Agenda Item No. **E- 5**

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| DATE SUBMITTED | 04/14/21 | COUNCIL ACTION (X) |
| | | PUBLIC HEARING REQUIRED ( ) |
| SUBMITTED BY | Capt. Max Sheffield | RESOLUTION ( ) |
| | | ORDINANCE 1ST READING ( ) |
| DATE ACTION REQUIRED | 04/21/21 | ORDINANCE 2ND READING ( ) |
| | | CITY CLERK'S INITIALS |

# IMPERIAL CITY COUNCIL
# AGENDA ITEM

**SUBJECT:**

**DISCUSSION/ACTION:**

1. The Imperial Police Department requests approval of a new MOU between the Imperial Police Department and the Imperial County Law Enforcement Agencies (ICLEA) for the cost sharing and use of law enforcement information utilizing the ProPhoenix System

**DEPARTMENT INVOLVED:**
Police

**BACKGROUND/SUMMARY:**

This is a MOU between the Imperial Police Department and the Imperial County Law Enforcement Agencies and ProPhoenix. The purpose of this agreement is to enhance the effectiveness of law enforcement by increasing information sharing related to criminal activities and to outline conditions under which ICLEA will share and use information in the ProPhoenix System.

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|---|---|
| **FISCAL IMPACT:**<br><br>NONE | **FINANCE INITIALS** |
| **STAFF RECOMMENDATION:**<br>Staff recommends approval of the MOU. | **DEPT. INITIALS** MS#4/Cl |
| **MANAGER'S RECOMMENDATION:**<br>approve | **CITY MANAGER's INITIALS** JHM |

**MOTION:**

SECONDED:
AYES:
NAYES:
ABSENT:

APPROVED ( )     REJECTED ( )
DISAPPROVED ( )     DEFERRED ( )

REFERRED TO:

<u>**INTERGOVERNMENTAL AGREEMENT**</u>
<u>**BETWEEN**</u>
<u>**IMPERIAL COUNTY SHERIFF'S OFFICE**</u>
<u>**AND**</u>
<u>**IMPERIAL COUNTY LAW ENFORCEMENT AGENCIES**</u>

This Intergovernmental Agreement (Agreement) is made and entered into this _____ day of _____, 2021, by and between **Imperial County Sheriff's Office** ("ICSO") and **El Centro Police Department, Calexico Police Department, Brawley Police Department, Imperial Police Department, Calipatria Police Department, and Westmoreland Police Department**, hereinafter referred to as Imperial County Law Enforcement Agencies ("ICLEA"), individually referred to as "party;" and collectively referred to as "parties."

**RECITALS**

**WHEREAS,** the parties provide Public Safety services within their jurisdictions; and

**WHEREAS,** the parties have found it to be of mutual benefit to provide for the most efficient utilization of their resources and services in the application to Public Safety efforts within their jurisdictions; and

**WHEREAS,** ICSO and ICLEA desire to enter into this Agreement on behalf of their various law enforcement agencies with respect to both the costs and use of law enforcement information utilizing the ProPhoenix System; and

**WHEREAS,** the implementation of this Agreement will substantially further the parties' objective to ensure public safety, health and welfare.

**NOW, WHEREFORE,** it is mutually agreed by and between the undersigned parties as follows:

1.     <u>**OVERVIEW OF AGREEMENT**</u>

    1.1     <u>**Background**</u>

ICSO and the ICLEA have agreed on the implementation of the ProPhoenix System, a method of sharing law and justice information that permits the electronic access to information maintained by member agencies. The implementation of the ProPhoenix System serves as a solution to the problem of inaccessible or irretrievable information as a result of disparate information system that lack a common platform and the difficulty in sharing data across jurisdictional boundaries.

    1.2     <u>**Intended Benefits**</u>

By facilitating the sharing of public safety information with law and justice partners, ICLEA member agencies can improve their responses to community crimes and enhance overall

investigative capacity. The ProPhoenix System provides sophisticated analytical tools that will enable authorized users to discover links and relationships by providing consolidated data across jurisdictional boundaries. This may allow authorized member agencies to solve previously "unsolvable" incidents and investigate serial criminal activity.

### 1.3    Purpose of Agreement

The purpose of this Agreement is to enhance the effectiveness of law enforcement by increasing information sharing related to criminal activities and to outline conditions under which ICLEA will share and use information in the ProPhoenix System. By signing this Agreement ICLEA as well as all individuals who operate or use the ProPhoenix System are represented by those agencies, agree to adhere to the guidelines specified in this Agreement and support the public benefit derived from the electronic sharing of public safety information.

### 1.4    Agency Participation

ProPhoenix System is a data repository node containing information from law enforcement member agencies in the Imperial County region. The ProPhoenix System contributing agencies are: Imperial County Sheriff's Office, El Centro Police Department, Calexico Police Department, Brawley Police Department, Imperial Police Department, Holtville Police Department, and Westmoreland Police Department, along with any additional contributing law and justice agencies as may be approved by a majority consensus of the contributing agencies.

### 1.5    Termination

This Agreement shall continue in full force until ICLEA provides sixty (60) days prior written notice to the other agency of its intent to terminate the other agency's access to its records through the methods provided in this agreement.

#### 1.5.1    Emergency Suspension of Operations

The Imperial County Sheriff may temporarily suspend information sharing activities for good cause in an emergency until ratification of any termination of this Agreement occurs.

### 1.6    Compensation

Compensation for services shall be provided to ICSO according to the terms outlined in the attached **Exhibit "A,"** and incorporated by this reference herein. Each party shall contribute in compensation in the following amounts:

- El Centro Police Department      $ 29,000.00/annually
- Calexico Police Department      $ 29,000.00/annually
- Brawley Police Department      $ 21,000.00/annually
- Imperial Police Department      $ 16,500.00/annually
- Calipatria Police Department      $ 7,500.00/annually

- Westmoreland Police Department        $ 7,500.00/annually

## 2.   AUTHORZED RELEASE OF INFORMATION

### 2.1   Sharing of Information

ICLEA authorizes the release of information residing in their members' records management systems to all authorized users of the ProPhoenix System as permitted by law. It is the responsibility of each agency to specify which data points to share and any other special requirements. ICLEA will participate in several testing sessions where they will validate and ensure that their information is accurately reflected.

A.      California law prohibits the release of victims' information in specific sex related crimes to unauthorized users.

### 2.2   Limitation on Information Sharing

Information contributed by ICELA member agencies shall only be shared with or released to authorized agencies. Only authorized agency employees that have an approved login and password will be allowed to access or use information in the ProPhoenix System. All queries must be made by such users.

### 2.3   Liability

Each member agency of ICLEA is solely responsible and liable for any damages, losses, claims, judgments, and expenses resulting from injury to any person or damage to any properties, which arise out of its own employee's performance and use of the ProPhoenix System.

### 2.4   Indemnification

Each Member agency of ICLEA that accesses information through the ProPhoenix System shall indemnify, defend, and hold harmless the other member agencies of ICLEA their County or Cities, City Councils, Board of Supervisors and other elected officials, board and commissions, officers, agents, and employees (collectively, the Indemnified Parties") from and against any and all claims (including, without limitation, claims for bodily injury, death, or damage to property), demands, obligations damages, actions, suits, losses, judgements, fines, penalties, liabilities, costs, and expenses (including without limitation, attorney's fees, disbursements, and court costs) of every kind and nature whatsoever (individually a "Claim;" collectively, Claims"), which may arise from the improper use or release of information obtained through the ProPhoenix System by the accessing ICLEA member agency, including as a result of the negligent and/or willful acts, errors, and/or omissions of the accessing member agency, its principals, officers, agents, employees, elected officials, and anyone employed directly or indirectly by them or for whose acts they may be liable.

Notwithstanding the foregoing, nothing herein shall be construed to require a member agency of ICLEA to indemnify the indemnified parties from any Claim arising from the sole negligence or

will full misconduct of the Indemnified Parties, nothing in this indemnity shall be construed as authorizing any award of attorney's fees in any action on or to enforce the terms of this Agreement. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by the accessing agency.

## 2.5 Internal Audit

Each member agency of ICLEA shall have their System Administrator conduct an internal audit on a periodic basis to ensure information is reasonably up to date and user queries are made for legitimate law enforcement purpose.

## 3. INFORMATION OWNERSHIP

### 3.1 Ownership

Individual member agencies of ICELA retain control of all information they provide through the ProPhoenix System at all times. Each individual member agency is responsible for creating, updating, and deleting records in its own records management system or database, according to its own policies. The originating agency is solely responsible for the completeness and accuracy of its source data.

### 3.2 Unauthorized Requests

Any request for access to information hosted in the ProPhoenix System that is not authorized for viewing will be referred to the agency that owns the information being requested. Except as required by law, information shall not be released or made available to any unauthorized requestor without the approval of the agency having ownership of the original source data.

## 4. UNDERSTANDING ON ACCURACY OF INFORMATION

### 4.1 Accuracy of Information

ICLEA agrees that the data maintained in the ProPhoenix System consists of information assumed to be accurate; however, data inaccuracies can arise for multiple reasons (e.g., entry errors, misinterpretations, outdated data). It is the responsibility of the individual member agency requesting or using the data to confirm the accuracy of the information with the owning agency before taking any enforcement-related action.

### 4.2 Timeliness of Information

Each member agency ICLEA determines the frequency with which their data will be refreshed in ProPhoenix System. In addition, each individual member agencies have their own policies and speed at which incidents are recorded in their records management systems. Since changes or additions to data do not get updated in ProPhoenix System on a real-time basis, agencies recognized that the information may not always be timely and relevant. It is the responsibilities of

the agency requesting the data to confirm the timeliness and relevance of the information with the owning agency.

### 4.3 Hold Harmless

To the extent permitted by law, individual member agencies of ICLEA agree to hold information owners harmless for any information which is in the ProPhoenix System repository, or any action taken as a result of that data, regardless of whether the data is accurate or not, or any time delay associated with changes, additions, or deletions to the information contributed.

## 5. USER ACCESS

### 5.1 Login Application Process

Each member user of ICLEA shall appoint their own agency specific System Administrator who is responsible for management of user accounts at that agency. An overall Network System Administrator will also be appointed. The user may submit a request for a login and password to their Agency System Administrator. The individual member agency agree that all users shall be current employees and be authorized to review criminal history data for legitimate purpose. The Agency System Administrator may deny or revoke individual access in their sole discretion.

### 5.2 Login Assignment

Each individual user of an ICLEA member agency will be issued a user login and a default password by their Agency System Administrator. Upon logging into the ProPhoenix System for the first time, each user will change the default password to another password. User may also be assigned to groups that have different access rights to the information in the system based on the level of restriction of the information.

### 5.3 Provision of Policy

The Agency System Administrator must provide a copy of the terms and conditions of this policy to all users when they are issued a login ID for the system.

### 5.4 Limitation on Use of Logins

Each user must comply with the IGA guidelines. A user may not access the ProPhoenix System by using a name or password that was assigned to another user. A user cannot give their password to another person, including another user, to access the system.

### 5.5 Audit Trail

Each transaction on the ProPhoenix System that has been logged and an audit trail created which is resident on the system for a minimum of three (3) years. Requests for transaction logs shall be in writing through the requestor's chain of command to their Agency System Administrator.

### 5.6    Termination of Logins

Participating member agencies of ICLEA will be responsible (through their Agency System Administrator) for timely removal of any login accounts as users leave the agency or as they fail to meet the requirements for access to the System.

## 6.    INTENDED USE OF THE SYSTEM

### 6.1    Intended Use

Each ICLEA member agency agree that the use of the ProPhoenix System, the information contained in it, and the networking resources provided are for reasons related to the mission of the ICLEA member agencies. Users acknowledge that the information hosted in the ProPhoenix System will be shared and used for authorized purpose only permitted by law. No user can use or share the information for any unethical, illegal, or criminal purpose.

## 7.    UNDERSTANDING ON CONFIDENTIALITY OF INFORMATION

### 7.1    Information Confidentiality

Each ICLEA member agency user agrees that information in the ProPhoenix System is confidential and not subject to the public disclosure, except as required by law. Only agency employees that have an authenticated login and password are allowed to view and use the information. The information will otherwise be kept confidential.

### 7.2    Internal Request for Information

A ProPhoenix System user who receives a request from a non-authorized requestor for information on the ProPhoenix System (of which they are not the originating source) shall not release that information, but may refer the requestor to the agency that is the source. A ProPhoenix System user who receives a court order to release information in the ProPhoenix System will immediately provide a copy of the court order to the owner/source agency that originally provided the information and to their own Agency System Administrator. The owner/source agency is responsible for preparing a timely response to the court order or, in the event of a failure to respond, allows the agency to respond as necessary to comply with the order. Any challenge or objection to the order is the responsibility of the owner/source agency.

### 7.3    Confidential Records

An agency that only wants data from its records management system to be made available to a select group of the ProPhoenix System users is responsible for placing the appropriate restriction indicator on the underlying data in the agency's internal records management system or database.

## 8.    SYSTEM ACCESS

### 8.1    Network Access

Access to ICLEA member agencies' information will provide utilizing network configuration that is mutually acceptable to ICLEA.

### 8.2    System Availability

The information residing in the ProPhoenix System shall be available on a 24-hour a day, 7 days a week basis with downtime limited to those hours required for any necessary System maintenance activities. ICLEA member agencies agree to inform each other in advance, whenever possible, of scheduled system downtimes.

## 9.    AGREEMENT TERMS

### 9.1    Term

The term of this Agreement will commence on the date that is adopted by ICLEA.

### 9.2    Changes to Agreement

Based on ongoing monitoring of the ProPhoenix System, ICLEA may propose other changes to this Agreement. It may be modified or amended only by written document executed by ICLEA.

### 9.3    Supplemental Policies

All participating member agencies of ICLEA shall agree to abide by the following terms written in the Imperial County Law Enforcement Shared Data System Policies as formed by the Imperial County Law Enforcement Administrative Board.

All ICLEA member agencies that operate their own computers or networks may add individual guidelines which supplement, but do not relax, this Agreement.

### 9.4    Sanctions for Non-Compliance

If any member agency of ICLEA, violates the guidelines of this Agreement with regard to accessing, sharing, or using information, that agency may be disconnected from the ProPhoenix System. The offending agency will be provided with a 90-day written notice of the opportunity to correct the violation. Failure to meet the terms of this Agreement will result in the termination of system access for the offending agency. All disputes concerning system access shall be determined by mutual agreement by the Chief of Police of ICLEA and the Imperial County Sheriff's Office.

### 9.5    Costs

Each party shall be responsible for their own costs associated with establishing, maintaining, or terminating this data sharing connection as indicated in paragraph 1.6. Nothing in this Agreement shall be construed to mean Parties incur new costs.

### 10.    Sign-off On Execution Of Policy

By signing this Agreement, ICLEA including their participation member agencies and all representatives contributing or using information from the ProPhoenix System, agree to implement and adhere to the provision as outlined.

### 11.    Party Participation

Each party shall designate an authorized representative to participate in quarterly meetings. Each party shall use their best efforts to attend scheduled meetings.

[Signatures on the Following Page]

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**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed on the day and year first written above.

**IMPERIAL COUNTY**                                **IMPERIAL COUNTY SHERIFF OFFICE**


_____                        _____
Michael W. Kelly, Chairman                         Raymond Loera,
Board of Supervisors                               Imperial County Sheriff

**ATTEST**


_____
Blanca Acosta, Clerk of the Board,
County of Imperial, State of California


**IMPERIAL COUNTY LAW ENFORCEMENT AGENICES**

Brawley Police Department                          El Centro Police Department


_____                        _____
Brawley Police Chief                               El Centro Police Chief


Calexico Police Department                         Imperial Police Department


_____                        _____
Calexico Police Chief                              Imperial Police Chief


[Signatures continued on the Following Page]

Holtville Police Department                     Calipatria Police Department


_____               _____
Holtville Police Chief                          Calipatria Police Chief


Westmoreland Police Department                  **APPROVED AS TO FORM**
                                                Adam G. Crook, County Counsel


_____               _____
Westmoreland Police Chief                       Layla Sarwari, Deputy County Counsel