working with the Board of State and Community Corrections (BSCC) to finalize the terms and conditions of the County's ground lease of the West Annex Jail site to the BSCC, and to obtain the necessary approvals to proceed with the bid process for the West Annex Jail project.

Before the BSCC will enter into the ground lease, the DOF wants to confirm, among other things, that any IGA that is then in effect contains certain terms in the form of a DOF-required Amendment No. 1 to that IGA. The ground lease is expected to be in effect for the life of the SB 1022 bonds.

Because the DOF's required terms of an Amendment No. 1 are the same for the current IGA or proposed, new IGA, and because the current IGA and proposed, new IGA are expected to have the same USMS-designated IGA number, the same form of an Amendment No. 1 is being recommended for the current IGA and the proposed, new IGA. That is:

- The recommended Amendment No. 1 to Detention Services Intergovernmental Agreement No. 97-02-0015 (Amendment No. 1 to Current IGA) would amend the current IGA No. 97-02-0015; and
- The recommended Amendment No. 1 to Detention Services Intergovernmental Agreement No. 97-02-0015 (Amendment No. 1 to New IGA) would amend the proposed, new IGA No. 97-02-0015.

Originally, as approved by the Board on April 4, 2017, staff sought for the proposed, new IGA to be approved by the USMS before the ground lease would be consummated. That would mean the DOF would want to confirm that the final Amendment No. 1 to New IGA is executed by the County as proposed by DOF, and that the final new IGA is acceptable to the DOF. But it may take longer than originally anticipated to obtain approvals from the USMS to satisfy the DOF.

To avoid delay on the consummation of the ground lease, Staff now wish to focus their efforts on requesting the USMS' expedited consideration of the Amendment No. 1 to Current IGA, and upon obtaining the USMS's approval of it, submit the Amendment No. 1 to Current IGA to the DOF for its approval before the County executes it.

Staff will continue to pursue the new IGA, and will seek the USMS' approval of the Amendment No. 1 to New IGA and the proposed new IGA. While the ground lease is in effect, the DOF will continue to require its Amendment No. 1 to New IGA for the proposed new IGA (if approved by the USMS after the ground lease is consummated), and any subsequent new IGA. Therefore, if the USMS approves the Amendment No. 1 to New IGA and the proposed new IGA, Staff will submit them to the DOF for its approval before the County executes them.

Approval of the recommended actions will allow the County to pursue DOF's requirements.

The County Administrative Officer will work with the Chairman regarding any necessary revisions to, or

additional terms or conditions for, the proposed new IGA and/or these DOF-required Amendments, subject to County Counsel and Auditor-Controller/Treasurer-Tax Collector approval.

The proposed new IGA and these DOF-required Amendments, are being presented to the Board as the parties work toward completing the documentation of these transactions, and work with the DOF, to avoid delay on the West Annex Jail project.

ALTERNATIVE ACTION(S):

If the recommended actions are not approved by the Board, proceeding with bidding the West Annex Jail project could be delayed. Also, if recommended actions 1 - 3, above are not approved, the Department will not be able to provide additional transportation services to the US Marshals Service.

FISCAL IMPACT:

There is no additional Net County Cost associated with these actions. For FY 2016-17, the Sheriff-Coroner's Office budgeted \$2,922,920 from the USMS for housing of federal detainees. This amount is based on the current rate of \$104.00 per day for an assumed minimum average daily population of 77 Federal detainees for 365 days. Using an estimated average minimum average daily population of 100 Federal detainees for 365 days, the additional \$26.00 per day (\$130 less \$104) will result in an increase in estimated revenue of \$949,000 per year. If the proposed new IGA and Amendment No. 1 to the new IGA are approved, the Sheriff-Coroner's Office will return to the Board for any budget adjustments associated with this revenue source.

DISCUSSION:

History:

The Sheriff-Coroner's Office and the USMS have had agreements to house federal detainees since 1984. Sheriffs have been reimbursed the cost of housing federal detainees in a local jail under Intergovernmental Agreements (IGA).

In 2006, the Department of Justice Office of Federal Detention Trustee (OFDT) created a new automated network known as the Detention Services Network (DSNetwork). By November 2007, the USMS completely retired the old system and requested that sheriffs replace old IGA's with new electronic Intergovernmental Agreements (eIGA) under the DSNetwork. The new system allows sheriffs to negotiate per diem rates based upon projected future jail operating costs.

Current IGA No. 97-02-0015:

Under the current agreement (IGA No. 97-02-0015), approved by the Board on June 15, 2010, the County and the USMS establish the agreement that allows the USMS to house federal detainees in the Fresno County Jail (this includes other federal agencies' detainees brought by the USMS to the Jail). The current agreement does not guarantee any minimum number of Federal beds or otherwise dedicate any housing capacity of Federal beds to the USMS. Under the current agreement, the Sheriff-Coroner's Office is reimbursed at a rate of \$104.00 per day, per Federal detainee.

On December 13, 2016, the Board accepted the Sheriff's report that the current agreement has no expiration date and that the County shall submit a request for any rate adjustments.

Other current agreement with USMS for housing federal detainees:

Both the current IGA and the proposed form of the new IGA state that if the County has received an Intergovernmental Cooperative Agreement Program (CAP) award with the USMS, then, the termination of the CAP will prevail.

On July 31, 2001, the County entered into a CAP Agreement with the USMS to receive \$2.8 million to construct three housing floors to the North Annex Jail (CAP No. 06-97-01). That CAP Agreement obligated the County to provide detention space and services for federal detainees on a declining schedule that incorporated prior USMS agreements that the County had with the USMS (originally, as much as 260 federal detainees). CAP Agreement No. 06-97-01 presently obligates the County for 85 bed spaces in the Fresno County Jail until February 10, 2018, which is 15 years from the date that the County received that CAP award and completed the North Annex Jail improvements. CAP Agreement No. 06-97-01 will expire before the West Annex Jail becomes operational.

Sheriff-Coroner's Application to USMS and Proposed New IGA 97-02-0015 - New Single Rate:

On March 30, 2017 the Sheriff-Coroner's Office submitted the County's application to the USMS for a new Detention Services Intergovernmental Agreement (IGA) No. 97-02-0015 using the web-based Federal Intergovernmental Agreement system. As of the date of the April 4, 2017 Agenda Item, Staff could not download the completed application, but, it has since been downloaded and is included as an Attachment to this Item. The USMS' form of the IGA is substantially similar to the current IGA No. 97-02-0015, and it is expected that the USMS will continue to use the current USMS-designated IGA number for the new IGA, and the variables (e.g., rates, dates, amounts) are data discussed in this Agenda Item (if the USMS does not use the current IGA number for the new IGA, the County will use the new IGA number designated by the USMS). The proposed form of IGA states that it allows the USMS, including any other authorized agency to house federal detainees in the Fresno County Jail. But the proposed form of IGA does not guarantee any minimum number of Federal beds or otherwise dedicate any housing capacity of Federal beds to the USMS.

The recommended proposed single rate of \$130.00 per day, per Federal detainee includes the estimated costs for housing, safekeeping, subsistence, guard transportation services to the local emergency contracted hospital, Community Regional Medical Center and the local Federal courthouse, Fresno Division of the Eastern District of California, and medical care provided inside the Facility to Federal detainees.

The proposed single rate does not include revenue for Federal detainees seeking medical care from outside medical facilities or medical services not routinely provided within the Facility, such as dialysis, because those costs will be directly billed by the outside medical providers to the Federal Government and not the County, but the County makes the arrangements with those outside medical providers.

Proposed New IGA 97-02-0015 - Key terms:

In addition to the rate, above, the key terms that would be changed from the current IGA to the recommended form of new IGA, if approved in final form by the parties, are:

- The estimated number of "Federal beds" in the Fresno County Jail would be reduced from 400 to 145 (this would be for male and female combined/no specific numbers of these beds for each gender).
- The Sheriff's transportation services would include transportation to and from the U.S. Courthouse in the City of Fresno.
- The new IGA would be effective upon the parties' execution. The new IGA would remain in effect unless inactivated in writing by either party; either party may terminate it for any reason with written notice at least 30 days in advance of termination, but, as stated below, the Amendment No. 1 adds a condition to the County's early termination notice, if it is given. (the current IGA has a minimum 120-day notice requirement for early termination).

The recommended form of new IGA incorporates by reference the following clauses: the Affordable Care Act, Special Management Inmates and Suicide Prevention, Prison Rape Elimination Act (PREA), Service Contract Act of 1965, Statement of Equivalent Rates for Federal Hires, Fair Labor Standards Act and the Service

Contract Act - Price Adjustment, and Hold Harmless.

Below is a brief explanation of these clauses (the County is the "local government"):

- Affordable Care Act - the local government shall provide Federal detainees, upon release of custody, information regarding the Affordable Care Act.
- Special Management Inmates and Suicide Prevention - the local government shall have written policy, procedure, and practice require that all special management inmates are personally observed twice per hour, but no more than 40 minutes apart, on an irregular schedule.
- PREA - the facility must post the Prison Rape Elimination Act brochure/bulletin in each housing unit of the facility and abide by all relevant PREA regulations.
- Service Contract of 1965, as Amended (July 2005) - 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 Department of Labor, or the rates contained in a predecessor contractor's collective bargaining agreement. This is also known as the Prevailing Wage.
- Statement of Equivalent Rates for Federal Hires (May 1989) - in compliance with the Service Contract of 1965, as amended, and the regulations of the Secretary of Labor (29 CFR par 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 (May 1989) - enacted in 1938 that 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.
- Hold Harmless - local government holds harmless, indemnifies, and defends the United States of America, its officers, employees, agents, and servants, individually and officially, for any and all liability caused by any act of any member of the County or anyone else arising out of the use of the Federal Government's property.

The County is working with the State on its SB 1022 financing of the West Annex Jail. Therefore, the DOF requires the County and the USMS to enter into Amendment No. 1 to Current IGA, which would amend the current IGA No. 97-02-0015 and Amendment No. 1 to New IGA, which would amend the proposed, new IGA No. 97-02-0015, if approved by the USMS. These terms in each such Amendment No. 1 are required by the DOF's bond counsel for purposes of the State's future issuance of SB 1022 bonds. Those bonds will be issued on a tax-exempt basis, when the West Annex Jail project is completed.

The terms of the present form of Amendment No. 1 to Current IGA and Amendment No. 1 to New IGA are the same, and are summarized as follows:

- The USMS agrees that notwithstanding any provision in the IGA to the contrary, the IGA does not confer upon the USMS any right, title or interest in the West Annex Jail, but if such right, title or interest may otherwise exist, the IGA will be "subordinate" (i.e., lower priority right or interest) and subject to the terms of the State's SB 1022 Bonds.
- The County has the right, without penalty or cause, to terminate the IGA at any time upon at least 30, but not later than 50 calendar days written notice.

- The County reasonably expects, as of the date of the Amendment No. 1, that no more than 15 beds in the West Annex Jail shall be occupied by federal detainees at any one time pursuant to the terms of the IGA.

REFERENCE MATERIAL:

BAI #23.1, April 4, 2017

BAI #21, December 13, 2016

BAI Addendum A, June 15, 2010

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Application with USMS

On file with Clerk - Current IGA No. 97-02-001

On file with Clerk - USMS template form of new IGA

On file with Clerk - Amendment No. 1 to Current IGA

On file with Clerk - Amendment No. 1 to New IGA

CAO ANALYST:

Jeannie Z. Figueroa