

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS

ACTION AGENDA SUMMARY

DEPT: Sheriff's Department

BOARD AGENDA # *B-10

Urgent

Routine

AGENDA DATE June 5, 2012

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval of Agreement with Edward W. Deuel and Richard C. Wemmer to Conduct Critical Incident Reviews of "Line of Duty Deaths" Involving Sheriff's Employees Mary Donahou and Robert Paris

STAFF RECOMMENDATIONS:

1. Approve the agreement with Edward W. Deuel and Richard C. Wemmer as reflected in this agenda item.
2. Authorize the Chief Executive Officer and the Sheriff, or his designee, to sign the agreement as reflected in this agenda item.

FISCAL IMPACT:

The contract with Edward W. Deuel and Richard C. Wemmer has a contract maximum of \$60,000 that will be funded by existing appropriations in the Sheriff's Department budget. There will be no additional cost to the General Fund.

BOARD ACTION AS FOLLOWS:

No. 2012-274

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith

and approved by the following vote,

Ayes: Supervisors: Chiesa, Withrow, Monteith, De Martini, and Chairman O'Brien

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval of Agreement with Edward W. Deuel and Richard C. Wemmer to Conduct Critical Incident Reviews of "Line of Duty Deaths" Involving Sheriff's Employees Mary Donahou and Robert Paris

DISCUSSION:

During the last six months the Stanislaus County Sheriff's Office has suffered two tragic losses. On Friday, December 30, 2011, Crime Analyst Technician Mary Donahou was struck and killed by a vehicle while investigating a crime scene following a drive by shooting in the City of Hughson. On Thursday, April 12, 2012, Deputy Sheriff Robert Paris and civilian locksmith Glendon Engert were murdered during the service of a civil eviction. Consequently, the Sheriff has directed that an independent review be conducted of these critical incidents.

The Sheriff has determined that Edward W. Deuel and Richard C. Wemmer of the Peace Officer Safety Institute, Center for the Study of Law Enforcement Officers Killed and Assaulted, are highly qualified to provide this service. The Directors, Captain Rich Wemmer, Los Angeles Police Department (Retired) and Lieutenant Ed Deuel, Huntington Beach Police Department (Retired) have over 70 years of law enforcement experience. This includes significant background in reviewing accidental deaths, assaults and line-of-duty killings of peace officers and use of force incidents.

Both Captain Wemmer and Lieutenant Deuel have worked with the California Commission on Peace Officer Standards and Training (POST) in researching law enforcement incidents and publishing multiple reports. These works are titled "California Law Enforcement Officers Killed and Assaulted in the Line of Duty" and "Critical Incident Report." Furthermore, they serve on the POST Commission's Law Enforcement Officers Killed and Assaulted (LEOKA) Advisory Council where they have examined the accidental and felonious deaths of over 500 California peace officers spanning the past 25 years. Additionally, they were selected to be subject matter experts on POST Law Enforcement video productions where incidents' causal factors and training recommendations were shared with diversified community and law enforcement audiences.

Both individuals have varied California peace officer experience with the Huntington Beach and Los Angeles Police Departments. This includes patrol, investigation, special duties, supervisory, command and training assignments. They are recognized law enforcement experts who have provided thousands of training hours to domestic and international policing audiences. Recently, they have spoken at the California Department of Justice training courses, California Narcotic Officer's Conference, California POST Basic and Specialized Courses, TREXPO West Conference and to Northern and Southern California policing agencies on various law enforcement topics related to this independent review.

Furthermore, they have individually and together, pioneered law enforcement activities that further enhanced their knowledge and skills to perform this service. These include the development of critical incident reports, "Officer Down" training, "Officer-Involved Shooting Series," and other realistic tactical decision-making scenarios involving non-deadly and deadly use of force and Trauma Response Teams. They have been acknowledged and awarded recognition for making peace officers more effective and safer.

Approval of Agreement with Edward W. Deuel and Richard C. Wemmer to Conduct Critical Incident Reviews of "Line of Duty Deaths" Involving Sheriff's Employees Mary Donahou and Robert Paris

The Fresno County Sheriff's Office used Edward W. Deuel and Richard C. Wemmer of Peace Officer Safety Institute to conduct a review of their Officer Involved Shooting that occurred on Thursday, February 25, 2010. They have been described as contemporary, ethical, objective and professional. They possess the character, interpersonal skills, leadership traits and reputations to work candidly and professionally with the various law enforcement ranks, from line level to agency head, who were involved in this terrible incident. Edward W. Deuel and Richard C. Wemmer have agreed to provide their services for a rate that is significantly less than the industry standard.

Because of the principle's background and experience, past comprehensive work products, current (and past) positions with the POST Commission, and extensive industry knowledge, the Sheriff has determined that Edward W. Deuel and Richard C. Wemmer of the Peace Officer Safety Institute are eminently and singularly qualified to conduct the fact finding required and produce a report that will answer all questions.

The Sheriff, as the chief law enforcement officer in the County, is obligated to bring all facts of the events of December 30, 2011 and April 12, 2012 to light as it is in the best interests of the Stanislaus County Sheriff's Office, our employees, the law enforcement community, and most importantly - the citizens we serve. Edward W. Deuel and Richard C. Wemmer of the Peace Officer Safety Institute will be of great service in this regard and their retention as reviewer of fact is critical to the on-going healing process following the tragic deaths of Mary Donahou and Robert Paris.

POLICY ISSUES:

Approval of these recommendations supports the Board's Priority of A Safe Community and Effective Partnerships.

STAFFING IMPACT:

There is no staffing impact associated with this item.

CONTACT INFORMATION:

Adam Christianson, Sheriff - Coroner, (209) 525-7216

Consultant and Indemnity Agreement for
Professional Expert Analysis and Consulting

This Consultant and Indemnity Agreement ("Agreement") is entered into as of ~~May~~ June 5, 2012 by and between the "client," Stanislaus County Sheriff's Department ("Indemnifier") on one hand, and Edward W. Deuel ("Deuel") and Richard C. Wemmer ("Wemmer") (each an "Indemnitee" and collectively, the "Indemnitees") on the other hand. Collectively, Indemnifier and Indemnitees may be referred to as the "Parties."

RECITALS

- A. Deuel is a retired Police Lieutenant with more than 32 years of law enforcement experience. Since 1986, Deuel has researched and reviewed critical incidents where peace officers have been seriously injured and killed. This includes the preparation of reports with findings and recommendations for the California Commission on Peace Officer Standards and Training. A major component of Deuel's work is identifying the challenges faced, strategies utilized and lessons learned by local, state and federal law enforcement agencies. Since 1980, Deuel has trained peace officers in officer safety techniques. A major component of Deuel's training is having peace officers participate in critical incident decision making and officer safety scenarios.

- B. Wemmer is a retired Police Captain with more than 40 years of law enforcement experience. Since 1974, Wemmer has researched and reviewed critical incidents where peace officers have been seriously injured and killed. This includes the preparation of reports with findings and recommendations for the California Commission on Peace Officer Standards and Training. A major component of Wemmer's work is identifying the challenges faced, strategies utilized and lessons learned by local, state and federal law enforcement agencies. Since 1974, Wemmer has trained local, state and federal peace officers in officer safety techniques. A major component of Wemmer's training is having peace officers participate in critical incident decision making and officer safety scenarios.

- C. The Stanislaus County Sheriff's Department ("SCSD") has requested Deuel and Wemmer conduct two critical incident reviews of separate policing incidents that occurred in Stanislaus County on Friday, December 30, 2011, and Thursday, April 12, 2012.

AGREEMENT

Based on the foregoing, the parties agree as follows:

1. General Scope of Services. The general scope of services provided by Deuel and Wemmer pursuant to this Agreement include coordinating with the Sheriff or his designee to assess information during the examination of the critical incidents; provide an initial explanation of reports and PowerPoint presentations to the Sheriff or his designee; visiting and examining the two Critical Incident sites, reviewing related documents; interviewing civilian and sworn law enforcement personnel; interviewing any other person related to the two incidents; participating in telephone consultations, e-mailing and drafting written correspondence; and researching and preparing two Critical Incident reports and two PowerPoint presentations concerning the separate events. Additionally, Deuel and Wemmer will present their findings to the SCSD's command staff and law enforcement personnel selected by the Sheriff. The Parties also recognize that depositions or testimony may arise out of Deuel's and/or Wemmer's services and such services are provided pursuant to this Agreement.

2. Compensation.
 - 2.1 SCSD will pay Deuel and Wemmer each Sixty Dollars per hour (\$60/hour), for up to 660 combined hours of work (for a total of Thirty Nine Thousand, Six Hundred Dollars and Zero Cents (\$39,600.00)). If the scope of the work exceeds 660 hours, Deuel and Wemmer will notify SCSD, at which point SCSD will approve continuation of the review, analysis, assessment, and preparation of documents, PowerPoint or other presentations for the client.

 - 2.2 Deuel and Wemmer will prepare the following:
 - Two separate Critical Incident reports;
 - Two separate PowerPoint presentations

 - 2.3 Court or Hearings: In addition to the compensation set forth herein, SCSD will pay Deuel and Wemmer each \$2,000.00 per day (or any part thereof not to be less than \$1000) for all court or hearing appearances.

 - 2.4 Depositions: SCSD (or the subpoenaing party (but in the event said subpoenaing party does not pay, SCSD) will pay \$275.00 per hour for any deposition taken of

Deuel or Wemmer arising out of or related to the Critical Incident or this Agreement.

- 2.5 Reimbursable Expenses: SCSD shall compensate Deuel and Wemmer for all travel and per diem expenses (using the California Department of Justice or Stanislaus County's travel reimbursement standards) arising out of the Critical Incidents and/or this Agreement. Extraordinary expenses and out-of-pocket costs related to the production of deliverable identified in Section 2.2 shall be reimbursed at cost, including but not limited to printing and stationary expenses.
- 2.6 Billing: Billing shall be on a monthly cycle unless extraordinary costs necessitate interim billing.
- 2.7 Testimony Retainer: In the event that testimony arising out of or related to this Agreement or the Critical Incidents is anticipated, a Testimony Retainer in the amount of Three Thousand Dollars and Zero Cents (\$3,000.00) will be due and payable seven (7) days in advance of such testimony. If testimony is canceled, the unexpended portion of the retainer shall be refundable according to the Cancellation policy set forth in section 2.8.
- 2.8 Cancellations: Any cancellation of a scheduled deposition or testimony shall be provided by SCSD or its agent at least one week in advance of the scheduled event in order to avoid hourly charges. In the event a deposition or testimony is not cancelled at least one week in advance, a minimum of one half day expense (i.e., \$1000.00) shall be charged and owed.
- 2.9 Contract Maximum: Both parties hereto acknowledge the maximum amount to be paid by SCSD for services provided shall not exceed \$60,000.00, including, without limitation, the cost of any subcontractors, consultants, experts or investigators retained by the Indemnitees to perform or to assist in the performance of its work under this Agreement.
- 2.10 Balance Due/Impartiality: All outstanding fees and reimbursements shall be paid in full prior to the release of any final reports and PowerPoint presentations to SCSD. Fees and reimbursements are not available for retrospective negotiation and are not and cannot be linked to the outcome of any reports, presentations or testimony. Deuel and Wemmer each reserve the right to suspend delivery of further services or reports until outstanding balances over thirty days old are

paid in full or if SCSD or its agent(s) make any attempt to prejudice the opinion(s) of Deuel or Wemmer.

3. Indemnification: The parties recognize that Edward W. Deuel and Richard C. Wemmer have agreed to serve as consultants for the Critical Incidents. SCSD hereby expressly agrees to defend, indemnify and hold harmless Deuel and Wemmer their successors, assigns, employees, agents, independent contractors, attorneys, and assistants against all suits, actions, claims, demands, judgments or damages, by whatever name known or form taken that arise out of or are related in any way whatsoever with the Critical Incidents or the performance of their duties under this Agreement.

3.1 Indemnification Procedures:

- Notice. In the event that Deuel or Wemmer receives notice of any asserted or impending claim where they believe indemnification would be sought under this Agreement, they shall notify the Indemnifier promptly.
 - Option to Defend. In the event Indemnifier shall be obligated to indemnify Indemnitees under this Agreement, Indemnifier shall be required to assume the defense of any such claim, with counsel approved by the Indemnitees (which approval shall not be unreasonably withheld) upon the delivery to Indemnitees of written notice of its election to do so. Indemnitees shall have the right to employ their own counsel in any such claim at their own expense.
 - Duplication of Payments. Indemnifier shall not be liable under this agreement if Indemnitees have otherwise actually received payment (e.g. under any insurance policy, etc.) of the amounts otherwise indemnifiable under this Agreement.
4. Severability: In the event any part of this Agreement is deemed to be illegal or unenforceable, said part shall be modified to the extent possible to be legal and enforceable and provide the same meaning and intention as was originally intended. Moreover, all other parts of this Agreement shall still be in full force and effect.
 5. Binding Effect: This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, agents, representatives, successors, and assigns. Moreover, the

person signing below represents and warrants that he or she has the authority to so bind the party on whose behalf he or she is signing.

6. Entire Agreement: This Agreement constitutes the entire agreement between the parties, and it is expressly agreed and understood that this Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever except by a writing duly executed by the parties hereto. No party (nor any officer, agent, employee, representative or attorney of or for any party) to this Agreement has made any statement, representation or promise of any kind or character to any other party regarding any fact or matter relied upon by it in entering into this Agreement, or in making the settlement provided for herein, except as expressly stated herein.
7. Governing Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California.
8. Notice: Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified, return receipt requested, postage prepaid or delivered by overnight delivery service:

A. If to Indemnifier:

Stanislaus County Sheriff's Department
Attn: Adam Christianson, Sheriff-Coroner
250 E Hackett Road
Modesto, CA 95358

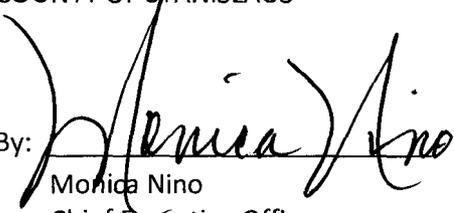
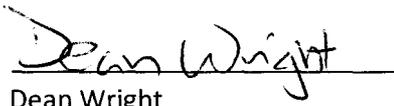
B. If to Indemnitees:

Edward W. Deuel
6892 Via Carona Drive
Huntington Beach, CA 92647

Richard C. Wemmer
9217 Molt River Circle
Fountain Valley, CA 92708

9. Waiver: The failure of either party to enforce any provisions of this agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first above written.

<p>COUNTY OF STANISLAUS</p> <p>By:  Monica Nino Chief Executive Officer</p>	<p>CONTRACTORS</p> <p>APPROVED AS TO CONTENT:</p> <p>By:  Edward W. Deuel</p>
<p>APPROVED AS TO CONTENT: Department of Sheriff</p> <p>By:  Adam Christianson Sheriff-Coroner</p>	<p>By:  Richard C. Wemmer</p>
<p>APPROVED AS TO FORM: John Doering County Counsel</p> <p>By:  Dean Wright Deputy County Counsel</p>	