



## Legislation Text

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**File #:** 12-0092, **Version:** 3

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Sheriff's Office recommending the Board approve and authorize the Chair to sign Amendment II to Agreement #329-S1211 with Lexipol, LLC to:

- 1) To increase compensation in the amount of \$4,500 for the period February 1, 2015 - January 31, 2016 for services relative to developing the Sheriff's Office Policy Manual, for a contract total not-to-exceed \$38,499;
- 2) Replace Article IV Ownership of Documents;
- 3) Replace Article VI Ownership of Rights;
- 4) Amend Article X Independent Contractor/Liability;
- 5) Remove Article XIX County Business License;
- 6) Add Article XXV Taxes;
- 7) Add Article XXVI Audit by California State Auditor;
- 8) Add Article XVII Change of Address; and
- 9) Revise Article XXVIII Limitation of Liability.

**FUNDING:** General Fund.

### **DEPARTMENT RECOMMENDATION**

Lexipol, LLC provides policy manual update guidance to the Sheriff's Office based on the latest changes in Federal and State Statutes, regulations, best practices and case law. Lexipol, LLC provides the Sheriff's Office with an essential service that is utilized by Sheriff's Office Staff on a daily basis. Sheriff's Office recommends the Board approve and authorize the Chair to sign Amendment II to Agreement #329-S1211.

### **DISCUSSION / BACKGROUND**

On February 28, 2006, the Board authorized the signing of Agreement #464-S0610 with Lexipol, LLC which began an update service for the Sheriff's Office Policy Manual.

In January 2012, the Board authorized the signing of a new Agreement #329-S1211 with Lexipol, LLC in the amount of \$13,500 for the term from February 1, 2012 to January 31, 2015 to continue to provide updates to the Sheriff's Policy Manual.

On January 7, 2014, Amendment I to Agreement #329-S1211 was approved and signed by the Board to amend the term of Agreement #329-S1211 to end in December 31, 2016, to add the development of a Sheriff Custody Policy Manual, and to increase the compensation by \$20,499, for a not-to-exceed total compensation of \$33,999.

This request is for an Amendment II to Agreement #329-S1211 to be signed increasing the compensation by \$4,500 for updates to the Sheriff's Office Policy Manual, for a not-to-exceed total \$38,499 for this five-year contract, and the revision, amendment, addition and removal of several articles in the original contract.

The changes to Article IV Ownership of Documents, Article VI Ownership of Rights, Article X Independent Contractor/Liability, and Article XXVIII Limitation of Liability have been rejected by County Counsel due to County Counsel's opinion that the information provided by Contractor is based on information in existing law that is not subject to copyright and there is no reason to conclude that use of the information involving existing law and documents prepared by the County in relation to existing law, are a derivative work that should become the property of the Contractor.

The Sheriff's Office understands the position of County Counsel. The Sheriff's Office believes that the language in Article IV Copyright; Derivative Works; Contractor Ownership is reasonable. Through negotiations with the contractor, the Sheriff's Office added the following language that differentiates County content from Contractor content which would be considered a Derivative work. In Article VI Ownership Rights, the policies that are drafted by the Sheriff's Office are protected as stated, County specific content created by County contained within the Policy Manual(s) will remain property of County.

Furthermore, Lexipol provides an essential service to the Sheriff's Office, and the manner in which the Sheriff's Office uses the service does not expose the County to copyright law litigation since the information is used strictly for the County's own internal purposes. Lastly, the Sheriff's Office will not be prohibited from providing a copy of the Policy Manual(s) for review by any party with lawful reason to do so or from disclosing any policies contained within the Policy Manual(s) pursuant to and authorized by a request under the Public Records Act, pursuant to court order or any other lawful process; provided that the material bears Lexipol's copyright notice, which the Sheriff's Office is comfortable complying with.

#### **ALTERNATIVES**

Failure to approve and sign this amendment could result in the cancellation of the contract and the loss of services to the Sheriff's Office.

#### **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel and Risk Management were involved in the approval process of the contract terms and insurance.

#### **CAO RECOMMENDATION**

The Sheriff has been using Lexipol since 2006 to keep the Sheriff's extensive policy manual up to date. This retroactive amendment is to update the agreement to current language standards and add \$4,500 in compensation. Approval is recommended.

#### **FINANCIAL IMPACT**

There is no Change to Net County Cost. The increase of \$4,500 is budgeted in the Sheriff's FY 2014/15 operating budget.

#### **CLERK OF THE BOARD FOLLOW UP ACTIONS**

Return one original to Sheriff's Office for distribution.

**STRATEGIC PLAN COMPONENT**

Public Safety

**CONTACT**

Undersheriff Randy Peshon