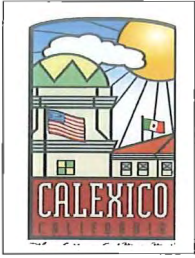


**AGENDA
ITEM**

6



AGENDA STAFF REPORT

DATE: December 1, 2021

TO: Mayor Moreno and Council Members

APPROVED BY: Miguel Figueroa, City Manager *ML*

PREPARED BY: Denise Garcia HR/RM Manager *Denise Garcia*

SUBJECT: Approval of 2021-2023 CalWORKs PREP Program Agreement with the County of Imperial and Authorizing the City Manager to Sign Agreement

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Recommendation:

Approval of 2021-2023 CalWORKs PREP Program Agreement with the County of Imperial and Authorizing the City Manager to Sign Agreement.

Background:

The CalWORKs PREP (Pre-Employment Preparation) Program in conjunction with the IVROP (Imperial Valley Regional Occupation Program) partners with non-profit agencies such as the City of Calexico to provide work to individuals who are eligible to participate.

The CalWORKs PREP Program pays 100% of the trainee's salary. The City is responsible for providing supervision, assignments, training, and performance evaluations only. Qualified individuals are afforded training in areas such as general office work, assisting with recreation activities, adult literacy, library activities, and traffic control. Trainees must be supervised at all times by a full-time City employee and will not be replacing former employees. Work is assigned as additional activities are generated during the year.

Discussion & Analysis:

The City of Calexico has used and benefited from the services of training programs. These partnerships allow individuals to learn skills that will contribute to their transition to employment opportunities in the public or private sector. The Agreement with the Imperial County is for a two-year period ending December 1, 2023.

Fiscal Impact:

None.

Attachments:

- 1. 2021-2023 CalWORKS PREP Program Agreement





COOPERATIVE AGREEMENT

This Cooperative Agreement, Agreement is made this 1st day of December 2021, by and between the County of Imperial, a political subdivision of the state of California (“County”) and the City of Calexico regarding the participation in the County’s CalWORKs Program. The City of Calexico will be primarily responsible for City of Calexico obligations under this MOU.

PRE-EMPLOYMENT PREPARATION PROGRAM

This Agreement is entered into under the authority of Chapter 270 of the California Statutes of 1997 (Assembly Bill 1542). Pre-employment Preparation (PREP) is a component of CalWORKs to be operated under the authority of this statute.

The County and **City of Calexico** agree to the following terms and conditions:

1. **Term.** The Term of the Agreement is from 12/01/2021 through 12/01/2023.
2. **Definitions.** The following definitions shall apply throughout this Agreement:
 - a. “Participant” means CalWORKs recipients who are in the PREP program
 - b. “Worksite” means the City of Calexico location where Participants report and provide services under the PREP program.
 - c. “PREP Assignments” means the work assignments that Participants perform at their assigned Worksite.
3. City of Calexico shall provide supervised work activity for assigned participant(s) referred to the Worksite by the County’s CalWORKs program.
4. Participant(s) will supplement, and under no circumstances will they supplant regular employees. Further, Pre-employment Preparation (PREP) Assignments at any Worksite, including one where regular employees are members of a bargaining unit, cannot prevent or delay the filling of vacant positions or the recall of workers currently in lay-off status.
5. City of Calexico is not responsible for compensating the participant(s) for work performed. Likewise, City of Calexico shall not charge the County for City of Calexico participation in this program.
6. The Worksite agrees to supervise each Participant according to the following safety regulations and guidelines. The Participant(s) shall:
 - a. Be allowed to operate portable drills, grinders, power equipment, and other like equipment while working under supervisions as required under the provision of the PREP/Work Experience Programs and according to City of Calexico policies and procedures.



- b. Be provided with the appropriate personal protective procedures equipment as provided in the CAL-OSHA regulations and be advised of appropriate and adequate safety procedures and equipment for the job being performed.
- c. Not be allowed to operate a motor vehicle, heavy (construction) equipment, forklifts, jackhammers, (chainsaws or power activated tools).
- d. Not be exposed to toxic or hazardous chemicals or operations, like spray-painting, welding or similar operations. Brush painting with water-based paint is acceptable.
 - i. Any such City of Calexico-Sanctioned operations of a vehicle or any work condition contrary to the condition stated above shall be the sole responsibility of the Worksite, and the Worksite shall, at its own expense, provide legal defense for the County of Imperial with respect to any litigation arising from such participant activity. The Worksite shall indemnify and hold free and harmless the County of Imperial, its officers, agents, and employees from all claims, actions, damages, and liabilities arising out of or resulting from such activity.
 - ii. In a PREP worksite assignment, All County Letter No. 00-14 (dated February 22, 2000) will cover Participants for Worker's Compensation insurance as required through self-insurance by the State of California Department of Social Services (CDSS).

7. During PREP Assignment, City of Calexico agrees:

- a. To provide Participant(s) with reasonable and proper supervision and instruction by Worksite regarding duties and work activities.
- b. To provide Participant(s) with the same working conditions as Employees similarly employed, e.g., coffee breaks, lunch breaks.
- c. To report Participant(s) attendance and other such information on Performance as may be requested by the County in a timely manner.
- d. To consider Participant(s) for any job openings, for which the participant is qualified, occurring at City of Calexico and inform the participant of any job opportunities within the agency.
 - i. Nothing in this Agreement obligates the City of Calexico to give Participants preferred consideration for such openings.
 - ii. Additionally, Participants shall not be considered City of Calexico Employees. As such Participants shall not be considered for job openings that are posted in-house.
- e. To utilize Participant(s) to perform duties at the training or entry level.
- f. For PREP Assignments, successful completion standards will include the following:
 - i. Daily attendance based on number of exact hours assigned, with no excessive ongoing tardiness or absences.
 - ii. Satisfactory completion of assigned duties.
 - iii. Responsiveness to supervisor's directions.
 - iv. Completion of assigned period (i.e., 3 months, 6 months, 12 months).



- g. To advise the County Rep (IVROP-staff) by telephone when the Participant(s) does not attend the Worksite for three consecutive days.
 - h. To report any accident or injury to IVROP-staff on the day the injury occurs.
- 8. The County Rep (IVROP-staff) and authorized Federal or State representatives have the right to observe, monitor, or evaluate all conditions, and activities involved in the performance of the Agreement. Said observance, monitoring, and evaluations may include but not limited to inspection of premises, reports, and interviews of project staff and Participants. The Worksite shall make available to the County Rep (IVROP-staff) and authorized Federal or State representatives its records with respect to Participants receiving services and matters covered by this Agreement and shall permit excerpts or transcripts from such records. Prior to release of said records, County and/or authorized Federal or State representatives shall provide City of Calexico with signed releases from Participants authorizing such disclosure.

9. Independent Contractor.

- a. City of Calexico, in the performance of this Agreement, shall be and act as an independent contractor. City of Calexico understands and agrees that it and all of its employees shall not be considered officers, employees or agents of County, County Rep (IVROP-staff) and are not entitled to benefits of any kind or nature normally provided employees of County and/or to which County's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. City of Calexico assumes the full responsibility for the acts and/or omissions of its employees or agents as they relate to the services to be provided under this Agreement. City of Calexico shall assume full responsibility for payment of federal, state and local taxes, including unemployment insurance, social security and income taxes for its employees.
- b. Nothing in this Agreement shall create an employment relationship between City of Calexico and Participants. Participants under this Agreement shall be and act as an independent contractor. County and County Rep (IVROP-staff) understands and agrees that it and all of the Participants it refers to City of Calexico shall not be considered officers, employees or agents of City of Calexico, and are not entitled to benefits of any kind or nature normally provided employees of City of Calexico and/or to which City of Calexico's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. County assumes the full responsibility for the acts and/or omissions of the Participants as they relate to the services to be provided under this Agreement. County shall assume full responsibility for payment of federal, state and local taxes, including unemployment insurance, social security and income taxes for its employees.

10. Indemnification:

- a. The County agrees to indemnify, defend, and hold harmless City of Calexico, its officers, agents and employees against any claim, liability, loss, injury or damage imposed on City of Calexico arising out of the County's performance on this



Agreement, except for liability resulting from the negligent or willful misconduct of City of Calexico, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless City of Calexico under this Agreement, the County shall reimburse City of Calexico for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. The County shall seek City of Calexico approval of any settlement that could adversely affect the City of Calexico, its officers, agents or employees.

- b. City of Calexico agrees to indemnify, defend, and hold harmless the County and County Rep (IVROP-staff), its officers, agents and employees against any claim, liability, loss, injury or damage imposed on the County arising out of City of Calexico's performance on this Agreement, except for liability resulting from the negligent or willful misconduct of County, its officers, agents and employees. If obligated to indemnify, defend, or hold harmless the County under this Agreement, City of Calexico shall reimburse the County for all costs, attorney's fees, expenses and liabilities associated with any resulting legal action. City of Calexico shall seek the County's approval of any settlement that could adversely affect the County, its officers, agents or employees.

11. **Public or Non-Profit Entity.** Worksite representative's signature affixed to this Agreement certifies that the Worksite is a public or private non-profit agency.
12. **No Monetary Obligation.** There shall be no monetary obligation on the City of Calexico or the County, one to the other.
13. **Termination.** Either Party may terminate this Agreement for any reason or no reason upon a ten (10) day written notice to the other Party. The Parties may mutually agree to waive this notice requirement and terminate the Agreement immediately.
14. With regard to CalWORKs Participants, City of Calexico and County (through its Department of Social Services) will comply with all confidentiality laws and requirements, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and California Civil Code section 56.10 et.seq. as applicable.
15. **Arbitration.** Any controversy or claim arising out of or relating to this Agreement shall first be subject to mediation with a mediator agreed to by both parties and paid for by both parties, absent an Agreement otherwise. If after mediation there is no resolution of the dispute, the parties agree to resolve the dispute by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules, and judgment on an arbitrator's award may be entered in any court having jurisdiction thereof.
 - a. The Parties shall select one arbitrator pursuant to the AAA's Commercial Arbitration Rules.



- b. The arbitrator shall present a written, well-reasoned decision that includes the arbitrator's findings of fact and conclusions of law. The decision of the arbitrator shall be binding and conclusive on the Parties.
 - c. The arbitrator shall have no authority to award punitive or other damages not measured by the prevailing Party's actual damages, except as may be required by statute. The arbitrator shall have no authority to award equitable relief. Any arbitration award initiated under this clause shall be limited to monetary damages and shall include no injunction or direction to either Party other than the direction to pay a monetary amount. As determined by the arbitrator, the arbitrator shall award the prevailing Party, if any, all of its costs and fees. The term "costs and fees" includes all reasonable pre-award arbitration expenses, including arbitrator fees, administrative fees, witness fees, attorney's fees and costs, court costs, travel expenses, and out-of-pocket expenses such as photocopy and telephone expenses. The decision of the arbitrator is not reviewable, except to determine whether the arbitrator complied with sections (c) and (d) of this paragraph.
16. **Governing Law and Venue.** The laws of the State of California shall govern this Agreement. Proper venue for any dispute regarding this Agreement shall lie in Imperial County, California.
17. **Entire Agreement.** This Agreement represents the entire Agreement between City of Calexico and County and supersedes any and all prior negotiations, representations, understandings or Agreements, either written or oral.
18. **Interpretation.** This Agreement shall be interpreted to give effect to its fair meaning and shall be construed as though both parties prepared it.
19. **Assignment.** Unless authorized in writing by both Parties, neither Party shall assign or transfer any rights or obligations covered by this Agreement. Any unauthorized assignment or transfer shall constitute grounds for termination by the other Party.
20. **Compliance with Laws.** The Parties shall, at their own cost and expense, comply with all local, state, and federal ordinances, regulations, and statutes now in force and which may hereafter be enacted that affect this Agreement.
21. **No Waiver of Default.** No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that instance or any other instance. Any waiver must be in writing and shall only apply to that instance.
22. **Successors and Assigns.** All representations, covenants, and warranties set forth by, on behalf of, or for the benefit of either Party herein shall be binding upon and inure to the benefit of such Party and its successors and assigns.
23. **Amendment.** This Agreement may only be altered, amended, or modified by written instrument executed by both Parties. The Parties agree to waive any right to claim, contest,



or assert that this Agreement was modified, canceled, superseded, or altered by oral Agreement, course of conduct, waiver, or estoppel.

24. **Severability.** If any one or more of the provisions of this Agreement is held to be invalid, illegal, or unenforceable, then such provision or provisions shall be severed from the Agreement, and the remaining provisions of the Agreement shall continue in full force and effect and shall not be affected, impaired, or invalidated in any way.

Non-Discrimination. During the performance of the Agreement, City of Calexico and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race; color; age; religion (including religious dress and grooming practices); national origin or ancestry (including language use restrictions and possession of a driver's license issued under Vehicle Code section 12801.9); physical and/or mental disability; medical condition; genetic information; gender; gender identity (a person's identification as male, female, a gender different from the person's sex at birth, or transgender); gender expression (a person's gender-related appearance or behavior, whether or not stereotypically associated with the person's sex at birth); sex (including but not limited to pregnancy, childbirth, breastfeeding, and nay related medical conditions), sexual orientation, marital/domestic partner status, military and veteran status, or any other protected characteristic. Where applicable, City of Calexico shall not discriminate in the admission of clients or assignment of accommodation. City of Calexico and subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. City of Calexico and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12940 et seq.) and the applicable regulation promulgated thereunder (California Code of Regulations, Title 2, section 7286.7 et seq.). The applicable regulations of the Fair Employment Housing commission implementing Government Code, section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. City of Calexico shall also abide by the Federal Civil Rights Act of 1964(P.L. 88-352) and all amendments thereto, and all administrative rules and regulations issued pursuant to said Act. City of Calexico shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

25. **Execution of Counterparts.** If this Agreement is executed in counterparts, each counterpart shall be deemed an original, and all such counterparts or as many of them as the Parties preserve undestroyed shall together constitute one and the same Agreement.
26. **Authority.** The Parties warrant and represent that they have the authority to enter into this Agreement in the names, titles, and capacities stated herein and on behalf of the entities, persons, or firms named herein and that all legal requirements to enter into this Agreement have been fulfilled.



27. **Notice.** Any notice given under this Agreement shall be in writing to the parties' representatives and shall be deemed delivered three (3) days after the deposit in the United States mail, certified or registered, postage prepaid, and addressed to the parties.
The Parties' representatives shall be:

CITY OF CALEXICO:

Denise Garcia
H.R./R.M. Manager
608 Heber Avenue
Calexico, CA, 92231
Phone: (760) 768-2107
Email: dgarcia@calexico.ca.gov

County Rep (IVROP-staff):

Gabriel Aguirre
Coordinator
2895 S. 4th St
El Centro, CA 92243
Phone: 760-336-4060
Email: gaguirre@ivrop.org

For CITY OF CALEXICO

By: _____

Miguel Figueroa
City Manager
CITY OF CALEXICO

Date: _____

Imperial County

By: _____

Javier Duran
Deputy Director
Imperial County Department of Social Services

Date: _____

APPROVED AS TO FORM: