

Meeting Date: 2/2/2016

Report Type: Consent

Report ID: 2016-00116

Title: Agreement: Sutter General Hospital Police Security Services

Location: Citywide

Recommendation: Pass a Resolution authorizing the City Manager, or the City Manager's designee, to 1) enter into an agreement with Sutter General Hospital in an amount not to exceed \$394,834 through December 31, 2016; and 2) maintain the four (4) Full Time Equivalent (FTE) Police Officer positions previously authorized by Agreement 2014-0436.

Contact: William Champion, Police Captain, Contract Services, (916) 808-0714, Police Department

Presenter: None

Department: Police

Division: Contract Services

Dept ID: 11001531

Attachments:

1-Description/Analysis

2-Resolution

3-Sutter Health Foundation Agreement

City Attorney Review

Approved as to Form

Michael Fry

1/20/2016 5:16:14 PM

Approvals/Acknowledgements

Department Director or Designee: Sam Somers - 1/14/2016 12:45:22 PM

Description/Analysis

Issue Detail: On May 13, 2014, Sutter General Hospital (Sutter) and the Sacramento Police Department (SPD) entered into Agreement 2014-0436 to provide security and safety services within the hospital and surrounding area. The Agreement was due to expire on December 31, 2015, but a supplemental agreement extended the terms of services through January 31, 2016. Sutter and SPD have negotiated a new agreement to continue providing security and safety services through December 31, 2016. To continue with the services requested by Sutter, SPD will maintain the four Full-Time Equivalent (FTE) Police Officer positions. The expenses associated with the salary and benefit costs of the four FTEs will be reimbursed by Sutter, in an amount not to exceed \$394,834 through December 31, 2016.

Policy Considerations: Sacramento City Code Section 3.04.020, City Council approval is required to enter into an agreement involving income or expenditure of \$100,000 or more.

Economic Impact: Not applicable.

Environmental Considerations: Not applicable.

California Environmental Quality Act (CEQA): This proposal does not constitute a “project” and is therefore exempt from the California Environmental Quality Act (CEQA), per CEQA Guidelines, Sections 15061(b)(3) and 15378(a).

Sustainability Considerations: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The recommendations contained in this report are consistent with the SPD’s goals to *Make Sacramento the Safest Big City in California*.

Financial Considerations: The expenses associated with the salary and benefit costs of the four FTE Police Officer positions will be reimbursed by Sutter General Hospital to the City of Sacramento. In the event the agreement is cancelled, terminated, or not subsequently renewed in the future, the positions will be eliminated. This recommendation will not impact the SPD General Fund operating budget.

Local Business Enterprise (LBE): There are no LBE considerations associated with the requested action.

Resolution No.

Adopted by the Sacramento City Council

[DATE]

AGREEMENT: SUTTER GENERAL HOSPITAL POLICE SECURITY SERVICES

BACKGROUND

- A. Agreement 2014-0436 and the supplemental agreement with Sutter General Hospital to provide police security services will expire on January 31, 2016. The Sacramento Police Department and Sutter General Hospital have negotiated a new agreement to continue services through December 31, 2016. The expenses associated with the salary and benefit costs of the four FTE Police Officers will be fully funded by Sutter General Hospital.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Manager, or the City Manager's designee, is authorized to enter into an Agreement with Sutter General Hospital to provide police services, in an amount not to exceed \$394,834 through December 31, 2016.
- Section 2. The City Manager, or the City Manager's designee, is authorized to maintain the four (4) Full Time Equivalent (FTE) Police Officer positions previously authorized by Agreement 2014-0436 for the purpose of executing the City's obligation under the agreement.

NEIGHBORHOOD POLICING GRANT AWARD AGREEMENT

Sutter Health Sacramento Sierra Region, a California nonprofit public benefit corporation d/b/a Sutter Medical Center, Sacramento (“Hospital”) is pleased to announce the grant award of \$394,834 (“Grant”) to the Sacramento Police Department (“SPD”) for the purpose of implementing a neighborhood policing program including police officer presence and patrol as further described herein. Grant funding will be for services during the period from February 1, 2016 to December 31, 2016. Hospital and SPD agree that this Grant will be subject to the following terms and conditions (“Agreement”).

The Goal of the Program:

The goal of the program is to develop a comprehensive neighborhood policing program within the area encompassed by 27th Street to 30th Street and J Street to N Street, including police officer presence and patrol within Hospital’s Sutter Medical Center campus located at 2825 Capitol Avenue, Sacramento, CA 95816 (the “Facility”), primarily in its emergency department.

Objectives of the Program:

- A. Using a Community Oriented Policing philosophy, SPD will provide law enforcement resources on Hospital’s campus, including police officer presence and patrol within Facility, primarily in its emergency department.

- B. In addition, the officers will use Problem Oriented Policing tactics combined with community mobilization to address issues in the broader area encompassed by 27th Street to 30th Street and J Street to N Street, including the following:
 - 1. SPD will provide training seminars, as requested by Hospital and mutually agreed by the parties, to enhance personal safety and awareness.
 - 2. SPD will assist security staff in providing police services for the Hospital campus and immediate area.
 - 3. SPD will develop working relationships with the Hospital staff, local merchants, and school to assist in developing a local business watch program in concert with the community policing effort.
 - 4. SPD will develop working relationships with the Hospital staff and local residents to assist in developing a local neighborhood watch program in concert with the community policing effort.

Hospital and SPD further agree as follows:

ARTICLE 1
GENERAL OBLIGATIONS OF SPD

1.1 Program. SPD agrees that the neighborhood policing program (“Program”) will be consistent with the services set forth in the Goals and Objectives stated above, which are incorporated into this Agreement by this reference, as requested by Hospital. At all times when performing services under the Program, the SPD uniformed officers (“Officers”) shall be subject to and required to comply with the rules and regulations of the City of Sacramento Police Department. Notwithstanding the foregoing, Officers performing the Program at the Hospital are expected to remain on the Hospital campus except in the event of an extreme emergency (as determined in SPD’s discretion), and must comply, with respect to the use of weapons and/or restraints, with all applicable standards and recommendations of The Joint Commission, applicable federal, state and local laws, rules and regulations, including, but not limited to, Title 22 of the California Code of Regulations and federal CMS guidelines.

1.2 Supplies and Equipment; Employees. SPD shall provide, at its own expense, all equipment, supplies and materials necessary to perform the Program, and Hospital shall provide no supplies and equipment. All Officers used to perform the Program shall be employees of SPD. SPD shall determine the wages, working hours, and other working conditions for such Officers, and shall monitor and control the quality of their work performance.

1.3 Required Hours; Shifts. Consistent with the Goals and Objectives set forth above, the SPD shall provide Officers for two (2) shifts per day totaling nineteen (19) hours of continuous (subject to the lunch and physical fitness time described in this paragraph) on-site coverage from 9:30am – 4:30am each day, seven (7) days a week. The specific hours of coverage may be adjusted as mutually agreed by the parties from time to time. There will be no overlap coverage of shifts (e.g. two (2) officers for day shift). Officers will be afforded thirty (30) minutes of travel time at the beginning and end of each shift (i.e., from 9:00 am – 9:30 am and 4:30 am – 5:00 am) to and from the police station to the Facility for a total of one hour per shift. In addition, for those Officers that voluntarily participate in the SPD physical fitness program, sixty (60) minutes of paid time, two (2) days per week will be allowed in order to engage in on-duty workout time or other approved physical fitness activities. Officers will be allowed a 40 minute lunch break, when feasible, per shift. If Officers leave the premises, the Officer shall advise Hospital’s lead security supervisor and maintain radio contact with Hospital’s security personnel. Should any questions arise over shifts or allocation of Officers to the Facility, the Hospital shall have its administrator contact the SPD sergeant assigned to the Program in an effort to informally resolve any questions. Should the administrator and assigned SPD sergeant be unable to resolve any questions, the parties may resort to the good faith, dispute resolution methods set forth below in Section 5.19, in an effort to resolve any remaining questions.

1.4 Health Screening. SPD shall provide documentation to Hospital to show that all Officers performing the Program for Hospital have received all screenings specified in this paragraph, which screenings shall be provided at the sole expense of SPD:

- (i) PPD results (to be completed annually). In the event PPD is positive, a chest x-ray or evidence of symptom review by a health care professional

- (ii) Hepatitis B vaccines, or titer, or statement of refusal
- (iii) Annual Influenza participation (proof of vaccination or signed declination).

1.5 Background Investigation/Compliance with Immigration Law. SPD represents and warrants that it has performed a background investigation of the Officers to verify the Officers' suitability to perform the Program and the ability of the Officers to be employed in the United States.

1.6 Acknowledgement of Standards. SPD acknowledges that Hospital is an affiliate of Sutter Health. SPD further acknowledges that, notwithstanding anything contained herein, neither party shall engage in any conduct that may violate any policies, procedures, or directives of the Sutter Health Standards for Business Conduct and Hospital's Standards of Behavior.

1.7 OIG List of Excluded Providers. SPD shall provide documentation to verify that SPD and the Officers are not listed on the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.hhs.gov/oig>).

1.8 Bloodborne Pathogens. SPD shall provide education, vaccinations and post exposure follow-up to the Officers as outlined in OSHA's Bloodborne Pathogens Standard and Tuberculosis Standard prior to the start of any assignment. Hospital will provide appropriate additional training on both standards specific to Hospital or Facility, if necessary. Hospital will also provide "Fit testing" for protective equipment utilized in care of Tuberculosis patients, as necessary and appropriate in Hospital's discretion.

ARTICLE 2 GENERAL OBLIGATIONS OF HOSPITAL

2.1 Access. Hospital shall provide SPD with access to the Facility as needed for performance of the Program.

2.2 Facilities. Hospital shall retain professional and administrative responsibility for the operation of the Facility, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Hospital's retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of SPD under this Agreement.

ARTICLE 3 TERM AND TERMINATION

3.1 Initial Term. This Agreement shall commence on February 1, 2016 and shall remain in force until December 31, 2016, unless earlier terminated as provided herein. This Agreement may be renewed upon mutual written agreement of the parties for a one year term. Should this Agreement be terminated before the end of its term, payment for any partial quarter shall be prorated to reflect the number of days in the quarter that services were provided prior to termination.

3.2 Termination.

(a) Without Cause. This Agreement may be terminated without cause, with at least thirty (30) days' advance written notice from one party to the other.

(b) Termination for Breach. Either party may terminate this Agreement in the event of the other party's breach of a material provision, covenant or condition of this Agreement and subsequent failure to cure said breach within ten (10) calendar days after written notice by the non-defaulting party of said breach.

(c) Termination on the Advice of Counsel. In the event legal counsel for either party advises that this Agreement or any practices which could be, or are, employed in exercising rights under this Agreement may violate any existing or future law, regulation, or accrediting agency standard, or compromise Hospital's status as a non-profit corporation under Section 501(c)(3) of the Internal Revenue Code, the parties in good faith will undertake to revise this Agreement to comply with such law, accrediting agency standard, or Internal Revenue Code requirement. In the event the parties are unable to agree upon the revised terms in a timely manner, this Agreement will terminate immediately upon written notice by one party to the other.

(d) Patient Safety. Hospital may, in its sole discretion, immediately terminate or suspend this Agreement at any time if, in its sole discretion, the provision of Program under this Agreement by SPD threatens the health or safety of Hospital's patients.

ARTICLE 4
FEES AND BILLING

4.1 Fees. The total Grant for this Agreement shall be \$394,834.

4.2 Invoice and Payment. Hospital shall pay the Grant on a quarterly basis within five (5) business days of the end of each quarter. Quarterly payments shall be remitted in accordance with the following schedule and dates:

| | |
|-------------------------------------|-----------|
| February 1, 2016 – March 31, 2016 | \$71,788 |
| April 1, 2016– June 30, 2016 | \$107,682 |
| July 1, 2016 – September 30, 2016 | \$107,682 |
| October 1, 2016 – December 31, 2016 | \$107,682 |

4.3 Annual Agreement Fee Review. SPD may, on an annual basis, make recommendations to adjust the Agreement fee to correct discrepancies between the Agreement Fee and any increase in SPD's salary and benefit costs resulting from changes to collective bargaining agreements specific to the positions authorized in this Agreement. Any changes to the Agreement Fee, as listed in Section 4.1, above, shall not be effective unless and until negotiated in good faith by both Parties, and mutually agreed upon in a written amendment to this Agreement signed by both Parties.

ARTICLE 5
MISCELLANEOUS PROVISIONS

5.1 Prohibition Against Discrimination. Neither Hospital nor SPD shall discriminate against any person because of race, color, creed, age, national origin, sex, marital status, veteran's status or any other protected status as provided by law. In addition neither Hospital nor SPD shall discriminate against any person because of handicap to the extent prohibited by Section 504 of the federal Rehabilitation Act of 1973 or disability to the extent prohibited by the Americans with Disabilities Act of 1990.

5.2 Compliance with Laws/HIPAA. SPD and Hospital shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, regulations, and accrediting agency standards, including but not limited to all applicable laws relating to patient confidentiality. SPD acknowledges that Hospital will only disclose to the Officers patient individually identifiable health information that is the minimum necessary for law enforcement purposes as set forth in 45 C.F.R. §164.512(f) of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), or otherwise permitted by HIPAA and other law. All Officers shall undergo appropriate privacy and security training provided by Hospital prior to performing the Program under this Agreement.

5.3 Relationship of the Parties; Independent Contractors. Hospital and SPD are independent contractors, and shall not be construed to be the partner, employee, agent or representative of each other. Hospital does not, by this Agreement, reserve control over the methods or procedures to be utilized by SPD or any of SPD's employees. SPD acknowledges that neither it nor its employees and agents have any right, entitlement or claim against Hospital for Social Security benefits, workers' compensation benefits, overtime wages, disability insurance, pension pay, vacation pay, sick pay or any other employee benefit of any kind. SPD warrants and agrees that it will comply fully with all applicable payroll tax, employment, and labor laws with respect to all Officers assigned to Hospital, including but not limited to, all tax withholding, social security, unemployment insurance, wage-hour, employment discrimination, occupational safety and health, immigration, workplace safety, family and medical leave, and employee benefit laws.

5.4 Indemnity. SPD further agrees to indemnify, defend, and hold harmless Hospital for any and all damages, costs, and/or attorneys' fees incurred by Hospital, its officers, agents, directors, and employees, or awarded or assessed against Hospital, its officers, agents, directors, employees, in connection with any claim, asserted claim, finding, award or liability resulting from any negligent or intentional act or omission attributed to any officer, agent, director or employee of SPD. Hospital agrees to indemnify, defend, and hold harmless SPD for any and all damages, costs, and/or attorneys' fees incurred by SPD, its officers, agents, directors, and employees, or awarded or assessed against SPD, its officers, agents, directors, employees, in connection with any claim, asserted claim, finding, award or liability resulting from any negligent or intentional act or omission attributed to any officer, agent director, or employee of Hospital. It is the intention of the parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, agents, directors, and employees.

5.5 Insurance. Hospital and SPD both agree to maintain appropriate insurance coverage throughout the term of this Agreement and for a period of five (5) years following expiration or termination of this Agreement. All or a portion of the required insurance may be satisfied through the use of a self-insurance program. With respect to Hospital and SPD, such insurance shall include at a minimum:

- i. General Liability Insurance in an amount not less than \$1,000,000 per occurrence, \$3,000,000 General Aggregate,
- ii. Workers' Compensation Insurance as required by California law. Where permitted by law, such insurance shall contain waivers of the insurer's right of subrogation against Hospital, its affiliates, officers, directors and employees.
- iii. Automobile Liability Insurance in an amount not less than \$1,000,000 per accident coverage all owned, non-owned and hired automobiles.

5.6 Notice. Any notices required or permitted to be given by one party to the other, may be given by personal delivery in writing, or by registered or certified mail, postage prepaid, with return receipt requested. Notices shall be addressed to the parties at the addresses appearing below, but each party may change their address in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of three (3) days after mailing.

If to SPD: Sacramento Police Department
Attn: Chief of Police
5770 Freeport Boulevard
Sacramento, CA 95822

If to Hospital: Sutter Medical Center, Sacramento
Attn: Hospital Administration / Richard SooHoo
2800 L Street
Sacramento, CA 95816

With copy to: Sutter Health Office of the General Counsel
VP & Chief Legal Officer, Valley Area / Penny Westfall
2200 River Plaza Drive
Sacramento, CA 95833

5.7 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.8 Assignment or Delegation. Except as otherwise specifically set forth in this Agreement, SPD shall not assign or delegate any or all of SPD's rights or responsibilities under this Agreement without the prior written consent of Hospital.

5.9 Severability. The provisions of the Agreement shall be deemed severable, and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

5.10 Headings. The headings are inserted into this Agreement for reference and convenience only, and will not affect the meaning or interpretation of any provision of this Agreement.

5.11 Reports. SPD shall provide to Hospital monthly reports to ensure that Grant funding is used appropriately.

5.12 No Waiver. No waiver of a breach of any provision of this Agreement may be construed as a waiver of any breach of any other provision. To be effective, a waiver must be in writing. No single waiver may be treated as an ongoing waiver unless expressly agreed in writing.

5.13 No Third-Party Benefit. Unless otherwise set forth in this Agreement, nothing contained in the Agreement is intended nor shall be construed to create rights running to the benefit of third parties.

5.14 Entire Agreement/Modification. This Agreement contains a full and complete expression of the rights and obligations of the parties and it shall supersede all other agreements, representations, and offers, written or oral, made by the parties regarding any of the subject matter contained herein. This Agreement may be modified only in writing, signed by both parties.

5.15 Access to Records. For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, and any written regulations thereto, SPD shall comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:

(a) Until the expiration of four (4) years after the furnishing of services pursuant to the Agreement, SPD shall make available to the Secretary of Health and Human Services and the Comptroller General of the United States, or their duly authorized representatives, upon written request of any of them, this Agreement, and all books, documents and records that are necessary to certify the nature and extent of the cost of services hereunder, and

(b) If SPD carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

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

5.17 Use of Trademark(s). SPD will not use the name(s), trademark(s), or tradename(s) of Hospital or its affiliates, except with the prior written consent of Hospital. The

Hospital or its affiliates shall not use the City seal or SPD logo, except with the proper written consent of the City.

5.18 Confidentiality.

(a) The parties acknowledge this Agreement can be made available to a person upon a properly made California Public Records Act request. Nonetheless, each party agrees to hold the following “Confidential Information” in strict confidence and not disclose the same to any other person or entity: each other’s proprietary and confidential records and information, including but not limited to all service and product data, trade secrets, financial data, business plans and any other information or technology received from the other party in implementing this Agreement; all personally identifiable information of a party’s employees, agents, patients and customers; and all information derived from the foregoing.

(b) Notwithstanding the above:

- (1) A party may disclose Confidential Information to the personnel within its organization and its legal and accounting advisors who require the Confidential Information in connection with the party’s internal business processes and its rights and obligations under this Agreement, provided that such disclosing party uses commercially reasonable efforts to require any such recipient to use the information solely for these purposes and to keep it strictly confidential, except as required by law and subject to the requirements of (b)(2) below.
- (2) A party may disclose Confidential Information as required by law, provided that such disclosing party provides reasonable prior notice to the other party to enable such other party to attempt to prevent or limit the disclosure and the disclosing party assists the other party upon request in seeking relief from or limiting the disclosure.
- (3) A party may disclose Confidential Information with the prior written consent of the other party.

(c) Neither party shall be obligated to hold the following information in confidence (and such information shall not be deemed to be Confidential Information): information that is or becomes publicly available through no fault of the recipient, information developed by a party without using any Confidential Information, information lawfully possessed by a party before receipt from the disclosing party, and information lawfully disclosed to a party on a non-confidential basis from a person or entity that is not bound by a duty of confidentiality.

5.19 Dispute Resolution. In the event of any dispute arising out of or in connection with this Agreement, including but not limited to any question regarding its existence, interpretation, validity, termination or shift hours of assigned Officers, either party may by written notice call a meeting regarding such dispute to be attended by an executive officer of each party who has the authority to negotiate and bind that party to a resolution. At the meeting, the parties will attempt in good faith to resolve the dispute. If the dispute cannot be resolved within forty-five (45) days from the date of the initial notice, and if either party wishes to pursue the dispute, the dispute shall be instituted and maintained in state or federal court located in

Sacramento County. However, upon a mutual written agreement of the parties any dispute arising out of or in connection with this Agreement may be referred to arbitration, mediation, or another form of an agreed upon alternative dispute resolution.

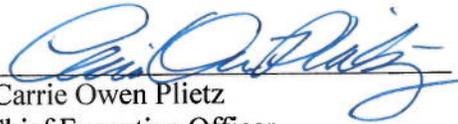
5.20 Survival. Termination or expiration of this Agreement for any reason shall not relieve either party of any obligation or liability incurred prior to the expiration or termination of this Agreement. The following provisions shall survive termination or expiration of this Agreement, in addition to those that by their nature are intended to survive termination: Relationship of the Parties; Insurance; Confidentiality; Indemnity; and Dispute Resolution.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first written above.

CITY OF SACRAMENTO

SUTTER HEALTH SACRAMENTO SIERRA REGION d/b/a SUTTER MEDICAL CENTER, SACRAMENTO

By: _____
Samuel D. Somers, Jr.
Chief of Police

By: 
Carrie Owen Plietz
Chief Executive Officer

For: John Shirey, City Manager

APPROVED AS TO FORM

ATTEST

By: _____
Michael Fry
Senior Deputy City Attorney
City of Sacramento

Shirley Concolino
City Clerk