

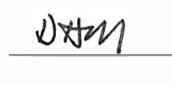


DATE SUBMITTED 08/10/22
 SUBMITTED BY Capt. Max Sheffield
 DATE ACTION REQUIRED 08/17/22

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS ()

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: Approval of the 2020 Stonegarden Memorandum of Understanding	
DEPARTMENT INVOLVED: Police Dept.	
BACKGROUND/SUMMARY: The Imperial Police Department is requesting to approve the 2020 Stonegarden MOU. Please see attached for further information.	
FISCAL IMPACT: None	ADMIN SERVICES SIGN INITIALS <u></u>
STAFF RECOMMENDATION: Request Council approval of the 2020 Stonegarden MOU	DEPT. INITIALS <u></u>
MANAGER'S RECOMMENDATION: <u>approve</u>	CITY MANAGER'S INITIALS <u></u>
MOTION:	
SECONDED: AYES: NAYES: ABSENT:	APPROVED () REJECTED () DISAPPROVED () DEFERRED () REFERRED TO:

RECEIVED
 AUG 10 2022

BY:

1 **AGREEMENT FOR THE**

2 **FISCAL YEAR 2020 OPERATION STONEGARDEN GRANT PROGRAM**

3 THIS AGREEMENT ("Agreement"), made and entered into effective the _____ day of _____
4 2022, is by and between the **COUNTY OF IMPERIAL**, a political subdivision of the State of California,
5 by and through its Sheriff's Office, Department of Probation, and District Attorney's Office ("County" or
6 "County Parties"), the **IMPERIAL COUNTY NARCOTICS TASK FORCE** ("ICNTF"), the
7 **CALIFORNIA HIGHWAY PATROL**, by and through its Calexico, El Centro, Indio, and Winterhaven
8 Offices ("CHP"), the **CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE** ("CDFW"), the **CITY**
9 **OF BRAWLEY**, an incorporated city within the County of Imperial, by and through its Police Department
10 ("Brawley"), the **CITY OF CALEXICO**, an incorporated city within the County of Imperial, by and through
11 its Police Department ("Calexico"), the **CITY OF EL CENTRO**, an incorporated city within the County of
12 Imperial, by and through its Police Department ("El Centro"), the **CITY OF IMPERIAL**, an incorporated
13 city within the County of Imperial, by and through its Police Department ("Imperial"), and the **CITY OF**
14 **WESTMORLAND**, an incorporated city within the County of Imperial, by and through its Police
15 Department ("Westmorland"), (individually, "Party;" collectively, "Parties"), for program support of the FY
16 2020 Operation Stonegarden Grant ("OPSG").

17 **RECITALS**

18 **WHEREAS**, County received funds from the U.S. Department of Homeland Security ("DHS")
19 passed through the California Governor's Office of Emergency Services ("CalOES"), under the OPSG
20 Program for fiscal year 2020; and

21 **WHEREAS**, said funds shall be used to support the OPSG Program to enhance law enforcement
22 preparedness and operational readiness along the border lands of the United States located within the
23 County; and

24 **WHEREAS**, Government Code §§ 55631 and 55632 authorize the legislative body of any local
25 agency to contract with any other local agency for the furnishing of police protection to such other local
26 agency, where a "local agency" includes a neighboring city, county, federal government, or any federal
27 department or agency; and

1 **WHEREAS**, the Parties desire to enter into an agreement with provisions concerning the nature,
2 scope, and extent of OPSG collaboration, services rendered, and compensation; and

3 **WHEREAS**, County, by action of the Board of Supervisors through Minute Order No. 33, dated
4 November 07, 2017, approved and authorized the Imperial County Sheriff to enter into this Agreement
5 with participating agencies, and to sign all grant documents necessary to receive OPSG funds that will be
6 used to reimburse the participating agencies under this Agreement; and

7 **WHEREAS**, the Parties agree to maintain documentation supporting all expenditures reimbursed
8 from OPSG funds, ensure all expenditures are allowable under grant requirements, adhere to their
9 jurisdictions authorized procurement methods, and submit an organization-wide financial and compliance
10 audit report if **Seven Hundred Fifty Thousand Dollars (\$750,000.00)** or more of OPSG federal funds
11 are expended in a fiscal year; and

12 **WHEREAS**, documentation and records shall be maintained and retained in accordance with
13 OPSG requirements and shall be available for audit and inspection; and

14 **WHEREAS**, for accounting purposes, the following is a description of OPSG funds: Federal
15 Grantor Agency: U.S. Department of Homeland Security; Pass Through Agency: California Governor's
16 Office of Emergency Services; Program Title: Homeland Security Grant Program; Federal CFDA
17 Number: 97.067.

18 **NOW THEREFORE**, and in consideration of the covenants and conditions hereinafter contained,
19 it is agreed between Parties as follows:

20 **1. PURPOSE AND INTENT.**

21 The purpose of this Agreement is to satisfy the OPSG proposal submitted to and awarded by DHS
22 and passed through CalOES under the OPSG for fiscal year 2020 -2023.

23 **2. SCOPE OF WORK.**

24 **2.1. Method of Service Delivery.**

25 2.1.1. County's Sheriff's Office will maintain the OPSG and will be administratively
26 responsible for coordination of Parties' obligations under this Agreement.

27 2.1.2 The OPSG will be staffed as described in Paragraph 4. – Standards of Service:
28 Obligations of the Parties.

1 **2.2. Overview of Basic Services.**

2 2.2.1. Parties will provide OPSG activities by increasing the presence of law enforcement
3 personnel in their designated areas of jurisdiction, in order to support DHS’s Bureau
4 of Customs and Border Protection (“CBP”) and Office of the Border Patrol
5 (“OBP”) efforts to improve border security in the region.

6 2.2.2 Parties will enforce local and state laws within the agency’s jurisdiction and will
7 not enforce immigration laws on behalf of CBP/OBP.

8 2.2.3 Parties will conduct OPSG activities consistent with the California Values Act,
9 including but not limited to Government Code Section 7284.6(b) and the following
10 conditions:

11 (a) The primary purpose of OPSG activities will not be immigration
12 enforcement, as defined in subdivision (f) of Government Code Section
13 7284.4.

14 (b) The enforcement or investigative duties will be primarily related to a
15 violation of state or federal law unrelated to immigration enforcement.

16 (c) Participation in OPSG activities by a California law enforcement agency
17 will not violate any local law or policy to which it is otherwise subject.

18 **3. TERM OF AGREEMENT.**

19 3.1. **Initial Term.** The term of this Agreement shall be from September 1, 2020, and
20 shall continue in effect through and terminate at midnight on August 31, 2023,
21 subject to the provisions in Paragraphs 3.2. and 3.3. below.

22 3.2. **Option to Extend.** Renewal or extension of this Agreement beyond May 31, 2020
23 shall be subject to remaining grant funds and to a time extension approved by DHS
24 and passed through CalOES.

25 3.3. **Termination.** Subject to the applicable provisions of State law, any Party may
26 terminate its participation in this Agreement upon a minimum of ninety (90) days
27 written notice to the other Parties.

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1 **4. STANDARDS OF SERVICE AND OBLIGATIONS OF PARTIES.**

2 **4.1. Anticipated Outcome.**

3 4.1.1. The anticipated outcome of the OPSG activities, to be provided by Parties under
4 this Agreement, is the increased presence of law enforcement personnel in their
5 designated areas of jurisdiction, to support CBP/OBP efforts to improve border
6 security in the region.

7 4.1.2. The anticipated outcome will be reached by achieving the goals and accomplishing
8 the missions set forth in this Agreement and in CBP's "Operations Order Report,"
9 hereinafter referred to as **Exhibit "A"** and incorporated by reference as though fully
10 set forth herein.

11 (a) Parties will provide enhanced enforcement by increasing patrol presence in
12 proximity to the border and/or routes of ingress from the border.

13 (b) Parties will utilize their unique investigatory and prosecutorial areas of
14 expertise in operations targeting criminal aliens upon reasonable suspicion
15 of, or for violation of, Section 1326 (a) of Title 8 of the United States Code
16 that may be subject to the enhancement specified in Section 1326(b)(2) of
17 Title 8 of the United States Code, if detected during an unrelated law
18 enforcement activity, to document fraud, and for intelligence development
19 including making necessary inquiries as permitted by Government Code
20 Section 7284.6(b).

21 (c) Parties shall increase intelligence/information sharing among each other,
22 which includes but is not limited to the following activities:

23 (i) Conducting monthly meetings with a minimum of one (1)
24 representative from each Party; and.

25 (ii) Sharing information during law enforcement operations.

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1 **4.2. Personnel Qualifications and Assignment.**

2 4.2.1 All Party personnel who perform OPSG activities pursuant to this Agreement shall
3 have met the minimum qualifications designated for their specific classification.

4 4.2.2. Parties shall provide OPSG with qualified personnel to meet performance standards
5 and scope of service defined herein and as further specified in **Exhibit "A."**

6 4.2.3. County Participating Agency Discretion.

7 (a) County's Sheriff's Office shall be responsible for the management,
8 direction, and supervision of its OPSG personnel, and the standards of
9 performance, discipline, and all other matters incidental to the performance
10 of such services, in its sole but reasonable judgment, and in accordance with
11 the provisions of applicable labor agreements.

12 (b) County's Sheriff's Office shall be the appointing authority for all of its
13 personnel provided to OPSG by this Agreement.

14 (c) County's Department of Probation shall be responsible for the management,
15 direction, and supervision of its OPSG personnel, and the standards of
16 performance, discipline, and all other matters incidental to the performance
17 of such services, in its sole but reasonable judgment, and in accordance with
18 the provisions of applicable labor agreements.

19 (d) County's Department of Probation shall be the appointing authority for all
20 of its personnel provided to OPSG by this Agreement.

21 (e) Non-County Parties shall have no liability for any direct payment of salary,
22 wages, indemnity or other compensation or benefit to persons engaged in
23 County's performance of this Agreement.

24 4.2.4. Non-County Parties' Discretion.

25 (a) Non-County Parties shall be responsible for the management, direction, and
26 supervision of their respective OPSG personnel, and the standards of
27 performance, discipline, and all other matters incident to the performance
28 of such services, in each respective non-County Party's sole but reasonable

1 judgment, and in accordance with the provisions of applicable labor
2 agreements.

3 (b) Each non-County Party shall be the appointing authority for its respective
4 personnel provided to the OPSG by this Agreement.

5 (c) County shall have no liability for any direct payment of salary, wages,
6 indemnity or other compensation or benefit to persons engaged in non-
7 County Party performance of this Agreement.

8 **4.2.5. OPSG Coordinators.**

9 (a) County's Sheriff's Office shall select and designate an OPSG Coordinator
10 who shall manage and direct the OPSG.

11 (b) County's Department of Probation and each non-County Party shall select
12 and designate an OPSG Coordinator under this Agreement.

13 (c) The designated OPSG Coordinator for each Party shall implement, as
14 needed, appropriate procedures governing the performance of all
15 requirements under this Agreement, and shall be responsible for meeting
16 and conferring in good faith in order to address any disputes which may
17 arise concerning implementation of this Agreement.

18 **4.2.6. Staffing for Basic Services.** Parties shall ensure that adequate numbers of their
19 qualified respective personnel are provided to OPSG activities at all times during
20 the term of this Agreement to meet the commitments set forth herein.

21 **4.2.7. Pre-Authorization of Overtime.**

22 (a) The OPSG Coordinator for each participating agency will be responsible
23 for authorizing all OPSG overtime prior to any detail.

24 (b) Any overtime scheduled for the OPSG Coordinator must be approved by
25 the department head or city manager.

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27 **4.2.8. Equipment and Supplies.**

- 1 (a) County's Sheriff's Office will provide its OPSG personnel with all supplies
2 and/or prescribed safety gear, body armor and or standard issue equipment
3 necessary to perform OPSG activities.
- 4 (b) County's Department of Probation will provide its OPSG personnel with all
5 supplies and/or prescribed safety gear, body armor and or standard issue
6 equipment necessary to perform OPSG activities
- 7 (c) Non-County Parties will provide their respective OPSG personnel with all
8 supplies and/or prescribed safety gear, body armor and/or standard issue
9 equipment necessary to perform OPSG activities unless otherwise specified
10 in **Exhibit "A."**

11 4.2.9. Party Monitoring. The County will monitor the performance of the Parties against
12 goals and performance standards set forth in this Agreement. Substandard
13 performance as determined by the County will constitute noncompliance with this
14 Agreement. If action to correct such substandard performance is not taken by the
15 Party/Parties within a reasonable period of time after being notified by the County,
16 suspension or termination procedures will be initiated.

17 **5. COST OF SERVICES/CONSIDERATION.**

18 **5.1. General.**

19 5.1.1. As full consideration for the satisfactory performance and completion by non-
20 County Parties of OPSG activities set forth in this Agreement, County shall pay
21 non-County Parties for personnel assigned to perform OPSG activities on the basis
22 of invoices and submittals as set forth hereunder.

23 5.1.2. Parties agree that awarded funds, identified as allowable costs as set forth in
24 **Exhibit "A"** shall be expended only for OPSG activities, operating expenses, and
25 equipment as detailed in **Exhibit "A"** for the applicable grant year, and that
26 unallowable costs are not reimbursed.

27 5.1.3. No reimbursement shall be made to a Party during any period of time within which
28 that Party is in default on filing any informational or financial reports required by

1 County. County, through its Sheriff's Office, shall make any necessary adjustments
2 to Party claims to correct for previous overpayments and disallowances or
3 underpayments.

4 5.1.4. Payments made by County are dependent on the continued availability of grant
5 funds from DHS passed through CalOES.

6 5.1.5. The amount of available OPSG funds shall not exceed **Two Million, Eight**
7 **Hundred and Five Thousand Dollars (\$2,805,000.00)**, unless otherwise
8 provided for under this Agreement.

9 **5.2. Personnel Cost/Rate of Compensation.**

10 5.2.1. During the term of this Agreement, County shall compensate Parties for
11 preauthorized overtime worked by personnel assigned to perform OPSG activities.

12 5.2.2. Compensation made by County is based upon available funding and the actual costs
13 incurred by Parties to provide OPSG activities under this Agreement.

14 **5.3. Method of Payment.**

15 5.3.1. Non-County Parties shall fax an itemized invoice, timesheets and any other related
16 supporting documentation that represents amounts due under this Agreement to
17 County's Sheriff's Office no later than 5:00 p.m., ten (10) business days following
18 the end of each calendar month during the term of this Agreement.

19 5.3.2. Invoices, timesheets and other related supporting documentation must have the
20 signature of each non-County Party's OPSG Coordinator, or his or her designee,
21 certifying that the invoices, timesheets, and related documentation are true and
22 correct.

23 5.3.3. Non-County Parties shall mail original documents in Paragraph 5.3.1. no later than
24 5:00 p.m. of the eleventh (11th) business day following the end of each calendar
25 month during the term of this Agreement to:

26 Imperial County Sheriff's Department
27 Fiscal Unit, Ref. OPSG
28 PO Box 1040
El Centro, CA 92244.

1 5.3.4. Within ten (10) business days after receipt of a valid invoice, County's Sheriff's
2 Office will process the request for reimbursement to DHS passed through CalOES.

3 5.3.5. Within ten (10) business days after receipt of reimbursement funds from DHS
4 passed through CalOES, County's Sheriff's Office will submit a claim for payment
5 to County's Auditor-Controller to pay non-County Parties for the service agreed to.

6 (a) County will request cash advances on the grant funds from DHS passed
7 through CalOES each quarter during the term of this Agreement.

8 (b) When County has a positive balance in its OPSG account, County will pay
9 non-County Parties for the service agreed to within ten (10) business days
10 of receipt of valid invoices.

11 5.3.6. Non-County Parties shall maintain payroll records for each and every person whose
12 costs are reimbursable under this Agreement, to include, at a minimum, the person's
13 name, classification, duty position, task and regular/overtime hours worked.

14 5.3.7. Upon request, non-County Parties shall make available to County's Sheriff's Office
15 all payroll records and other records that relate to the services provided under this
16 Agreement.

17 5.3.8. County Departments shall obtain reimbursement for qualifying OGSP activities
18 through procedures to be agreed upon within County.

19 **6. INDEMNIFICATION.**

20 **6.1. Indemnification Related to Workers' Compensation and Employment.**

21 6.1.1. County shall fully indemnify and hold harmless all non-County Parties and their
22 respective officers, employees and agents from any claims, losses, fines, expenses
23 (including attorneys' fees and court costs), costs, damages or liabilities arising from
24 or related to:

25 (a) Any Workers' Compensation claim or demand or other Workers'
26 Compensation proceeding arising from or related to, or claimed to arise
27 from or relate to, employment which is brought by an employee of County
28 or any contract labor provider retained by County; or

1 (b) Any claim, demand, suit or other proceeding arising from or related to, or
2 claimed to arise from or relate to, the status of employment (including
3 without limitation, compensation, demotion, promotion, discipline,
4 termination, hiring, work assignment, transfer, disability, leave or other
5 such matters) which is brought by an employee of County.

6 6.1.2. Non-County Parties shall fully indemnify and hold harmless County and its
7 officers, employees and agents from any claims, losses, fines, expenses (including
8 attorneys' fees and court costs or arbitration costs), costs, damages or liabilities
9 arising from or related to:

10 (a) Any Workers' Compensation claim or demand or other Workers'
11 Compensation proceeding arising from or related to, or claimed to arise
12 from or relate to, employment which is brought by an employee of the
13 respective non-County Party or any contract labor provider retained by the
14 respective non-County Party; or

15 (b) Any claim, demand, suit or other proceeding arising from or related to, or
16 claimed to arise from or relate to, the status of employment (including
17 without limitation, compensation, demotion, promotion, discipline,
18 termination, hiring, work assignment, transfer, disability, leave or other
19 such matters) which is brought by an employee of the respective non-
20 County Party or any contract labor provider retained by the respective non-
21 County Party.

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23 **6.2. Indemnification Related to Acts and/or Omissions – Negligence.**

24 **6.2.1. Claims Arising from Sole Acts and/or Omissions of a Party.**

25 (a) Each Party to this Agreement hereby agrees to defend and indemnify the
26 other Parties to this Agreement and their agents, officers and employees,
27 from any claim, action, or proceeding against the other Parties arising solely
28 out of its own acts or omissions in the performance of this Agreement.

1 (b) At each Party's sole discretion, each Party may participate at its own
2 expense in the defense of any claim, action or proceeding, but such
3 participation shall not relieve any Party of any obligation imposed by this
4 Agreement.

5 (c) Parties shall notify each other promptly of any claim, action, or proceeding
6 and cooperate fully in the defense.

7 **6.2.2. Claims Arising from Concurrent Acts or Omissions.**

8 (a) Parties hereby agree to defend themselves from any claim, action or
9 proceeding arising out of the concurrent acts or omissions of Parties.

10 (b) Parties agree to retain their own legal counsel, bear their own defense costs
11 and waive their right to seek reimbursement of such costs, except as
12 provided in Paragraph 6.2.4. below.

13 **6.2.3. Joint Defense.**

14 (a) Notwithstanding Paragraph 6.2.2. above, in cases where Parties agree in
15 writing to a joint defense, Parties may appoint joint defense counsel to
16 defend the claim, action or proceeding arising out of the concurrent acts or
17 omissions of Parties.

18 (b) Joint defense counsel shall be selected by mutual agreement of Parties.

19 (c) Parties agree to share the costs of such joint defense and any agreed
20 settlement in equal amounts, except as provided in Paragraph 6.2.4. below.

21 (d) Parties agree that no Party may bind the others to a settlement agreement
22 without the written consent of the others.

23 **6.2.4. Reimbursement and/or Reallocation.** Where a trial verdict or arbitration award
24 allocates or determines the comparative fault of the Parties, Parties may seek
25 reimbursement and/or reallocation of defense costs, settlement payments,
26 judgments and awards, consistent with such comparative fault.

27 **7. GENERAL PROVISIONS.**

28 **7.1. Independent Contractor Status.**

1 7.1.1. In the performance of services under this Agreement, County and non-County
2 Parties acknowledge and agree that:

3 (a) County and its respective officers, agents and/or employees shall be deemed
4 independent contractors and not officers, agents or employees of non-
5 County Parties; and

6 (b) Non-County Parties and their respective officers, agents and/or employees
7 shall be deemed independent contractors and not officers, agents or
8 employees of County.

9 7.1.2. All personnel provided by County under this Agreement are under the direct and
10 exclusive supervision, daily direction, and control of County, and County assumes
11 full responsibility for the actions of such personnel in the performance of services
12 hereunder.

13 7.1.3. All personnel provided by non-County Parties under this Agreement are under the
14 direct and exclusive supervision, daily direction, and control of their respective
15 agencies, and each agency assumes full responsibility for the actions of such
16 personnel in the performance of services hereunder.

17 7.1.4. County and non-County Parties acknowledge and agree that County does not
18 control the manner and means of performing the work of non-County Parties'
19 officers, agents or employees who perform OPSG activities, nor does County have
20 the right to hire or terminate employment of such officers, agents or employees.

21 7.1.5. Non-County Parties do not control the manner and means of performing the work
22 of County officers, agents or employees who perform OPSG activities, nor do non-
23 County Parties have the right to hire or terminate employment of such officers,
24 agents or employees.

25 7.1.6. County has no authority of any kind to bind non-County Parties, and non-County
26 Parties have no authority to bind County in any respect whatsoever.
27
28

1 7.1.7. County shall not act or attempt to act, or represent itself directly or by implication
2 as an agent of non-County Parties, or in any manner assume or create or attempt to
3 assume or create any obligation on behalf of or in the name of non-County Parties.

4 7.1.8. Non-County Parties shall not act or attempt to act, or represent themselves directly
5 or by implication as an agent of County, or in any manner assume or create or
6 attempt to assume or create any obligation on behalf of or in the name of County.

7 7.2. **Insurance.** Parties agree to obtain, at their sole cost and expense, sufficient insurance to
8 cover the liabilities arising out of this Agreement.

9 7.3. **Notices.**

10 7.3.1. Any notice, request, demand or other communication required or permitted
11 hereunder shall be in writing and may be personally delivered or given as of the
12 date of mailing by depositing such notice in the United States mail, first-class
13 postage prepaid, and addressed as follows, or to such other place as each Party may
14 designate by subsequent written notice to each other:

15 **County Parties:**

16 Sheriff
17 Imperial County Sheriff's Office
18 PO Box 1040
19 El Centro, CA 92244

Chief Probation Officer
Imperial County Probation Department
324 Applestill Road
El Centro, CA 92243

19 District Attorney
20 Imperial County District Attorney's Office
21 940 West Main Street, Suite 102
22 El Centro, CA 92243

22 **Non-County Parties:**

23 California Highway Patrol
24 Fiscal Management Section
25 PO Box 942898
26 Sacramento, CA 94298-2898

Deputy Director/Administration Division
California Department of Fish & Wildlife
1416 Ninth Street, Twelfth Floor
Sacramento, CA 95814

26 Imperial County Narcotics Task Force
27 2417 La Brucherie Road, Suite C
28 Imperial, CA 92251

Chief of Police
Brawley Police Department
351 Main Street
Brawley, CA 92227

1 Chief of Police
2 Calexico Police Department
3 420 East Fifth Street
4 Calexico, CA 92231

Chief of Police
El Centro Police Department
105 North Eleventh Street
El Centro, CA 92243

Chief of Police
Imperial Police Department
420 South Imperial Avenue
Imperial, CA 92251

Chief of Police
Westmorland Police Department
355 South Center
Westmorland, CA 9228

7.3.2. A notice shall be effective:

- (a) On the date of personal delivery if personally delivered before five o'clock (5:00) p.m. on a business day; or
- (b) On the first (1st) business day following personal delivery that did not occur before five o'clock (5:00) p.m. on a business day; or
- (c) Two (2) business days following the date the notice is postmarked for mail delivery; or
- (d) On the first (1st) business day following delivery to the applicable overnight courier, if sent by overnight courier for next business day delivery; or
- (e) When otherwise actually received.

7.4. **Amendment.** This Agreement may be modified or amended only by a written document signed by all Parties, and no verbal understanding or agreement shall be binding on the Parties.

7.5. **Assignment.** No Party shall assign any of its rights nor delegate any of its obligations hereunder without the prior written consent of the other Parties.

7.6. **Entire Agreement.**

7.6.1. This Agreement constitutes the complete and exclusive statement of agreement between County and non-County Parties with respect to the subject matter hereto.

7.6.2. All prior written and verbal understandings are superseded in total by this Agreement.

7.7. **Construction.**

1 7.7.1. This Agreement will be deemed to have been made and shall be construed,
2 interpreted, governed, and enforced pursuant to and in accordance with the laws of
3 the State of California.

4 7.7.2. The headings and captions used in this Agreement are for convenience and ease of
5 reference only, and shall not be used to construe, interpret, expand or limit the terms
6 of the Agreement and shall not be construed against any one (1) Party.

7 **7.8. Waiver.**

8 7.8.1. A waiver by County or non-County Parties of a breach of any of the covenants to
9 be performed by County or non-County Parties shall not be construed as a waiver
10 of any succeeding breach of the same or other covenants, agreements, restrictions
11 or conditions of this Agreement.

12 7.8.2. The failure of any Party to insist upon strict compliance with any provision of this
13 Agreement shall not be considered a waiver of any right to do so, whether for that
14 breach or any subsequent breach.

15 7.8.3. The acceptance by County or non-County Parties of either performance or payment
16 shall not be considered a waiver of any other Party's preceding breach of this
17 Agreement.

18 **7.9. Authority to Enter Into Agreement.**

19 7.9.1. County and non-County Parties have all requisite power and authority to conduct
20 their respective business and to execute, deliver and perform the Agreement.

21 7.9.2. Each Party warrants that the individuals who have signed this Agreement have the
22 legal power, right and authority to make this Agreement and to bind each respective
23 Party.

24 **7.10. Cooperation.** County and non-County Parties will cooperate in good faith to implement
25 this Agreement.

26 **7.11. Counterparts.** This Agreement may be executed in one (1) or more counterparts, each of
27 which shall be deemed to be an original, but all of which together shall constitute one (1)
28 and the same instrument.

1 **7.12. Severability.**

2 7.12.1. This Agreement is subject to all applicable laws and regulations.

3 7.12.2. If any provision of this Agreement is found by any Court or other legal authority,
4 or is agreed upon by the Parties, to be in conflict with any law or regulation, then
5 the conflicting provision shall be considered null and void.

6 7.12.3. If the effect of nullifying any conflicting provision is such that a material benefit of
7 this Agreement to any Party is lost, then the Agreement may be terminated at the
8 option of the affected Party, with the notice as required in this Agreement.

9 7.12.4. In all other cases, the remainder of this Agreement shall be severable and shall
10 continue in full force and effect.

11 **7.13. Legislative Changes.** If any changes are made to laws or regulations under which this
12 Agreement is made, or to any successor legislation or regulations, or if DHS passed through
13 CalOES imposes any budget requirements or limitations applicable to this Agreement and
14 the services to be provided hereunder, then:

15 7.13.1. To the extent any of the changes are of mandatory application, such change(s) shall
16 apply to the Parties and this Agreement, and this Agreement shall be deemed to be
17 amended to be consistent with such change(s) except to the extent that such
18 change(s) alter(s) a material provision of this Agreement, in which case, such
19 material provision shall be voidable, and the Parties will negotiate in good faith to
20 amend the Agreement as necessary; and

21 7.13.2. To the extent any of the changes are not of mandatory application, such change(s)
22 shall not affect this Agreement or the rights or obligations of County and non-
23 County Parties under this Agreement, unless Parties mutually agree to subject
24 themselves to such change(s).

25 **7.14. Representation.**

26 7.14.1. County's Sheriff's Office, District Attorney's Office, and Department of Probation
27 shall be represented by their respective OPSG Coordinators, or their designees, in
28 all discussions pertaining to this Agreement.

1 7.14.2. Non-County Parties shall be represented by their respective OPSG Coordinators,
2 or their designees, in all discussions pertaining to this Agreement.

3 7.15. **Dispute Resolution Concerning Services and Payment.** In the event of any dispute
4 concerning services and payment arising from this Agreement, Parties' OPSG
5 Coordinators, or their respective designees, will meet and confer within ten (10) business
6 days after receiving notice of the dispute to resolve the dispute.

7 7.16. **Termination of Funding.**

8 7.16.1. In the event that funding for reimbursement of costs related to OPSG activities is
9 terminated by DHS passed through CalOES, this Agreement, in its entirety, shall
10 be considered null and void, and Parties shall no longer be required to provide
11 OPSG activities as described herein.

12 7.16.2. In the event that funding for reimbursement of costs related to OPSG activities is
13 terminated, Parties shall meet immediately, and if agreed upon by Parties, mutually
14 develop and implement, within a reasonable period, a transition plan for the
15 provision of OPSG activities through alternate means.

16 7.17. **Obligation.** This Agreement shall be binding upon the successors of the Parties.

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18 **8. SPECIAL PROVISIONS.**

19 8.1. **Lobbying and Political Activities.**

20 8.1.1. As required by Section 1352, Title 31 of the United States Code (U.S.C.), for
21 persons entering into a contract, grant, loan, or cooperative agreement from an
22 agency or requests or receives from an agency a commitment providing for the
23 United States to insure or guarantee a loan, each Party independently certifies that:

- 24 (a) No federal appropriated funds have been paid for or will be paid, by or on
25 behalf of the undersigned, to any person for influencing or attempting to
26 influence an officer or employee of an agency, a Member of Congress, an
27 officer or employee of Congress, or an employee of a Member of Congress
28 in connection with the awarding of any Federal contract, the making of any

1 federal grant, the making of any federal loan, the entering into of any
2 cooperative agreement, and the extension, continuation, renewal,
3 amendment, or modification of any federal contract, grant, loan, or
4 cooperative agreement.

5 (b) If any funds other than federal appropriated funds have been paid or will be
6 paid to any person for influencing or attempting to influence an officer or
7 employee of any agency, a Member of Congress, an officer or employee of
8 Congress, or an employee of a Member of Congress in connection with this
9 federal contract, grant, loan, or cooperative agreement, the undersigned
10 shall complete and submit Standard Form-LLL, "Disclosure Form to Report
11 Lobbying," in accordance with its instructions.

12 (c) The undersigned shall require that the language of this certification be
13 included in the award documents for all subawards at all tiers (including
14 subcontracts, subgrants, and contracts under grants, loans, and cooperative
15 agreements) and that all subrecipients shall certify and disclose accordingly.

16 8.1.2 When applicable, each Party will also comply with provisions of the Hatch Act (5
17 U.S.C. §§ 1501-1508 and §§ 7321-7326) which limit the political activities of
18 employees whose principal employment activities are funded in whole or in part
19 with federal funds.

20 8.1.3 Finally, each Party agrees that federal funds will not be used, directly or indirectly,
21 to support the enactment, repeal, modification, or adoption of any law, regulation,
22 or policy without the express written approval from Cal OES or the federal
23 awarding agency.

24 **8.2. Debarment and Suspension.**

25 8.2.1. Each Party will provide protection against waste, fraud, and abuse by debarring or
26 suspending those persons deemed irresponsible in their dealings with the federal
27 government. Each Party independently certifies that it and its principal,
28 subgrantees, recipients, or subrecipients:

- 1 (a) Are not presently debarred, suspended, proposed for debarment, declared
2 ineligible, or voluntarily excluded from covered transactions by any federal
3 department or agency;
- 4 (b) Have not within a three-year period preceding this Agreement, been
5 convicted of or had a civil judgment rendered against them for commission
6 of fraud or a criminal offense in connection with obtaining, attempting to
7 obtain, or performing a public (federal, state, or local) transaction or
8 contract under a public transaction; violation of federal or state antitrust
9 statutes or commission of embezzlement, theft, forgery, bribery,
10 falsification or destruction of records, making false statements, or receiving
11 stolen property;
- 12 (c) Are not presently indicted for or otherwise criminally or civilly charged by
13 a governmental entity (federal, state, or local) with commission of any of
14 the offenses enumerated in paragraph (2)(b) of this certification; and
- 15 (d) Have not within a three-year period preceding this Agreement, had one or
16 more public transactions (federal, state, or local) terminated for cause or
17 default.

18 8.2.2. Where a Party, its subgrantees, recipients, or subrecipients, under this Agreement
19 is unable to certify to any of these statements in the certification listed in Paragraph
20 8.2.1, such Party shall provide a written explanation to County.

21 **9. CALIFORNIA LAW.**

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

25 **IN WITNESS WHEREOF**, the Parties have executed this Agreement on the day and year first
26 above written.

1 **COUNTY OF IMPERIAL**
2 **SHERIFF'S OFFICE**

3 By: _____
4 Raymond Loera
5 Sheriff

6 **COUNTY OF IMPERIAL**
7 **DISTRICT ATTORNEY'S OFFICE**

8 By: _____
9 Gilbert G. Otero
10 District Attorney

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14 **CALIFORNIA HIGHWAY PATROL**
15 **CALEXICO OFFICE,**
16 **EL CENTRO OFFICE,**
17 **INDIO OFFICE,**
18 **WINTERHAVEN OFFICE**

19 By: _____
20 Scott Parker
21 Border Division Chief

22
23 **CITY OF BRAWLEY**
24 **POLICE DEPARTMENT**

25 By: _____
26 Jimmy Duran
27 Chief

28 **CITY OF EL CENTRO**
POLICE DEPARTMENT

By: _____
Brian P. Johnson
Chief

COUNTY OF IMPERIAL
DEPARTMENT OF PROBATION

By: _____
Daniel Prince
Chief Probation Officer

IMPERIAL COUNTY NARCOTICS
TASK FORCE

By: _____
Gilbert G. Otero
Imperial County District Attorney

CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE

By: _____
Melinda Peacock
Branch Chief, Business Management Branch

CITY OF CALEXICO
POLICE DEPARTMENT

By: _____
Jesus Serrano
Interim Chief

CITY OF IMPERIAL
POLICE DEPARTMENT

By: _____
Leonard J. Barra
Chief

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1 **CITY OF WESTMORLAND**
2 **POLICE DEPARTMENT**

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4 By: _____
5 Xavier Mendez
6 Mayor

7 **APPROVED AS TO FORM:**

8 Eric Havens
9 County Counsel

10 By: _____
11 Danuta Tuszynska
12 Deputy County Counsel

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Due to **EXHIBIT A** containing confidential information, it will be held on file at the City of Imperial Police Department.