Print Form

FOR CLERK USE ONLY
City Council
Item No. 13

CITY COUNCIL AGENDA
FACT SHEET

Community Development Department

July 20, 2010 Requested Date

1. **Request:**

Council Approval	☒	Information Only/ Presentation	☐
Other (specify)	☐	Hearing	☐

2. **Requested Action:**

An Ordinance approving a Development agreement between the City of Calexico and Raul/Alice Estrada for real property within the City of Calexico.

3. **Fiscal Impact:**

Revenue:	Increase	☐	Source:	
	Decrease	☐	Amount:	
Cost:	Increase	☐	Source:	
	Decrease	☐	Amount:	$Unknown at this time.
	Does Not Apply	☒		

4. **Reviewed By:**

Finance Dept. on _____ By: _____

Comments: _____

City Attorney on _____ By: _____

Comments: _____

Note: Back up must be submitted along with this form. Deadline is 5:00 p.m., 2 Fridays before the scheduled meeting date.

CLERK USE ONLY:

CITY COUNCIL DATE: _____

Action	☐	Filing	☐
Consent	☐	Presentation	☐
Hearing	☐	Other(specify)	☐

Reviewed by: City Clerk _____ City Manager _____

Date _____ Date _____

Form FIN038 (Revised 07/2009)

CITY COUNCIL
AGENDA REPORT

SUBJECT: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND RAUL AND ALICE ESTRADA FOR REAL PROPERTY WITHIN THE CITY OF CALEXICO.**

AGENDA DATE: July 20, 2010

PREPARED BY: Armando Villa, Assistant City Manager
Mark Vasquez, Associate Planner
Jennifer Lyon, City Attorney

APPROVED FOR AGENDA BY: Victor Carrillo, City Manager

RECOMMENDATION: Hold Public Hearing. Receive Input. Adopt ordinance by title only, waive full reading of the ordinance.

ENVIRONMENTAL SETTING:

The City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007. The uses contemplated in the proposed Development Agreement (Agreement) are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to this Agreement or the Property, or were not analyzed in the FEIR. Pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for this Agreement. In addition, the Agreement is exempt from environmental review pursuant CEQA Guidelines section 15305 as a minor alteration in land use limitations with an average slope of less than 20% which does not result in any changes in land use or density because it secure the rights of the Property Owner to develop property in compliance with the existing general plan and zoning designation for 15 years. Specific development of the property is subject to subsequent environmental review as provided in the Agreement.

LOCATION

The subject property consists of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002. The subject property is bounded by the Central Main Canal to the north, truck storage to the west, Robinson Avenue to the south, and State Route 111 to the east.

BACKGROUND

The Property Owner is the owner of the subject property (the "Property"), which currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as "C-H" (Commercial Highway) and "I" (Industrial) in the City's Zoning Code.

The proposed development agreement would secure the rights of the Property Owner to develop the Property in compliance with the existing general plan and zoning designation for 15 years. The development agreement further secures certain rights of the Property Owner to utilize capacity in the City's existing wastewater facilities to allow development and use of the Property within these land use and zoning and designations. The development agreement does not contemplate a specific or proposed type of development since it merely secures the existing land use and zoning designations. Further, the development agreement specifies that if processing, impact fees and any other fees, assessments, or taxes that are applicable on a city-wide basis are changed in the next fifteen years, the Property Owner will be required to pay the amount of the fee, assessment or tax that is in effect at the type that development of the Property actually occurs. If changes to the City codes or policies are due to state or federal law requirements, then such changed laws will also apply to the development of the Property.

The proposed development agreement will facilitate development of the Property in a manner which the City and the Property Owner intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents.

DISCUSSION

The City is authorized to enter into development agreements with private property owners to secure various rights with the respect to development of land pursuant to California Government Code sections 65864 *et. seq* and Calexico Municipal Code Chapter 16.52.

Under the Calexico Municipal Code, a proposed development agreement must be considered by the Planning Commission at a noticed public hearing. After the hearing, the Planning Commission shall forward its written recommendation and the development agreement to the City Council. The recommendation shall include the Planning Commission's findings with respect to the proposed development agreement. The Planning Commission considered this agreement on June 28, 2010 and adopted a resolution recommending that the City Council approve the agreement. The resolution contains the findings discussed above.

Under the Calexico Municipal Code, a proposed development agreement must be considered by the City Council after the Planning Commission has reviewed it and submitted its recommendation. After June 28, 2010, the proper legal notices were sent and published to advertise the hearing before the City Council on July 20, 2010. If the City Council approves the development agreement, it must do so by ordinance and it must make the following findings:

A. The city council must find that:

(1) The provisions of the agreement are consistent with the general plan and any applicable specific plan; and

(2) The development agreement complies with all applicable zoning, subdivision, and building regulations and with the general and any relevant specific plan.

B. The agreement must state:

(1) The specific duration of the agreement;

(2) The permitted uses of the property;

(3) The density and intensity of use;

(4) The maximum height and size of proposed buildings;

(5) Specific provisions for reservation or dedication of land for public purposes.

The proposed development agreement meets the findings as discussed above as shown in the attached agreement and ordinance. The proposed development agreement secures that the existing general plan and zoning designations of the City of Calexico are compliant with the items listed above. Development in accordance with the City's General Plan and zoning code are considered compatible with adjacent land uses. As such, the land uses are compatible with and beneficial to the general welfare, health, and safety of the residents of the City. This development will not adversely affect the orderly development of the Property because it vests the Property Owner with rights to allow certainty for the future development of the Property which adds value to the Property.

STAFF'S RECOMMENDATION: As set forth above and in the draft ordinance, staff believes that the proposed findings can be made for this development agreement and recommends that the City Council hold the public hearing, receive input and approve the attached Ordinance and Agreement.

ATTACHMENTS

Exhibit A- Ordinance
Exhibit B- Map of the Property
Exhibit C- Development Agreement
Exhibit D- Planning Commission Staff Report
Exhibit E- Planning Commission Resolution

Chapter 12.04 SIDEWALK SPECIFICATIONS

12.04.010 Widths.

12.04.020 Cement walks.

12.04.030 Ditches.

12.04.040 Gutter lines.

12.04.010 Widths.

The width of sidewalks in the city shall be as follows:

A. Twelve-foot Walks. On Imperial Avenue south from Fifth Street, on Second and Third Streets west from Heffernan Avenue, and on Paulin and Rockwood Avenues between Second and Third Streets, sidewalks, including curbs, shall be twelve feet wide.

B. Twenty-foot Walks. On all other streets having a width of eighty feet or over, including those portions of Imperial, Paulin and Rockwood Avenues, and Second and Third Streets, not described in subsection A of this section, the width of the sidewalks shall be twenty feet.

C. Fifteen-foot Walks. On all streets and avenues less than eighty feet wide, the width of sidewalks shall be fifteen feet. (Prior code §§ 8031, 8032.2, 8032.3)

12.04.020 Cement walks.

A. Twenty-foot Sidewalks. Cement walks upon twenty-foot sidewalks shall be not less than five feet wide and laid so as to leave at least three feet of clear space next to the property line for grass or ornamental shrubbery.

B. Fifteen-foot Sidewalks. Upon fifteen-foot sidewalks, the walk shall be placed as near as possible midway between the tree line and the property line and shall be not less than three feet wide. (Prior code § 8037)

12.04.030 Ditches.

A. All ditches hereafter constructed along any of the public streets shall have the center thereof approximately sixteen feet from the property line on streets with a twenty-foot sidewalk and fourteen feet on streets having a fifteen-foot sidewalk.

B. Outer Bank and Gutter Line. The outer or street bank of the ditch shall correspond with the gutter line. (Prior code § 8032)

12.04.040 Gutter lines.

A. Twenty-foot Sidewalk. The gutter line on streets having a twenty-foot sidewalk shall be twenty feet from the property line and eight inches below the top of the sidewalk grade.

B. Fifteen-foot Sidewalk. Upon streets having a fifteen-foot sidewalk, the gutter line shall be fifteen feet from the property line and eight inches below the sidewalk grade, and form the toe or outer side of the ditches. (Prior code § 8033)

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Title 13 PUBLIC SERVICES

Chapter 13.20 FIRE CONNECTIONS

13.20.010 Meter not required.

13.20.020 Cost of installation.

13.20.030 Tapping of main and connection.

13.20.040 Taking water for improper uses--Signs at taps.

13.20.050 Taking water for improper uses--Penalty for violation.

13.20.010 Meter not required.

In any industry or business building a special pipe system for fire service only may be installed and connected with the nearest city main without a meter connection. (Prior code § 1456)

13.20.020 Cost of installation.

Such fire connections as designated in Section 13.20.010 are to be installed entirely at the expense of the owner of the property who shall lay the pipe to the main. (Prior code § 1456.1)

13.20.030 Tapping of main and connection.

Tapping the main and connecting with the fire line shall only be done by the water department. (Prior code § 1456.2)

13.20.040 Taking water for improper uses--Signs at taps.

Owners of all buildings containing fire lines shall cause to be placed at each tap on the same a sign stating that it is unlawful to take water therefrom save for fire purposes and giving the fine for violation. (Prior code § 1456.31)

13.20.050 Taking water for improper uses--Penalty for violation.

Taking any water from such a fire line as designated in this chapter for any purpose save fighting fire is a violation of this chapter and shall be penalized by a fine of two hundred fifty dollars and shall require the severance of the connection. (Ord. 725 § 1, 1978: prior code § 1456.3)

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Title 16 SUBDIVISIONS

Chapter 16.04 GENERAL PROVISIONS

16.04.010 Title.

16.04.020 Authority.

16.04.030 Purpose.

16.04.040 Map to be filed.

16.04.010 Title.

The ordinance codified in this title shall be known as the "Subdivision Ordinance." (Ord. 575 § 2 (part), 1964: prior code § 8401)

16.04.020 Authority.

This title is adopted pursuant to the Subdivision Map Act as set forth in the Government Code of the state of California. (Ord. 734 § 1, 1978: Ord. 575 § 2 (part), 1964: prior code § 8402)

16.04.030 Purpose.

This title is to supplement the provisions of the Subdivision Map Act concerning the design, improvement and survey data of subdivisions, the form and content of tentative maps and final maps, and the procedure to be followed in securing the official approval of the city of such maps or division of land maps as authorized by this title. (Ord. 575 § 2 (part), 1964: prior code § 8403)

16.04.040 Map to be filed.

To subdivide land in the city a final map of the subdivision must be recorded. Prior to the recording of such map, certain requirements must be complied with as set forth in this title, and in such rules and regulations as are adopted supplemental thereto. (Ord. 575 § 2 (part), 1964: prior code § 8404)

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Title 16 SUBDIVISIONS

Chapter 16.08 DEFINITIONS

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16.08.060 Design.

16.08.070 Division of land map.

16.08.080 Engineer.

16.08.090 Fire protection.

16.08.100 Flood hazard.

16.08.110 Freeway.

16.08.120 Frontage.

16.08.130 Highway, major.

16.08.140 Highway, secondary.

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16.08.240 Road, service.

16.08.250 Roadway.

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16.08.330 Surveyor.

16.08.340 Vehicular access right.

16.08.350 Water supply.

16.08.360 Zoning ordinance.

16.08.010 Generally.

For the purpose of this title, the following words and phrases are defined as set out in this chapter. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.020 Advisory agency.

"Advisory agency" means the city planning commission. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.030 Alley.

"Alley" means a public way, other than a major or secondary highway or a local street, providing a secondary means of vehicular access to abutting property. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.040 Building site.

"Building site" means any parcel of land which conforms to the definition of a lot as defined in this chapter. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.050 Commission.

"Commission" means the city planning commission. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.060 Design.

"Design" means street alignment, grades and widths, alignment and widths of easements and the rights-of-way for drainage and sanitary sewers, and minimum lot area and width. Design also includes the alignment, grade and width of easements and rights-of-way for utilities as well as the grading and general layout of the lots and streets within the area. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.070 Division of land map.

"Division of land map" means a map prepared pursuant to this title and certified by the advisory agency as having been approved pursuant to this title and filed in the office of the city clerk. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.080 Engineer.

"Engineer" means the registered civil engineer employed by the subdivider to prepare the subdivision map or record of survey map and improvement plans. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.090 Fire protection.

"Fire protection" means such fire hydrants and water lines as are required by the chief of the fire department. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.100 Flood hazard.

"Flood hazard" means a hazard to land or improvements due to overflow water having sufficient velocity to transport or deposit debris, to scour the surface soil, to dislodge or damage buildings, or to erode the banks of watercourses. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.110 Freeway.

"Freeway" means a highway with respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands, or with respect to which such owners have only limited or restricted right or easement of access, and which is declared to be such in compliance with the Streets and Highways Code of the state of California. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.120 Frontage.

"Frontage" means a service road as defined in this chapter. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.130 Highway, major.

"Major highway" means any street, existing or proposed, designated on the master plan adopted after public hearing by the advisory agency as a major highway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.140 Highway, secondary.

"Secondary highway" means any street, existing or proposed, designated on the master plan adopted after public hearing by the advisory agency as a secondary highway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.150 Improvement.

"Improvement" means such street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof. Such street work and utilities include, but are not limited to, curbs, paving, sidewalks, monuments, street name signs, guardrails, barricades, safety devices, fire hydrants, grading, retaining walls, storm drains and flood-control channels and facilities, erosion-control structures, sanitary sewer, water lines, street lights, street trees, traffic regulatory and warning devices, (other than traffic signals and relocation of existing traffic signal systems directly affected by other subdivision improvements), and other facilities as are required by the city in conformance with other provisions of this code, or as are determined necessary by the advisory agency for the appropriate development of the proposed subdivision. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.160 Inundation.

"Inundation" means ponded water or water in motion of sufficient depth to damage property due to the mere presence of the water or to deposition of silt. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.170 Lot.

"Lot" means:

A. A parcel of real property shown as a delineated parcel of land with a number or other designation of a final map recorded in the office of the county recorder, Imperial County; or

B. A parcel of land the dimensions of boundaries of which are defined by a record of survey map recorded in the office of the county recorder in accordance with the law regulating the subdivision of land; or

C. A parcel of real property not delineated as in subsections A and B of this section containing not less than the prescribed minimum area required in the zone in which it is located, and which abuts at least one street and was held under one ownership at the time of the adoption of the ordinance codified in this title. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.180 Map, final.

"Final map" means a map prepared in accordance with the provisions of this title and with any applicable provisions of the Subdivision Map Act and designed to be recorded in the office of the county recorder. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.190 Map, revised tentative.

"Revised tentative map" means a map involving a revised arrangement of the streets, alleys, easements or lots within property for which a tentative map has been previously submitted, or a modification of the boundary of the property. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.200 Map, tentative.

"Tentative map" is defined in the Subdivision Map Act. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.210 Master plan.

"Master plan" means a master or general plan, which may include any of the elements listed and defined in the planning law of the Government Code of the state of California. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.220 Public way.

"Public way" means any street, channel, viaduct, subway, tunnel, bridge, easement, right-of-way or other way in which a public agency has a right. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.230 Record of survey.

"Record of survey" means a map prepared and filed pursuant to Subdivision (c) of Section 11535 of the Business and Professions Code (Subdivision Map Act) and conforming to Chapter 15 of Division 3 of said code. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.240 Road, service.

"Service road" means that part of a major or secondary highway or freeway containing a roadway which affords access to abutting property and is adjacent and approximately parallel to and separated from the principal roadway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.250 Roadway.

"Roadway" means that portion of a right-of-way for a street or alley intended to accommodate the movement of vehicles. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.260 Street, collector.

"Collector street" means a street, including the principal access streets of a subdivision, which carries traffic from local streets either directly or via other existing or proposed collector streets to a major or secondary highway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.270 Street, future.

"Future street" means any real property which the owner thereof has offered for dedication for street purposes and which offer has been rejected by the city council subject to the right of the council to rescind its action and accept by resolution at any later date, and without further action by the owner, all or part of said property as a public street. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.280 Street, local.

"Local street" means any street other than a collector street, major or secondary highway, or freeway providing access to abutting property and serving local as distinguished from through traffic. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.290 Street, private.

"Private street" means a parcel of land, not dedicated as a public street, over which a private easement for road purposes has been granted to the owners of property contiguous or adjacent thereto, which intersects or connects with a public street or another private street, and the instrument creating the same has been duly recorded or filed in the office of the recorder of Imperial County, and which has been determined by the advisory agency to be adequate for access and for the purposes defined in this title. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.300 Subdivider.

"Subdivider" means a person, firm, corporation, partnership or association who causes land to be divided into a subdivision for himself or others. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.310 Subdivision.

"Subdivision" is defined in the Subdivision Map Act. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.320 Subdivision Map Act.

"Subdivision Map Act" means the Subdivision Map Act of the state of California pursuant to State of California Government Code Section 66410 et seq. (Ord. 734 § 2, 1978: Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.330 Surveyor.

"Surveyor" means a licensed land surveyor authorized to practice in California. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.340 Vehicular access right.

"Vehicular access right" means the right or easement for access of owners or occupants of abutting lands to a public way other than as pedestrians. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.350 Water supply.

"Water supply" means such water system supply and distribution facilities necessary to provide a reliable and adequate water supply for private use and public fire protection purposes. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.360 Zoning ordinance.

"Zoning ordinance" means the zoning ordinance of the city. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

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Chapter 16.16 DESIGN REQUIREMENTS

16.16.010 Adoption.

16.16.020 Conformance required.

16.16.030 Conformance to general plan.

16.16.040 Future streets.

16.16.050 Street extensions.

16.16.060 Dangerous areas.

16.16.070 Grading plans.

16.16.080 Condominium subdivisions.

16.16.090 Subdivisions in P-C zones.

16.16.010 Adoption.

Design standards for subdivision improvements shall be adopted by the city council upon recommendation of the advisory agency. (Ord. 575 § 2 (part), 1964: prior code § 8412)

16.16.020 Conformance required.

Except as provided in this chapter, subdivisions and improvements shall be designed in accordance with the design standards in effect as of the date of approval of the tentative map. (Ord. 575 § 2 (part), 1964: prior code § 8413)

16.16.030 Conformance to general plan.

Each tentative map shall be so designed that there is substantial compliance with the general plan. (Ord. 575 § 2 (part), 1964: prior code § 8411)

16.16.040 Future streets.

In the event certain streets, alleys or easements in a subdivision are to be reserved for future public use and have been approved as to location and width, they shall be indicated on the final map and offered for dedication as future streets, future alleys, or future easements. Proper certificates providing that the city may accept the offer to dedicate such easement at any time shall be shown on the final map. (Ord. 575 § 2 (part), 1964: prior code § 8414)

16.16.050 Street extensions.

Provision shall be made for the extension of streets in adjoining tracts. (Ord. 575 § 2 (part), 1964: prior code § 8415)

16.16.060 Dangerous areas.

Areas designated by resolution of the city council as potentially dangerous by reason of geological conditions, or which are subject to inundation, overflow by stormwater, or any other potentially dangerous condition, shall not be subdivided except when approved by the advisory agency after recommendation of the city engineer. Final maps of such areas shall delineate the extent of such potential danger. (Ord. 575 § 2 (part), 1964: prior code § 8416)

16.16.070 Grading plans.

A preliminary grading plan may be required with the tentative map of any subdivision. In potentially dangerous areas or any other areas where it appears to the advisory agency, upon recommendation of the city engineer, that cuts or fills which would occur in the grading of the property may be contrary to the objectives of these regulations, the advisory agency may require that the subdivider submit grading plans for all or part of the tract before the action on the tentative map can be taken. Failure to furnish such grading plan necessary to complete the investigation of the tentative map within the time specified in the written notice requesting its submission shall be cause for the disapproval of the tentative map unless the time for acting on said map is extended by mutual consent. If the changes in the design of the lots or streets system can be made to correct the conditions mentioned in this section, either by increased lot sizes or changes in grades, such modifications shall be made. (Ord. 575 § 2 (part), 1964: prior code § 8417)

16.16.080 Condominium subdivisions.

A. The provisions of this section shall apply to property divided or to be divided into condominiums as defined by Section 783 of the California Civil Code.

B. The provisions of Title 6, Part 4, Division Second, California Civil Code shall apply to a condominium project.

C. In every instance of a condominium project, the subdivider shall cause to be filed a tentative map and final map as required by this title for other subdivisions. Such maps may show the building and/or the air space and other information required by Chapter 1, of Title 6, of Part 4, Division Second of the Civil Code, but such information shall not be a consideration of the approval of such maps.

D. The advisory agency, prior to recommending the approval of a condominium subdivision, may require the subdivider to submit for approval by the city a declaration of restrictions relating to such project and may require prior to the recording of the final map thereof adequate guarantees of the improvement and maintenance of recreation and open areas, approved restrictions, and other improvements.

E. No condominium subdivision shall be submitted for approval unless the proposed structure or structures would otherwise comply with Title 17, except as provided in this title. (Ord. 575 § 2 (part), 1964: prior code § 5418)

16.16.090 Subdivisions in P-C zones.

A. Intent. It is the intention of this section that special subdivision requirements may be applied to developments within the P-C zones.

B. Requirements. Providing the overall project means the requirements listed in this subsection, the advisory agency may approve a tentative map and a final map may be recorded which contains individual lots of less than minimum dimensions and yard distances, greater maximum lot coverage, and having no frontage on a dedicated street:

1. The overall project shall maintain the minimum yard dimensions, width, depth, and area, shall maintain the Overall minimum lot area per dwelling unit, and shall not exceed the overall maximum lot coverage specified in Title 17.

2. The density of the overall project shall not exceed twenty dwelling units per acre of gross land area exclusive of dedicated streets.

3. The individual lot shall contain not less than five hundred square feet.

4. There shall be permanently reserved within the subdivision for recreation, and/or permanently maintained open space, an area equivalent to not less than twenty percent of the gross area of the subdivision.

5. The subdivider shall, prior to the conveyance of any lot therein, record a declaration of restrictions which has been approved by the advisory agency, which restrictions shall be enforceable equitable servitudes and shall inure to and bind all lot owners in the project.

6. The subdivider shall, at the time of submittal of the final map to the city engineer, submit plans for recreation areas and maintained open spaces showing detailed landscaping and an irrigation system.

C. Filing Bond. To assure the installation and maintenance of recreation areas, open spaces, private streets, and access ways, the subdivider shall file a bond in addition to any bond required to guarantee public improvements, which bond shall cover the cost of landscaping, recreation facilities, irrigation system, and private drives, ways, and walks in an amount and form approved by the city in the manner set forth in Chapter 16.32. (Ord. 575 § 2 (part), 1964: prior code § 8419)

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Chapter 16.32 IMPROVEMENTS

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16.32.050 Utilities--Installation.

16.32.060 Utilities--Underground requirements--Exceptions.

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16.32.120 Guarantee for construction of improvements--Form of surety.

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16.32.010 Streets--Requirements.

In all subdivisions, the streets, alleys, lots, and easements shall be laid out to provide for necessary water, sewer, and drainage facilities. All streets and alleys within and adjoining the subdivision, together with any necessary drainage and sanitary sewer easements, shall be graded and improved to a width and grade approved by the city engineer; it being understood that where the proposed subdivision abuts an existing dedicated unimproved street, improvements shall normally be required to be constructed only on the one-half of said street adjoining the proposed subdivision. (Ord. 575 § 2 (part), 1964: prior code § 8441)

16.32.020 Temporary improvements.

In addition to permanent improvements, temporary improvements may be required prior to or concurrent with permanent improvements. (Ord. 575 § 2 (part), 1964: prior code § 8442)

16.32.030 Waiver of improvements.

The advisory agency, upon the recommendation of the city engineer, may waive improvement requirements upon request of the subdivider in accordance with Chapter 16.44. (Ord. 575 § 2 (part), 1964: prior code § 8443)

16.32.040 Streets--Plans and specifications.

All street improvements, including drainage structures incidental thereto, shall be installed to grade, which grade shall be approved by the city engineer. Plans, profiles and specifications for such improvements shall be furnished to the city engineer not later than the time of submitting the final map. Such plans, profiles and specifications shall show full details and shall be in accordance with the standards of the city. (Ord. 575 § 2 (part), 1964: prior code § 8444)

16.32.050 Utilities--Installation.

A. The subdivider shall make all necessary arrangements with each serving utility for the installation of its facilities.

B. Utility facilities, with connections within the subdivision, adequate to supply communication, electricity, gas, sewer, and water service to the subdivision shall be constructed and installed therein for the purpose of supplying such services to the subdivider. (Ord. 656 § 1 (part), 1971: prior code §§ 8444.1, 8444.2)

16.32.060 Utilities--Underground requirements--Exceptions.

All communication and electrical distribution facilities installed in and for the purpose of supplying any communication or electrical service in the subdivision, and also all community antenna television distribution facilities, if any, installed in and for the purpose of supplying any community antenna television signal service to a subdivision, shall be placed underground, except as follows:

A. Transformers, pedestals, terminal boxes, meter cabinets, concealed ducts and other facilities necessarily appurtenant may be situated aboveground if they are used solely for the purpose of providing service within the subdivision and are used solely in connection with the underground distribution lines.

B. General transmission, subtransmission, long distance, trunk or feeder lines may be situated above the surface of the ground when such lines are not used as individual subdivision distribution lines. Location of such lines shall be approved by the serving utility and the city.

C. Poles supporting street lights, and the electricity lines within said poles, may be situated above the surface of the ground. (Ord. 656 § 1 (part), 1971: prior code §§ 8444.4--8444.6)

16.32.070 Utilities--Underground requirements--Waiver.

A. Conditions. After consideration of the report and recommendation of the planning commission, the city council may waive the underground requirements of Section 16.32,060, whole or in part, if it finds that topographical, soil or other conditions or circumstances make underground installation of said facilities unreasonable or impracticable.

B. Industrial Subdivisions. After consideration of the report and recommendation of the planning commission, the city council may waive the requirements of underground utilities in part for

industrial subdivisions.

C. Easements for Overhead Pole Lines. In those cases where the requirement for underground utilities has been waived, then easements for overhead pole lines shall be provided at the rear of all lots, except where alleys are available, or where the requirement is waived by the city council.

D. Effect. The waiver by the city council of the requirements of Section 16.32.060 for one portion of a subdivision shall not affect the requirements for the balance of that subdivision. (Ord. 656 § 1 (part), 1971: prior code §§ 8444.7--8444.10)

16.32.080 Street lighting.

If the approval of the tentative map required street lighting plans for a street lighting system, plans shall be submitted to and be approved by the city engineer. (Ord. 575 § 2 (part), 1964: prior code § 8445)

16.32.090 Curbs and gutters.

Curbs and gutters shall be constructed on all streets within the subdivision, except where not required by the advisory agency, subject to approval of the city council. (Ord. 575 § 2 (part), 1964: prior code § 8446)

16.32.100 Sidewalks.

Sidewalks shall be constructed on all highways within or adjacent to the subdivision and on local streets; except that in rural areas sidewalks may be omitted or may be provided on only one side of the street or highway, subject to the approval of the advisory agency and ratification by the city council. (Ord. 575 § 2 (part), 1964: prior code § 8447)

16.32.110 Street trees.

The city may require the subdivider to provide adequate landscaping, and arrangements between the subdivider and the city may be made whereby the subdivider makes a cash payment to the city in an amount sufficient to ensure the city of adequate funds to plant street trees in subdivisions at the proper time as determined by the city engineer. The city may plant street trees either by contract or by city forces. The amount of cash payment per tree shall be determined by the city council in accordance with prevailing nursery prices and labor costs, and shall be subject to annual revision. (Ord. 575 § 2 (part), 1964: prior code § 8448)

16.32.120 Guarantee for construction of improvements--Form of surety.

In the event the approval of the tentative map requires agreement for improvement of streets, utilities, or other facilities in connection with the subdivision, and the improvements have not been installed and accepted by the city prior to the presentation of the final map to the city council, the subdivider shall:

A. Bond. File with the city clerk a bond in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. The bond shall be executed by the subdivider as principal, and a corporation authorized to act as

surety under the laws of the state of California as surety. The bond shall be payable to the city and be conditioned upon the faithful performance of any and all work required to be done within a specified reasonable time; or

B. Cash or Negotiable Bond. Deposit with the city clerk cash or negotiable bonds of the kind approved by law for securing deposits of public money in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. Whenever the subdivider elects to deposit cash or approved negotiable bonds, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the cash or negotiable bonds are filed to cause the work to be done and to pay all costs therefor from such deposit; or

C. Instrument of Credit. Deposit with the city clerk, and subject to the approval of the city finance officer, an instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed are on deposit and guaranteed for payment; further agreeing that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument of credit. Whenever the subdivider elects to deposit an instrument or instruments of credit, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the instrument or instruments of credit are filed to cause the work to be done and to pay all costs therefor from such funds which are on deposit pursuant to the aforementioned instrument or instruments of credit. "Instrument or instruments of credit" is defined to include the establishment of a construction loan disbursement account which requires the approval and the signature of the city by an appropriate city official as a condition precedent to any disbursement of funds contained in such construction loan disbursement account. (Ord. 653 § 1 (part), 1970: Ord. 575 § 2 (part), 1964: prior code § 8449)

16.32.130 Guarantee for construction of improvements--Contracts for future improvements.

Any contract for the future improvement of a subdivision shall contain, among other provisions, the following:

A. Term of Bond. Subject to the conditions stated in this section, the term of each deposit of cash, negotiable bonds, or instrument or instruments of credit in lieu of bond or surety bond filed pursuant to the provisions of this title shall begin on the date of the deposit or filing of the survey bond and shall end upon the date of the completion to the satisfaction of the city engineer of all the improvements required to be done by the owner. The fact of such completion shall be evidenced by a statement thereof signed by the city engineer, a copy of which shall be returned to the owner or person legally entitled thereto, or the surety bond exonerated at any time after the city engineer has signed the statement.

B. Amount of Guarantee. The amount of the guarantee shall be one hundred percent of the estimated cost of the work as determined by the city engineer.

C. Provisions. Every surety bond furnished and every contract under which a deposit is made to secure and guarantee the construction and completion of the improvements required to be done by the subdivider shall further provide and be conditioned that the surety executing such bond, or such deposit, respectively, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the city in causing any and all such required work to be done, and that surety or depositor, respectively, assents to any lawful extensions of time within which to construct and complete such improvements that may be granted to the subdivider. (Ord. 734 § 9, 1978; Ord. 653 § 1 (part), 1970: Ord. 575 § 2 (part), 1964: prior code § 8449.1)

16.32.140 Guarantee for construction of improvements--Acceptance of partial work.

A. When a substantial portion of the required improvement in a tract has been completed to the satisfaction of the city engineer, and the completion of all remaining improvements in the tract is delayed due to conditions beyond the control of the subdivider, the city engineer may, in his discretion, accept the completed portion of the improvements and consent to a proportionate reduction of the surety bond to an amount estimated and determined by him to be adequate to assure the completion of the required improvements remaining to be done.

B. Whenever the subdivider deposits cash, approved negotiable bonds or an instrument or instruments of credit, the deposit by its terms may provide for the acceptance of the work as it progresses and for partial withdrawal of the deposit of money or negotiable bonds upon certification of the city engineer that the completed portion of the work is accepted by the city, and that sufficient money or bonds remain on deposit to assure the completion of all of the required improvements remaining to be done. (Ord. 653 § 1 (part), 1970: Ord. 575 § 2 (part), 1964: prior code § 8449.2)

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Chapter 16.36 PRIVATE STREETS

16.36.010 Filing tentative map and compliance required.

16.36.020 Signposting.

16.36.030 Maintenance.

16.36.040 Effect on existing streets.

16.36.010 Filing tentative map and compliance required.

All private street subdivisions established in the city after the effective date of the ordinance codified in this title shall be created only after the filing of a tentative map and otherwise following the procedures set forth in this title. (Ord. 575 § 2 (part), 1964: prior code § 8452)

16.36.020 Signposting.

At or near the entrance of each intersection of a private street with a dedicated public street or with another private street, there shall be erected and maintained by the applicant a signpost to which is attached a sign having an area of at least fifteen inches by twenty-one inches upon which is printed and clearly legible in at least two-inch letters the name of the private street and the words "Private Street" and in at least one-inch letters the words "Not Dedicated for Public Use or Maintained by City of Calexico." The words, letters and figures of the sign shall be arranged in substantially the following manner:

Name of street

Private street

Not dedicated for public use or maintained by city of Calexico. (Ord. 575 § 2 (part), 1964: prior code § 8453)

16.36.030 Maintenance.

All private streets shall be maintained by the owners of property contiguous or adjacent thereto in such manner that adequate access by vehicular traffic is provided at all times so that fire, police, health and sanitation vehicles and public utility vehicles will have adequate turning area. If said private streets are not maintained as provided in this section, and the council determines that the maintenance and turning facilities are inadequate to provide access for the vehicles using the same, refuse and garbage collection may be withheld from the property owners contiguous and adjacent to said private streets until adequate access for such vehicles is provided. (Ord. 575 § 2 (part), 1964: prior code § 8454)

16.36.040 Effect on existing streets.

The provisions of this chapter shall not apply to those building sites which are served by a private street if the building site has previously been approved by the city prior to the effective date of the ordinance codified in this title and the conditions of approval have been fulfilled. (Ord. 575 § 2 (part), 1964: prior code § 8451)

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Exhibit A

ORDINANCE NO. 2010-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND RAUL AND ALICE ESTRADA FOR REAL PROPERTY WITHIN THE CITY OF CALEXICO.

WHEREAS, the Property Owner (Raul and Alice Estrada) is the owner of certain real property (the "Property"), consisting of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002; and

WHEREAS, the Property currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as "C-H" (Commercial Highway) and "I" (Industrial) in the City Zoning Code; and

WHEREAS, the City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007; and

WHEREAS, the City agreed to consider a development agreement for the Property to secure the Property Owner's rights to develop the Property in accordance with the existing land use and zoning designations and to secure certain rights of capacity in the City's existing wastewater infrastructure provided that the Property Owner provide the necessary wastewater infrastructure to transport the wastewater to the City's facilities; and

WHEREAS, the development agreement will facilitate development of the Property in a manner which the Parties intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents. Consequently, entering into the development agreement is acknowledged to be to the mutual benefit of the parties; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 *et seq.* of the California Government Code, which authorize the City to enter into a development agreement with any person or entity having a legal or equitable interest in real property, providing for the development of such property and establishing certain rights and obligations related to such development; and

WHEREAS, to implement the above-described state laws, the City adopted Chapter 16.52 of the Calexico Municipal Code, establishing procedures and requirements for considering, approving and implementing development agreements; and

WHEREAS, the Property Owner has a legal interest in the real property situated in the City which is the subject of the development agreement, and therefore satisfies the statutory requirements to enter into the agreement; and

WHEREAS, the application for this development agreement has been reviewed by the Director of Development Services and has been deemed complete; and

WHEREAS, the Planning Commission, on June 28, 2010, conducted a duly noticed hearing to consider the proposed development agreement as required by Municipal Code Sections 16.52.060 *et seq.* and approved a resolution to recommend that the City Council approve the proposed development agreement; and

WHEREAS, the City Council, on July 20, 2010, conducted a duly noticed hearing to consider the proposed development agreement as required by Municipal Code Sections 16.52.110.

NOW THEREFORE, the City Council of the City of Calexico DOES HEREBY ORDAIN as follows:

1. That the above-listed findings are true and correct.

2. The City Council has exercised its independent review of the FEIR for the City's General Plan Update and finds that the uses contemplated in the development agreement are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to the development agreement or the Property, or were not analyzed in the FEIR. Therefore, pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, the Planning Commission hereby finds that no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for the development agreement.

3. The City Council further finds that the uses contemplated in the development agreement are consistent with the uses authorized in the General Plan Update and that the development agreement secures the rights of the Property Owner to develop the Property in compliance with the existing general plan and zoning designation for 15 years. Therefore, pursuant to CEQA Guidelines section 15305, the City Council hereby finds that the development agreement also is exempt from environmental review as a minor alteration in land use limitations with an average slope of less than 20% which does not result in any changes in land use or density.

4. The City Council finds and determines that the proposed development agreement:

   (a.) Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan because the proposed development agreement secures the existing general plan and zoning designation;

(b.) Is compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located because it is intended to promote and retain the highest level of well-planned development;

(c.) Is in conformity with public convenience, general welfare and good land use practice which ensures that the integrity of the City's Land Use Element is maintained;

(d.) Will not be detrimental to the health, safety and general welfare because development in accordance with the adjacent land uses and zoning which will guide the growth of Calexico in an efficient, coordinated manner in order to provide for high quality and balanced growth. As such, the land uses are compatible and beneficial to the general welfare of the residents of the City. Further, because development consistent with the existing land use and designation is consistent with the General Plan which is the City's guide for orderly development, any proposed development would not be detrimental to the health, safety and general welfare of the citizens;

(e.) Will not adversely affect the orderly development of property or the preservation of property valued because it vests the Property Owner with rights to allow certainty for the future development of the Property which adds value to the Property.

(f.) The agreement states:

(1) The specific duration of the agreement (*15 years*);

(2) The permitted uses of the property *(as set forth in the City's Land Use Element for Commercial Highway and Zoning Code for "C-H" and "I")*;

(3) The density and intensity of use *(as set forth in the City's Land Use Element for Commercial Highway and Zoning Code for "C-H" and "I");*

(4) The maximum height and size of proposed buildings *(as set forth in the City's Land Use Element for Commercial Highway and Zoning Code for "C-H" and "I")*;

(5) Specific provisions for reservation or dedication of land for public purposes *(as set forth in the City's Land Use Element for Commercial Highway and Zoning Code for "C-H" and "I").*

5. That the City Council hereby approves the development agreement between the City of Calexico and Raul and Alice Estrada and authorizes the City Manager to execute the agreement and carry out all provisions of such.

6. This Ordinance shall take effect 30 days after the date of its adoption.

7. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remainder of the Ordinance. The Council hereby declares that it would have adopted this Ordinance, and each section, subsection, sentence, clause, phrase, or portion hereof, irrespective of that fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

8. The city clerk shall certify to the adoption of this Ordinance and shall cause this ordinance, or a summary thereof, to be published as required by law.

Adopted and approved this 3rd day of August, 2010.

_____
John Moreno, Mayor

ATTEST:

_____
Lourdes Cordova, City Clerk

APPROVED AS TO FORM:

_____
Jennifer M. Lyon, City Attorney

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) SS.
CITY OF CALEXICO)

I, LOURDES CORDOVA, CITY CLERK OF THE CITY OF CALEXICO, DO HEREBY CERTIFY THAT THE ABOVE AND FOREGOING ORDINANCE NO. ____ WAS

DULY PASSED AND ADOPTED BY THE CITY COUNCIL AT A REGULAR SESSION HELD ON THE 3rd DAY OF AUGUST, 2010, BY THE FOLLOWING VOTE TO WIT:

AYES:
NOES:
ABSENT:

_____
LOURDES CORDOVA, CITY CLERK

_____

PM 11-87

PARCEL MAP NO. 059-010-20

A PORTION OF THE SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M.,
CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA.

ENGINEER'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF RAUL ESTRADA, ON OCTOBER 4, 2000. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

2-30-02
DATE

TERRY L. BARRETT R.C.E. 38447
EXP. DATE: 09/30/2003

CITY ENGINEER'S STATEMENT:

I, TONY K. HONG, ACTING CITY ENGINEER OF THE CITY OF CALEXICO, HEREBY STATE, THAT I HAVE EXAMINED THIS MAP CONSISTING OF 2 SHEETS, THAT THE SUBDIVISION SHOWN HEREWITH IS SUBSTANTIALLY AS IT APPEARED ON THE TENTATIVE MAP AS APPROVED ON NOVEMBER 20, 2001 THAT ALL OF THE PROVISIONS OF LOCAL ORDINANCES APPLICABLE HERE THE TENTATIVE MAP HAS APPROVED AND ALL OF REQUIREMENTS OF CHAPTER 2, ARTICLE 2 OF THE SUBDIVISION MAP ACT, AS AMENDED JANUARY 22, 2000, HAVE BEEN COMPLIED WITH, THAT THE REQUIRED PUBLIC IMPROVEMENTS HERE CONSTRUCTED, OR HAVE BEEN AGREED TO BE CONSTRUCTED, AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT AND HEREBY RECOMMEND THAT THIS MAP BE ACCEPTED BY THE CITY COUNCIL.

7/31/02
DATE

CITY ENGINEER
TONY HONG R.C.E. 22288
EXPIRATION DATE: 12/31/2003

OWNER'S STATEMENT:

WE HEREBY CERTIFY THAT WE ARE THE ONLY PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND SUBDIVIDED AS SHOWN ON THIS MAP, AND WE CONSENT TO THE PREPARATION AND RECORDATION OF THIS PARCEL MAP, THAT WE HEREBY OFFER FOR DEDICATION TO PUBLIC USE ANY STREETS, HIGHWAYS AND OTHER PUBLIC WAYS AND EASEMENTS SHOWN UPON SAID MAP AND BEING WITHIN SAID SUBDIVISION.

RAUL ESTRADA ALICE ESTRADA

ENGINEER'S MONUMENTATION STATEMENT:

I, TERRY L. BARRETT, HEREBY STATE THAT ALL MONUMENTS SHOWN ON THIS MAP ARE OF THE CHARACTER INDICATED AND OCCUPY THE POSITIONS INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

TERRY L. BARRETT R.C.E. 38447
EXP. DATE: 09/30/2003

LEGAL DESCRIPTION:

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF IMPERIAL, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

THAT PORTION OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

STARTING AT THE CENTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE RECORD OF SURVEY RECORDED IN BOOK 3, PAGE 30; THENCE NORTH 0°01'34" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, 50.97 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°59'00" EAST, 1320.08 FEET TO THE EAST LINE OF SECTION 2; THENCE NORTH 0°01'37" WEST ALONG THE EAST LINE OF SECTION 2, 480.00 FEET TO A POINT; THENCE NORTH 89°59'00" WEST 1320.04 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2; THENCE SOUTH 0°01'34" EAST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, 480.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID PROPERTY IS ALSO SHOWN AS PARCEL 2 ON CERTIFICATE OF COMPLIANCE RECORDED AUGUST 1, 1996 AS FILE NO. 96-12710, IN BOOK 1407, PAGE 1482 OF OFFICIAL RECORDS.

PARCEL B:

THAT PORTION OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER LINE OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., COUNTY OF IMPERIAL, STATE OF CALIFORNIA, SAID POINT OF BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 44°91'11" EAST, A DISTANCE OF 138.42 FEET TO A POINT; THENCE SOUTH 44°91'49" EAST, A DISTANCE OF 248.57 FEET TO A POINT; THENCE NORTH 40°00'00" EAST, A DISTANCE OF 1160 FEET; THENCE NORTH 00°01'49" WEST, A DISTANCE OF 384.74 FEET TO A POINT; THENCE NORTH 43°00'00" EAST, A DISTANCE OF 90.36 FEET TO A POINT ON THE EAST LINE OF SECTION 2; THENCE NORTH 00°02'49" WEST ALONG SAID EAST LINE OF SECTION 2, A DISTANCE OF 897.46 FEET TO A POINT; THENCE NORTH 89°59'16" WEST, A DISTANCE OF 1314.56 FEET; THENCE SOUTH 00°03'37" EAST, A DISTANCE OF 30.37 FEET TO THE TRUE POINT OF BEGINNING.

SAID PROPERTY IS ALSO SHOWN AS PARCEL 1 ON CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 1, 1996 AS FILE NO. 96-028497, IN BOOK 1446, PAGE 1712 OF OFFICIAL RECORDS.

BASIS OF BEARINGS:

THE BEARING OF S 00°02'49" E, WHICH IS THE BEARING OF THE EAST LINE OF SECTION 2 SHOWN IN RECORD OF SURVEY RECORDED IN BOOK 12, PAGE 36, IN THE COUNTY RECORDERS OFFICE OF IMPERIAL COUNTY.

TITLE COMPANY:

I HEREBY CERTIFY THAT THE PERSONS SPECIFIED IN THE CERTIFICATES HEREON ARE THE OWNERS, AND THE ONLY ONES WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE.

FIRST AMERICAN TITLE INSURANCE COMPANY
KIM CARSON
TITLE OFFICER

SIGNATURE OMISSION STATEMENT:

THE SIGNATURES OF THE FOLLOWING PARTIES HAVE BEEN OMITTED PURSUANT TO SECTION 66436 (a) OF THE SUBDIVISION MAP ACT IN THAT THEIR INTERESTS CAN NOT RIPEN INTO A FEE:

1 UNITED STATES OF AMERICA
AN EASEMENT RECORDED IN BOOK 1, PAGE 63 OF PATENTS.

SUPPORTING DOCUMENTS:

THE FOLLOWING DOCUMENTS WERE RECORDED AS OFFICIAL RECORDS OF THE COUNTY OF IMPERIAL IN SUPPORT OF THIS PARCEL MAP.

TITLE: Owner's Certificate	BOOK: 2146	AT PAGE: 1655	
TITLE: Tax Certificate	BOOK: 2146	AT PAGE: 1660	
TITLE: Subdivision Guarantee	BOOK: 2146	AT PAGE: 1664	
TITLE: Resolution	BOOK: 2146	AT PAGE: 1661	
TITLE: Agreement	BOOK: 2146	AT PAGE: 1663	
TITLE:	BOOK:	AT PAGE:	
TITLE:	BOOK:	AT PAGE:	
TITLE:	BOOK:	AT PAGE:	

COUNTY RECORDER'S STATEMENT:

FILED THIS 13th DAY OF Sept, 2002 AT 10:11 AM, IN BOOK 11 OF PARCEL MAPS AT PAGE 87, AT THE REQUEST OF RAUL ESTRADA AND ALICE ESTRADA

FEE: 198

DOCUMENT: 02-23435

DOLORES PROVENCIO, COUNTY RECORDER

CITY CLERK'S CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF CALEXICO, BY RESOLUTION NO. 02-416 ADOPTED AUGUST 6, 2002, 2002, HAS APPROVED THIS MAP AND ACCEPTED ON BEHALF OF THE PUBLIC ALL PARCELS OF LAND OFFERED FOR DEDICATION AS SHOWN HEREWITH.

8-7-02
DATE

CLERK OF THE CITY COUNCIL

15591

SHEET 1 OF 2 BJ

PM 11-87

59-01

CITY OF CALEXICO

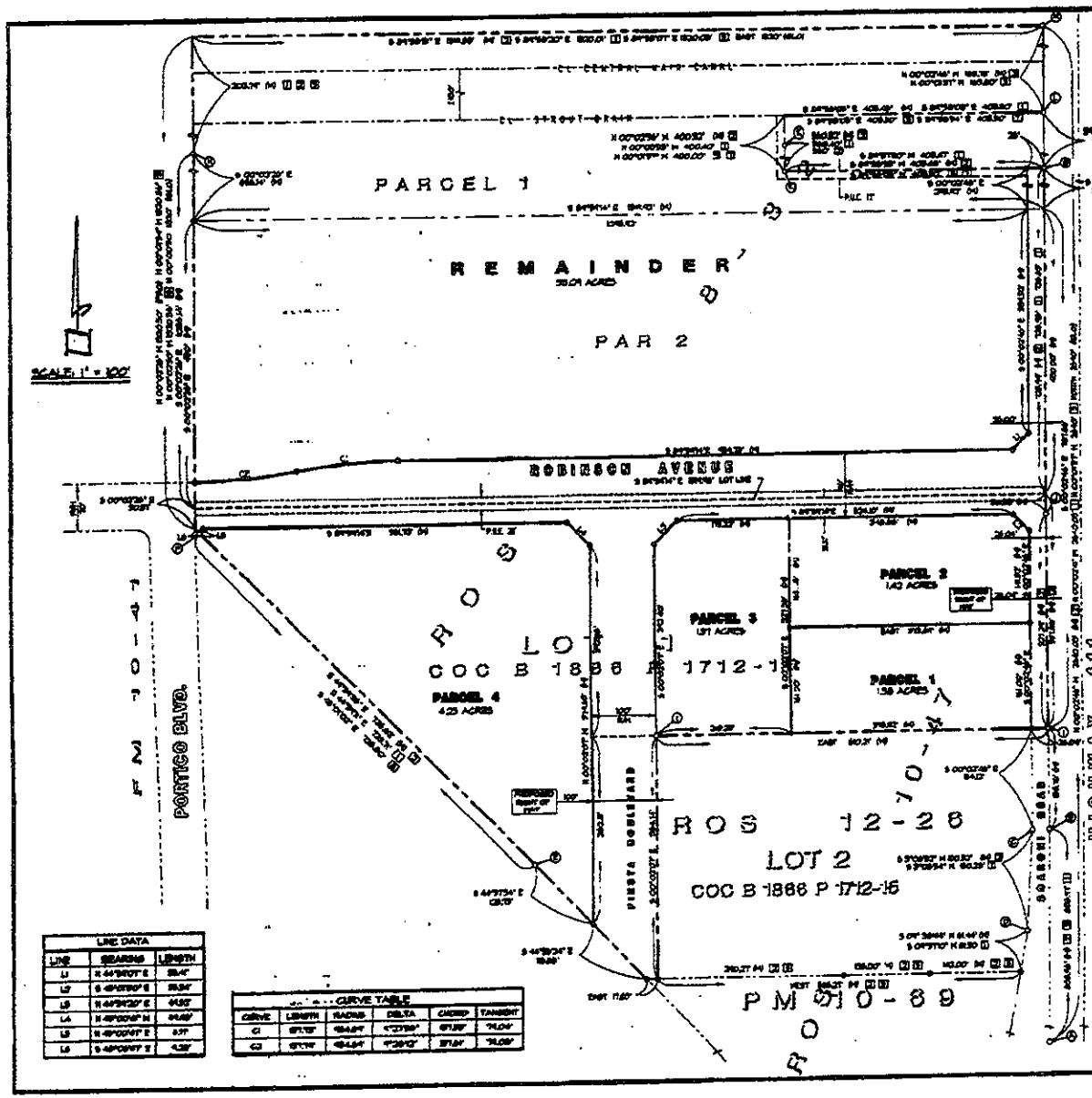
1 of 2

Exhibit B

PM 11-88

PARCEL MAP NO. 059-010-20

A PORTION OF THE SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M.
CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA.



LEGEND:

- PROPERTY BOUNDARY.
- LOT LINE.
- (GLO) GENERAL LAND OFFICE PLAT DATED NO. 16, 1860.
- (PRO) PRORATED DATA.
- SET 1-1/2" IRON PIPE TAGGED R.C.E. 28,441
- FOUND MONUMENT AS NOTED.
- FOUND 1-1/2" I.P. TAG'D R.C.E. 28,441 PER PM-10-89.
- (M) MEASURED DATA.
- 1 RECORD DATA PER RECORD OF SURVEY BOOK 10, PAGE 41.
- 2 RECORD DATA PER RECORD OF SURVEY BOOK 12, PAGE 26.
- 3 RECORD DATA PER RECORD OF SURVEY BOOK 9, PAGE 52.
- 4 RECORD DATA PER DOCUMENT NO. 84-16841 RECORDED OCT. 15, 1984 IN BK. 1884, PG 246 O.R.
- 5 RECORD DATA PER PARCEL MAP BOOK 10, PAGE 84.
- 6 DATA PER CALIFORNIA DIVISION OF HIGHWAY'S MAP RUTE 10-84-18 ON FILE AT SHP. CO. SURV. RUN 118-1A.
- 7 RECORD DATA PER DOCUMENT NO. 88-13710 RECORDED AUG. 1, 1988, BK. 1907, PG. 1803, O.R.
- 8 RECORD DATA PER FINAL MAP BOOK 10, PAGE 41.
- A FD. CALIFORNIA DEPARTMENT OF TRANSPORTATION BRASS CAP, FOR SE CORNER OF SECTION 2.
- B FD. 1-1/2" I.P. TAG'D PLS 5941 2" DIA. AT AC PAVEMENT PER ROS 10-41.
- C FD. 1-1/2" I.P. TAG'D PLS 5941 FLUSH, PER ROS 10-41.
- D FD. 1-1/4" I.P. NTH CA. DIV. OF TRANSP. BRASS TAG, PER CADT HOR. MAP 10-11-PH 230-289 (R/W 118-1A) HIGH SURVEY, ROS 9-52 AND ROS 10-41.
- E FD. 1-1/2" TAG'D R.C.E. 27,051, FLUSH FOR NE COR. LOT 1 PER FINAL MAP 8-41, ROS 10-41 AND PM 8-41.
- F FD. 1-1/2" I.P. TAG'D R.C.E. 27,051, 2" DIA. FOR RP 1.27' SOUTHERLY OF THE N4 COR. OF THE S2 1/4 OF THE SE 1/4 OF SECTION 2 PER PM 18-41.
- G FD. PK NAIL AND 1-1/2" BRASS HANGER STAMPED R.C.E. 31,021 PER ROS 9-52, FLUSH IN PAVEMENT.
- H FD. 1-1/2" I.P. TAG NOT READABLE 6", DIA. FOR 208.71' SOUTH OF S-1/4 C-C-SEC. 2.
- I FD. 1-1/2" I.P. TAGGED R.C.E. 28,441 PER ROS 12-26.
- J FD. 1-1/2" I.P. TAGGED LS 5941, 3 DIA. FOR 1/16 COR. S2 / S1 PER ROS 10-41.
- K FD. 1-1/2" I.P. TAGGED R.C.E. 31,021, ABOVE GROUND PER ROS 9-52.
- L FD. PK NAIL AND 1-1/2" BRASS HANGER STAMPED R.C.E. 31,021 PER ROS 9-52, FLUSH IN PAVEMENT.
- M FD. 2" BRASS DISK STAMPED LS 5941, FLUSH IN PAVEMENT FOR 1/4 COR. S2 / S1 PER ROS10-41.

LINE DATA		
LINE	BEARING	LENGTH
L1	N 44°34'07" E	59.44'
L2	S 45°07'00" E	39.94'
L3	N 44°34'20" E	44.93'
L4	N 45°00'00" W	44.49'
L5	N 45°00'00" E	5.71'
L6	S 45°00'00" E	4.28'

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	TANGENT
C1	67.10'	154.64'	25°00'00"	67.08'	34.04'
C2	67.10'	154.64'	25°00'00"	67.08'	34.04'

1 3 6 9 2

SHEET 2 OF 2

PM 11-87 59-01 CITY OF CALEXICO 2 of 2

Exhibit C

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Calexico
Attn: City Manager
608 Heber Avenue
Calexico, California 92231

(SPACE ABOVE FOR RECORDER'S USE ONLY)

DEVELOPMENT AGREEMENT

By and between the

CITY OF CALEXICO

and

RAUL and ALICE ESTRADA

_____, 2010

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2010, by and between (i) the CITY OF CALEXICO, a municipal corporation organized and existing under the laws of the State of California (the "City"), and (ii) RAUL and ALICE ESTRADA, husband and wife (collectively, the "Property Owner"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code. The City and the Property Owner may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Property Owner is the owner of certain real property (the "Property"), consisting of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002, a true and correct copy of which is attached hereto as Exhibit "A."

B. The Property currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as C-H (Commercial Highway) & I (Industrial) in the City Zoning Code.

C. As a component of obligations incurred by the City pursuant to that certain *Settlement Agreement and Mutual Release of Claims*, dated January 19, 2010, among the City, the Property Owner, *et al.* (the "Settlement Agreement"), the City agreed (i) to present a development agreement between the parties before the City's Planning Commission and City Council for consideration, and if it was approved (ii) to thereafter consider amending the General Plan designation and zoning designation of part or all of the Property, upon request by the Property Owner.

D. The Settlement Agreement further secured certain rights of the Property Owner to utilize capacity in the City's wastewater facilities to allow development and use of the Property, subject to certain obligations on the part of the Property Owner.

E. This Agreement will facilitate development of the Property in a manner which the Parties intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents. Consequently, entering into this Agreement is acknowledged to be to the mutual benefit of the Parties.

F. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 *et seq.* of the California Government Code, which authorize the City to enter into a development agreement with any person or entity having a legal or equitable interest in real property, providing for the development

of such property and establishing certain rights and obligations related to such development.

G. To implement the above-described state laws, the City adopted Chapter 16.52 of the Calexico Municipal Code, establishing procedures and requirements for considering, approving and implementing development agreements.

H. The Property Owner has a legal interest in the real property situated in the City which is the subject of this Agreement, and therefore satisfies the statutory requirements to enter into this Agreement.

I. The City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007. The uses contemplated in this Agreement are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to this Agreement or the Property, or were not analyzed in the FEIR. Pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for this Agreement.

J. The Planning Commission, on June 28, 2010, conducted a hearing and adopted findings relating to this Agreement, as required by Municipal Code Sections 16.52.060 *et seq.*, and recommended that the City Council approve this Agreement.

K. The City Council, on July 20, 2010 and August 3, 2010, made all findings and determinations relating to this Agreement which are required by Municipal Code Sections 16.52.111 *et seq.*, and approved this Agreement by its adoption of Ordinance No. _____. In doing so, the City Council determined that this Agreement is consistent with all applicable plans, ordinance and regulations of the City.

L. The City Council finds that execution of this Agreement and the performance of and compliance with the terms and conditions set forth herein by the Parties: (i) is in the best interests of the City; (ii) will promote the public convenience, general welfare and good land use practices in the City; (iii) will promote preservation and enhancement of land values in the City; (iv) will encourage the development of the Project by providing a reasonable level of certainty to the Property Owner; and (v) will provide for orderly growth and development in a manner consistent with the General Plan and other plans and regulations of the City.

NOW, THEREFORE, in consideration of the above Recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and obligations of the Parties set forth herein, the Parties agree as follows:

1. **Use of Property.**

A. Existing Land Use Designation.

The Property is currently designated as CH-Highway Commercial in the 2007 General Plan and C-H (Commercial Highway) & I (Industrial) in the City Zoning Code. As of the Effective Date, Property Owner shall be entitled to develop and use the Property consistent with the rules, regulations, laws, ordinances and adopted City policies governing the development and use of property within the Commercial Highway land use category and C-H (Commercial Highway) & I (Industrial)zone (collectively, the "Applicable Rules"); provided, however, that the Applicable Rules do not include the City's Building, Fire, Electrical, Plumbing, and Mechanical Codes and other similar ordinances, codes, rules and regulations mandated by state law that establish construction standards that are intended to be applied ministerially to the construction of building improvements on all private property in the City.

B. Wastewater Facilities.

In acknowledgement of Property Owner having previously provided without cost to the City right-of-way across its property for the installation of a wastewater transmission line serving other developments to the east of the Property, and in accordance with section 4.2 of the Settlement Agreement, Property Owner shall have the right to utilize sufficient capacity in the City's existing wastewater transmission and treatment facilities to allow development and use of the Property in a manner consistent with the Applicable Rules as provided for in this Agreement.

C. Property Owner Obligations for Additional Wastewater Facilities.

Notwithstanding Section 1B, above, in accordance with section 4.2 of the Settlement Agreement, Property Owner shall install, at Property Owner's sole expense, any infrastructure or pipes required to connect and transport wastewater from the Property to the City's wastewater treatment facilities and pay any impact fees applicable in connection therewith.

D. Development Standards.

Except as otherwise specifically provided in this Agreement, development and use of the Property shall be governed by the Applicable Rules and any future environmental review that is necessary; provided, however, that the City reserves certain authority under its police power to take actions necessary to protect the public health and safety, which actions are generally applicable on a Citywide basis and are actually effective upon general categories or areas of properties, do not disproportionately burden the Property relative to other similarly situated properties, and cannot be legally relinquished or restricted by this Agreement, and this Agreement shall be subject thereto.

E. Permitted Uses.

The permitted uses, the density and intensity of uses, the maximum heights, locations and total area of the proposed buildings, the development schedule, the provisions for vehicular access and parking, any reservation or dedication of land, any public improvements, facilities and services, and all environmental impact mitigation measures imposed as approval conditions for the Property, shall be exclusively those provided in the 2007 General Plan applicable to the Commercial Highway land use designation, applicable chapters of the City's Municipal Code, and all associated applications required for full development of the Property, including but not limited to, any environmental document prepared for subsequent development of the Property, and those applicable ordinances in effect as of the "Effective Date" as defined below in Section 3A of this Agreement. For ease of reference as to some but not all of the sections of the City's Municipal Code applicable as of the Effective Date, are attached hereto as Exhibit "B."

2. Vesting of Rights.

Upon the Effective Date of this Agreement, the City hereby grants to Property Owner a vested right to develop and construct on the Property improvements as authorized by, and in accordance with, the terms of this Agreement, the Applicable Rules and any subsequent required discretionary review, including environmental review.

A. Future Amendments; Moratoria.

No future amendments to the Applicable Rules shall apply to the Property, except such future modifications that are not in conflict with and do not prevent development of the Property in accordance herewith; provided, however, that no City-imposed moratorium or other limitation approved, issued or granted within the City shall prevent or restrict the development or use of the Property in the manner and to the extent permitted by the Applicable Rules and this Agreement, whether directed to building construction, sewer or water services, traffic impacts, or otherwise.

B. Revised Fees.

Any existing application, processing, administrative, legal, development impact and inspection fees that are revised during the term of this Agreement shall apply to the Project provided that (1) such fees have general applicability; (2) the application of such fees to the Property is prospective; and (3) the application of such fees would not prevent development and use of the Property in accordance with the Applicable Rules and this Agreement.

C. New Taxes.

Any subsequently enacted Citywide taxes shall apply to the Property provided that: (1) the application of such taxes to the Property is prospective; (2) the application of such taxes would not prevent development in accordance with the Applicable Rules and this Agreement.

D. Assessments.

Nothing herein shall be construed to relieve the Property from its fair share of common benefit assessments levied against both the Property and similarly situated properties by the City pursuant to, and in accordance with, any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Property and similarly situated properties.

E. Subsequent Revision of Applicable Rules.

Notwithstanding anything in this Agreement to the contrary, if after the Effective Date the City, by official formal action amends or otherwise revises the Applicable Rules, Property Owner shall have the right to elect, in its sole and absolute discretion, to waive its rights hereunder and develop and use the Property in accordance with those land uses permitted by such amended or revised rules.

F. Federal and State Laws.

To the extent required by Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of changes in City rules, regulations or official policies, the terms of which are specifically mandated and required (as opposed to permitted) by federal or state laws. In the event such federal or state laws prevent or preclude compliance with one or more provisions of this Agreement, Property Owner may elect (i) to have the remaining provisions of this Agreement remain in full force and effect and continue to be binding on the Parties, or (ii) to terminate this Agreement. Where any state or federal law allows the City to exercise any discretion or to take any action with respect to that law, the City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

3. Term of Agreement and Timing of Development.

A. Effective Date.

The term of this Agreement shall commence on the effective date of the ordinance approving this Agreement ("Effective Date"), shall extend for a period of fifteen (15) years thereafter ("Expiration Date"), and unless extended by mutual consent of the parties, shall expire on the fifteenth (15th) anniversary of the Effective Date. In the event that litigation to which the City is a party against the Property Owner or any of its officers, agents, employees, contractors, representatives or consultants should delay implementation or construction of development in accordance with this Agreement on the Property, the expiration date of this Agreement shall be extended for a period equal to the length of time from the time the summons and complaint is served on the defendant(s) until the judgment entered by the court is final and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed five (5) years.

B. Timing of Development.

The parties acknowledge that Property Owner cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not at all within the control of Property Owner, such as market orientation and demand, interest rates and competition. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, it is the intent of Property Owner and the City to hereby acknowledge and provide for the right of Property Owner to develop the Project in such order and at such rate and times as Property Owner deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement.

C. Termination Upon Completion.

If not already terminated by reason of any other provision hereof, this Agreement shall automatically terminate upon the first development of the entire Property in a manner consistent with either the current General Plan land use designation or development in accordance with any subsequent General Plan Amendment applicable to the Property.

4. Cooperation Between Parties in Implementation of This Agreement.

The Property Owner and City shall proceed in a reasonable and timely manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. Property Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents.

5. Obligations of City and Property Owner.

A. Subdivision Map/Permits for Development of the Property.

1. The City shall review and use all reasonable efforts to expeditiously process any tentative subdivision map which may be submitted for development of the Property and to achieve a final map.

2. The City shall issue building permits and certificates of occupancy only after the City has reviewed and approved Property Owner's applications.

6. Interests of Other Property Owners.

Property Owner has no knowledge of any reason why Property Owner, and any other persons holding legal or equitable interests in the Property as of the date on which title to the Property vests of record in Property Owner, will not be bound by this Agreement.

7. No Property Interest.

Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, title to the Property.

8. Assignment

A. Right to Assign.

Property Owner may at any time or from time to time transfer its right, title or interest in or to all or any portion of the Property. In accordance with Government Code Section 65868.5, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties. As a condition precedent to any such transfer, Property Owner shall require the transferee to acknowledge in writing that transferee has been informed, understands and agrees that the burdens and benefits under this Agreement relating to such transferred property shall be binding upon and inure to the benefit of the transferee, provided that upon the effectiveness of the Release provided in Section 8D, below, Property Owner shall no longer be required to obtain the transferee's written acknowledgement.

B. Notice of Assignment or Transfer.

Prior to completion of development of the Property, no transfer, sale or assignment of Property Owner's rights, interests and obligations hereunder shall occur without the prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld or delayed. The City Manager shall consider and approve the matter within ten (10) days after Property Owner's notice, provided all necessary documents, certifications and other information are provided to the City Manager. Approval shall be deemed given with ten (10) days after Property Owner's notice to City unless the City Manager gives Property Owner express notice of disapproval and the basis for disapproval. It is further provided that notwithstanding any provision of this Section 8, after the completion of development of the Property and the satisfaction of all Property Owner's obligations under this Agreement, City Manager approval shall not be required for transfers to any buyer of the entire Property.

C. Exception for Notice.

Notwithstanding Section 8B, Property Owner may at any time, upon notice to City but without the necessity of any approval by the City, transfer the Property or any part thereof and all or any part of Property Owner's rights, interests and obligations hereunder to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is

under common control with Property Owner (ii) any member or partner of Property Owner or any subsidiary, parent or affiliate of any such member or partner, or (iii) any successor or successors to Property Owner by merger, consolidation, non-bankruptcy reorganization or government action. As used in this paragraph, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the Property Ownership of voting securities, partnership interest, contracts (other than those that transfer Property Owner's interest in the property to a third party not specifically identified in this Section 8C or otherwise.

D. Release Upon Transfer.

Upon the earlier to occur of: (1) any transfer, sale, or assignment of all of Property Owner's rights, interests in the Project approved by the City Manager if such approval is required under Section 8B, above; or (2) any transfer after completion of construction, Property Owner shall be released from the obligations under this Agreement; provided, however, that upon any transfer to a transferee, purchaser or assignee not made in violation of this Agreement and where such transferee, purchaser, or assignee expressly assumes any right, interest or obligation of Property Owner under this Agreement, Property Owner shall be released with respect to such rights, interests and assumed obligations. In any event, the transferee, purchaser or assignee shall be subject to all the provisions of this Agreement and shall provide all necessary notice to City and shall obtain approval where the City Manager approval is required, and for so long as notice or approval is required.

E. Property Owner's Right to Retain Specified Rights or Obligations.

Notwithstanding Sections 8A and 8C, above, Property Owner may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which Property Owner shall retain, provided that Property Owner gives written notice of such retained rights, interests and/or obligations in a written notice to the City Manager, prior to or concurrently with the sale, transfer or assignment of the Property. Property Owner's purchaser, transferee or assignee shall then have no interest or obligations for such retained rights, interests and obligations and this Agreement shall remain applicable to Property Owner with respect to such retained rights, interests and/or obligations.

F. Notice to City.

Property Owner shall within ten (10) days of the date escrow closes on any such transfer, notify the City in writing of the name and address of the transferee. Said notice shall include a statement as to the obligations, including any unfulfilled mitigation measures, fees, improvements or other conditions of approval, assumed by the transferee. Any transfer that does not comply with the notice requirements of Section 8B, above, shall not release the Property Owner from its obligations to the City under this Agreement until such time as the City is provided notice in accordance with Section 8B.

9. Mortgagee's Protections.

The Parties agree that this Agreement shall not prevent or limit Property Owner, in any manner, at Property Owner's sole discretion, from encumbering the Property or any portion thereof or any improvements thereon by any mortgage, deed of trust or other security device. The City acknowledges that the lender(s) providing such financing may require certain Agreement interpretations and modifications and agrees, upon request, from time to time, to meet with Property Owner and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure ("Mortgagee") on the Property shall be entitled to the following rights and privileges:

A. Mortgage Not Rendered Invalid.

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform Property Owner's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property.

B. Request for Notice to Mortgagee.

The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any Notice of Default delivered to Property Owner.

C. Mortgagee's Time to Cure.

The City shall provide a copy of any Notice of Default to the Mortgagee within ten (10) days of sending the Notice of Default to Property Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such Notice of Default. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Mortgagee obtaining possession of the Property, or any portion thereof, and such Mortgagee seeks to obtain possession, such Mortgagee shall have until thirty (30) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, to commence to cure such default; and provided, further, that a Mortgagee shall not be required to cure any non-curable default of Property Owner, which default shall be deemed cured upon any Mortgagee obtaining possession.

D. Cure Rights.

Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of Property Owner under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Property Owner arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement for the Property, or portion thereof acquired by such Mortgagee, have been paid to City.

E. Bankruptcy.

If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Property Owner, the times specified in Section 9C, above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

10. Notices.

A. Form of Notice.

All notices required or provided for under this Agreement shall be in writing and delivered in person (to include delivery by courier) or sent by certified mail, postage prepaid, return receipt requested or by overnight delivery service. Notices to the Parties shall be addressed as follows (or, in the case of an Assignee, at the address specified by such Assignee in a written notice to the City and the Property Owner.)

To City: City of Calexico
Attn: City Manager
608 Heber Avenue
Calexico, CA 92231
Facsimile: (760) 357-7862

With a copy to: Jennifer Lyon, City Attorney
McDougal, Love, Eckis, Boehmer & Foley
8100 La Mesa Blvd., Suite 200
La Mesa, CA 91942
Facsimile: (619) 440-4907

To Property Owner: Raul and Alice Estrada
_____
_____
_____

Facsimile: _____

With a copy to: John McClendon
Leibold McClendon & Mann, P.C.
23422 Mill Creek Drive, Suite 105
Laguna Hills, CA 92653
Facsimile: (949) 457-6305

B. Change of Address.

Any Party (and any Assignee) may change the address to which notices are to be sent (and/or the person to whose attention notices are to be directed) at any time by giving written notice of such change in the manner provided above.

11. Covenants Run With The Land

The terms of this Agreement are legislative in nature, and apply to the Property as regulatory ordinances. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and shall ensure to the benefit of their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, and any interest therein, whether by sale, operation of law or other manner.

12. Conflict with State or Federal Law

In the event that State or Federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. Notwithstanding the foregoing, Property Owner shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

13. Procedure for Modification Because of Conflict with State or Federal Laws.

In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City then, subject to Section 2F, above, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Chapter 16.52 and Section 14 of this Agreement, as applicable.

14. Amendment of Agreement.

This Agreement may be further amended or terminated only in writing and in the manner set forth in Government Code Sections 65865.1, 65867.5, 65868, 65868.5 and Municipal Code Sections 16.52.150 *et seq.*

15. Interpretation and Enforcement of Agreement.

A. Complete Agreement. This Agreement represents the complete understanding between the Parties, and supersedes all prior agreements, discussions and negotiations relating to the subject matter hereof. No amendment, modification or cancellation of this Agreement shall be valid unless in writing and executed by the Parties, other than pursuant to Section 15(C) below.

B. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect, unless such invalidation renders any remaining provisions impossible or impractical to enforce.

C. Applicable Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California and any applicable laws of the United States of America.

D. Prevailing Party. In the event of any action or proceeding brought by either Party against the other to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable costs and expenses, including attorneys' fees, incurred in connection therewith.

E. Cooperation in the Event of Action by Third Party. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or subsequent development approvals that are based on this Agreement, the Parties shall cooperate in defending such action. During the entire course of any such challenge, including any review up to a court of final jurisdiction, this Agreement shall remain in full force and effect, unless otherwise modified by the court during the pendency of the action.

F. Authority of Signatories. All the Parties represent and warrant that the persons signing this Agreement on their behalves have full authority to bind the respective Parties, and that each and every term of this Agreement is fully enforceable in all respects at the time this Agreement is executed and shall remain fully enforceable at all times during which the Agreement is in effect and, where indicated, beyond the term of this Agreement. Such enforceability shall pertain to both the substantive provisions of this Agreement and any remedies available for violation of the Agreement by either Party.

G. Indemnification. Property Owner agrees to and shall indemnify, save, hold harmless and, if requested by the City, defend the City and its agents, officers, and employees, in any action brought by a person or entity not a party to this Agreement (i) challenging the City's approval of this Agreement, (ii) challenging the validity of this Agreement, or (iii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution or enforcement of this Agreement. This obligation applies to any

and all claims, damages, awards, and expenses, including but not limited to, attorney's fees and costs of litigation. Nothing in this Section 14G shall be construed to mean that Property Owner shall hold the City harmless and/or defend it from any claims arising from the sole negligent acts, sole negligent failure to act, or sole intentional acts on the part of the City. City may make all reasonable decisions with respect to its representation in any legal proceeding, including selection of its own legal defense counsel. In the event a legal action is filed against City, Property Owner shall submit a Ten Thousand Dollar ($10,000) deposit within ten (10) days of the filing of any action and shall thereafter replenish the funds in increments of Ten Thousand ($10,000) when requested by the City.

H. Waiver and Delays. Failure by either Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or failure by either Party to exercise its rights upon a default by the other Party, shall not constitute a waiver of any right to demand strict performance by such other Party in the future.

I. Third Party Actions. Nonperformance by either Party shall not be excused because of a failure of a third person, except as specifically provided herein.

J. Force Majeure. Neither Party shall be deemed to be in default for failure or delay in performance of any of its obligations under this Agreement if caused by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, government agencies and their regulations, or other causes beyond the reasonable control of the Party claiming the force majeure. If any such event shall occur, the term of this Agreement and the time for performance of any obligations hereunder shall be extended by the period of time that such events prevent either Party from proceeding with such performance.

16. Effect on Property.

A. Estoppel Certificate.

Any Party may, at any time and from time to time, deliver written notice to another Party requesting certification in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and is a binding obligation of the Parties; (ii) this Agreement has not been amended, or, if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or, if in default, describing the nature and extent of any such default. A Party receiving a request hereunder shall execute and return such certificate to the requesting Party within thirty (30) days following the receipt thereof. The City Manager of the City shall have the authority to execute any such certificate requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

B. Release of Lots from Agreement.

Promptly upon the written request of the Property Owner, the City shall execute a document, in a recordable form, releasing any lot for which a final subdivision map has been recorded and which has been sold or leased, from the effects of this Agreement, and deliver such document to the Property Owner.

17. Periodic Review of Compliance with Agreement.

A. Annual Review.

This Agreement shall be subject to annual review, pursuant to California Government Code Section 65865.1, and City Municipal Code Section 16.52.190 *et seq.* At each anniversary of this Agreement, within thirty (30) days following receipt of notice from the City of such annual review, the Property Owner shall submit to the Development Services Director of the City written documentation demonstrating good-faith compliance with the terms of this Agreement ("Annual Report"), to the extent that the Property Owner has taken or is required to take any action pursuant to this Agreement. Failure by the Property Owner to submit the Annual Report in a timely manner shall not itself constitute a breach of this Agreement, unless the City has first given the Property Owner additional notice thereof, and the Property Owner fails to submit the Annual Report within fifteen (15) days after receipt of such notice.

B. Contents of Report.

The Annual Report and any supporting documents shall describe (i) any permits or other approvals which have been issued or for which application has been made, (ii) any development or construction activity which has commenced or has been completed, and (iii) any other activity carried out by the Property Owner in satisfaction of the requirements of any development and this Agreement, since the date hereof or since the preceding annual review. The City shall review all the information contained in such report in determining the Property Owner's good faith compliance with this Agreement.

C. Waiver.

The City does not waive any claim of defect in performance by the Property Owner if, at the time of an annual review, the City does not propose immediately to exercise its remedies hereunder. However, in the event that the City, following receipt of the Annual Report for any year, fails to review the information contained therein and/or to determine the Property Owner's good faith compliance with this Agreement, the Property Owner shall be deemed to be in good faith compliance with regard to the period covered by that Annual Report.

18. Violations.

A. Violation by Property Owner.

i. The Property Owner shall be deemed in violation of the terms of this Agreement if a finding and determination is made by the City, upon the basis of substantial evidence that the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

ii. If the City believes the Property Owner to be in violation of this Agreement, the City shall give the Property Owner thirty (30) days written notice specifying the nature of the alleged violation and, when appropriate, the manner

in which the violation may be satisfactorily cured. Failure or delay in giving notice of a violation shall not constitute a waiver of such violation.

iii. The Property Owner may appeal the allegation of violation by filing a notice of appeal with the City Clerk, within the thirty (30) day cure period described in the preceding paragraph. The Property Owner's appeal shall be placed on the agenda of the next regularly scheduled meeting of the City Council, which shall be an open meeting but not a public hearing. If the City Council finds that a violation has occurred and is continuing, the Property Owner shall be given another sixty (60) days within which to cure such violation; provided that such time period shall be extended automatically so long as the Property Owner is engaged in making good faith efforts to cure the violation. At the next City Council meeting following expiration of the sixty (60) day period allowed for curing the violation, or any extension thereof, the City Council shall set forth by motion or resolution its determination as to (i) the continuation of the violation and (ii) any action to be taken, which action may include amendment or termination of this Agreement. Any action to terminate shall be in the form of a resolution and shall be supported by written findings.

iv. After proper notice and expiration of the cure period without appeal, cure or commencement of substantial effort toward a cure by the Property Owner, the City may take unilateral action to terminate or amend this Agreement.

B. Violation by City.

i. The City shall be deemed in violation of the terms of this Agreement upon failure of the City to carry out any of its material obligations hereunder.

ii. If the Property Owner believes the City to be in violation of this Agreement, the Property Owner promptly shall notify the City, through its Planning Official, to that effect, setting forth the grounds upon which a violation is claimed, facts in support of such grounds, and the means through which such violation may be cured. The City shall have thirty (30) days following the date of receipt of the notice within which to take action to deny the claim, cure the violation or undertake substantial action toward the cure.

iii. If the action of the City is unsatisfactory to the Property Owner, the Property Owner may make an appeal to the City Council, provided that, within ten (10) days following the date of receipt of the notice of denial of the claim, or within ten (10) days following the date of expiration of the cure period described in the preceding paragraph, whichever occurs first, the Property Owner files with the City Clerk a notice of appeal to the City Council. The City Council thereafter shall consider this matter on the agenda of its next regularly scheduled meeting, which shall be an open meeting but not a public hearing, at which the Property Owner may present information regarding the alleged violation. Based upon the information presented by the Property Owner, the City Council shall make a

determination as to whether the City is in violation of this Agreement, as alleged by the Property Owner.

19. Legal Enforcement.

Subject to the prior exhaustion of all administrative remedies set forth above (except to the extent that such acts would be futile), in addition to any other rights or remedies, either Party may institute legal action (i) to cure, correct or remedy any violation, (ii) to enforce any covenants or agreements herein, (iii) to enjoin any threatened or attempted violation hereof, (iv) to recover damages for any default or (v) to obtain any other remedies consistent with the purposes of this Agreement. In addition to any other remedies available herein, (vi) either Party may have liability under this Agreement for contractual damages, (vii) each Party shall be entitled to specific performance by the other Party of its obligations under this Agreement and (viii) each Party shall be subject to liability for violation of a statutory or constitutional right of the other Party which exists independent of this Agreement. Any such legal action shall be brought in the Superior Court of Imperial County, State of California, or in an appropriate federal court.

20. Relationship of Parties.

In performing its obligations hereunder, the Property Owner is acting as an independent contractor and not as an agent or employee of the City. Further, nothing in this Agreement shall be construed as creating between the Property Owner and the City a partnership or joint venture for any purpose.

21. Exhibits.

All exhibits referred to in, and attached to, this Agreement are incorporated herein by such reference.

22. Recording of Agreement.

Within ten (10) days following the adoption by the City of the ordinance approving this Agreement, or any subsequent amendment hereof, the City Clerk shall file a fully executed copy hereof with the County Recorder of Imperial County, State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement, to be effective as of the date set forth in the first paragraph hereof.

PROPERTY OWNER

_____
Raul Estrada

_____
Alice Estrada

CITY OF CALEXICO,
a municipal corporation

By: _____
Victor Carrillo, City Manager

APPROVED AS TO FORM.

_____
Jennifer M. Lyon, City Attorney

ATTEST:

_____
Lourdes Cordova, City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

Remainder Parcel of Parcel Map No. 059-010-20, filed on September 13, 2002, at Book 11, Page 87 of Parcel Maps, in the Office of the County Recorder of the County of Imperial, State of California.

EXHIBIT "B"
Applicable City Codes/Policies

Exhibit D

PLANNING COMMISSION STAFF REPORT

SUBJECT: **RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALEXICO RECOMMENDING THAT THE CITY COUNCIL CONSIDER AND ADOPT AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND RAUL AND ALICE ESTRADA FOR REAL PROPERTY WITHIN THE CITY OF CALEXICO.**

DATE: June 28, 2010

TO: Chairperson and Members of the Planning Commission

FROM: Armando G. Villa, Assistant City Manager/Development Services Director

PREPARED BY: Mark Vasquez, Associate Planner

REQUESTS: Approval of the attached resolution to recommend that the City Council approve a development agreement.

ENVIRONMENTAL SETTING:

The City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007. The uses contemplated in the proposed Development Agreement (Agreement) are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to this Agreement or the Property, or were not analyzed in the FEIR. Pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for this Agreement. In addition, the Agreement is exempt from environmental review pursuant CEQA Guidelines section 15305 as a minor alteration in land use limitations with an average slope of less than 20% which does not result in any changes in land use or density because it secure the rights of the Property Owner to develop property in compliance with the existing general plan and zoning designation for 15 years. Specific development of the property is subject to subsequent environmental review as provided in the Agreement.

LOCATION

The subject property consists of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002. The subject property is bounded by the Central Main Canal to the north, truck storage to the west, Robinson Avenue to the south, and State Route 111 to the east.

BACKGROUND

The Property Owner is the owner of the subject property (the "Property"), which currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as "C-H" (Commercial Highway) and "I" (Industrial) in the City's Zoning Code.

The proposed development agreement would secure the rights of the Property Owner to develop the Property in compliance with the existing general plan and zoning designation for 15 years. The development agreement further secures certain rights of the Property Owner to utilize capacity in the City's existing wastewater facilities to allow development and use of the Property within these land use and zoning and designations. The development agreement does not contemplate a specific or proposed type of development since it merely secures the existing land use and zoning designations. Further, the development agreement specifies that if processing, impact fees and any other fees, assessments, or taxes that are applicable on a city-wide basis are changed in the next fifteen years, the Property Owner will be required to pay the amount of the fee, assessment or tax that is in effect at the type that development of the Property actually occurs. If changes to the City codes or policies are due to state or federal law requirements, then such changed laws will also apply to the development of the Property.

The proposed development agreement will facilitate development of the Property in a manner which the City and the Property Owner intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents.

DISCUSSION

The City is authorized to enter into development agreements with private property owners to secure various rights with the respect to development of land pursuant to California Government Code sections 65864 *et. seq* and Calexico Municipal Code Chapter 16.52.

Under the Calexico Municipal Code, a proposed development agreement must be considered by the Planning Commission at a noticed public hearing. After the hearing, the Planning Commission shall forward its written recommendation and the development agreement to the City Council. The recommendation shall include the Planning Commission's determination of whether or not the proposed development agreement:

1. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;

2. Is compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located;

3. Is in conformity with public convenience, general welfare and good land use practice;

4. Will be detrimental to the health, safety and general welfare;

5. Will adversely affect the orderly development of property or the preservation of property valued.

The proposed development agreement secures that the existing general plan and zoning designations of the City of Calexico are compliant with items 1-5 as outlined above. Development in accordance with the city's general plan and zoning code, respectively are considered compatible with existing adjacent land uses. As such, the land uses are compatible with and beneficial to the general welfare, health, and safety of the residents of the City. This development will not adversely affect the orderly development of the Property because it vests the Property Owner with rights to allow certainty for the future development of the Property which adds value to the Property.

STAFF'S RECOMMENDATION: As set forth above and in the draft resolution, staff believes that the proposed findings can be made for this development agreement and recommends that the Planning Commission hold the public hearing, receive input and approve the attached Resolution.

APPROVED BY: For Armando G Villa
ARMANDO G. VILLA, ASSISTANT CITY MANAGER

ATTACHMENTS
Exhibit A- Resolution
Exhibit B- Map of the Property
Exhibit C- Draft Development Agreement

Exhibit A

RESOLUTION NO. 2010-

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALEXICO RECOMMENDING THAT THE CITY COUNCIL CONSIDER AND ADOPT AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND RAUL AND ALICE ESTRADA FOR REAL PROPERTY WITHIN THE CITY OF CALEXICO.

WHEREAS, the Property Owner (Raul and Alice Estrada) is the owner of certain real property (the "Property"), consisting of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002; and

WHEREAS, the Property currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as "C-H" (Commercial Highway) and "I" (Industrial) in the City Zoning Code; and

WHEREAS, the City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007; and

WHEREAS, the City agreed to consider a development agreement for the Property to secure the Property Owner's rights to develop the Property in accordance with the existing land use and zoning designations and to secure certain rights of capacity in the City's existing wastewater infrastructure provided that the Property Owner provide the necessary wastewater infrastructure to transport the wastewater to the City's facilities; and

WHEREAS, the development agreement will facilitate development of the Property in a manner which the Parties intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents. Consequently, entering into the development agreement is acknowledged to be to the mutual benefit of the parties; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 *et seq.* of the California Government Code, which authorize the City to enter into a development agreement with any person or entity having a legal or equitable interest in real property, providing for the development of such property and establishing certain rights and obligations related to such development; and

WHEREAS, to implement the above-described state laws, the City adopted Chapter 16.52 of the Calexico Municipal Code, establishing procedures and requirements for considering, approving and implementing development agreements; and

WHEREAS, the Property Owner has a legal interest in the real property situated in the City which is the subject of the development agreement, and therefore satisfies the statutory requirements to enter into the agreement; and

WHEREAS, the application for this development agreement has been reviewed by the Director of Development Services and has been deemed complete; and

WHEREAS, the Planning Commission, on June 28, 2010, conducted a duly noticed hearing to consider the proposed development agreement as required by Municipal Code Sections 16.52.060 *et seq.*.

NOW THEREFORE, the Planning Commission of the City of Calexico DOES HEREBY RESOLVE as follows:

1. That the above-listed findings are true and correct.

2. The Planning Commission has exercised its independent review of the FEIR for the City's General Plan Update and finds that the uses contemplated in the development agreement are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to the development agreement or the Property, or were not analyzed in the FEIR. Therefore, pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, the Planning Commission hereby finds that no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for the development agreement.

3. The Planning Commission further finds that the uses contemplated in the development agreement are consistent with the uses authorized in the General Plan Update and that the development agreement secures the rights of the Property Owner to develop the Property in compliance with the existing general plan and zoning designation for 15 years. Therefore, pursuant to CEQA Guidelines section 15305, the Planning Commission hereby finds that the development agreement also is exempt from environmental review as a minor alteration in land use limitations with an average slope of less than 20% which does not result in any changes in land use or density.

4. The Planning Commission finds and determines that the proposed development agreement:

   (a.) Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan

because the proposed development agreement secures the existing general plan and zoning designation;

(b.) Is compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located because it is intended to promote and retain the highest level of well planned development;

(c.) Is in conformity with public convenience, general welfare and good land use practice which ensures that the integrity of the city's Land Use Element are maintained;

(d.) Will not be detrimental to the health, safety and general welfare because development in accordance with the adjacent land uses and zoning which will guide the growth of Calexico in an efficient, coordinated manner in order to provide for high quality and balanced growth. As such, the land uses are compatible and beneficial to the general welfare of the residents of the City. Further, because development consistent with the existing land use and designation is consistent with the General Plan which is the City's guide for orderly development, any proposed development would not be detrimental to the health, safety and general welfare of the citizens;

e.) Will not adversely affect the orderly development of property or the preservation of property valued because the because it vests the Property Owner with rights to allow certainty for the future development of the Property which adds value to the Property.

5. That the Planning Commission hereby recommends that the City Council consider and approve a development agreement between the City of Calexico and Raul and Alice Estrada.

_____
Carlton Hargrave, Chairperson
Calexico Planning Commission

I hereby certify that the preceding resolution was taken by the Planning Commission at a meeting conducted on June 28, 2010 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

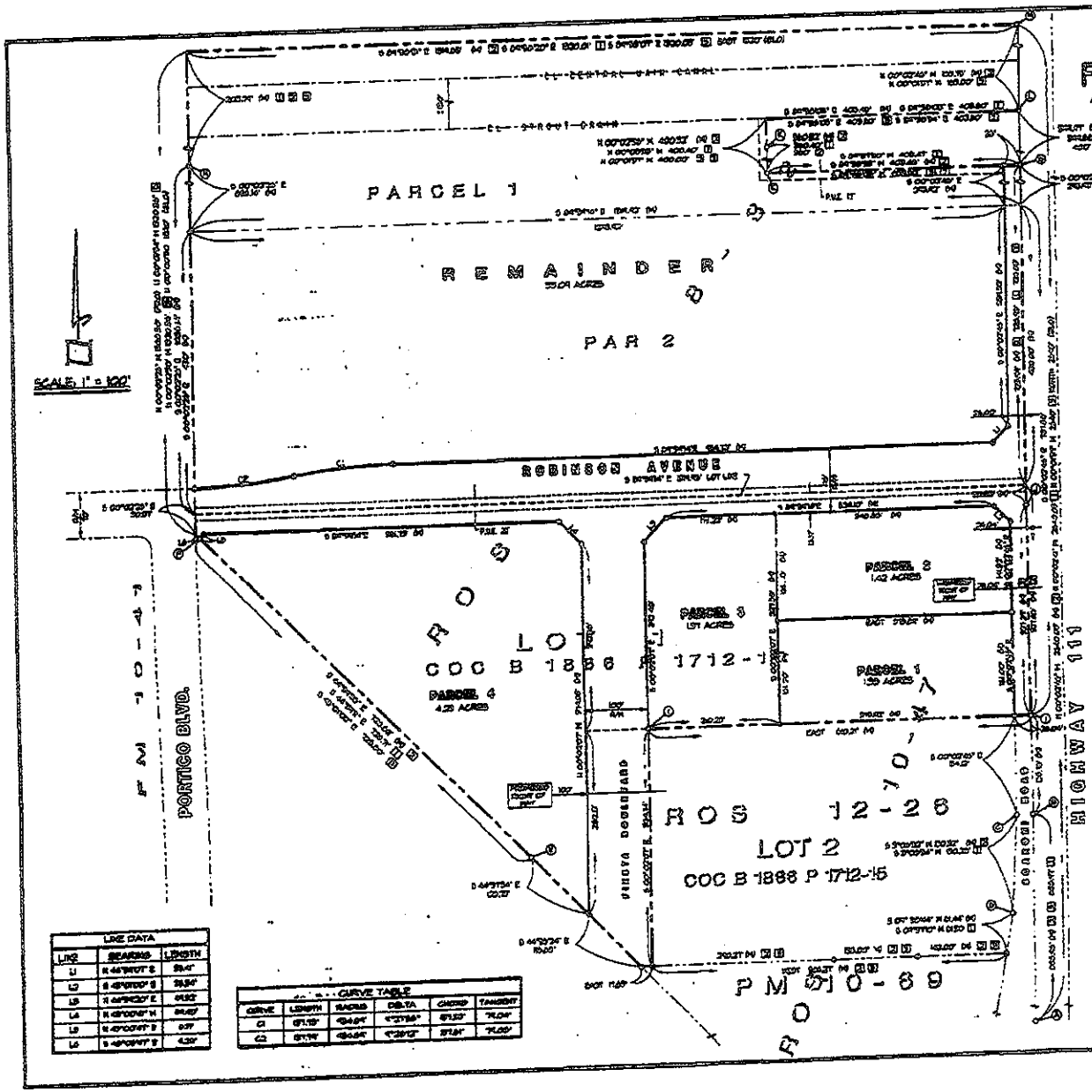
_____

Armando G. Villa
Secretary - Director

PM 11-86

PARCEL MAP NO. 058-010-20

A PORTION OF THE SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M.,
CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA.



LEGEND:

- PROPERTY BOUNDARY.
- LOT LINE.
- (GLO) GENERAL LAND OFFICE PLAT DATED NOV. 19, 1909.
- (PRO) PRORATED DATA.
- SET 1-1/2" IRON PIPE TAGGED R.C.E. 20,847
- FOUND MONUMENT AS NOTED.
- FOUND 1-1/2" I.P. TAG'D R.C.E. 20,847 PER PM-10-89.
- (M) MEASURED DATA.
- RECORD DATA PER RECORD OF SURVEY BOOK 10, PAGE 41.
- RECORD DATA PER RECORD OF SURVEY BOOK 12, PAGE 29.
- RECORD DATA PER RECORD OF SURVEY BOOK 9, PAGE 52.
- RECORD DATA PER DOCUMENT NO. 00-14077 RECORDED OCT. 13, 1994 DK. 1994, PG 26 O.R.
- RECORD DATA PER PARCEL MAP BOOK 10, PAGE 89.
- DATA PER CALIFORNIA DIVISION OF HIGHWAYS MAP SURV. 10-8-94-18 ON FILE AT IMP. CO. SURV. R/W 170-7A
- RECORD DATA PER DOCUMENT NO. 86-10770 RECORDED AUG. 1, 1986, BK. 1001, PG. 1302, O.R.
- RECORD DATA PER FINAL MAP BOOK 18, PAGE 41.
- (A) FD. CALIFORNIA DEPARTMENT OF TRANSPORTATION BRASS CAP, FOR SE CORNER OF SECTION 2.
- (B) FD. 1-1/2" I.P. TAG'D PLS 20847 3" DIA. AT AC PAVEMENT PER ROS 10-41.
- (C) FD. 1-1/2" I.P. TAG'D PLS 20847 FLUSH, PER ROS 10-41.
- (D) FD. 1-1/2" I.P. NTH CA. DIV. OF TRANSP. BRASS TAG, PER CADT MOR. MAP 10-III-PM 250-233 (U/M 170-7A) 1994 SURVEY, ROS 8-52 AND ROS 10-41.
- (E) FD. 1-1/2" TAG'D R.C.E. 23,251, FLUSH PER R2 COR. LOT 1 PER FINAL MAP 13-41, ROS 10-41 AND PM 8-10.
- (F) FD. 1-1/2" I.P. TAG'D R.C.E. 23,251, 3" DIA. PER CP 10.21' SOUTHERLY OF THE N4 COR. ON-THE S2 1/4 OF T17S R14E 1/4 OF SECTION 2 PER PM 13-41.
- (G) FD. PK NAIL AND 1-1/2" BRASS WASHER STAMPED R.C.E. 31931 PER ROS 8-52, FLUSH IN PAVEMENT.
- (H) FD. 1-1/2" I.P. TAG NOT READABLE, 5" DIA. PER CP 250.17' SOUTH OF D-1/4 C-4-CEV. 2.
- (I) FD. 1-1/2" I.P. TAGGED R.C.E. 20,847 PER ROS 12-26.
- (J) FD 1-1/2" I.P. TAGGED LS 5577, 5 DIA. PER 1/4 COR. S2 / S1 PER ROS 10-41.
- (K) FD 1-1/2" I.P. TAGGED R.C.E. 31931, ADJ'G GROUND PER ROS 8-52.
- (L) FD. PK NAIL AND 1-1/2" BRASS WASHER STAMPED R.C.E. 31931 PER ROS 8-52, FLUSH IN PAVEMENT.
- (M) FD. 2" BRASS DISK STAMPED LS 5577, FLUSH IN PAVEMENT PER 1/4 COR. S2 / S1 PER ROS10-41.

LINE DATA

LINE	BEARING	LENGTH
L1	N 44°18'07" E	29.41'
L2	S 45°01'00" E	29.24'
L3	N 44°18'00" E	49.92'
L4	N 45°00'00" W	84.87'
L5	N 45°00'41" E	0.37'
L6	S 45°00'47" E	4.20'

CURVE TABLE

CURVE	LENGTH	RADIUS	DELTA	CHORD	TANGENT
C1	67.15'	43.00'	90°21'56"	60.43'	42.94'
C2	67.15'	43.00'	90°21'56"	60.43'	42.94'

SHEET 2 OF 2

BJS

1 5 5 9 2

CLICO

PM 11-87

59-01

CITY OF CALEXICO

2 of 2

Exhibit B

PM 11-87

PARCEL MAP NO. 059-010-20

A PORTION OF THE SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M.,
CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA.

ENGINEER'S STATEMENT:

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF RAUL ESTRADA, ON OCTOBER 4, 2000. I HEREBY STATE THAT THIS PARCEL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED OR CONDITIONALLY APPROVED TENTATIVE MAP, IF ANY.

2-30-02
DATE

TERRY L. BARRETT R.C.E. 28,047
EXP. DATE: 09/30/2003

CITY ENGINEER'S STATEMENT:

I, TONY E. MORA, ACTING CITY ENGINEER OF THE CITY OF CALEXICO, HEREBY STATE, THAT I HAVE EXAMINED THIS MAP CONSISTING OF 2 SHEETS, THAT THE SUBDIVISION SHOWN HEREWITH IS SUBSTANTIALLY AS IT APPEARED ON THE TENTATIVE MAP AS APPROVED ON NOVEMBER 20, 2001 THAT ALL OF THE PROVISIONS OF LOCAL ORDINANCES APPLICABLE WERE THE TENTATIVE MAP HAS APPROVED AND ALL OF REQUIREMENTS OF CHAPTER 2, ARTICLE 2 OF THE SUBDIVISION MAP ACT, AS AMENDED JANUARY 22, 2001, HAVE BEEN COMPLIED WITH THAT THE REQUIRED PUBLIC IMPROVEMENTS HERE CONSTRUCTED, OR HAVE BEEN AGREED TO BE CONSTRUCTED, AND THAT I AM SATISFIED THAT THIS MAP IS TECHNICALLY CORRECT AND HEREBY RECOMMEND THAT THIS MAP BE ACCEPTED BY THE CITY COUNCIL.

7/31/02
DATE

CITY ENGINEER
TONY MORA R.C.E. 22001
EXPIRATION DATE: 12/31/2003

OWNER'S STATEMENT:

WE HEREBY CERTIFY THAT WE ARE THE ONLY PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND SUBDIVIDED AS SHOWN ON THIS MAP, AND WE CONSENT TO THE PREPARATION AND RECORDATION OF THIS PARCEL MAP, THAT WE HEREBY OFFER FOR DEDICATION TO PUBLIC USE ANY STREETS, HIGHWAYS AND OTHER PUBLIC WAYS AND EASEMENTS SHOWN UPON SAID MAP AND BEING WITHIN SAID SUBDIVISION.

RAUL ESTRADA ALICE ESTRADA

SURVEYOR'S MONUMENTATION STATEMENT:

I, TERRY L. BARRETT, HEREBY STATE THAT ALL MONUMENTS SHOWN ON THIS MAP ARE OF THE CHARACTER INDICATED AND OCCUPY THE POSITIONS INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

TERRY L. BARRETT R.C.E. 28,047
EXP. DATE: 09/30/2003

LEGAL DESCRIPTION:

THE LAND REFERRED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF IMPERIAL, AND IS DESCRIBED AS FOLLOWS:

PARCEL A:

THAT PORTION OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

STARTING AT THE CENTER OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE RECORD OF SURVEY RECORDED IN BOOK 8, PAGE 30; THENCE NORTH 0°01'34" WEST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, 50.91 FEET TO THE TRUE POINT OF BEGINNING; THENCE SOUTH 84°59'05" EAST, 1320.06 FEET TO THE EAST LINE OF SECTION 2; THENCE NORTH 0°01'37" WEST ALONG THE EAST LINE OF SECTION 2, 480.00 FEET TO A POINT; THENCE NORTH 84°59'05" WEST 1320.04 FEET TO THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2; THENCE SOUTH 0°01'34" EAST ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 2, 480.00 FEET TO THE TRUE POINT OF BEGINNING.

SAID PROPERTY IS ALSO SHOWN AS PARCEL 2 ON CERTIFICATE OF COMPLIANCE RECORDED AUGUST 1, 1996 AS FILE NO. 06-12710, IN BOOK 1971, PAGE 1652 OF OFFICIAL RECORDS.

PARCEL B:

THAT PORTION OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., IN THE CITY OF CALEXICO, COUNTY OF IMPERIAL, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER LINE OF THE SOUTHEAST QUARTER OF SECTION 2, TOWNSHIP 17 SOUTH, RANGE 14 EAST, S.B.M., COUNTY OF IMPERIAL, STATE OF CALIFORNIA, SAID POINT OF BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 44°59'11" EAST, A DISTANCE OF 138.42 FEET TO A POINT; THENCE SOUTH 44°57'49" EAST, A DISTANCE OF 248.37 FEET TO A POINT; THENCE NORTH 40°00'00" EAST, A DISTANCE OF 11.80 FEET; THENCE NORTH 00°01'49" WEST, A DISTANCE OF 384.74 FEET TO A POINT; THENCE NORTH 40°00'00" EAST, A DISTANCE OF 910.19 FEET TO A POINT ON THE EAST LINE OF SECTION 2; THENCE NORTH 00°02'46" WEST ALONG SAID EAST LINE OF SECTION 2, A DISTANCE OF 89.46 FEET TO A POINT; THENCE NORTH 84°59'16" WEST, A DISTANCE OF 1319.36 FEET; THENCE SOUTH 00°01'37" EAST, A DISTANCE OF 90.37 FEET TO THE TRUE POINT OF BEGINNING.

SAID PROPERTY IS ALSO SHOWN AS PARCEL 1 ON CERTIFICATE OF COMPLIANCE RECORDED NOVEMBER 1, 1990 AS FILE NO. 90-028407, IN BOOK 1900, PAGE 1712 OF OFFICIAL RECORDS.

BASIS OF BEARINGS:

THE BEARING OF S 00°02'46" E, WHICH IS THE BEARING OF THE EAST LINE OF SECTION 2 SHOWN IN RECORD OF SURVEY RECORDED IN BOOK 12, PAGE 25, IN THE COUNTY RECORDERS OFFICE OF IMPERIAL COUNTY.

TITLE COMPANY:

I HEREBY CERTIFY THAT THE PERSONS SPECIFIED IN THE CERTIFICATES HEREON ARE THE OWNERS, AND THE ONLY OWNERS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE.

FIRST AMERICAN TITLE INSURANCE COMPANY
KIM CARSON
TITLE OFFICER

SIGNATURE OMISSION STATEMENT:

THE SIGNATURES OF THE FOLLOWING PARTIES HAVE BEEN OMITTED PURSUANT TO SECTION 66436 (B) OF THE SUBDIVISION MAP ACT IN THAT THEIR INTERESTS CAN NOT RIPEN INTO A FEE:

1 UNITED STATES OF AMERICA
AN EASEMENT RECORDED IN BOOK 1, PAGE 52 OF PATENTS.

SUPPORTING DOCUMENTS:

THE FOLLOWING DOCUMENTS WERE RECORDED AS OFFICIAL RECORDS OF THE COUNTY OF IMPERIAL IN SUPPORT OF THIS PARCEL MAP.

TITLE: Owner's Certificate	BOOK: 2446	AT PAGE: 1655	
TITLE: Trustee Certificate	BOOK: 2446	AT PAGE: 1657	
TITLE: Subdivision Guarantee	BOOK: 2446	AT PAGE: 1666	
TITLE: Resolution	BOOK: 2446	AT PAGE: 1664	
TITLE: Agreement	BOOK: 2446	AT PAGE: 1663	
TITLE:	BOOK:	AT PAGE:	
TITLE:	BOOK:	AT PAGE:	
TITLE:	BOOK:	AT PAGE:	

COUNTY RECORDER'S STATEMENT:

FILED THIS 13th DAY OF Sept, 2002 AT 10:11 A.M. IN BOOK 11 OF PARCEL MAPS AT PAGE 87. AT THE REQUEST OF RAUL ESTRADA AND ALICE ESTRADA.

FEE: $9.00

DOCUMENT: 02-23455

DOLORES PROVENCIO, COUNTY RECORDER

CITY CLERK'S CERTIFICATE:

I HEREBY CERTIFY THAT THE CITY COUNCIL OF THE CITY OF CALEXICO, BY RESOLUTION NO. 02-46 ADOPTED August 6, 2002, 2002, WAS APPROVED THIS MAP AND ACCEPTED ON BEHALF OF THE PUBLIC ALL PARCELS OF LAND OFFERED FOR DEDICATION AS SHOWN HEREWITH.

8-7-02
DATE

CLERK OF THE CITY COUNCIL

15501

SHEET 1 OF 2

PM 11-87

CITY OF CALEXICO

1 of 2

Exhibit C

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Calexico
Attn: City Manager
608 Heber Avenue
Calexico, California 92231

(SPACE ABOVE FOR RECORDER'S USE ONLY)

DEVELOPMENT AGREEMENT

By and between the

CITY OF CALEXICO

and

RAUL and ALICE ESTRADA

_____, 2010

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered into this ___ day of _____, 2010, by and between (i) the CITY OF CALEXICO, a municipal corporation organized and existing under the laws of the State of California (the "City"), and (ii) RAUL and ALICE ESTRADA, husband and wife (collectively, the "Property Owner"), pursuant to the authority of Sections 65864 through 65869.5 of the California Government Code. The City and the Property Owner may be referred to herein individually as a "Party" and collectively as the "Parties."

RECITALS

A. The Property Owner is the owner of certain real property (the "Property"), consisting of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002, a true and correct copy of which is attached hereto as Exhibit "A."

B. The Property currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as C-H (Commercial Highway) & I (Industrial) in the City Zoning Code.

C. As a component of obligations incurred by the City pursuant to that certain *Settlement Agreement and Mutual Release of Claims*, dated January 19, 2010, among the City, the Property Owner, *et al.* (the "Settlement Agreement"), the City agreed (i) to present a development agreement between the parties before the City's Planning Commission and City Council for consideration, and if it was approved (ii) to thereafter consider amending the General Plan designation and zoning designation of part or all of the Property, upon request by the Property Owner.

D. The Settlement Agreement further secured certain rights of the Property Owner to utilize capacity in the City's wastewater facilities to allow development and use of the Property, subject to certain obligations on the part of the Property Owner.

E. This Agreement will facilitate development of the Property in a manner which the Parties intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents. Consequently, entering into this Agreement is acknowledged to be to the mutual benefit of the Parties.

F. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 *et seq.* of the California Government Code, which authorize the City to enter into a development agreement with any person or entity having a legal or equitable interest in real property, providing for the development

of such property and establishing certain rights and obligations related to such development.

G. To implement the above-described state laws, the City adopted Chapter 16.52 of the Calexico Municipal Code, establishing procedures and requirements for considering, approving and implementing development agreements.

H. The Property Owner has a legal interest in the real property situated in the City which is the subject of this Agreement, and therefore satisfies the statutory requirements to enter into this Agreement.

I. The City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007. The uses contemplated in this Agreement are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to this Agreement or the Property, or were not analyzed in the FEIR. Pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for this Agreement.

J. The Planning Commission, on June 28, 2010, conducted a hearing and adopted findings relating to this Agreement, as required by Municipal Code Sections 16.52.060 *et seq.*, and recommended that the City Council approve this Agreement.

K. The City Council, on _____, 2010, made all findings and determinations relating to this Agreement which are required by Municipal Code Sections 16.52.111 *et seq.*, and approved this Agreement by its adoption of Ordinance No. _____. In doing so, the City Council determined that this Agreement is consistent with all applicable plans, ordinance and regulations of the City.

L. The City Council finds that execution of this Agreement and the performance of and compliance with the terms and conditions set forth herein by the Parties: (i) is in the best interests of the City; (ii) will promote the public convenience, general welfare and good land use practices in the City; (iii) will promote preservation and enhancement of land values in the City; (iv) will encourage the development of the Project by providing a reasonable level of certainty to the Property Owner; and (v) will provide for orderly growth and development in a manner consistent with the General Plan and other plans and regulations of the City.

NOW, THEREFORE, in consideration of the above Recitals, all of which are expressly incorporated into this Agreement, and the mutual promises and obligations of the Parties set forth herein, the Parties agree as follows:

1. **Use of Property.**

A. Existing Land Use Designation.

The Property is currently designated as CH-Highway Commercial in the 2007 General Plan and C-H (Commercial Highway) & I (Industrial) in the City Zoning Code. As of the Effective Date, Property Owner shall be entitled to develop and use the Property consistent with the rules, regulations, laws, ordinances and adopted City policies governing the development and use of property within the Commercial Highway land use category and C-H (Commercial Highway) & I (Industrial)zone (collectively, the "Applicable Rules"); provided, however, that the Applicable Rules do not include the City's Building, Fire, Electrical, Plumbing, and Mechanical Codes and other similar ordinances, codes, rules and regulations mandated by state law that establish construction standards that are intended to be applied ministerially to the construction of building improvements on all private property in the City.

B. Wastewater Facilities.

In acknowledgement of Property Owner having previously provided without cost to the City right-of-way across its property for the installation of a wastewater transmission line serving other developments to the east of the Property, and in accordance with section 4.2 of the Settlement Agreement, Property Owner shall have the right to utilize sufficient capacity in the City's existing wastewater transmission and treatment facilities to allow development and use of the Property in a manner consistent with the Applicable Rules as provided for in this Agreement.

C. Property Owner Obligations for Additional Wastewater Facilities.

Notwithstanding Section 1B, above, in accordance with section 4.2 of the Settlement Agreement, Property Owner shall install, at Property Owner's sole expense, any infrastructure or pipes required to connect and transport wastewater from the Property to the City's wastewater treatment facilities and pay any impact fees applicable in connection therewith.

D. Development Standards.

Except as otherwise specifically provided in this Agreement, development and use of the Property shall be governed by the Applicable Rules and any future environmental review that is necessary; provided, however, that the City reserves certain authority under its police power to take actions necessary to protect the public health and safety, which actions are generally applicable on a Citywide basis and are actually effective upon general categories or areas of properties, do not disproportionately burden the Property relative to other similarly situated properties, and cannot be legally relinquished or restricted by this Agreement, and this Agreement shall be subject thereto.

E. Permitted Uses.

The permitted uses, the density and intensity of uses, the maximum heights, locations and total area of the proposed buildings, the development schedule, the provisions for vehicular access and parking, any reservation or dedication of land, any public improvements, facilities and services, and all environmental impact mitigation measures imposed as approval conditions for the Property, shall be exclusively those provided in the 2007 General Plan applicable to the Commercial Highway land use designation, applicable chapters of the City's Municipal Code, and all associated applications required for full development of the Property, including but not limited to, any environmental document prepared for subsequent development of the Property, and those applicable ordinances in effect as of the "Effective Date" as defined below in Section 3A of this Agreement. For ease of reference as to some but not all of the sections of the City's Municipal Code applicable as of the Effective Date, are attached hereto as Exhibit "B."

2. Vesting of Rights.

Upon the Effective Date of this Agreement, the City hereby grants to Property Owner a vested right to develop and construct on the Property improvements as authorized by, and in accordance with, the terms of this Agreement, the Applicable Rules and any subsequent required discretionary review, including environmental review.

A. Future Amendments; Moratoria.

No future amendments to the Applicable Rules shall apply to the Property, except such future modifications that are not in conflict with and do not prevent development of the Property in accordance herewith; provided, however, that no City-imposed moratorium or other limitation approved, issued or granted within the City shall prevent or restrict the development or use of the Property in the manner and to the extent permitted by the Applicable Rules and this Agreement, whether directed to building construction, sewer or water services, traffic impacts, or otherwise.

B. Revised Fees.

Any existing application, processing, administrative, legal, development impact and inspection fees that are revised during the term of this Agreement shall apply to the Project provided that (l) such fees have general applicability; (2) the application of such fees to the Property is prospective; and (3) the application of such fees would not prevent development and use of the Property in accordance with the Applicable Rules and this Agreement.

C. New Taxes.

Any subsequently enacted Citywide taxes shall apply to the Property provided that: (1) the application of such taxes to the Property is prospective; (2) the application of such taxes would not prevent development in accordance with the Applicable Rules and this Agreement.

D. Assessments.

Nothing herein shall be construed to relieve the Property from its fair share of common benefit assessments levied against both the Property and similarly situated properties by the City pursuant to, and in accordance with, any statutory procedure for the assessment of property to pay for infrastructure and/or services which benefit the Property and similarly situated properties.

E. Subsequent Revision of Applicable Rules.

Notwithstanding anything in this Agreement to the contrary, if after the Effective Date the City, by official formal action amends or otherwise revises the Applicable Rules, Property Owner shall have the right to elect, in its sole and absolute discretion, to waive its rights hereunder and develop and use the Property in accordance with those land uses permitted by such amended or revised rules.

F. Federal and State Laws.

To the extent required by Government Code Section 65869.5, this Agreement shall not preclude the application to the Property of changes in City rules, regulations or official policies, the terms of which are specifically mandated and required (as opposed to permitted) by federal or state laws. In the event such federal or state laws prevent or preclude compliance with one or more provisions of this Agreement, Property Owner may elect (i) to have the remaining provisions of this Agreement remain in full force and effect and continue to be binding on the Parties, or (ii) to terminate this Agreement. Where any state or federal law allows the City to exercise any discretion or to take any action with respect to that law, the City shall, in an expeditious and timely manner, at the earliest possible time, (i) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement, and (ii) take such other actions as may be necessary to carry out in good faith the terms of this Agreement.

3. **Term of Agreement and Timing of Development.**

A. Effective Date.

The term of this Agreement shall commence on the effective date of the ordinance approving this Agreement ("Effective Date"), shall extend for a period of fifteen (15) years thereafter ("Expiration Date"), and unless extended by mutual consent of the parties, shall expire on the fifteenth (15th) anniversary of the Effective Date. In the event that litigation to which the City is a party against the Property Owner or any of its officers, agents, employees, contractors, representatives or consultants should delay implementation or construction of development in accordance with this Agreement on the Property, the expiration date of this Agreement shall be extended for a period equal to the length of time from the time the summons and complaint is served on the defendant(s) until the judgment entered by the court is final and not subject to appeal; provided, however, that the total amount of time for which the expiration date shall be extended as a result of such litigation shall not exceed five (5) years.

B. Timing of Development.

The parties acknowledge that Property Owner cannot at this time predict when or at what rate the Property would be developed. Such decisions depend upon numerous factors which are not at all within the control of Property Owner, such as market orientation and demand, interest rates and competition. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development permitted a later adopted initiative restricting the timing of development and controlling the Parties' agreement, it is the intent of Property Owner and the City to hereby acknowledge and provide for the right of Property Owner to develop the Project in such order and at such rate and times as Property Owner deems appropriate within the exercise of its sole and subjective business judgment. The City acknowledges that such a right is consistent with the intent, purpose and understanding of the Parties to this Agreement.

C. Termination Upon Completion.

If not already terminated by reason of any other provision hereof, this Agreement shall automatically terminate upon the first development of the entire Property in a manner consistent with either the current General Plan land use designation or development in accordance with any subsequent General Plan Amendment applicable to the Property.

4. Cooperation Between Parties in Implementation of This Agreement.

The Property Owner and City shall proceed in a reasonable and timely manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Property in accordance with the terms of this Agreement. Property Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and to cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents.

5. Obligations of City and Property Owner.

A. Subdivision Map/Permits for Development of the Property.

1. The City shall review and use all reasonable efforts to expeditiously process any tentative subdivision map which may be submitted for development of the Property and to achieve a final map.

2. The City shall issue building permits and certificates of occupancy only after the City has reviewed and approved Property Owner's applications.

6. **Interests of Other Property Owners.**

Property Owner has no knowledge of any reason why Property Owner, and any other persons holding legal or equitable interests in the Property as of the date on which title to the Property vests of record in Property Owner, will not be bound by this Agreement.

7. **No Property Interest.**

Nothing herein shall be construed as a dedication or transfer of any right or interest in, or as creating a lien with respect to, title to the Property.

8. **Assignment**

A. Right to Assign.

Property Owner may at any time or from time to time transfer its right, title or interest in or to all or any portion of the Property. In accordance with Government Code Section 65868.5, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties. As a condition precedent to any such transfer, Property Owner shall require the transferee to acknowledge in writing that transferee has been informed, understands and agrees that the burdens and benefits under this Agreement relating to such transferred property shall be binding upon and inure to the benefit of the transferee, provided that upon the effectiveness of the Release provided in Section 8D, below, Property Owner shall no longer be required to obtain the transferee's written acknowledgement.

B. Notice of Assignment or Transfer.

Prior to completion of development of the Property, no transfer, sale or assignment of Property Owner's rights, interests and obligations hereunder shall occur without the prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld or delayed. The City Manager shall consider and approve the matter within ten (10) days after Property Owner's notice, provided all necessary documents, certifications and other information are provided to the City Manager. Approval shall be deemed given with ten (10) days after Property Owner's notice to City unless the City Manager gives Property Owner express notice of disapproval and the basis for disapproval. It is further provided that notwithstanding any provision of this Section 8, after the completion of development of the Property and the satisfaction of all Property Owner's obligations under this Agreement, City Manager approval shall not be required for transfers to any buyer of the entire Property.

C. Exception for Notice.

Notwithstanding Section 8B, Property Owner may at any time, upon notice to City but without the necessity of any approval by the City, transfer the Property or any part thereof and all or any part of Property Owner's rights, interests and obligations hereunder to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is

under common control with Property Owner (ii) any member or partner of Property Owner or any subsidiary, parent or affiliate of any such member or partner, or (iii) any successor or successors to Property Owner by merger, consolidation, non-bankruptcy reorganization or government action. As used in this paragraph, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the Property Ownership of voting securities, partnership interest, contracts (other than those that transfer Property Owner's interest in the property to a third party not specifically identified in this Section 8C or otherwise.

D. Release Upon Transfer.

Upon the earlier to occur of: (1) any transfer, sale, or assignment of all of Property Owner's rights, interests in the Project approved by the City Manager if such approval is required under Section 8B, above; or (2) any transfer after completion of construction, Property Owner shall be released from the obligations under this Agreement; provided, however, that upon any transfer to a transferee, purchaser or assignee not made in violation of this Agreement and where such transferee, purchaser, or assignee expressly assumes any right, interest or obligation of Property Owner under this Agreement, Property Owner shall be released with respect to such rights, interests and assumed obligations. In any event, the transferee, purchaser or assignee shall be subject to all the provisions of this Agreement and shall provide all necessary notice to City and shall obtain approval where the City Manager approval is required, and for so long as notice or approval is required.

E. Property Owner's Right to Retain Specified Rights or Obligations.

Notwithstanding Sections 8A and 8C, above, Property Owner may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which Property Owner shall retain, provided that Property Owner gives written notice of such retained rights, interests and/or obligations in a written notice to the City Manager, prior to or concurrently with the sale, transfer or assignment of the Property. Property Owner's purchaser, transferee or assignee shall then have no interest or obligations for such retained rights, interests and obligations and this Agreement shall remain applicable to Property Owner with respect to such retained rights, interests and/or obligations.

F. Notice to City.

Property Owner shall within ten (10) days of the date escrow closes on any such transfer, notify the City in writing of the name and address of the transferee. Said notice shall include a statement as to the obligations, including any unfulfilled mitigation measures, fees, improvements or other conditions of approval, assumed by the transferee. Any transfer that does not comply with the notice requirements of Section 8B, above, shall not release the Property Owner from its obligations to the City under this Agreement until such time as the City is provided notice in accordance with Section 8B.

9. **Mortgagee's Protections.**

The Parties agree that this Agreement shall not prevent or limit Property Owner, in any manner, at Property Owner's sole discretion, from encumbering the Property or any portion thereof or any improvements thereon by any mortgage, deed of trust or other security device. The City acknowledges that the lender(s) providing such financing may require certain Agreement interpretations and modifications and agrees, upon request, from time to time, to meet with Property Owner and representatives of such lender(s) to negotiate in good faith any such request for interpretation or modification. The City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure ("Mortgagee") on the Property shall be entitled to the following rights and privileges:

A. Mortgage Not Rendered Invalid.

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value. No Mortgagee shall have an obligation or duty under this Agreement to perform Property Owner's obligations, or to guarantee such performance, prior to taking title to all or a portion of the Property.

B. Request for Notice to Mortgagee.

The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any Notice of Default delivered to Property Owner.

C. Mortgagee's Time to Cure.

The City shall provide a copy of any Notice of Default to the Mortgagee within ten (10) days of sending the Notice of Default to Property Owner. The Mortgagee shall have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such Notice of Default. Notwithstanding the foregoing, if such default shall be a default which can only be remedied by such Mortgagee obtaining possession of the Property, or any portion thereof, and such Mortgagee seeks to obtain possession, such Mortgagee shall have until thirty (30) days after the date of obtaining such possession to cure or, if such default cannot reasonably be cured within such period, to commence to cure such default; and provided, further, that a Mortgagee shall not be required to cure any non-curable default of Property Owner, which default shall be deemed cured upon any Mortgagee obtaining possession.

D. Cure Rights.

Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, shall succeed to the rights and obligations of Property Owner under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Property Owner arising prior to acquisition of title to the Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building permit or occupancy certificate until all delinquent and current fees and other monetary obligations due under this Agreement for the Property, or portion thereof acquired by such Mortgagee, have been paid to City.

E. Bankruptcy.

If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Property Owner, the times specified in Section 9C, above, shall be extended for the period of the prohibition, except that any such extension shall not extend the term of this Agreement.

10. Notices.

A. Form of Notice.

All notices required or provided for under this Agreement shall be in writing and delivered in person (to include delivery by courier) or sent by certified mail, postage prepaid, return receipt requested or by overnight delivery service. Notices to the Parties shall be addressed as follows (or, in the case of an Assignee, at the address specified by such Assignee in a written notice to the City and the Property Owner.)

To City: City of Calexico
Attn: City Manager
608 Heber Avenue
Calexico, CA 92231
Facsimile: (760) 357-7862

With a copy to: Jennifer Lyon, City Attorney
McDougal, Love, Eckis, Boehmer & Foley
8100 La Mesa Blvd., Suite 200
La Mesa, CA 91942
Facsimile: (619) 440-4907

To Property Owner: Raul and Alice Estrada
_____
_____
_____

Facsimile: _____

With a copy to: John McClendon
Leibold McClendon & Mann, P.C.
23422 Mill Creek Drive, Suite 105
Laguna Hills, CA 92653
Facsimile: (949) 457-6305

B. Change of Address.

Any Party (and any Assignee) may change the address to which notices are to be sent (and/or the person to whose attention notices are to be directed) at any time by giving written notice of such change in the manner provided above.

11. Covenants Run With The Land

The terms of this Agreement are legislative in nature, and apply to the Property as regulatory ordinances. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and shall ensure to the benefit of their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, and any interest therein, whether by sale, operation of law or other manner.

12. Conflict with State or Federal Law

In the event that State or Federal laws or regulations, enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations. Notwithstanding the foregoing, Property Owner shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

13. Procedure for Modification Because of Conflict with State or Federal Laws.

In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City then, subject to Section 2F, above, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be approved by the City Council in accordance with Chapter 16.52 and Section 14 of this Agreement, as applicable.

14. Amendment of Agreement.

This Agreement may be further amended or terminated only in writing and in the manner set forth in Government Code Sections 65865.1, 65867.5, 65868, 65868.5 and Municipal Code Sections 16.52.150 *et seq.*

15. Interpretation and Enforcement of Agreement.

A. Complete Agreement. This Agreement represents the complete understanding between the Parties, and supersedes all prior agreements, discussions and negotiations relating to the subject matter hereof. No amendment, modification or cancellation of this Agreement shall be valid unless in writing and executed by the Parties, other than pursuant to Section 15(C) below.

B. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected thereby and shall remain in full force and effect, unless such invalidation renders any remaining provisions impossible or impractical to enforce.

C. Applicable Law. This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of California and any applicable laws of the United States of America.

D. Prevailing Party. In the event of any action or proceeding brought by either Party against the other to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable costs and expenses, including attorneys' fees, incurred in connection therewith.

E. Cooperation in the Event of Action by Third Party. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or subsequent development approvals that are based on this Agreement, the Parties shall cooperate in defending such action. During the entire course of any such challenge, including any review up to a court of final jurisdiction, this Agreement shall remain in full force and effect, unless otherwise modified by the court during the pendency of the action.

F. Authority of Signatories. All the Parties represent and warrant that the persons signing this Agreement on their behalves have full authority to bind the respective Parties, and that each and every term of this Agreement is fully enforceable in all respects at the time this Agreement is executed and shall remain fully enforceable at all times during which the Agreement is in effect and, where indicated, beyond the term of this Agreement. Such enforceability shall pertain to both the substantive provisions of this Agreement and any remedies available for violation of the Agreement by either Party.

G. Indemnification. Property Owner agrees to and shall indemnify, save, hold harmless and, if requested by the City, defend the City and its agents, officers, and employees, in any action brought by a person or entity not a party to this Agreement (i) challenging the City's approval of this Agreement, (ii) challenging the validity of this Agreement, or (iii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution or enforcement of this Agreement. This obligation applies to any

and all claims, damages, awards, and expenses, including but not limited to, attorney's fees and costs of litigation. Nothing in this Section 14G shall be construed to mean that Property Owner shall hold the City harmless and/or defend it from any claims arising from the sole negligent acts, sole negligent failure to act, or sole intentional acts on the part of the City. City may make all reasonable decisions with respect to its representation in any legal proceeding, including selection of its own legal defense counsel. In the event a legal action is filed against City, Property Owner shall submit a Ten Thousand Dollar ($10,000) deposit within ten (10) days of the filing of any action and shall thereafter replenish the funds in increments of Ten Thousand ($10,000) when requested by the City.

H. Waiver and Delays. Failure by either Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or failure by either Party to exercise its rights upon a default by the other Party, shall not constitute a waiver of any right to demand strict performance by such other Party in the future.

I. Third Party Actions. Nonperformance by either Party shall not be excused because of a failure of a third person, except as specifically provided herein.

J. Force Majeure. Neither Party shall be deemed to be in default for failure or delay in performance of any of its obligations under this Agreement if caused by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, government agencies and their regulations, or other causes beyond the reasonable control of the Party claiming the force majeure. If any such event shall occur, the term of this Agreement and the time for performance of any obligations hereunder shall be extended by the period of time that such events prevent either Party from proceeding with such performance.

16. Effect on Property.

A. Estoppel Certificate.

Any Party may, at any time and from time to time, deliver written notice to another Party requesting certification in writing that, to the knowledge of the certifying Party: (i) this Agreement is in full force and effect and is a binding obligation of the Parties; (ii) this Agreement has not been amended, or, if so amended, identifying the amendments; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or, if in default, describing the nature and extent of any such default. A Party receiving a request hereunder shall execute and return such certificate to the requesting Party within thirty (30) days following the receipt thereof. The City Manager of the City shall have the authority to execute any such certificate requested by the Property Owner. The City acknowledges that a certificate hereunder may be relied upon by transferees and mortgagees.

B. Release of Lots from Agreement.

Promptly upon the written request of the Property Owner, the City shall execute a document, in a recordable form, releasing any lot for which a final subdivision map has been recorded and which has been sold or leased, from the effects of this Agreement, and deliver such document to the Property Owner.

17. **Periodic Review of Compliance with Agreement.**

A. Annual Review.

This Agreement shall be subject to annual review, pursuant to California Government Code Section 65865.1, and City Municipal Code Section 16.52.190 *et seq.* At each anniversary of this Agreement, within thirty (30) days following receipt of notice from the City of such annual review, the Property Owner shall submit to the Development Services Director of the City written documentation demonstrating good-faith compliance with the terms of this Agreement ("Annual Report"), to the extent that the Property Owner has taken or is required to take any action pursuant to this Agreement. Failure by the Property Owner to submit the Annual Report in a timely manner shall not itself constitute a breach of this Agreement, unless the City has first given the Property Owner additional notice thereof, and the Property Owner fails to submit the Annual Report within fifteen (15) days after receipt of such notice.

B. Contents of Report.

The Annual Report and any supporting documents shall describe (i) any permits or other approvals which have been issued or for which application has been made, (ii) any development or construction activity which has commenced or has been completed, and (iii) any other activity carried out by the Property Owner in satisfaction of the requirements of any development and this Agreement, since the date hereof or since the preceding annual review. The City shall review all the information contained in such report in determining the Property Owner's good faith compliance with this Agreement.

C. Waiver.

The City does not waive any claim of defect in performance by the Property Owner if, at the time of an annual review, the City does not propose immediately to exercise its remedies hereunder. However, in the event that the City, following receipt of the Annual Report for any year, fails to review the information contained therein and/or to determine the Property Owner's good faith compliance with this Agreement, the Property Owner shall be deemed to be in good faith compliance with regard to the period covered by that Annual Report.

18. **Violations.**

A. Violation by Property Owner.

i. The Property Owner shall be deemed in violation of the terms of this Agreement if a finding and determination is made by the City, upon the basis of substantial evidence that the Property Owner has not complied in good faith with one or more of the material terms or conditions of this Agreement.

ii. If the City believes the Property Owner to be in violation of this Agreement, the City shall give the Property Owner thirty (30) days written notice specifying the nature of the alleged violation and, when appropriate, the manner

in which the violation may be satisfactorily cured. Failure or delay in giving notice of a violation shall not constitute a waiver of such violation.

iii. The Property Owner may appeal the allegation of violation by filing a notice of appeal with the City Clerk, within the thirty (30) day cure period described in the preceding paragraph. The Property Owner's appeal shall be placed on the agenda of the next regularly scheduled meeting of the City Council, which shall be an open meeting but not a public hearing. If the City Council finds that a violation has occurred and is continuing, the Property Owner shall be given another sixty (60) days within which to cure such violation; provided that such time period shall be extended automatically so long as the Property Owner is engaged in making good faith efforts to cure the violation. At the next City Council meeting following expiration of the sixty (60) day period allowed for curing the violation, or any extension thereof, the City Council shall set forth by motion or resolution its determination as to (i) the continuation of the violation and (ii) any action to be taken, which action may include amendment or termination of this Agreement. Any action to terminate shall be in the form of a resolution and shall be supported by written findings.

iv. After proper notice and expiration of the cure period without appeal, cure or commencement of substantial effort toward a cure by the Property Owner, the City may take unilateral action to terminate or amend this Agreement.

B. Violation by City.

i. The City shall be deemed in violation of the terms of this Agreement upon failure of the City to carry out any of its material obligations hereunder.

ii. If the Property Owner believes the City to be in violation of this Agreement, the Property Owner promptly shall notify the City, through its Planning Official, to that effect, setting forth the grounds upon which a violation is claimed, facts in support of such grounds, and the means through which such violation may be cured. The City shall have thirty (30) days following the date of receipt of the notice within which to take action to deny the claim, cure the violation or undertake substantial action toward the cure.

iii. If the action of the City is unsatisfactory to the Property Owner, the Property Owner may make an appeal to the City Council, provided that, within ten (10) days following the date of receipt of the notice of denial of the claim, or within ten (10) days following the date of expiration of the cure period described in the preceding paragraph, whichever occurs first, the Property Owner files with the City Clerk a notice of appeal to the City Council. The City Council thereafter shall consider this matter on the agenda of its next regularly scheduled meeting, which shall be an open meeting but not a public hearing, at which the Property Owner may present information regarding the alleged violation. Based upon the information presented by the Property Owner, the City Council shall make a

determination as to whether the City is in violation of this Agreement, as alleged by the Property Owner.

19. **Legal Enforcement.**

Subject to the prior exhaustion of all administrative remedies set forth above (except to the extent that such acts would be futile), in addition to any other rights or remedies, either Party may institute legal action (i) to cure, correct or remedy any violation, (ii) to enforce any covenants or agreements herein, (iii) to enjoin any threatened or attempted violation hereof, (iv) to recover damages for any default or (v) to obtain any other remedies consistent with the purposes of this Agreement. In addition to any other remedies available herein, (vi) either Party may have liability under this Agreement for contractual damages, (vii) each Party shall be entitled to specific performance by the other Party of its obligations under this Agreement and (viii) each Party shall be subject to liability for violation of a statutory or constitutional right of the other Party which exists independent of this Agreement. Any such legal action shall be brought in the Superior Court of Imperial County, State of California, or in an appropriate federal court.

20. **Relationship of Parties.**

In performing its obligations hereunder, the Property Owner is acting as an independent contractor and not as an agent or employee of the City. Further, nothing in this Agreement shall be construed as creating between the Property Owner and the City a partnership or joint venture for any purpose.

21. **Exhibits.**

All exhibits referred to in, and attached to, this Agreement are incorporated herein by such reference.

22. **Recording of Agreement.**

Within ten (10) days following the adoption by the City of the ordinance approving this Agreement, or any subsequent amendment hereof, the City Clerk shall file a fully executed copy hereof with the County Recorder of Imperial County, State of California.

IN WITNESS WHEREOF, the Parties have executed this Agreement, to be effective as of the date set forth in the first paragraph hereof.

PROPERTY OWNER

_____
Raul Estrada

_____
Alice Estrada

CITY OF CALEXICO,
a municipal corporation

By: _____
, Mayor

APPROVED AS TO FORM.

_____
Jennifer M. Lyon, City Attorney

ATTEST:

_____
Lourdes Cordova, City Clerk

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

Remainder Parcel of Parcel Map No. 059-010-20, filed on September 13, 2002, at Book 11, Page 87 of Parcel Maps, in the Office of the County Recorder of the County of Imperial, State of California.

EXHIBIT "B"
Applicable City Codes/Policies

Chapter 12.04 SIDEWALK SPECIFICATIONS

12.04.010 Widths.

12.04.020 Cement walks.

12.04.030 Ditches.

12.04.040 Gutter lines.

12.04.010 Widths.

The width of sidewalks in the city shall be as follows:

A. Twelve-foot Walks. On Imperial Avenue south from Fifth Street, on Second and Third Streets west from Heffernan Avenue, and on Paulin and Rockwood Avenues between Second and Third Streets, sidewalks, including curbs, shall be twelve feet wide.

B. Twenty-foot Walks. On all other streets having a width of eighty feet or over, including those portions of Imperial, Paulin and Rockwood Avenues, and Second and Third Streets, not described in subsection A of this section, the width of the sidewalks shall be twenty feet.

C. Fifteen-foot Walks. On all streets and avenues less than eighty feet wide, the width of sidewalks shall be fifteen feet. (Prior code §§ 8031, 8032.2, 8032.3)

12.04.020 Cement walks.

A. Twenty-foot Sidewalks. Cement walks upon twenty-foot sidewalks shall be not less than five feet wide and laid so as to leave at least three feet of clear space next to the property line for grass or ornamental shrubbery.

B. Fifteen-foot Sidewalks. Upon fifteen-foot sidewalks, the walk shall be placed as near as possible midway between the tree line and the property line and shall be not less than three feet wide. (Prior code § 8037)

12.04.030 Ditches.

A. All ditches hereafter constructed along any of the public streets shall have the center thereof approximately sixteen feet from the property line on streets with a twenty-foot sidewalk and fourteen feet on streets having a fifteen-foot sidewalk.

B. Outer Bank and Gutter Line. The outer or street bank of the ditch shall correspond with the gutter line. (Prior code § 8032)

12.04.040 Gutter lines.

A. Twenty-foot Sidewalk. The gutter line on streets having a twenty-foot sidewalk shall be twenty feet from the property line and eight inches below the top of the sidewalk grade.

B. Fifteen-foot Sidewalk. Upon streets having a fifteen-foot sidewalk, the gutter line shall be fifteen feet from the property line and eight inches below the sidewalk grade, and form the toe or outer side of the ditches. (Prior code § 8033)

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Title 13 PUBLIC SERVICES

Chapter 13.20 FIRE CONNECTIONS

13.20.010 Meter not required.

13.20.020 Cost of installation.

13.20.030 Tapping of main and connection.

13.20.040 Taking water for improper uses--Signs at taps.

13.20.050 Taking water for improper uses--Penalty for violation.

13.20.010 Meter not required.

In any industry or business building a special pipe system for fire service only may be installed and connected with the nearest city main without a meter connection. (Prior code § 1456)

13.20.020 Cost of installation.

Such fire connections as designated in Section 13.20.010 are to be installed entirely at the expense of the owner of the property who shall lay the pipe to the main. (Prior code § 1456.1)

13.20.030 Tapping of main and connection.

Tapping the main and connecting with the fire line shall only be done by the water department. (Prior code § 1456.2)

13.20.040 Taking water for improper uses--Signs at taps.

Owners of all buildings containing fire lines shall cause to be placed at each tap on the same a sign stating that it is unlawful to take water therefrom save for fire purposes and giving the fine for violation. (Prior code § 1456.31)

13.20.050 Taking water for improper uses--Penalty for violation.

Taking any water from such a fire line as designated in this chapter for any purpose save fighting fire is a violation of this chapter and shall be penalized by a fine of two hundred fifty dollars and shall require the severance of the connection. (Ord. 725 § 1, 1978: prior code § 1456.3)

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Title 16 SUBDIVISIONS

Chapter 16.04 GENERAL PROVISIONS

16.04.010 Title.

16.04.020 Authority.

16.04.030 Purpose.

16.04.040 Map to be filed.

16.04.010 Title.

The ordinance codified in this title shall be known as the "Subdivision Ordinance." (Ord. 575 § 2 (part), 1964: prior code § 8401)

16.04.020 Authority.

This title is adopted pursuant to the Subdivision Map Act as set forth in the Government Code of the state of California. (Ord. 734 § 1, 1978: Ord. 575 § 2 (part), 1964: prior code § 8402)

16.04.030 Purpose.

This title is to supplement the provisions of the Subdivision Map Act concerning the design, improvement and survey data of subdivisions, the form and content of tentative maps and final maps, and the procedure to be followed in securing the official approval of the city of such maps or division of land maps as authorized by this title. (Ord. 575 § 2 (part), 1964: prior code § 8403)

16.04.040 Map to be filed.

To subdivide land in the city a final map of the subdivision must be recorded. Prior to the recording of such map, certain requirements must be complied with as set forth in this title, and in such rules and regulations as are adopted supplemental thereto. (Ord. 575 § 2 (part), 1964: prior code § 8404)

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Chapter 16.08 DEFINITIONS

16.08.010 Generally.

16.08.020 Advisory agency.

16.08.030 Alley.

16.08.040 Building site.

16.08.050 Commission.

16.08.060 Design.

16.08.070 Division of land map.

16.08.080 Engineer.

16.08.090 Fire protection.

16.08.100 Flood hazard.

16.08.110 Freeway.

16.08.120 Frontage.

16.08.130 Highway, major.

16.08.140 Highway, secondary.

16.08.150 Improvement.

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16.08.170 Lot.

16.08.180 Map, final.

16.08.190 Map, revised tentative.

16.08.200 Map, tentative.

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16.08.240 Road, service.

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16.08.260 Street, collector.

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16.08.300 Subdivider.

16.08.310 Subdivision.

16.08.320 Subdivision Map Act.

16.08.330 Surveyor.

16.08.340 Vehicular access right.

16.08.350 Water supply.

16.08.360 Zoning ordinance.

16.08.010 Generally.

For the purpose of this title, the following words and phrases are defined as set out in this chapter. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.020 Advisory agency.

"Advisory agency" means the city planning commission. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.030 Alley.

"Alley" means a public way, other than a major or secondary highway or a local street, providing a secondary means of vehicular access to abutting property. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.040 Building site.

"Building site" means any parcel of land which conforms to the definition of a lot as defined in this chapter. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.050 Commission.

"Commission" means the city planning commission. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.060 Design.

"Design" means street alignment, grades and widths, alignment and widths of easements and the rights-of-way for drainage and sanitary sewers, and minimum lot area and width. Design also includes the alignment, grade and width of easements and rights-of-way for utilities as well as the grading and general layout of the lots and streets within the area. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.070 Division of land map.

"Division of land map" means a map prepared pursuant to this title and certified by the advisory agency as having been approved pursuant to this title and filed in the office of the city clerk. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.080 Engineer.

"Engineer" means the registered civil engineer employed by the subdivider to prepare the subdivision map or record of survey map and improvement plans. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.090 Fire protection.

"Fire protection" means such fire hydrants and water lines as are required by the chief of the fire department. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.100 Flood hazard.

"Flood hazard" means a hazard to land or improvements due to overflow water having sufficient velocity to transport or deposit debris, to scour the surface soil, to dislodge or damage buildings, or to erode the banks of watercourses. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.110 Freeway.

"Freeway" means a highway with respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands, or with respect to which such owners have only limited or restricted right or easement of access, and which is declared to be such in compliance with the Streets and Highways Code of the state of California. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.120 Frontage.

"Frontage" means a service road as defined in this chapter. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.130 Highway, major.

"Major highway" means any street, existing or proposed, designated on the master plan adopted after public hearing by the advisory agency as a major highway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.140 Highway, secondary.

"Secondary highway" means any street, existing or proposed, designated on the master plan adopted after public hearing by the advisory agency as a secondary highway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.150 Improvement.

"Improvement" means such street work and utilities to be installed, or agreed to be installed, by the subdivider on the land to be used for public or private streets, highways, ways, and easements as are necessary for the general use of the lot owners in the subdivision and local neighborhood traffic and drainage needs as a condition precedent to the approval and acceptance of the final map thereof. Such street work and utilities include, but are not limited to, curbs, paving, sidewalks, monuments, street name signs, guardrails, barricades, safety devices, fire hydrants, grading, retaining walls, storm drains and flood-control channels and facilities, erosion-control structures, sanitary sewer, water lines, street lights, street trees, traffic regulatory and warning devices, (other than traffic signals and relocation of existing traffic signal systems directly affected by other subdivision improvements), and other facilities as are required by the city in conformance with other provisions of this code, or as are determined necessary by the advisory agency for the appropriate development of the proposed subdivision. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.160 Inundation.

"Inundation" means ponded water or water in motion of sufficient depth to damage property due to the mere presence of the water or to deposition of silt. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.170 Lot.

"Lot" means:

A. A parcel of real property shown as a delineated parcel of land with a number or other designation of a final map recorded in the office of the county recorder, Imperial County; or

B. A parcel of land the dimensions of boundaries of which are defined by a record of survey map recorded in the office of the county recorder in accordance with the law regulating the subdivision of land; or

C. A parcel of real property not delineated as in subsections A and B of this section containing not less than the prescribed minimum area required in the zone in which it is located, and which abuts at least one street and was held under one ownership at the time of the adoption of the ordinance codified in this title. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.180 Map, final.

"Final map" means a map prepared in accordance with the provisions of this title and with any applicable provisions of the Subdivision Map Act and designed to be recorded in the office of the county recorder. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.190 Map, revised tentative.

"Revised tentative map" means a map involving a revised arrangement of the streets, alleys, easements or lots within property for which a tentative map has been previously submitted, or a modification of the boundary of the property. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.200 Map, tentative.

"Tentative map" is defined in the Subdivision Map Act. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.210 Master plan.

"Master plan" means a master or general plan, which may include any of the elements listed and defined in the planning law of the Government Code of the state of California. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.220 Public way.

"Public way" means any street, channel, viaduct, subway, tunnel, bridge, easement, right-of-way or other way in which a public agency has a right. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.230 Record of survey.

"Record of survey" means a map prepared and filed pursuant to Subdivision (c) of Section 11535 of the Business and Professions Code (Subdivision Map Act) and conforming to Chapter 15 of Division 3 of said code. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.240 Road, service.

"Service road" means that part of a major or secondary highway or freeway containing a roadway which affords access to abutting property and is adjacent and approximately parallel to and separated from the principal roadway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.250 Roadway.

"Roadway" means that portion of a right-of-way for a street or alley intended to accommodate the movement of vehicles. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.260 Street, collector.

"Collector street" means a street, including the principal access streets of a subdivision, which carries traffic from local streets either directly or via other existing or proposed collector streets to a major or secondary highway. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.270 Street, future.

"Future street" means any real property which the owner thereof has offered for dedication for street purposes and which offer has been rejected by the city council subject to the right of the council to rescind its action and accept by resolution at any later date, and without further action by the owner, all or part of said property as a public street. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.280 Street, local.

"Local street" means any street other than a collector street, major or secondary highway, or freeway providing access to abutting property and serving local as distinguished from through traffic. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.290 Street, private.

"Private street" means a parcel of land, not dedicated as a public street, over which a private easement for road purposes has been granted to the owners of property contiguous or adjacent thereto, which intersects or connects with a public street or another private street, and the instrument creating the same has been duly recorded or filed in the office of the recorder of Imperial County, and which has been determined by the advisory agency to be adequate for access and for the purposes defined in this title. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.300 Subdivider.

"Subdivider" means a person, firm, corporation, partnership or association who causes land to be divided into a subdivision for himself or others. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.310 Subdivision.

"Subdivision" is defined in the Subdivision Map Act. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.320 Subdivision Map Act.

"Subdivision Map Act" means the Subdivision Map Act of the state of California pursuant to State of California Government Code Section 66410 et seq. (Ord. 734 § 2, 1978: Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.330 Surveyor.

"Surveyor" means a licensed land surveyor authorized to practice in California. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.340 Vehicular access right.

"Vehicular access right" means the right or easement for access of owners or occupants of abutting lands to a public way other than as pedestrians. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.350 Water supply.

"Water supply" means such water system supply and distribution facilities necessary to provide a reliable and adequate water supply for private use and public fire protection purposes. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

16.08.360 Zoning ordinance.

"Zoning ordinance" means the zoning ordinance of the city. (Ord. 575 § 2 (part), 1964: prior code § 8405 (part))

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Chapter 16.16 DESIGN REQUIREMENTS

16.16.010 Adoption.

16.16.020 Conformance required.

16.16.030 Conformance to general plan.

16.16.040 Future streets.

16.16.050 Street extensions.

16.16.060 Dangerous areas.

16.16.070 Grading plans.

16.16.080 Condominium subdivisions.

16.16.090 Subdivisions in P-C zones.

16.16.010 Adoption.

Design standards for subdivision improvements shall be adopted by the city council upon recommendation of the advisory agency. (Ord. 575 § 2 (part), 1964: prior code § 8412)

16.16.020 Conformance required.

Except as provided in this chapter, subdivisions and improvements shall be designed in accordance with the design standards in effect as of the date of approval of the tentative map. (Ord. 575 § 2 (part), 1964: prior code § 8413)

16.16.030 Conformance to general plan.

Each tentative map shall be so designed that there is substantial compliance with the general plan. (Ord. 575 § 2 (part), 1964: prior code § 8411)

16.16.040 Future streets.

In the event certain streets, alleys or easements in a subdivision are to be reserved for future public use and have been approved as to location and width, they shall be indicated on the final map and offered for dedication as future streets, future alleys, or future easements. Proper certificates providing that the city may accept the offer to dedicate such easement at any time shall be shown on the final map. (Ord. 575 § 2 (part), 1964: prior code § 8414)

16.16.050 Street extensions.

Provision shall be made for the extension of streets in adjoining tracts. (Ord. 575 § 2 (part), 1964: prior code § 8415)

16.16.060 Dangerous areas.

Areas designated by resolution of the city council as potentially dangerous by reason of geological conditions, or which are subject to inundation, overflow by stormwater, or any other potentially dangerous condition, shall not be subdivided except when approved by the advisory agency after recommendation of the city engineer. Final maps of such areas shall delineate the extent of such potential danger. (Ord. 575 § 2 (part), 1964: prior code § 8416)

16.16.070 Grading plans.

A preliminary grading plan may be required with the tentative map of any subdivision. In potentially dangerous areas or any other areas where it appears to the advisory agency, upon recommendation of the city engineer, that cuts or fills which would occur in the grading of the property may be contrary to the objectives of these regulations, the advisory agency may require that the subdivider submit grading plans for all or part of the tract before the action on the tentative map can be taken. Failure to furnish such grading plan necessary to complete the investigation of the tentative map within the time specified in the written notice requesting its submission shall be cause for the disapproval of the tentative map unless the time for acting on said map is extended by mutual consent. If the changes in the design of the lots or streets system can be made to correct the conditions mentioned in this section, either by increased lot sizes or changes in grades, such modifications shall be made. (Ord. 575 § 2 (part), 1964: prior code § 8417)

16.16.080 Condominium subdivisions.

A. The provisions of this section shall apply to property divided or to be divided into condominiums as defined by Section 783 of the California Civil Code.

B. The provisions of Title 6, Part 4, Division Second, California Civil Code shall apply to a condominium project.

C. In every instance of a condominium project, the subdivider shall cause to be filed a tentative map and final map as required by this title for other subdivisions. Such maps may show the building and/or the air space and other information required by Chapter 1, of Title 6, of Part 4, Division Second of the Civil Code, but such information shall not be a consideration of the approval of such maps.

D. The advisory agency, prior to recommending the approval of a condominium subdivision, may require the subdivider to submit for approval by the city a declaration of restrictions relating to such project and may require prior to the recording of the final map thereof adequate guarantees of the improvement and maintenance of recreation and open areas, approved restrictions, and other improvements.

E. No condominium subdivision shall be submitted for approval unless the proposed structure or structures would otherwise comply with Title 17, except as provided in this title. (Ord. 575 § 2 (part), 1964: prior code § 5418)

16.16.090 Subdivisions in P-C zones.

A. Intent. It is the intention of this section that special subdivision requirements may be applied to developments within the P-C zones.

B. Requirements. Providing the overall project means the requirements listed in this subsection, the advisory agency may approve a tentative map and a final map may be recorded which contains individual lots of less than minimum dimensions and yard distances, greater maximum lot coverage, and having no frontage on a dedicated street:

1. The overall project shall maintain the minimum yard dimensions, width, depth, and area, shall maintain the Overall minimum lot area per dwelling unit, and shall not exceed the overall maximum lot coverage specified in Title 17.

2. The density of the overall project shall not exceed twenty dwelling units per acre of gross land area exclusive of dedicated streets.

3. The individual lot shall contain not less than five hundred square feet.

4. There shall be permanently reserved within the subdivision for recreation, and/or permanently maintained open space, an area equivalent to not less than twenty percent of the gross area of the subdivision.

5. The subdivider shall, prior to the conveyance of any lot therein, record a declaration of restrictions which has been approved by the advisory agency, which restrictions shall be enforceable equitable servitudes and shall inure to and bind all lot owners in the project.

6. The subdivider shall, at the time of submittal of the final map to the city engineer, submit plans for recreation areas and maintained open spaces showing detailed landscaping and an irrigation system.

C. Filing Bond. To assure the installation and maintenance of recreation areas, open spaces, private streets, and access ways, the subdivider shall file a bond in addition to any bond required to guarantee public improvements, which bond shall cover the cost of landscaping, recreation facilities, irrigation system, and private drives, ways, and walks in an amount and form approved by the city in the manner set forth in Chapter 16.32. (Ord. 575 § 2 (part), 1964: prior code § 8419)

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Chapter 16.32 IMPROVEMENTS

16.32.010 Streets--Requirements.

16.32.020 Temporary improvements.

16.32.030 Waiver of improvements.

16.32.040 Streets--Plans and specifications.

16.32.050 Utilities--Installation.

16.32.060 Utilities--Underground requirements--Exceptions.

16.32.070 Utilities--Underground requirements--Waiver.

16.32.080 Street lighting.

16.32.090 Curbs and gutters.

16.32.100 Sidewalks.

16.32.110 Street trees.

16.32.120 Guarantee for construction of improvements--Form of surety.

16.32.130 Guarantee for construction of improvements--Contracts for future improvements.

16.32.140 Guarantee for construction of improvements--Acceptance of partial work.

16.32.010 Streets--Requirements.

In all subdivisions, the streets, alleys, lots, and easements shall be laid out to provide for necessary water, sewer, and drainage facilities. All streets and alleys within and adjoining the subdivision, together with any necessary drainage and sanitary sewer easements, shall be graded and improved to a width and grade approved by the city engineer; it being understood that where the proposed subdivision abuts an existing dedicated unimproved street, improvements shall normally be required to be constructed only on the one-half of said street adjoining the proposed subdivision. (Ord. 575 § 2 (part), 1964: prior code § 8441)

16.32.020 Temporary improvements.

In addition to permanent improvements, temporary improvements may be required prior to or concurrent with permanent improvements. (Ord. 575 § 2 (part), 1964: prior code § 8442)

16.32.030 Waiver of improvements.

The advisory agency, upon the recommendation of the city engineer, may waive improvement requirements upon request of the subdivider in accordance with Chapter 16.44. (Ord. 575 § 2 (part), 1964: prior code § 8443)

16.32.040 Streets--Plans and specifications.

All street improvements, including drainage structures incidental thereto, shall be installed to grade, which grade shall be approved by the city engineer. Plans, profiles and specifications for such improvements shall be furnished to the city engineer not later than the time of submitting the final map. Such plans, profiles and specifications shall show full details and shall be in accordance with the standards of the city. (Ord. 575 § 2 (part), 1964: prior code § 8444)

16.32.050 Utilities--Installation.

A. The subdivider shall make all necessary arrangements with each serving utility for the installation of its facilities.

B. Utility facilities, with connections within the subdivision, adequate to supply communication, electricity, gas, sewer, and water service to the subdivision shall be constructed and installed therein for the purpose of supplying such services to the subdivider. (Ord. 656 § 1 (part), 1971: prior code §§ 8444.1, 8444.2)

16.32.060 Utilities--Underground requirements--Exceptions.

All communication and electrical distribution facilities installed in and for the purpose of supplying any communication or electrical service in the subdivision, and also all community antenna television distribution facilities, if any, installed in and for the purpose of supplying any community antenna television signal service to a subdivision, shall be placed underground, except as follows:

A. Transformers, pedestals, terminal boxes, meter cabinets, concealed ducts and other facilities necessarily appurtenant may be situated aboveground if they are used solely for the purpose of providing service within the subdivision and are used solely in connection with the underground distribution lines.

B. General transmission, subtransmission, long distance, trunk or feeder lines may be situated above the surface of the ground when such lines are not used as individual subdivision distribution lines. Location of such lines shall be approved by the serving utility and the city.

C. Poles supporting street lights, and the electricity lines within said poles, may be situated above the surface of the ground. (Ord. 656 § 1 (part), 1971: prior code §§ 8444.4--8444.6)

16.32.070 Utilities--Underground requirements--Waiver.

A. Conditions. After consideration of the report and recommendation of the planning commission, the city council may waive the underground requirements of Section 16.32,060, whole or in part, if it finds that topographical, soil or other conditions or circumstances make underground installation of said facilities unreasonable or impracticable.

B. Industrial Subdivisions. After consideration of the report and recommendation of the planning commission, the city council may waive the requirements of underground utilities in part for

industrial subdivisions.

C. Easements for Overhead Pole Lines. In those cases where the requirement for underground utilities has been waived, then easements for overhead pole lines shall be provided at the rear of all lots, except where alleys are available, or where the requirement is waived by the city council.

D. Effect. The waiver by the city council of the requirements of Section 16.32.060 for one portion of a subdivision shall not affect the requirements for the balance of that subdivision. (Ord. 656 § 1 (part), 1971: prior code §§ 8444.7--8444.10)

16.32.080 Street lighting.

If the approval of the tentative map required street lighting plans for a street lighting system, plans shall be submitted to and be approved by the city engineer. (Ord. 575 § 2 (part), 1964: prior code § 8445)

16.32.090 Curbs and gutters.

Curbs and gutters shall be constructed on all streets within the subdivision, except where not required by the advisory agency, subject to approval of the city council. (Ord. 575 § 2 (part), 1964: prior code § 8446)

16.32.100 Sidewalks.

Sidewalks shall be constructed on all highways within or adjacent to the subdivision and on local streets; except that in rural areas sidewalks may be omitted or may be provided on only one side of the street or highway, subject to the approval of the advisory agency and ratification by the city council. (Ord. 575 § 2 (part), 1964: prior code § 8447)

16.32.110 Street trees.

The city may require the subdivider to provide adequate landscaping, and arrangements between the subdivider and the city may be made whereby the subdivider makes a cash payment to the city in an amount sufficient to ensure the city of adequate funds to plant street trees in subdivisions at the proper time as determined by the city engineer. The city may plant street trees either by contract or by city forces. The amount of cash payment per tree shall be determined by the city council in accordance with prevailing nursery prices and labor costs, and shall be subject to annual revision. (Ord. 575 § 2 (part), 1964: prior code § 8448)

16.32.120 Guarantee for construction of improvements--Form of surety.

In the event the approval of the tentative map requires agreement for improvement of streets, utilities, or other facilities in connection with the subdivision, and the improvements have not been installed and accepted by the city prior to the presentation of the final map to the city council, the subdivider shall:

A. Bond. File with the city clerk a bond in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. The bond shall be executed by the subdivider as principal, and a corporation authorized to act as

surety under the laws of the state of California as surety. The bond shall be payable to the city and be conditioned upon the faithful performance of any and all work required to be done within a specified reasonable time; or

B. Cash or Negotiable Bond. Deposit with the city clerk cash or negotiable bonds of the kind approved by law for securing deposits of public money in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed. Whenever the subdivider elects to deposit cash or approved negotiable bonds, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the cash or negotiable bonds are filed to cause the work to be done and to pay all costs therefor from such deposit; or

C. Instrument of Credit. Deposit with the city clerk, and subject to the approval of the city finance officer, an instrument or instruments of credit from one or more financial institutions, subject to regulation by the state or federal government, pledging that funds in such amount as the city engineer estimates and determines to be necessary to complete all of the improvements required to be installed are on deposit and guaranteed for payment; further agreeing that the funds designated by the instrument shall become trust funds for the purposes set forth in the instrument of credit. Whenever the subdivider elects to deposit an instrument or instruments of credit, the city shall be authorized in the event of any default on the part of the subdivider in the performance of any work or improvement for which the instrument or instruments of credit are filed to cause the work to be done and to pay all costs therefor from such funds which are on deposit pursuant to the aforementioned instrument or instruments of credit. "Instrument or instruments of credit" is defined to include the establishment of a construction loan disbursement account which requires the approval and the signature of the city by an appropriate city official as a condition precedent to any disbursement of funds contained in such construction loan disbursement account. (Ord. 653 § 1 (part), 1970: Ord. 575 § 2 (part), 1964: prior code § 8449)

16.32.130 Guarantee for construction of improvements--Contracts for future improvements.

Any contract for the future improvement of a subdivision shall contain, among other provisions, the following:

A. Term of Bond. Subject to the conditions stated in this section, the term of each deposit of cash, negotiable bonds, or instrument or instruments of credit in lieu of bond or surety bond filed pursuant to the provisions of this title shall begin on the date of the deposit or filing of the survey bond and shall end upon the date of the completion to the satisfaction of the city engineer of all the improvements required to be done by the owner. The fact of such completion shall be evidenced by a statement thereof signed by the city engineer, a copy of which shall be returned to the owner or person legally entitled thereto, or the surety bond exonerated at any time after the city engineer has signed the statement.

B. Amount of Guarantee. The amount of the guarantee shall be one hundred percent of the estimated cost of the work as determined by the city engineer.

C. Provisions. Every surety bond furnished and every contract under which a deposit is made to secure and guarantee the construction and completion of the improvements required to be done by the subdivider shall further provide and be conditioned that the surety executing such bond, or such deposit, respectively, shall continue to be firmly bound under a continuing obligation for the payment of all necessary costs and expenses that may be incurred or expended by the city in causing any and all such required work to be done, and that surety or depositor, respectively, assents to any lawful extensions of time within which to construct and complete such improvements that may be granted to the subdivider. (Ord. 734 § 9, 1978; Ord. 653 § 1 (part), 1970: Ord. 575 § 2 (part), 1964: prior code § 8449.1)

16.32.140 Guarantee for construction of improvements--Acceptance of partial work.

A. When a substantial portion of the required improvement in a tract has been completed to the satisfaction of the city engineer, and the completion of all remaining improvements in the tract is delayed due to conditions beyond the control of the subdivider, the city engineer may, in his discretion, accept the completed portion of the improvements and consent to a proportionate reduction of the surety bond to an amount estimated and determined by him to be adequate to assure the completion of the required improvements remaining to be done.

B. Whenever the subdivider deposits cash, approved negotiable bonds or an instrument or instruments of credit, the deposit by its terms may provide for the acceptance of the work as it progresses and for partial withdrawal of the deposit of money or negotiable bonds upon certification of the city engineer that the completed portion of the work is accepted by the city, and that sufficient money or bonds remain on deposit to assure the completion of all of the required improvements remaining to be done. (Ord. 653 § 1 (part), 1970: Ord. 575 § 2 (part), 1964: prior code § 8449.2)

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Chapter 16.36 PRIVATE STREETS

16.36.010 Filing tentative map and compliance required.

16.36.020 Signposting.

16.36.030 Maintenance.

16.36.040 Effect on existing streets.

16.36.010 Filing tentative map and compliance required.

All private street subdivisions established in the city after the effective date of the ordinance codified in this title shall be created only after the filing of a tentative map and otherwise following the procedures set forth in this title. (Ord. 575 § 2 (part), 1964: prior code § 8452)

16.36.020 Signposting.

At or near the entrance of each intersection of a private street with a dedicated public street or with another private street, there shall be erected and maintained by the applicant a signpost to which is attached a sign having an area of at least fifteen inches by twenty-one inches upon which is printed and clearly legible in at least two-inch letters the name of the private street and the words "Private Street" and in at least one-inch letters the words "Not Dedicated for Public Use or Maintained by City of Calexico." The words, letters and figures of the sign shall be arranged in substantially the following manner:

Name of street

Private street

Not dedicated for public use or maintained by city of Calexico. (Ord. 575 § 2 (part), 1964: prior code § 8453)

16.36.030 Maintenance.

All private streets shall be maintained by the owners of property contiguous or adjacent thereto in such manner that adequate access by vehicular traffic is provided at all times so that fire, police, health and sanitation vehicles and public utility vehicles will have adequate turning area. If said private streets are not maintained as provided in this section, and the council determines that the maintenance and turning facilities are inadequate to provide access for the vehicles using the same, refuse and garbage collection may be withheld from the property owners contiguous and adjacent to said private streets until adequate access for such vehicles is provided. (Ord. 575 § 2 (part), 1964: prior code § 8454)

16.36.040 Effect on existing streets.

The provisions of this chapter shall not apply to those building sites which are served by a private street if the building site has previously been approved by the city prior to the effective date of the ordinance codified in this title and the conditions of approval have been fulfilled. (Ord. 575 § 2 (part), 1964: prior code § 8451)

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Exhibit E

RESOLUTION NO. 2010- 15

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CALEXICO RECOMMENDING THAT THE CITY COUNCIL CONSIDER AND ADOPT AN ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND RAUL AND ALICE ESTRADA FOR REAL PROPERTY WITHIN THE CITY OF CALEXICO.

WHEREAS, the Property Owner (Raul and Alice Estrada) is the owner of certain real property (the "Property"), consisting of approximately thirty-three and 9/100 (33.09) acres, designated as the "Remainder" on Parcel Map No. 059-010-20, which was recorded as Document No. 02-23435 in Book 11 of parcel maps at Page 87 in the Office of the County Recorder of Imperial County on September 13, 2002; and

WHEREAS, the Property currently is designated as CH-Commercial Highway in the Land Use Element of the City's General Plan and as "C-H" (Commercial Highway) and "I" (Industrial) in the City Zoning Code; and

WHEREAS, the City Council certified a Final Environmental Impact Report (FEIR) in connection with the City's General Plan Update in May of 2007; and

WHEREAS, the City agreed to consider a development agreement for the Property to secure the Property Owner's rights to develop the Property in accordance with the existing land use and zoning designations and to secure certain rights of capacity in the City's existing wastewater infrastructure provided that the Property Owner provide the necessary wastewater infrastructure to transport the wastewater to the City's facilities; and

WHEREAS, the development agreement will facilitate development of the Property in a manner which the Parties intend to be consistent with and beneficial to other approved adjacent land uses, thereby generating benefits to the City and its residents. Consequently, entering into the development agreement is acknowledged to be to the mutual benefit of the parties; and

WHEREAS, to strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 *et seq.* of the California Government Code, which authorize the City to enter into a development agreement with any person or entity having a legal or equitable interest in real property, providing for the development of such property and establishing certain rights and obligations related to such development; and

WHEREAS, to implement the above-described state laws, the City adopted Chapter 16.52 of the Calexico Municipal Code, establishing procedures and requirements for considering, approving and implementing development agreements; and

WHEREAS, the Property Owner has a legal interest in the real property situated in the City which is the subject of the development agreement, and therefore satisfies the statutory requirements to enter into the agreement; and

WHEREAS, the application for this development agreement has been reviewed by the Director of Development Services and has been deemed complete; and

WHEREAS, the Planning Commission, on June 28, 2010, conducted a duly noticed hearing to consider the proposed development agreement as required by Municipal Code Sections 16.52.060 *et seq.*.

NOW THEREFORE, the Planning Commission of the City of Calexico DOES HEREBY RESOLVE as follows:

1. That the above-listed findings are true and correct.

2. The Planning Commission has exercised its independent review of the FEIR for the City's General Plan Update and finds that the uses contemplated in the development agreement are consistent with the uses authorized in the General Plan Update and will not have any environmental effects which are peculiar to the development agreement or the Property, or were not analyzed in the FEIR. Therefore, pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183, the Planning Commission hereby finds that no further review under the California Environmental Quality Act ("CEQA"), the CEQA Guidelines and the applicable ordinances and regulations of the City is required for the development agreement.

3. The Planning Commission further finds that the uses contemplated in the development agreement are consistent with the uses authorized in the General Plan Update and that the development agreement secures the rights of the Property Owner to develop the Property in compliance with the existing general plan and zoning designation for 15 years. Therefore, pursuant to CEQA Guidelines section 15305, the Planning Commission hereby finds that the development agreement also is exempt from environmental review as a minor alteration in land use limitations with an average slope of less than 20% which does not result in any changes in land use or density.

4. The Planning Commission finds and determines that the proposed development agreement:

   (a.) Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan

because the proposed development agreement secures the existing general plan and zoning designation;

(b.) Is compatible with the uses authorized in, and the regulations prescribed for the land use district in which the real property is located because it is intended to promote and retain the highest level of well planned development;

(c.) Is in conformity with public convenience, general welfare and good land use practice which ensures that the integrity of the city's Land Use Element are maintained;

(d.) Will not be detrimental to the health, safety and general welfare because development in accordance with the adjacent land uses and zoning which will guide the growth of Calexico in an efficient, coordinated manner in order to provide for high quality and balanced growth. As such, the land uses are compatible and beneficial to the general welfare of the residents of the City. Further, because development consistent with the existing land use and designation is consistent with the General Plan which is the City's guide for orderly development, any proposed development would not be detrimental to the health, safety and general welfare of the citizens;

e.) Will not adversely affect the orderly development of property or the preservation of property valued because the because it vests the Property Owner with rights to allow certainty for the future development of the Property which adds value to the Property.

5. That the Planning Commission hereby recommends that the City Council consider and approve a development agreement between the City of Calexico and Raul and Alice Estrada.

Carlton Hargrave

Carlton Hargrave, Chairperson
Calexico Planning Commission

I hereby certify that the preceding resolution was taken by the Planning Commission at a meeting conducted on June 28, 2010 by the following vote:

AYES: Higuera, Hargrave, Cardenas, Lopez
NOES: None
ABSENT: Rodriguez
ABSTAIN: None

ATTEST:

Armando G. Villa
Assistant City Manager