RESOLUTION NO. 2016-20

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING THE EMPLOYMENT AGREEMENT WITH ARMANDO G. VILLA AND APPOINTING HIM AS CITY MANAGER OF THE CITY CALEXICO

WHEREAS, the City of Calexico is a general law city that operates under the council-manager form of government; and

WHEREAS, under the council-manager form of government, the City Council acts as the board of directors and sets policy for the City, while the City Manager acts as the chief executive officer of the organization and carries out the policies of the governing body; and

WHEREAS, as the chief executive officer of the City, the City Manager implements the decisions of the City Council, manages the day-to-day operations of the City, ensures municipal services are delivered efficiently and effectively, hires and fires employees and works to protect the health, safety and welfare of the City; and

WHEREAS, the City Council wishes to enter into a long-term employment agreement with Armando G. Villa and appoint him as City Manager for the City of Calexico.

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

Section 1. The City Council hereby appoints Armando G. Villa as City Manager for the City of Calexico and approves the Employment Agreement between the City of Calexico and Armando G. Villa, attached as Exhibit "A" to this Resolution.

Section 2. This Resolution shall become effective immediately upon passage.

PASSED, ADOPTED and APPROVED this 21st day of June, 2016, by the City Council of the City of Calexico.

Kim Vote NO

Joong S. Kim, Mayor

ATTEST:

Gabriela Garcia, Deputy City Clerk

6/29/16

SIGNATURE DATE

HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL RECORD ON FILE IN THIS OFFICE

APPROVED AS TO FORM:

Carlos Campos, Interim 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. 2016-20 was approved at a regular City Council meeting held on the 21st day of June 2016, by the following vote to-wit:

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

Gabriela T. Garcia, Deputy City Clerk

EXHIBIT A

EMPLOYMENT AGREEMENT BETWEEN THE CITY OF CALEXICO AND ARMANDO G. VILLA

This Employment Agreement (hereinafter referred to as "Agreement") is made and entered into between ARMANDO G. VILLA (hereinafter referred to as "City Manager") and the CITY OF CALEXICO, a municipal corporation of the State of California (hereinafter referred to as "City"), in order to provide, in writing, the terms and conditions for management services by the City Manager of City. City and City Manager are sometimes referred to herein individually as "Party" and collectively as "Parties."

RECITALS

WHEREAS, the City requires the services of a City Manager, and the City Council of the City ("City Council") desires to employ the City Manager in that position;

WHEREAS, the City Manager is familiar with the position's legal requirements, industry standards and responsibilities, and duties as set forth both in the job description and Chapter 2.02 of the City's Municipal Code;

WHEREAS, the City Manager has the necessary education, experience, skills, expertise and abilities to serve as the City's City Manager.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the parties hereto agree as follows:

TERMS

1. Employment

The City hereby agrees to employ the City Manager, and the City Manager agrees and does accept employment upon the terms and conditions set forth herein. It is expressly understood that City Manager, in his capacity as City Manager, is a contracted employee serving at the will and pleasure of the City Council, subject to termination pursuant to the terms of this Agreement, and with no right to any hearing or appeal, including any so-called *Skelly* conference, other than the rights expressly provided in this Agreement.

2. Term and Renewal

A. This Agreement shall be effective as of June 22, 2016 (the "Anniversary Date"). The term of this Agreement shall be for five (5) years, through June 22, 2021, unless sooner terminated or extended by the Parties as set forth in this Agreement.

3. Duties and Obligations of City Manager

A. The City Manager hereby agrees to perform the functions and duties of City Manager, as specified in the City's ordinances, the City's municipal code ("Municipal Code"), City policies and procedures approved by the City Council, and in state law, and to perform such other legally permissible and proper duties and functions as the majority of the City Council shall from time to time assign. Specifically, the City Manager is obligated to know and execute the duties and responsibilities of the City Manager as set forth in Chapter 2.02 (as applicable at the time of execution of this Agreement), except for Section 2.02.020 which is legally invalid, and perform his duties consistent with all ethical and procedural standards applicable by law, industry standards, and best practices. The City Manager further agrees to perform all such functions and duties to the best of his ability and in an efficient and competent manner.

B. The City Council shall also designate the City Manager as the executive director, general manager or similar title of other City-related legal entities. Such other legal entities include the City's financing authorities and utility agencies and could include certain joint powers authorities when applicable.

C. The City Manager is an exempt employee, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work, as the City Manager is expected to be available at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the City's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. The City Manager shall spend sufficient hours on site to perform the City Manager's duties; however, the City Manager has discretion over the City Manager's work schedule and work location.

D. The Parties mutually desire that the City Manager be subject to and comply with the International City Management Association (ICMA) Code of Ethics, incorporated herein by reference. The City Manager commits to comply with the ICMA Code of Ethics.

E. The City Manager shall administer and enforce policies established by the City Council, and promulgate rules and regulations as necessary to implement City Council policies.

F. The City Manager shall attend all meetings of the City Council, unless excused. The Mayor shall have the authority on behalf of the City Council to excuse the City Manager from meetings. The City Manager shall also take part in the discussion of all matters before the City Council during meetings he attends, and the City Manager shall receive notice of all regular and special meetings of the City Council.

G. Consistent with the Municipal Code, state law and all relevant City policies and procedures, the City Manager shall review and concur by rendering a recommendation on all agenda documents before preparing the agenda for any regular or special meetings of the City Council.

H. The City Manager shall direct the work of all elective and appointive City officers and departments that are the concern and responsibility of the City Council, except those that are directly appointed by or report directly to the City Council.

I. The City Manager will focus his professional time, ability, and attention to City business during the term of this Agreement. The City Manager shall not engage in any other business duties or pursuits whatsoever or, directly or indirectly, render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, without the prior consent of Council, except that:

(1) The expenditure of reasonable amounts of time not in conflict with the City's needs and interests, for educational, charitable, community, and professional activities, shall not be deemed a breach of this Agreement and shall not require prior consent.

(2) This Agreement shall not be interpreted to prohibit the City Manager from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement.

J. All data, studies, reports and other documents prepared by the City Manager while performing his duties during the term of this Agreement shall be furnished to and become the property of the City, without restriction or limitation on their use.

K. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to the City Manager in connection with the performance of this Agreement shall be held confidential by the City Manager. Such materials shall not, without the prior written consent of the Council, be used by the City Manager for any purposes other than the performance of his duties. Nor shall such materials be disclosed to any person or entity not connected with the performance of services under this Agreement, except as required by law.

4. Compensation

A. Base Salary. The City Manager's base salary shall be One Hundred and Sixty Nine Thousand Dollars ($169,000.00) annually, payable pursuant to the payroll procedures regularly established and as they may be amended by the City in its sole discretion. The City Manager may receive up to 5% annual increases in salary as may be determined by the City Council in its sole discretion. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement. All compensation and comparable payments to be paid to City Manager shall be less withholdings required by law.

B. Cost of Living Adjustments. Whenever a cost of living adjustment or other non-merit based pay increase is provided to other City Employees, the City Council shall meet to determine whether it is reasonable and appropriate to provide a similar adjustment or increase to the City Manager's Base Salary. Any cost of living increase will be provided at the City Council's sole discretion.

5. Benefits

In addition to the compensation set forth in Section 4 the City Manager shall be entitled to the following benefits:

A. Automobile Allowance. The City shall provide the City Manager with *either* a City issued vehicle *or* a Four Hundred Dollar ($400.00) monthly automobile allowance for use toward a vehicle in the furtherance of his duties as City Manager.

B. ICMA Dues/Other Professional Development. The City agrees to budget and pay the City Manager's annual dues for membership in ICMA. In addition, the City agrees, subject to the City's budget constraints and advance approval of Council, to pay expenses and allow City time for the following: (1) conference and meeting attendance and selected training opportunities, including, but not limited to, those associated with ICMA, the League of California Cities, and other national, state, regional or local associations and organizations necessary and desirable for the good of the City and for the City Manager's continued professional development; (2) professional dues and subscriptions on behalf of the City Manager which are necessary for the City Manager's continuation and full participation in national, state, regional or local associations and organizations, including civic clubs or organization, necessary and desirable for the good of the City and for the City Manager's continued professional development; and (3) travel and subsistence expenses of the City Manager to pursue official and other functions for the City, including, but not limited to, national, state, regional and/or local associations and organizations necessary and desirable for the good of the City and for the City Manager's continued professional development

C. Business Expenses. Within the City's budget constraints and subject to adopted City policies, the City shall pay for or provide the City Manager reasonable reimbursement for all actual and necessary business expenses.

D. Other Benefits. With the exception of such benefits as outlined specifically in this Section, the City shall provide the City Manager with other benefits, including but not limited to vacation, sick leave, holiday pay, life insurance, medical, disability and retirement benefits through CalPERS, consistent with those benefits provided to the City's other Director-level employees as outlined in the City of Calexico Management Benefit Roster.

E. Executive Leave. Upon execution of this Agreement and each year thereafter, Employee will be allotted eighty (80) hours of executive leave to be used as administrative days away from the office. These days are to be scheduled and used throughout the year to complete administrative tasks and duties without undue office interference. These days off do not accrue, are not subject to carry over, are not subject to any cash-out option, and will not be paid out upon termination of employment.

F. Internal Revenue Code Compliance. All provisions of this Section 5 are subject to the provisions and limitations of the Internal Revenue Code and its related regulations, as amended from time to time. No requirement of any provision of this Section 5 shall be effective if it would violate any provision of the Internal Revenue Code or its related regulations, and the inability of the City to effectuate such requirements shall not constitute a breach of this Agreement.

6. Performance Evaluations

A. The City Council shall review and evaluate the performance of the City Manager in writing, at a minimum, on an annual basis at the second Board meeting of every January. The evaluation will also set forth mutually defined goals to be achieved by the City Manager in the subsequent year. The City Manager will be provided an adequate opportunity to discuss his evaluation with the City Council at a closed session Council meeting. The City Manager shall be eligible, if merited in the City Council's sole discretion, to receive a salary increase of up to five percent (5%) at the conclusion of such evaluation. Any agreed salary increase must be expressly memorialized in a subsequent written and executed Amendment to this Agreement. Failure of the City Council to conduct a performance evaluation shall not prohibit the City Council from terminating this Agreement in accordance with the other sections of this Agreement.

B. The performance review and evaluation process set forth herein is intended to provide review and feedback to City Manager so as to facilitate a more effective management of the City. Nothing herein shall be deemed to alter or change the employment status of City Manager, nor shall this Section be construed as requiring "cause" to terminate this Agreement or the services of City Manager hereunder.

7. Termination of Agreement and Severance Pay

A. At-Will. The Parties hereby expressly agree that the employment relationship created by this Agreement is "at will" and that the City Manager serves at the will and pleasure of the City Council. Nothing in this Agreement, any statute, ordinance, or rule shall prevent, limit or otherwise interfere with the right of the Council to terminate, without cause or right of appeal or grievance, the services of the City Manager at any time, except as set forth in this Section 7. Accordingly, City Manager agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment and that the provisions of Section 2.02 of the Municipal Code shall not be applicable to City Manager and that he hereby waives any rights he would otherwise have thereunder.

B. Automatic Termination. This Agreement, and City Manager's employment, shall automatically terminate, and the City Manager shall not be entitled to any Severance Payment, upon the happening of any of the following events:

(1) Upon mutual agreement in writing by both Parties to terminate this Agreement.

(2) Upon forty-five (45) days notice of resignation given to City by the City Manager.

(3) Upon retirement from full-time public service with the City pursuant to applicable CalPERS laws, rules and regulations. If the City Manager retires, the City Manager shall provide six (6) months' advance notice. The City Manager's actual retirement date will be mutually established.

(4) Upon the death of the City Manager.

(5) When the City Manager has been unable to perform all or substantially all of the essential functions of his position, with or without reasonable accommodation, due to illness or other disability for a period of three (3) months or longer. The failure of the City to enforce this provision for a period of three (3) months or longer shall not act as a waiver, and the City, upon a determination of a lack of substantial performance by the City Manager, shall be able to move forward with termination pursuant to this provision at any time after three (3) months of unavailability, regardless of how long it has waited for the City Manager's availability to return prior to that date.

C. Termination With or Without Cause. This Agreement, and City Manager's employment, may be terminated without prior notice at any time, with or without cause, pursuant to the requirements as set forth below.

(1) Without Cause - Severance. In the event City Manager is terminated without cause during such time that the City Manager is willing and able to perform his duties under this Agreement, other than under an automatic termination instance as provided for in Section 7(B) above, the City agrees to provide City Manager with a severance payment of up to the following amounts:

(a) If severance occurs in the first year of the Agreement, then an amount equal to ten (10) months of pay, plus payment of COBRA premiums sufficient to provide City Manager coverage for ten (10) months;

(b) If severance occurs in the second year of the Agreement, then an amount equal to (11) months of pay, plus payment of COBRA premiums sufficient to provide City Manager coverage for eleven (11) months; or,

(c) If severance occurs in the third year of the Agreement or thereafter, then an amount equal to twelve (12) months of pay, plus payment of COBRA premiums sufficient to provide City Manager coverage for twelve (12) months.

The City Council agrees that, during the first three (3) years of this Agreement, at least four (4) members of the City Council will have to vote in favor of termination without cause in order to effectuate the termination.

Severance payment, however, shall be limited as required by Government Code section 53260, in that any severance payment will be either consistent with the amounts listed above or shall be a payment amount equal to the unexpired term (initial or subsequent, whichever is currently relevant) of this Agreement, whichever is less. The provision of a severance payment shall also be conditioned upon the execution by City Manager of a Release of All Claims, both known and unknown.

(2) With Cause. In the event City Manager is terminated for cause by a vote of at least three (3) members of the City Council, he shall not be entitled to any severance pay or benefits. "Cause" shall include the following reasons:

(a) Acts of malfeasance or unethical behavior inconsistent with the ICMA Code of Ethics to the detriment of the City;

(b) Refusal or failure to act in accordance with any legal requirement or specific lawful direction or lawful order made by of the majority of the City Council;

(c) Exhibition in regard to his employment unfitness or willful unavailability for service, willful and repeated unsatisfactory performance, misconduct, dishonesty, habitual neglect, or incompetence;

(d) Involvement in crime involving dishonesty, breach of trust, or public conduct reflecting negatively on the City (no pending criminal prosecution need be in effect for termination due to fraud, embezzlement or public conduct reflecting on the City; rather the Council must only have a reasonable good faith belief based on evidence and an independent third party investigation);

(e) Creates physical or emotional harm to any person in violation of state or federal laws (no pending criminal prosecution need be in effect for termination due to such harm; rather the Council must only have a reasonable good faith belief based on evidence and an independent third party investigation); or,

(f) Breaches any material term of this Agreement.

(3) The provisions of California Government Code sections 53243 to 53243.4, as those sections now or hereafter exist are hereby incorporated by reference into this Agreement. Thus, if City Manager is convicted of a crime involving an abuse of his office or position, whether before or after release from employment, City Manager shall fully reimburse the City for any severance pay, paid leave salary disbursed pending an investigation related to the crime, or legal criminal defense funds relevant to the crime.

D. With Cause Procedure. Upon termination for cause, the City shall deliver to the City Manager a written specification of the charges or other reasons upon which "cause" is alleged. The City Manager shall then have ten (10) business days to challenge such termination for cause by delivery of a written response to such specifications. Within such ten (10) day period, the City Manager may also demand a hearing upon the specifications. Failure to submit a written response or demand a hearing within the ten (10) business day period shall constitute a waiver of such right, and the Council's determination shall be final. If a hearing is demanded, such hearing shall be held in closed session and the City Manager and/or his attorney or legal representative may present any evidence or argument relevant to the inquiry. If a written response is submitted but no hearing is demanded, the Council shall review its decision based upon the City Manager's written response. The Council's decision regarding whether sufficient cause existed for termination following review of the written response or presentation at hearing

shall be final and without right of appeal. The City Manager shall not have any reinstatement rights.

E. Suspension. The City Council by a vote of at least three (3) members of the City Council may suspend the City Manager with full pay and benefits at any time, for any duration, upon: (1) if the City Manager agrees to said suspension; or (2) upon the Council voting to suspend the City Manager.

8. Bonding

The City shall bear the full cost of any fidelity or other bonds required of the City Manager, in the performance of his duties as City Manager.

9. Indemnification

To the full extent of the law, as provided by the California Torts Claims Act (Government Code Section 810, et seq.), the City shall defend and indemnify the City Manager against all losses sustained by the City Manager in direct consequences of the discharge of the City Manager's duties within the scope of his employment for the period of the City Manager's employment.

10. Modification

Any modification of this Agreement will be effective only if it is in writing and signed by both Parties.

11. Effect of Waiver

The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

12. Assignment

Neither this Agreement, nor any right, privilege, or obligation of the City Manager hereunder shall be assigned or transferred by him without the prior written consent of the Council. Any attempt at assignment or transfer in violation of this provision shall, at the option of the Council, be null and void and may be considered a material breach of this Agreement.

13. Entire Agreement

This Agreement supersedes any and all other agreements, either oral or in writing, between the City and the City Manager. This Agreement contains all of the covenants and agreements between the Parties with respect to the City Manager's employment by the City in any manner whatsoever. Each Party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any Party, or

anyone acting on behalf of any Party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding on either Party.

14. Partial Invalidity

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

15. Law Governing Agreement

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in Imperial County.

16. No Presumption of Drafter

The Parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the Parties, and this Agreement reflects their mutual agreement regarding the subject matter of this Agreement. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any Party to be the drafter of this Agreement and, therefore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

17. Survival of Termination

Many sections of this Agreement are intended by their terms to survive the City Manager's termination of employment with the City. Where so intended, these sections shall survive termination of employment and termination of this Agreement.

18. Attorneys' Fees

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to recover such amount as the court may award as reasonable attorneys' fees and costs.

19. Notices

A. Any notice to be given hereunder by either Party to the other shall be in writing and may be transmitted by personal delivery or mail, registered or certified, postage prepaid, with return receipt requested. Mailed notices shall be addressed to the following respective addresses:

If To Employer:

Mayor and City Council
City of Calexico
608 Heber Avenue
Calexico, CA 92231
ATTN: Mayor

With Copy to:
Best Best & Krieger LLP
74760 Highway 111, Suite 200
Indian Wells, CA 92210
ATTN: Calexico City Attorney

If To Employee:

Armando G. Villa
[Address on file with the City]

B. Notices delivered personally shall be deemed communicated as of the date of actual receipt. Mailed notices shall be deemed communicated as of the date of mailing, plus two (2) days.

20. Assistance of Counsel

Each Party to this Agreement warrants to the other Party that it has either had the assistance of counsel in negotiation for, and preparation of, this Agreement or could have had such assistance and voluntarily declined to obtain it.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the ____ day of June 2016.

CITY OF CALEXICO By:_____ MAYOR, JOONG S. KIM Kim Vote NO	CITY MANAGER By:_____ ARMANDO G. VILLA
ATTEST: By:_____ Gabriela T. Garcia, City Clerk	
APPROVED AS TO FORM By:_____ for Carlos Campos, City Attorney	

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