



CITY COUNCIL AGENDA REPORT

MEETING DATE: February 21, 2006

ITEM NUMBER: Item Number

SUBJECT: JOINT POWERS AGREEMENT – INTEGRATED LAW AND JUSTICE AGENCY FOR ORANGE COUNTY

DATE: JANUARY 10, 2006

FROM: POLICE DEPARTMENT

PRESENTATION JOHN D. HENSLEY, CHIEF OF POLICE

BY:

FOR FURTHER INFORMATION CONTACT: JOHN D. HENSLEY (714) 754-5117

RECOMMENDATION:

1. Approve Resolution _____ authorizing the City of Costa Mesa to participate in the Integrated Law and Justice Agency for Orange County (ILJAO) and authorizing the Mayor to execute the Joint Powers Agreement (JPA) (Exhibit 1) associated with the City's participation, subject to conditions described in this report and authorize the City Manager and/or Police Chief to execute any related documents consistent with the implementation of this Agreement.
2. Ratify the COPLINK System Use Policy (Exhibit 6), specifically authorizing the Chief of Police to execute the document and any amendments on behalf of the City.

BACKGROUND:

City and County law enforcement officials have been concerned for a number of years about the inefficiencies of the various databases used by the Court, the Sheriff's Office, municipal police departments, and District Attorney's Office.

As a result of these concerns, a local study was conducted in early 1997 wherein the Orange County Chief's and Sheriff's Association determined that over \$5 million in overtime (using 1995 data) was being spent in Orange County by the various law enforcement agencies for off-duty Court appearances, when only 1–2% of those same officers actually testified in court.

For that reason, grant funding was obtained to study the witness management system in the County. A nationally regarded consulting firm was hired to conduct the study, which identified several inefficiencies in the Criminal Justice System in Orange County. As a result, some short-term changes were made with the support of the Court that has had a moderate impact on the problem. Based upon findings in the study, a Project Steering Committee was formed that included:

- Chief's from seven (7) municipal police departments (appointed by the Orange County Chief's and Sheriff's Association and representing all municipal chiefs in the County);

- The department heads of the County Criminal Justice Agencies (including the Sheriff, District Attorney, Public Defender and Chief Probation Officer);
- The Chief Executive Officer and Presiding Judge of the Court;
- Two representatives from the Orange County City Manager's Association; and
- A representative from the County Executive Office.

The Steering Committee developed a Memorandum of Agreement (Exhibit 2) at the time (1997) that outlined shared principals. The Agreement directed the Steering Committee to take a more comprehensive look at the entire Criminal Justice System in Orange County and to see how it could be improved.

Local funding for the project was sought and secured after failing to get any assistance at the State level. Local funding was provided by pre-bankruptcy funds contributed by the cities to the Orange County Automated Teletype System (OCATS) along with County budgeted funds for criminal justice integration. A request for Proposal (RFP) contract was awarded to Deloitte and Touche to help prepare a Strategic Plan for what is now called the Integrated Law and Justice Project. The Strategic Plan examined all components of the Criminal Justice System in the County. All 21 municipal police departments, the Sheriff, the District Attorney, Probation, Public Defender, the Courts, and others were included in the Project. After a year of work, the Steering Committee and all members of the Association adopted the Strategic Plan in April 2001.

The Strategic Plan made recommendations to:

- Improve public safety through increased access to better information on a more timely basis;
- Reduce redundant data entry and processes;
- Stop "reinventing the wheel";
- Become more efficient so to re-deploy funds into other law and justice activities; and
- Take advantage of the national emphasis (and related funding) for integration initiatives.

The Strategic Plan identified eight (8) specific initiatives for implementation. (Other sub-projects have also been addressed since the Strategic Plan was formally adopted.) The Strategic Plan was designed in modules so that funding could be applied on a "pay as you go" basis.

The eight (8) primary initiatives were to:

- Establish a governance structure;
- Distribute and provide access to Court disposition information;
- Process and deliver subpoenas electronically;

- Share records and case data across jurisdictional lines and between disparate data bases;
- Automate case filings, including establishing a case number index that unifies the different filing systems within the Criminal Justice System;
- Infrastructure design (the design of a “middleware platform” to accomplish the information sharing contemplated in the Strategic Plan); and
- Enhance security (the development of specific security solutions to ensure confidentiality and access restrictions, while facilitating the contemplated information sharing).

ANALYSIS:

Project Costs

The consultants conducting the study initially estimated one-time costs of \$10 - \$12 million to implement the Strategic Plan. These costs are largely attributed to technology purchases, installations, and consultant fees. The consultants also identified ongoing costs for future upgrades and outside help, but it is difficult to determine all of the costs to a certainty before all the initiatives are formally designed and implemented. It is not envisioned that the JPA will have any technical staff, but rather the Project will contract assistance to manage the various initiatives. Existing personnel within each member agency will support the ILJAOC’s work in their particular agency. Costs attributed to any particular member that are related to improvements benefiting all users will be subject to reimbursement and/or will be shared on a proportionate basis. Currently it is the intent of the Project Steering Committee to implement the Project Plan on a “pay as you go” basis, relying on available grant funds to accomplish the objectives.

With that said, it is believed that the one-time Countywide costs will be less than the original \$10-\$12 million dollars estimated based upon work already underway and new improvements made to technology in general. One million dollars has already been invested in local funds (which resided in the County budget) for the Strategic Plan, and we have secured in excess of another \$5 million in Federal funds, with another appropriation request from former Representative Christopher Cox (R-Costa Mesa) still pending in the current Appropriations Bill for the Department of Commerce, Justice and State.

To reiterate, it is difficult to define a specific dollar figure on the JPA’s future costs. However, each member of the Agency as individual entities and the JPA as a whole will evaluate ongoing maintenance costs in the selection of any product or service that addresses each initiative. Without a doubt, the JPA will have ongoing costs to the participating agencies; however, those costs will be assessed in a rational, deliberative manner, with a decision-making process designed intentionally to require a consensus vote by a two-thirds majority of the Governance Board. Confidently speaking, some Agencies will either donate their services for the overhead associated with this form of governance (legal advice, administrative/budgetary support, risk management, etc.) or will only charge the JPA for direct costs associated with the assistance.

During follow-up meetings involving the City Manager’s Association, Project representatives were asked, in spite of the difficulty, to prepare a preliminary budget to

approximate the costs that may be incurred over the next several years in order to give them a better idea of what can be expected financially. The Project's consultants were asked to identify the worst-case scenario. The consultant's projection is outlined in Exhibit 3, which identifies costs both with participation from the County and without the County's contribution. The request before you does not include the County. As detailed in Exhibit 3, the worse case cost scenario for Costa Mesa is estimated at \$80,000 per year. As yet, the County has not reconsidered their position either directly or indirectly on behalf of the contract cities, which rely on the Sheriff for police services. The ILJ Project is still hopeful that the County will reconsider their position on participation, as all other members of the Criminal Justice System in Orange County, including the Superior Court, have expressed their support for the Project and for the related JPA Governance.

Even though some of the long-term costs for the JPA are not definitely known today, significant costs will continue to be incurred if the system's inefficiencies are not addressed. The cost of these inefficiencies will far exceed the cost associated with the Project.

For instance, the below examples illustrate how the Project can help reduce inefficiencies.

- Citation Database

The County's Courts contract with a third party vendor to manually enter approximately 750,000 citations annually into their database, even after local law enforcement agencies have entered those same citations into their local respective databases. By electronically uploading local information to the Court system, the collective savings to all Orange County agencies would be significant.

- Electronic Filing of Criminal Cases

Today, four sectors of the justice system hand-enter criminal case data. First the originating agency, secondly the District Attorney's Office, thirdly the Court, and lastly the Public Defender. Additional data entry occurs later to this same database should the defendant be placed on probation.

These two examples demonstrate why this project (and the governance to support it) is so important to those who serve in and are served by the Criminal Justice System in Orange County.

It should be noted that a number of the initiatives and projects identified in the Strategic Plan, as well as related efforts (such as Terms and Conditions of Probation, Electronic Subpoena Service, Countywide Electronic Scheduling, Court Dispositions, and Data Sharing) are currently implemented or they have undergone substantial development and improvement.

Governance

One of the more difficult initiatives identified in the Strategic Plan was the need for a strong governance, both in the short-term for the Strategic Project and for the long-term management of the information sharing and efficiencies brought about through these efforts. The Steering Committee worked hard to craft a document that ensured good representation of those affected by the outcome, yet protected those who already had infrastructure in place for information sharing, etc.

Two primary governance alternatives were sought, neither of which pose a significant costs in their creation, although the Joint Powers Agreement results in a slightly higher overhead.

- A JPA, where agencies with specific powers establish a formal, separate authority to carryout the prescribed responsibilities; and
- A Memorandum of Understanding (MOU), where agencies agree to perform specific tasks in a cooperative way, via a simple legal agreement to do so.

Early on, a majority of the agencies on the Steering Committee clearly preferred the more formal JPA; however, the County Sheriff and the CEO preferred the less formal MOU as they believed that the MOU would allow any recommendations made within the MOU to be “advisory only” (and not binding) to the Board of Supervisors.

After considering both approaches, a draft JPA was developed. The ILJ Steering Committee and the Orange County Chief’s and Sheriff’s Association overwhelmingly supported the JPA model. Although of the opinion that the JPA is too formal, Sheriff Michael Carona had originally indicated that (based upon the overwhelming support by the rest of the Criminal Justice Community) he would not oppose the JPA if adopted, and his Department would participate. However, several days before the JPA was scheduled for approval by the Board of Supervisors on December 10, 2002, the Sheriff changed his position and actively opposed it. At this point, it was removed from the Board’s Agenda, and the governance formation has been stalled ever since.

The JPA structure was not chosen in a vacuum. The Project Steering Committee sought opinions from consulting firms, corporations involved in criminal justice integration projects across the country, and a non-profit consortium funded by the Federal government that assists criminal justice agencies with integration projects. All have concurred that an effective Project implementation and the long-term success of our efficiency improvements require a governance that is institutionalized, as opposed to a less formal structure that may be eroded by time and changes in founding personnel. A JPA will result in fair representation for those member agencies involved in the improvements attempting to be effected.

The JPA requires a two-thirds majority vote for any budget-related decision to ensure there is a clear consensus for any such decision. In addition, the JPA document allows agencies to withdraw from participation and/or to be reimbursed for any costs required to improve the existing Countywide infrastructure, should that become necessary to facilitate the Project implementation.

Overall, it is clear to all those who have participated in the Project since its inception that the JPA form of governance is the preferred alternative, given both our Countywide experience with less formal methods of governance for significant projects, and given the long-term implications of changes required in justice system administration as laws and technology change.

On September 7, 2005, a presentation was made to the Orange County City Manager’s Association (OCCMA) as a follow up to the attached letter (Exhibit 4), signed by every Chief of Police in the County, the District Attorney and the Presiding Judge of the Superior Court. The request was clear. The time had come to implement the JPA Governance, even without the County participation, to insure the overall work on the ILJ Project and significant resources such as the COPLINK System remain viable and can continue to be

improved in the future. On November 2, 2005, the OCCMA again deliberated on the issue, and those City Managers with municipal police departments unanimously approved the recommendation to form the JPA for the Integrated Law and Justice Agency. The letter memorializing that action is attached (Exhibit 5).

Exhibit 6 (attached) is a tentatively executed COPLINK System User Policy, which governs the operation and use of the Data Sharing System currently under development by the ILJ Project. It insures that those contributing data to the System and those accessing it follow certain procedural requirements. Because there is an indemnification clause in the Agreement, Council is asked to ratify the action and authorize the Chief of Police to execute the document and any subsequent amendments to it.

ALTERNATIVES CONSIDERED:

First, Council can decide not to participate as a member of the JPA. This could and would most likely mean that Costa Mesa would be an island unto itself resulting in no data sharing with other Orange County agencies and no improved system efficiencies.

Secondly, a Memorandum of Understanding (MOU) was considered as an alternative to the more formal Joint Powers Agreement. The MOU was less formal where agencies would agree to perform specific tasks in a cooperative way. However, participating agencies agreed that less formal forms of governance would not be beneficial to meeting the overall objectives of the project initiatives given its long-term implications.

FISCAL REVIEW:

There is no immediate fiscal impact on this item.

LEGAL REVIEW:

The City Attorney's Office has reviewed the attached Resolution and approved it as to form. The City Attorney's Office has also reviewed the Joint Powers Agreement which the Resolution authorizes to be executed. The City Attorney has concerns regarding two provisions of the Joint Powers Agreement, which contain language ambiguities would could result in confusion or disagreement in the future. Unfortunately, the JPA Agreement had already been adopted by four cities prior to the agreement being distributed to our City Attorney's Office.

The first, and most serious, ambiguity in the agreement appears at Section 5.03, which is part of the agreement's language regarding indemnification. Section 5.03, is intended to provide that the ILJAOC is to indemnify the member agencies and their elected and appointed officials and employees, etc., from *all* liabilities for employees of ILJAOC or member agencies who are performing ILJAOC functions. In addition, the section is intended to require the ILJAOC to maintain "sufficient insurance coverage" as recommended by its risk manager, to cover any such claims, losses, and liability. However, the language of this section as it is currently written is ambiguous. It could be interpreted to mean that the indemnification obligation in favor of member agencies by the JPA is for damages *up to* the amount of insurance coverage in effect, rather than unlimited indemnification not capped by the availability or amount of insurance coverage. Correcting this ambiguity is very simple and is a matter of breaking the two

issues into separate sentences and adding nine words to the section. This minor modification would clear up this ambiguity and allow all signing cities to fully understand the indemnification intended to be actually provided by section 5.03 of the Joint Powers Authority agreement.

The second ambiguity in the agreement is minor, and easily corrected. The second ambiguity appears in section 6.02(b), dealing with voluntary withdrawal of member agencies from the Joint Powers Authority. The language as it currently exists allows for shortened notice upon “unanimous approval of a quorum of the board.” A quorum of the board normally (and under this agreement) would be considered a simple majority. Based on our discussions with officials involved in the creation of the ILJAOC, it is apparent that approval for shortening of required withdrawal notice was not intended to be accomplished by a simple majority. Instead, the intent was to have unanimous approval of all board members present at the time such a request was considered. This change, like the one in section 5.03, is relatively easy to make and consists of deletion of a couple words and clarification of the intent.

The City Attorney, City Manager and Chief of Police have discussed available options to deal with correcting these ambiguities. Because five cities have now ratified the agreement in its present form, It was determined that the best course of action to allow the ILJAOC formation to move forward is to authorize the City to enter into the JPA Agreement, conditioned upon the two language changes discussed above being made in the agreement, to be ratified by all member agencies, within six months of the City’s adoption of the agreement. To further ensure that the corrections are made, the City will not make any financial contribution to the ILJAOC until the agreement is revised to correct these ambiguities. If the corrections are not made as specified, the City will have the option to withdraw from the ILJAOC.

CONCLUSION:

The entire Orange County Criminal Justice System (with the exception of the Sheriff’s Department) has come together for a common purpose; to improve information sharing and efficiency for all those who are both members and who are affected by the system. With that common purpose comes the need for truly shared decision-making by all parties.

Success will only come with an institutionalized commitment to a better, more efficient legal system and to the long-term maintenance of the improved system.

Therefore it is recommended to endorse the Integrated Law and Justice Agency of Orange County and the City’s participation in the Joint Powers Authority. In order to move the Authority forward, the Council is requested to authorize the Mayor to sign the proposed Joint Powers Authority Agreement, subject to the condition that 1) the language of sections 5.03 and 6.02(b) be revised to correct the ambiguities, with language substantially similar to that reflected in the City Attorney’s recommendation (Attachment 8), within a period of six months of the City’s approval; and 2) the City shall make no financial contribution to the JPA until the JPA Agreement is corrected as set forth in Attachment 8.

It is also recommended that approval be given to the execution of the related COPLINK System Use Policy.

JOHN D. HENSLEY
Chief of Police

MARC R. PUCKETT
Director of Finance

KIMBERLY HALL BARLOW
City Attorney

DISTRIBUTION: City Manager
City Attorney
Finance Director

ATTACHMENTS: 1 [Resolution No.](#)
2 [Joint Powers Agreement for ILJAOC](#)
3 [Orange County Law and Justice MOA](#)
4 [Deloitte Cost Distribution](#)
5 [Letter to OCCMA](#)
6 [OCCMA Letter of Response](#)
7 [COPLINK System Use Policy](#)
8 [Proposed Revisions to Joint Powers Agreement](#)