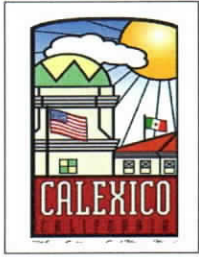


**AGENDA
ITEM**

9



AGENDA STAFF REPORT

DATE: December 16, 2020

TO: Mayor and City Council

APPROVED BY: Miguel Figueroa, City Manager 

PREPARED BY: Miguel Figueroa, City Manager

SUBJECT: Authorize City Manager to Sign Memorandum of Understanding Between City of Calexico and Imperial County Sheriff's Office

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Recommendation:

Authorize City Manager to sign Memorandum of Understanding between City of Calexico and Imperial County Sheriff's Office.

Background:

City of Calexico agrees upon a Memorandum of Understanding with Imperial County Sheriff's Office beginning December 9, 2020 through December 18, 2020, to provide Public Safety and Law Enforcement services within City limits.

Discussion & Analysis:

Due to the increased number of cases, high infection rate and rapid spread of COVID-19 within the City of Calexico, the City is in need of assistance from partner Public Safety agencies of the Imperial Valley. The City will seek 100% reimbursement through FEMA Grant.

Fiscal Impact:

No Fiscal Impact to General Fund. Fund # 255 FEMA will have an impact of approximately \$30,000.

Coordinated with:

City Manager, Calexico Police Department and Finance Department.

Attachments:

- 1. Memorandum of Understanding between City of Calexico and Imperial County Sheriff's Office.



MEMORANDUM OF UNDERSTANDING
Emergency Employee Sharing Agreement

THIS MEMORANDUM OF UNDERSTANDING ("**MOU**") is dated effective as of December 9, 2020, (the "**Effective Date**"), by and between CITY OF CALEXICO and IMPERIAL COUNTY SHERIFF'S OFFICE , CITY OF CALEXICO and IMPERIAL COUNTY SHERIFF'S OFFICE shall be referred to either singularly as "**Party**" or jointly as the "**Parties**."

RECITALS

WHEREAS, the Parties are public entities tasked with the provision of essential public services necessary for the continued health and well-being of the communities they serve.

WHEREAS, the Parties are cognizant of the risk that essential staff may become unavailable during a Major Public Disaster.¹

WHEREAS, the Parties seek resources to continue essential public services in the event of such a Major Public Disaster.

WHEREAS, the Parties believe that their personnel can be utilized collectively to best maintain necessary services if either or both Parties are experiencing staff unavailability caused by such a Major Public Disaster.

WHEREAS, CITY OF CALEXICO wishes to engage IMPERIAL COUNTY SHERIFF'S OFFICE; and IMPERIAL COUNTY SHERIFF'S OFFICE wishes to engage CITY OF CALEXICO in the event of a Major Public Disaster, such as *to provide public safety and law enforcement services, through collaborative efforts, responsible use of resources and policies, necessary for the continued health and well-being of the public at large* (the "Services").

NOW THEREFORE, in consideration of the mutual covenants herein contained, the Parties hereto, intending to be mutually legally bound, agree as follows:

1. **Emergency Staffing Committee.** Upon a Major Public Disaster (COVID-19), the Parties will designate an emergency staffing committee made up of leadership personnel from both agencies that will meet regularly to discuss staffing needs and equipment shortfalls, as well as identify available staffing and equipment. The Parties agree to seek input from each other and legitimately assess available resources while respecting that each Party will prioritize services in its own service area. The emergency staffing committee shall mutually determine which staff and what equipment will be lent pursuant to this MOU. Such decisions shall be documented in a running ledger during the term of the Major Public Disaster.

¹ As used in this MOU, a "Major Public Disaster" must have caused a governmental authority, such as the Governor of California or the President of the United States, to declare a formal state of emergency. This definition shall be interpreted consistently with 44 CFR § 206.2(a)(17), which includes events such as hurricane, tornado, tsunami, earthquake, volcanic eruption, or pandemic.

MEMORANDUM OF UNDERSTANDING

Emergency Employee Sharing Agreement

- 2. Contractual Relationship:** In the event of a Major Public Disaster, each Party agrees to make staff and equipment available to the other as needed. For purposes of this MOU, the Party experiencing the shortfall shall be referred to as the "Borrowing Employer" and the Party providing staff or equipment coverage shall be the "Loaning Employer."

To the extent Loaning Employer can reasonably provide staff and equipment during a Major Public Disaster without harm to its own service area, Loaning Employer agrees to provide and loan the services of available staff to perform the Services for and on behalf of Borrowing Employer, and Borrowing Employer agrees to accept and utilize the services of Employee, as provided by this MOU. While providing services for Borrowing Employer, Employee shall technically be under the supervision and direction of Borrowing Employer; however, the Parties acknowledge that Borrowing City of Calexico's management and staff shall be fully supportive of instructions related to compliance and legal mandates. While general services and assignments are directed by Borrowing Employer, legal compliance shall take precedence.

- 3. Employment Status:** Personnel provided by Loaning Employer will remain full-time regular employees of Loaning Employer; will remain on Loaning City of Calexico's payroll; will remain subject to Loaning City of Calexico's general personnel administration and will continue to receive compensation and benefits solely from Loaning Employer. Employees shall remain subject to Loaning City of Calexico's personnel policies, rules and regulations; though Loaning City of Calexico's personnel shall endeavor to comply with those behavior standards set forth in Borrowing City of Calexico's personnel rules, regulations and practices while performing work for Borrowing Employer. Loaning Employer shall be responsible for payment of all Employee salary and related benefits, pension, insurance, taxes and withholdings required under Loaning City of Calexico's personnel rules, policies and contracts and applicable federal and state law. Loaning Employer shall be responsible for keeping and maintaining the personnel file and payroll and other records of Loaning City of Calexico's personnel.
- 4. Insurance:** The Parties agree to maintain sufficient insurance to cover the Services contemplated under this MOU, including but not limited to Workers' Compensation Insurance. The Parties further agree that they maintain, or shall procure and maintain, Commercial General Liability (\$2M per occurrence and \$2M aggregate), as well as Automobile Liability (\$1M per accident) sufficient to cover any claim which may arise during the contemplated Services. Upon request, a Party shall provide a certificate or certificates of insurance evidencing necessary insurance as required in this section.
- 5. Indemnifications:** Loaning Employer shall indemnify, defend, protect and hold harmless Borrowing Employer, and its officers, employees, volunteers, and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and

MEMORANDUM OF UNDERSTANDING

Emergency Employee Sharing Agreement

consultant fees, and litigation costs) of every nature arising out of a breach of Loaning City of Calexico's obligations under this MOU, except where caused by the negligence or willful misconduct of Borrowing Employer or as otherwise provided or limited by law.

Borrowing Employer shall indemnify, defend, protect and hold harmless Loaning Employer, and its officers, employees, volunteers and agents, from and against any and all liability, losses, claims, damages, expenses, demands, and costs (including, but not limited to, attorney, expert witness and consultant fees, and litigation costs) of every nature arising out of a breach of Borrowing City of Calexico's obligations under this MOU, except where caused by the negligence or willful misconduct of Loaning Employer or as otherwise provided or limited by law.

The Parties' obligations under these indemnification provisions shall survive the termination of this MOU. The Parties agree to notify each other immediately upon assertion or possible assertion of any such claim and to cooperate with one another in the investigation and defense of said claim.

6. **Assignment:** During the term of this MOU, Loaning Employer agrees to temporarily incorporate into personnel duties and work schedule the responsibility to perform the Services on behalf of Borrowing Employer in furtherance of this MOU. Such Services may include as *to provide public safety and law enforcement services, through collaborative efforts, responsible use of resources and policies,* and direction of subordinate Borrowing City of Calexico's staff where appropriate, and preparing and making reports regarding Services rendered. Services performed by Loaning City of Calexico's personnel will be performed where best suited to the Services provided. Use of Borrowing City of Calexico's equipment and supplies, such as telephones, computers, and printers will be allowed in the furtherance of such Services.
7. **Conditions of Employment:** Borrowing Employer understands and acknowledges that it is entering into this MOU on the basis of its familiarity and confidence in the skills and experience of Loaning City of Calexico's services, and has not relied, in any way, on representations or promises of Loaning Employer.
 - a. During the term of this MOU Loaning Employer shall be responsible for the full payment of wages to Loaning City of Calexico's personnel regardless of payment from Borrowing Employer to Loaning Employer.
 - b. Loaning Employer shall be responsible for the administration, collection, and disbursement of its personnel W-2 payroll including the calculation of gross wage entitlement, withholdings from employee's wages and payment of those withholdings.
 - c. Loaning Employer shall be responsible for all employer tax-reporting functions as required by law and shall have the sole right to responsibility to evaluate, reassign, discipline, or terminate the employment of its

MEMORANDUM OF UNDERSTANDING

Emergency Employee Sharing Agreement

personnel. Loaning Employer shall provide prompt written notice to Borrowing Employer of any action taken which results in Loaning City of Calexico's personnel being unavailable for duty under the terms of this MOU.

- d. Loaning Employer and Borrowing Employer shall cooperate with one another to ensure compliance with all wage-and-hour; safety; and employment-related federal and state laws and regulations, including, but not limited to, the Family Medical Leave Act, California Family Rights Act, California Fair Employment and Housing Act, American with Disabilities Act, Fair Labor Standards Act, and Cal/OSHA or OSHA safety rules.
 - e. Borrowing Employer agrees to comply with all legally imposed safety practices and procedures with respect to Loaning City of Calexico's personnel activities. Borrowing Employer shall report all work-related accidents, injuries or illnesses to Loaning Employer within twenty-four (24) hours of any such occurrence. Borrowing Employer further agrees to: (i) provide Loaning City of Calexico's DWC-1 form or equivalent (for purposes of workers' compensation) promptly to Loaning City of Calexico's personnel if involved in a work-related accident, injury or illness; and, (ii) facilitate receipt of emergency medical care if needed with a follow-up notification to Loaning Employer.
8. **Changes in Employment Status:** During the pendency of Services, Loaning Employer shall not engage in any significant termination or lay-off that would materially affect the Services nor implement any increase in pay. In the event of an emergency or when Loaning Employer determines that such notice is not feasible, Loaning Employer shall provide Borrowing Employer with at least two (2) days advance written notice.
 9. **Term:** The term of this MOU shall commence upon the Effective Date specified above and shall continue for one (1) year from that date. The MOU shall thereafter automatically renew for successive one (1) year terms, unless terminated as set forth in this MOU. Either party to this MOU can terminate the MOU by providing at least thirty (30) day written notice of intent to terminate.
 10. **Billing:** Borrowing Employer shall pay to Loaning Employer an hourly fee based on the number of hours actually worked by Loaning Employer's personnel on behalf of Borrowing Employer, times the hourly rate actually paid by Loaning Employer to such personnel. Loaning Employer shall bill Borrowing Employer reasonable hourly costs associated with borrowed personnel which amount shall be offset by any unpaid amount owed to Borrowing Employer. Loaning Employer shall attempt to provide an invoice on a monthly basis but shall provide an invoice no later than thirty (30) days following the end of the period affected by the Major Public Disaster. Borrowing Employer shall pay such bill, minus offsets, by no later than ninety (90) days following receipt of such invoice.

MEMORANDUM OF UNDERSTANDING
Emergency Employee Sharing Agreement

11. **Notices:** All notices, invoices, reports and other communications hereunder shall be sent to the designated representative for the party to which it is directed, by U.S. Mail, overnight courier delivery, or email directed as follows:

If to CITY OF CALEXICO:	City Manager, Miguel Figueroa 608 Heber Avenue Calexico, CA 92231
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If to IMPERIAL COUNTY SHERIFF'S OFFICE	Chief Deputy Robert Benavidez P.O. Box 1040 El Centro, CA 92243
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12. **Arbitration of Disputes:** Any disputes between the Parties relating to this MOU shall be settled by binding arbitration administered through JAMS in accordance with its comprehensive arbitration rules and procedures. Prior to demand for arbitration, written notice must be provided to the non-aggrieved Party, and such Party shall have thirty (30) days in which to attempt to pay the disputed amount or cure the alleged breach. Following the running of the thirty (30) day cure period, the aggrieved party shall have ten (10) days to provide written notice to the non-aggrieved party of its arbitration demand. Upon timely and proper notice of the arbitration demand, the Parties shall mutually agree upon an arbitrator; in the event no agreement can be reached, the Parties shall procure a list of five qualified arbitrators from JAMS and strike names, beginning with Borrowing Employer, until one name remains. A binding arbitration shall commence with the remaining named arbitrator in no later than sixty (60) days.

13. **Severability:** If any provision of this MOU is found by any court or other legal authority to be in conflict with any code or regulation, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the agreement to either party is lost, the MOU may be terminated at the option of the affected party. In all other cases, the remainder of the MOU shall continue in full force and effect.

14. **Amendment:** No amendment of this MOU shall be valid or enforceable unless in writing and signed by both parties.

15. **Entire Agreement:** This MOU constitutes the entire agreement between the parties with respect to the subject matter hereof, and there are no oral or written understandings, representations, or commitments of any kind, express or implied which are not expressly set forth herein.

MEMORANDUM OF UNDERSTANDING
Emergency Employee Sharing Agreement

16. **No Third-Party Beneficiaries:** Nothing in this MOU shall be construed to give any rights or benefits to anyone other than the CITY OF CALEXICO and IMPERIAL COUNTY SHERIFF'S OFFICE.

17. **Counterparts:** This MOU may be executed in one or more counterparts. Each shall be deemed an original and all, taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives as of the day and year first above written.

Dated: _____

CITY OF CALEXICO

By: _____
CITY MANAGER

Dated: _____

IMPERIAL COUNTY SHERIFF'S OFFICE

By: _____
authorized signatory