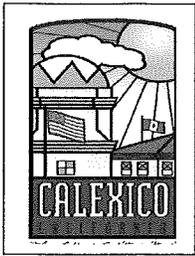


**AGENDA  
ITEM**

**8**



# AGENDA STAFF REPORT

**DATE:** January 19, 2016

**TO:** Mayor and City Council

**APPROVED BY:** Nick Fenley, Acting City Manager 

**PREPARED BY:** Carlos Campos, Interim City Attorney

**SUBJECT:** Amendment to the Employment Agreement Between the City and Nick Fenley Naming Nick Fenley the Interim City Manager

=====

## Recommendation:

Approval of Amendment to the Employment Agreement between the City of Calexico and Nick Fenley naming Nick Fenley the Interim City Manager for the City of Calexico.

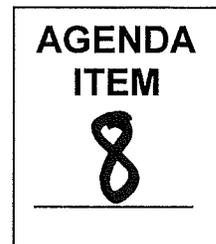
## Background:

The City of Calexico is a general law city that operates under the council-manager form of government. Under this form of government, the City Council acts as the board of directors and sets policy for the City, while the City Manager acts as the chief executive officer (CEO) of the organization and carries out the policies of the governing body.

The City Manager implements the decisions of the City Council, manages the day-to-day operations of the City, ensures municipal services are delivered efficiently and effectively, hires and fires employees and works to protect the health, safety and welfare of the City.

## Discussion & Analysis:

On September 16, 2015, Mr. Fenley was temporarily appointed Acting City Manager for the City of Calexico. Further, on November 3, 2015, the City Council approved an Employment Agreement with Nick Fenley as Acting City Manager ("Employment Agreement"). Now, the City seeks to change the title of Mr. Fenley from Acting City Manager to Interim City Attorney. Since this title change requires an amendment to the Employment Agreement between the City and Mr. Fenley, this Amendment is being presented to the City Council for approval. The approval of this Amendment would



name Mr. Fenley the Interim City Manager for the City of Calexico. No other changes are being proposed to the Employment Agreement between the City and Mr. Fenley.

**Fiscal Impact:**

No fiscal impact.

**Coordinated With:**

City Manager's Office.

**Attachment:**

1. Proposed Amendment to the Employment Agreement between the City of Calexico and Nick Fenley Naming Nick Fenley the Interim City Manager.
2. Employment Agreement between the City of Calexico and Mr. Fenley.

**AMENDMENT**  
**TO THE EMPLOYMENT AGREEMENT**  
**BETWEEN**  
**THE CITY OF CALEXICO**  
**AND**  
**NICK FENLEY**

**1. Parties and Date.**

This AMENDMENT to the Employment Agreement for Acting City Manager is made and entered into as of January 19, 2016 by and between the City of Calexico (“City”) and Nick Fenley (“Employee”). City and Employee are sometimes individually referred to as “Party” and collectively as “Parties.”

**2. Recitals.**

2.1 Agreement Purpose. The City, under the Employment Agreement for Acting City Manager dated September 16, 2016 (“Agreement”), has retained the services of Employee to act as the Acting City Manager for the City.

2.2 Amendment Purpose. The City and Employee desire to amend the aforesaid Agreement to change the title of Employee from Acting City Manager to Interim City Manager.

2.3 Amendment Authority. This AMENDMENT is authorized pursuant to Section 15 of the Agreement.

**3. Terms.**

3.1 Change of Title to Interim City Manager. The Agreement is hereby amended to provide that Employee will serve as the Interim City Manager for the City.

3.2 Continuing Effect of Agreement. Except as amended by this AMENDMENT, all other provisions of the aforementioned Agreement remain in full force and effect. From and after the date of this AMENDMENT, whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this AMENDMENT.

3.3 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the

obligations they have undertaken pursuant to this AMENDMENT.

**IN WITNESS WHEREOF**, the Parties hereto have executed this AMENDMENT as of the date first herein above written.

CITY OF CALEXICO

NICK FENLEY

By: \_\_\_\_\_  
Joong S. Kim  
Mayor

By: \_\_\_\_\_  
Nick Fenley

## AGREEMENT FOR ACTING CITY MANAGER

**THIS AGREEMENT FOR ACTING CITY MANAGER** (hereafter "Agreement") is made and entered into by and between the City of Calexico ("City") and Nick Fenley ("Employee"), an individual.

### RECITALS

**WHEREAS**, Employee currently holds the position of Public Works Manager, a single-position classification, for the City (the "Original Assignment"). He has held this position since July 1, 2013; and

**WHEREAS**, as of September 2015, the City has an immediate need for an employee to temporarily perform the duties of City Manager, a position involving specialized skills and duties as set forth in the Municipal Code at Section 2.02, *et seq*; and

**WHEREAS**, Employee is competent and qualified to perform the services required by this Agreement, and City wishes to have Employee perform certain highly-specialized, critically necessary on-going duties and functions of the City Manager position on a temporary or "Acting" basis.

### **NOW, THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

1. **TERM:** This Agreement is effective as of September 16, 2015. Employee will serve as the Acting City Manager during the period of recruitment, or until relieved of his duty by action of the City Council. Once the City hires an incumbent for the City Manager position, or otherwise terminates Employee's employment as Acting City Manager, Employee will revert in capacity to his Original Assignment. The term of this Agreement will continue until terminated by the City in its absolute discretion pursuant to Section 2.
2. **AT-WILL EMPLOYMENT:** Employee acknowledges that he reports to and serves at the pleasure of the Council and confirms that he does not have a "property interest" in continued employment as Acting City Manager. The Council may terminate Employee's assignment as Acting City Manager without cause at any time. In the event that Employee resigns his position as Acting City, the City requests that he provide the General Manager a minimum of two (2) weeks advance notice, unless the parties otherwise agree in writing.
3. **DUTIES:** Employee shall serve as the Acting City Manager the City during the time that City is recruiting for and training a replacement to fill that City Manager position. In that capacity, Employee shall have responsibility for the job requirements stated in Section 2.02 of the Municipal Code and shall be subject to direction by the Council. Employee shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards. He shall comply with and carry out the City's rules and regulations, and he shall obey the laws of the United States of America and State of California as they apply to the performance of his duties.

4. **NO CONFLICTS:** Except as provided herein, Employee shall devote his full energies, interests, abilities and productive time to his performance as the City's Acting City Manager, and he shall not, without written approval by the Council, render services of any kind for compensation or engage in any activity which would materially interfere with the performance of his duties. Employee shall not engage in any activity which is or may become a conflict of interest with the City or which might create an incompatibility of office as defined under California law.

5. **COMPENSATION AND WORK SCHEDULE:**

5.1 Rate of Pay. Employee shall receive gross base pay of \$137,109 General Salary Schedule, Range G70, Step 5, per year for his services as Acting City Manager, payable on a pro-rata basis as timed by the City's payroll disbursements. In the event that this Agreement is terminated or expires, Employee's base salary shall be pro-rated for the portion of the preceding month during which he was employed under this Agreement. Payments will be made on regularly scheduled City payroll dates, and shall be subject to all applicable payroll taxes and withholdings. Such compensation shall be the sole compensation for services under this Agreement.

Once a replacement is hired and has completed initial training, Employee will transition back to his Original Assignment and shall be compensated pursuant to the terms and salary of that underlying assignment.

5.2 Work Schedule. Employee is expected to devote necessary time, within and outside normal business hours, to the business of the City.

5.3 Exempt Position: The position is exempt from FLSA and state overtime pay requirements. Due to the nature of the position, it is understood that the work day and work week hours may extend beyond a typical 8 hour day and/or a 40 hour workweek. In that event, Employee is not eligible for and will not be paid for any hours exceeding 40 in one workweek during the time that he acts as Acting City Manager.

5.4 No Benefits. Employee will receive no other benefits, incentives, compensation in lieu of benefits, or any other form of compensation. His benefits package shall remain that her received (and will continue to received) during his Original Assignment.

6. **REIMBURSEMENT:** The City shall reimburse Employee for reasonable out-of-pocket expenses incurred in connection with the City's business, including travel, food and lodging while away from home, subject to such policies and procedures as the City may from time to time establish for its employees.

7. **OTHER COMPENSATION PROHIBITED:** No compensation of any kind shall be paid to Employee unless expressly approved by the Council.

8. **DISPUTES:** Any litigation arising out of this Agreement shall be brought in Imperial County, California, and shall be resolved in accordance with the laws of the State of California. In any action to interpret or enforce the terms of this Agreement or to adjudicate any alleged

dispute, breach, default or misrepresentation in connection with any provision of this Agreement, no party shall be entitled to recover attorneys' fees or costs in addition to any other relief to which such party may be entitled.

### GENERAL

9. **NOTICES.** Notices pursuant to this Agreement shall be in writing given by deposit in the United States Postal Service, postage prepaid, delivered personally, or by overnight or other courier delivery services. All notices shall be effective as of the date of the sender's postage receipt, or immediately upon receipt if delivered personally or by overnight or other courier delivery services.

Notices to the City shall be addressed as follows:

608 Heber Avenue  
Calexico, CA 92231

or to such other address or location as the City directs.

Notices to Employee shall be addressed as follows:

377 Countryside Drive  
El Centro, CA 92243

10. **EMPLOYEE WARRANTIES.** Employee warrants that, as of the commencement of his service as Acting City Manager, he will be able to immediately begin performance of his duties and that by entering this Agreement, he will not be in violation of any other contract or Agreement.

11. **SEVERABILITY.** In the event that any provision of this Agreement is finally held or determined to be illegal or void by a court having jurisdiction over the parties, the remainder of the Agreement shall remain in full force and effect unless the parts found to be void are wholly inseparable from the remaining portion of the Agreement.

12. **PARITY IN CONSTRUING AGREEMENT.** Both parties have had sufficient opportunity to review this Agreement and to consult with legal counsel before executing it. This Agreement shall therefore be construed in accordance with its plain meaning and not in favor of or against any party.

13. **HEADINGS AND SECTION DIVISIONS.** Headings and section divisions in this Agreement are for ease of reference and are not intended to define, interpret or limit the content of each numbered paragraph or section.

14. **SOLE AGREEMENT.** The City and Employee acknowledge that this Agreement constitutes the sole and entire agreement between them relating to the subject matter of this Agreement, and that there are no other representations, agreements, arrangements or understandings, either written or oral, which are not fully expressed herein. The City and Employee further agree that this Agreement may only be modified by the City Council and Employee, and any modifications shall be in writing.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the date indicated below commencing the initial Term as provided in this Agreement.

-- CITY of CALEXICO--

Dated: Nov 5, 2015, 2015

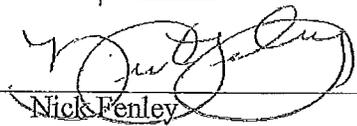
By

  
Joong S. Kim, Mayor

-- ACTING CITY MANAGER --

Dated: Nov 5, 2015, 2015

By

  
Nick Fenley