

DATE SUBMITTED 8/28/19
 SUBMITTED BY Imperial Police Dept.
 DATE ACTION REQUIRED _____

COUNCIL ACTION (x)
 PUBLIC HEARING REQUIRED ()
 RESOLUTION ()
 ORDINANCE 1ST READING ()
 ORDINANCE 2ND READING ()
 CITY CLERK'S INITIALS 28

**IMPERIAL CITY COUNCIL
 AGENDA ITEM**

SUBJECT: DISCUSSION/ACTION: 1. The Imperial Police Department requests approval of the MOU between the Imperial Police Department and the Imperial Valley Drug Coalition Domestic Highway Enforcement Group.	
DEPARTMENT INVOLVED: Police Dept.	
BACKGROUND/SUMMARY: This is a MOU between the City of Imperial, and the Imperial Valley Drug Coalition (IVDC) Domestic Highway Enforcement (DHE) regarding equitable sharing memorandum of understanding for participating agencies in the DHE operations which are ongoing.	
FISCAL IMPACT: None.	ADMIN SERVICES SIGN INITIALS <u> <i>W</i> </u>
STAFF RECOMMENDATION: Staff recommends approval of the MOU.	DEPT. INITIALS <u> <i>ML</i> </u>
MANAGER'S RECOMMENDATION:	CITY MANAGER'S INITIALS <u> <i>JD</i> </u>
MOTION: SECONDED: APPROVED () REJECTED () AYES: DISAPPROVED () DEFERRED () NAYES: ABSENT: REFERRED TO:	

EQUITABLE SHARING MEMORANDUM OF UNDERSTANDING

Imperial Valley Drug Coalition Domestic Highway Enforcement Group

The state, local members and the Federal agencies (“Participant Agencies”) of the Imperial Valley Drug Coalition Domestic Highway Enforcement Group (“IVDC DHE”), hereby agree to the following terms and conditions of this Memorandum of Understanding (“MOU”) governing the Group’s equitable sharing requests and participation in the Treasury Executive Office for Asset Forfeiture (“TEOAF”) Equitable Sharing Program:

Authorities: HSI-San Diego is authorized to enter into this agreement pursuant to 6 U.S.C. § 112(b)(2). HSI-San Diego is a federal law enforcement agency with enforcement authorities, including but not limited to, under the provisions of 19 U.S.C. § 1589a; 8 U.S.C. § 1357; 21 U.S.C. § 873; 8 U.S.C. § 1103(c); 18 U.S.C. § 981(e); and 19 U.S.C. § 1616a.

I. Mission of the Imperial Valley Drug Coalition Domestic Highway Enforcement Group

1. The mission of asset forfeiture is to disrupt criminal enterprises and remove the instrumentalities and proceeds of crime. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens. Whenever possible, assets seized by members of the IVDC DHE will be processed for federal forfeiture. This MOU does not create or confer any legal rights, privileges or benefits that may be enforced in any way by private parties.

2. The mission of the IVDC DHE is to disrupt and dismantle major drug trafficking and money laundering organizations, and their affiliates, in San Diego’s area of responsibility of Imperial County, thereby reducing crime and the availability of illegal drugs in the area. Unique to the IVDC DHE is its ability to target the point of transportation on the freeways, highways and streets in and around the Imperial County area. This ability to intercept vehicles trafficking money and drugs causes great vulnerability for both the drug trafficking organizations (DTO) suppliers and dealers, offering law enforcement the greatest chance of success in disrupting the supply of drugs and the violence associated with narcotics trafficking at the United States/Mexico border and its surrounding towns. Exploiting this vulnerability, will impact the DTOs and their higher-level sources of supply, as well as the Southern border trafficking networks. IVDC DHE will bring federal, state, and local law enforcement, intelligence, and prosecutorial resources to bear on this vulnerability of the entire drug distributions network in the area of the U.S./Mexico border of Imperial County.

3. The following are the participants of the IVDC DHE:
 - a. Immigration and Customs Enforcement Homeland Security Investigations – San Diego (HSI-San Diego)
 - b. Imperial County Sheriff’s Office (ICSO)
 - c. El Centro Police Department (ECPD)

- d. Brawley Police Department (BPD)
 - e. Imperial Police Department (IPD)
 - f. Calexico Police Department (CPD).
4. IVDC DHE operations are conducted on a weekly basis in an equal participation rotational manner. It is understood any member, who is also a member of another MOU, only receive a share under one MOU. Therefore, for any one seizure, their contribution may not be counted in both MOUs for equitable sharing purposes.

II. Structure of the Imperial Valley Drug Coalition Domestic Highway Enforcement Group (IVDC DHE)

1. Task Force Participant Agencies

- a. Immigration and Customs Enforcement, Homeland Security Investigations, San Diego, federal law enforcement agency, Acting SAC Timothy Tubbs, or his successor.
- b. Imperial County, California, Sheriff's Office, local law enforcement agency, Sheriff, Raymond Loera, or his successor.
- c. El Centro, California, Police Department, local law enforcement agency, Chief Brian Johnson, or his successor.
- d. Brawley, California, Police Department, local law enforcement agency, Chief Robert Sawyer, or his successor.
- e. Imperial, California, Police Department, local law enforcement agency, Chief Leonard Barra, or his successor.
- f. Calexico, California, Police Department, local law enforcement agency, Chief Gonzalo Gerardo or his successor.

2. Equitable Sharing Account

- a. Each Participant Agency shall maintain all TEOAF equitable sharing funds, regardless of source, within a separate account or accounting code. TEOAF equitable sharing funds shall not be commingled with any other funds.
- b. Each Participant Agency shall file an Automated Clearing House ("ACH") form with TEOAF. Each Participant Agency must promptly update its ACH form with any necessary changes.

III. Participant Agencies shall not budget equitable sharing funds until the shared funds are deposited into the Participant Agency's equitable sharing account. Equitable Sharing and Distribution of Federally Forfeited Assets

1. Assets Eligible for Sharing

- a. The Participant Agencies to this agreement agree that each signatory police agency should receive an equitable share of net proceeds from all assets seized by the group while conducting IVDC DHE operations and federally forfeited, by the US Department of Treasury. Equitable sharing decisions will comply with the Guide to Equitable Sharing for State, Local, and Tribal Law Enforcement Agencies (July 2018) and applicable federal law, regulation and policy.

- b. The parties to this agreement understand that federal law authorizes the Attorney General to share federally forfeited property with participating state and local law enforcement agencies. The parties understand that the exercise of this authority is discretionary and limited by statute and sharing is not required in any case.
- c. Participant Agencies acknowledge that sharing will not be awarded in a case if victims have not been fully compensated. State, local, or federal government entities can be considered victims.

2. Submission of the TDF-92 Form

- a. In order to request an equitable share, each agency must submit a TDF-92 form per U.S. Department of Treasury (TEOAF).
- b. Pursuant to this agreement each participating police agency will receive their equitable sharing from each TDF-92 submission individually and there will be no fiduciary equitable sharing agency for the group.

3. The Participant Agencies agree that the forfeited assets shall be distributed as follows:

Homeland Security Investigations	30%
Imperial County Sheriff's Office	14%
El Centro Police Department	14%
Brawley Police Department	14%
Imperial Police Department	14%
Calexico Police Department	14%

The Participant agencies agree that the above percentages accurately reflect the degree of participation by each agency.

IV. Participant Agencies understand the following:

- 1. If a non-signatory police agency makes a direct contribution to an investigation that led to the asset seizure by the Imperial County Drug Coalition (IVDC) Domestic Highway Enforcement (DHE) Group and subsequent federal forfeiture, that agency may request an equitable share of the net proceeds of the forfeited property. The non-signatory agency's equitable share should be proportionate to its investigative contribution, as determined by its work hours and qualitative factors. In such cases, the work hours/qualitative factors of the non-signatory agency will be compared with signatory agencies to determine the non-signatory's equitable share. After the non-signatory's share is determined, the remaining proceeds will be shared equally with the five (5) state and local signatory agencies listed in paragraph II, 1.
- 2. If a Participant Agency leaves IVDC DHE

- a. All pending sharing involving the departing agency will continue to be processed according to the agreed upon sharing percentages.
 - b. The departing agency will no longer receive any equitable sharing for new asset seizures made by the group
 - c. The sharing percentages of the group will be reallocated proportionally to the remaining agencies.
 - d. If a new agency joins the IVDC DHE, a new agreement will be completed with new sharing percentages.
3. If a Participant Agency is suspended or terminated from the Equitable Sharing Program:
- a. A suspended agency will not receive any equitable sharing for pending or new asset seizures until their status is restored.
 - b. A terminated agency will not receive any equitable sharing for pending or new asset seizures.
 - c. If an agency is terminated, the sharing percentages of the IVDC DHE will be reallocated proportionally to the remaining agencies.

V. IVDC DHE Participant Obligations

1. Compliance with Program Requirement
 - a. Equitably shared funds received from the federal government will be used in strict compliance with federal law as well as TEOAF regulations and policies.
 - b. Federal Participants shall not direct, control, or approve expenditures of equitable sharing, complete or submit TDF-92 forms, or sign or submit the annual Equitable Sharing Agreement Certification (ESAC) forms.
2. Audit and Compliance Requirements
 - a. Each Participant Agency shall be subject to OMB Circular A-133 single audit requirements.
 - b. Each Participant Agency shall submit the ESAC form annually and provide information to Money Laundering Asset Removal Section as requested during the compliance review process.
3. Recordkeeping and Financial Controls
 - a. Participant Agencies shall comply with accurate recordkeeping and financial controls in accordance with the Guide and any applicable state or local record retention laws or policies.

VI. General Provisions

1. The parties to this agreement understand that federal law authorizes the Attorney General to share federally forfeited property with participating state and local law enforcement agencies. The parties understand that the exercise of this authority is discretionary and limited by statute and sharing is not required in any case.
2. Effective Date and Termination Date
 - a. The term of this agreement shall be from the date of signature by representatives of the parties to September 30, 2024. This agreement may be terminated by any of the parties with thirty (30) days advance written notice.
 - b. Modifications to this MOU shall be in writing and executed all Participant Agencies.

VII. Points of Contact

1. HSI-San Diego
Rene Perez
Assistant Special Agent in Charge
(760) 335-5302
2051 N. Waterman Ave.
El Centro, CA 92243
Rene.N.Perez@ice.dhs.gov
2. Imperial County Sheriff's Office
Robert Benavidez
Lieutenant
(760) 235-9097
328 Applestill Road
El Centro, CA 92243
RBenavidez@icso.org
3. El Centro Police Department
Brian Johnson
Chief of Police
(760) 996-0375
150 North 11th Street
El Centro, CA 92243
bjohnson@ecpd.org
4. Brawley Police Department
Robert Sawyer
Chief of Police

