

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 06/15/2010

ORIGINATING DEPARTMENT: Police Department

SUBJECT: Grant administration of "Operation Stone Garden"

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Brian Hojnacki/619-531-2734 MS 715

REQUESTED ACTION:

Approve the requested action of grant administration for Operation Stone Garden via the San Diego County Sheriff.

STAFF RECOMMENDATION:

Approve Requested Action

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

Operation Stone Garden is a collaborative regional approach to law enforcement involving crimes stemming from alien and drug smuggling. This regional approach is a collaboration of federal, state and local authorities to share resources and intelligence in combating illegal activities throughout the County. The funding from this grant makes the collaboration possible.

The San Diego Police Department via Purchasing and Contracting has entered into a contractual agreement with the San Diego County Sheriff Office (SDSO) in which SDSO will reimburse SDPD for Overtime (\$1,366,940), Equipment (\$859,051), Mileage (\$130,500) and Flight Costs (\$74,160).

Operation Stone Garden is a Federal grant which has been awarded to the SD Sheriff Office. They have sub contracted a portion of the funds to SDPD as well as several other law enforcement agencies within the County. The sub award to SDPD via the Sheriff has been approved by the Federal grantor.

The funds which will be reimbursed to SDPD are from SDSO via Cal EMA via the Department of Homeland Security "Operation Stone Garden".

FISCAL CONSIDERATIONS:None. All expenses resulting from this action are grant funded. There is no requirement for continued expenditures or services once grant funding is depleted or terminated.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Signed agreement via Purchasing and Contracting. Attached

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:N/A

Ramirez, David

Originating Department

Deputy Chief/Chief Operating Officer

**AGREEMENT FOR THE
2009 OPERATION STONEGARDEN GRANT**

PARTIES TO THE AGREEMENT

This Agreement is between the COUNTY OF SAN DIEGO ("COUNTY"), and the CITY OF SAN DIEGO ("CITY"), for program support of the 2009 Operation Stonegarden Grant ("OPSG").

Party Departments Or Agencies Participating In The Agreement

For the COUNTY, participating agency is the Sheriff's Department.

For the CITY, participating agency is the police department.

The services and obligations of CITY are set forth herein.

RECITALS

WHEREAS, COUNTY through SHERIFF received funds from the U.S. Department of Homeland Security (DHS) passed through the California Emergency Management Agency (Cal-EMA), under the Fiscal Year (FY) 2009 Operation Stonegarden Grant- Supplemental (OPSG-S); and

WHEREAS, funds shall be used to support the OPSG program to enhance law enforcement preparedness and operational readiness along the land borders of the United States; and

WHEREAS, Government Code §55632 authorizes COUNTY through SHERIFF and the CITY by and through its police department, to contract with SHERIFF for provision of joint law enforcement services; and

WHEREAS, CITY desires to enter into an agreement with provisions concerning the nature and extent of OPSG collaboration, services rendered, and compensation; and

WHEREAS, COUNTY, by action of the Board of Supervisors Minute Order No. 3 dated November 3, 2009, approved and authorized the SHERIFF to execute expenditure contracts to use FY 2009 OPSG-S grant funds to reimburse CITY for overtime expenses; equipment and vehicle purchases; fuel, mileage, flight, and vehicle and equipment maintenance costs incurred in OPSG activities not to exceed \$2,430,651, during the project period beginning October 1, 2009 through March 30, 2012; and

WHEREAS, CITY agrees to maintain all documentation supporting all expenditures reimbursed from Operation Stonegarden (OPSG) grant funds, ensure all expenditures are allowable under grant requirements, and submit an organization-wide financial and compliance audit report if \$300,000 or more of OPSG federal funds are expended in a fiscal year. The records shall be maintained and retained in accordance with OPSG grant requirements and shall be available for audit and inspection. The audit shall be performed in accordance with the U.S. General Accounting Office Government Auditing Standards and OMB Circular A-133. For accounting purposes, the following is a description of these funds: Federal Grantor Agency: U.S. Department of Homeland Security; Pass Through Agency: California Emergency Management Agency (CALEMA); Program Title: Homeland Security Grant Program; Federal CFDA Number: 97.067; and

WHEREAS, CITY agrees to Exhibit A - FY09 Grant Assurances as set forth by the California Emergency Management Agency;

NOW THEREFORE, for consideration, the receipt and sufficiency of which is hereby acknowledged, CITY intends that COUNTY through SHERIFF will fund, and CITY will provide, a level of OPSG services, as set forth in this Agreement.

AGREEMENT

I. PURPOSE AND INTENT

The purpose of this Agreement is to satisfy the OPSG proposal submitted to and awarded by the U.S. Department of Homeland Security passed through the California Emergency Management Agency, under the FY 2009 OPSG-S.

II. SCOPE OF SERVICES

A. Method of Service Delivery

SHERIFF will maintain the OPSG grant and will be administratively responsible for coordination of CITY's obligations under this Agreement. The SHERIFF'S OPSG will be staffed as described in section IV. - Standards of Service: Obligations of the CITY.

B. Overview Of Basic Services

CITY will provide OPSG activities ("Activities") by increasing law enforcement presence in their designated areas of jurisdiction in order to support the U. S. Department of Homeland Security, Bureau of Customs and Border Protection efforts in the region to improve border security. CITY will enforce local and state laws within the agency's jurisdiction and will not enforce immigration laws on behalf of Customs and Border Protection/Border Patrol.

III. TERM OF AGREEMENT

A. Initial Term

The term of this Agreement shall be retroactive to midnight on October 1, 2009, and shall continue in effect through and terminate at midnight on March 30, 2012; subject to the termination provision in section III. B. and III. C. below.

B. Option to Extend

Renewal or extension of the Agreement beyond March 30, 2012, shall be subject to remaining grant funds and to a time extension approved by the U.S. Department of Homeland Security (DHS) through the California Emergency Management Agency (Cal-EMA).

C. Termination

Subject to the applicable provisions of state law, CITY may terminate its participation in this Agreement upon ninety-day (90) minimum written notice to the COUNTY through SHERIFF.

IV. STANDARDS OF SERVICE: OBLIGATIONS OF THE CITY

A. Anticipated Outcome

The anticipated outcome of the OPSG Activities to be provided by CITY under this Agreement is increased law enforcement presence in its designated areas of jurisdiction in order to support the U. S. Department of Homeland Security, Bureau of Customs and Border Protection efforts in the region to improve border security and reduce border related crime. The law enforcement agencies that elected to participate in OPSG are San Diego County Probation Department, Chula Vista Police Department, San Diego Harbor Police Department, California Highway Patrol, California Department of Fish & Game, San Diego Police Department, Oceanside Harbor Police, Coronado Police Department, Orange County Sheriff's Department, California Department of Motor Vehicles, and Carlsbad Police Department ("Participating Agencies"). The anticipated outcome will be reached by

achieving the goals and accomplishing the missions set forth below by the Participating Agencies and in Exhibit B –FY 2009 OPSG-S Operations Order to this Agreement.

1. OPSG Participating Agencies will provide enhanced enforcement by increasing patrol presence in proximity to the border and/or routes of ingress from the border. In addition, Participating Agencies will utilize their unique investigatory areas of expertise in operations targeting criminal aliens, document fraud, and intelligence development.
2. Increase intelligence/information sharing among Participating Agencies, including but not limited to the following activities:
 - a. Conduct monthly meetings with a minimum of one representative from each OPSG agency.
 - b. Increase information sharing during operations.
3. At the conclusion of each shift funded by Operation Stonegarden, OPSG state/local law enforcement officers will complete a Daily Activity Report (DAR). The DAR will be submitted via email to U.S. Customs and Border Protection (CBP)/Border Patrol Sector Headquarters at: SDCOPSG2009@cbp.dhs.gov and SDSD at: gayda.pia@sdsheriff.org. The work week for OPSG is Wednesday – Tuesday.

B. Personnel Qualifications And Assignment

All CITY personnel who perform OPSG Activities pursuant to this Agreement shall have met the minimum qualifications designated for their specific classification.

CITY shall provide OPSG with qualified personnel to meet performance standards and scope of service defined herein and as further specified in Exhibit B.

1. Sheriff And Participating Agency's Discretion

The management, direction, and supervision of SHERIFF OPSG personnel, the standards of performance, the discipline of deputies, and all other matters incident to the performance of such services, shall be performed by and be the responsibility of COUNTY through SHERIFF in SHERIFF'S sole but reasonable judgment and in accord with the provisions of applicable labor agreements. SHERIFF shall be the appointing authority for all SHERIFF personnel provided to OPSG by this AGREEMENT. Participating Agencies shall have no liability for any direct payment of salary, wages, indemnity, or other compensation or benefit to persons engaged in COUNTY'S performance of this Agreement.

2. Participating Agency's Discretion

The management, direction, and supervision of CITY OPSG personnel, the standards of performance, the discipline of officers and/or non-sworn personnel, and all other matters incident to the performance of such services, shall be performed by and be the individual responsibility of CITY in its sole but reasonable judgment and in accord with the provisions of applicable labor agreements. CITY shall be the appointing authority for its respective personnel provided to the OPSG by this Agreement. COUNTY and SHERIFF shall have no liability for any direct payment of salary, wages, indemnity, or other

compensation or benefit to persons engaged in CITY's performance of this Agreement.

3. Designated Coordinators

SHERIFF shall select and designate a coordinator who shall manage and direct the OPSG. CITY shall select and designate a coordinator under this Agreement. The designated coordinators for each party shall implement, as needed, appropriate procedures governing the performance of all requirements under this Agreement and shall be responsible for meeting and conferring in good faith in order to address any disputes which may arise concerning implementation of this Agreement.

4. Staffing for Basic Services

CITY shall ensure that adequate numbers of their qualified respective personnel are provided to OPSG Activities at all times during the term of this Agreement to meet the Basic Services, Scope of Services, and Standards of Service commitments set forth herein.

5. Equipment and Supplies

COUNTY through SHERIFF will provide SHERIFF OPSG personnel with all supplies and/or prescribed safety gear, body armor, and/or standard issue equipment necessary to perform OPSG Activities. CITY will provide its respective OPSG personnel with all supplies and/or prescribed safety gear, body armor, and/or standard issue equipment necessary to perform OPSG Activities unless otherwise specified in Exhibit B. CITY is responsible for the procurement of its own equipment to be used in OPSG Operations.

V. COST OF SERVICES/CONSIDERATION

A. General

As full consideration for the satisfactory performance and completion by CITY of OPSG Activities set forth in this Agreement, COUNTY through SHERIFF shall reimburse CITY for personnel assigned to perform OPSG Activities on the basis of invoices and submittals as set forth hereunder. Such payments by COUNTY through SHERIFF are dependent on the continued availability of grant funds from the U.S. Department of Homeland Security (DHS) passed through the California Emergency Management Agency (Cal-EMA).

B. Personnel Costs/Rate of Compensation

During the term of this Agreement, COUNTY through SHERIFF shall reimburse CITY for overtime worked by personnel assigned to perform OPSG Activities based upon available funding and the actual costs incurred by CITY to provide Activities under this Agreement.

C. Method of Payment

1. CITY shall mail itemized invoices, timesheets, and any other related supporting documentation that represents amounts due under this Agreement to SHERIFF no later than 5:00 p.m. of the thirty-first (31st) business day following the end of each month of the contract year, and no later than 5:00 p.m. of the thirty-first (31st) business day of each succeeding month during the term of this Agreement to: San Diego County Sheriff's Department, Financial Services Division (Homeland Security Grants Unit), Ref: OPSG, P. O. Box 939062, San Diego, CA 92193.

- a. Invoices, timesheets, and other related supporting documentation must have the signature of CITY's designated coordinator or his or her designee, certifying that the invoice, timesheets, and related documentation are true and correct.
 - b. CITY shall provide payroll records for each and every person whose costs are reimbursable under this Agreement, to include, at a minimum, the person's name, classification, duty position, task, regular hourly rate, overtime hourly rate, overtime hours worked, and fringe benefit rate and cost.
2. Within thirty (30) business days upon receipt of valid invoice, SHERIFF will pay CITY for the Basic Services agreed to.

VI. INDEMNIFICATION RELATED TO WORKERS COMPENSATION.

EMPLOYMENT AND CLAIMS AND LIABILITY ISSUES

A. Workers Compensation And Employment

1. The COUNTY shall fully indemnify and hold harmless the CITY and its respective officers, employees and agents, from any claims, losses, fines, expenses (including attorneys' fees and court costs and/or arbitration costs), costs, damages or liabilities arising from or related to (1) any workers' compensation claim or demand or other workers' compensation proceeding arising from or related to, or claimed to arise from or relate to, employment which is brought by an employee of the COUNTY or any contract labor provider retained by the COUNTY, or (2) any claim, demand, suit or other proceeding arising from or related to, or claimed to arise from or relate to, the status of employment (including without limitation, compensation, demotion, promotion, discipline, termination, hiring, work

assignment, transfer, disability, leave or other such matters) which is brought by an employee of the COUNTY or any contract labor provider retained by the COUNTY.

2. The CITY shall fully indemnify and hold harmless the COUNTY, its officers, employees and agents, from any claims, losses, fines, expenses (including attorneys' fees and court costs or arbitration costs), costs, damages or liabilities arising from or related to (1) any workers' compensation claim or demand or other workers' compensation proceeding arising from or related to, or claimed to arise from or relate to, employment which is brought by an employee of the CITY or any contract labor provider retained by the CITY, or (2) any claim, demand, suit or other proceeding arising from or related to, or claimed to arise from or relate to, the status of employment (including without limitation, compensation, demotion, promotion, discipline, termination, hiring, work assignment, transfer, disability, leave or other such matters) which is brought by an employee of the CITY or any contract labor provider retained by the CITY.

B. Indemnification Related To Acts Or Omissions; Negligence

1. Claims Arising From Sole Acts or Omissions of County

The COUNTY of San Diego (COUNTY) hereby agrees to defend and indemnify the CITY, its agents, officers and employees, from any claim, action or proceeding against CITY, arising solely out of the acts or omissions of COUNTY in the performance of this Agreement. At its sole discretion, CITY may participate at its own expense in the defense of any claim, action or proceeding, but such participation shall not relieve

COUNTY of any obligation imposed by this Agreement. CITY shall notify COUNTY promptly of any claim, action or proceeding and cooperate fully in the defense.

2. Claims Arising From Sole Acts or Omissions of CITY

The CITY hereby agrees to defend and indemnify the COUNTY of San Diego, its agents, officers and employees from any claim, action or proceeding against COUNTY, arising solely out of the acts or omissions of CITY in the performance of this Agreement. At its sole discretion, COUNTY may participate at its own expense in the defense of any such claim, action or proceeding, but such participation shall not relieve CITY of any obligation imposed by this Agreement. COUNTY shall notify CITY promptly of any claim, action or proceeding and cooperate fully in the defense.

3. Claims Arising From Concurrent Acts or Omissions

COUNTY hereby agrees to defend itself, and CITY hereby agrees to defend itself, from any claim, action or proceeding arising out of the concurrent acts or omissions of COUNTY and CITY. In such cases, COUNTY and CITY agree to retain their own legal counsel, bear their own defense costs, and waive their right to seek reimbursement of such costs, except as provided in paragraph 5 below.

4. Joint Defense

Notwithstanding paragraph 3 above, in cases where COUNTY and CITY agree in writing to a joint defense, COUNTY and CITY may appoint joint defense counsel to defend the claim, action or proceeding arising out of the concurrent acts or omissions of CITY and COUNTY. Joint defense counsel shall be selected by mutual agreement of COUNTY and CITY. COUNTY and CITY agree to share the costs of such joint defense and any agreed settlement in equal amounts, except as provided in paragraph 5 below.

COUNTY and CITY further agree that neither party may bind the other to a settlement agreement without the written consent of both COUNTY and CITY.

5. Reimbursement and/or Reallocation

Where a trial verdict or arbitration award allocates or determines the comparative fault of the parties, COUNTY and CITY may seek reimbursement and/or reallocation of defense costs, settlement payments, judgments and awards, consistent with such comparative fault.

VII. GENERAL PROVISIONS

A. Independent Contractor Status

In the performance of services under this Agreement, COUNTY and CITY acknowledge and agree that COUNTY and its respective officers, agents and/or employees shall be deemed independent contractors and not officers, agents or employees of CITY; CITY and their respective officers, agents and/or employees shall be deemed independent contractors and not officers, agents or employees of COUNTY. All such personnel provided by COUNTY under this Agreement are under the direct and exclusive supervision, daily direction, and control of COUNTY and COUNTY assumes full responsibility for the actions of such personnel in the performance of services hereunder; all such personnel provided by CITY under this Agreement are under the direct and exclusive supervision, daily direction, and control of CITY and CITY assumes full responsibility for the actions of such personnel in the performance of services hereunder.

COUNTY and CITY acknowledge and agree that COUNTY does not control the manner and means of performing the work of CITY's officers, agents or

employees who perform OPSG Activities, nor does COUNTY have the right to hire or terminate employment of such officers, agents or employees. CITY does not control the manner and means of performing the work of COUNTY officers, agents or employees who perform OPSG Activities, nor does CITY have the right to hire or terminate employment of such officers, agents or employees.

COUNTY has no authority of any kind to bind CITY, and CITY has no authority to bind COUNTY and/or SHERIFF in any respect whatsoever, nor shall COUNTY or SHERIFF act or attempt to act, or represent itself directly or by implication as an agent of CITY, or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of CITY. CITY shall not act or attempt to act, or represent itself directly or by implication as an agent of COUNTY or SHERIFF, or in any manner assume or create or attempt to assume or create any obligation on behalf of or in the name of COUNTY.

B. Notices

Any notice, request, demand or other communication required or permitted hereunder shall be in writing and may be personally delivered or given as of the date of mailing by depositing such notice in the United States mail, first-class postage prepaid and addressed as follows or, to such other place as each party may designate by subsequent written notice to each other:

To COUNTY and SHERIFF:
Sheriff
San Diego County Sheriff's Department
P. O. Box 939062
San Diego, CA 92193

To CITY:
Chief of Police
San Diego Police Department
1401 Broadway,
San Diego, CA 92101

A notice shall be effective on the date of personal delivery if personally delivered before 5:00 p.m. on a business day or otherwise on the first business day following personal delivery; or two (2) business days following the date the notice is postmarked, if mailed; or on the first business day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery and otherwise when actually received.

C. Amendment; Assignment

This Agreement may be modified or amended only by a written document signed by the COUNTY and CITY, and no oral understanding or agreement shall be binding on the COUNTY and CITY. No party shall assign any of its rights or delegate any of its obligations hereunder without the prior written consent of the COUNTY and CITY.

D. Entire Agreement

This Agreement constitutes the complete and exclusive statement of agreement between the COUNTY and CITY with respect to the subject matter hereto. As such, all prior written and oral understandings are superseded in total by this Agreement.

E. Construction

This Agreement will be deemed to have been made and shall be construed, interpreted, governed, and enforced pursuant to and in accordance with the laws of the State of California. The headings and captions used in this Agreement are for

convenience and ease of reference only and shall not be used to construe, interpret, expand, or limit the terms of the Agreement and shall not be construed against any one party.

F. Waiver

A waiver by COUNTY or CITY of a breach of any of the covenants to be performed by COUNTY or CITY shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. In addition, the failure of any party to insist upon strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by COUNTY or CITY of either performance or payment shall not be considered a waiver of CITY's preceding breach of this Agreement.

G. Authority to Enter Agreement

COUNTY and CITY have all requisite power and authority to conduct their respective business and to execute, deliver, and perform the Agreement. CITY warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.

H. Cooperation

COUNTY through SHERIFF and CITY will cooperate in good faith to implement this Agreement.

I. Counterparts

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

J. Severability

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any Court or other legal authority, or is agreed upon by the COUNTY through SHERIFF and CITY, to be in conflict with any law or regulation, then the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of this Agreement to any party is lost, then the Agreement may be terminated at the option of the affected party, with the notice as required in this Agreement. In all other cases, the remainder of this Agreement shall be severable and shall continue in full force and effect.

K. Legislative Changes

If any changes are made to regulations pursuant to which this Agreement is made or to any successor legislation or regulations, or if the U.S. Department of Homeland Security through the California Emergency Management Agency imposes any budget requirements or limitations applicable to this Agreement and the services to be provided hereunder, then (1) to the extent any of the changes are of mandatory application, such change(s) shall apply to CITY and this Agreement, and this Agreement shall be deemed to be amended to be consistent with such change(s) except to the extent that such change(s) alter(s) a material provision of this

Agreement in which case such material provision shall be voidable and CITY will negotiate in good faith to amend the Agreement as necessary, and (2) to the extent any of the changes are not of mandatory application, such change(s) shall not affect this Agreement or the right or obligations of COUNTY and SHERIFF, and CITY, under this Agreement unless the parties mutually agree to subject themselves to such changes(s).

L. Representation

CITY's Chief, or his or her designee, shall represent CITY in all discussions pertaining to this Agreement. SHERIFF, or his or her designee, shall represent SHERIFF in all discussions pertaining to this Agreement.

M. Dispute Resolution Concerning Services and Payment

In the event of any dispute concerning services and payment arising from this Agreement, the SHERIFF, or his or her designee, and CITY's Chief, or his or her respective designee, will meet and confer within 10 (ten) business days after receiving notice of the dispute to resolve the dispute.

N. Termination of Funding

In the event that funding for reimbursement of costs related to OPSG Activities is terminated by the U.S. Department of Homeland Security through the California Emergency Management Agency, this Agreement in its entirety shall be considered null and void and COUNTY through SHERIFF and CITY shall no longer be required to provide OPSG Activities as described herein. In such event, the COUNTY through SHERIFF and CITY shall meet immediately, and if agreed upon by the COUNTY through SHERIFF and CITY, mutually develop and implement within a

reasonable time frame, a transition plan for the provision of OPSG Activities through alternate means.

O. Obligation

This Agreement shall be binding upon the successors of the parties.

This Agreement is executed and delivered within the State of California and the rights and obligations of the parties hereto shall be construed and enforced in accordance with, and governed by the laws of the State of California.

IN WITNESS WHEREOF, the COUNTY through SHERIFF and CITY hereto have executed this Agreement on this 2nd day of DECEMBER, 2009.

**COUNTY OF SAN DIEGO
SHERIFF'S DEPARTMENT**

SAN DIEGO POLICE DEPARTMENT

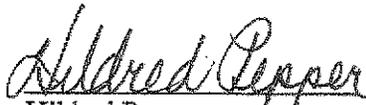


William D. Gore
Sheriff



William Larsdowne
Chief

Approved as to form and legality:
SAN DIEGO COUNTY COUNSEL



Hildred Pepper
Director
Purchasing & Contract



William L. Pettingill
Senior Deputy



Linda R. Peter
City Attorney