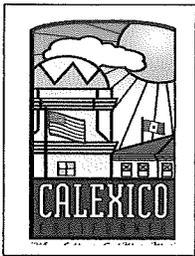


**AGENDA  
ITEM**

**09**



# AGENDA STAFF REPORT

**DATE:** August 1, 2018

**TO:** Mayor and City Council

**APPROVED BY:** David B. Dale, City Manager *DD*

**PREPARED BY:** David B. Dale, City Manager

**SUBJECT:** Authorize the City Manager to Execute the Proposed Amendment to Memorandum of Understanding with Imperial County Local Transportation (LTA) Regarding Reimbursement Funding to the City in an Amount Not to Exceed \$150,000 Total for FY 18/19 for the Purpose of Traffic Control Staffing Assistance for Land Port of Entry Vehicular Traffic During Cesar Chavez Blvd. Expansion Project.

=====

**Recommendation:**

Authorize the City Manager to execute the proposed amendment to Memorandum of Understanding with Imperial County Local Transportation (LTA) regarding reimbursement funding to the City in an amount not to exceed \$150,000 total for FY 18/19 for the purpose of traffic control staff assistance for Land Port of Entry vehicular traffic during Cesar Chavez Blvd. Expansion Project.

**Background:**

On December 21, 2016 the City Council authorized the City Manager to enter into a Memorandum of Understanding with the Imperial County Local Transportation Authority (LTA) to receive funding for two years in an amount of \$150,000 per year to assist with traffic controllers. The traffic controllers were needed to address the existing and anticipated traffic congestion created within the City of Calexico by traffic crossing the International Border at Calexico Land Port of Entry (LPOE). The funds were to allow us an opportunity to mitigate existing congestion issues while the City and LTA, along with other local, state and federal stake holders analyzed and evaluated traffic control measures to address anticipated impacts of the border crossing expansion.

**Discussion & Analysis:**

The existing MOU was approved for FY 2016/17 and FY 2017/18. On June 6, 2018 the City of Calexico requested one additional year of funding to address traffic control needs anticipated by the opening of the new Port of Entry before the expansion of Cesar Chavez Blvd (the new border corridor) has been completed to accommodate the international traffic.



The Imperial County LTA has provided a draft Amendment to the Memorandum of Understanding (MOU) for consideration and approval of extending the funding provided to Calexico for one more year. The language is standard and we feel comfortable proceeding with executing the Amendment as presented.

It is requested that you authorize the City Manager to execute the proposed Amendment to Memorandum of Understanding with the Imperial County Local Transportation Authority (LTA) regarding reimbursement funding to the City for the purpose of traffic control staff assistance along the border corridor.

**Fiscal Impact:**

\$150,000 reimbursement to the City

**Coordinated With:**

None.

**Attachments:**

Draft Amendment to Memorandum of Understanding between the Imperial County Local Transportation Authority and the City of Calexico.



1 "A. Term and Termination. The term of this MOU shall begin on the Effective Date  
2 and terminate on June 30, 2019. Either party may terminate this MOU at any time  
3 with or without cause."

4 3. All other terms and conditions of the MOU are and will remain in full force and effect.

5 IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment on the day  
6 and year first above written.

7  
8 **IMPERIAL COUNTY LOCAL  
TRANSPORTATION AUTHORITY:**

**CITY OF CALEXICO**

9  
10 By:   
11 LUIS PLANCARTE, Chairperson

By: \_\_\_\_\_  
, Mayor

12 ATTEST:  
13   
14 CRISTI LERMA  
15 Secretary to the Authority

ATTEST:  
\_\_\_\_\_  
City Clerk

16  
17 APPROVED AS TO FORM:

18 KATHERINE TURNER  
19 COUNTY COUNSEL

20 By:   
21 Eric Havens  
22 Deputy County Counsel

By: \_\_\_\_\_  
City Attorney

**MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING (“MOU”), made and entered into this 21st day of December, 2016, is by and between the **IMPERIAL COUNTY LOCAL TRANSPORTATION AUTHORITY** (“LTA”), and the **CITY OF CALEXICO**, a municipal corporation of the State of California (“CITY”), (individually, “Party;” collectively, “Parties”).

**RECITALS**

**WHEREAS**, on September 12, 2016, CITY made a request to LTA for funds from the regional highway set-aside for traffic control staff assistance on State Route 111 / Imperial Avenue, for southbound traffic leading to the Downtown Calexico West Port of Entry (POE); and

**WHEREAS**, CITY’s request is \$150,000 for each of two (2) years for a total request of \$300,000 for Fiscal Year 2016-17 and FY 2017-18; and

**WHEREAS**, on September 28, 2016, the LTA Board approved the allocation for additional funding needed in the amount \$150,000 for each of two (2) years for a total request of \$300,000 from the Regional Highway set-aside from the Measure D allocations and authorized the Executive Director to execute the necessary agreements between CITY and LTA.

**NOW THEREFORE**, for and in consideration of the mutual promises set out herein, LTA and CITY have and hereby agree as follows:

**1. LTA SHALL:**

A. Reimburse CITY for additional funding needed in a not to exceed amount of \$150,000 for each of two (2) years Fiscal Year 2016-17 and FY 2017-18 for a total request of \$300,000 from the Regional Highway set-aside from the Measure D allocations for the specific purposes set forth in **Exhibit “A”** attached hereto and incorporated herein by reference.

B. Reimbursement shall be provided in arrears after receipt of documentation for expenses including but not limited to payroll and other related expenses.

**2. CITY SHALL:**

A. Utilize funds only for those purposes set forth in **Exhibit “A”**.

B. Invoices, clearly indicating the period for which the bill is made, shall be submitted to:  
Attn: Executive Director  
Imperial County Local Transportation Authority

1405 N. Imperial Ave. Suite 1  
El Centro, CA 92243

2 C. Payment shall not be due and payable until such time as CITY has provided LTA with a  
3 monthly service statement / invoice itemizing with sufficient particularity all expenses and work  
4 performed. Said statements / invoices must meet with the approval of LTA and be received by LTA  
5 with annotations so as to clearly identify the expense and/or work performed.

6 D. CITY acknowledges LTA is under no obligation to reimburse CITY if services  
7 performed or expenses incurred are not authorized by LTA for the specific purposes set forth in  
8 **Exhibit "A"**.

9 **3. IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY AND BETWEEN**  
10 **THE PARTIES THAT:**

11 A. Term and Termination. The term of this agreement shall begin on the Effective Date  
12 and terminate two (2) years thereafter. Either party may terminate this MOU at any time with or  
13 without cause.

14 B. Relationship of the Parties. This MOU does not create a joint venture, partnership, or  
15 any other legal relationship of association among the Parties. Each Party is an independent legal entity  
16 and is not acting as an agent of the other Party in any respect. In all situations and circumstances  
17 arising out of the terms and conditions of this MOU, CITY, and any of its employees, is not an  
18 employee or agent of LTA and is only responsible for the requirements and results specified by this  
19 MOU. CITY shall not be subject to LTA's control with respect to the physical actions or activities in  
20 fulfillment of the requirements of this MOU. CITY, and any of its employees, is not, and shall not be,  
21 entitled to receive from, or through, LTA, and LTA shall not provide, or be obligated to provide, CITY  
22 with Workers' Compensation coverage or any other type of employment or worker insurance or  
23 benefit coverage required or provided by any Federal, State or local law or regulation for, or normally  
24 afforded to, an employee of LTA. CITY shall not be entitled to have LTA withhold or pay, and LTA  
25 shall not withhold or pay, on behalf of CITY, any tax or money relating to the Social Security Old Age  
26 Pension Program, Social Security Disability Program, or any other type of pension, annuity, or  
27 disability program required or provided by any Federal, State or local law or regulation. CITY, and  
28 any of its employees, shall not be entitled to participate in, nor receive any benefit from, or make any

1 claim against any LTA fringe program, including, but not limited to, LTA's pension plan, medical and  
2 health care plan, dental plan, life insurance plan, or any other type of benefit program, plan, or  
3 coverage designated for, provided to, or offered to LTA's employees. LTA shall not withhold or pay,  
4 on behalf of CITY, or any of its employees, any Federal, State, or local tax, including, but not limited  
5 to, any personal income tax, owed by CITY. CITY shall not have the authority, express or implied, to  
6 act on behalf of, bind or obligate LTA in any way.

7 C. Indemnification. To the furthest extent allowed by law, CITY shall indemnify, hold  
8 harmless and defend LTA and each of its members, board members, officers, officials, employees,  
9 agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages  
10 (whether in contract, tort or strict liability, including but not limited to personal injury, death at any  
11 time and property damage), and from any and all claims, demands and actions in law or equity  
12 (including reasonable attorney's fees and litigation expenses) arising or alleged to have arisen directly  
13 or indirectly out of performance of this MOU. CITY'S obligations under the preceding sentence shall  
14 apply regardless of whether LTA or any of its members (excluding the member CITY who is a party to  
15 this MOU), board members, officers, officials, employees, agents and volunteers are passively  
16 negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused  
17 by the active or sole negligence, or the willful misconduct, of LTA and each of its members (excluding  
18 the member CITY who is a party to this MOU), board members, officers, officials, employees, agents  
19 and volunteers.

20 If CITY should subcontract all or any portion of the services to be performed under this MOU,  
21 CITY shall require each subcontractor to indemnify, hold harmless and defend LTA and each of its  
22 members, board members, officers, employees, agents and volunteers in accordance with the terms of  
23 the preceding paragraph.

24 This section shall survive termination or expiration of this MOU.

25 D. Insurance.

26 Throughout the life of this MOU, CITY shall pay for and maintain in full force and effect all  
27 policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the  
28 California Insurance Commissioner to do business in the State of California and rated not less than "A-

1 VII" in Best's Insurance Rating Guide, or (ii) authorized by LTA's Executive Director or his/her  
2 designee at any time and in his/her sole discretion. The following policies of insurance are required:

3 (i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as  
4 broad as the most current version of Insurance Services Office (ISO) Commercial General  
5 Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property  
6 damage" and "personal and advertising injury" with coverage for premises and operations  
7 (including the use of owned and non-owned equipment), products and completed operations,  
8 and contractual liability (including, without limitation, indemnity obligations under the  
9 Contract) with limits of liability of not less than the following:

10 \$2,000,000 per occurrence for bodily injury and property damage

11 \$1,000,000 per occurrence for personal and advertising injury

12 \$4,000,000 aggregate for products and completed operations

13 \$4,000,000 general aggregate

14 (ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least  
15 as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage  
16 Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or  
17 other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than \$2,000,000  
18 per accident for bodily injury and property damage.

19 (iii) WORKERS' COMPENSATION insurance as required under the California  
20 Labor Code.

21 (iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than  
22 \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each  
23 employee.

24 In the event Contractor purchases an Umbrella or Excess insurance policy(ies) to meet the  
25 minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford  
26 no less coverage than the primary insurance policy(ies).

27 CITY shall be responsible for payment of any deductibles contained in any insurance policies  
28 required hereunder and CITY shall also be responsible for payment of any self-insured retentions. Any

1 deductibles or self-insured retentions must be declared to, and approved by, the LTA's Executive  
2 Director or his/her designee. At the option of the LTA's Executive Director or his/her designee, either:  
3 (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to LTA,  
4 its board members, officers, employees, agents and volunteers: or (ii) CITY shall provide a financial  
5 guarantee, satisfactory to LTA's Executive Director or his/her designee, guaranteeing payment of  
6 losses and related investigations, claim administration and defense expenses. At no time shall LTA be  
7 responsible for the payment of any deductibles or self-insured retentions.

8 All policies of insurance required hereunder shall be endorsed to provide that the coverage shall  
9 not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written  
10 notice has been given to LTA. Upon issuance by the insurer, broker, or agent of a notice of  
11 cancellation, non-renewal, or reduction in coverage or in limits, CITY shall furnish LTA with a new  
12 certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire  
13 during the work to be performed for LTA, CITY shall provide a new certificate, and applicable  
14 endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration  
15 date of the expiring policy.

16 The General Liability and Automobile Liability insurance policies shall be written on an  
17 occurrence form and shall name LTA, its members, board members, officers, officials, employees,  
18 agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so  
19 CITY's insurance shall be primary and no contribution shall be required of LTA. The Workers'  
20 Compensation insurance policy shall contain a waiver of subrogation as to LTA, its members, board  
21 members, officers, employees, agents and volunteers. The coverage(s) shall contain no special  
22 limitations on the scope of protection afforded to LTA, its members, board members, officers,  
23 officials, employees, agents and volunteers. Should CITY maintain insurance or self-insurance with  
24 broader coverage and/or limits of liability greater than those shown above, LTA requires and shall be  
25 entitled to the broader coverage and/or the higher limits of liability maintained by CITY. Any  
26 available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall  
27 be available to LTA.

28

1 CITY shall furnish LTA with all certificate(s) and applicable endorsements effecting coverage  
2 required hereunder. All certificates and applicable endorsements are to be received by LTA and  
3 approved by LTA's Executive Director or his/her designee prior to LTA's execution of the MOU and  
4 before work commences. Upon request of LTA, CITY shall immediately furnish LTA with a complete  
5 copy of any insurance policy required under this MOU, including all endorsements, with said copy  
6 certified by the underwriter to be a true and correct copy of the original policy. This requirement shall  
7 survive expiration or termination of this MOU.

8 If at any time during the life of this MOU or any extension, CITY or any of its subcontractors  
9 fail to maintain any required insurance in full force and effect, all work under this MOU shall be  
10 discontinued immediately, and all payments due or that become due to CITY shall be withheld until  
11 notice is received by LTA that the required insurance has been restored to full force and effect and that  
12 the premiums therefore have been paid for a period satisfactory to LTA. Any failure to maintain the  
13 required insurance shall be sufficient cause for LTA to terminate this MOU. No action taken by LTA  
14 hereunder shall in any way relieve CITY of its responsibilities under this MOU.

15 The fact that insurance is obtained by CITY shall not be deemed to release or diminish the  
16 liability of CITY, including, without limitation, liability under the indemnity provisions of this MOU.  
17 The duty to indemnify LTA shall apply to all claims and liability regardless of whether any insurance  
18 policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification  
19 to be provided by CITY. Approval or purchase of any insurance contracts or policies shall in no way  
20 relieve from liability nor limit the liability of CITY, its officers, employees, agents, volunteers, persons  
21 under the supervision of CITY, vendors, suppliers, invitees, consultants, sub-consultants, contractors,  
22 subcontractors, or anyone employed directly or indirectly by any of them.

23 If CITY should subcontract all or any portion of the services to be performed under this MOU,  
24 CITY shall require each subcontractor to provide insurance protection in favor of LTA, its members,  
25 board members, officers, officials, employees, agents and volunteers in accordance with the terms of  
26 each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be  
27 on file with CITY and LTA prior to the commencement of any work by the subcontractor.  
28

1 E. Nondiscrimination. During the performance of this MOU, CITY and its subcontractors  
2 shall not unlawfully discriminate against any employee or applicant for employment or member of the  
3 public because of race, religion, color, national origin, ancestry, physical or mental disability, medical  
4 condition, marital status, age or gender. CITY shall insure that the evaluation and treatment of their  
5 employees and applicants for employment and members of the public are free of such discrimination.  
6 CITY shall comply with the provisions of the Fair Employment and Housing Act (California  
7 Government Code §12900 et seq.). The applicable regulations of the Fair Employment and Housing  
8 Commission implementing Government Code §12900, set forth in Chapter 5 of Division 4 of Title 1 of  
9 the California Administrative Code, are incorporated into this MOU by reference and made a part  
10 thereof as if set forth in full. CITY shall also abide by the Federal Civil Rights Act of 1964 and all  
11 amendments thereto, and all administrative rules and regulations issued pursuant to said Act. CITY  
12 shall give written notice of its obligations under this clause to labor organizations with which it has a  
13 collective bargain or other agreement. CITY shall include the non-discrimination and compliance  
14 provision of this paragraph in all subcontracts to perform work under this MOU.

15 F. Nonappropriation. This MOU is valid and enforceable only if sufficient funds are made  
16 available for the purposes of this MOU. If sufficient funds are not available for this MOU, it shall be  
17 invalid and of no further force and effect. In that event, LTA shall have no liability to pay any funds to  
18 CITY. CITY will be due the share of reimbursement of expenses incurred as represented by the  
19 proportion of services rendered and expenses charged, if any, at the time of termination once a final  
20 billing is approved by LTA.

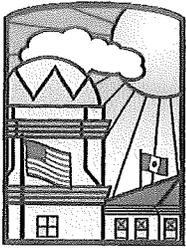
21 G. Notices. All payments, notices hereunder and communications regarding interpretation  
22 of the terms of this MOU or changes thereto shall be provided by the mailing thereof by registered or  
23 certified mail, return receipt requested, postage prepaid and addressed, as follows:

24 **LTA:**  
25 Imperial County Local Transportation Authority  
26 1405 N. Imperial Avenue, Suite 1  
El Centro, CA 92243

27 ///  
28 ///







# CITY OF CALEXICO

608 Heber Avenue  
Calexico, CA 92231  
Tel: 760.768.2110  
Fax: 760.768.2103  
[www.calexico.ca.gov](http://www.calexico.ca.gov)

June 6, 2018

Mr. Luis Plancarte  
Imperial County Local Transportation Authority  
1405 N. Imperial Ave., Ste. 1  
El Centro, CA 92243

Honorable Committee Members,

The City of Calexico respectfully requests consideration of granting one additional year of funding in the amount of \$150,000 for traffic controllers. The funding, if granted, would be used to address the existing and anticipated traffic congestion created within the City of Calexico by traffic crossing the International Border at the new Calexico Land Port of Entry (LPOE) during the Cesar Chavez Blvd expansion project.

The Calexico LPOE is deemed the third busiest in the State of California by the General Services Administration (GSA), with northbound vehicle crossings alone totalling approximately 4 million each year. As a result, a new LPOE has been under construction since 2015 to increase capacity. It is scheduled to be operational between July and September of 2018. The location of the new LPOE will result in Cesar Chavez Blvd becoming the new border crossing corridor, as it feeds directly into the new LPOE. It will be heavily impacted by the excess through traffic to and from the new LPOE. To accommodate the anticipated traffic, Cesar Chavez Blvd. will be expanded. The expansion project will include widening of the street, inclusion of turn lanes, sidewalks, gutters, signal lights and resurfacing

The opening of the new LPOE and the completion of the Cesar Chavez Blvd expansion project were originally scheduled to occur simultaneously. An unanticipated delay in funding of the Cesar Chavez Blvd expansion project has resulted in construction beginning in July, 2018 with a tentative completion date in January, 2019. Cesar Chavez Blvd. will be heavily impacted by both southbound and northbound traffic to and from the new LPOE. With the additional factor of on-going construction impacting traffic flow, along with the unpredictable nature of border traffic in general, human judgement will be needed to control traffic and ensure safety during the Cesar Chavez Blvd expansion project. We propose scheduling traffic controllers at six key intersections along the new border corridor to prevent gridlock and ensure the safety of our residents and regional travelers during the 6 months required to complete the necessary Cesar Chavez Blvd expansion.

*Viva Calexico!*

The City of Calexico greatly appreciates your past assistance in funding traffic controllers along the existing border corridor of Hwy 111/Imperial Ave. in Calexico. Your financial commitment over the past two fiscal years allowed the city to continue to address safety concerns created by traffic congestion along the existing border corridor and ensure the community was able to receive public safety assistance during these times. Traffic control staffing was utilized at 5-6 intersections along the existing border corridor, with costs totaling over \$300,000 per fiscal year. The border traffic congestion acts as a divider by creating a barrier along Imperial Ave./Hwy. 111 between the east and west areas of our city. There is a constant need for public safety to cross intersections impacted by the border traffic. The Calexico Fire Department responds to approximately 1,800 calls per year that are considered "overlapping" because they require crossing sides of town in order to assist residents. Without the necessary traffic controllers, public safety response time would have been adversely impacted and residents' lives and property would have been placed at risk.

While the actual impacts of the new LPOE increased capacity remain to be seen, the established correlation between border wait times and revenue losses for the region, leads us to anticipate that the increased capacity at the new LPOE will result in a reduction in border wait times. This reduction will likely lead to an increase in international border travelers, which will benefit our entire region economically. Unfortunately, our past experience with the border traffic flow has shown that the LPOE traffic flow can be unpredictable and inconsistent. The increased LPOE traffic flow is anticipated to bottleneck onto either Cesar Chavez Blvd or East Second Street towards Imperial Ave., creating the potential need for solutions to ensure safety, minimize gridlock, and prevent the dangerous blocking of intersections that would otherwise hinder public safety emergency response time and movement of travelers and goods. Therefore, in addition to requesting funding for traffic controllers during the Cesar Chavez Blvd. expansion project to accommodate border traffic to and from the new LPOE, we respectfully request your continued support to find solutions for the anticipated long term effects of the new LPOE and its increased capacity.

Sincerely,



David B. Dale  
City Manager