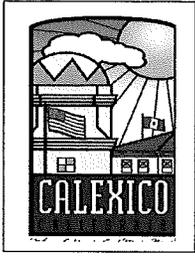


**AGENDA  
ITEM**

**10**



# AGENDA STAFF REPORT

**DATE:** March 15, 2016

**TO:** Mayor and City Council

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

**PREPARED BY:** Eduardo Gutierrez, Interim Finance Director  
Steve Dukett, Urban Futures, Inc.

**SUBJECT:** Approval of a Resolution approving a Bond Expenditure Agreement between the Successor Agency to the Calexico Community Redevelopment Agency and the City of Calexico and approving certain related actions.

=====

## Recommendation:

It is recommended that the City Council adopt the attached resolution approving a Bond Expenditure Agreement between the Successor Agency to the Calexico Community Redevelopment Agency and the City of Calexico and approving certain related actions.

## Background:

Pursuant to Health and Safety Code ("HSC") § 34172 (a) (1), the Calexico Community Redevelopment Agency was dissolved on February 1, 2012. Consistent with the provisions of the HSC, the City Council of the City of Calexico previously elected to serve in the capacity of the Successor Agency. The Oversight Board for the Successor Agency ("Oversight Board") has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency.

HSC § 34191.4 (c) allows a successor agency that has received a Finding of Completion (the "FOC") to use bond proceeds from bonds issued prior to 2011 and a percentage of proceeds from bonds issued between January 1, 2011 and June 27, 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute excess bond proceeds (the "Excess Bond Proceeds") obligations that shall be listed separately on a successor agency's Recognized Obligation Payment Schedule (the "ROPS").

The HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies.

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HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. HSC § 34178 (c) allows a successor agency and its sponsoring city to enter into agreements for the purpose of conducting the work of winding-down the former redevelopment agency as set forth in HSC § 34177.3 (b), subject to the obtaining the approval of its oversight board.

As a consequence of receiving its FOC on October 3, 2013, the Successor Agency may now utilize its Excess Bond Proceeds for their intended purposes, subject to the terms and limitations set forth in that certain Bond Expenditure Agreement between the Successor Agency and the City, which is included as Exhibit "A" to the attached resolution (the "Bond Expenditure Agreement"). The Successor Agency has Excess Bond Proceeds in the amount of \$2,784,958 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2003C (the "2003C TABs") and \$6,184,410 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2011 (the "2011 TABs") that together total \$8,969,368 that are to be transferred to the City of Calexico (the "City") to facilitate the handling of proceeds of the TABs as more particularly provided herein in conformity with the covenants applicable to each of the TAB issues.

**Discussion & Analysis:**

The Successor Agency does not have the technical capability of causing the development of capital projects; however, the City of Calexico (the "City") does have the requisite technical capability of causing the development of capital projects. Consistent with the foregoing, the Successor Agency desires to provide the Excess Bond Proceeds to the City for the purpose of enabling the City to use such funds in the manner consistent with the covenants applicable to the TABs. The transfer of the Excess Bond Proceeds to the City for use in the manner consistent with the covenants applicable to the TABs is evidenced in the Bond Expenditure Agreement. The Bond Expenditure Agreement shall only be effective subsequent to its approval by the Successor Agency's Oversight Board and the California Department of Finance. Therefore, and consistent with the foregoing, the Bond Expenditure Agreement is recommended for approval.

**Fiscal Impact:**

Approval of the Bond Expenditure Agreement will ensure that the Excess Bond Proceeds are used for their intended purpose in an expeditious manner.

**Coordinated With:**

Urban Futures, Inc.

**Attachment:**

1. Resolution approving a Bond Expenditure Agreement between the Successor Agency to the Calexico Community Redevelopment Agency and the City of Calexico and approving certain related actions.

**RESOLUTION NO. 2016-\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING A BOND EXPENDITURE AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE CALEXICO COMMUNITY REDEVELOPMENT AGENCY AND THE CITY OF CALEXICO AND APPROVING CERTAIN RELATED ACTIONS**

**WHEREAS**, pursuant to Health and Safety Code (the "HSC") § 34172 (a)(1), the Calexico Community Redevelopment Agency was dissolved on February 1, 2012; and

**WHEREAS**, consistent with the provisions of the HSC, the City Council of the City of Calexico previously elected to serve in the capacity of the Successor Agency to the Calexico Community Redevelopment Agency (the "Successor Agency"); and

**WHEREAS**, the Oversight Board for the Successor Agency (the "Oversight Board") has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

**WHEREAS**, HSC § 34191.4 (c) allows a successor agency that has received a Finding of Completion (the "FOC") to use bond proceeds from bonds issued prior to 2011 and a percentage of proceeds from bonds issued between January 1, 2011 and June 27, 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute excess bond proceeds (the "Excess Bond Proceeds") obligations that shall be listed separately on a successor agency's Recognized Obligation Payment Schedule (the "ROPS"); and

**WHEREAS**, the HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies; and

**WHEREAS**, HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

**WHEREAS**, HSC § 34178 (c) allows a successor agency and its sponsoring city to enter into agreements for the purpose of conducting the work of winding-down the former redevelopment agency as set forth in HSC § 34177.3 (b), subject to the obtaining the approval of its oversight board; and

**WHEREAS**, as a consequence of receiving its FOC on October 3, 2013, the Successor Agency may now utilize its Excess Bond Proceeds for their intended purposes, subject to the terms and limitations set forth in that certain Bond Expenditure Agreement between the Successor Agency and the City, which is attached hereto as Exhibit "A" (the "Bond Expenditure Agreement"); and

**WHEREAS**, the Successor Agency has Excess Bond Proceeds in the amount of \$2,784,958 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2003C (the "2003C TABs") and \$6,184,410 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2011 (the "2011 TABs") that together total \$8,969,368 that are to be transferred to the City of Calexico (the "City") to facilitate the handling of proceeds of the TABs as more particularly provided herein in conformity with the covenants applicable to each of the TAB issues; and

**WHEREAS**, the Successor Agency does not have the technical capability of causing the development of capital projects; however, the City of Calexico (the "City") does have the requisite technical capability of causing the development of capital projects; and

**WHEREAS**, consistent with the foregoing recital, the Successor Agency desires to provide the Excess Bond Proceeds to the City for the purpose of enabling the City to use such funds in the manner consistent with the covenants applicable to the TABs; and

**WHEREAS**, the transfer of the Excess Bond Proceeds to the City for use in the manner consistent with the covenants applicable to the TABs is evidenced in the Bond Expenditure Agreement between the Successor Agency and the City, attached hereto as Exhibit "A"; and

**WHEREAS**, the Bond Expenditure Agreement shall only be effective subsequent to its approval by the Successor Agency's Oversight Board and the California Department of Finance; and

**WHEREAS**, consistent with the foregoing, the Bond Expenditure Agreement is recommended for approval; and

**WHEREAS**, all of the prerequisites with respect to the approval of this Resolution have been met.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Calexico, as follows:

**Section 1.** The foregoing recitals are true and correct and are a substantive part of this Resolution.

**Section 2.** The Bond Expenditure Agreement between the Successor Agency and the City, which is attached hereto as Exhibit "A", is approved.

**Section 3.** The City Manager, or designee, is authorized to take such actions and execute such documents as are necessary to effectuate the intent of this Resolution.

**Section 5.** This Resolution shall take effect upon the date of its adoption.

**PASSED, APPROVED AND ADOPTED** this 15<sup>th</sup> day of March 2016.

---

Joong S. Kim, Mayor

ATTEST

---

Gabriela T. Garcia, Deputy City Clerk

**CERTIFICATION:**

I, Gabriela T. Garcia, Deputy City Clerk for the City of Calexico, do hereby certify that the foregoing Resolution No. 2016-\_\_ was duly adopted by the City Council of the City of Calexico, at a meeting thereof held on the 15<sup>th</sup> day of March 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Gabriela T. Garcia, Deputy City Clerk

**EXHIBIT "A"**

**BOND EXPENDITURE AGREEMENT  
BETWEEN THE  
SUCCESSOR AGENCY TO THE  
CALEXICO COMMUNITY REDEVELOPMENT AGENCY  
AND THE  
CITY OF CALEXICO**

**(See Attachment)**

## **BOND EXPENDITURE AGREEMENT**

This Bond Expenditure Agreement (the “Agreement”) is entered into on March 1, 2016, by and between the City of Calexico, a municipal corporation (the “City”) and the Successor Agency to the Calexico Community Redevelopment Agency, a public body corporate and politic (the “Successor Agency”). The City and the Successor Agency are collectively referred to herein as “Parties” or individually referred to as a “Party”.

### **RECITALS**

**WHEREAS**, pursuant to Health and Safety Code (the “HSC”) § 34172 (a)(1), the Calexico Community Redevelopment Agency was dissolved on February 1, 2012; and

**WHEREAS**, consistent with the provisions of the HSC, the City Council of the City of Calexico previously elected to serve in the capacity of the Successor Agency to the Calexico Community Redevelopment Agency (the “Successor Agency”); and

**WHEREAS**, the Oversight Board for the Successor Agency (the “Oversight Board”) has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

**WHEREAS**, HSC § 34191.4 (c) allows a successor agency that has received a Finding of Completion (the “FOC”) to use bond proceeds from bonds issued prior to 2011 and a percentage of proceeds from bonds issued between January 1, 2011 and June 27, 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute excess bond proceeds (the “Excess Bond Proceeds”) obligations that shall be listed separately on a successor agency’s Recognized Obligation Payment Schedule (the “ROPS”); and

**WHEREAS**, the HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies; and

**WHEREAS**, HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

**WHEREAS**, HSC § 34178 (c) allows a successor agency and its sponsoring city to enter into agreements for the purpose of conducting the work of winding-down the former redevelopment agency as set forth in HSC § 34177.3 (b), subject to the obtaining the approval of its oversight board; and

**WHEREAS**, as a consequence of receiving its FOC on October 3, 2013, the Successor Agency may now utilize its Excess Bond Proceeds for their intended purposes; and

**WHEREAS**, the Successor Agency has Excess Bond Proceeds in the amount of \$2,784,958 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2003C (the “2003C TABs”) and \$6,184,410 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2011 (the “2011 TABs”) that together total \$8,969,368 that are to be transferred to the City of Calexico (the “City”) to facilitate the handling of proceeds of the TABs as more particularly provided herein in conformity with the covenants applicable to each of the TAB issues; and

**WHEREAS**, the Successor Agency does not have the technical capability of causing the development of capital projects; however, the City does have the requisite technical capability of causing the development of capital projects; and

**WHEREAS**, pursuant to this Agreement, the Successor Agency desires to provide the Excess Bond Proceeds to the City for the purpose of enabling the City to use such funds in the manner consistent with the covenants applicable to the 2003C TABs and 2011 TABs, respectively; and

**WHEREAS**, the expenditure of proceeds from the 2011 TABs shall be governed by the provisions of HSC § 34191.4 (c) (2), as such provisions may be amended from time to time; and

**WHEREAS**, the Parties intend that this Agreement shall constitute an excess bonds proceeds obligation within the meaning of HSC § 34191.4 (c) to be paid from Excess Bond Proceeds; and

**WHEREAS**, the Successor Agency has listed the use of Excess Bond Proceeds on its ROPS 16-17 A & B as obligations to be funded with Excess Bond Proceeds.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants and conditions set forth hereinafter, the parties agree as follows:

**1. Incorporation.** The foregoing Recitals are true and correct and are a substantive part of this Agreement.

**2. Successor Agency’s Obligations:** Subsequent to the Effective Date, as defined below, the Successor Agency shall: i) transfer to the City all of the Excess Bond Proceeds from the TABs, plus all interest accrued thereon up to the date of such transfer; and ii) assign to the City all duties and responsibilities with respect to the administration of any capital projects that are funded with Excess Bond Proceeds, including without limitation, as set forth therefor in the indenture or indentures of trust under which the TABs were issued.

**3. City’s Obligations:** The City shall have the following obligations under this Agreement:

a) Retention of Excess Bond Proceeds: The City shall accept, hold, and disburse Excess Bond Proceeds transferred to the City pursuant to this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City shall retain any Excess Bond Proceeds that it receives and shall use such funds for uses consistent with applicable bond covenants.

b) Use of Excess Bond Proceeds: The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity authorized by the City Council of the City (the "Selected Projects"). The Selected Projects may include projects that are described in the Official Statement for the TABs or as otherwise allowable under the tax certificate executed and delivered for all or a portion of the TABs. The expenditure of proceeds from the 2011 TABs shall be governed by the provisions of HSC § 34191.4 (c) (2), as such provisions may be amended from time to time. Further, the City must spend the Excess Bond Proceeds consistent with the original bond covenants applicable to the particular Excess Bond Proceeds, and must comply with all requirements of the federal tax law and all applicable requirements of the HSC as to the use of such funds. The City shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws.

The City shall indemnify and defend the Successor Agency, and its officers and agents, against, and shall hold the Successor Agency, and its officers and agents, harmless from, any claims causes of action, or liabilities arising from any use of Excess Bond Proceeds by the City that is inconsistent with or unallowable pursuant to the applicable bond covenant or the failure of the City to ensure that Excess Bond Proceeds are used in accordance with bond covenants, federal tax law, and the HSC.

The City assumes all contracts, if any, entered into by the Successor Agency or the former redevelopment agency related to activities to be funded by Excess Bonds Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations. The City shall perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA, and shall timely complete the work required for each project.

**4. Entire Agreement; Waivers; and Amendments:**

a) This Agreement constitutes the entire understanding and agreement of the Parties with respect to the transfer and use of Excess Bond Proceeds. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

b) This agreement is intended solely for the benefit of the City and the Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Successor Agency, there shall be no third party beneficiaries under this agreement.

c) All waivers of the provisions of the Agreement and all amendments to this Agreement must be in writing and signed by the authorized Representative of the Parties.

**5. Severability:** If any term, provisions, covenant or condition to this Agreement is held by a court of competent jurisdiction to be invalid, void of unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

**6. Further Assurances:** Each Party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this agreement.

**7. Effective Date:** This Agreement shall only be effective subsequent to its approval by the Successor Agency's Oversight Board and the California Department of Finance.

**8. Governing Law:** This Agreement shall be construed and interpreted according to the laws of the State of California.

**(Signatures on Following Page)**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below.

**CITY OF CALEXICO**

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

Date: \_\_\_\_\_

**SUCCESSOR AGENCY TO THE CALEXICO  
COMMUNITY REDEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Joong S. Kim, Chairman

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

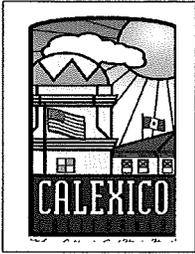
By: \_\_\_\_\_  
Interim City Attorney

**ATTEST:**

By: \_\_\_\_\_  
Gabriela T. Garcia, Deputy City Clerk

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# AGENDA STAFF REPORT

**DATE:** March 15, 2016  
**TO:** Mayor and City Council  
**APPROVED BY:** Nick Fenley, Interim City Manager  
**PREPARED BY:** Gabriela T. Garcia, Deputy City Clerk  
**SUBJECT:** Update of General Fund Budget – Discussion Only.

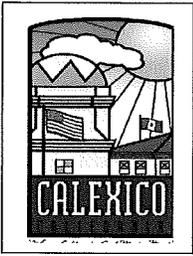
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**BACK UP FOR THIS ITEM WILL BE PROVIDED AT MEETING.**

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# AGENDA STAFF REPORT

**DATE:** March 15, 2016  
**TO:** Mayor and City Council  
**APPROVED BY:** Nick Fenley, Interim City Manager  
**PREPARED BY:** Nick Fenley, Interim City Manager  
**SUBJECT:** Change in the Observation of Cesar Chavez Holiday

=====

**Recommendation:**

Recommend City Council to provide direction to Staff on Option to implement.

**Background:**

On March 20, 2001, the City approved Resolution No. 01-23 establishing March 31<sup>st</sup> as Cesar Chavez Day. Every year since, City Hall and other City facilities have closed in observation of the Cesar Chavez Day and his many contributions in support of the agriculture communities.

**Discussion & Analysis:**

Staff presents the following options on the closure of Cesar Chavez Day holiday:

1. Observe the Cesar Chavez Day holiday and close City Hall and other City Facilities on Friday, April 1, 2016 instead of Thursday, March 31, 2016. This option is presented due to the amount of traffic the City is currently experiencing at the end of each month with the payment of the utility bills. This option will allow the public to continue to make their utility bill payment as scheduled. This option will also require a change in the City payroll to Thursday, March 31, 2015. This will create an additional day off for the personnel on 9/80 who are off on Friday. Staff that is scheduled to be off on Friday, April 1, 2016, will have to make arrangements to take another day off within the same payroll period. If Staff is not able to schedule another day within the same payroll period, they will be incurring overtime.
2. Observe the Cesar Chavez Day holiday, close City Hall and other City Facilities on Thursday, March 31, 2016 and allow residents to make their utilities payment until Friday, April 1, 2016 **without a late payment fee.** Please note this option will

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require a change in the Springbrook System in order for a late fee not to be assessed to the account holders until after April 1, 2016. Since the utility bill has already gone out for the month of March, the City will have to advertise the change in the local newspaper, City Hall bulletin boards, Camarena Library and City website so the public is aware that a late fee **will not be assessed** due to City Hall being closed on the last day of the month.

**Fiscal Impact:**

Approximately \$250 for advertisement in local newspaper.  
Fiscal Impact of possible overtime is unknown at this time.

**Coordinated With:**

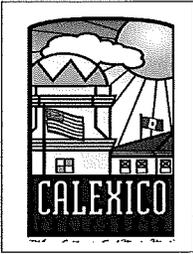
None.

**Attachment:**

None.

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**13**



# AGENDA STAFF REPORT

**DATE:** March 15, 2016

**TO:** Mayor and City Council

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

**PREPARED BY:** Nick Fenley, Interim City Manager

**SUBJECT:** Authorize City Manager to Sign Amendment No. 3 Agreement between the City of Calexico and Bender Rosenthal, Inc. for Right-of-Way Services for Cesar Chavez Blvd. Improvement Project.

=====

## Recommendation:

Authorize City Manager to Sign Amendment No. 3 Agreement between the City of Calexico and Bender Rosenthal, Inc. for Right-of-Way Services for Cesar Chavez Blvd. Improvement Project.

## Background:

On October 21, 2014, the City Council of the City of Calexico awarded the right-of-way services for Cesar Chavez Blvd. Improvement Project to Bender Rosenthal, Inc. in the amount of \$244,090. Additional work has been required that was not anticipated and the City Council of the City of Calexico gave authorization to the City Manager to sign Amendment No. 1 and 2 bring the total contract amount to \$340,835.

## Discussion & Analysis:

On a bi-weekly basis Engineering Division staff, Interim City Attorney, Bender Rosenthal, Inc., and KOA (design phase) meet to discuss the progress of Cesar Chavez Blvd. Improvement Project. Due to unanticipated complications on the part of displaced businesses and the relocation task that have proven to be more time consuming Bender Rosenthal, Inc. will need to an increase in the number of contacts and meetings, therefore, they are requesting an amendment to existing contract. Please note that this project is on a time sensitive timeline and it's very crucial that the City proceed on approving the additional work in Bender Rosenthal, Inc. Amendment No. 3. If approved the new total contract amount will be \$373,335.

In summary the scope includes the following tasks:

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1. Right-of-way management & certification
2. Acquisition services
3. Relocation
4. Escrow support

**Fiscal Impact:**

Measure "D" Funds \$32,500.00

**Coordinated With:**

Engineering Division staff, Bender Rosenthal, Inc., and KOA (design phase)

**Attachment:**

1. Amendment No. 3 Agreement Proposal
2. Bender Rosenthal, Inc. Agreement, Amendment No. 1 and Amendment No. 2

**AMENDMENT NUMBER NO. 3 TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF CALEXICO AND BENDER ROSENTHAL, INC.**

AMENDMENT NUMBER NO. 2 dated March 15, 2016, the agreement for professional services between the City of Calexico ("City") and Bender Rosenthal, Inc. ("Consultant") dated June 20, 2014 (the "Agreement") concerning Cesar Chavez Blvd. Improvement (the "Project").

The Consultant has entered into the Agreement with the City for the furnishing of professional services, and the parties now desire to amend the Agreement.

Therefore, it is mutually agreed that the Agreement is amended to include Additional Services to be performed by Consultant and provisions for additional compensation by the City to the Consultant, all set forth in:

Exhibit A – Scope and Fee Amendment dated March 1, 2016

The parties ratify the terms and conditions of the Agreement not inconsistent with this Amendment, all of which are incorporated by reference.

CITY OF CALEXICO:

CONSULTANT:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: Nick Fenley, Interim City Manager

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

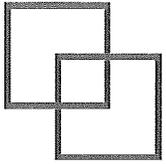
Title: Carlos Campos, Interim City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: Gabriela Garcia, Deputy City Clerk

Date: \_\_\_\_\_



**BENDER  
ROSENTHAL, INC.**

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

4400 Auburn Boulevard, Suite 102  
Sacramento, CA 95841  
main: 916.978.4900 • fax: 916.978.4904  
www.benderrosenthal.com

March 1, 2016

Nick Fenley  
City Manager  
City of Calexico, Public Works and Engineering Department  
608 Heber Avenue  
Calexico, CA 92231

Subject: Cesar Chavez Right of Way Services – Scope and Fee Amendment

Dear Mr. Fenley:

As previously discussed, enclosed is the amended scope and cost proposal for Right of Way Services for the Cesar Chavez Road Improvement Project.

Based on our review of the work completed to date, the remaining work to be done, and the remaining budget, we have developed the attached scope which includes the following services:

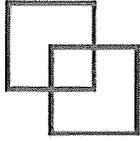
- ROW Management & Certification
- Acquisition
- Relocation
- Escrow Support

With reference to the original contract scope, the right of way planning, appraisal, and appraisal review services have been completed.

Please contact me if you have any questions regarding this scope / fee amendment proposal. I can be reached at (916) 919-7262.

Respectfully,

Steve Parent, MAI, SRA, AI-GRS, SR/WA, PMP  
Director



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## **RIGHT OF WAY SCOPE OF SERVICES**

Acquisition & Relocation services will be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way Manual, as applicable. A general discussion of the scope is as follows:

### **TASK 1 –ROW MANAGEMENT & CERTIFICATION**

The additional budget requested for this task is due to schedule extension beyond the end of 2015. The additional budget proposed will extend BRI's management services activities through the end of October 2016. Based on the original contract schedule, management activities were anticipated to end June 1, 2015. Based on the second amendment, management activities were anticipated to end December 31, 2015.

This task includes monthly ROW Status meetings, monthly schedule and progress updates, and coordination efforts with the PDT and ROW teams throughout the life of the project.

#### **Deliverables:**

- Running weekly BRI staff meetings through the acquisition and condemnation support phases of the project.
- Providing Monthly progress updates to CITY staff.
- Developing ROW Certification.
- Managing resources necessary to provide condemnation support services
- Managing resources necessary to possession and use agreement negotiation services
- Managing resources necessary to provide additional relocation services

### **TASK 2 - APPRAISAL SERVICES**

No Change. This task is complete.

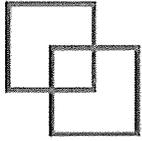
### **TASK 3 - ACQUISITION SERVICES**

To help clarify the scope of this task we have broken this in to three separate sub-tasks:

Task 3.1 – Acquisition

Task 3.2 – Possession and Use Agreement Negotiations

Task 3.3 – Post Resolution of Necessity Acquisition Services



---

### **TASK 3.1 ACQUISITION**

BRI has met all of its original acquisition scope requirements with the exception of delivery of a final report. Additional acquisition related tasks include negotiation of possession and use agreements and post-resolution of necessity activities as detailed below.

### **TASK 3.2 - POSSESSION AND USE AGREEMENT (PAU) NEGOTIATIONS**

BRI has met all of its scope requirements for this activity.

### **TASK 3.3 - POST-RESOLUTION OF NECESSITY (RON) ACQUISITION SERVICES**

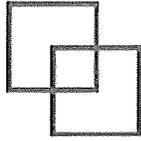
The current scope of work would allow BRI's condemnation support activities to continue up until such time as a motion for order of possession is filed. These acquisition services would include administrative settlements. Additional work is required to finalize the acquisition of remaining properties needed for the project. This task includes up to six contacts with owners between RON and final order of possession which will take up to 30 hours.

### **TASK 4 - ESCROW SUPPORT**

This is not a new task. Due to delays that have resulted from Title/Escrow Company and administrative processing, it is necessary to continue escrow support activities. The estimated time required for this is 32 hours.

**Deliverable:**

- Facilitate Title and Escrow support for up to 14 larger parcels



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## **TASK 5 - RELOCATION ASSISTANCE PROGRAM (RAP)**

The scope of this task is outlined in the original contract. With reference to the original contract, items 1-6 have been completed. Items 7-14 as shown below pertain to activities that remain.

7. Distribute 30-Day Notices to Vacate, and other notices as required.
8. Determine eligibility for and proposed amount of relocation benefits, including moving payments and miscellaneous business relocation costs.
9. Inspect replacement site to determine if they meet “decent, safe and sanitary” (DS&S) requirements.
10. Monitor the move to replacement site, as necessary.
11. Prepare necessary payment documentation and deliver benefit checks and other appropriate payments to claimants.
12. Provide displacees with on-going advisory services to minimize hardship.
13. Meet with City staff and/or consultants to coordinate relocation activities.
14. Maintain current and accurate files and records of all contacts with each displace and include them in a Final Report.

Due to unanticipated complications on the part of displaced businesses, the relocation task has proven to be more time consuming than originally anticipated. This has led to an increased number of contacts and meetings with displacees to assist them with the relocation process. This is the basis for the additional budget request associated with 60 hours.

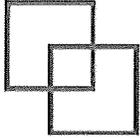
The number of relocations covered under this amendment is unchanged relative to the prior amendment.

**Deliverable:**

- Provide relocation assistance as outlined above for up to 4 business and 2 personal property relocations

**Assumption:**

- Claim for Relocation benefits will occur within contract period.



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## FEES

The remaining scope of work pertains to the following parcels: 058-333-009, 058-400-049, 058-400-012, 058-334-002, 058-334-005, 058-400-034, UPRR Right of Way, 058-400-013, 058-400-045, 058-400-046, 058-400-047, 058-400-023, 058-400-029, 058-400-027, 058-400-028, 058-400-030, 058-400-004, 058-244-001, 058-400-006, 058-400-063.

A summary of our fee based on the scope described above is as follows.

	Total
Task 1 - ROW Management / Certification 70 hours x \$175/hour	\$12,250
Task 3 - Acquisition Services 30 hours x \$140/hour	\$4,200
Task 4 – Escrow Support 32 hours x \$140/hour	\$4,480
Task 5 – Relocation 60 hours x \$140/hour	\$8,400
Sub Total	\$29,330
Management Reserve	\$3,170
Total	\$32,500

BRI currently has \$5,000 remaining in our budget. This will be consumed by acquisition, relocation, escrow support, and management activities. The additional fees requested above will provide the aforementioned additional services not covered by the remaining contract budget. The management reserve proposed will not be tapped unless authorized by City Staff.

## AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into as of the 30th day of October, 2014, by and between the City of Calexico ("City") and Bender Rosenthal, Inc. ("Consultant").

### RECITALS

- A. Consultant is specially trained, experienced and competent to perform the special services which will be required by this Agreement; and
- B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement on the terms and conditions described herein.

### AGREEMENT

1. Scope of Services. The Consultant shall furnish the following services in a professional manner. Consultant shall perform the services described on Exhibit A which is attached hereto and incorporated herein by reference. Consultant shall provide said services at the time, place, and in the manner specified in Exhibit A, subject to the direction of the City through its staff that it may provide from time to time.
2. Time of Performance. The services of Consultant are to commence upon execution of this Agreement and shall continue until all authorized work is approved by the City. All such work shall be completed no later than December 31, 2016. Time is of the essence for every provision of this agreement that states a time for performance and for every deadline imposed by the City.
3. Compensation. Compensation to be paid to Consultant shall be as set forth in Exhibit B, which is attached hereto and incorporated herein by reference. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.
4. Method of Payment. Consultant shall submit monthly billings to City describing the work performed during the preceding month. Consultant's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Consultant no later than 30 days after approval of the monthly invoice by City staff.
5. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Consultant, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of the City upon payment to Consultant for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Consultant or to any other party. Consultant shall, at Consultant's

expense, provide such reports, plans, studies, documents and other writings to City upon written request.

6. Independent Contractor. It is understood that Consultant, in the performance of the work and services agreed to be performed, shall act as and be an independent contractor and shall not act as an agent or employee of the City. Consultant shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Consultant hereby expressly waives any claim it may have to any such rights.

7. Interest of Consultant. Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by and during this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Consultant's services hereunder. Consultant further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Consultant is not a designated employee within the meaning of the Political Reform Act because Consultant:

a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and

b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

8. Professional Ability of Consultant. City has relied upon the professional training and ability of Consultant to perform the services hereunder as a material inducement to enter into this Agreement. Consultant shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Consultant's field of expertise.

9. Indemnity. Consultant agrees to indemnify, including the cost to defend, the City, and its officers, agents and employees from any and all claims, demands, costs or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Consultant and its agents in the performance of services under this contract. This indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence, willful misconduct or defects in design by the City or its agents, servants, or independent contractors who are directly responsible to the City, or the active negligence of the City.

To the fullest extent permitted by law, the Consultant shall (1) immediately defend and (2) indemnify the City, and its councilmembers, officers, agents, and employees from and against all liabilities regardless of nature or type that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. The Consultant's obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, then Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability.

- (b) The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, agents, and employees, immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Consultant are responsible for the claim does not relieve Consultant from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant may submit a claim to the City for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the indemnified party.
- (c) The review, acceptance or approval of the City's work or work product by any indemnified party shall not affect, relieve or reduce the City's indemnification or defense obligations. This Section survives completion of the services or the termination of this contract. The provisions of this Section are not limited by and do not affect the provisions of this contract relating to insurance.

10. Insurance Requirements.

- a. Consultant, at Consultant's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies.
  - i. Workers' Compensation Coverage. Consultant shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Consultant shall require each subcontractor to similarly maintain Workers'

Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Consultant for City. This provision shall not apply if Consultant has no employees performing work under this Agreement. If the Consultant has no employees for the purposes of this Agreement, Consultant shall sign the "Certificate of Exemption from Workers' Compensation Insurance" which is attached hereto as Exhibit C.

ii. General Liability Coverage. Consultant shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.

iii. Automobile Liability Coverage. Consultant shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence.

iv. Errors and Omissions Liability. Consultant shall maintain errors and omissions liability insurance for all work performed under this Agreement in an amount of not less than one million dollars (\$1,000,000).

b. Policy Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. The City of Calexico, its elected or appointed officers, officials, employees, agents and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work or operations.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.

v. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days written notice has been received by the City.

c. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. At the City's option, Consultant shall demonstrate financial capability for payment of such deductibles or self-insured retentions.

d. Certificates of Insurance and Endorsements. Consultant shall provide certificates of insurance with original endorsements to City as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the City on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the City at all times during the term of this Agreement.

11. Compliance with Laws. Consultant shall use the standard of care in its profession to comply with all applicable federal, state and local laws, codes, ordinances and regulations.
12. Licenses. Consultant represents and warrants to City that it has all licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Consultant to practice its profession. Consultant shall obtain a City of Calexico Business License.
13. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Imperial, California.
14. Written Notification. Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and either served personally or sent prepaid, first class mail. Any such notice, demand, etc. shall be addressed to the other party at the address set forth herein below. Either party may change its address by notifying the other party of the change of address. Notice

shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to City: City of Calexico, City Manager  
608 Heber Ave.  
Calexico, CA 92231

If to Consultant: Bender Rosenthal, Inc.  
4400 Auburn Blvd., Suite 102  
Sacramento, CA 95841

15. Consultant's Books and Records.

a. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Consultant to this Agreement.

b. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor-in-interest.

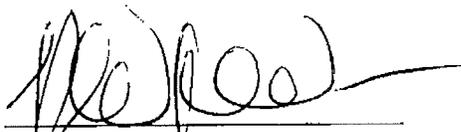
16. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between the City and Consultant. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in total by this Agreement.

17. Amendments. This Agreement may be modified or amended only by a written document executed by both Consultant and City and approved as to form by the City Attorney.

18. Waiver. No failure on the part of either party to exercise any right or remedy hereunder shall operate as a waiver of any other right or remedy that party may have hereunder.
19. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
20. Assignment and Subcontracting. The parties recognize that a substantial inducement to City for entering into this Agreement is the professional reputation, experience and competence of Consultant. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express consent of the City. Consultant shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the City. If City consents to such subcontract, Consultant shall be fully responsible to City for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between City and subcontractor nor shall it create any obligation on the part of the City to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
21. Termination. This Agreement may be terminated by the City immediately for cause or by either party without cause upon fifteen days' written notice of termination. Upon termination, Consultant shall be entitled to compensation for services performed up to the effective date of termination.

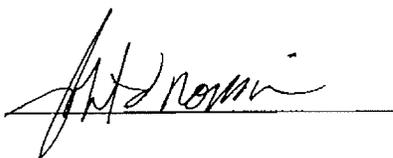
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

CITY OF CALEXICO:

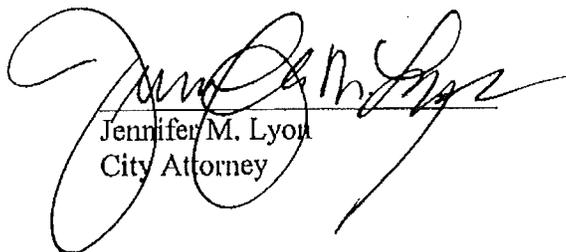


Richard N. Warne  
Interim City Manager

CONSULTANT:

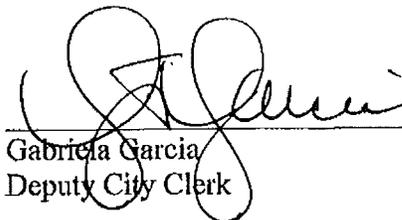


APPROVED AS TO FORM:



Jennifer M. Lyon  
City Attorney

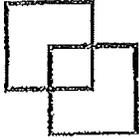
ATTEST:



Gabriela Garcia  
Deputy City Clerk

**EXHIBIT A**  
**SCOPE OF SERVICES**

(Oct. 8, 2014)



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## RIGHT OF WAY SCOPE OF SERVICES

Acquisition & Relocation services will be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way Manual, as applicable. A general discussion of the scope is as follows:

### TASK 1 - ROW PLANNING

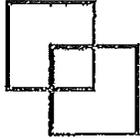
BRI will work with the CITY's staff to help refine the issues facing the ROW acquisition prior to the final design phase. Planning activities include a field review of project and developing a preliminary ROW capital cost estimate based on preliminary plans. This task will include developing a ROW budget and ROW data sheet for the preferred alternative. Per chapter 17.04.02.01 of the Caltrans ROW manual, all ROW Data sheets will be signed by a Right of Way professional with either a Real Estate Appraiser Certification or Real Estate License.

#### Deliverables:

- Make *one site visit*, including an inspection of proposed ROW for opportunities to avoid sensitive sites, critical constraints, and environmental problems.
- Review of current and projected land use patterns from a ROW cost
- Provide a comparable analysis of each property, including potential damages to affected property improvements.
- Assist in identifying ROW solutions to environmental problems where appropriate.
- Establish steps for acquiring rights of way required.
- Provide ROW estimates, by parcel.
- Provide up to 1 ROW Data Sheets.

#### Assumption:

- CITY will provide spreadsheet with all affected parcels, current size, current use and size of acquisition delineated thereon.
- A detailed Relocation Impact Study will not be necessary.
- A detailed Relocation Plan will not be required in this phase.
- Detailed appraisals will not be required in this phase.
- No property owner contact in this phase.
- *Estimates are for budgetary purposes only.*
- CITY will provide number and cost of Utility relocations.
- Utility costs and information to be provided by Engineer.
- Railroad costs and information to be provided by Engineer.



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## **TASK 2 –ROW MANAGEMENT & CERTIFICATION**

This task includes monthly ROW Status meetings, monthly schedule and progress updates, and coordination efforts with the PDT and ROW teams throughout the life of the project.

### **Deliverables:**

- Running weekly BRI staff meetings through the appraisal and acquisition phase of the project.
- Attending City PDT meetings, up to 3.
- Providing Monthly progress updates to PDT and the CITY staff.
- Coordinating design issues between engineering team and ROW team.
- Attendance at one City Council meeting
- Developing ROW Certification.

## **TASK 3 - APPRAISAL SERVICES**

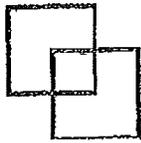
BRI will develop complete appraisals for the CITY that will state the estimated fair market value of the fee simple interest in each referenced property. The appraisal reports will be summary appraisal reports that will be prepared in conformance with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, which fully incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Jurisdictional exceptions may apply in some cases.

Plats and legal descriptions for each of the properties to be appraised will be provided to BRI by the CITY. Some of the items that may affect the appraisal process include:

- Complexity of the valuation;
- Impact of the interests to be acquired (e.g. Temporary Construction Easements, and Public Utility easements).
- Damage Analysis (Severance Damage, Cost to Cure, etc.)

The primary steps in completion of fair market value appraisals of the property rights to be acquired include but are not limited to the following:

- Onsite physical inspection of the subject property with the owner.
- Visual inspection of the comparable market data.
- Study of community and neighborhood in which the subject is located.
- Collection of data from appropriate governmental agencies.
- Verification of market data with sources knowledgeable with the pertinent details of the transaction.
- Analysis of all appropriate data in the before and after condition to arrive at an opinion of value.
- Preparation of report.



**Deliverables:**

- Three copies of each Appraisal that meet all State and Federal Standards
- Up to 13 Appraisal Reports.
- Up to 5 Waiver Valuations

**TASK 3A - INDEPENDENT APPRAISAL REVIEW**

Per Federal and State regulations, (Uniform Act) a qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary correction or revisions. In addition, the review appraiser shall certify that the opinion of fair market value is reasonably supported by an acceptable appraisal.

**Deliverables:**

- Review certification appraisal reports for up to 13 Appraisals.

**TASK 3B – FURNITURE, FIXTURE & EQUIPMENT (FF&E) APPRAISAL SERVICES**

This scope of these services will depend on the effect of the project on the operations of the various businesses. This won't be determined until the initial appraisal interviews are completed.

The FF&E valuation will be valued using generally accepted appraisal principles and theory, and comply with the standards outlined by the California Department of Transportation, Right of Way Manual, Section 7.08.02 and the reporting requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the appraisal foundation of the American Society of Appraisers.

The purpose of the "appraisal is to estimate the potential Replacement cost new, Fair Market Value In Use, Salvage Value and Relocation Cost, which will provide the City a number for negotiation and settlement purposes. This value is not intended for Court purposes.

**Deliverables:**

- 2 FF&E Appraisal report for 058-400-034 and 058-400-061.

**TASK 3 - ACQUISITION SERVICES**

Bender Rosenthal, Inc. proposes to develop all necessary contracts, conveyance documents and escrow instructions necessary to make offers based on the CITY's process. We will meet with the owners, and convey documents until acceptance or impasse is reached.



Steps within the acquisition process are outlined below:

1. Review of the project concept and design with staff and other consultants.
2. Review of appraisals, title reports, maps and descriptions of the required parcels.
3. Field review the project with the Project Manager or other designated person.
4. Preparation of right-of-way contracts and other acquisition documents.
5. Meet with the property owners to discuss the project in general; review of maps and legal descriptions; confirm information about occupants/owners and make the official First Written Offer to owner. Acquire tenant consent if required.
6. Acquisition activities are based on settlement by the third contact either in person or by telephone. A recommendation to the CITY will be made after *impasse* has been reached. To reach *impasse* there are specific requirements:
  - A. Go through the *acquisition steps* outlined below; plus
  - B. Make at least three contacts with owner (personal call, letter or phone call) in any combination; plus
  - C. Spend up to eight hours working on the parcel acquisition.
  - D. Responding to property owner inquiries verbally and in writing within two business days.

The acquisition steps when offering compensation to the property owner include:

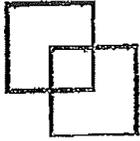
- A. Owner accepts offer. (Close)
- B. Owner rejects offer.
  1. Owner refuses to counter. (Impasse)
  2. Owner makes counter proposal.
    - a. The City accepts counter. (Close)
    - b. The City rejects counter. (Impasse)
    - c. The City makes new offer.
      1. Owner accepts new offer. (Close)
      2. Owner does not accept new offer. (Impasse)
7. Deliver signed right-of-way contract and signed and acknowledged grant deed for closed transaction. Deliver a memorandum explaining *impasse*.
8. Final report, including transfer of all pertinent correspondence and files, to the CITY.

**Deliverables:**

- Acquisition of up to 18 parcels.

**TASK 4 - ESCROW SUPPORT**

In order to facilitate the closing of the various ROW transactions, the project will provide escrow and title support as part of the scope of work. BRI is very knowledgeable in this area and has the staff necessary to help the CITY with their title and escrow needs. This task is very difficult to quantify for a scope. For example, we have been very instrumental in providing lender's additional information as it



relates to a proposed acquisition (especially if the acquisition has little or no affect to the real estate). This has eliminated the Bank's desire to charge for an additional appraisal. However, it is very difficult to "mandate" a lender to address a partial reconveyance of a deed of trust. Tasks to be considered include:

- The CITY to provide preliminary title reports needed for the Project.
- Review existing easements and permits.
- Review Legal descriptions and plats for the project.
- Title Company to draft consent to easement, partial release and partial reconveyances. Title Company to follow through with appropriate lenders, beneficiaries and trustees.
- Prepare and send Request for Invoice and Demand to the Title Company.
- Copy and forward fully executed escrow grant deed and purchase agreement to CITY for "acceptance of the agreement."
- Receive approved fully executed purchase agreement from the CITY. Forward approved executed copy to property owner.
- Send all executed acquisition documents through escrow and transmit to the appropriate parties, (property owner and City)
- Prepare transmittal and forward closed files to the CITY's Project Manager.
- Research and secure owner's Trust Certificates and Statement of Identity's.

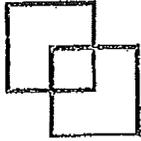
**Deliverable:**

- Facilitate Title and Escrow support as outlined above on up to 18 parcels.

**TASK 5 - RELOCATION ASSISTANCE PROGRAM (RAP)**

Any displaced person or business, as a result of the project, is eligible for relocation assistance as per the Uniform Relocation Act, Title 49 (Part 24). It is anticipated that this project will require one residential and one business relocations on parcel 058-400-034, and one residential and one business relocation on 058-400-061. Relocation tasks include:

1. Conduct personal, on site interviews of prospective displacee's to ascertain relocation needs and special requirements including need for handicapped access or bilingual services (please refer to assumptions).
2. Inform displaced persons of available relocation assistance and explain relocation process.
3. Prepare relocation planning documents to Caltrans Standards (not anticipated)
4. If Necessary, Prepare a Replacement Housing Valuation for residential displacees.
5. Provide advisory assistance as required.
6. Physically assist residential displacee's in locating replacement housing that meets Uniform Act decent, safe, and sanitary (DS&S) requirements.
7. Distribute Relocation Assistance brochures, 90 and 30-Day Notices to Vacate, and other notices as required. *(If you do not have 90 and 30-day notices, we can certainly help*



- develop the appropriate documentation*). The Caltrans Relocation Assistance brochure can be provided in English and Spanish
8. Determine eligibility for and proposed amount of relocation benefits, including moving payments and miscellaneous business relocation costs.
  9. Inspect replacement site to determine if they meet "decent, safe and sanitary" (DS&S) requirements.
  10. Monitor the move to replacement site, as necessary.
  11. Prepare necessary payment documentation and deliver benefit checks and other appropriate payments to claimants.
  12. Provide displacees with on-going advisory services to minimize hardship.
  13. Meet with City staff and/or consultants to coordinate relocation activities.
  14. Maintain current and accurate files and records of all contacts with each displacee and include them in a Final Report.

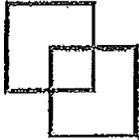
**Deliverable:**

- Provide relocation assistance as outline above for up to 2 residences and 2 businesses

**Assumption:**

- Claim for Relocation benefits will occur within contract period.
- No personal property moves.

**EXHIBIT B**  
**SCHEDULE OF CHARGES**  
(Oct. 8, 2014)



## SCHEDULE AND FEES

A tentative schedule for our efforts includes

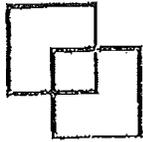
	From	To
ROW Planning	10/22/2014	12/1/2014
ROW Management	10/22/2014	6/1/2015
Appraisal	10/22/2014	2/1/2015
Appraisal Review	12/1/2014	2/1/2015
Acquisition	1/5/2015	4/15/2015
Relocation	1/5/2015	6/1/2015
Escrow Support	2/15/2015	6/1/2015

A detailed per parcel budget is attached. A summary of our fee based on scope provided is as follows:

	Total
ROW Planning	\$5,000
ROW Management	\$17,200
Appraisal	\$81,500
Appraisal Review	\$29,500
Acquisition	\$44,500
Relocation	\$18,000
Escrow Support	\$9,000
Sub Total	\$221,900
Management Reserve	\$22,190
Total	\$244,090

The following are the assumptions behind the budget:

1. Full documentation to Federal and State standards for all tasks.
2. No expert witness testimony.
3. The actual costs may differ from task to task, but the overall budget will not exceed the "Total Budget" shown in the above spreadsheet.
4. No Coordination with State or Federal ROW departments, other than listed in scope.
5. No significant severance damage analysis required for the appraisals. This fee also assumes that no significant structures or improvements will be acquired, other than those listed in the scope.
6. Any external audit support will be billed on a time and material basis.



Rates for appraisal services vary based on land use and type of acquisition. Appraisal services are generally completed on a lump sum basis rather than hourly.

### 2014 RATES

Cydney G. Bender, MAI	\$215/hr.*
David Wraa, MAI	\$215/hr.*
Bob Morrison, PE, CA Real Estate Broker	\$215/hr.*
Designated Members of the Appraisal Institute (MAI/SRA)	\$215/hr.*
Senior Project Manager	\$180/hr.
Quality Control Auditor	\$165/hr.
Senior Appraiser	\$140/hr.
Relocation Specialist	\$150/hr.
Senior Acquisition Agent	\$140/hr.
Acquisition Agent	\$125/hr.
Appraiser	\$110/hr.
Other Associated Professional Staff	\$ 85/hr.
Researchers	\$ 85/hr.
Administrative/Production	\$ 75/hr.

\*NOTE: For court or briefing preparation, depositions, any pre-trial conferences, court appearances, and related activities, the hourly rate is \$430 per hour.



**EXHIBIT C**

**CERTIFICATE OF EXEMPTION FROM WORKERS' COMPENSATION INSURANCE**

I hereby certify that in the performance of the work for which this Agreement is entered into, I shall not employ any person in any manner so as to become subject to the Workers' Compensation Laws of the State of California.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, at \_\_\_\_\_, California.

\_\_\_\_\_  
Consultant

N/A

**AMENDMENT NUMBER 1 TO THE AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE CITY OF CALEXICO AND BENDER ROSENTHAL, INC.**

AMENDMENT NUMBER 1 dated March 03, 2015, the agreement for professional services between the City of Calexico ("City") and Bender Rosenthal, Inc. ("Consultant") dated February 11, 2015 (the "Agreement") concerning Cesar Chavez Right of Way Services

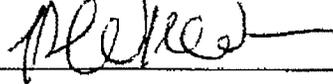
The Consultant has entered into the Agreement with the City for the furnishing of professional services, and the parties now desire to amend the Agreement.

Therefore, it is mutually agreed that the Agreement is amended to include Additional Services to be performed by Consultant and provisions for additional compensation by the City to the Consultant, all set forth in:

Exhibit 1 - Proposal dated February 11, 2015

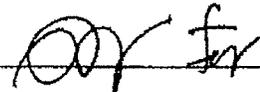
The parties ratify the terms and conditions of the Agreement not inconsistent with this Amendment, all of which are incorporated by reference.

CITY OF CALEXICO:

By: 

Title: Richard N. Warne, Interim City Manager

Date: 5-14-2015

By: 

Title: Jennifer Lyon, City Attorney

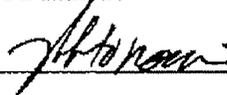
Date: 5/5/15

By: 

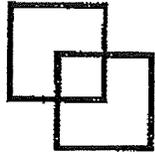
Title: Gabriela Garcia, Deputy City Clerk

Date: 5/14/2015

CONSULTANT:

By: 

Date: 4/17/15



**BENDER  
ROSENTHAL, INC.**  
COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

4400 Auburn Boulevard, Suite 102  
Sacramento, CA 95841  
main: 916.978.4900 • fax: 916.978.4904  
www.benderosenthal.com

February 11, 2015

Nick Servin, P.E.,  
Public Works Director/City Engineer  
City of Calexico, Public Works and Engineering Department  
608 Heber Avenue  
Calexico, CA 92231

Subject: Cesar Chavez Right of Way Services – Scope and Fee Amendment

Dear Mr. Servin:

As discussed, enclosed is the amended scope and cost proposal for Right of Way Services for the Cesar Chavez Road Improvement Project.

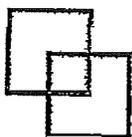
Based on our review of the information provided by the City and City consultant KOA, we have developed the attached scope which includes:

- ROW Planning
- ROW Management & Certification
- Appraisal
- Appraisal Review
- Acquisition
- Relocation
- Escrow Support

Please contact me if you have any questions regarding this scope / fee amendment. I can be reached at (916) 919-7262.

Respectfully,

Steve Parent, MAI, SRA, AI-GRS, SR/WA, PMP  
Director



---

## RIGHT OF WAY SCOPE OF SERVICES

Acquisition & Relocation services will be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way Manual, as applicable. A general discussion of the scope is as follows:

### TASK 1 - ROW PLANNING

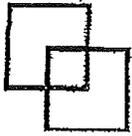
BRI will work with the CITY's staff to help refine the issues facing the ROW acquisition prior to the final design phase. Planning activities include a field review of project and developing a preliminary ROW capital cost estimate based on preliminary plans. This task will include developing a ROW budget and ROW data sheet for the preferred alternative. Per chapter 17.04.02.01 of the Caltrans ROW manual, all ROW Data sheets will be signed by a Right of Way professional with either a Real Estate Appraiser Certification or Real Estate License.

#### Deliverables:

- Make *one site visit*, including an inspection of proposed ROW for opportunities to avoid sensitive sites, critical constraints, and environmental problems.
- Review of current and projected land use patterns from a ROW cost
- Provide a comparable analysis of each property, including potential damages to affected property improvements.
- Assist in identifying ROW solutions to environmental problems where appropriate.
- Establish steps for acquiring rights of way required.
- Provide ROW estimates, by parcel.
- Provide up to 1 ROW Data Sheets.

#### Assumption:

- CITY will provide spreadsheet with all affected parcels, current size, current use and size of acquisition delineated thereon.
- A detailed Relocation Impact Study will not be necessary.
- A detailed Relocation Plan will not be required in this phase.
- Detailed appraisals will not be required in this phase.
- No property owner contact in this phase.
- *Estimates are for budgetary purposes only.*
- CITY will provide number and cost of Utility relocations.
- Utility costs and information to be provided by Engineer.
- Railroad costs and information to be provided by Engineer.



---

## **TASK 2 –ROW MANAGEMENT & CERTIFICATION**

This task includes monthly ROW Status meetings, monthly schedule and progress updates, and coordination efforts with the PDT and ROW teams throughout the life of the project.

### **Deliverables:**

- Running weekly BRI staff meetings through the appraisal and acquisition phase of the project.
- Attending City PDT meetings, up to 3.
- Providing Monthly progress updates to PDT and the CITY staff.
- Coordinating design issues between engineering team and ROW team.
- Attendance at one City Council meeting
- Developing ROW Certification.

## **TASK 3 - APPRAISAL SERVICES**

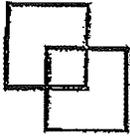
BRI will develop complete appraisals for the CITY that will state the estimated fair market value of the fee simple interest in each referenced property. The appraisal reports will be summary appraisal reports that will be prepared in conformance with and subject to the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute, which fully incorporate the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation. Jurisdictional exceptions may apply in some cases.

Plats and legal descriptions for each of the properties to be appraised will be provided to BRI by the CITY. Some of the items that may affect the appraisal process include:

- Complexity of the valuation;
- Impact of the interests to be acquired (e.g. Temporary Construction Easements, and Public Utility easements).
- Damage Analysis (Severance Damage, Cost to Cure, etc.)

The primary steps in completion of fair market value appraisals of the property rights to be acquired include but are not limited to the following:

- Onsite physical inspection of the subject property with the owner.
- Visual inspection of the comparable market data.
- Study of community and neighborhood in which the subject is located.
- Collection of data from appropriate governmental agencies.
- Verification of market data with sources knowledgeable with the pertinent details of the transaction.
- Analysis of all appropriate data in the before and after condition to arrive at an opinion of value.
- Preparation of report.



**Deliverables:**

- Three copies of each Appraisal that meet all State and Federal Standards
- Up to 15 Appraisal Reports.
- Up to 5 Waiver Valuations

**TASK 3A - INDEPENDENT APPRAISAL REVIEW**

Per Federal and State regulations, (Uniform Act) a qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary correction or revisions. In addition, the review appraiser shall certify that the opinion of fair market value is reasonably supported by an acceptable appraisal. BRI is pleased to include Mr. Stephen Rosenthal, MAI, as the independent reviewer for the project. Mr. Rosenthal and Mr. Landes will ensure the appraisals meet all Federal and State regulations.

**Deliverables:**

- Review certification appraisal reports for up to 15 Appraisals.

**TASK 3B - FURNITURE, FIXTURE & EQUIPMENT (FF&E) APPRAISAL SERVICES**

This scope of these services will depend on the effect of the project on the operations of the various businesses. This won't be determined until the initial appraisal interviews are completed.

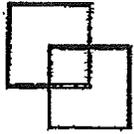
The FF&E valuation will be valued using generally accepted appraisal principles and theory, and comply with the standards outlined by the California Department of Transportation, Right of Way Manual, Section 7.08.02 and the reporting requirements of the Uniform Standards of Professional Appraisal Practice (USPAP) as adopted by the appraisal foundation of the American Society of Appraisers.

The purpose of the "appraisal is to estimate the potential Replacement cost new, Fair Market Value In Use, Salvage Value and Relocation Cost, which will provide the City a number for negotiation and settlement purposes. This value is not intended for Court purposes.

**Deliverables:**

- 2 FF&E Appraisal report for 058-400-034 and 058-400-061.

**TASK 3 - ACQUISITION SERVICES**



Bender Rosenthal, Inc. proposes to develop all necessary contracts, conveyance documents and escrow instructions necessary to make offers based on the CITY's process. We will meet with the owners, and convey documents until acceptance or impasse is reached.

Steps within the acquisition process are outlined below:

1. Review of the project concept and design with staff and other consultants.
2. Review of appraisals, title reports, maps and descriptions of the required parcels.
3. Field review the project with the Project Manager or other designated person.
4. Preparation of right-of-way contracts and other acquisition documents.
5. Meet with the property owners to discuss the project in general; review of maps and legal descriptions; confirm information about occupants/owners and make the official First Written Offer to owner. Acquire tenant consent if required.
6. Acquisition activities are based on settlement by the third contact either in person or by telephone. A recommendation to the CITY will be made after *impasse* has been reached. To reach *impasse* there are specific requirements:
  - A. Go through the *acquisition steps* outlined below; plus
  - B. Make at least three contacts with owner (personal call, letter or phone call) in any combination; plus
  - C. Spend up to eight hours working on the parcel acquisition.
  - D. Responding to property owner inquiries verbally and in writing within two business days.

The acquisition steps when offering compensation to the property owner include:

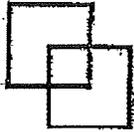
- A. Owner accepts offer. (Close)
- B. Owner rejects offer.
  1. Owner refuses to counter. (Impasse)
  2. Owner makes counter proposal.
    - a. The City accepts counter. (Close)
    - b. The City rejects counter. (Impasse)
    - c. The City makes new offer.
      1. Owner accepts new offer. (Close)
      2. Owner does not accept new offer. (Impasse)
7. Deliver signed right-of-way contract and signed and acknowledged grant deed for closed transaction. Deliver a memorandum explaining impasse.
8. Final report, including transfer of all pertinent correspondence and files, to the CITY.

**Deliverables:**

- Acquisition of up to 19 parcels.

**TASK 4 - ESCROW SUPPORT**

In order to facilitate the closing of the various ROW transactions, the project will provide escrow and title support as part of the scope of work. BRI is very knowledgeable in this area and has the staff



necessary to help the CITY with their title and escrow needs. This task is very difficult to quantify for a scope. For example, we have been very instrumental in providing lender's additional information as it relates to a proposed acquisition (especially if the acquisition has little or no affect to the real estate). This has eliminated the Bank's desire to charge for an additional appraisal. However, it is very difficult to "mandate" a lender to address a partial reconveyance of a deed of trust. Tasks to be considered include:

- The CITY to provide preliminary title reports needed for the Project.
- Review existing easements and permits.
- Review Legal descriptions and plats for the project.
- Title Company to draft consent to easement, partial release and partial reconveyances. Title Company to follow through with appropriate lenders, beneficiaries and trustees.
- Prepare and send Request for Invoice and Demand to the Title Company.
- Copy and forward fully executed escrow grant deed and purchase agreement to CITY for "acceptance of the agreement."
- Receive approved fully executed purchase agreement from the CITY. Forward approved executed copy to property owner.
- Send all executed acquisition documents through escrow and transmit to the appropriate parties, (property owner and City)
- Prepare transmittal and forward closed files to the CITY's Project Manager.
- Research and secure owner's Trust Certificates and Statement of Identity's.

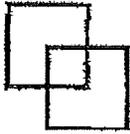
**Deliverable:**

- Facilitate Title and Escrow support as outlined above on up to 18 parcels.

**TASK 5 - RELOCATION ASSISTANCE PROGRAM (RAP)**

Any displaced person or business, as a result of the project, is eligible for relocation assistance as per the Uniform Relocation Act, Title 49 (Part 24). It is anticipated that this project will require one residential and one business relocations on parcel 058-400-034, and one residential and one business relocation on 058-400-061. Relocation tasks include:

1. Conduct personal, on site interviews of prospective displacee's to ascertain relocation needs and special requirements including need for handicapped access or bilingual services (please refer to assumptions).
2. Inform displaced persons of available relocation assistance and explain relocation process.
3. Prepare relocation planning documents to Caltrans Standards (not anticipated)
4. If Necessary, Prepare a Replacement Housing Valuation for residential displacees.
5. Provide advisory assistance as required.
6. Physically assist residential displacee's in locating replacement housing that meets Uniform Act decent, safe, and sanitary (DS&S) requirements.



**BENDER  
ROSENTHAL, INC.**

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

City of Calexico  
ROW Services

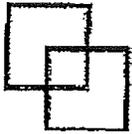
7. Distribute Relocation Assistance brochures, 90 and 30-Day Notices to Vacate, and other notices as required. *(If you do not have 90 and 30-day notices, we can certainly help develop the appropriate documentation).* The Caltrans Relocation Assistance brochure can be provided in English and Spanish
8. Determine eligibility for and proposed amount of relocation benefits, including moving payments and miscellaneous business relocation costs.
9. Inspect replacement site to determine if they meet "decent, safe and sanitary" (DS&S) requirements.
10. Monitor the move to replacement site, as necessary.
11. Prepare necessary payment documentation and deliver benefit checks and other appropriate payments to claimants.
12. Provide displacees with on-going advisory services to minimize hardship.
13. Meet with City staff and/or consultants to coordinate relocation activities.
14. Maintain current and accurate files and records of all contacts with each displacee and include them in a Final Report.

**Deliverable:**

- Provide relocation assistance as outline above for up to 2 residences and 2 businesses

**Assumption:**

- Claim for Relocation benefits will occur within contract period.
- No personal property moves.



## FEES

Based on our current understanding, the affected parcels / areas are provided as follows: 058-244-001, 058-333-009, 058-400-049, 058-400-034, 058-400-006, 058-400-007, 058-400-012, 058-400-013, 058-400-060, 058-400-061, 058-400-063, 058-400-045, 058-400-046, 058-400-047, 058-400-029, UPRR Right of Way, 058-334-002, 058-334-005, 058-334-004.

A summary of our fee based the scope described above is as follows.

	Total
ROW Planning	\$5,000
ROW Management	\$17,200
Appraisal	\$98,500
Appraisal Review	\$38,950
Acquisition	\$56,000
Relocation	\$18,000
Escrow Support	\$10,000
Sub Total	\$243,650
Management Reserve	\$24,365
Total	\$268,015

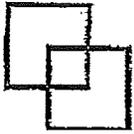
The original scope and fee did not include the following properties which have now been included in the scope and fee presented above.

### UPRR Right of Way Property

058-334-002  
058-334-005  
058-334-004

Parcels that were included in the original proposal but are excluded from the amendment are as follows:

058-292-005  
058-510-001



**BENDER  
ROSENTHAL, INC.**

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

City of Calexico  
ROW Services

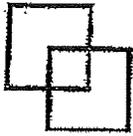
The original budget amounts are provided below for reference only. The amounts below will no longer be applicable upon approval of this amendment.

	Total
ROW Planning	\$5,000
ROW Management	\$17,200
Appraisal	\$81,500
Appraisal Review	\$29,500
Acquisition	\$44,500
Relocation	\$18,000
Escrow Support	\$9,000
Sub Total	\$221,900
Management Reserve	\$22,190
Total	\$244,090

The following are the assumptions behind the budget:

1. Full documentation to Federal and State standards for all tasks.
2. No expert witness testimony.
3. The actual costs may differ from task to task, but the overall budget will not exceed the "Total Budget" shown in the above spreadsheet.
4. No Coordination with State or Federal ROW departments, other than listed in scope.
5. No significant severance damage analysis required for the appraisals. This fee also assumes that no significant structures or improvements will be acquired, other than those listed in the scope.
6. Any external audit support will be billed on a time and material basis.

Rates for appraisal services vary based on land use and type of acquisition. Appraisal services are generally completed on a lump sum basis rather than hourly.



**2014 RATES**

Cydney G. Bender, MAI	\$215/hr.*
David Wraa, MAI	\$215/hr.*
Bob Morrison, PE, CA Real Estate Broker	\$215/hr.*
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Senior Project Manager	\$180/hr.
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Other Associated Professional Staff	\$ 85/hr.
Researchers	\$ 85/hr.
Administrative/Production	\$ 75/hr.

\*NOTE: For court or briefing preparation, depositions, any pre-trial conferences, court appearances, and related activities, the hourly rate is \$430 per hour.

**AMENDMENT NUMBER NO. 2 TO THE AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE CITY OF CALEXICO AND BENDER ROSENTHAL, INC.**

AMENDMENT NUMBER NO. 2 dated September 1, 2015, the agreement for professional services between the City of Calexico ("City") and Bender Rosenthal, Inc. ("Consultant") dated June 20, 2014 (the "Agreement") concerning Cesar Chavez Blvd. Improvement (the "Project").

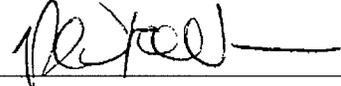
The Consultant has entered into the Agreement with the City for the furnishing of professional services, and the parties now desire to amend the Agreement.

Therefore, it is mutually agreed that the Agreement is amended to include Additional Services to be performed by Consultant and provisions for additional compensation by the City to the Consultant, all set forth in:

Exhibit A – Scope and Fee Amendment dated August 7, 2015

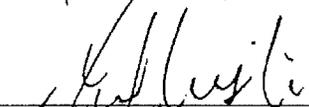
The parties ratify the terms and conditions of the Agreement not inconsistent with this Amendment, all of which are incorporated by reference.

CITY OF CALEXICO:

By: 

Title: Richard N. Warne, City Manager

Date: 9-8-2015

By: 

Title: Mark Austin, Interim City Attorney

Date: 9/18/15

By: 

Title: Gabriela Garcia, Deputy City Clerk

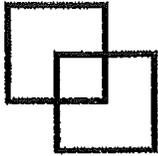
Date: 9/8/15

CONSULTANT:

By: 

Title: Robert Morrison, President

Date: 10/6/15



**BENDER  
ROSENTHAL, INC.**

COMMERCIAL VALUATION AND RIGHT OF WAY SERVICES

4400 Auburn Boulevard, Suite 102  
Sacramento, CA 95841  
main: 916.978.4900 • fax: 916.978.4904  
www.benderrosenthal.com

August 7, 2015

Nick Servin, P.E.,  
Public Works Director/City Engineer  
City of Calexico, Public Works and Engineering Department  
608 Heber Avenue  
Calexico, CA 92231

Subject: Cesar Chavez Right of Way Services – Scope and Fee Amendment

Dear Mr. Servin:

Enclosed is the amended scope and cost proposal for Right of Way Services for the Cesar Chavez Road Improvement Project.

Based on our review of the work completed to date, the remaining work to be done, and the remaining budget, we have developed the attached scope which includes the following services:

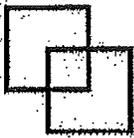
- ROW Management & Certification
- Appraisal
- Acquisition
- Relocation
- Escrow Support

With reference to the original contract scope, the right of way planning, appraisal, and appraisal review services have been completed.

Please contact me if you have any questions regarding this scope / fee amendment proposal. I can be reached at (916) 919-7262.

Respectfully,

Steve Parent, MAI, SRA, AI-GRS, SR/WA, PMP  
Director



---

## **RIGHT OF WAY SCOPE OF SERVICES**

Acquisition & Relocation services will be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC 4601 *et seq.*) and implementing regulation, 49 CFR Part 24; California Government Code Section 7267 *et seq.*; California Code of Civil Procedure Sections 1263.010 to 1263.620 and 1255.010 to 1255.060; Housing and Community Development Title 25; State of California, Department of Transportation, Right of Way Manual, as applicable. A general discussion of the scope is as follows:

### **TASK 1 –ROW MANAGEMENT & CERTIFICATION**

The additional budget requested for this task is due to schedule extension and an expansion of other scope of services e.g. condemnation support and possession and use agreements as noted within the deliverables below. The additional budget proposed will extend BRI's management services activities through the end of 2015. Based on the original contract schedule, management activities were anticipated to end June 1, 2015.

This task includes monthly ROW Status meetings, monthly schedule and progress updates, and coordination efforts with the PDT and ROW teams throughout the life of the project.

#### **Deliverables:**

- Running weekly BRI staff meetings through the acquisition and condemnation support phases of the project.
- Providing Monthly progress updates to CITY staff.
- Attendance at one City Council meeting
- Developing ROW Certification.
- Managing resources necessary to provide condemnation support services
- Managing resources necessary to possession and use agreement negotiation services
- Managing resources necessary to provide additional relocation services

### **TASK 2 - APPRAISAL SERVICES**

No Change. This task is complete.

### **TASK 3 - ACQUISITION SERVICES**

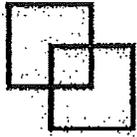
To help clarify the scope of this task, it has been broken into three separate sub-tasks:

Task 3.1 – Acquisition

Task 3.2 – Possession and Use Agreement Negotiations

Task 3.3 – Post Resolution of Necessity Acquisition Services

#### **TASK 3.1 ACQUISITION**



BRI has met all of its original acquisition scope requirements with the exception of delivery of impasse memo (for 3 properties) and final report. Additional acquisition related tasks include negotiation of possession and use agreements and post-resolution of necessary activities as detailed below.

### **TASK 3.2 - POSSESSION AND USE AGREEMENT (PAU) NEGOTIATIONS**

BRI's current acquisition scope does not include this service. The Possession and Use Agreement is used when a property owner agrees to the early possession of their property while continuing to negotiate for their final compensation. This is routinely used prior to eminent domain / condemnation activities, and can be a very effective acquisition tool used to protect the schedule. This agreement, when successfully negotiated, will allow the CITY to obtain possession of the property as soon as funds are deposited into escrow. This provides for possession and use of the required private property sooner than the legal process of filing a motion for and obtaining a court-ordered possession.

**Deliverables:**

- Obtain signed agreements or negotiate up to 8 hours for up to 14 properties.

### **TASK 3.3 - POST-RESOLUTION OF NECESSITY (RON) ACQUISITION SERVICES**

BRI's current acquisition scope does not include this service. The current scope indicates BRI's acquisition activities to cease after agreement or after impasse / pursuit of Resolution of Necessity (RON). City's legal would then handle the RON process under the current scope.

The new scope of work would allow BRI's condemnation support activities to continue up until such time as a motion for order of possession is filed. These acquisition services would include administrative settlements.

### **TASK 4 - ESCROW SUPPORT**

This is not a new task. There is no change to the existing scope. Remaining scope will be accomplished by remaining budget.

**Deliverable:**

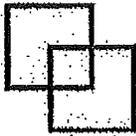
- Facilitate Title and Escrow support for up to 14 larger parcels

### **TASK 5 - RELOCATION ASSISTANCE PROGRAM (RAP)**

The scope of this task is outlined in the original contract.

BRI's current contract relocation scope includes:

- 2 residential relocations
- 2 business relocations



- 0 personal property relocations

The required number of relocations is:

- 0 residential relocations
- 4 business relocations
- 2 personal property relocations

**Deliverable:**

- Provide relocation assistance as outlined above for up to 4 business and 2 personal property relocations

**Assumption:**

- Claim for Relocation benefits will occur within contract period.

**FEES**

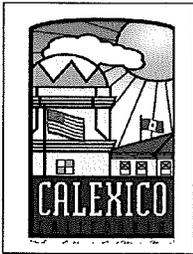
A summary of our fee based on the scope described above is as follows.

	Total
Task 1 - ROW Management / Certification	\$15,000
Task 3 - Acquisition Services	\$39,200
Task 5 - Relocation	\$12,000
Sub Total	\$66,200
Management Reserve	\$6,620
Total	\$72,820

BRI currently has approximately \$20,000 remaining in our budget for work under our original contract. This will be consumed by acquisition, relocation, and escrow support activities. The additional fees requested above will provide the afore-mentioned additional services not covered by the original scope of services. The management reserve proposed will not be used unless authorized by City Staff.

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# AGENDA STAFF REPORT

**DATE:** March 15, 2016

**TO:** Mayor and City Council

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

**PREPARED BY:** Nick Fenley, Interim City Manager

**SUBJECT:** Consideration on Rescinding Resolution No. 2015-19, A Resolution of the City Council of the City of Calexico Reprimanding and Censuring Council Member Castro for Violating the City of Calexico Code of Ethics and Stripping Him of all City Council Assignments dated April 21, 2015. (Mayor Kim).

=====

**Recommendation:**

City Council to consider rescinding Resolution No. 2015-19.

**Background:**

At the meeting of March 1, 2016, Mayor Kim requested an item to rescind the censuring of Council Member Castro.

Reprimand and Censuring of Council Member Castro was approved via Resolution No. 2015-19 on April 21, 2015.

**Fiscal Impact:**

None.

**Coordinated With:**

None.

**Attachment:**

1. Resolution No. 2015-19
2. Minutes of Meeting of April 21, 2015.

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## **RESOLUTION NO. 2015-19**

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA REPRIMANDING AND CENSURING COUNCIL MEMBER LUIS CASTRO FOR VIOLATING THE CITY OF CALEXICO CODE OF ETHICS.**

**WHEREAS**, the citizens and businesses of the City of Calexico are entitled to have fair, ethical and accountable local government which has earned the public's full confidence; and

**WHEREAS**, in keeping with the City of Calexico's commitment to excellence, all public officials, both elected and appointed must comply with the letter and spirit of the laws and policies affecting the operation of government; and

**WHEREAS**, all public officials, both elected and appointed, are required to be impartial and fair in their judgment and actions and ensure that public office is used for the public good; and

**WHEREAS**, the City Council of the City of Calexico adopted on February 3, 2015, a Code of Ethics in Resolution No. 2015-08 for its members and the members of all City Council-appointed boards, committees and commissions to achieve these ends; and

**WHEREAS**, Council Member Luis Castro voted for the City of Calexico Code of Ethics on February 3, 2015, and publically signed the City of Calexico Code of Ethics at the February 17, 2015, City Council meeting; and

**WHEREAS**, the City of Calexico Code of Ethics expresses standards of ethical conduct expected for members of the Calexico City Council and members themselves have the primary responsibility to assure that the ethical standards are understood and met; and

**WHEREAS**, during the March 3, 2015, City Council meeting, Council Member Luis Castro called the Mayor a "clown" on two occasions and during a recess called by the Mayor in response to Council Member Castro's personal attack on the Mayor by calling him a "clown," made an obscene gesture from the City Council dais with his middle finger.

**WHEREAS**, since the last City Council meeting on April 7, 2015, Council Member Castro has had an encounter with a business owner in which he called the business owner a "faggot" and suggested that the business owner perform a sex act on Council Member Castro.

**WHEREAS**, the City of Calexico Code of Ethics that requires all members of the City Council to ensure that "public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility."

**NOW, THEREFORE**, be it resolved, determined, and ordered by the City Council of the City of Calexico:

**Section 1.** Findings. The City Council of the City of Calexico hereby finds and determines that the City of Calexico Code of Ethics requires all members of the City Council

ensure that “public deliberations and processes be conducted openly, unless legally confidential, in an atmosphere of respect and civility,”

The City Council further finds and determines Council Member Castrol has violated the following principles of the City of Calexico Code of Ethics:

**Principle 3. Conduct of Members.** The professional and personal conduct of members must be above reproach and avoid even the appearance of impropriety. Members shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of other members of Council, boards, commissions, committees, the staff or public.

**Principle 4. Respect for the Process.** Members shall perform their duties in accordance with the processes and rules of order established by The City Council, boards, commissions and committees governing the deliberation of public policy issues, meaningful involvement of the public, and implementation of policy decisions of the City Council and by City staff.

**Principle 5. Conduct of Public Meetings.** Members shall prepare themselves for public issues; listen courteously and attentively to all public discussions before the body; and focus on the business at hand. They shall refrain from interrupting other speakers; making personal comments not germane to the business at hand, or otherwise interfering with the orderly conduct of meetings.

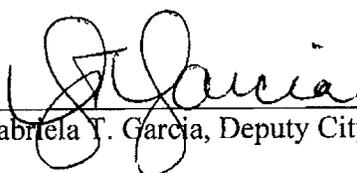
**Section 2. Sanctions.** The City Council of the City of Calexico hereby reprimands and censures Council Member Luis Castro for violations of the City of Calexico Code of Ethics.

**Section 3.** This Resolution shall become effective immediately upon passage.

PASSED, ADOPTED and APPROVED this 21<sup>st</sup> day of April, 2015, by the City Council of the City of Calexico.

  
\_\_\_\_\_  
John M. Moreno, Mayor

ATTEST:

  
\_\_\_\_\_  
Gabriela T. Garcia, Deputy City Clerk

Approved as to Form:

\_\_\_\_\_  
Jennifer Lyon, City Attorney

State of California )  
County of Imperial ) ss.  
City of Calexico )

I, Gabriela T. Garcia, Deputy City Clerk of the City of Calexico do hereby certify the above Resolution No. 2015-19 was approved at a regular City Council meeting held on the 21<sup>st</sup> day of April, 2015, by the following vote to-wit:

AYES: Moreno, Real, Hurtado  
NOES: Kim, Castro  
ABSTAIN: None  
ABSENT: None

  
\_\_\_\_\_  
Gabriela T. Garcia, Deputy City Clerk

**(1) CONSIDERATION OF POTENTIAL CALEXICO CODE OF ETHICS VIOLATIONS BY COUNCIL MEMBER LUIS CASTRO AND (2) CONSIDERATION OF A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO REPRIMANDING AND CENSURING COUNCIL MEMBER CASTRO FOR VIOLATING THE CITY OF CALEXICO CODE OF ETHICS AND STRIPPING HIM OF ALL CITY COUNCIL ASSIGNMENTS.**

City Manager Warne stated there is a staff report stating what has happened and the citizens have a video that they would like to show. He recommended the citizens be allowed to show the video. City Manager stated the video is graphic and stated persons who are easily offended or have children may want to leave the chambers.

Citizens presented video with conversation between Mr. Abelardo Perez and Council Member Castro. Maribel Padilla spoke about the past meeting when Mayor Moreno dismissed the reprimand and 12 other people who supported the reprimand were not considered. She stated that only in Calexico can the compadres shake hands and everything is over with. She spoke about giving Mr. Castro a second hand and an olive branch and we all know what he did with the olive branch. She asked at what point Calexico becomes professional. She pointed out that Mr. Perez is a citizen and has a business in Calexico and Council Member Castro has constantly voted against him. She pointed out that Mr. Perez was upset because Council Member Castro was the first one to use profanity. Ms. Padilla pointed out that Council Member Castro is supposed to be above this since he signed the code of ethics.

Abelardo Perez spoke about the incident in the video and he spoke about Council Member Castro's actions. He spoke about bringing his transportation items to the Council. He stated he asked Council Member Castro to recues himself on his transportation items. He spoke about Council Member working on the buses and stated he is trying to prove he has a conflict of interest.

Benjamin Horton stated the people put elected officials to high standards and should let their performance speak for itself. He stated the people expect the Council Members to be leaders and to do and be above reproach. He spoke about standards and expects Council to police their own, to do what has to be done and send a message to the public. City officials should be the example.

Janine Farias spoke about Council Member Castro's gesture towards Mrs. Padilla. She expressed her embarrassment for his actions.

Giovan Castro asked who would censure Mrs. Padilla and her vulgar language and the lies told by Mr. Abelardo Perez against him.

Persons who support the censuring of Council Member Castro but do not want to speak: Mrs. Sosa and Mrs. Francina De Necochea Gonzalez.

Sugey Quezada 1233 P. Rashid Street, stated there has been a fight and asked the City Council Members and community to work together. She pointed out this is not the place to show this type of video. She stated that everyone knows that video cannot be relied on because they can be photo shopped. She stated she brought her son to show him about the City and she did not like the fact that she had to leave the chambers. We need to work together to beautify the City, the Streets, the

downtown and all should be responsible for what we say and do and would like to see collaboration.

Marlene Thomas stated that she takes no sides and likes all and deals with the issues. She stated the need to speak about leadership and the absence of leadership because of the fighting. She stated the people outside of Calexico do not look at Kim or Castro, they look at all of you and you need to get together as leaders. She stated to strip someone is ridiculous, this man has been elected, six months after there is a recall and it fails, and this is an obsession and this needs to stop. Calexico is an economic disaster area with no banks, schools are in trouble and all you talk about is Castro and the buses. She asked for evidence that he owns the transportation company other than a video and asked that they step forward and present the documentation.

Mayor Pro Tem Kim agree with community members that we should take care of business for the citizen's benefit and not fighting each other.

Mayor Pro Tem Kim read a letter to the public:

From: Joong S. Kim

To: Gabriela Garcia, Deputy City Clerk  
Richard Warne, Interim City Manager  
John Moreno, Mayor  
608 Heber Avenue  
Calexico, CA 92231

Steve E. Boehmer, City Attorney

4/21/2015

Dear Deputy City Clerk,

Regarding City Calexico Resolution No. 2015-08 which was PASSED, ADOPTED AND APPROVED on Feb. 03, 2015 by the City Council of the Calexico.

I, Joong S. Kim, City Councilman HEREBY RESCOND my vote and signature on this issue.

As I have discovered along with many others this RESOLUTION was a fraud and is being used as a political tool to humiliate people. I am not playing the game and I will tell the truth. Its not being used for the public good. All I am witnessing his hypocrisy and false statements.

Signed: Joong S. Kim

Hurtado stated the issue is that anger by citizens is because in the past there have been several issues on transportation in Calexico. She stated that each item that has been come up on the agenda has been a fight where certain Council Members have embarrassed persons and Agencies who have come to the City including Mr. Mark Baza, a person who is well regarded in the Transportation area. She pointed out that every company that has come to Calexico for

transportation they are show down, humiliated and intimated and all because there are special interests going on in this Council. She stated she believed this is where you see the anger in the citizens with the conflict of interest that exists. Council Member Hurtado stated the conflict of interest rules exist so that the Council Members do not vote with special interests in mind. She stated that when a Council Members have a conflict they should remove themselves. She stated the anger comes from the Council not respecting the community because of the conflicts that exist.

Council Member Castro read letter to the public and apologized to the Community for his offensive language but stated he was not apologizing to Mr. Perez. He stated he filed a police report and he was informed by the police department that this report goes to the District Attorney's office. He stated that back in December Mr. Perez's wife stopped her bus in the middle of the street and took pictures of him and this is harassment. He believed the majority of this Council does not want to see this type of videos in the Council Chambers. He stated that in 2008 his son bought the business and since then he is the owner and people still state there is a conflict of interest. Council Member Castro spoke about being harassed and once again apologized to the community for using offensive language. He stated he respects his people and his colleagues' decision and he is mature enough to confront the problem.

Council Member Hurtado called for the question. Call for the question died due to lack of second.

Council Member Real stated he feels this is a new council even though some of the members have been here for many years and quoted "Those who look only to the past or the present are certain to miss the future." He stated that as Council Members they should not be screaming foul language to people on the streets. He further stated he has been harassed from time to time and it takes a bigger person to say, I'm the elected official and I will restrain myself from making a fool of myself." Council Member Real expressed his shock at how the Council is so divided, however, he is still trying to work together with the Council Members and trying to get along. He stated the Council should be ashamed to have this item on the agenda and the Council should agree to disagree and move forward.

Mayor Moreno stated he is disappointed and this could have been avoided had Mr. Castro had the clear conscious to step down when it was a transportation issue. He stated it is not for the Council to prove it is not his transportation, it is for him to step down. Mayor Moreno commented on an item on the agenda related to Wells Fargo, which is where his brother is employed, and he pointed out he stepped down because he does not to be perceived as having a conflict of interest. Mayor Moreno commented on the incidents with transportation items on the agenda and stated that if Council Member Castro had removed himself from the items on transportation, many of these situations could have been avoided.

A motion by Mayor Pro Tem Kim not to approve the item. Motion died due to lack of second.

Motion was made by Council Member Real to approve the resolution to reprimand and censure and leave him on the committees. Motion was second by Council Member Hurtado.

Council Member Castro requested clarification on the motion. City Attorney Boehmer stated this is a public reprimand.

Motion passed by the following vote to wit:

AYES:	Real, Hurtado, Moreno
NOES:	Kim
ABSENT:	None
NO VOTE:	Castro

Council took a recess at 8:47 p.m.

Council returned from recess at 9:00 p.m.

**APPROVE AGREEMENT FOR THE EXCHANGE OF REAL PROPERTY AND JOINT ESCROW INSTRUCTIONS BETWEEN BORDERTOWN INVESTMENTS, LP AND THE CITY OF CALEXICO SUBJECT TO FINAL REVIEW AND APPROVAL BY THE CITY MANAGER AND BY CITY ATTORNEY.**

City Manager stated the Gran Plaza Developer wants to move forward with phase 1B and 2A and have submitted plans for the building and engineering and the environmental document is being circulated. He further stated that in order for this project to move forward there needs to be a land exchange and it involves of one parcel, represented by the blue parcel, for three parcels, represented by parcels in purple, green and yellow as depicted on the map presented. This means the City will exchange 20.31 acres for 24.52 acres of land owned by Bordertown Investments, LP which means we are getting more property in the exchange. In addition, the City had an independent appraisal conducted for the both properties to ensure that the City received either comparable value or more value in the exchange and the tax payers do not lose anything. He reported that the exchange comes to the City at an increase of \$ 195,000 dollars. City Manager stated Staff recommends that Council Approval contingent upon approval of the City Manager and City Attorney.

Council Member Real asked if the appraisal was performed based on the square footage method and asked if a highest and best use was in the appraisal.

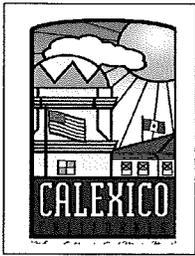
Public Works Director/City Engineer Servin stated there was an in depth appraisal of the properties and it was based on square footage. He informed there was an appraisal and a consultant who reviewed the appraisal.

Council Member Hurtado moved for approval of the Agreement for the Exchange of Real Property and Joint Escrow Instructions between Bordertown Investments, LP and the City of Calexico subject to final review and approval by the City Manager and by the City Attorney. Motion was seconded by Mayor Moreno for discussion.

Mayor Pro Tem Kim stated Council Member Real made a point and sometimes the value depends on the location and size and location is very valuable. He stated when you change the value and land sometimes value is higher. Mayor Pro Tem Kim expressed his concern on losing value on the land due to the switch.

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# AGENDA STAFF REPORT

**DATE:** March 15, 2016

**TO:** Mayor and City Council

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

**PREPARED BY:** Nick Fenley, Interim City Manager

**SUBJECT:** Discussion on Direct Election of the Mayor for the City of Calexico.  
(Mayor Kim).

=====

**Background:**

Mayor Kim requested this item be placed on the agenda for discussion.

**Fiscal Impact:**

None.

**Coordinated With:**

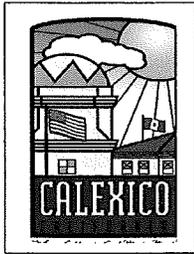
None.

**Attachment:**

None.

AGENDA ITEM <b>15</b>
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# AGENDA STAFF REPORT

**DATE:** March 15, 2016

**TO:** Mayor and City Council

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

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

**SUBJECT:** Ordinance No. 1169 An Interim Urgency Ordinance of the City Council of the City of Calexico Enacted Pursuant to California Government Code Section 65858 Establishing a Temporary Moratorium on Off-Site Display and Sale of Automobiles in the City Pending an Enactment of an Amendment to the Calexico Municipal Code.

=====

**Recommendation:**

Approve Ordinance No. 1169 An Interim Urgency Ordinance of the City Council of the City of Calexico Enacted Pursuant to California Government Code Section 65858 Establishing a Temporary Moratorium on Off-Site Display and Sale of Automobiles in the City Pending an Enactment of an Amendment to the Calexico Municipal Code.

**Background:**

In November 2011, the City Council considered the effects of the off-site display and sale of automobiles at "tent sales" within the City of Calexico. Concerns were raised that automobile tent sales in the City resulted in direct competition with established automobile sales businesses in the City; created an unfair business climate for local businesses; created public safety concerns with regard to traffic and pedestrian safety; and was aesthetically displeasing for the City. Staff studied the issue, but no zoning ordinance amendments were adopted at that time.

On February 16, 2016, the City Council again considered the off-site display and sale of automobiles within the City and heard public comment from both sides of the issue. Concerns were raised that automobile tent sales result in competition with established automobile sales businesses in the City, discourage dealerships from opening "brick and mortar" stores in the City, create unfair business climate for local businesses, create public safety concerns, and are aesthetically displeasing. Potential benefits of "tent sales" were also discussed,

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including increased competition, providing citizen consumers with more options in convenient locations; additional business activity within the City, and additional sales tax revenues to the City.

Following the February 16, 2016 meeting and at the Council's direction, staff has been studying a zoning proposal to either prohibit or reasonably regulate the off-site display and sale of automobiles in the City.

The City needs time to fully evaluate the effects of these temporary activities in a manner that will protect the general public and homes and businesses adjacent to and near locations where such activities could conceivably occur. As such, staff believes that a temporary moratorium on off-site display and sale of automobiles is appropriate. Moreover, staff thought it was appropriate to bring this urgency ordinance for the City Council's consideration after hearing the Council's concerns regarding the public health, safety and welfare effects of this type of activity.

The contemplated urgency ordinance would establish a moratorium on the off-site display and sale of automobiles on both public and private property within the City of Calexico. It would not prohibit the display and sale at established businesses selling automobiles in the City. It would also exempt sales subject to existing contracts as of February 16, 2016. Moreover, if the urgency ordinance is adopted it would not prohibit private persons from offering for sale their personal automobile so long as they were not in violation of California Vehicle Code Section 22651.

### **Discussion & Analysis:**

Many cities regulate the off-site display and sale of automobiles at "tent sales" based on public health, safety and welfare concerns in light of the primary and secondary effects associated with this activity.

Specifically, it has been noted that these types of activities occurring around the state, including those taking place in Calexico, have a tendency to attract large crowds, which can be attributed to public safety concerns with regard to traffic and pedestrian safety, crime, and the increased need of local public safety resources. Of equal importance, staff has noted that the off-site display and sale of automobiles, and "tent sale" events, are aesthetically displeasing and out of harmony with the character of the community so as to constitute visual blight.

Many in the business community worry that the off-site display and sale of automobiles, and in particular, "tent sale" events, have a negative effect on local businesses, including local automobile dealerships and other businesses located at or near the location of the activity. They believe that "tent sales" allow businesses in other jurisdictions to profit without making any local investment. Local business community members have also said that tent sales deprive the City of tax dollars.

On the other hand, the merchants who conduct the sales said they benefit consumers by creating competition and driving down prices. Also, the dealers say they add to the local

economy by renting space for the sales, setting up water, garbage and phone service and spending money for advertising.

Cities have the authority to regulate these types of activities pursuant to their police powers; this is why some cities have imposed detailed regulations regarding such activities. As part of its study on this zoning proposal, staff will be studying the regulations of other California cities with these types of enacted ordinances.

This interim, urgency ordinance would place a moratorium in effect immediately that would ban any off-site display and sale of automobiles (including off-site automobile sales events) in the City for 45 days so staff can start looking at how it wants to regulate these activities. If the City must continue studying this issue after the initial 45 days has passed, the City Council can extend the moratorium for another 10 months and 15 days.

An urgency ordinance is based on findings of immediate need to preserve the public peace, health or safety. The recommended ordinance contains such findings. Courts have consistently recognized the validity of urgency, interim moratorium ordinances for zoning matters. In addition, a city council may properly consider aesthetics as an element of the public health in making the findings required for an urgency ordinance.

In the case of off-site sales and displays of automobiles, the Council has received comments that such sales are in direct competition with established local businesses and can create an unfair business climate for local business owners, that there are numerous public safety concerns associated with those activities, and that these activities are aesthetically displeasing for the community.

Based on this, the City Council can find that off-site display and sale of automobiles causes unfair competition with established businesses selling automobiles in the City and is aesthetically displeasing. In addition, the City Council can make a legislative finding that the off-site sale and display of automobiles poses a distraction for drivers and a hazard to traffic and can pose numerous other public safety issues. Any of these grounds provides sufficient justification for the proposed urgency ordinance.

A 4/5 vote is necessary to approve this urgency ordinance and temporary moratorium. If passed, the ordinance and moratorium will take effect immediately. Staff believes it is necessary for the City to take its time to decide the right way to deal with this issue based on the unique character of the City of Calexico and in order to sufficiently protect the health and welfare of its residents. After receipt of a written report describing measures taken to alleviate the condition leading to the ordinance, the Council may, after notice and a public hearing, extend the ordinance one or more times. If this urgency ordinance is approved, staff will present a status report at a future City Council meeting prior expiration of the 45-day moratorium.

**Fiscal Impact:**

None.

**Coordinated With:**

City Attorney's Office.

**Attachments:**

1. Ordinance No. 1166.
2. Minutes from Council Meeting of February 16, 2016 re: off-site car tent sales.

ORDINANCE NO. \_\_\_\_\_

**AN INTERIM URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO ENACTED PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 ESTABLISHING A TEMPORARY MORATORIUM ON OFF-SITE DISPLAY AND SALE OF AUTOMOBILES IN THE CITY PENDING AN ENACTMENT OF AN AMENDMENT TO THE CALEXICO MUNICIPAL CODE.**

**WHEREAS**, Government Code Section 65858 provides that a city council may, upon a four-fifths vote of its membership in order to protect the public health, safety and welfare, adopt an interim ordinance prohibiting any uses that conflict with a contemplated zoning proposal; and

**WHEREAS**, Government Code Section 65858 further provides that such an ordinance may be adopted without following the procedures otherwise required before adoption of a zoning ordinance, as an urgency ordinance effective upon adoption, and continuing in effect for forty-five days; and

**WHEREAS**, in November 2011, the City Council considered the effects of the off-site display and sale of automobiles within the City of Calexico, including the off-site display and sale of automobiles at certain events referred to as "tent sales," at which large amounts of automobiles are made available for sale to members of the general public at a single location; and

**WHEREAS**, concerns were raised that the off-site display and sale of automobiles in the City, including the off-site display and sale of automobiles at "tent sales," results in direct competition with established automobile sales businesses in the City; creates an unfair business climate for local businesses; creates public safety concerns with regard to traffic and pedestrian safety; and is aesthetically displeasing for the City; and

**WHEREAS**, on February 16, 2016, the City Council again considered the off-site display and sale of automobiles within the City of Calexico and heard public comment from both sides of the issue; and

**WHEREAS**, similar concerns were raised that off-site display and sale of automobiles at "tent sales," results in competition with established automobile sales businesses in the City, discourages dealerships from opening "brick and mortar" stores in the City, creates unfair business climate for local businesses, creates public safety concerns, and is aesthetically displeasing; and

**WHEREAS**, potential benefits of "tent sales" were also discussed including increased competition, providing citizen consumers with more options in convenient

locations; additional business activity within the City, and additional sales tax revenues to the City; and

**WHEREAS**, following this meeting and at the Council's direction, staff has begun studying a zoning proposal to either prohibit or reasonably regulate the off-site display and sale of automobiles in the City of Calexico, prepared this emergency measure to temporarily prohibit such off-site sales, and has begun to process a zoning ordinance amending the applicable sections of Title 17 of the Calexico Municipal Code to prohibit or reasonably regulate such off-site sales; and

**WHEREAS**, based on any ambiguities and the need for a clear regulatory program in the City of Calexico regarding the off-site display and sale of automobiles, it is reasonable to conclude that negative effects on the public health, safety, and welfare may occur in Calexico as a result of the unregulated off-site display and sale of automobiles; and

**WHEREAS**, the Council finds off-site automobile sales in the City, particularly at "tent sales," may result in direct competition with established automobile sales businesses in the City and create an unfair business climate for local businesses; and

**WHEREAS**, the Council finds off-site automobile sales in the City, particularly at sales events referred to as "tent sales," are aesthetically displeasing and out of harmony with the character of the City so as to constitute visual blight; and

**WHEREAS**, based on the facts set out above, the City Council finds that there is a current and immediate threat to public health, safety or welfare, which may be addressed by enactment of an interim, urgency ordinance; and

**WHEREAS**, the case of *Crown Motors v. City of Redding* (1991) 232 Cal.App.3d 173, recognizes that the City Council may properly consider aesthetics as an element of the public health in making the findings required for an urgency ordinance; and

**WHEREAS**, the City Council further finds, based on the facts set out above, the approval of additional permits, variances, or any other applicable entitlement for use which might be required in order to comply with the zoning ordinance to allow the off-site sale and display of automobiles in the City would result in a threat to public health, safety or welfare.

NOW, THEREFORE, the City Council of the City of Calexico does hereby ordain as follows:

**SECTION 1. Imposition of Moratorium and Findings.**

A. The City, pursuant to the police powers delegated to it by the California Constitution, has the authority to enact laws which promote, preserve and protect the public health, safety, and general welfare of its citizens; and

B. Based on the recitals set forth above, which are hereby incorporated by reference, the Council finds that there is a current and immediate threat to public health, safety or welfare caused by the off-site display and sale of automobiles in the City, particularly at certain events referred to as "tent sales," at which large amounts of automobiles are made available for sale to members of the general public at a single location; and

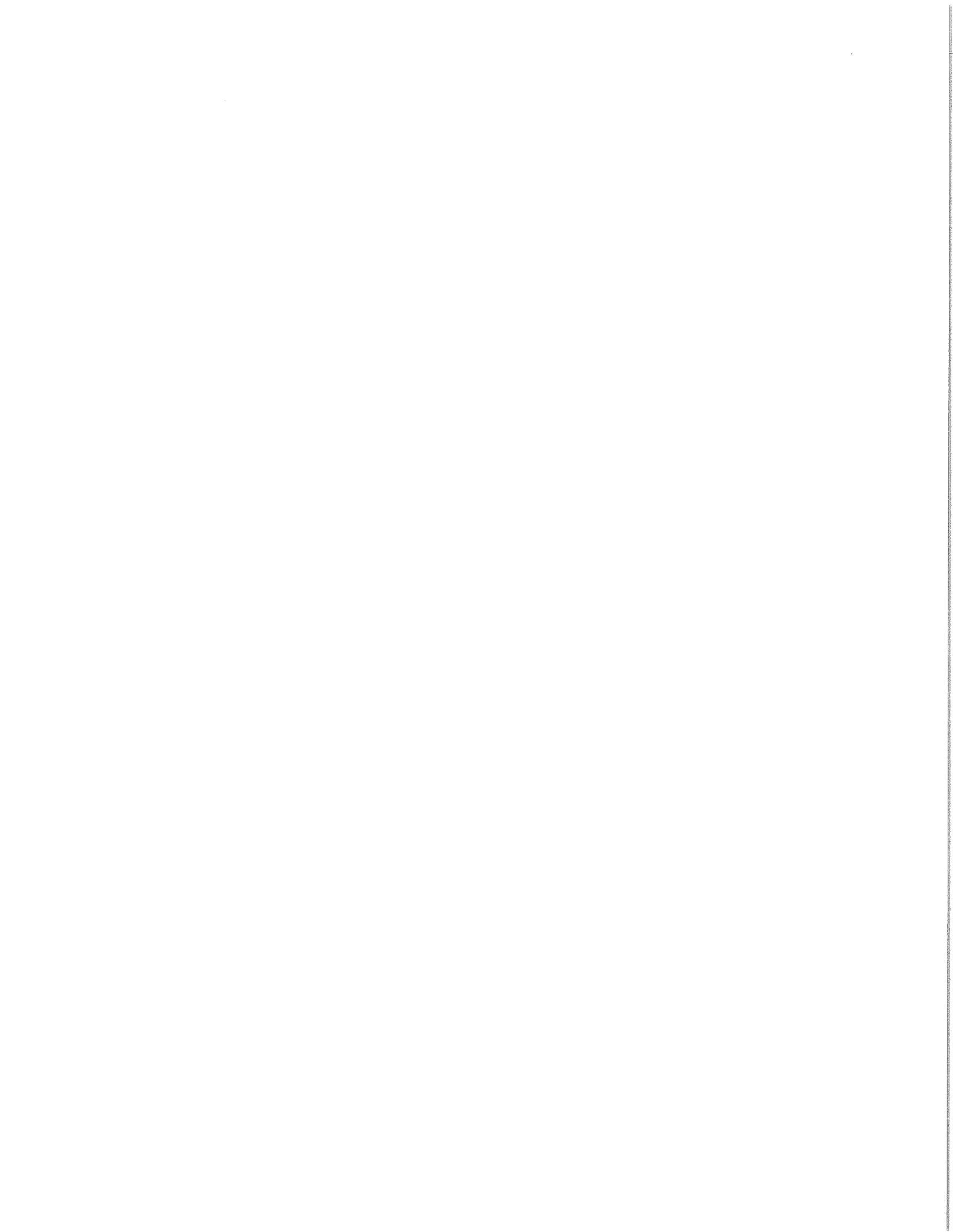
C. Based on the recitals set forth above, which are hereby incorporated by reference, the Council finds that the City's existing land use and zoning regulations do not explain with sufficient clarity whether the off-site display and sale of automobiles is permitted in the City, fail to address the location and operation of this activity, and as a consequence do not adequately protect the health, safety, and general welfare of the citizens of Calexico from the actual and potential impacts arising from the off-site display and sale of automobiles in the City; and

D. Based on the recitals set forth above, which are hereby incorporated by reference, the Council finds that there is a need to study the potential options and effects of prohibiting and/or restricting the off-site display and sale of automobiles in the City, considering all available options ranging from banning such activities to determining appropriate location and operating requirements to address unintended or secondary consequences of this activity within the city limits; and sale of automobiles in the City and that granting permits to those conducting such activities would result in a threat to public safety, health, and general welfare during the term of the study of additional regulations regarding the off-site display and sale of automobiles; and

E. Based on the recitals set forth above, which are hereby incorporated by reference, the Council has determined that there is a current and immediate threat to the public health, safety, or general welfare of the City's citizens in allowing unregulated off-site display and sales of automobiles; and

F. Based on the recitals set forth above, which are hereby incorporated by reference, it is also hereby found that the public health need of the community is met by the immediate imposition of a moratorium on off-site display and sale of automobiles in the City since such displays and sales, and such "tent sale" events are aesthetically displeasing and out of harmony with the character of this community so as to constitute visual blight which reduces the quality of life within the community to the extent that the overall public health is detrimentally affected. Thus, in the event that such activities are allowed to be conducted in the City under current regulations, such would detrimentally affect the City's aesthetics and the public health of the City; and

G. The 45-day initial moratorium procedure authorized by Government Code section 65858 will allow for the necessary study of the effects of regulating off-site display and sale of automobiles in the City and of proposed regulatory measures, and therefore imposing a moratorium in order to provide time for study and review of the issues is required. The Council needs time to consider potential options for regulating off-site display and sale of automobiles in the City.



## **SECTION 2. Emergency Measures.**

A. No business licenses, use permits, or zoning approvals for any off-site display and sale of automobiles within the City, at any location, public or private, shall be approved, authorized, or granted, until such time as the City Council of the City of Calexico has conducted an appropriate study of the effect of the off-site display and sale of automobiles on the health, safety and welfare of the community, including its effect on the character of the City, on property values, density, and effective utilization of property in Calexico, and on the legality and wisdom of various regulatory approaches toward off-site display and sale of automobiles, which study is intended to occur within a reasonable time.

1. "Off-site display and sale of automobiles" means displaying for purposes of sale or the selling of new or used motor vehicles by any person, business or organization within the City of Calexico at any location, public or private, other than the established place of business for such person business or organization. Excluded from this definition are private persons who are selling a motor vehicle and are not in violation of California Vehicle Code Section 22651.9 with regard to the illegal display of a "for sale" vehicle.

B. Applications that have been submitted to the City requesting any applicable entitlement under the zoning ordinance to allow the off-site display and sale of automobiles, but which have not yet been granted or denied as of the effective date of this Interim Ordinance, shall be subject to this Interim Ordinance, and the City shall be under no obligation to process, review or grant such application.

C. This moratorium shall not apply to off-site display and automobile sales contracts existing on February 16, 2016 ("Exempt Contracts").

D. In order to avoid unnecessary citations for violations of this Interim Urgency Ordinance, vehicle dealerships or automobile sales businesses shall submit a list of Exempt Contracts to the City Clerk by close of business on Tuesday, March 22, 2016. The following information must be included in the list of Exempt Contracts: the parties to the agreement; the date the agreement was entered into; the property to which the agreement applies; and dates on which the property is leased under the agreement.

E. The City finds and declares that this moratorium is a reasonable and necessary measure designed to protect the important public purpose of the preservation of the public health, safety, and welfare.

**SECTION 3. Compliance with California Environmental Quality Act.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA

Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly; it prevents changes in the environment pending the completion of the contemplated study of impacts.

**SECTION 4. Severability.** If any sentence, clause, or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each sentence, clause, or phrase thereof, irrespective of the fact that any one or more sentence, clause, or phrase be declared unconstitutional.

**SECTION 5. Effective Date.** This Ordinance shall become effective immediately upon adoption if adopted by at a least four-fifths (4/5) vote of the City Council and shall be in effect for forty-five (45) days from the date of adoption unless extended by the City Council as provided for in the Government Code.

**SECTION 6. Notice of Adoption.** The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Calexico.

**SECTION 7. Report.** City staff is instructed to prepare the report required by Government Code Section 65858 (d) describing the measures taken to alleviate the condition which led to this Ordinance's adoption for presentation to the City Council no later than ten days prior to the expiration of this Ordinance.

**PASSED, ADOPTED, AND APPROVED** by the City Council of the City of Calexico at the regular meeting this 15th day of March, 2016.

\_\_\_\_\_  
Joong S. Kim  
Mayor

ATTEST:

\_\_\_\_\_  
Gabriela Garcia, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Carlos Campos  
City Attorney

STATE OF CALIFORNIA            )  
COUNTY OF IMPERIAL         ) ss  
CITY OF CALEXICO             )

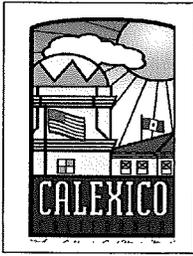
I, Gabriela Garcia, City Clerk of the City of Calexico, California, do hereby certify that the foregoing Urgency Ordinance was adopted at a regular meeting of the City Council of the City of Calexico held on the 15th day of March, 2016, by the following vote:

AYES:            COUNCIL MEMBERS:  
NOES:            COUNCIL MEMBERS:  
ABSENT:         COUNCIL MEMBERS:  
ABSTAIN:        COUNCIL MEMBERS:

\_\_\_\_\_  
Gabriela Garcia  
City Clerk

**AGENDA  
ITEM**

**17**



# AGENDA STAFF REPORT

**DATE:** April 7, 2015  
**TO:** Mayor and City Council  
**APPROVED BY:** Nick Fenley, Interim City Manager   
**PREPARED BY:** Mayor Joong S. Kim  
**SUBJECT:** Discussion on Establishing Independent Taxis Owned by Driver.  
=====

**Recommendation:**

Recommendation by Mayor Kim for at least 40 independent taxis drivers who are residents of the City of Calexico.

**Background:**

Item requested the item be placed on agenda.

**Discussion & Analysis:**

This will increase job creation by approximately 100 jobs.

**Fiscal Impact:**

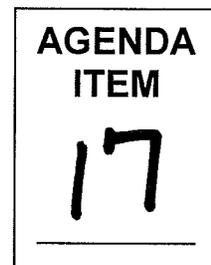
None.

**Coordinated With:**

None.

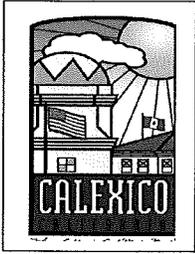
**Attachment:**

- 1. Municipal Code Chapter 5.80 – Taxicabs.



**AGENDA  
ITEM**

**18**



# AGENDA STAFF REPORT

**DATE:** December 15, 2015

**TO:** Mayor and City Council

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

**PREPARED BY:** Gabriela T. Garcia, Deputy City Clerk

**SUBJECT:** Appointment by Mayor and Council Members to Various Commissions, Boards and Committees:

- a. Business Improvement District – Appointments by Mayor Kim and Council Member Hurtado
- b. Recreation Commission – Appointments by Mayor Kim, Council Member Real
- c. Financial Advisory Board – Appointments by Council Member Hurtado and Council Member Real
- d. Senior Citizens Commission – Appointment by Council Member Moreno
- e. Senior Citizens Commission – Appointment of Two Members from any of the Senior Citizen Complexes
- f. Street Naming Committee – Appointments by Council Member Real and Council Member Moreno
- g. Historical Commission – Appointment by Council Member Hurtado
- h. Library Board – Appointment by Council Member Castro
- i. Beautification Commission – Appointment by Council Member Hurtado

=====

**Recommendation:**

Mayor and Council Members to make the appointments to the Commissions, Boards and Committees listed in the Subject line above.

**Background:**

The City Boards, Commissions and Committees have had vacancies due to resignations, removals and due to absences to meetings. These vacancies were advertised by the City Clerk’s office in local newspaper, at the Camarena Library, City Hall Public Boards, and on the City website.

<b>AGENDA ITEM</b>
<b>18</b>

**Discussion & Analysis:**

City Clerk has advertised the positions on the Calexico website, City Hall Public Boards, Camarena Library and in local newspaper. Commissions have had vacancies for over three months. Ordinance No. 1159 Section 2.19.010 (A) of Appointments to Commissions Boards and Committees states:

- A. Appointments to all city commissions boards and committees shall be made by the following process:
  - 1. When the commission, board or committee consists of five (5) members, each City Council Member will appoint one commissioner, board member or committee member. If after a reasonable amount of time not to exceed forty-five (45) days after an election is certified or vacancy otherwise exists a City Council Member has failed to make an appointment, the appointment will be made by a majority vote of the City Council and the appointee shall not be removed from office except by majority vote of the City Council.
  - 2. When the commission, board or committee consists of seven (7) members the first five (5) members will be appointed in the following manner each City Council Member will appoint one commissioner. If after a reasonable amount of time a City Council Member has failed to make an appointment, the appointment will be made by a majority vote of the City Council. The appointment of the final two (2) members will be by a majority vote of the City Council.

**Fiscal Impact:**

None.

**Coordinated With:**

None.

**Attachment:**

- 1. Ordinance No. 1159.

## **ORDINANCE NO. 1159**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALEXICO ADOPTING AMENDMENTS TO CHAPTER 2.19 "ELIGIBILITY AND PROCEDURES FOR COMMISSIONS, BOARDS AND COMMITTEES" SECTIONS 2.19.010 THROUGH 2.19.100 OF TITLE 2 "ADMINISTRATION AND PERSONNEL" OF THE CITY OF CALEXICO MUNICIPAL CODE**

**WHEREAS**, the City Council of the City of Calexico has reviewed Chapter 2.19 "ELIGIBILITY AND PROCEDURES FOR COMMISSIONS, BOARDS AND COMMITTEES" of TITLE 2 "ADMINISTRATION AND PERSONNEL;" and

**WHEREAS**, the City Council of the City of Calexico wishes to adopt amendments to Chapter 2.19 "ELIGIBILITY AND PROCEDURES FOR COMMISSIONS, BOARDS AND COMMITTEES" of TITLE 2 "ADMINISTRATION AND PERSONNEL."

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CALEXICO DOES HEREBY ORDAIN AS FOLLOWS:**

**Section 1.** CHAPTER 2.19 "ELIGIBILITY AND PROCEDURES FOR COMMISSIONS, BOARDS AND COMMITTEES" Sections 2.19.010 and 2.19.100 of TITLE 2 "ADMINISTRATION AND PERSONNEL" of the Calexico Municipal Code are amended and enacted to read as follows:

### **SECTIONS**

#### **"2.19.010 - Appointments to Commissions, Boards and Committees—Process.**

- A. Appointments to all city commissions, boards and committees, shall be made by the following process:
1. When the commission, board or committee consists of five (5) members, each City Council Member will appoint one commissioner, board member or committee member. If after a reasonable amount of time (not to exceed forty-five (45) days after an election is certified or vacancy otherwise exists), a City Council Member has failed to make an appointment, the appointment will be made by a majority vote of the City Council and the appointee shall not be removed from office except by majority vote of the City Council.
  2. When the commission, board or committee consists of seven (7) members, the first five (5) members will be appointed in the following manner: each City Council Member will appoint one commissioner. If after a reasonable amount of time, a City Council Member has failed to make an appointment, the appointment will be made by a majority vote of the City Council. The

appointment of the final two (2) members will be by a majority vote of the City Council.

- B. Pursuant to this code and Government Code Section 54974, the following procedures shall be employed in filling vacancies on commissions, boards and committees in the city:
1. The City Clerk shall advise the City Council of the names of those persons whose term of office on a City commission, board or committee will be expiring thirty (30) days prior to such expiration.
  2. The City Clerk shall promptly advise the City Council of any unscheduled vacancy whether due to resignation, death, termination or other causes.
    - a. Whenever an unscheduled vacancy occurs in any commission, board or committee for which the City Council has the appointing power, whether due to resignation, death, termination or other causes, a special vacancy notice shall be posted in the office of the City Clerk, and in other places as directed by the City Council not earlier than twenty (20) days before or not later than twenty (20) days after the vacancy occurs. Final appointment to the board, commission or committee shall not be made by the city council for at least ten (10) working days after the posting of the notice in the city clerk's office.
    - b. Notwithstanding subsection (C)(2)(a) of this section, the City Council may, if it finds that an emergency exists, fill the unscheduled vacancy immediately. Such emergency appointments shall be made by the Mayor with the approval of the City Council. A person appointed to fill the vacancy shall serve only on an acting basis until the final appointment is made pursuant to this section.
  3. The chair of each City commission, board or committee shall notify the City Clerk of any position which should be declared vacant pursuant to the provisions of this code or state law. The City Clerk shall in turn advise the City Council of all such notification.
  4. The City Council shall provide by ordinance any additional procedures necessary for appointments to commissions, boards and committees.

#### **2.19.020 Vacancies and Removal of Members.**

- A. Any member of the Commission may resign from any commission, board or committee at anytime.

- B. A member of any commission, board, or committee may be removed at any time by the City Council Member who appointed such member to the respective commission, board, or committee for any reason and/or if absent from three (3) regularly scheduled meetings in a calendar year. Such removal must be announced at a public meeting of the City Council.
- C. Notwithstanding any other provision of this Chapter, any member of any commission, board or committee (except non-voting ex-officio members) who absents himself or herself from any three (3) regularly scheduled meetings (for any reason) in a twelve (12)-month period shall automatically forfeit his or her position and shall automatically be removed from the membership of the commission, board or committee. Any member so removed shall not be reappointed for a period of one (1) year to any City commission, board or committee. It shall be the responsibility of the Chairman, Vice Chairman or presiding officer to report attendance at each meeting of the commission, board or committee to the City Clerk.
- D. Members will also be automatically removed for violating the Political Reform Act of 1974 as determined by the appropriate agency with authority to render such decisions or failing to comply with mandatory ethics training or conflict-of-interest filings required by the State of California or the City of Calexico.

#### **2.19.030 Eligibility.**

- A. To be eligible for, and to hold appointment, each appointee shall neither hold public office, or City employment, nor shall he/she be an officer of any local, state or national partisan official group. All members of commissions, boards and committees of the City shall be residents of the city or shall regularly work within the City.
- B. Members of the City Council may be appointed by the majority of the City Council to attend commission, board or committee meetings as liaisons to the City Council.
- C. Appointee shall be subject to the conflict-of-interest sections of the Political Reform Act of 1974.
- D. An individual may serve on only one (1) committee, board or committee at anytime.
- E. With the exception of the Planning Commission, which shall receive compensation as determined by the City Council, members commissions, boards and committees shall serve without compensation, provided that the City Manager or City Council may authorize the reimbursement of reasonable expenses incurred by the members in the performance of their duties.

#### **2.19.040 Disqualifying Activity.**

In the event that any commissioner, board member, or committee member shall place his/her name as a candidate or permit his/her name to be placed as a candidate for any elective office in the City of Calexico, the term of said commissioner shall automatically terminate effective on the date that his/her name is received by the public officer charged with the duty of receiving said names as candidates for elective office in the City of Calexico.

#### **2.19.050 Terms of office.**

- A. The term of office of any commissioner, board member, or committee member appointed under this chapter shall commence upon his/her appointment to said office and shall continue for the duration of the term of office of the appointing councilperson, automatically terminating at the day and hour that the City Clerk shall certify the results of the election for the office to which the appointing councilperson was elected. If a City Council Member is elected to serve another term of office, that City Council Member is entitled to make all new appointments to City commissions, boards, and committees, however, such City Council Member can choose to re-appoint his/her previous appointees for a new term concurrent with the respective City Council Member's new term of office. If the appointing councilperson shall die while holding office or be sooner removed from office by recall or resignation, the term of said City Council Member's appointee on the commission, board or committee shall terminate upon the appointment or election of a new City Council Member assuming the office of the said deceased or removed City Council Member.

By way of clarification, therefore, in the event the nominating City Council Member shall not be a full term City Council Member then the appointment of said new commissioner, board member or committee member shall be only for the unexpired portion of the term of the commissioner, board member or committee member being replaced by said appointment.

- B. The term of office of any commission, board or committee member appointed by the whole City Council on a seven (7)-member commission, board or committee, shall be for four (4) years.
- C. The term of office of a commissioner, board member, or committee member can also be terminated pursuant to Section 2.19.020 of this chapter.

#### **2.19.060 Alternates and Interim Members.**

- A. Any commissioner, board member, or committee member appointed pursuant to this chapter who is unable to attend a scheduled meeting shall immediately notify the city council member who appointed them of their anticipated absence at the meeting. The City Council Member who appointed the commissioner, board member, or committee member may serve as an alternate at the meeting.

- B. Whenever a vacancy occurs on any commission, board, or committee, the City Council Member who has the power to appoint a successor pursuant to This chapter may serve as an interim member of the commission, board, or committee until the vacancy has been filled.
- C. Any City Council Member serving as an alternate or interim member of a commission, board, or committee shall be counted for the purposes of reaching a quorum and may vote and otherwise participate in all matters before the commission, board, or committee.
- D. This section does not apply to the planning commission or the personnel commission.
- E. No more than two City Council Members may serve as alternates or interim members of the same commission, board, or committee at any given time.

#### **2.19.070 Organization.**

- A. The officers of City commissions, boards and committees shall consist of a Chairman, Vice Chairman and Secretary to be elected by the commission, board, or committee, and such other offices as Commission may from time to time designate. The term of said officers shall be fixed by the commission, board or committee.
- B. Each commission, board and committee shall make its own rules and regulations and fix the procedure for calling, holding and conducting meetings; providing, that such rules and regulations are not in conflict with the Brown Act or with the provisions of any laws of the State of California or the City of Calexico.

#### **2.19.080 Meetings and Quorum.**

- A. Each commission, board or committee shall meet regularly at a time and place in the City to be determined by the commission, board or committee. Meetings shall not be held on legal holidays of the City.
- B. Special meetings of the called by the Chairman of the Commission or the Vice Chairman in the Chairman's absence, majority of the Commission, City Council, City Manager or staff member assigned to work with the commission, board or committee. Notice of special meetings shall be given each member of the commission, board or committee in compliance with the Brown Act and in a reasonable time in advance of the meeting.
- C. Three (3) voting members of the commission, board or committee shall constitute a quorum of the commission, board or committee for the purpose of transacting business.

D. No action authorizing the expenditure of funds shall be taken by the commission, board or committee at any meeting other than a regular meeting by a majority vote.

E. Each commission, board or committee shall keep a public record of its transactions, findings, determinations and recommendations.

**2.19.090 Commission, Board or Committee Staff Support.**

The City Manager will assign a staff member to each commission, board or committee.

**2.19.100 Commission, Board or Committee Budget.**

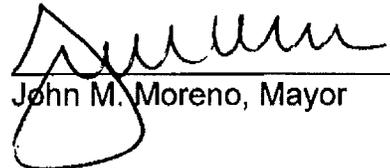
Each commission, board and committee may receive funds by an annual appropriation in the City budget or by government corporate or private grants or donations, and from the proceeds of City-approved functions. All such funds shall be held and managed as the City Manager or City Council may direct."

**Section 3.** Except as expressly modified pursuant to this Ordinance, all provisions of the Calexico Municipal Code shall remain unmodified and in full force and effect.

**Section 4.** The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation.

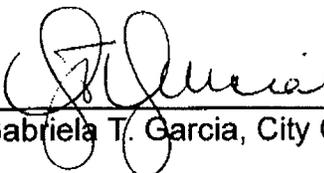
First read at a regular meeting of the City Council held on the 20th day of January, 2015 and adopted and ordered published at a regular meeting of said Council on the 3rd day of February, 2015.

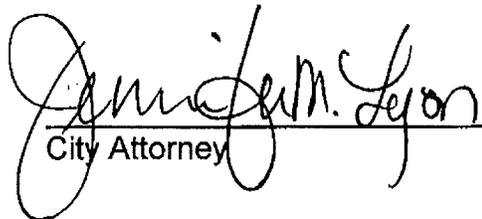
**PASSED, APPROVED AND ADOPTED this 3rd day of February, 2015.**

  
\_\_\_\_\_  
John M. Moreno, Mayor

**ATTEST:**

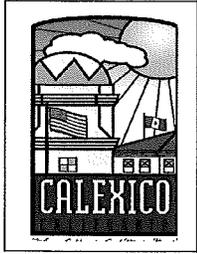
**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Gabriela T. Garcia, City Clerk

  
\_\_\_\_\_  
Jennifer M. Lyon  
City Attorney

**AGENDA  
ITEM**

**19**



# AGENDA STAFF REPORT

**DATE:** March 15, 2016  
**TO:** Mayor and City Council  
**APPROVED BY:** Nick Fenley, Interim City Manager  
**PREPARED BY:** Gabriela T. Garcia, Deputy City Clerk  
**SUBJECT:** Change of City Representative on the Imperial County Transportation Commission (ICTC) (Mayor Kim)

=====

**Recommendation:**

Mayor Kim to make one appointment to the Imperial County Transportation Commission.

**Background:**

The Imperial County Transportation Commission (ICTC) Board is composed of ten voting members and one non-voting member consisting of two members of the Imperial County Board of Supervisors; one member from each incorporated city (seven) within Imperial County who shall be the mayor of the city or a member of its city council; one member of the Board of Directors of the Imperial Irrigation District; and, one non-voting member appointed by the Governor representing the California Department of Transportation (Caltrans).

**Discussion & Analysis:**

Mayor Kim has requested to make a change of the City's representative serving on the Imperial County Transportation Commission (ICTC).

**Fiscal Impact:**

None.

**Coordinated With:**

None.

**Attachment:**

None.

AGENDA  
ITEM  
19