



**CALEXICO CITY COUNCIL/CALEXICO REDEVELOPMENT SUCCESSOR
AGENCY/CALEXICO FINANCING AUTHORITY
SPECIAL MEETING AGENDA**

**City of Calexico
Fernando "Nene" Torres Council Chambers
608 Heber Avenue
Calexico, California
www.calexico.ca.gov**

**Thursday, June 30, 2016
6:00 p.m.**

Council Members

**Joong S. Kim, Mayor/Chairman
Luis J. Castro, Mayor Pro Tem/Vice Chair
Armando Real, Councilman
Maritza Hurtado, Councilwoman
John M. Moreno, Councilman**

City Manager

Armando G. Villa

Interim City Attorney

Carlos Campos

City Clerk

Gabriela T. Garcia

**Next City Ordinance Number: 1170
Next City Resolution Number: 2016-21**

CLOSED SESSION AGENDA

6:00 P.M.

CALL TO ORDER

Roll Call.

Public Comments.

(Not to Exceed 3 Minutes) This is the time for the public to address the City Council on Closed Session Items only. The Mayor will recognize you and when you come to the microphone, please state your name and place of residence for the record. While members of the public are encouraged to participate, it is unlawful to disturb or delay the Council meeting with personal or slanderous remarks. The City Council is prohibited by State law from taking action or discussing items not included on the printed agenda. Please direct your questions and comments to the City Council.

Adjourn to Closed Session.

A "Closed" Session of the City Council/Calexico Community Redevelopment Agency Successor Agency/ Calexico Financing Authority may be held in accordance with state law which may include, but is not limited to, the following types of items: personnel matters, labor negotiations, security matters, providing instructions to real property negotiators and conference with legal counsel regarding pending litigation. The Closed Session will be

held in the City Hall Conference Room located at 608 Heber Avenue, Calexico, California. Any public comment on Closed Session items will be taken before the Closed Session. Any required announcements or discussion of Closed Session items or actions following the Closed Session will be made in the City Council Chambers, 608 Heber Avenue, Calexico, California.

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS
Agency Representatives: City Manager, City Attorney
Employee Organizations: Police Officers Association, Fire Fighters Association, Supervisors Association, Certified Operators Association/SEIU Local 221, Calexico Municipal Employees Association.
(Govt. Code Section 54957.6).
2. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION
Pursuant to Government Code Section 54956.9(d)(1)
 - a. Stephen Frazier v. City of Calexico
 - b. Steven Garcia v. City of Calexico
 - c. German Duran v. City of Calexico
 - d. Frank Uriarte v. City of Calexico
 - e. Luis Casillas v. City of Calexico
 - f. Rudy Alarcon v. City of Calexico
 - g. Gabriel Rodriguez v. City of Calexico

CALEXICO CITY COUNCIL/CALEXICO REDEVELOPMENT SUCCESSOR AGENCY/CALEXICO FINANCING AUTHORITY

OPEN SESSION AGENDA 6:30 P.M.

CALL TO ORDER

Call to Order and Attendance.
Pledge of Allegiance.
Closed Session Announcements.
Approval of the Agenda.

ANNOUNCEMENTS

These proceedings may be viewed on the City of Calexico website at www.calexico.ca.gov the Friday following the City Council meeting.

DISCUSSION AND POTENTIAL ACTION ITEMS

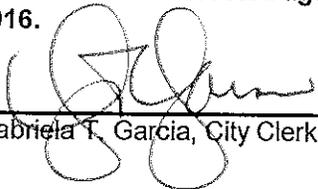
1. Discussion of Proposed Budget and Financing Documents for Fiscal Year 2015-2016 and Fiscal Year 2016-2017.
 - a. Discussion of Proposed Budget for Fiscal Year 2016-2017. Resolution of the City Council of the City of Calexico Approving the Budget for Fiscal Year July 1, 2015 to June 30, 2016 and for the Fiscal Year July 1, 2016 through June 30, 2017.
2. Approval of Resolutions for \$3.5 Million Financing to Balance Fiscal Year 2015-16
 - a. Resolution of the City Council of the City of Calexico, California Authorizing Execution and Delivery of a Site Lease, a Lease Agreement, and other Related Documents in Connection with Entering into a Lease Obligation through a Lease Financing Arrangement with the Calexico Public Financing Authority and Certain other Actions Relating thereto

- b. Resolution of the Board of Directors of the Calexico Public Financing Authority, Authorizing Execution and Delivery of a Site Lease, a Lease Agreement, and other Related Documents in Connection with the Working Capital Financing through a Lease Financing Arrangements with the City and the Wastewater Enterprise Fund of the City, and Certain Other Actions Relating thereto.

ADJOURNMENT

It is the intention of the City of Calexico to comply with the Americans with Disabilities Act in all respects. If you are a person with a disability who requires a disability-related modification or accommodation in order to participate in a meeting, including auxiliary aids or services, please request such modification or accommodation from the City Clerk at (760) 768-2102. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to assure accessibility to the meeting. Please advise us at the time whether you will require accommodations to participate in meetings on a regular basis. Any person affected by any application on this agenda may submit their concerns in writing prior to the meeting or appear in person and be heard in support or opposition to the proposal at the time the matter is considered on the agenda. The staff reports, applications and environmental documents may be viewed at either the office of the office of the City Clerk, 608 Heber Avenue from 8:30 a.m. until 5:30 p.m. Monday through Thursday, except legal holidays. Telephone inquiries may be made at (760) 768-2102. If you challenge any agenda issue in court, you may be limited to raising only those issues that you or someone else raised at the public meeting described in this notice, or in written correspondence delivered to the City of Calexico at, or prior to, the public meeting.

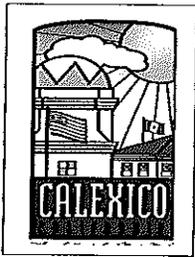
This notice of the corrected agenda is hereby certified to have been posted on or before 6:00 p.m., June 29, 2016.



Gabriela T. Garcia, City Clerk

6:00 p.m. / June 29, 2016.

Time/Date



AGENDA STAFF REPORT

DATE: June 30, 2016

TO: Mayor and Members of the City Council of the City of Calexico and Members of the Calexico Public Financing Authority

APPROVED BY: Armando Villa, City Manager *Armando Villa*

PREPARED BY: Eduardo Gutierrez, Acting Finance Director

SUBJECT: Discussion of Proposed Budget and Financing Documents for Fiscal Year 2015-2016 and Fiscal Year 2016-2017.

a. Resolution of the City Council of the City of Calexico Approving the Budget for Fiscal Year July 1, 2015 to June 30, 2016 and for the Fiscal Year July 1, 2016 through June 30, 2017.

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Recommendation:

Consider approving the following resolution:

- a. Resolution of the City Council of the City of Calexico Approving the Budget for Fiscal Year July 1, 2015 to June 30, 2016 and for the Fiscal Year July 1, 2016 through June 30, 2017.

Background and Discussion:

The Fiscal year 2015-16 and 2016-17 Budgets, attached hereto as Exhibit 1, shall be the budget for the City of Calexico for the Fiscal Years 2015-16 and 2016-17.

The City Manager or his duly appointed representative, has the authority to expend appropriated amounts subject to policies and procedures adopted by the City Council. Budget appropriations shall be controlled at the department level within the General Fund, at the fund level for other funds, and at the capital project level within the capital improvement program. The City Manager is authorized to transfer appropriations between accounts within a General Fund Department, and within other individual funds, to meet the operating needs of the City.

The General Fund budget includes \$3,950,000 in placeholder revenue, salary/benefit, and operating cost adjustments necessary to achieve a balanced General Fund budget for the 2016-17 fiscal year. The City Manager is directed to identify and implement revenue, salary/benefit, and/or operating cost adjustments to replace these placeholders by August 1, 2016. If adjustments are not identified by this date, the City Manager is

directed to commence a reduction in City employee staffing sufficient to reduce General Fund operating costs to a level within available revenues for the 2016-17 fiscal year.

Fiscal Impact:

\$3,500,000 to the Wastewater Fund to balance Fiscal Years 2015-16 budget.

Attachments:

1. Resolution of the City Council of the City of Calexico Approving the Budget for Fiscal Year July 1, 2015 to June 30, 2016 and for the Fiscal Year July 1, 2016 through June 30, 2017.

RESOLUTION NO. 2016-_____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO APPROVING
THE BUDGET FOR FISCAL YEAR JULY 1, 2015 TO JUNE 30, 2016 AND FOR THE
FISCAL YEAR JULY 1, 2016 THROUGH JUNE 30, 2017**

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

WHEREAS, the City Council of the City of Calexico annually adopts a budget that estimates revenues and authorizes expenditures, subject to the City's existing purchasing policies and procedures, employment policies and other adopted city policies;

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

Section 1. The Fiscal year 2015-16 and 2016-17 Budgets, attached hereto as Exhibit 1, shall be the budget for the City of Calexico for the Fiscal Years 2015-16 and 2016-17.

Section 2. The City Manager, or his duly appointed representative, has the authority to expend appropriated amounts subject to policies and procedures adopted by the City Council. Budget appropriations shall be controlled at the department level within the General Fund, at the fund level for other funds, and at the capital project level within the capital improvement program. The City Manager is authorized to transfer appropriations between accounts within a General Fund Department, and within other individual funds, to meet the operating needs of the City.

Section 3. The General Fund budget includes \$3,950,000 in placeholder revenue, salary/benefit, and operating cost adjustments necessary to achieve a balanced General Fund budget for the 2016-17 fiscal year. The City Manager is directed to identify and implement revenue, salary/benefit, and/or operating cost adjustments to replace these placeholders by August 1, 2016. If adjustments are not identified by this date, the City Manager is directed to commence a reduction in City employee staffing sufficient to reduce General Fund operating costs to a level within available revenues for the 2016-17 fiscal year.

PASSED, ADOPTED and APPROVED this 30th day of June, 2016, by the City Council of the City of Calexico.

Joong S. Kim, Mayor

ATTEST:

Gabriela Garcia, Deputy City Clerk

State of California)
Count of Imperial)
City of Calexico)

I, Gabriela T. Garcia, Deputy City Clerk of the City of Calexico do hereby certify the above Resolution No. 2016-_____ was approved at a regular City Council meeting held on the 30th day of June, 2016, by the following vote to-wit:

AYES:
NOES:
ABSENT:
ABSTAIN:

Gabriela T. Garcia, Deputy City Clerk

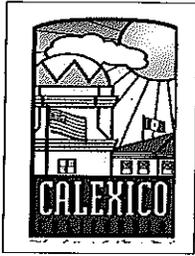
EXHIBIT 1

City of Calexico
2015-17 Budget



City-wide Budget
Summary of Expenditures by Fund

		2015-16	2016-17					
			Salaries and Benefits	Other Operations	Capital Improvements	Debt Service	Transfers	Total
General Fund								
111	General Fund	\$ 17,895,147	\$ 10,003,652	\$ 3,370,685	\$ 364,650	\$ 1,000,000	\$ -	\$ 14,738,988
120	Measure H Sales Tax	2,700,000	1,250,000	340,000	-	-	990,000	2,580,000
Operating Grants								
222	Library Grants	109,100	-	99,800	-	-	-	99,800
223	Art in Public Places	10,000	-	10,000	-	-	-	10,000
231	Gas Tax	887,283	291,302	633,750	-	-	-	925,052
233	LTA/Measure D	33,000	-	-	3,104,098	-	-	3,104,098
234/5/6	Transportation Development Ac	-	-	-	-	-	-	-
232	Traffic Safety	692	-	-	-	-	-	-
241	Asset Seizure/Forfeiture	869,838	-	139,000	-	-	-	139,000
242	Prop 172/Public Safety Sales Tr	100,000	100,000	-	-	-	-	100,000
243	COPS State Grant Program	100,000	100,000	-	-	-	-	100,000
245	High Intensity Drug Traffic (HI	-	-	-	-	-	-	-
246	Operation Stonegarden	150,000	150,000	-	-	-	-	150,000
253	OES - Office of Emergency Ser	12,305	-	-	-	-	-	-
255	FEMA	-	-	-	-	-	-	-
271	IVECA	102,000	-	102,000	-	-	-	102,000
281	Solid Waste	1,665,433	52,830	1,665,435	-	-	-	1,718,265
Debt Service Funds								
301	Measure D Bonds	982,000	-	2,000	-	980,000	-	982,000
310	Measure H Bonds	995,000	-	2,000	-	998,000	-	1,000,000
Capital Project Funds								
401	Measure H Bond Proceeds	3,000,000	-	-	-	-	-	-
402	Measure D Bond Proceeds	1,283,312	-	-	2,500,000	-	-	2,500,000
412	Capital Grants	1,334,000	-	-	10,708,408	-	-	10,708,408
430-6	Development Impact Fees	-	-	-	-	-	-	-
452-64	Development Projects	-	-	-	-	-	-	-
474-6	New River Projects	108,000	-	-	4,000,000	-	-	4,000,000
Enterprise Funds								
513	Water Operations	6,067,360	1,580,902	2,296,265	-	-	982,000	4,859,167
514	Water Debt Service	982,000	-	-	-	982,000	-	982,000
515	Water Development Fees	-	-	-	-	-	4,446,000	4,446,000
516	Water Capital Program	950,000	-	-	4,446,000	-	-	4,446,000
521-5	Airport	532,214	-	310,550	-	-	-	310,550
531	Transit	-	-	-	-	-	-	-
544	Wastewater Operations	3,436,921	1,232,182	2,153,644	-	-	3,505,000	6,890,826
545	Wastewater Debt Service	178,344	-	-	-	178,344	-	178,344
546	Wastewater Development Fees	178,344	-	-	-	-	178,344	178,344
547	Wastewater Capital Program	-	-	-	3,505,000	-	-	3,505,000
CFD/Special Districts								
		987,242	-	1,886,000	-	-	-	1,886,000
Housing Funds								
813	Rental Assistance	150,000	-	150,000	-	-	-	150,000
		<u>\$ 45,799,536</u>	<u>\$ 14,760,867</u>	<u>\$ 13,161,130</u>	<u>\$ 28,628,156</u>	<u>\$ 4,138,344</u>	<u>\$ 10,101,344</u>	<u>\$ 70,789,841</u>
			Total Expenditures, net of interfund transfers		60,688,497			



AGENDA STAFF REPORT

DATE: June 30, 2016

TO: Mayor and Members of the City Council of the City of Calexico and Members of the Calexico Public Financing Authority

APPROVED BY: Armando Villa, City Manager *[Signature]*

PREPARED BY: Carlos Campos, Interim City Attorney

SUBJECT: 3.5 Million Financing to Balance Fiscal Year 2015-16

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Recommendation:

Consider approving the following resolutions:

- 1). Resolution of the City Council of the City of Calexico, California Authorizing Execution and Delivery of a Site Lease, a Lease Agreement, and other Related Documents in Connection with Entering into a Lease Obligation through a Lease Financing Arrangement with the Calexico Public Financing Authority and Certain other Actions Relating thereto.
- 2). Resolution of the Board of Directors of the Calexico Public Financing Authority, Authorizing Execution and Delivery of a Site Lease, a Lease Agreement, and other Related Documents in Connection with the Working Capital Financing through a Lease Financing Arrangement with the City and the Wastewater Enterprise Fund of the City, and Certain Other Actions Relating thereto.

Background and Discussion:

See attached Memorandum from Interim City Attorney dated June 24, 2016.

Fiscal Impact:

General Fund borrows \$3,500,000 from Wastewater Fund to balance Fiscal Years 2015-16 budget.

Attachments:

- (1) Memorandum dated June 24, 2016 from the Interim City Attorney, Calexico Lease Obligation to Fund working Capital Deficit in General Fund
- (2) Resolution of the City Council of the City of Calexico, California Authorizing Execution and Delivery of a Site Lease, a Lease Agreement, and other Related Documents in Connection with Entering into a Lease Obligation through a Lease Financing Arrangement with the Calexico Public Financing Authority and Certain other Actions Relating thereto.
- (3). Resolution of the Board of Directors of the Calexico Public Financing Authority, Authorizing Execution and Delivery of a Site Lease, a Lease Agreement, and other Related Documents in Connection with the Working Capital Financing through a Lease Financing Arrangement with the City and the Wastewater Enterprise Fund of the City, and Certain Other Actions Relating thereto.

MEMORANDUM

To: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL OF THE CITY OF CALEXICO AND MEMBERS OF THE CALEXICO PUBLIC FINANCING AUTHORITY; CITY MANAGER AND EXECUTIVE DIRECTOR

FROM: SPECIAL COUNSEL

DATE: JUNE 24, 2016

RE: CALEXICO LEASE OBLIGATION TO FUND WORKING CAPITAL DEFICIT IN GENERAL FUND

The City Council is in the budget process for the 2016-17 fiscal year and is in the process for finalizing the operations of the City for the 2015-16 fiscal year. It has been determined that there will be a structural deficit for the City's General Fund in the amount of \$3,500,000.00. The City intends to finance the amount of the deficit using a lease obligation between the City and the Calexico Public Financing Authority. The City has determined that the unallocated reserves of the City's Wastewater Enterprise Fund may be used to purchase the lease obligation. The purchase of the lease obligation by the Wastewater Fund will constitute and investment of such funds in that the investment will be the purchase of an obligation of a local agency as described in Section 53601(a) of the California Government Code, the obligation is for a term of less than 5 years, and the purchase of the obligation will not interfere with the cash flow needs of the Wastewater Enterprise Fund for the term of the investment. With respect to the City's prudent investment requirement, the City Council will need to ensure that it fully intends to honor the covenants and obligations under the lease obligation.

The actions taken with respect to the financing are as follows: The Wastewater Enterprise Fund will advance the amount of \$3,500,000.00 to the City's General Fund, and in return the City will enter into the lease obligation with the Authority. The property which will be the subject matter of the lease is City Hall. The Authority will assign its right to receive the lease

payments to the City's Wastewater Enterprise Fund for the term of 4 years in order to repay all of the amount advanced to the General Fund including interest at a rate of 4.00%. The City will promise to annually budget and appropriate the amounts equal to the lease payments in order to repay the Wastewater Enterprise Fund. Enclosed with this memorandum are approving resolutions of the City and the Calexico Public Financing Authority (the "Authority") which approve the financing. The resolutions also approve the following documents:

1. Site Lease, between the Authority as Lessee, and the City as Lessor. The Property subject to the Site Lease will be City Hall;

2. Lease Agreement between the Authority and the City, under which the City will lease the leased asset (being City Hall), and pay lease payments to the Authority which will be sufficient to repay the amount borrowed to fund the working capital deficit, plus interest at the rate of 4.00%. and

3. Assignment Agreement - The lease payments made to the Authority are assigned to the Wastewater Enterprise Fund to repay the amount of the financed working capital deficit;

The resolutions also authorize staff of the City and Authority, respectively, to take necessary action in order to bring the financing to a successful conclusion. It is anticipated that the financing will be accomplished by the end of the current fiscal year, or upon the adoption of the 2016-2017 budget.

The resolutions and legal documents are scheduled to be presented to the City Council and Financing Authority for approval at the June 30, 2016 meeting. Someone from our

office will attend the meeting should you have any questions regarding any of the items presented to you.

RESOLUTION NO. 2016-_____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO, CALIFORNIA
AUTHORIZING EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE
AGREEMENT, AND OTHER RELATED DOCUMENTS IN CONNECTION WITH
ENTERING INTO A LEASE OBLIGATION THROUGH A LEASE FINANCING
ARRANGEMENT WITH THE CALEXICO PUBLIC FINANCING AUTHORITY AND
CERTAIN OTHER ACTIONS RELATING THERETO**

WHEREAS, the City Council (the "City Council") of the City of Calexico (the "City") hereby determines that it is in the best interests of the City to finance a working capital shortfall in the City's General Fund (the "Project"), through a lease financing arrangement (the "Lease Obligation") with the Calexico Public Financing Authority (the "Authority") and the Wastewater Enterprise of the City, (the "Purchaser"); and

WHEREAS, the City, in order to accomplish the Project, wishes to enter into a Site Lease and a Lease Agreement, each between the City and the Authority, hereinafter more particularly described, and that certain other action be taken and authorized, and that the Lease Payments thereunder will be assigned to the Purchaser under an Assignment Agreement; and

WHEREAS, The City has determined that the unallocated reserves of the City's Wastewater Enterprise Fund may be used to purchase the lease obligation, as the purchase of the lease obligation by the Wastewater Fund will constitute an investment of such funds, in that the investment will be the purchase of an obligation of a local agency as described in Section 53601(a) of the California Government Code, the obligation is for a term of less than 5 years, and the purchase of the obligation will not interfere with the cash flow needs of the Wastewater Enterprise Fund for the term of the investment. With respect to the City's prudent investment requirement, the City Council ensures that it fully intends to honor the covenants and obligations under the lease obligation.

WHEREAS, this City Council has determined that the financing terms presented to the City by the Purchaser are acceptable and that it is in the best interest of the City that the financing terms presented by the Purchaser be accepted; and

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Approval of Financing. The City hereby approves the Project subject to the terms and conditions of this Resolution.

2. Approval of Financing Documents. The City Council hereby approves each of the following documents in substantially the respective forms on file with the City Clerk, together with such additions thereto and changes therein as Special Counsel shall deem necessary, desirable or appropriate, the execution of which by the Mayor, City Manager or Finance Director shall be conclusive evidence of the approval of any such additions and changes:

- (1) the Site Lease;
- (2) the Lease Agreement; and
- (3) the Assignment Agreement.

The Mayor, the City Manager, or the City Finance Director are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest and affix the seal of the City to the final form of each of the foregoing documents and agreements for and in the name and on behalf of the City. The City Council hereby authorizes the delivery and performance of each of the foregoing documents and agreements.

3. Financing Terms; Investment. The financing terms presented to the City by the Purchaser are approved as follows: maximum principal amount of financing is \$3,500,000.00; the interest rate with respect to the financing is 4.00% and maximum term for the financing is 4 years.

This City Council finds that the purchase of the financing by the Wastewater Enterprise complies with the City's investment policy for the Wastewater Enterprise Fund and that the City has taken measures to ensure that the investment by the Wastewater Enterprise Fund will be repaid through the General Fund budget and appropriation process during the next 4 fiscal years.

4. Requisitions. The City Manager and the City Finance Director, or any one of them, are hereby authorized and directed to execute one or more requisitions authorizing the payment of costs of issuing the Lease Obligations from the proceeds of payment by the Authority under the Site Lease.

5. Other Acts. The City Manager, the City Finance Director and the other officers and staff members of the City are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents, which in consultation with the staff and Special Counsel they may deem necessary or advisable in order to consummate the Project, or otherwise to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified and confirmed.

6. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 30th day of June, 2016.

Joong S. Kim, Mayor

Attest:

_____, Deputy City Clerk

Approved as to Form:

_____, City Attorney

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

I, _____, Deputy City Clerk of the City of Calexico do hereby certify the above Resolution No. 2016-____ was approved at a regular City Council meeting held on the ____ day of _____, 2016, by the following vote to-wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____, Deputy City Clerk

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Best Best & Krieger LLP
Attention: Kim Byrens, Esq.
3390 University Avenue, 5th Floor
Riverside, CA 92501

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER
TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND
TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES
PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE AND FACILITY LEASE

by and between

CITY OF CALEXICO, CALIFORNIA
as Lessor

and

CALEXICO PUBLIC FINANCING AUTHORITY,
as Lessee

Dated June 30, 2016

SITE AND FACILITY LEASE

THIS SITE AND FACILITY LEASE (this "Site and Facility Lease"), dated June 30, 2016, is by and between the **CITY OF CALEXICO**, a general law city and municipal corporation, duly organized and existing under and by virtue of the laws of the State of California (the "City"), as lessor, and the **CALEXICO PUBLIC FINANCING AUTHORITY**, a public agency existing under the laws of the State of California (the "Authority"), as lessee;

WITNESSETH:

WHEREAS, pursuant to this Site and Facility Lease, the City proposes to lease those certain parcels of real property situated in the City of Calexico, Imperial County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority, all for the purpose of enabling the City to finance a working capital shortfall in the General Fund of the City (the "Project"), as defined in the Lease Agreement; and

WHEREAS, the Authority proposes to lease the Property back to the City pursuant to that certain Lease Agreement, dated June 30, 2016, a memorandum of which is recorded concurrently herewith (the "Lease Agreement"); and

WHEREAS, the City possesses statutory authority to lease the Property and its governing body has duly authorized the execution and delivery of the Lease Agreement and this Site and Facility Lease; and

NOW THEREFORE, for and in consideration of the premises and covenants and conditions hereinafter contained, the parties agree as follows:

Section 1. Definitions. Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 2. Site and Facility Lease. The City hereby leases to the Authority and the Authority hereby leases from the City, on the terms and conditions hereinafter set forth, the Property.

Section 3. Term. The term of this Site and Facility Lease shall commence on June 30, 2016, and shall end on June 30, 2020, unless such term is extended or sooner terminated as hereinafter provided. If, on June 30, 2020, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than June 30, 2026. If, prior to June 30, 2020, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site and Facility Lease shall end.

Section 4. Advance Rental Payment. The City agrees to lease the Property to the Authority in consideration of the payment by the Authority of an advance rental payment of \$3,500,000.00.

Section 5. Purpose. The Authority shall use the Property solely for the purpose of leasing the Property to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, however, that in the event of default by the City under the Lease Agreement, the Authority and its assigns may exercise the remedies provided in the Lease Agreement.

Section 6. City's Interest in the Property. The City covenants that it is the owner in fee of the Property.

Section 7. Assignments and Subleases. Unless the City shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site and Facility Lease or sublet the Property, except as provided in the Lease Agreement. If the City is in default under the Lease Agreement, the Authority (including its successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, this Site and Facility Lease and the Lease Agreement.

Section 8. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 9. Termination. The Authority agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the City.

Section 10. Default. In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the City shall have no right to terminate this Site and Facility Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the City will continue to pay the Lease Payments to the Assignee.

In the event of the occurrence of an Event of Default under the Lease Agreement, the Authority may (a) exercise the remedies provided in the Lease Agreement, (b) use the Property for any lawful purpose, subject to any applicable legal limitations or restrictions, and (c) exercise all options provided herein.

Section 11. Quiet Enjoyment. The Authority, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

Section 12. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Authority are solely liabilities of the Authority and the City hereby releases each and every director, officer, employee and agent of the Authority of and from any personal or individual liability under this Site and Facility Lease. No director, officer, employee or agent of the Authority shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Authority hereunder.

Section 13. Taxes. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Authority's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the City in accordance with the Lease Agreement.

Section 14. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Authority or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City. The City hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Authority in and to the Property through the eminent domain powers of the City. However, the City hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the City with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 15. Use of the Proceeds. The City and the Authority hereby agree that the lease to the Authority of the City's right and interest in the Property pursuant to Section 2 serves the public purposes of the City.

Section 16. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 18. Binding Effect. This Site and Facility Lease shall inure to the benefit of and shall be binding upon the City and the Authority and their respective successors and assigns. The Assignee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

Section 19. Amendment. This Site and Facility Lease may not be amended except as permitted under the Lease Agreement.

Section 20. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

Section 21. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 22. No Merger. Neither this Site and Facility Lease, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the City to the Property under this Site and Facility Lease and the City's leasehold interest therein under the Lease Agreement.

Section 23. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

(Signature page follows)

IN WITNESS WHEREOF, the City and the Authority have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF CALEXICO

By _____
Armando G. Villa
City Manager

Attest:

Gabriela T. Garcia
City Clerk

CALEXICO PUBLIC FINANCING
AUTHORITY

By _____
Joong S. Kim
Mayor

*-Signature Page-
Site and Facility Lease*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A
DESCRIPTION OF THE SITE

For APN/Parcel ID(s): 058-445-001-000

Block 24 and the North 220 feet Block 27, of the Townsite of Calexico, in the City of Calexico, County of Imperial, State of California, according to amended Map No. 911 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County.

EXHIBIT B
DESCRIPTION OF THE FACILITY

1. City Hall, City of Calexico, California

LEASE AGREEMENT

by and between

CALEXICO PUBLIC FINANCING AUTHORITY,
as Sublessor

and

CITY OF CALEXICO, CALIFORNIA,
as Sublessee

Dated June 30, 2016

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease Agreement"), dated June 30, 2016, is by and between the **CALEXICO PUBLIC FINANCING AUTHORITY**, a public agency existing under the laws of the State of California, as lessor (the "Authority"), and the **CITY OF CALEXICO**, a general law city and municipal law corporation, duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "City");

WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated June 30, 2016 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in the City of Calexico, Imperial County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority, all for the purpose of enabling the City to fund a working capital shortfall in the General Fund (the "Project"); and

WHEREAS, the Authority proposes to lease the Property back to the City pursuant to this Lease Agreement; and

WHEREAS, in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Property during each Rental Period under this Lease, the City agrees to make certain Lease Payments (as hereinafter defined); and

WHEREAS, the City and the Authority have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$3,500,000 for the purpose of implementing the financing transactions described above.

WHEREAS, the City and the Authority agree to mutually cooperate now and hereafter, to the extent possible, in order to sustain the intent of this Lease Agreement and the bargain of both parties hereto.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

Section 1.01. Definitions. All terms defined in this Section 1.01 have the meanings herein specified for all purposes of this Lease Agreement.

"Additional Payments" means the amounts specified as such in Section 4.03(b) of this Lease Agreement.

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“*Authority*” means the Calexico Public Financing Authority.

“*Bond Counsel*” means (a) Best Best & Krieger LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State.

“*City*” means the City of Calexico, California, a municipal corporation and general law city organized and existing under the laws of the State.

“*City Representative*” means the Mayor, the City Manager, the Finance Director, or the designee of any such official, or any other person authorized by resolution delivered to the Authority to act on behalf of the City under or with respect to the Site and Facility Lease and this Lease Agreement.

“*Closing Date*” means the date this Lease Agreement or a memorandum thereof is recorded in the office of the County Recorder of the County of Imperial.

“*Contract*” means any indenture, trust agreement, contract, agreement (other than this Lease Agreement), other contractual restriction, lease, mortgage or instrument.

“*Event of Default*” means any of the events of default as defined in Section 8.01.

“*Facility*” means those certain existing facilities more particularly described in Exhibit B to the Site and Facility Lease and in Exhibit B to this Lease Agreement.

“*Federal Securities*” means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“*Fiscal Year*” means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

“*Lease Agreement*” means this Lease Agreement, dated June 30, 2016, between the Authority and the City.

“*Lease Payment Date*” means June 30 in each year, commencing June 30, 2017, and continuing to and including the date on which the Lease Payments are paid in full.

“*Lease Payments*” means all payments required to be paid by the City under Section 4.04, including any prepayment thereof under Sections 9.02 or 9.03.

“*Net Proceeds*” means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Permitted Encumbrances*” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Site and Facility Lease and this Lease Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Property for its intended purposes.

“*Project*” means the Project as described in the recitals of this Lease.

“*Property*” means, collectively, the Site and the Facility.

“*Purchaser*” means the Wastewater Enterprise of the City of Calexico.

“*Rental Period*” means each period during the Term of the Lease commencing on and including June 30, 2016 in each year and extending to and including the next succeeding June 30, 2017. The first Rental Period begins on the Closing Date and ends on June 30, 2017.

“*Site*” means that certain real property more particularly described in Exhibit A to the Site and Facility Lease and in Exhibit A to this Lease Agreement.

“*Site and Facility Lease*” means the Site and Facility Lease, dated as of June 30, 2016, by and between the City, as lessor, and the Authority, as lessee, together with any duly authorized and executed amendments thereto.

“*State*” means the State of California.

“*Term of this Lease Agreement*” or “*Term*” means the time during which this Lease Agreement is in effect, as provided in Section 4.02.

Section 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.01. Covenants, Representations and Warranties of the City. The City makes the following covenants, representations and warranties to the Authority as of the date of the execution and delivery of this Lease Agreement:

(a) ***Due Organization and Existence.*** The City is a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery by the City of the Site and Facility Lease and this Lease Agreement.

(b) ***Due Execution.*** The representative of the City executing the Site and Facility Lease and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the City Council of the City.

(c) ***Valid, Binding and Enforceable Obligations.*** The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

(d) ***No Conflicts.*** The execution and delivery of the Site and Facility Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or

order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease or this Lease Agreement or the financial condition, assets, properties or operations of the City.

(e) ***Consents and Approvals.*** No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site and Facility Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) ***Sufficient Funds.*** The City reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(g) ***No Defaults.*** The City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(h) ***Fee Title.*** The City is the owner in fee of title to the Property. No lien or encumbrance on the Property materially impairs the City's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(i) ***Use of the Property, Essentiality.*** During the term of this Lease Agreement, the Property will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority. The Property is essential to the City's efficient and economic operations and the lease thereof for use by the City is in the best interest of the City.

(j) ***Flooding Risk.*** The Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(k) ***Value of Property.*** The value of the Property (real property replacement cost) is not less than \$3,500,000.

Section 2.02. Covenants, Representations and Warranties of the Authority. The Authority makes the following covenants, representations and warranties to the City as of the date of the execution and delivery of this Lease Agreement:

(a) the Authority has been duly organized and is validly existing as a corporation under the laws of the State of California with full corporate power to enter into and undertake its duties and obligations hereunder and has sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt municipal obligations, to be able to evaluate the economic risks and merits of the investment represented by the Lease;

(b) the execution, delivery and performance of this Lease Agreement and the Site and Facility Lease have been duly authorized by all necessary corporate actions on the part of the Authority and do not require any further approvals or consents;

(c) the execution, delivery and performance of this Lease Agreement and the Site and Facility Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Authority is a party by which it or its property is bound;

(d) there is no pending or, to the knowledge of the Authority, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Authority to perform its obligations under this Lease Agreement and the Site and Facility Lease; and

(e) the Authority will not mortgage or encumber the Property or the Lease Agreement or assign this Lease Agreement or its rights to receive Lease Payments hereunder, except as expressly permitted herein or in the Site and Facility Lease.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS

Section 3.01. Deposit of and Application of Funds. On the Closing Date, the Authority shall cause the amount of \$3,500,000.00 to be used to fund the amount of the General Fund's Working Capital Shortfall.

ARTICLE IV

LEASE OF PROPERTY; LEASE PAYMENTS

Section 4.01. Sublease of Property by the Authority Back to the City.

(a) The Authority hereby subleases the Property to the City, and the City hereby subleases the Property from the Authority, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the City to the Authority pursuant to the Site and Facility Lease shall not affect or result in a merger of the City's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

Section 4.02. Term. The Term of this Lease Agreement commences on the 30th day of June, 2016 and ends on June 30, 2020, or the date on which all of the Lease Payments have been paid in full. If on June 30, 2020, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the City, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed 10 years. The provisions of this Section 4.02 are subject to the provisions of Section 6.01 relating to the taking in eminent domain of the Property or any portion thereof.

Section 4.03. Lease Payments.

(a) **Obligation to Pay.** Subject to the provisions of Sections 6.01 and 6.03 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit C attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit C. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period. The interest components of the Lease Payments have been calculated based on an interest rate of 4.00% per annum, on the basis of a 360-day year of twelve 30-day months. The City understands that the Authority has assigned its right to receive the Lease Payments to the Purchaser and that the Purchaser will send an invoice to the City in advance of each Lease Payment Date.

(b) **Additional Payments.** In addition to the Lease Payments set forth herein, the City agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Authority therein or in this Lease Agreement; provided, however, the City may, at the City's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Authority shall notify the City that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes and assessments or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof; and

(iii) any other reasonable fees, costs or expenses incurred by the Authority in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Authority associated with any assignment of this Lease Agreement.

Amounts constituting Additional Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 30 days after notice in writing from the Authority to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) *Effect of Prepayment.* If the City prepays all Lease Payments in full under Sections 9.02 or 9.03, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Section 9.03, the principal components of the remaining Lease Payments will be reduced on a pro rata basis; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.

(d) *Rate on Overdue Payments.* If the City fails to make any of the payments required in this Section 4.03, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the rate of 12% per annum or any lesser maximum legal rate.

(e) *Fair Rental Value.* The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(f) *Source of Payments; Budget and Appropriation.* The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.01, 6.03 and 9.01. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants

and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(g) *Allocation of Lease Payments.* All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) *No Offsets.* Notwithstanding any dispute between the Authority and the City, the City shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) *Payments under this Lease Agreement.* The Authority hereby directs the City, and the City hereby agrees, to pay to the Purchaser (or to its assignees as directed pursuant to Section 7.04 hereof) all payments payable by the City under this Section 4.03 and all amounts payable by the City under Article IX.

Section 4.04. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Authority will provide the City with quiet use and enjoyment of the Property and the City will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease Agreement. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Property as provided in Sections 5.12(c) and 7.02.

Section 4.05. Title. At all times during the Term of this Lease Agreement, the City shall hold title to the Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.02.

Upon the termination of this Lease Agreement (other than under Section 8.02(b) hereof), all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Property, or upon the deposit by the City of security for such Lease Payments as provided in Section 9.01, all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer.

Section 4.06. Release of Excess Property. The City may, at any time and from time to time, release any portion of the Property (the "Released Property") from this Lease Agreement, with the prior written consent of the Authority, which consent shall be at the Authority's sole discretion, and upon satisfaction of all of the following requirements which are conditions precedent to such release:

(a) The City shall certify to the Authority that no Event of Default has occurred and is continuing, and no event giving rise to an abatement of Lease Payments under Section 6.03 has occurred or is continuing with respect to the Property to be remaining following release of the Released Property;

(b) The City shall file with the Authority, and cause to be recorded in the office of the Imperial County Recorder, an amendment to this Lease Agreement which deletes the Released Property from the description of the Property;

(c) The City shall file with the Authority a written certificate of the City stating the City's determination that the estimated fair rental value, for each remaining Rental Period and in the aggregate, of the Property remaining after release of the Released Property is at least equal to the remaining Lease Payments for each remaining Rental Period and in the aggregate; and

(d) The City shall file with the Authority such other information, documents and instruments as the Authority shall reasonably request, including (if requested by the Authority) evidence of the insurable value of the Property to be remaining following release of the Released Property, indicating that such value is in excess of the then unpaid principal component of the Lease Payments and such endorsements to the title policy delivered on the Closing Date.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement of record against the Released Property.

Section 4.07. Substitution of Property.

The City may at any time and from time to time, with the prior written consent of the Authority, substitute other real property (the "Substitute Property") for the Property, or any portion thereof (the "Former Property"), provided that the City satisfies all of the following requirements which are conditions precedent to such substitution:

(i) No Event of Default shall have occurred and be continuing and no event giving rise to an abatement of Lease Payments under Section 6.3 hereof shall have occurred and be continuing with respect to the Substitute Property;

(ii) The City shall file with the Authority, and cause to be recorded in the office of the Imperial County Recorder sufficient memorialization of, an amendment of the Lease Agreement which adds to Exhibit B thereto a description of such Substitute Property and deletes therefrom the description of such Former Property;

(iii) The City shall certify in writing to the Authority that such Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the Laws of the State of California, and has been

determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City;

(iv) The Substitute Property shall not cause the City to violate any of its covenants, representations and warranties made in this Lease Agreement;

(v) The City shall file with the Authority an appraisal or other written documentation which establishes that the fair market value and the fair rental value of the Substitute Property are at least equal to the present value of the remaining Lease Payments in the aggregate and for each remaining Rental Period, respectively, and that the useful life of the Substitute Property at least equals the lesser of (i) the useful life of the Former Property; or (ii) the final Lease Payment Date of the Lease Payments allocable thereto; and

(vi) In the event of damage or destruction of the Leased Property from earthquake or other uninsured peril, the City shall substitute under this Lease Agreement other unencumbered real property of a value and useful life not less than the outstanding principal component of the Lease Payments and the remaining term of this Lease Agreement.

Upon the satisfaction of all such conditions precedent, the term of the Lease Agreement shall thereupon end as to the Former Property and shall thereupon commence as to the Substitute Property, and all references to the Former Property shall apply with full force and effect to the Substitute Property. The City shall not be entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Lease Agreement of record against the Former Property.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 5.01. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property are the sole responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease Agreement.

The City will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Property or the respective interests or

estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City is obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority. The City shall promptly notify the Authority of any tax, assessment, utility or other charge it elects to contest.

Section 5.02. Modification of Property. The City has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Section 5.03. Public Liability Insurance. The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general liability insurance policy or policies in protection of the City, the Authority and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits of at least \$1,000,000 per occurrence, \$3,000,000 in the aggregate, for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount (including any deductibles) satisfactory to the Authority. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with Authority's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.04. Casualty Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the City, in an amount at least equal to the greater of the replacement value of the insured buildings and the

aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$250,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with the Purchaser's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.02.

Section 5.05. Rental Interruption Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.04, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24 month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the City. The City will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Section 5.06. Worker's Compensation Insurance. If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Authority certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance.

Section 5.07. Recordation Hereof. On or before the Closing Date, the City shall, at its expense, cause this Lease Agreement, the Site and Facility Lease and the Assignment Agreement, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Imperial County Recorder with respect to the Property.

Section 5.08. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.03, 5.04 and 5.05 and provided by third party insurance carriers shall name the City and the Authority as insured parties and the Authority as loss payee and shall include a lender's loss payable endorsement for the benefit of the Authority. In the case of coverage pursuant to Section 5.03, the Authority shall be added as an additional insured. Prior to the Closing Date, the City will deposit with the Authority policies (and riders

and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Authority evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Authority of such fact.

Section 5.09. Installation of City's Personal Property. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City, in which the Authority has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Authority do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Authority provides its prior written approval, which approval shall be at Authority's sole discretion. Except as expressly provided in this Article V, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Advances. If the City fails to perform any of its obligations under this Article V, the Authority may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.03(c).

Section 5.12. Environmental Covenants.

(a) *Compliance with Laws; No Hazardous Substances.* The City will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) *Notification of Authority.* The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Authority, and

the City will notify the Authority in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Authority.

(c) *Access for Inspection.* The City will permit the Authority, its agents, or any experts designated by the Authority to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Authority has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

ARTICLE VI

EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.01. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (a) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Authority such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

Section 6.02. Application of Net Proceeds.

(a) *From Insurance Award.*

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the City in the event of any such damage or destruction shall be deposited by the City promptly upon receipt thereof in a special fund with the Authority designated as the "Insurance and Condemnation Fund."

(ii) Within 90 days following the date of such deposit, the City shall determine and notify the Authority in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.03 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair

rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the City's determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments and other amounts pursuant to Section 9.03 of this Lease Agreement; provided, however, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, Prepayment Premiums described in Section 9.02, and all other costs related to such prepayments pursuant to Section 9.03 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; provided further, however, that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by a City Representative.

(iv) In the event the City's determination is as set forth in clause (B) of subparagraph (ii) above, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the City, and until the Property has been restored to its prior condition, the City shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Authority, at its sole discretion.

(b) *From Eminent Domain Award.* If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the City in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the City has given written notice to the Authority of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Authority and the Authority, and the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(ii) If the City has given written notice to the Authority and the Authority of its determination that (A) such eminent domain proceedings have not

materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Authority, and the City shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Authority of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(iv) In making any determination under this Section 6.02(b), the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Authority. Any such determination by the City shall be final.

(c) *From Title Insurance.* The Net Proceeds from a title insurance award shall be deposited by the City in the Insurance and Condemnation Fund and credited towards the prepayment of Lease Payments required to be paid pursuant to Section 9.03 of this Lease Agreement.

Section 6.03. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof to the extent to be agreed upon by the City and the Authority. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a City Representative to the Authority. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.03 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.03, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

ARTICLE VII

OTHER COVENANTS OF THE CITY

Section 7.01. Disclaimer of Warranties. THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Authority liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or use of the Property by the City.

Section 7.02. Access to the Property; Grant and Conveyance of Right of Entry. The City agrees that the Authority, and the Authority's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the City, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The City further agrees that the Authority, and the Authority's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Property if the City fails to perform its obligations hereunder. Neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

The City further grants, conveys and confirms to the Authority, for the use, benefit and enjoyment of the Authority, its successors in interest to the Property, including the Authority, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the City adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.03. Release and Indemnification Covenants. To the extent permitted by law, the City hereby indemnifies the Authority, and its directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City or the City's employees, agents, contractors, invitees or licensees, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) the

clean-up of any Hazardous Substances or toxic wastes from the Property, or (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.03 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Authority, or its respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of the Term of this Lease Agreement for any reason. The City and the Authority each agree to promptly give notice to each other and the Authority of any claim or liability hereby indemnified against following learning thereof.

Section 7.04. Assignment by the Authority. The Authority may assign its rights, title and interests herein, but no such assignment will be effective as against the City unless and until the Authority has filed with the City at least five Business Days' prior written notice thereof and an executed copy of a letter addressed to the City and the Authority substantially in the form of the letter delivered by the Authority on the Closing Date attached hereto as Exhibit D. The City shall pay all Lease Payments hereunder to the Authority, as provided in Section 4.03(h) hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease Agreement, the City will keep a complete and accurate record of all such notices of assignment.

Section 7.05. Assignment Agreement and Subleasing by the City. This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the City. The City may sublease the Property, or any portion thereof, with the prior written consent of the Authority, at the Authority's sole discretion, subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority a true and complete copy of such sublease.

(c) No such sublease by the City may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The City shall furnish the Authority with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Site and Facility Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property.

Section 7.06. Amendment of Lease Agreement. This Lease Agreement may be amended in writing by the parties hereto.

Section 7.07. Records and Accounts. The City covenants and agrees that it shall keep proper books of record and accounts of its operations, in which complete and correct entries shall be made of all transactions relating to the City. Said books and records shall at all reasonable times be subject to the inspection of the Authority upon 72 hours' prior notice.

Section 7.08. Observance of Laws and Regulations. The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a municipal corporation, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default Defined. Any one or more of the following events constitutes an Event of Default hereunder:

(a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority. However, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the Authority shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State act now existing or which may hereafter be enacted.

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the City is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Authority or any affiliate of the Authority, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$2,000,000.

(f) Any default by the City to observe any covenant, condition or agreement on its part to be observed or performed under the Site and Facility Lease.

(g) Any court of competent jurisdiction shall find or rule that the Site and Facility Lease or this Lease Agreement is not valid or binding against the City.

(h) Any Material Adverse Effect shall exist.

Section 8.02. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise any one or more of the following remedies:

(a) *Enforcement of Payments Without Termination.* If the Authority does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Property, or, if the Authority is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in Imperial County for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with

the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Property upon demand of the Authority for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Authority in excess of the sum of Lease Payments plus costs and expenses incurred by the Authority for its services in re-leasing the Property shall be paid to the City.

(b) *Termination of Lease.* If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Site and Facility Lease. If the Authority terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Property by the Authority in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Authority from such re-leasing shall be applied by the Authority to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

(c) *Proceedings at Law or In Equity.* If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(d) *Remedies under the Site and Facility Lease.* If an Event of Default occurs and continues hereunder, the Authority may exercise its rights under the Site and Facility Lease.

Section 8.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing

at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.04. Agreement to Pay Attorneys' Fees and Expenses. If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 8.05. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.06. Judicial Reference.

(a) Judicial Reference. The Authority and the City hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Lease Agreement, the Site and Facility Lease, the Property or any document related thereto, any dealings between the City and the Authority related to the subject matter of this Lease Agreement, the Site and Facility Lease or any related transactions, and/or the relationship that is being established between the City and the Authority (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of Section 638 et seq. of the California Code of Civil Procedure, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Authority or the City, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The Authority and the City agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) the Authority and the City shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 8.7; (iv) either the Authority or the City, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it; (v) the Authority and the City, as

applicable, will each have such rights to assert such objections as are set forth in Section 638 et seq. of the California Code of Civil Procedure; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(b) Selection of Referee; Powers. The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with Section 638 of the California Code of Civil Procedure (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the Imperial County Superior Court, or of the U.S. District Court for the Southern District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 8.7.

(c) Provisional Remedies and Self Help. No provision of this Section 8.7 shall limit the right of either the Authority or the City, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Authority or the City to the Reference pursuant to this Section 8.7(c).

(d) Costs and Fees. Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

Section 9.01. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Authority or a fiduciary reasonably satisfactory to the Authority, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Authority, which cash so held is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be

required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Authority and addressed and delivered to the Authority), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.03(a) or when due on any optional prepayment date under Section 9.02, as the City instructs at the time of said deposit; provided, however, that at or prior to the date on which any such security deposit is established, the City shall deliver to the Authority an opinion of Bond Counsel (in form and substance acceptable to the Authority) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the Authority for federal income tax purposes. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the City to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the City, and (B) the release and indemnification obligations of the City under subparagraphs (f) and (g) of Section 7.03, and (iii) under Section 4.05, the Authority's leasehold interest in the Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Authority. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.03 hereof to the extent payable from the funds held by the Authority or the fiduciary as described in the first sentence of this Section 9.01.

Section 9.02. Optional Prepayment.

The City may prepay the principal component of the Lease Payments in full or in part, in such manner as shall be selected by the City, on any date at an amount equal to the principal amount of Lease Payments to be prepaid, together accrued interest to the date fixed for prepayment, without premium.

Section 9.03. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part in such order of prepayment as shall be selected by the City on any date, together with any accrued and unpaid interest, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.02.

ARTICLE X

MISCELLANEOUS

Section 10.01. Notices. Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority and the City may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:

City of Calexico
608 Heber Avenue
Calexico, CA 92231
Attention: Finance Director
Phone: 760 -768-2130

If to the Authority:

Calexico Public
Financing Authority
608 Heber Avenue
Calexico, CA 92231
Attention: Finance Director
Phone: 760 -768-2130

Section 10.02. Binding Effect. This Lease Agreement inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns.

Section 10.03. Severability. If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 10.04. Net-net-net Lease. This Lease Agreement is a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 10.05. Further Assurances and Corrective Instruments. The Authority and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 10.06. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 10.07. Applicable Law. This Lease Agreement is governed by and construed in accordance with the laws of the State.

Section 10.08. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Lease Agreement.

IN WITNESS WHEREOF, the Authority and the City have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CALEXICO PUBLIC FINANCING
AUTHORITY

By _____
Joong S. Kim, President

CITY OF CALEXICO

By _____
Joong S. Kim, Mayor

ATTEST:

Gabriela T. Garcia
City Clerk

EXHIBIT A

DESCRIPTION OF THE SITE

For APN/Parcel ID(s): 058-445-001-000

Block 24 and the North 220 feet Block 27, of the Townsite of Calexico, in the City of Calexico, County of Imperial, State of California, according to amended Map No. 911 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County.

EXHIBIT B

DESCRIPTION OF THE FACILITY

1. City Hall, City of Calexico, California

EXHIBIT C

SCHEDULE OF LEASE PAYMENTS

Lease Payment Date (June 30)	Principal Component	Coupon	Interest Component*	Annual Debt Service
2017	\$ 824,215.00	4.00%	\$140,000.00	\$ 964, 215.00
2018	857,184.00	4.00	107,031.40	964, 215.40
2019	891,471.00	4.00	72,744.04	964, 215.04
<u>2020</u>	<u>927,130.00</u>	4.00	<u>37,085.20</u>	<u>964, 215.20</u>

* The interest component due under this Lease Agreement may vary from the amount indicated in this schedule based on the date the Lease Payment is received by the Purchaser.

EXHIBIT D

MEMORANDUM OF LEASE AGREEMENT

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "Memorandum of Lease Agreement"), is entered into June 30, 2016, by and between the CALEXICO PUBLIC FINANCING AUTHORITY, an a public agency existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF CALEXICO, a general law city and municipal corporation duly organized and existing under the laws of the State of California, as lessee (the "City"), who agree as follows:

Section 1. The Lease. The City leases from the Authority and the Authority leases to the City, certain real property described in paragraph 2 hereof, and the improvements situated upon said real property, upon the terms and conditions, and for the term, more fully set forth in the Lease Agreement, dated June 30, 2016, by and between the Authority, as lessor, and the City, as lessee (the "Lease Agreement"), all of the provisions of which are hereby incorporated into this Memorandum of Lease Agreement by reference.

Section 2. Leased Premises; Term. The Authority leases, lets and demises unto the City and the City leases, hires and takes from the Authority, those certain parcels of real property situated in the City of Calexico, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Site"), and those certain improvements on the Site, more particularly described in Exhibit B attached hereto and made a part hereof (the "Facility"). The Lease Agreement is for a term commencing on June 30, 2016 and ending on June 30, 2020, or such earlier or later date on which the Lease Payments (as defined in the Lease Agreement) are paid in full or provision has been made for such payment in accordance with the Lease Agreement.

Section 3. Provisions Binding on Successors and Assigns. Subject to the provisions of the Lease Agreement relating to assignment and subletting, the Lease Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns, including the Authority.

Section 4. Purpose of Memorandum. This Memorandum of Lease Agreement is prepared for the purpose of recordation, and it in no way modifies the provisions of the Lease Agreement.

Section 5. Execution. This Memorandum of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority has caused this Memorandum of Lease Agreement to be executed in its corporate name by its duly authorized officers; and the City has caused this Memorandum of Lease Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

CALEXICO PUBLIC FINANCING
AUTHORITY

By _____
Nick Fenley,
Executive Director

CITY OF CALEXICO

By _____
Nick Fenley
City Manager

ATTEST:

Gabriela T. Garcia
City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Names Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer – Title(s):
- Partner -- Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other:

Signer(s) Other Than Named Above

\$3,500,000
LEASE AGREEMENT
dated June 30, 2016,
by and between the
Calexico Public Financing Authority, as Sublessor, and
the City of Calexico, California, as Sublessee,

CERTIFICATE OF ACCEPTANCE OF LEASE AGREEMENT

This is to certify that the interest in real property conveyed by the Lease Agreement, dated June 30, 2016, from Calexico Public Financing Authority, as sublessor, to the City of Calexico, California, as sublessee (the "City"), as evidenced by the Memorandum of Lease Agreement recorded concurrently herewith, is hereby accepted by the undersigned officer on behalf of the City pursuant to authority conferred by resolution of the City Council of the City adopted on June 30, 2016, and the sublessee consents to recordation thereof by its duly authorized officer.

Dated as of June 30, 2016

CITY OF CALEXICO, CALIFORNIA

By _____
Armando G. Villa
City Manager

TO BE RECORDED AND WHEN RECORDED
RETURN TO:

Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside, CA 92501
Attention: Kim Byrens, Esq.

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF
THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT, dated June 30, 2016 (this "Assignment Agreement"), is among the CALEXICO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the "Authority"), the WASTEWATER ENTERPRISE OF THE CITY OF CALEXICO, and its successors and assigns (in its capacity as assignee, the "Assignee" or "Purchaser") and the CITY OF CALEXICO (the "City").

BACKGROUND:

1. In order to provide financing to fund a working capital shortfall in the City's General Fund, the City is leasing the real property more particularly described in Appendix A attached hereto, and by this reference incorporated herein (the "Leased Property"), to the Authority, pursuant to a Site and Facilities Lease dated June 30, 2016 (the "Site Lease"), between City as lessor and the Authority as lessee, and recorded concurrently herewith, and the Authority is leasing the Leased Property back to the City pursuant to a Lease Agreement dated June 30, 2016 (the "Lease"), between the Authority as lessor and the City as lessee, and recorded concurrently herewith. Under the Lease, the City is obligated to pay semiannual lease payments (the "Lease Payments") to the Authority in consideration of such lease.

2. The Authority wishes to assign its rights under the Lease, including but not limited to its right to receive and enforce the Lease Payments, to the Assignee for the purpose of providing the funds required to fund a working capital deficit for the City's General Fund.

AGREEMENT:

In consideration of the material covenants contained in this Assignment Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Lease.

SECTION 2. *Assignment.* The Authority hereby assigns to the Assignee all of the Authority's rights under the Lease (excepting only the Authority's rights under Sections 5.11, 7.03 and 8.04 of the Lease) (the "Assigned Rights"), including but not limited to:

- (a) the right to receive and collect all of the Lease Payments from the City under the Lease,
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Leased Property, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Leased Property, and
- (c) the right to exercise such rights and remedies conferred on the Authority under the Lease as may be necessary or convenient (i) to enforce payment of the Lease Payments and any amounts required to be applied to the prepayment of the Lease Payments, or (ii) otherwise to protect the interests of the Assignee in the event of a default by the City under the Lease, which rights and remedies may be exercised by the Assignee.

The assignment made under this Section 2 is absolute and irrevocable, and without recourse to the Authority.

SECTION 3. *Acceptance.* (a) The Authority hereby acknowledges that the Purchase Price has been paid by the Purchaser.

(b) The Authority, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign and transfer to the Purchaser, irrevocably and absolutely, without recourse, all of its right, title and interest in and to the Lease Agreement, including, without limitation, the right to receive the Lease Payments to be paid by the City under and pursuant to the Lease Agreement; provided, however, that the Authority shall retain the rights under the Lease Agreement to indemnification and payment for any costs and expenses. This assignment is irrevocable and absolute and is immediately effective.

(c) The Assignee hereby accepts the assignments made herein for the purpose of securing the payments due under the Lease to, and the rights under the Lease of, the Authority.

SECTION 4. *Consideration; Deposit of Funds.* In consideration of the assignment to the Assignee of the Lease Payments and certain other rights of the Authority under Section 2, the Assignee hereby agrees to deposit the amount of \$3,500,000 with the General Fund.

SECTION 5. *Representations.* (a) The Authority represents and warrants to the Assignee that:

(i) Enforceability of Assignment Agreement. The Authority has the power, authority, and legal right to execute, deliver and perform this Assignment Agreement, and this Assignment Agreement is a valid, binding, and enforceable obligation of the Authority, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles; and

(ii) Marketable Title. Good and marketable title to the rights assigned hereunder has been duly vested in the Assignee free and clear of any liens, security interests, encumbrances or other claims other than the rights of the City under the Lease, and the Authority has not assigned or transferred any of the rights assigned hereunder or any interest in the rights assigned hereunder to any party other than the Assignee.

(iii) Neither the execution and delivery of this Assignment Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound.

(b) Each of the City and the Authority acknowledges and agrees that the Purchaser is acting and has acted solely as lender for its own loan account and not as a fiduciary for the City or the Authority and is not acting as a broker, dealer, municipal advisor or municipal securities underwriter in connection with the execution or delivery of the Lease Agreement, or this Assignment Agreement or any documents relating thereto.

SECTION 6. *Covenants*. (a) Nonimpairment of Lease. The Authority agrees that it (1) shall not have any right to amend, modify, compromise, release, terminate or permit prepayment of the Lease, and (2) shall not take any action that may impair the payment of Lease Payments or the validity or enforceability of the Lease.

(c) Lease Payments. If the Authority receives any Lease Payments, then the Authority shall receive such payments in trust for the Assignee and shall immediately deliver the same to the Assignee in the form received, duly endorsed by the Authority for deposit by the Assignee.

SECTION 7. *Restriction on Transfers*. The Assignee shall not have the right to assign, transfer or convey the Lease or any interest therein or portion thereof.

SECTION 8. Expenses. The fees and disbursements of Special Counsel, the fees and disbursements of the financial advisor to the City or the Authority, fees of Assignee's Counsel and other miscellaneous expenses of the City or the Authority incurred in connection with the offering and delivery of the Lease shall all be the obligation of the Authority. The Assignee shall not have any responsibility for any expenses associated with the Lease, including, but not limited to, the expenses identified above as the obligation of the Authority.

SECTION 9. *Release and Indemnification*. The City shall, to the extent permitted by law, indemnify and save the Assignee, and its respective officers, agents, directors and employees,

harmless from and against all claims, losses, liabilities, costs, expenses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management or operation of, or from any work or thing done on, the Leased Property by the City, including injury or damages to any persons or property arising therefrom, (b) any breach or default on the part of the City in the performance of any of its obligations under the Lease Agreement, or (c) any act of negligence of the City or the Authority or of any of their agents, contractors, servants, employees or licensees with respect to the Leased Property. No indemnification is made under this Section for willful misconduct or negligence by Assignee or its officers, agents, directors or employees. The provisions of this Section shall continue in full force and effect, notwithstanding the termination of the Term of the Lease Agreement for any reason.

SECTION 10. *Conditions to Assignee Performance.* The Assignee hereby enters into this Assignment Agreement in reliance upon its own due diligence and the representations and warranties of the City contained herein and the representations and warranties to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the City and the Authority of their respective obligations both on the Closing Date. Accordingly, the obligations of the Assignee under this Assignment Agreement to purchase and to accept the assignment of Lease hereunder shall be subject, at the option of the Assignee, to the accuracy in all material respects of the representations and warranties of the City contained herein as of the date hereof, to the accuracy in all material respects of the statements of the officers and other officials of the City and the Authority made in any certificate or document furnished pursuant to the provisions of the Lease Agreement or hereof, to the performance by the City and the Authority of their respective obligations to be performed hereunder and under the Lease Agreement, at or prior to the Closing Date, and also shall be subject to such additional legal opinions, certificates, proceedings, instruments and other documents as counsel to the Assignee or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

SECTION 11. *Execution in Counterparts.* This Assignment Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Assignment Agreement may be separately executed by the Assignee, the Authority and the City, both with the same force and effect as though the same counterpart had been executed by the Assignee, the Authority and the City.

SECTION 12. *Binding Effect.* This Assignment Agreement inures to the benefit of and binds the Authority and the Assignee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 13. *Fees and Costs.* The Authority agrees to pay, or cause the City to pay all fees and costs relating to this Assignment Agreement, the Lease Agreement and any related transactions including financial advisory fees, Bond Counsel fees, fees of the Assignee's counsel or any other fees and costs in connection with this transaction.

SECTION 14. *Governing Law.* This Assignment Agreement is governed by the laws of the State of California.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement by their duly authorized officers as of the day and year first written above.

**CALEXICO PUBLIC FINANCING
AUTHORITY**

By: _____
Joong S. Kim, Mayor

**CITY OF CALEXICO, WASTEWATER
ENTERPRISE FUND, *as Assignee***

By: _____
Joong S. Kim, Mayor

CITY OF CALEXICO, as City

By: _____
Joong S. Kim, Mayor

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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)
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

For APN/Parcel ID(s): 058-445-001-000

Block 24 and the North 220 feet Block 27, of the Townsite of Calexico, in the City of Calexico, County of Imperial, State of California, according to amended Map No. 911 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County.

LEASE AGREEMENT

by and between

CALEXICO PUBLIC FINANCING AUTHORITY,
as Sublessor

and

CITY OF CALEXICO, CALIFORNIA,
as Sublessee

Dated June 30, 2016

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RESOLUTION NO. 2016-_____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CALEXICO PUBLIC FINANCING AUTHORITY, AUTHORIZING EXECUTION AND DELIVERY OF A SITE LEASE, A LEASE AGREEMENT, AND OTHER RELATED DOCUMENTS IN CONNECTION WITH THE WORKING CAPITAL FINANCING THROUGH A LEASE FINANCING ARRANGEMENT WITH THE CITY AND THE WASTEWATER ENTERPRISE FUND OF THE CITY, AND CERTAIN OTHER ACTIONS RELATING THERETO

WHEREAS, the Board of Directors (the "Board") of the Calexico Public Financing Authority (the "Authority") hereby determines that it is in the best interests of the City to finance a working capital shortfall in the General Fund of the City (the "Project"), through a lease financing arrangement (the "Lease Obligation") with the Calexico Public Financing Authority (the "Authority") and the Wastewater Enterprise of the City, (the "Purchaser"); and

WHEREAS, the Authority, in order to accomplish the Project, wishes to enter into a Site Lease and a Lease Agreement, each between the City and the Authority, hereinafter more particularly described, and that certain other action be taken and authorized and that the Lease Payments thereunder will be assigned to the Purchaser under an Assignment Agreement; and

WHEREAS, this Board has determined that the financing terms presented to the Authority by the Purchaser are acceptable and that it is in the best interest of the Authority that the financing terms presented by the Purchaser be accepted; and

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Approval of Financing. The Board hereby approves the financing of the Project subject to the terms and conditions of this Resolution.

2. Approval of Financing Documents. The Board hereby approves each of the following documents in substantially the respective forms on file with the Secretary, together with such additions thereto and changes therein as Special Counsel shall deem necessary, desirable or appropriate, the execution of which by the Mayor, City Manager or Finance Director shall be conclusive evidence of the approval of any such additions and changes:

- (1) the Site Lease;
- (2) the Lease Agreement; and
- (3) the Assignment Agreement.

The Mayor, the City Manager, or the City Finance Director are hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest

and affix the seal of the City to the final form of each of the foregoing documents and agreements for and in the name and on behalf of the City. The City Council hereby authorizes the delivery and performance of each of the foregoing documents and agreements.

3. Financing Terms. The financing terms presented to the City by the Purchaser are approved as follows: maximum principal amount of financing is \$3,500,00.00; maximum interest rate with respect to the financing is 4.00% and maximum term for the financing is 4 years.

4. Requisitions. The City Manager and the City Finance Director, or any one of them, are hereby authorized and directed to execute one or more requisitions authorizing the payment of costs of issuing the Lease Obligations from the proceeds of payment by the Authority under the Site Lease.

5. Other Acts. The City Manager, the City Finance Director and the other officers and staff members of the City are hereby authorized and directed, jointly and severally, to do any and all things, to execute and deliver any and all documents, which in consultation with the staff and Special Counsel they may deem necessary or advisable in order to consummate the Project, or otherwise to effectuate the purposes of this Resolution, and any such actions previously taken by such officers are hereby ratified and confirmed.

6. Effective Date. This Resolution shall take effect immediately upon its adoption.

PASSED, APPROVED AND ADOPTED this 30th day of June, 2016.

_____, President

Attest:

_____, Secretary

Approved as to Form:

_____, City Attorney

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

I, _____, Secretary of the Calexico Public Financing Authority do hereby certify the above Resolution No. 2016-____ was approved at a regular meeting held on the ____ day of _____, 2016, by the following vote to-wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____, Secretary

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Best Best & Krieger LLP
Attention: Kim Byrens, Esq.
3390 University Avenue, 5th Floor
Riverside, CA 92501

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER
TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND
TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES
PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

SITE AND FACILITY LEASE

by and between

CITY OF CALEXICO, CALIFORNIA
as Lessor

and

CALEXICO PUBLIC FINANCING AUTHORITY,
as Lessee

Dated June 30, 2016

SITE AND FACILITY LEASE

THIS SITE AND FACILITY LEASE (this "Site and Facility Lease"), dated June 30, 2016, is by and between the **CITY OF CALEXICO**, a general law city and municipal corporation, duly organized and existing under and by virtue of the laws of the State of California (the "City"), as lessor, and the **CALEXICO PUBLIC FINANCING AUTHORITY**, a public agency existing under the laws of the State of California (the "Authority"), as lessee;

WITNESSETH:

WHEREAS, pursuant to this Site and Facility Lease, the City proposes to lease those certain parcels of real property situated in the City of Calexico, Imperial County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority, all for the purpose of enabling the City to finance a working capital shortfall in the General Fund of the City (the "Project"), as defined in the Lease Agreement; and

WHEREAS, the Authority proposes to lease the Property back to the City pursuant to that certain Lease Agreement, dated June 30, 2016, a memorandum of which is recorded concurrently herewith (the "Lease Agreement"); and

WHEREAS, the City possesses statutory authority to lease the Property and its governing body has duly authorized the execution and delivery of the Lease Agreement and this Site and Facility Lease; and

NOW THEREFORE, for and in consideration of the premises and covenants and conditions hereinafter contained, the parties agree as follows:

Section 1. Definitions. Capitalized terms used, but not otherwise defined, in this Site and Facility Lease shall have the meanings ascribed to them in the Lease Agreement.

Section 2. Site and Facility Lease. The City hereby leases to the Authority and the Authority hereby leases from the City, on the terms and conditions hereinafter set forth, the Property.

Section 3. Term. The term of this Site and Facility Lease shall commence on June 30, 2016, and shall end on June 30, 2020, unless such term is extended or sooner terminated as hereinafter provided. If, on June 30, 2020, the aggregate amount of Lease Payments (as defined in and as payable under the Lease Agreement) shall not have been paid by reason of abatement, default or otherwise, or provision shall not have been made for their payment in accordance with the Lease Agreement, then the term of this Site and Facility Lease shall be extended until such Lease Payments shall be fully paid or provision made for such payment, but in no event later than June 30, 2026. If, prior to June 30, 2020, all Lease Payments shall be fully paid or provision made for such payment in accordance with the Lease Agreement, the term of this Site and Facility Lease shall end.

Section 4. Advance Rental Payment. The City agrees to lease the Property to the Authority in consideration of the payment by the Authority of an advance rental payment of \$3,500,000.00.

Section 5. Purpose. The Authority shall use the Property solely for the purpose of leasing the Property to the City pursuant to the Lease Agreement and for such purposes as may be incidental thereto; provided, however, that in the event of default by the City under the Lease Agreement, the Authority and its assigns may exercise the remedies provided in the Lease Agreement.

Section 6. City's Interest in the Property. The City covenants that it is the owner in fee of the Property.

Section 7. Assignments and Subleases. Unless the City shall be in default under the Lease Agreement, the Authority may not assign its rights under this Site and Facility Lease or sublet the Property, except as provided in the Lease Agreement. If the City is in default under the Lease Agreement, the Authority (including its successors and assigns under the Lease Agreement) may fully and freely assign and sublease the Property or any portion thereof, this Site and Facility Lease and the Lease Agreement.

Section 8. Right of Entry. The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

Section 9. Termination. The Authority agrees, upon the termination of this Site and Facility Lease, to quit and surrender the Property in the same good order and condition as the same were in at the time of commencement of the term hereunder, reasonable wear and tear excepted, and agrees that any permanent improvements and structures existing upon the Site at the time of the termination of this Site and Facility Lease shall remain thereon and title thereto shall vest in the City.

Section 10. Default. In the event the Authority shall be in default in the performance of any obligation on its part to be performed under the terms of this Site and Facility Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site and Facility Lease and of the Lease Agreement shall be deemed to occur as a result thereof and the City shall have no right to terminate this Site and Facility Lease as a remedy for such default. Notwithstanding the foregoing, so long as the Lease Agreement remains in effect, the City will continue to pay the Lease Payments to the Assignee.

In the event of the occurrence of an Event of Default under the Lease Agreement, the Authority may (a) exercise the remedies provided in the Lease Agreement, (b) use the Property for any lawful purpose, subject to any applicable legal limitations or restrictions, and (c) exercise all options provided herein.

Section 11. Quiet Enjoyment. The Authority, at all times during the term of this Site and Facility Lease, shall peaceably and quietly have, hold and enjoy all of the Property subject to the provisions of the Lease Agreement.

Section 12. Waiver of Personal Liability. All liabilities under this Site and Facility Lease on the part of the Authority are solely liabilities of the Authority and the City hereby releases each and every director, officer, employee and agent of the Authority of and from any personal or individual liability under this Site and Facility Lease. No director, officer, employee or agent of the Authority shall at any time or under any circumstances be individually or personally liable under this Site and Facility Lease for anything done or omitted to be done by the Authority hereunder.

Section 13. Taxes. All assessments of any kind or character and all taxes, including possessory interest taxes, levied or assessed upon the Property or the Authority's interest in the Property created by this Site and Facility Lease (including both land and improvements) will be paid by the City in accordance with the Lease Agreement.

Section 14. Eminent Domain. In the event the whole or any part of the Property is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid principal component of the Lease Payments, any then unpaid interest component of the Lease Payments and any premium due with respect to the prepayment of Lease Payments to the date such amounts are remitted to the Authority or its assignee, and, subject to the provisions of the Lease Agreement, the balance of the award, if any, shall be paid to the City. The City hereby waives, to the extent permitted by law, any and all rights that it has or may hereafter have to acquire the interest of the Authority in and to the Property through the eminent domain powers of the City. However, the City hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the City with respect to the Property shall be in an amount not less than the total unpaid principal component of Lease Payments, the interest component of Lease Payments accrued to the date of payment of all Lease Payments and any premium due with respect to the prepayment of Lease Payments under the Lease Agreement.

Section 15. Use of the Proceeds. The City and the Authority hereby agree that the lease to the Authority of the City's right and interest in the Property pursuant to Section 2 serves the public purposes of the City.

Section 16. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site and Facility Lease shall, to any extent, be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding, order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site and Facility Lease shall be affected thereby, and each provision of this Site and Facility Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 17. Notices. All notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if delivered personally or if mailed by United States registered mail, return receipt requested, postage prepaid, at the addresses set forth in the Lease Agreement, or to such other addresses as the respective parties may from time to time designate by notice in writing.

Section 18. Binding Effect. This Site and Facility Lease shall inure to the benefit of and shall be binding upon the City and the Authority and their respective successors and assigns. The Assignee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

Section 19. Amendment. This Site and Facility Lease may not be amended except as permitted under the Lease Agreement.

Section 20. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site and Facility Lease.

Section 21. Applicable Law. This Site and Facility Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in California.

Section 22. No Merger. Neither this Site and Facility Lease, the Lease Agreement nor any provisions hereof or thereof shall be construed to effect a merger of the title of the City to the Property under this Site and Facility Lease and the City's leasehold interest therein under the Lease Agreement.

Section 23. Execution in Counterparts. This Site and Facility Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same instrument.

(Signature page follows)

IN WITNESS WHEREOF, the City and the Authority have caused this Site and Facility Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF CALEXICO

By _____
Armando G. Villa
City Manager

Attest:

Gabriela T. Garcia
City Clerk

CALEXICO PUBLIC FINANCING
AUTHORITY

By _____
Joong S. Kim
Mayor

*-Signature Page-
Site and Facility Lease*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

DESCRIPTION OF THE SITE

For APN/Parcel ID(s): 058-445-001-000

Block 24 and the North 220 feet Block 27, of the Townsite of Calexico, in the City of Calexico, County of Imperial, State of California, according to amended Map No. 911 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County.

EXHIBIT B
DESCRIPTION OF THE FACILITY

1. City Hall, City of Calexico, California

LEASE AGREEMENT

by and between

CALEXICO PUBLIC FINANCING AUTHORITY,
as Sublessor

and

CITY OF CALEXICO, CALIFORNIA,
as Sublessee

Dated June 30, 2016

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease Agreement"), dated June 30, 2016, is by and between the **CALEXICO PUBLIC FINANCING AUTHORITY**, a public agency existing under the laws of the State of California, as lessor (the "Authority"), and the **CITY OF CALEXICO**, a general law city and municipal law corporation, duly organized and existing under and by virtue of the laws of the State of California, as lessee (the "City");

WITNESSETH:

WHEREAS, pursuant to that certain Site and Facility Lease, dated June 30, 2016 (the "Site and Facility Lease"), the City has leased those certain parcels of real property situated in the City of Calexico, Imperial County, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (the "Site"), and those certain improvements thereon, more particularly described in Exhibit B hereto (the "Facility" and, with the Site, the "Property"), to the Authority, all for the purpose of enabling the City to fund a working capital shortfall in the General Fund (the "Project"); and

WHEREAS, the Authority proposes to lease the Property back to the City pursuant to this Lease Agreement; and

WHEREAS, in consideration of the right of possession of, and the continued quiet use and enjoyment of, the Property during each Rental Period under this Lease, the City agrees to make certain Lease Payments (as hereinafter defined); and

WHEREAS, the City and the Authority have agreed to enter into this Lease Agreement providing for Lease Payments with an aggregate principal component in the amount of \$3,500,000 for the purpose of implementing the financing transactions described above.

WHEREAS, the City and the Authority agree to mutually cooperate now and hereafter, to the extent possible, in order to sustain the intent of this Lease Agreement and the bargain of both parties hereto.

AGREEMENT

NOW, THEREFORE, for and in consideration of the premises and the covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

Section 1.01. Definitions. All terms defined in this Section 1.01 have the meanings herein specified for all purposes of this Lease Agreement.

"Additional Payments" means the amounts specified as such in Section 4.03(b) of this Lease Agreement.

- (a) the existence, cleanup, and/or remedy of contamination on property;
- (b) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (c) the control of hazardous wastes; or
- (d) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

“*Authority*” means the Calexico Public Financing Authority.

“*Bond Counsel*” means (a) Best Best & Krieger LLP, or (b) any other attorney or firm of attorneys of nationally recognized expertise with respect to legal matters relating to obligations the interest on which is excludable from gross income under Section 103 of the Tax Code.

“*Business Day*” means a day other than a Saturday, Sunday or legal holiday, on which banking institutions are not closed in the State.

“*City*” means the City of Calexico, California, a municipal corporation and general law city organized and existing under the laws of the State.

“*City Representative*” means the Mayor, the City Manager, the Finance Director, or the designee of any such official, or any other person authorized by resolution delivered to the Authority to act on behalf of the City under or with respect to the Site and Facility Lease and this Lease Agreement.

“*Closing Date*” means the date this Lease Agreement or a memorandum thereof is recorded in the office of the County Recorder of the County of Imperial.

“*Contract*” means any indenture, trust agreement, contract, agreement (other than this Lease Agreement), other contractual restriction, lease, mortgage or instrument.

“*Event of Default*” means any of the events of default as defined in Section 8.01.

“*Facility*” means those certain existing facilities more particularly described in Exhibit B to the Site and Facility Lease and in Exhibit B to this Lease Agreement.

“*Federal Securities*” means any direct general non-callable obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), or obligations the timely payment of principal of and interest on which are directly guaranteed by the United States of America.

“*Fiscal Year*” means each twelve-month period during the Term of this Lease Agreement commencing on July 1 in any calendar year and ending on June 30 in the next succeeding calendar year, or any other twelve-month period selected by the City as its fiscal year period.

“*Lease Agreement*” means this Lease Agreement, dated June 30, 2016, between the Authority and the City.

“*Lease Payment Date*” means June 30 in each year, commencing June 30, 2017, and continuing to and including the date on which the Lease Payments are paid in full.

“*Lease Payments*” means all payments required to be paid by the City under Section 4.04, including any prepayment thereof under Sections 9.02 or 9.03.

“*Net Proceeds*” means any insurance or eminent domain award (including any proceeds of sale to a governmental entity under threat of the exercise of eminent domain powers), paid with respect to the Property, to the extent remaining after payment therefrom of all expenses incurred in the collection thereof.

“*Permitted Encumbrances*” means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article VI of this Lease Agreement; (b) the Site and Facility Lease and this Lease Agreement; (c) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy issued with respect to the Property as of the Closing Date; and (e) any easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Property for its intended purposes.

“*Project*” means the Project as described in the recitals of this Lease.

“*Property*” means, collectively, the Site and the Facility.

“*Purchaser*” means the Wastewater Enterprise of the City of Calexico.

“*Rental Period*” means each period during the Term of the Lease commencing on and including June 30, 2016 in each year and extending to and including the next succeeding June 30, 2017. The first Rental Period begins on the Closing Date and ends on June 30, 2017.

“*Site*” means that certain real property more particularly described in Exhibit A to the Site and Facility Lease and in Exhibit A to this Lease Agreement.

“*Site and Facility Lease*” means the Site and Facility Lease, dated as of June 30, 2016, by and between the City, as lessor, and the Authority, as lessee, together with any duly authorized and executed amendments thereto.

“*State*” means the State of California.

“*Term of this Lease Agreement*” or “*Term*” means the time during which this Lease Agreement is in effect, as provided in Section 4.02.

Section 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease Agreement; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease Agreement as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 2.01. Covenants, Representations and Warranties of the City. The City makes the following covenants, representations and warranties to the Authority as of the date of the execution and delivery of this Lease Agreement:

(a) *Due Organization and Existence.* The City is a municipal corporation and general law city, duly organized and existing under and by virtue of the laws of the State, has full legal right, power and authority under the laws of the State to enter into the Site and Facility Lease and this Lease Agreement and to carry out and consummate all transactions on its part contemplated hereby and thereby, and by proper action the City has duly authorized the execution and delivery by the City of the Site and Facility Lease and this Lease Agreement.

(b) *Due Execution.* The representative of the City executing the Site and Facility Lease and this Lease Agreement has been fully authorized to execute the same by a resolution duly adopted by the City Council of the City.

(c) *Valid, Binding and Enforceable Obligations.* The Site and Facility Lease and this Lease Agreement have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding agreements of the City enforceable against the City in accordance with their respective terms.

(d) *No Conflicts.* The execution and delivery of the Site and Facility Lease and this Lease Agreement, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or

order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site and Facility Lease or this Lease Agreement or the financial condition, assets, properties or operations of the City.

(e) ***Consents and Approvals.*** No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site and Facility Lease and this Lease Agreement, or the consummation of any transaction therein and herein contemplated, except as have been obtained or made and as are in full force and effect.

(f) ***Sufficient Funds.*** The City reasonably believes that sufficient funds can be obtained to make all Lease Payments and all other amounts required to be paid pursuant to this Lease Agreement.

(g) ***No Defaults.*** The City has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease Agreement, or under any of its bonds, notes, or other debt obligations.

(h) ***Fee Title.*** The City is the owner in fee of title to the Property. No lien or encumbrance on the Property materially impairs the City's use of the Property for the purposes for which it is, or may reasonably be expected to be, held.

(i) ***Use of the Property, Essentiality.*** During the term of this Lease Agreement, the Property will be used by the City only for the purpose of performing one or more governmental or proprietary functions of the City consistent with the permissible scope of the City's authority. The Property is essential to the City's efficient and economic operations and the lease thereof for use by the City is in the best interest of the City.

(j) ***Flooding Risk.*** The Property is not located in a flood hazard area and has never been subject to material damage from flooding.

(k) ***Value of Property.*** The value of the Property (real property replacement cost) is not less than \$3,500,000.

Section 2.02. Covenants, Representations and Warranties of the Authority. The Authority makes the following covenants, representations and warranties to the City as of the date of the execution and delivery of this Lease Agreement:

(a) the Authority has been duly organized and is validly existing as a corporation under the laws of the State of California with full corporate power to enter into and undertake its duties and obligations hereunder and has sufficient knowledge and experience in financial and business matters, including purchase and ownership of tax-exempt municipal obligations, to be able to evaluate the economic risks and merits of the investment represented by the Lease;

(b) the execution, delivery and performance of this Lease Agreement and the Site and Facility Lease have been duly authorized by all necessary corporate actions on the part of the Authority and do not require any further approvals or consents;

(c) the execution, delivery and performance of this Lease Agreement and the Site and Facility Lease do not and will not result in any breach of or constitute a default under any indenture, mortgage, contract, agreement or instrument to which the Authority is a party by which it or its property is bound;

(d) there is no pending or, to the knowledge of the Authority, threatened action or proceeding before any court or administrative agency which will materially adversely affect the ability of the Authority to perform its obligations under this Lease Agreement and the Site and Facility Lease; and

(e) the Authority will not mortgage or encumber the Property or the Lease Agreement or assign this Lease Agreement or its rights to receive Lease Payments hereunder, except as expressly permitted herein or in the Site and Facility Lease.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS

Section 3.01. Deposit of and Application of Funds. On the Closing Date, the Authority shall cause the amount of \$3,500,000.00 to be used to fund the amount of the General Fund's Working Capital Shortfall.

ARTICLE IV

LEASE OF PROPERTY; LEASE PAYMENTS

Section 4.01. Sublease of Property by the Authority Back to the City.

(a) The Authority hereby subleases the Property to the City, and the City hereby subleases the Property from the Authority, upon the terms and conditions set forth in this Lease Agreement.

(b) The leasing of the Property by the City to the Authority pursuant to the Site and Facility Lease shall not affect or result in a merger of the City's subleasehold estate pursuant to this Lease Agreement and its fee estate as lessor under the Site and Facility Lease.

Section 4.02. Term. The Term of this Lease Agreement commences on the 30th day of June, 2016 and ends on June 30, 2020, or the date on which all of the Lease Payments have been paid in full. If on June 30, 2020, the Lease Payments payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental interruption insurance or other sources, or the City shall have defaulted in its payment of Lease Payments hereunder or any Event of Default has occurred and continues without cure by the City, then the term of this Lease Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, as necessary to accommodate the final payment of all Lease Payments due hereunder, not to exceed 10 years. The provisions of this Section 4.02 are subject to the provisions of Section 6.01 relating to the taking in eminent domain of the Property or any portion thereof.

Section 4.03. Lease Payments.

(a) **Obligation to Pay.** Subject to the provisions of Sections 6.01 and 6.03 and the provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments (denominated into components of principal and interest) in the respective amounts specified in Exhibit C attached hereto (including any supplements thereto) and by this reference incorporated herein, to be due and payable in immediately available funds on each of the respective Lease Payment Dates specified in Exhibit C. The Lease Payments payable in any Rental Period with respect to the Property shall be for the use of the Property during such Rental Period. The interest components of the Lease Payments have been calculated based on an interest rate of 4.00% per annum, on the basis of a 360-day year of twelve 30-day months. The City understands that the Authority has assigned its right to receive the Lease Payments to the Purchaser and that the Purchaser will send an invoice to the City in advance of each Lease Payment Date.

(b) **Additional Payments.** In addition to the Lease Payments set forth herein, the City agrees to pay as Additional Payments all of the following:

(i) all taxes and assessments of any nature whatsoever, including but not limited to excise taxes, ad valorem taxes, ad valorem and specific lien special assessments and gross receipts taxes, if any, levied upon the Property or upon any interest of the Authority therein or in this Lease Agreement; provided, however, the City may, at the City's expense and in its name, in good faith contest any such taxes and assessments and, in the event of such contest, may permit such taxes and assessments to remain unpaid during the period of such contest and appeal therefrom unless the Authority shall notify the City that, in the opinion of Bond Counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property, or any portion thereof, will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes and assessments or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority;

(ii) insurance premiums, if any, on all insurance required under the provisions of Article V hereof; and

(iii) any other reasonable fees, costs or expenses incurred by the Authority in connection with the execution, performance or enforcement of this Lease Agreement or any of the transactions contemplated hereby or related to the Property, including, without limitation, any amounts which may become due; provided, however, the City shall not be responsible for any costs incurred by the Authority associated with any assignment of this Lease Agreement.

Amounts constituting Additional Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 30 days after notice in writing from the Authority to the City stating the amount of Additional Payments then due and payable and the purpose thereof.

(c) *Effect of Prepayment.* If the City prepays all Lease Payments in full under Sections 9.02 or 9.03, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Section 9.03, the principal components of the remaining Lease Payments will be reduced on a pro rata basis; and the interest component of each remaining Lease Payment will be reduced on a pro rata basis.

(d) *Rate on Overdue Payments.* If the City fails to make any of the payments required in this Section 4.03, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the rate of 12% per annum or any lesser maximum legal rate.

(e) *Fair Rental Value.* The Lease Payments coming due and payable during each Rental Period constitute the total rental for the Property for such Rental Period, and will be paid by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments due during each Rental Period are not in excess of the fair rental value of the Property during such Rental Periods. In making this determination, consideration has been given to the estimated fair market value of the Property, the estimated replacement cost of the Property, the uses and purposes which may be served by the Property and the benefits therefrom which will accrue to the City and the general public.

(f) *Source of Payments; Budget and Appropriation.* The Lease Payments are payable from any source of legally available funds of the City, subject to the provisions of Sections 6.01, 6.03 and 9.01. The City covenants to take such action as may be necessary to include all Lease Payments in each of its annual budgets during the Term of this Lease Agreement and to make the necessary annual appropriations for all such Lease Payments. The covenants on the part of the City herein contained constitute duties imposed by law and it is the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants

and agreements in this Lease Agreement agreed to be carried out and performed by the City.

(g) *Allocation of Lease Payments.* All Lease Payments received shall be applied first to the interest components of the Lease Payments due hereunder, then to the principal components of the Lease Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

(h) *No Offsets.* Notwithstanding any dispute between the Authority and the City, the City shall make all Lease Payments when due without deduction or offset of any kind and shall not withhold any Lease Payments pending the final resolution of such dispute.

(i) *Payments under this Lease Agreement.* The Authority hereby directs the City, and the City hereby agrees, to pay to the Purchaser (or to its assignees as directed pursuant to Section 7.04 hereof) all payments payable by the City under this Section 4.03 and all amounts payable by the City under Article IX.

Section 4.04. Quiet Enjoyment. Throughout the Term of this Lease Agreement, the Authority will provide the City with quiet use and enjoyment of the Property and the City will peaceably and quietly have and hold and enjoy the Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease Agreement. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Property as provided in Sections 5.12(c) and 7.02.

Section 4.05. Title. At all times during the Term of this Lease Agreement, the City shall hold title to the Property, including all additions which comprise fixtures, repairs, replacements or modifications thereto, subject to Permitted Encumbrances and subject to the provisions of Section 7.02.

Upon the termination of this Lease Agreement (other than under Section 8.02(b) hereof), all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. Upon the payment in full of all Lease Payments allocable to the Property; or upon the deposit by the City of security for such Lease Payments as provided in Section 9.01, all right, title and interest of the Authority in and to the Property shall be transferred to and vested in the City. The Authority agrees to take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer.

Section 4.06. Release of Excess Property. The City may, at any time and from time to time, release any portion of the Property (the "Released Property") from this Lease Agreement, with the prior written consent of the Authority, which consent shall be at the Authority's sole discretion, and upon satisfaction of all of the following requirements which are conditions precedent to such release:

(a) The City shall certify to the Authority that no Event of Default has occurred and is continuing, and no event giving rise to an abatement of Lease Payments under Section 6.03 has occurred or is continuing with respect to the Property to be remaining following release of the Released Property;

(b) The City shall file with the Authority, and cause to be recorded in the office of the Imperial County Recorder, an amendment to this Lease Agreement which deletes the Released Property from the description of the Property;

(c) The City shall file with the Authority a written certificate of the City stating the City's determination that the estimated fair rental value, for each remaining Rental Period and in the aggregate, of the Property remaining after release of the Released Property is at least equal to the remaining Lease Payments for each remaining Rental Period and in the aggregate; and

(d) The City shall file with the Authority such other information, documents and instruments as the Authority shall reasonably request, including (if requested by the Authority) evidence of the insurable value of the Property to be remaining following release of the Released Property, indicating that such value is in excess of the then unpaid principal component of the Lease Payments and such endorsements to the title policy delivered on the Closing Date.

Upon the satisfaction of all such conditions precedent, the Term of this Lease Agreement will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge this Lease Agreement of record against the Released Property.

Section 4.07. Substitution of Property.

The City may at any time and from time to time, with the prior written consent of the Authority, substitute other real property (the "Substitute Property") for the Property, or any portion thereof (the "Former Property"), provided that the City satisfies all of the following requirements which are conditions precedent to such substitution:

(i) No Event of Default shall have occurred and be continuing and no event giving rise to an abatement of Lease Payments under Section 6.3 hereof shall have occurred and be continuing with respect to the Substitute Property;

(ii) The City shall file with the Authority, and cause to be recorded in the office of the Imperial County Recorder sufficient memorialization of, an amendment of the Lease Agreement which adds to Exhibit B thereto a description of such Substitute Property and deletes therefrom the description of such Former Property;

(iii) The City shall certify in writing to the Authority that such Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the Laws of the State of California, and has been

determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City;

(iv) The Substitute Property shall not cause the City to violate any of its covenants, representations and warranties made in this Lease Agreement;

(v) The City shall file with the Authority an appraisal or other written documentation which establishes that the fair market value and the fair rental value of the Substitute Property are at least equal to the present value of the remaining Lease Payments in the aggregate and for each remaining Rental Period, respectively, and that the useful life of the Substitute Property at least equals the lesser of (i) the useful life of the Former Property; or (ii) the final Lease Payment Date of the Lease Payments allocable thereto; and

(vi) In the event of damage or destruction of the Leased Property from earthquake or other uninsured peril, the City shall substitute under this Lease Agreement other unencumbered real property of a value and useful life not less than the outstanding principal component of the Lease Payments and the remaining term of this Lease Agreement.

Upon the satisfaction of all such conditions precedent, the term of the Lease Agreement shall thereupon end as to the Former Property and shall thereupon commence as to the Substitute Property, and all references to the Former Property shall apply with full force and effect to the Substitute Property. The City shall not be entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such substitution. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Lease Agreement of record against the Former Property.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

Section 5.01. Maintenance, Utilities, Taxes and Assessments. Throughout the Term of this Lease Agreement, as part of the consideration for the rental of the Property, all improvement, repair and maintenance of the Property are the sole responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and shall pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Property, as hereinbefore more specifically set forth. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease Agreement.

The City will pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Property or the respective interests or

estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City is obligated to pay only such installments as are required to be paid during the Term of this Lease Agreement as and when the same become due.

The City may, at the City's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Property will be materially endangered or the Property or any part thereof will be subject to loss or forfeiture, in which event the City will promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority. The City shall promptly notify the Authority of any tax, assessment, utility or other charge it elects to contest.

Section 5.02. Modification of Property. The City has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Lease Agreement. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

Section 5.03. Public Liability Insurance. The City shall maintain or cause to be maintained throughout the Term of this Lease Agreement a standard comprehensive general liability insurance policy or policies in protection of the City, the Authority and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage with limits of at least \$1,000,000 per occurrence, \$3,000,000 in the aggregate, for bodily injury and property damage coverage, and excess liability umbrella coverage of at least \$5,000,000, and in all events in form and amount (including any deductibles) satisfactory to the Authority. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with Authority's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

Section 5.04. Casualty Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, casualty insurance against loss or damage to all buildings situated on the Property and owned by the City, in an amount at least equal to the greater of the replacement value of the insured buildings and the

aggregate principal amount of the Lease Payments outstanding, with a lender's loss payable endorsement. Such insurance must, as nearly as practicable, cover loss or damage by all "special form" perils. Such insurance shall be subject to a deductible of not to exceed \$250,000. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including, with the Purchaser's prior written consent, a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the Net Proceeds of such insurance as provided in Section 6.02.

Section 5.05. Rental Interruption Insurance. The City will procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease Agreement, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of the Property and the improvements situated thereon as a result of any of the hazards covered in the insurance required by Section 5.04, in an amount at least equal to the maximum Lease Payments coming due and payable during any future 24 month period. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance; provided that such rental interruption insurance shall not be self-insured by the City. The City will apply the Net Proceeds of such insurance towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Section 5.06. Worker's Compensation Insurance. If required by applicable California law, the City shall carry worker's compensation insurance covering all employees on, in, near or about the Property and, upon request, shall furnish to the Authority certificates evidencing such coverage throughout the Term of this Lease Agreement. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City (including a self insurance program), and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance.

Section 5.07. Recordation Hereof. On or before the Closing Date, the City shall, at its expense, cause this Lease Agreement, the Site and Facility Lease and the Assignment Agreement, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Imperial County Recorder with respect to the Property.

Section 5.08. Insurance Net Proceeds; Form of Policies. All insurance policies (or riders) required by this Article V and provided by third party insurance carriers shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least ten days before the cancellation or revision becomes effective. Each insurance policy or rider required by Sections 5.03, 5.04 and 5.05 and provided by third party insurance carriers shall name the City and the Authority as insured parties and the Authority as loss payee and shall include a lender's loss payable endorsement for the benefit of the Authority. In the case of coverage pursuant to Section 5.03, the Authority shall be added as an additional insured. Prior to the Closing Date, the City will deposit with the Authority policies (and riders

and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Authority evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article V unless such insurance is no longer obtainable, in which event the City shall notify the Authority of such fact.

Section 5.09. Installation of City's Personal Property. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City, in which the Authority has no interest, and may be modified or removed by the City at any time. The City must repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Lease Agreement prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest may attach to any part of the Property.

Section 5.10. Liens. The City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Authority do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Authority provides its prior written approval, which approval shall be at Authority's sole discretion. Except as expressly provided in this Article V, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible, if the same shall arise at any time. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

Section 5.11. Advances. If the City fails to perform any of its obligations under this Article V, the Authority may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.03(c).

Section 5.12. Environmental Covenants.

(a) *Compliance with Laws; No Hazardous Substances.* The City will comply with all Applicable Environmental Laws with respect to the Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Property.

(b) *Notification of Authority.* The City will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Property and any operations conducted thereon or any conditions existing thereon to the Authority, and

the City will notify the Authority in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Authority.

(c) *Access for Inspection.* The City will permit the Authority, its agents, or any experts designated by the Authority to have full access to the Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Authority has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

ARTICLE VI

EMINENT DOMAIN; USE OF NET PROCEEDS

Section 6.01. Eminent Domain. If all of the Property shall be taken permanently under the power of eminent domain or sold to a governmental entity threatening to exercise the power of eminent domain, the Term of this Lease Agreement shall cease as of the day possession shall be so taken. If less than all of the Property shall be taken permanently, or if all of the Property or any part thereof shall be taken temporarily under the power of eminent domain, (a) this Lease Agreement shall continue in full force and effect and shall not be terminated by virtue of such taking and the parties waive the benefit of any law to the contrary, and (b) there shall be a partial abatement of Lease Payments in an amount equal to the application of the Net Proceeds of any eminent domain award to the prepayment of the Lease Payments hereunder, in an amount to be agreed upon by the City and the Authority such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portion of the Property.

Section 6.02. Application of Net Proceeds.

(a) *From Insurance Award.*

(i) Any Net Proceeds of insurance against damage to or destruction of any part of the Property collected by the City in the event of any such damage or destruction shall be deposited by the City promptly upon receipt thereof in a special fund with the Authority designated as the "Insurance and Condemnation Fund."

(ii) Within 90 days following the date of such deposit, the City shall determine and notify the Authority in writing of its determination either (A) that the replacement, repair, restoration, modification or improvement of the Property is not economically feasible or in the best interest of the City and the Net Proceeds, together with other moneys available therefor, are sufficient to cause the prepayment of the principal components of all unpaid Lease Payments pursuant to Section 9.03 hereof, or (B) that all or a portion of such Net Proceeds are to be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property and the fair

rental value of the Property following such repair, restoration, replacement, modification or improvement will at least equal the unpaid principal component of the Lease Payments.

(iii) In the event the City's determination is as set forth in clause (A) of subparagraph (ii) above, such Net Proceeds shall be promptly applied to the prepayment of Lease Payments and other amounts pursuant to Section 9.03 of this Lease Agreement; provided, however, that in the event of damage or destruction of the Property in full, such Net Proceeds may be so applied only if sufficient, together with other moneys available therefor, to cause the prepayment of the principal components of all unpaid Lease Payments, all accrued and unpaid interest, Prepayment Premiums described in Section 9.02, and all other costs related to such prepayments pursuant to Section 9.03 of this Lease Agreement and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property; provided further, however, that in the event of damage or destruction of the Property in part, such Net Proceeds may be applied to the prepayment of Lease Payments only if the resulting Lease Payments following such prepayment from Net Proceeds represent fair consideration for the remaining portions of the Property and otherwise such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the Property, evidenced by a certificate signed by a City Representative.

(iv) In the event the City's determination is as set forth in clause (B) of subparagraph (ii) above, such Net Proceeds shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Property by the City, and until the Property has been restored to its prior condition, the City shall not place any lien or encumbrance on the Property that is senior to this Lease Agreement without the prior written consent of the Authority, at its sole discretion.

(b) ***From Eminent Domain Award.*** If all or any part of the Property shall be taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Net Proceeds therefrom shall be deposited by the City in the Insurance and Condemnation Fund and shall be applied and disbursed as follows:

(i) If the City has given written notice to the Authority of its determination that (A) such eminent domain proceedings have not materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are not needed for repair or rehabilitation of the Property, the City shall so certify to the Authority and the Authority, and the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(ii) If the City has given written notice to the Authority and the Authority of its determination that (A) such eminent domain proceedings have not

materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under this Lease Agreement, and (B) such proceeds are needed for repair, rehabilitation or replacement of the Property, the City shall so certify to the Authority, and the City shall apply such amounts for such repair or rehabilitation.

(iii) If (A) less than all of the Property shall have been taken in such eminent domain proceedings or sold to a government threatening the use of eminent domain powers, and if the City has given written notice to the Authority of its determination that such eminent domain proceedings have materially affected the operation of the Property or the ability of the City to meet any of its obligations with respect to the Property under the Lease Agreement or (B) all of the Property shall have been taken in such eminent domain proceedings, then the City shall credit such proceeds towards the prepayment of the Lease Payments pursuant to Section 9.03 of this Lease Agreement.

(iv) In making any determination under this Section 6.02(b), the City may, but shall not be required to, obtain at its expense, the report of an independent engineer or other independent professional consultant, a copy of which shall be filed with the Authority. Any such determination by the City shall be final.

(c) *From Title Insurance.* The Net Proceeds from a title insurance award shall be deposited by the City in the Insurance and Condemnation Fund and credited towards the prepayment of Lease Payments required to be paid pursuant to Section 9.03 of this Lease Agreement.

Section 6.03. Abatement of Lease Payments in the Event of Damage or Destruction. Lease Payments shall be abated during any period in which, by reason of damage or destruction, there is substantial interference with the use and occupancy by the City of the Property or any portion thereof to the extent to be agreed upon by the City and the Authority. The parties agree that the amounts of the Lease Payments under such circumstances shall not be less than the amounts of the unpaid Lease Payments as are then set forth in Exhibit C, unless such unpaid amounts are determined to be greater than the fair rental value of the portions of the Property not damaged or destroyed, based upon an appropriate method of valuation, in which event the Lease Payments shall be abated such that they represent said fair rental value. Such abatement shall continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction as evidenced by a Certificate of a City Representative to the Authority. In the event of any such damage or destruction, this Lease Agreement shall continue in full force and effect and the City waives any right to terminate this Lease Agreement by virtue of any such damage and destruction. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.03 to the extent that (a) the proceeds of rental interruption insurance or (b) amounts in the Insurance and Condemnation Fund are available to pay Lease Payments which would otherwise be abated under this Section 6.03, it being hereby declared that such proceeds and amounts constitute special funds for the payment of the Lease Payments.

ARTICLE VII

OTHER COVENANTS OF THE CITY

Section 7.01. Disclaimer of Warranties. THE AUTHORITY MAKES NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE CITY LEASES THE PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. In no event is the Authority liable for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease Agreement for the existence, furnishing, functioning or use of the Property by the City.

Section 7.02. Access to the Property; Grant and Conveyance of Right of Entry. The City agrees that the Authority, and the Authority's successors or assigns, has the right at all reasonable times, following at least 48 hours written notice provided to the City, to enter upon and to examine and inspect (to the extent permitted by law and public policy) the Property or any part thereof. The City further agrees that the Authority, and the Authority's successors or assigns shall have such rights of access to the Property or any component thereof, following at least 48 hours written notice provided to the City, as may be reasonably necessary to cause the proper maintenance of the Property if the City fails to perform its obligations hereunder. Neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

The City further grants, conveys and confirms to the Authority, for the use, benefit and enjoyment of the Authority, its successors in interest to the Property, including the Authority, and its sublessees, and their respective employees, invitees, agents, independent contractors, patrons, customers, guests and members of the public visiting the Property, a right of entry which shall be irrevocable for the Term of this Lease Agreement over, across and under the property of the City adjacent to the Property to and from the Property for the purpose of: (a) ingress, egress, passage or access to and from the Property by pedestrian or vehicular traffic; (b) installation, maintenance and replacement of utility wires, cables, conduits and pipes; and (c) other purposes and uses necessary or desirable for access to and from and for operation and maintenance of the Property.

Section 7.03. Release and Indemnification Covenants. To the extent permitted by law, the City hereby indemnifies the Authority, and its directors, officers, agents, employees, successors and assigns against all claims, losses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, or from any work or thing done on the Property by the City or the City's employees, agents, contractors, invitees or licensees, (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease Agreement, (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Property, (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Property, (e) the acquisition, construction, improvement and equipping of the Property, (f) the

clean-up of any Hazardous Substances or toxic wastes from the Property, or (g) any claim alleging violation of any Applicable Environmental Laws, or the authorization of payment of the costs thereof. No indemnification is made under this Section 7.03 or elsewhere in this Lease Agreement for willful misconduct or gross negligence under this Lease Agreement by the Authority, or its respective officers, agents, employees, successors or assigns. The indemnification hereunder shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease Agreement or the termination of the Term of this Lease Agreement for any reason. The City and the Authority each agree to promptly give notice to each other and the Authority of any claim or liability hereby indemnified against following learning thereof.

Section 7.04. Assignment by the Authority. The Authority may assign its rights, title and interests herein, but no such assignment will be effective as against the City unless and until the Authority has filed with the City at least five Business Days' prior written notice thereof and an executed copy of a letter addressed to the City and the Authority substantially in the form of the letter delivered by the Authority on the Closing Date attached hereto as Exhibit D. The City shall pay all Lease Payments hereunder to the Authority, as provided in Section 4.03(h) hereof, or under the written direction of the assignee named in the most recent assignment or notice of assignment filed with the City. During the Term of this Lease Agreement, the City will keep a complete and accurate record of all such notices of assignment.

Section 7.05. Assignment Agreement and Subleasing by the City. This Lease Agreement may not be assigned, mortgaged, pledged or transferred by the City. The City may sublease the Property, or any portion thereof, with the prior written consent of the Authority, at the Authority's sole discretion, subject to all of the following conditions:

(a) This Lease Agreement and the obligation of the City to make Lease Payments hereunder shall remain obligations of the City, and any sublease shall be subject and subordinate to this Lease Agreement.

(b) The City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority a true and complete copy of such sublease.

(c) No such sublease by the City may cause the Property to be used for a purpose other than as may be authorized under the provisions of the laws of the State.

(d) The City shall furnish the Authority with a written opinion of Bond Counsel stating that such sublease does not cause the interest components of the Lease Payments to become includable in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State.

(e) Any such sublease shall be subject and subordinate in all respects to the Site and Facility Lease and this Lease Agreement.

Notwithstanding the foregoing, in connection with any sublease entered into for financing purposes, the principal component of the then remaining Lease Payments plus the principal component of the sublease payments shall not exceed the fair market value of the Property.

Section 7.06. Amendment of Lease Agreement. This Lease Agreement may be amended in writing by the parties hereto.

Section 7.07. Records and Accounts. The City covenants and agrees that it shall keep proper books of record and accounts of its operations, in which complete and correct entries shall be made of all transactions relating to the City. Said books and records shall at all reasonable times be subject to the inspection of the Authority upon 72 hours' prior notice.

Section 7.08. Observance of Laws and Regulations. The City will well and truly keep, observe and perform or cause to be kept, observed and performed all valid and lawful obligations or regulations now or hereafter imposed on it by contract, or prescribed by any law of the United States, or of the State, or by any officer, board or commission having jurisdiction or control, as a condition of the continued enjoyment of any and every right, privilege or franchise now owned or hereafter acquired and enjoyed by the City, including the City's right to exist and carry on business as a municipal corporation, to the end that such rights, privileges and franchises shall be maintained and preserved, and shall not become abandoned, forfeited or in any manner impaired.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

Section 8.01. Events of Default Defined. Any one or more of the following events constitutes an Event of Default hereunder:

(a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.

(b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed hereunder, other than as referred to in the preceding clause (a) of this Section, for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority. However, if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the Authority shall not unreasonably withhold their consent to an extension of such time (for a period not to exceed 60 days) if corrective action is instituted by the City within such 30-day period and diligently pursued until the default is corrected.

(c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar federal or State act now existing or which may hereafter be enacted.

(d) Any statement, representation or warranty made by the City in or pursuant to this Lease Agreement or its execution, delivery or performance shall have been false, incorrect, misleading or breached in any material respect on the date when made.

(e) Any default occurs under any other agreement for borrowing money, lease financing of property or otherwise receiving credit under which the City is an obligor, if such default (i) arises under any other agreement for borrowing money, lease financing of property or provision of credit provided by the Authority or any affiliate of the Authority, or (ii) arises under any obligation under which there is outstanding, owing or committed an aggregated amount in excess of \$2,000,000.

(f) Any default by the City to observe any covenant, condition or agreement on its part to be observed or performed under the Site and Facility Lease.

(g) Any court of competent jurisdiction shall find or rule that the Site and Facility Lease or this Lease Agreement is not valid or binding against the City.

(h) Any Material Adverse Effect shall exist.

Section 8.02. Remedies on Default. Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease Agreement; provided, however, that notwithstanding anything herein to the contrary, there shall be no right under any circumstances to accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each and every covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; provided, that no termination of this Lease Agreement shall be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise any one or more of the following remedies:

(a) ***Enforcement of Payments Without Termination.*** If the Authority does not elect to terminate this Lease Agreement in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Property, or, if the Authority is unable to re-lease the Property, then for the full amount of all Lease Payments to the end of the Term of this Lease Agreement, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Property, to place such property in storage or other suitable place in Imperial County for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Property and the removal and storage of such property by the Authority or its duly authorized agents in accordance with

the provisions herein contained. The City agrees that the terms of this Lease Agreement constitute full and sufficient notice of the right of the Authority to re-lease the Property in the event of such re-entry without effecting a surrender of this Lease Agreement, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease Agreement irrespective of the term for which such re-leasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease Agreement shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Property upon demand of the Authority for the purpose of enabling the Property to be re-let under this paragraph. Any rental obtained by the Authority in excess of the sum of Lease Payments plus costs and expenses incurred by the Authority for its services in re-leasing the Property shall be paid to the City.

(b) *Termination of Lease.* If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease Agreement and re-lease all or any portion of the Property, subject to the Site and Facility Lease. If the Authority terminates this Lease Agreement at its option and in the manner hereinafter provided due to a default by the City (and notwithstanding any re-entry upon the Property by the Authority in any manner whatsoever or the re-leasing of the Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Payments. Any surplus received by the Authority from such re-leasing shall be applied by the Authority to Lease Payments due under this Lease Agreement. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease Agreement, and no termination of this Lease Agreement on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease Agreement. The City covenants and agrees that no surrender of the Property, or of the remainder of the Term hereof or any termination of this Lease Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

(c) *Proceedings at Law or In Equity.* If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(d) *Remedies under the Site and Facility Lease.* If an Event of Default occurs and continues hereunder, the Authority may exercise its rights under the Site and Facility Lease.

Section 8.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Lease Agreement or now or hereafter existing

at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it shall not be necessary to give any notice, other than such notice as may be required in this Article VIII or by law.

Section 8.04. Agreement to Pay Attorneys' Fees and Expenses. If either party to this Lease Agreement defaults under any of the provisions hereof and the nondefaulting party should employ attorneys (including in-house legal counsel) or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys (including allocable costs and expenses of in-house legal counsel, if any) and such other expenses so incurred by the nondefaulting party.

Section 8.05. No Additional Waiver Implied by One Waiver. If any agreement contained in this Lease Agreement is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 8.06. Judicial Reference.

(a) Judicial Reference. The Authority and the City hereby agree: (i) each proceeding or hearing based upon or arising out of, directly or indirectly, this Lease Agreement, the Site and Facility Lease, the Property or any document related thereto, any dealings between the City and the Authority related to the subject matter of this Lease Agreement, the Site and Facility Lease or any related transactions, and/or the relationship that is being established between the City and the Authority (hereinafter, a "Claim") shall be determined by a consensual general judicial reference (the "Reference") pursuant to the provisions of Section 638 et seq. of the California Code of Civil Procedure, as such statutes may be amended or modified from time to time; (ii) upon a written request, or upon an appropriate motion by either the Authority or the City, as applicable, any pending action relating to any Claim and every Claim shall be heard by a single Referee (as defined below) who shall then try all issues (including any and all questions of law and questions of fact relating thereto), and issue findings of fact and conclusions of law and report a statement of decision. The Referee's statement of decision will constitute the conclusive determination of the Claim. The Authority and the City agree that the Referee shall have the power to issue all legal and equitable relief appropriate under the circumstances before the Referee; (iii) the Authority and the City shall promptly and diligently cooperate with one another, as applicable, and the Referee, and shall perform such acts as may be necessary to obtain prompt and expeditious resolution of all Claims in accordance with the terms of this Section 8.7; (iv) either the Authority or the City, as applicable, may file the Referee's findings, conclusions and statement with the clerk or judge of any appropriate court, file a motion to confirm the Referee's report and have judgment entered thereon. If the report is deemed incomplete by such court, the Referee may be required to complete the report and resubmit it; (v) the Authority and the City, as

applicable, will each have such rights to assert such objections as are set forth in Section 638 et seq. of the California Code of Civil Procedure; and (vi) all proceedings shall be closed to the public and confidential, and all records relating to the Reference shall be permanently sealed when the order thereon becomes final.

(b) Selection of Referee; Powers. The parties to the Reference proceeding shall select a single neutral referee (the "Referee"), who shall be a retired judge or justice of the courts of the State of California, or a federal court judge, in each case, with at least ten (10) years of judicial experience in civil matters. The Referee shall be appointed in accordance with Section 638 of the California Code of Civil Procedure (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts). If within ten (10) days after the request or motion for the Reference, the parties to the Reference proceeding cannot agree upon a Referee, then any party to such proceeding may request or move that the Referee be appointed by the Presiding Judge of the Imperial County Superior Court, or of the U.S. District Court for the Southern District of California. The Referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Section 8.7.

(c) Provisional Remedies and Self Help. No provision of this Section 8.7 shall limit the right of either the Authority or the City, as the case may be, to (i) exercise such self-help remedies as might otherwise be available under applicable law, or (ii) obtain or oppose provisional or ancillary remedies, including without limitation injunctive relief, writs of possession, the appointment of a receiver, and/or additional or supplementary remedies from a court of competent jurisdiction before, after, or during the pendency of any Reference. The exercise of, or opposition to, any such remedy does not waive the right of the Authority or the City to the Reference pursuant to this Section 8.7(c).

(d) Costs and Fees. Promptly following the selection of the Referee, the parties to such Reference proceeding shall each advance equal portions of the estimated fees and costs of the Referee. In the statement of decision issued by the Referee, the Referee shall award costs, including reasonable attorneys' fees, to the prevailing party, if any, and may order the Referee's fees to be paid or shared by the parties to such Reference proceeding in such manner as the Referee deems just.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

Section 9.01. Security Deposit. Notwithstanding any other provision of this Lease Agreement, the City may on any date secure the payment of the Lease Payments in whole or in part by depositing with the Authority or a fiduciary reasonably satisfactory to the Authority, in trust, an amount of cash, which shall be held in a segregated trust or escrow fund under a trust or escrow agreement that is in form and content acceptable to the Authority, which cash so held is either (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Exhibit C, or (b) invested in whole in non-callable Federal Securities maturing not later than the dates such funds will be

required to make Lease Payments or any prepayment in an amount which is sufficient, in the opinion of an independent certified public accountant (which opinion must be in form and substance, and with such an accountant, acceptable to the Authority and addressed and delivered to the Authority), together with interest to accrue thereon and without reinvestment and together with any cash which is so deposited, to pay such Lease Payments when due under Section 4.03(a) or when due on any optional prepayment date under Section 9.02, as the City instructs at the time of said deposit; provided, however, that at or prior to the date on which any such security deposit is established, the City shall deliver to the Authority an opinion of Bond Counsel (in form and substance acceptable to the Authority) to the effect that any such security deposit will not adversely affect the excludability of the interest component of Lease Payments from gross income of the Authority for federal income tax purposes. In the event of a security deposit under this Section with respect to all unpaid Lease Payments, (i) the Term of this Lease Agreement shall continue, (ii) all obligations of the City under this Lease Agreement, and all security provided by this Lease Agreement for said obligations, shall thereupon cease and terminate, excepting only (A) the obligation of the City to make, or cause to be made, all of the Lease Payments from such security deposit and, to the extent of any deficiency, as rent payable from other legally available funds of the City, and (B) the release and indemnification obligations of the City under subparagraphs (f) and (g) of Section 7.03, and (iii) under Section 4.05, the Authority's leasehold interest in the Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. The City hereby grants a first priority security interest in and the lien on said security deposit and all proceeds thereof in favor of the Authority. Said security deposit shall be deemed to be and shall constitute a special fund for the payment of Lease Payments in accordance with the provisions of this Lease Agreement and, notwithstanding anything to the contrary herein, Lease Payments therefrom shall not be subject to abatement under Section 6.03 hereof to the extent payable from the funds held by the Authority or the fiduciary as described in the first sentence of this Section 9.01.

Section 9.02. Optional Prepayment.

The City may prepay the principal component of the Lease Payments in full or in part, in such manner as shall be selected by the City, on any date at an amount equal to the principal amount of Lease Payments to be prepaid, together accrued interest to the date fixed for prepayment, without premium.

Section 9.03. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall be obligated to prepay the unpaid principal components of the Lease Payments in whole or in part in such order of prepayment as shall be selected by the City on any date, together with any accrued and unpaid interest, from and to the extent of any proceeds of insurance award or condemnation award with respect to the Property to be used for such purpose under Section 6.02.

ARTICLE X

MISCELLANEOUS

Section 10.01. Notices. Any notice, request, complaint, demand or other communication under this Lease Agreement shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority and the City may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

If to the City:

City of Calexico
608 Heber Avenue
Calexico, CA 92231
Attention: Finance Director
Phone: 760 -768-2130

If to the Authority:

Calexico Public
Financing Authority
608 Heber Avenue
Calexico, CA 92231
Attention: Finance Director
Phone: 760 -768-2130

Section 10.02. Binding Effect. This Lease Agreement inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns.

Section 10.03. Severability. If any provision of this Lease Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

Section 10.04. Net-net-net Lease. This Lease Agreement is a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

Section 10.05. Further Assurances and Corrective Instruments. The Authority and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease Agreement.

Section 10.06. Execution in Counterparts. This Lease Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

Section 10.07. Applicable Law. This Lease Agreement is governed by and construed in accordance with the laws of the State.

Section 10.08. Captions. The captions or headings in this Lease Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or section of this Lease Agreement.

IN WITNESS WHEREOF, the Authority and the City have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of the date first above written.

CALEXICO PUBLIC FINANCING
AUTHORITY

By _____
Joong S. Kim, President

CITY OF CALEXICO

By _____
Joong S. Kim, Mayor

ATTEST:

Gabriela T. Garcia
City Clerk

EXHIBIT A

DESCRIPTION OF THE SITE

For APN/Parcel ID(s): 058-445-001-000

Block 24 and the North 220 feet Block 27, of the Townsite of Calexico, in the City of Calexico, County of Imperial, State of California, according to amended Map No. 911 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County.

EXHIBIT B

DESCRIPTION OF THE FACILITY

1. City Hall, City of Calexico, California

EXHIBIT C

SCHEDULE OF LEASE PAYMENTS

<u>Lease Payment Date (June 30)</u>	<u>Principal Component</u>	<u>Coupon</u>	<u>Interest Component*</u>	<u>Annual Debt Service</u>
2017	\$ 824,215.00	4.00%	\$140,000.00	\$ 964,215.00
2018	857,184.00	4.00	107,031.40	964,215.40
2019	891,471.00	4.00	72,744.04	964,215.04
<u>2020</u>	<u>927,130.00</u>	4.00	<u>37,085.20</u>	<u>964,215.20</u>

* The interest component due under this Lease Agreement may vary from the amount indicated in this schedule based on the date the Lease Payment is received by the Purchaser.

EXHIBIT D

MEMORANDUM OF LEASE AGREEMENT

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "Memorandum of Lease Agreement"), is entered into June 30, 2016, by and between the CALEXICO PUBLIC FINANCING AUTHORITY, an a public agency existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF CALEXICO, a general law city and municipal corporation duly organized and existing under the laws of the State of California, as lessee (the "City"), who agree as follows:

Section 1. The Lease. The City leases from the Authority and the Authority leases to the City, certain real property described in paragraph 2 hereof, and the improvements situated upon said real property, upon the terms and conditions, and for the term, more fully set forth in the Lease Agreement, dated June 30, 2016, by and between the Authority, as lessor, and the City, as lessee (the "Lease Agreement"), all of the provisions of which are hereby incorporated into this Memorandum of Lease Agreement by reference.

Section 2. Leased Premises; Term. The Authority leases, lets and demises unto the City and the City leases, hires and takes from the Authority, those certain parcels of real property situated in the City of Calexico, State of California, more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Site"), and those certain improvements on the Site, more particularly described in Exhibit B attached hereto and made a part hereof (the "Facility"). The Lease Agreement is for a term commencing on June 30, 2016 and ending on June 30, 2020, or such earlier or later date on which the Lease Payments (as defined in the Lease Agreement) are paid in full or provision has been made for such payment in accordance with the Lease Agreement.

Section 3. Provisions Binding on Successors and Assigns. Subject to the provisions of the Lease Agreement relating to assignment and subletting, the Lease Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns, including the Authority.

Section 4. Purpose of Memorandum. This Memorandum of Lease Agreement is prepared for the purpose of recordation, and it in no way modifies the provisions of the Lease Agreement.

Section 5. Execution. This Memorandum of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority has caused this Memorandum of Lease Agreement to be executed in its corporate name by its duly authorized officers; and the City has caused this Memorandum of Lease Agreement to be executed in its name by its duly authorized officers, as of the date first above written.

CALEXICO PUBLIC FINANCING
AUTHORITY

By _____
Nick Fenley,
Executive Director

CITY OF CALEXICO

By _____
Nick Fenley
City Manager

ATTEST:

Gabriela T. Garcia
City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

DESCRIPTION OF ATTACHED DOCUMENT

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Names Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

Individual

Corporate Officer -- Title(s):

Partner -- Limited General

Attorney in Fact

Trustee

Guardian or Conservator

Other:

Signer(s) Other Than Named Above

\$3,500,000
LEASE AGREEMENT
dated June 30, 2016,
by and between the
Calexico Public Financing Authority, as Sublessor, and
the City of Calexico, California, as Sublessee,

CERTIFICATE OF ACCEPTANCE OF LEASE AGREEMENT

This is to certify that the interest in real property conveyed by the Lease Agreement, dated June 30, 2016, from Calexico Public Financing Authority, as sublessor, to the City of Calexico, California, as sublessee (the "City"), as evidenced by the Memorandum of Lease Agreement recorded concurrently herewith, is hereby accepted by the undersigned officer on behalf of the City pursuant to authority conferred by resolution of the City Council of the City adopted on June 30, 2016, and the sublessee consents to recordation thereof by its duly authorized officer.

Dated as of June 30, 2016

CITY OF CALEXICO, CALIFORNIA

By _____
Armando G. Villa
City Manager

TO BE RECORDED AND WHEN RECORDED
RETURN TO:

Best Best & Krieger LLP
3390 University Avenue, 5th Floor
Riverside, CA 92501
Attention: Kim Byrens, Esq.

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF
THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT, dated June 30, 2016 (this “Assignment Agreement”), is among the CALEXICO PUBLIC FINANCING AUTHORITY, a joint exercise of powers authority duly organized and existing under the laws of the State of California (the “Authority”), the WASTEWATER ENTERPRISE OF THE CITY OF CALEXICO, and its successors and assigns (in its capacity as assignee, the “Assignee” or “Purchaser”) and the CITY OF CALEXICO (the “City”).

B A C K G R O U N D :

1. In order to provide financing to fund a working capital shortfall in the City’s General Fund, the City is leasing the real property more particularly described in Appendix A attached hereto, and by this reference incorporated herein (the “Leased Property”), to the Authority, pursuant to a Site and Facilities Lease dated June 30, 2016 (the “Site Lease”), between City as lessor and the Authority as lessee, and recorded concurrently herewith, and the Authority is leasing the Leased Property back to the City pursuant to a Lease Agreement dated June 30, 2016 (the “Lease”), between the Authority as lessor and the City as lessee, and recorded concurrently herewith. Under the Lease, the City is obligated to pay annual lease payments (the “Lease Payments”) to the Authority in consideration of such lease.

2. The Authority wishes to assign its rights under the Lease, including but not limited to its right to receive and enforce the Lease Payments, to the Assignee for the purpose of providing the funds required to fund a working capital deficit for the City’s General Fund.

A G R E E M E N T :

In consideration of the material covenants contained in this Assignment Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms.* All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Lease.

SECTION 2. *Assignment.* The Authority hereby assigns to the Assignee all of the Authority's rights under the Lease (excepting only the Authority's rights under Sections 5.11, 7.03 and 8.04 of the Lease) (the "Assigned Rights"), including but not limited to:

- (a) the right to receive and collect all of the Lease Payments from the City under the Lease,
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Leased Property, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Leased Property, and
- (c) the right to exercise such rights and remedies conferred on the Authority under the Lease as may be necessary or convenient (i) to enforce payment of the Lease Payments and any amounts required to be applied to the prepayment of the Lease Payments, or (ii) otherwise to protect the interests of the Assignee in the event of a default by the City under the Lease, which rights and remedies may be exercised by the Assignee.

The assignment made under this Section 2 is absolute and irrevocable, and without recourse to the Authority.

SECTION 3. *Acceptance.* (a) The Authority hereby acknowledges that the Purchase Price has been paid by the Purchaser.

(b) The Authority, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign and transfer to the Purchaser, irrevocably and absolutely, without recourse, all of its right, title and interest in and to the Lease Agreement, including, without limitation, the right to receive the Lease Payments to be paid by the City under and pursuant to the Lease Agreement; provided, however, that the Authority shall retain the rights under the Lease Agreement to indemnification and payment for any costs and expenses. This assignment is irrevocable and absolute and is immediately effective.

(c) The Assignee hereby accepts the assignments made herein for the purpose of securing the payments due under the Lease to, and the rights under the Lease of, the Authority.

SECTION 4. *Consideration; Deposit of Funds.* In consideration of the assignment to the Assignee of the Lease Payments and certain other rights of the Authority under Section 2, the Assignee hereby agrees to deposit the amount of \$3,500,000 with the General Fund.

SECTION 5. *Representations.* (a) The Authority represents and warrants to the Assignee that:

(i) Enforceability of Assignment Agreement. The Authority has the power, authority, and legal right to execute, deliver and perform this Assignment Agreement, and this Assignment Agreement is a valid, binding, and enforceable obligation of the Authority, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles; and

(ii) Marketable Title. Good and marketable title to the rights assigned hereunder has been duly vested in the Assignee free and clear of any liens, security interests, encumbrances or other claims other than the rights of the City under the Lease, and the Authority has not assigned or transferred any of the rights assigned hereunder or any interest in the rights assigned hereunder to any party other than the Assignee.

(iii) Neither the execution and delivery of this Assignment Agreement, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound.

(b) Each of the City and the Authority acknowledges and agrees that the Purchaser is acting and has acted solely as lender for its own loan account and not as a fiduciary for the City or the Authority and is not acting as a broker, dealer, municipal advisor or municipal securities underwriter in connection with the execution or delivery of the Lease Agreement, or this Assignment Agreement or any documents relating thereto.

SECTION 6. *Covenants.* (a) Nonimpairment of Lease. The Authority agrees that it (1) shall not have any right to amend, modify, compromise, release, terminate or permit prepayment of the Lease, and (2) shall not take any action that may impair the payment of Lease Payments or the validity or enforceability of the Lease.

(c) Lease Payments. If the Authority receives any Lease Payments, then the Authority shall receive such payments in trust for the Assignee and shall immediately deliver the same to the Assignee in the form received, duly endorsed by the Authority for deposit by the Assignee.

SECTION 7. *Restriction on Transfers.* The Assignee shall not have the right to assign, transfer or convey the Lease or any interest therein or portion thereof.

SECTION 8. Expenses. The fees and disbursements of Special Counsel, the fees and disbursements of the financial advisor to the City or the Authority, fees of Assignee's Counsel and other miscellaneous expenses of the City or the Authority incurred in connection with the offering and delivery of the Lease shall all be the obligation of the Authority. The Assignee shall not have any responsibility for any expenses associated with the Lease, including, but not limited to, the expenses identified above as the obligation of the Authority.

SECTION 9. *Release and Indemnification.* The City shall, to the extent permitted by law, indemnify and save the Assignee, and its respective officers, agents, directors and employees,

harmless from and against all claims, losses, liabilities, costs, expenses and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management or operation of, or from any work or thing done on, the Leased Property by the City, including injury or damages to any persons or property arising therefrom, (b) any breach or default on the part of the City in the performance of any of its obligations under the Lease Agreement, or (c) any act of negligence of the City or the Authority or of any of their agents, contractors, servants, employees or licensees with respect to the Leased Property. No indemnification is made under this Section for willful misconduct or negligence by Assignee or its officers, agents, directors or employees. The provisions of this Section shall continue in full force and effect, notwithstanding the termination of the Term of the Lease Agreement for any reason.

SECTION 10. *Conditions to Assignee Performance.* The Assignee hereby enters into this Assignment Agreement in reliance upon its own due diligence and the representations and warranties of the City contained herein and the representations and warranties to be contained in the documents and instruments to be delivered on the Closing Date and upon the performance by the City and the Authority of their respective obligations both on the Closing Date. Accordingly, the obligations of the Assignee under this Assignment Agreement to purchase and to accept the assignment of Lease hereunder shall be subject, at the option of the Assignee, to the accuracy in all material respects of the representations and warranties of the City contained herein as of the date hereof, to the accuracy in all material respects of the statements of the officers and other officials of the City and the Authority made in any certificate or document furnished pursuant to the provisions of the Lease Agreement or hereof, to the performance by the City and the Authority of their respective obligations to be performed hereunder and under the Lease Agreement, at or prior to the Closing Date, and also shall be subject to such additional legal opinions, certificates, proceedings, instruments and other documents as counsel to the Assignee or the Assignee may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the representations contained herein and the due performance or satisfaction by the City at or prior to such time of all agreements then to be performed and all conditions then to be satisfied.

SECTION 11. *Execution in Counterparts.* This Assignment Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Assignment Agreement may be separately executed by the Assignee, the Authority and the City, both with the same force and effect as though the same counterpart had been executed by the Assignee, the Authority and the City.

SECTION 12. *Binding Effect.* This Assignment Agreement inures to the benefit of and binds the Authority and the Assignee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 13. *Fees and Costs.* The Authority agrees to pay, or cause the City to pay all fees and costs relating to this Assignment Agreement, the Lease Agreement and any related transactions including financial advisory fees, Bond Counsel fees, fees of the Assignee's counsel or any other fees and costs in connection with this transaction.

SECTION 14. *Governing Law.* This Assignment Agreement is governed by the laws of the State of California.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Assignment Agreement by their duly authorized officers as of the day and year first written above.

**CALEXICO PUBLIC FINANCING
AUTHORITY**

By: _____
Joong S. Kim, Mayor

**CITY OF CALEXICO, WASTEWATER
ENTERPRISE FUND, *as Assignee***

By: _____
Joong S. Kim, Mayor

CITY OF CALEXICO, as City

By: _____
Joong S. Kim, Mayor

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

For APN/Parcel ID(s): 058-445-001-000

Block 24 and the North 220 feet Block 27, of the Townsite of Calexico, in the City of Calexico, County of Imperial, State of California, according to amended Map No. 911 on file in the office of the County Recorder of San Diego County, a copy of said map being on file in the office of the County Recorder of Imperial County.