REQUEST FOR COUNCIL ACTION

CITY COUNCIL MEETING DATE:
FEBRUARY 2, 2016

TITLE:

AGREEMENT AMENDMENT
WITH U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT TO
PROVIDE HOUSING FOR
FEDERAL INMATES
{STRATEGIC PLAN NO. 1, 4A}

CITY MANAGER

CLERK OF COUNCIL USE ONLY:

APPROVED
☐ As Recommended
☐ As Amended
☐ Ordinance on 1st Reading
☐ Ordinance on 2nd Reading
☐ Implementing Resolution
☐ Set Public Hearing For:

CONTINUED TO

FILE NUMBER

RECOMMENDED ACTION

Authorize the City Manager and the Clerk of the Council to execute a five-year agreement amendment beginning on February 2, 2016, and terminating June 30, 2020, with U.S. Immigration and Customs Enforcement (ICE) for jail housing services to include a 128 bed guarantee, and increase the maximum number of ICE detainees from 200 to 300, subject to non-substantive changes approved by the City Manager and City Attorney.

DISCUSSION

The City of Santa Ana has had an agreement with U.S. Immigration and Customs Enforcement (ICE) since 2006, and has provided housing for Federal detainees awaiting immigration proceedings. In accordance with Jail cost recovery strategies, this contract amendment will expand the Jail facility’s ability to house transgender, gay and bisexual detainees. As detailed in the terms of the amended agreement, detainees with special housing needs will be evaluated by an established committee comprised of Jail facility personnel, ICE personnel and contracted medical staff. The committee will determine the appropriate housing assignment of detainees within this identified classification based on the information gathered from the detainee’s history, and facility safety or security concerns.

Numerous local advocacy organizations were consulted whom provided valuable recommendations and insight. In conjunction with ICE personnel and committee members, Jail personnel will strive to ensure the housing needs are met within this expanded program, where appropriate. All detainees held in the Jail facility are provided immediate access to ICE personnel for case inquiries, and have access to non-profit and legal organizations specializing in immigration proceedings within the immediate local area.
This amendment includes a 128 bed guarantee, which will allow ICE to house approximately 58 additional detainees in two 64 bed mods. There are currently 70 detainees in these two mods. In addition, this amendment increases the maximum number of ICE detainees from 200 to 300. These two contract modifications will assist the Jail with reaching current revenue projections by increasing our current 170 detainee Average Daily Population (ADP) to an ADP of 228. This ADP increase will generate an estimated $2.2 million annually. This agreement amendment will be effective February 2, 2016 through June 30, 2020 and can be terminated by either party for any reason with 90 days written notice in advance of termination.

**STRATEGIC PLAN ALIGNMENT**

Approval of this item assists the City in meeting Goal #1 Community Safety, Objective #4 (ensure a sound fiscal model for Jail operations), Strategy A (modify the Santa Ana Jail business model and identify short- and long-term goals to effectively meet the needs of the community through contract negotiations with outside agencies, evaluation of staffing needs and increasing operational efficiency).

**FISCAL IMPACT**

Funds for this agreement will be deposited in the Police Department Jail Facility Rental account (no. 01114002 57460) for FY 2015-16 through FY 2019-20.

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Carlos Rojas  
Chief of Police  
Santa Ana Police Department

APPROVED AS TO FUNDS AND ACCOUNTS:

Francisco Gutierrez  
Executive Director, Finance & Mgmt. Services

Exhibit: Agreement with ICE

25D-2
## AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

<table>
<thead>
<tr>
<th>1. CONTRACT/ID CODE</th>
<th>5. PAGE OF PAGES</th>
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<th>3. EFFECTIVE DATE</th>
<th>4. REQUISITION/PURCHASE REQ NO</th>
<th>5. PROJECT NO (If applicable)</th>
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<td>02/01/2016</td>
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<th>6. ISSUED BY</th>
<th>CODE</th>
<th>7. ADMINISTERED BY (Enter other than Item 6)</th>
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Immigration and Customs Enforcement
Office of Acquisition Management
2400 Avila Road, Room 3104
Attn: Natasha Nguyen (949)425-7030
Laguna Niguel CA 92677

8. NAME AND ADDRESS OF CONTRACTOR (In., street, city, state and ZIP Code)
SANTA ANA CITY OF
20 CIVIC CENTER PLAZA
SANTA ANA CA 92701

9. CODE (Item 10)
083153247

10. FACILITY CODE

### 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ This above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers ☐ is extended. ☐ is not extended.

Offers must acknowledge receipt of this amendment prior to the hour and date specified for the solicitation or as amended, by one of the following methods: (a) by completing Item 8 and 15, and returning copies of this amendment; (b) by acknowledging receipt of this amendment on each copy of the offer submitted; or (c) by separate letter or telegram which includes a reference to the solicitation and amendment number. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. ☒

Failure of this amendment to change an offer already submitted, such change may be made by telegram or letter, provided such telegram or letter states the changes and this amendment, and is received prior to the date and time specified.

12. ACCOUNTING AND APPROPRIATION DATA (If required)
N/A

### 13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACT ORDER. IT MODIFIES THE CONTRACT ORDER NO. AS DESCRIBED IN ITEM 14.

**CHECK ONE**

☐ A. THE CHANGE ORDER IS ISSUED PURSUANT TO (Specify authority): THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 15A.

☐ B. THE ABOVE NUMBERED CONTRACT ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

☒ C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
Mutual Agreement of the Parties

☐ D. OTHER (Specify type of modification and authority)

14. IMPORTANT: Contractor ☒ is required to sign this document and return 2 copies to the issuing office.

DUNS Number: 083153247

COR POC: Daniel Pomplun, (760) 561-6327 or e-mail at daniel.a.pomplun@ice.dhs.gov

Attachment 6 - Transgender Care

The purpose of this modification is to incorporate the following with an effective date on 02/01/2016:

1) The contractor shall comply with requirements related to the care and custody of transgender detainees as outlined in Attachment 6 - Transgender Care Continued...

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as applicable, shall remain unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)
Roberta J. Halls

15B. CONTRACT/OFEROR

15C. DATE SIGNED

15D. UNITED STATES OF AMERICA

15E. DATE SIGNED

(Signature of person authorized to sign)

APPROVED AS TO FORM

Laura A. Rossini
Senior Assistant City Attorney

25D-3
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<td>3) To change the total bed from 200 to 300 detention beds capacity in IGSA Article 1, paragraph C and IGSA Article 3, paragraph A. Exempt Action: Y</td>
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ICE Detention Facility Contract Modification for Transgender Care

[Santa Ana Jail FACILITY] will comply with the following requirements related to the care and custody of transgender detainees:

Transgender Care

1) **Intake:** Upon arrival at the detention facility, intake personnel shall review the detainee’s record and documentation. If the record indicates the detainee’s gender identity differs from his/her biological sex, intake personnel shall only ask questions related to gender identity when such information is necessary to ensure the safety and security of other detainees and staff. In addition, the facility shall ensure that sensitive information, such as the detainee’s gender identity, is not used to the detainee’s detriment by facility personnel or other detainees.

   a) Intake personnel shall accurately record the detainee as transgender. The detainee shall be treated as a protective custody detainee for the duration of the intake process.

   b) The detainee shall be temporarily housed (i.e., in a location away from the general population, to include in a medical unit or protective custody) until classification, housing, and other needs can be assessed by a Transgender Classification and Care Committee as delineated below. When feasible, the facility will initiate the review process within 72 hours (excluding holidays, and exigent circumstances and not to exceed 10 calendar days. In particular, placement into administrative segregation due to a detainee’s identification as transgender should be used only as a last resort and when no other viable housing options exist.

2) **Transgender Classification and Care Committee**

   a) The facility shall create and operate a Transgender Classification and Care Committee (TCCC).

   b) In facilities **staffed** by the ICE Health Service Corps (IHSC):

      i) The TCCC shall be comprised of a dedicated facility medical representative, facility mental health representative, a facility classification supervisor, the Enforcement and Removal Operations (ERO) Lesbian, Gay, Bisexual, Transgender, and Intersex (LGBTI) Field Liaison, and a supervisory representative designated by the Field Office Director (FOD) (the supervisory representative from the ERO FOD can be the ERO LGBTI Field Liaison).

      ii) The TCCC may utilize remote forms of communication (i.e., phone or video-teleconference) to facilitate meetings and other activities.

   c) For facilities **not staffed** by IHSC:

      i) The TCCC shall include the IHSC Field Medical Coordinator (FMC), in addition to a dedicated facility medical representative, a facility mental health representative,
ICE Detention Facility Contract Modification for Transgender Care

a facility classification supervisor, facility ICE compliance officer or security supervisor, the ERO LGBTI Field Liaison, and a supervisory representative designated by the FOD (at the FOD’s discretion, the supervisory representative can include the ERO LGBTI Field Liaison).

d) The TCCC shall be chaired jointly by a representative from the facility and an ERO representative, preferably the ERO LGBTI Field Liaison.

e) In coordination with ERO LGBTI Field Liaison, the facility staff members, including medical and mental health personnel, will have appropriate training and experience in working with transgender persons. Training provided will be pursuant to a training plan mutually agreed upon by the parties.

3) Transgender Classification and Care Committee Determinations:

a) Meeting with the Detainee: In preparation for the TCCC meeting, the TCCC designated facility medical representative(s) shall meet with the detainee as soon as practicable after the detainee’s arrival to the facility to gather information necessary to solicit the detainee’s preferences and requests with regard to housing, searches, and other matters. The ERO LGBTI Field Liaison may also participate in any meeting with the detainee. The communication between the TCCC representative(s) and the detainee shall be in a language and manner the detainee can understand and should be conducted using the TCCC Determination Question Guide provided at the conclusion of this document.

b) Meeting of the TCCC: The TCCC shall meet and provide a classification assessment no later than 10 calendar days but when feasible, within 72 hours (excluding weekends, holidays, and emergencies) after the detainee’s arrival to the facility to assess medical, psychological, housing, and other needs.

c) Classification Assessment: As part of the transgender classification assessment, the TCCC shall, at a minimum, consider:

i) The detainee’s self-identification;

ii) An assessment of the effect of possible placements on the detainee’s health and safety, conducted by a medical or mental health professional (which may coincide with the full medical assessment done in accordance with the applicable ICE detention standards);

iii) The detainee’s record and available documentation, including forms and notes from initial processing, medical/mental health records, booking records, identification documents, etc.; and

iv) Documented observations provided by facility staff supervising the detainee in the

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1 Whenever practicable, the detainee’s request should be honored but not to the detriment of the safety and security of the facility or facility staff.
ICE Detention Facility Contract Modification for Transgender Care

assigned housing unit, medical or mental health representative(s), to include those based upon the latest Diagnostic and Statistical Manual of Mental Disorders (DSM) criteria for the diagnosis of Gender Dysphoria.

d) Detention Plan: Once the TCCC determines the detainee’s transgender classification, the TCCC shall construct an individualized Detention Plan for each transgender detainee. As part of its Detention Plan assessment, the TCCC shall, at a minimum, consider:

i) All records and prior assessments, including medical/mental health records, and an assessment of the effects of any housing placement on the detainee’s health and safety that has been conducted by a medical or mental health professional;

ii) The detainee’s preferences and requests;

iii) The detainee’s self-assessment of his or her safety needs (i.e., does the detainee feel threatened or at risk of harm?);

iv) The detainee’s documented criminal history and past and/or current behavior;

v) The TCCC’s determination of the detainee’s safety/security needs, including documented and self-reported history of sexual assault, victimization, or predatory behavior;

vi) The detainee’s physical, medical, or mental health, or special needs;

vii) Privacy issues, including showers, single-cell sleeping arrangements, etc.;

viii) Available beds and/or housing;

ix) Whether the housing assignment would pose a safety risk to other detainees (See Section 3.e.ii “Safety, Security, and Privacy”); and

x) Effects of housing assignment on resources, including facility staff.

c) Requirements within the Detention Plan: Consistent with existing ICE policy and detention standards, the individualized Detention Plan shall, at a minimum, contain the following requirements:

i) Housing Assignment: Options to include:

a. General housing consistent with the detainee’s biological sex;

b. General housing consistent with the detainee’s gender identity;

c. A protective custody unit; or

d. Medical or administrative segregation.

ii) Safety, Security and Privacy: The TCCC shall address the safety, security, and privacy needs for both the transgender detainee and the general detention population when assessing the housing assignment. Discussion(s) may include
ICE Detention Facility Contract Modification for Transgender Care

guidance on appropriate staffing levels in the housing option assigned (e.g., single or shared cell, or dormitory housing).

iii) **Hygiene:** Consistent with ICE detention standards, facility staff shall ensure that transgender detainees are able to maintain acceptable personal hygiene practices consistent with their gender identity and that ensure their safety. Transgender detainees shall be provided the opportunity to shower in a setting that ensures safety and privacy.

iv) **Clothing and Commissary:** Transgender detainees will be provided undergarments consistent with their gender identity as assessed by the TCCC. Transgender detainees shall be issued standard detention attire consistent with their assigned housing unit. Transgender detainees shall also be allowed to possess or purchase through the commissary those hygiene and personal items that are consistent with their Detention Plan.

v) **Searches:** As prescribed by standard 2.10 of ICE's 2011 *Performance-Based National Detention Standards (PBNDS)*, the transgender detainee’s preference as to the gender of the officer that will perform any necessary pat-down and strip searches will be considered by the TCCC when drafting the Detention Plan and followed by detention facility staff accordingly. Also with regards to strip searches only, and pursuant to standard 2.10 of ICE’s 2011 *PBNDS*, special care should be taken to ensure that transgender detainees are searched in private. Searches shall be conducted in a professional and respectful manner and in the least restrictive manner possible, consistent with security needs. Pursuant to DHS PREA Standards, at no time shall any search be conducted solely for the purpose of determining a detainee’s biological sex. Requests for transgender detainees to remove appearance related items such as prosthetics, clothing that conveys gender identity, wigs, and cosmetics shall be consistent with requirements for the removal of similar items for other non-transgender detainees. All strip searches shall be documented.

vi) **Staff Communication:** Detention facility staff shall refer to transgender detainees by their preferred pronouns or by the detainee’s last name.

vii) **Medical Care:** Pursuant to existing ICE detention standards, transgender detainees who were already receiving hormone therapy when taken into ICE custody shall have continued access to hormone therapy; those who have not yet begun treatment will be assessed and treated, if deemed medically necessary and safe in the context of their other medical conditions. All transgender detainees shall have access to continued mental health care and other transgender-related health care based on medical need. Medical care for transgender detainees shall be provided by qualified and appropriate medical professionals and administered pursuant to the applicable ICE detention standards.
f) **Decision:** The TCCC will attempt to reach consensus on all decisions. In situations where a consensus is not reached, the final decision shall rest with the ERO LGBTI Field Liaison.

   i) The TCCC shall retain summary notes of each meeting to document persons attending and conclusions reached. A copy of the notes shall be placed in the detainee’s detention file.

   ii) Absent extraordinary circumstances, a written Detention Plan by the TCCC for the detainee, including housing assignment, shall be forwarded to the facility classification supervisor within 72 hours (excluding weekends, holidays, and emergencies) of the TCCC’s decision, and maintained in the detainee’s detention file; a copy of the plan and housing assignment shall also be provided to the detainee.

   g) **Implementation of Detention Plan:** The classification supervisor or designee shall notify line staff of the TCCC’s Detention Plan and change of housing assignment decision.

   i) Detention facility staff shall follow the Detention Plan outlined by the TCCC. If a detention facility staff member identifies a safety or security risk posed by the TCCC’s plan, the staff member must inform the TCCC directly, or must notify his/her supervisor as soon as practicable, and that supervisor must notify the TCCC. The TCCC shall review the case and make adjustments to the Detention Plan, if necessary, within 72 hours (excluding weekends, holidays, and emergencies) of receiving notification.

   ii) In the case of an immediate threat to the safety or security of the transgender detainee or others, the detention facility staff may make a temporary change(s) to the TCCC’s plan (to include housing assignment), but should notify the TCCC as soon as possible. Only the TCCC can approve permanent change(s) to the Detention Plan.

   h) **Reassessment:** The TCCC shall reassess a transgender detainee’s Detention Plan and housing assignment after 30 days following the initial determination and then every 60 days thereafter or at any other time if additional relevant information becomes known, or following any incident of victimization or threats to safety experienced by the detainee. As part of its reassessment, the TCCC shall, at a minimum, consider:

   i) Changes in the transgender detainee’s housing preferences;

   ii) Variations in the detainee’s medical and/or mental health status;

   iii) Safety/security of the detainee, other detainees, and/or facility staff;

   iv) Any threats to safety experienced by the detainee;
v) Continued availability of housing; and

vi) The detention facility’s documented concerns.

i) **Education:** Upon adoption of this Contract Modification, the facility, in partnership with ICE ERO, will produce orientation training and/or materials describing the various housing options at the facility, including the possibility of placing a transgender detainee in general housing consistent with that detainee’s gender identity. This training and/or materials will be provided to each detainee upon admission, as well as to detainees already placed in the facility.

4) **Bed Space Guarantee:** The Service Provider and ICE agree on a guarantee of 128 beds to separate and dedicate for Gay, Bisexual and Transgender (GBT) detainees.

5) **Total ICE Detainees Permitted to be Housed with Service Provider:** The Service Provider and ICE agree to modify EROIGSA-15-007, specifically Article 3 “Covered Services”, Section A “Bedspace,” to state that the Service Provider shall provide and operate up to 300 bed adult civil detention facility.
ICE Detention Facility Contract Modification for Transgender Care

TCCC Determination Questions Guide

In preparation for the TCCC meeting, the designated facility medical representative(s), shall meet with the detainee when feasible within 72 hours (excluding weekends, holidays, and emergencies) and no later than ten (10) calendar days after the detainee’s arrival to the facility to gather information necessary to verify the transgender classification, and to solicit detainee’s preferences and requests with regards to housing, searches, and other matters. The ERO LGBTI Field Liaison may also participate in any meeting with the detainee. The following questions are provided to assist in this initial meeting, but may be used in other settings as deemed appropriate.

1) Do you identify as transgender?
   IF YES to #1, then proceed to ask the following questions:

   Name
   2) Do you go by or use any other name(s) or aliases?
   3) What pronoun(s) do you prefer others use to refer to you?

   Medical Issues
   4) Prior to coming here, were you taking any hormonal medications?
      a. If yes, what were they?
      b. How often were you taking them?
      c. Were these prescribed by a doctor?

   Hygiene and Grooming
   5) Do you prefer to wear male or female clothing?
   6) Are there any specific clothing items (e.g., undergarments) that you need that have not been provided?
   7) Are there any specific personal hygiene items that you need that have not been provided?

   Housing
   8) Do you feel you are at risk for your safety based on your gender identity?
      a. Would you feel safer being housed with men or women?
      b. Would you feel safer being housed with transgender women or men?
      c. Would you feel safer being housed in a cell with someone else or by yourself?

   Programming
   9) Do you feel comfortable being around male and female detainees during recreation, organized programs, or other types of group activities?
      a. If not, would you prefer to be separated from males or females?
      b. Do you feel you require complete separation, or would specific types of safeguards (e.g., sight or sound separation, staff escort) address your concern(s)?

   Searches
   10) Do you have a preference for whether a male or female staff member searches you? If so, which would you prefer?
ICE Detention Facility Contract Modification for Transgender Care

Other
11) Is there anything else we should know about you related to being transgender—any particular concerns?
12) Are there any other specific precautions and/or accommodations you think you would like to have to ensure your safety and welfare while at this facility?
ICE Detention Facility Contract Modification for Transgender Care

Definitions

The following definitions apply for purposes of this modification only:

1. **Biological Sex.** An individual’s biological status as either male or female, typically assigned at birth, and associated primarily with physical attributes such as chromosomes, hormone prevalence, and external and internal anatomy.

2. **Detainee.** An individual detained in ERO custody.

3. **Detention Plan.** A plan for a transgender detainee, constructed by the Transgender Classification and Care Committee at an ICE detention facility with instructions for how to address issues including, but not limited to, housing, clothing, showering, grooming, name and pronoun use, recreation, programming, escort, transportation, searches, privacy, etc.

4. **Diagnostic and Statistical Manual of Mental Disorders (DSM).** The standard classification of mental disorders used by mental health professionals in the United States as published by the American Psychiatric Association. DSM-5 (Fifth Edition) is the most current edition of the drafting of this guidance.

5. **Gender Affirming Surgery.** Surgical alteration of male or female genitals, or the reshaping, by any surgical procedure, of a male body into a body with female appearance, or vice versa. Also referred to as “sex reassignment surgery (SRS),” “gender reassignment surgery (GRS),” or by other names. Note: gender affirming surgery is the preferred name.

6. **Gender Dysphoria.** Medical diagnosis in the American Psychiatric Association’s DSM-5 that describes the distress that may accompany the incongruence between an individual’s experienced or expressed gender and the individual’s biological sex. This was previously known as Gender Identity Disorder.

7. **Gender Expression.** The ways in which an individual communicates/dispaly his/her gender identity to others; a combination of appearance, demeanor, and behavior.

8. **Gender Identity.** An individual’s internal sense of being a man, woman, or another gender. It is not necessarily based on the individual’s biological sex or on the individual’s sexual orientation. Because gender identity is internal, it is not necessarily visible to others, but may be externally manifested in the individual’s appearance, behavior, demeanor or other aspects of the individual’s life.

9. **Gender Non-Conforming.** Having an appearance or manner that does not conform to traditional societal gender expectations.

10. **Intersex.** Having sexual or reproductive anatomy or chromosomal pattern that do not seem to fit typical definitions of male or female. Intersex medical conditions are sometimes referred to as disorders of sex development.
11. **LGBTI.** The acronym for Lesbian, Gay, Bisexual, Transgender, and Intersex.

12. **Sexual Orientation.** A pattern of romantic, emotional, physical, and/or sexual attraction towards members of the same, opposite, or both sexes. Includes homosexuality, heterosexuality, and bisexuality.

13. **Transgender.** A person whose gender identity (i.e., internal sense of feeling male or female) is different from the sex assigned to the person at birth.

14. **Transgender Classification and Care Committee (TCCC).** The detention facility committee that gathers information and assesses the gender identity of the detainee, and produces and regularly assesses a Detention Plan for a transgender detainee.

15. **Transgender man.** An individual who is a biological female and has a gender identity as a man.

16. **Transgender woman.** An individual who is a biological male and has a gender identity as a woman.

17. **Transition.** The process by which an individual changes his/her gender from that assigned at birth to one with which he/she now identifies. This may include making personal, legal, and medical changes to his/her gender, such as changing his/her name and/or gender on legal documents; undergoing hormone therapy; and/or undergoing one or more forms of surgery.