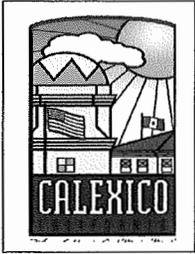


**AGENDA
ITEM**

7



AGENDA STAFF REPORT

DATE: March 6, 2019

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: David Dale, City Manager

SUBJECT: Ratification of Employment Agreement with Police Chief and Fire Chief

=====

Recommendation:

Ratification of Employment Agreement with Gonzalo Gerardo as Police Chief and Diego Favila as Fire Chief.

Background/Discussion:

Under section 2.02.100 of the City's Municipal Code the City Manager has the authority to control, order and direct all heads of City Departments. Moreover, section 2.02.110 provides the City Manager has the authority to appoint, remove, promote and demote all officers and employees of the City, except the city clerk and city attorney.

Further, under Sections 2.10.030 and 2.08.030, the City Manager has the authority to appoint the Police Chief and Fire Chief subject to the approval of the City Council. The employment agreements are being brought to council for ratification.

The terms of the employment contract with Mr. Gerardo as Police Chief include:

- Salary of \$121,332.00
- Health, retirement, holidays, sick leave, executive leave, vacation and insurance benefits.
- Uniform Allowance.
- Reimbursement for reasonable and necessary travel and business expenses.
- Termination at any time, with or without cause.

**AGENDA
ITEM
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The terms of the employment contract with Mr. Favila as Fire Chief include:

- Salary of \$121,332.00
- Health, retirement, holidays, sick leave, executive leave, vacation and insurance benefits.
- Uniform Allowance.
- Reimbursement for reasonable and necessary travel and business expenses.
- Termination at any time, with or without cause.

Fiscal Impact:

Under the Employment Agreement with Mr. Favila, the City will pay Mr. Favila \$121,332 per year. The estimated yearly benefit package for Mr. Favila's employment is \$ 60,210.83.

Under the proposed Employment Agreement with Mr. Gerardo, the City will pay Mr. Gerardo \$121,332 per year. The estimated yearly benefit package for Mr. Gerardo's employment is \$ 64,552.21.

Coordinated with:

City Attorney.

Attachment:

1. Employment Agreement for Police Chief Between the City of Calexico and Gonzalo Gerardo.
2. Employment Agreement for Fire Chief Between the City of Calexico and Diego Favila.
3. Contract Details for Mr. Favila and Mr. Gerardo

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

This AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between **Gonzalo Gerardo** (hereinafter referred to as "Employee") and the CITY OF CALEXICO, CALIFORNIA (hereinafter referred to as the "City" or "Employer") as of December 14, 2018.

WHEREAS, Employer agrees to hire Employee to render services as **POLICE CHIEF**; and

WHEREAS, The City Manager has the duty and responsibility under the Calexico Municipal Code Sections 2.02.100 and 2.02.110 to appoint, control, direct and remove subordinate officers and employees, and

WHEREAS, the parties agree that the Employee will serve at the will and pleasure of the City Manager per the terms of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment and Term. The City hereby agrees to employ Employee, and Employee agrees and does accept at will employment upon the terms and conditions set forth herein. The effective date of employment shall be December 14, 2018. The term of this Agreement shall be for three (3) years, unless sooner terminated or extended by the parties as set forth in this Agreement ("Initial Term").

In the event that the City Manager determines that the Employee is not to be reemployed upon expiration of the Initial Term, he shall be given written notice thereof by the City at least two (2) months in advance of the expiration of the Initial Term. Should the City fail to give notice at least two (2) months prior to the expiration of the Initial Term, the Agreement shall automatically be extended on the same terms and conditions for additional successive periods of one (1) year ("Succeeding Term"), unless and until the City Manager provides written notice to Employee two (2) months prior to the expiration of any Succeeding Term.

2. Duties and Obligations of Employee.

A. Employee will be appointed at will for City as **POLICE CHIEF** (hereinafter referred to as "Position"). As of the date of this Agreement, the parties formalize the employment agreement and Employee's job responsibilities as set forth in the relevant job description, attached as Exhibit "A." Employee hereby agrees to perform the functions and duties of the Position as set forth in the applicable job description, the City's Resolutions, Rules, Regulations and Policies as they may be changed by the City from time to time, and to perform such other duties and functions as the City and specifically the City's City Manager may assign. It is expressly understood that the terms of this Agreement, including but not limited to those governing termination of employment, supersede any rights conferred by City Resolution, Rules, Regulations or Policies where in contradiction.

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

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

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

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

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

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

3. Salary and Benefits.

- A. *Salary.* Employee shall be compensated at the range of G-69, Step 3, with a monthly salary of Ten Thousand One Hundred Eleven Dollars and Zero Cents (**\$10,211.00**) per month, which shall be payable in installments at the same time as other employees of the City are paid, pursuant to the procedures regularly established, and as they may be amended by the City. The Employee will also be eligible for annual Cost of Living Adjustment ("COLA") and "step" merit increases to salary based on performance reviews at the discretion of the City Manager, as provided to all other City employees.
- B. *Automobile Allowance.* As consideration for use of his need for a vehicle to perform work-related duties, the City shall provide the Employee with a city vehicle.
- C. *Uniform Allowance.* A uniform allowance for \$1,500.00 will be provided on an annual basis.
- D. *Vacation.* Employee shall accrue one hundred seventy-six (176) hours of vacation for each year. The City may, in its discretion, allow employee a weekly prorated accrual per week in total one hundred seventy-six accrual by year end. Such vacation may be carried over, if not used, and may accumulate to a cap of **two-year** balance. Once the accrual cap is reached, the Employee will not accrue additional vacation hours until he reduces his accrued hours below the cap. Proposed Employee vacation dates must be approved by the City Manager to best suit City needs. City will also buy down the employee's current accrued vacation hours on January 1, 2019 to a total of 250 accrued vacation hours.
- E. *Holidays.* Employee shall receive the following paid holidays: New Year's Day, Washington's Birthday, Martin Luther King, Jr. Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, California Admissions Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.
- F. *Sick leave.* Employee shall accrue 3.69 hours of sick leave per pay period. Accrued but unused sick leave will be paid out upon Employee's separation from employment consistent with the terms of such sick leave pay out as provided to officers covered under their current Memorandum of Understanding (MOU), as that MOU may be changed from time to time. Likewise, Employee's sick leave accruals will be capped consistent with the accrual limitations as set for the in the current MOU. Nothing about the reference to terms in the MOU shall be construed as conferring or implying membership in the POA, nor are any other benefits or rights provided to covered officers conferred unless expressly provided herein, including but not limited to due process, appeal rights, or so-called *Skelly* rights.
- G. *Executive leave.* Upon execution of this Agreement and each year thereafter, Employee will be allotted twenty-two (72) hours away from the office, to be scheduled and used throughout the year to complete administrative tasks and duties without undue office interference. These hours off do not accrue, are not subject to carry over, are not subject to any cash-out option, and will not be paid out upon termination of employment.
- H. *Professional development.* The City shall budget and pay for approved professional dues and association memberships necessary for continued participation in approved organizations necessary for Employee's continued professional growth and advancement. The City shall also pay for travel and subsistence expenses (as set out by applicable City policy) for approved professional or official travel, meetings, training, seminars or similar functions.
- I. *Other benefits pursuant to City policy.* In addition, Employee shall be provided those benefits for which Employee is eligible pursuant to policies and procedures of the City and consistent with those

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

benefits conferred to senior police officer personnel. Employee shall also be required to pay medical, dental and prescription and optical benefits insurance costs consistent with such payments and cost-sharing shouldered by other senior police officer personnel, whether imposed by City policy or pursuant to the relevant MOU. Employee will not be provided comp time; however, the City will buy back the Employee's current accrued comp time on January 1, 2019.

- a. *Retirement.* The City will provide Employee CalPERS retirement benefits pursuant to its agreements with CalPERS. Currently, the City contracts with CalPERS to provide Employee a 2% at age 50 retirement plan. Employee shall pay his portion of his CalPERS contribution on terms consistent with those provided to other senior police officer personnel per their current MOU. Nothing about the reference to terms in the MOU shall be construed as conferring or implying membership in the POA, nor are any other benefits or rights provided to covered officers conferred unless expressly provided herein, including but not limited to due process, appeal rights, or so-called *Skelly* rights.

4. At-Will Employment Status, Termination of Agreement and Severance Pay.

A. *Nature of Employment.* The parties hereby expressly agree that the employment relationship created by the Agreement is "at will" and that Employee serves at the will and pleasure of the City. Nothing in this Agreement, any Resolution, Statute, Ordinance, Rule or Policy shall prevent, limit or otherwise interfere with the right of the City to terminate the services of Employee at any time without cause or right of notice, *Skelly* conference, hearing, appeal or grievance. Accordingly, Employee agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment and that he hereby waives any rights he would otherwise have there under.

B. *By the Employee.* The Employee may terminate this Agreement upon written notice to the City Manager and shall endeavor to give thirty (30) days prior notice. The City shall have the option, in its complete discretion, to terminate the Employee any time prior to the end of such notice period, provided the City pays the Employee all compensation due to include vacation, sick leave (as such may be paid out pursuant to City policies and practices) and owing through the last day actually worked, plus an amount equal to the base salary the Employee would have earned through the remainder of the notice period. Thereafter, all the City's obligations under this Agreement shall cease.

C. *By the City, Without Cause.* At any time, and without prior notice, the City may terminate the Employee's employment for any reason, with or without cause. In the event the City exercises its right under this provision to terminate employment without cause, the City shall pay Employee all compensation due to include vacation and sick leave (as such may be paid out pursuant to City policies and practices) and owing through the last day actually worked, plus sixteen weeks of the Employee's salary as of the time of the termination *or* pursuant to the requirements of Government Code § 53260, an amount equivalent to the remainder of the term of this Agreement, whichever is less. The payment of such severance benefit shall be conditioned upon Employee executing a general release agreement containing a general release of all claims Employee may have against the City at the time of any such termination, in such form as may be reasonably required by Employer's attorney. Such severance benefit shall not be payable unless and until Employee executes such a general release and until expiration of all waiver and rescission rights as provided by law at the time of such termination. Failure by the Employee to satisfy his termination obligations pursuant to Section 4(E) shall nullify the City's obligation to provide severance payment pursuant to this Section. If Employee is convicted of a crime involving an abuse of his office or position, whether before or after release from employment, Employee shall fully reimburse the City for any severance pay, paid leave salary disbursed pending an investigation, or legal criminal defense funds relevant to the crime paid for by the City.

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

D. *By the City, For Cause.* At any time, and without prior notice, the City may terminate Employee for Cause (as defined below). The City shall pay Employee all compensation then due and owing; thereafter, all of the City's obligations under this Agreement shall cease. Termination shall be for "cause" if Employee: (1) acts in bad faith and to the detriment of the City; (2) refuses or fails to act in accordance with any specific legal direction or order of the City; (3) exhibits in regard to his employment unfitness or unavailability for service, unsatisfactory performance, misconduct, dishonesty, habitual neglect, or incompetence; (4) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; or (5) breaches any material term of this Agreement. Any dispute between the City Manager and Employee regarding whether the Employee's conduct constitutes cause for termination shall be resolved conclusively by the City Council, in its discretion, without right of appeal.

E. *Termination Obligations.* Employee agrees that all property, including, without limitation, all equipment, tangible proprietary information, documents, records, notes, contracts, and computer-generated materials furnished to or prepared by Employee incident to his employment belongs to the City and shall be returned promptly to the City upon termination of Employee's employment. Further, any and all debts to the City shall be paid upon termination. Employee's obligations under this subsection shall survive the termination of his employment.

F. *Retirement-in lieu of termination.* Employee and the City agree that the employee has the option of retirement in lieu of termination, with all the benefits described above.

5. Badge, Wallet & ID Upon Retirement. Upon retirement the City of Calexico will purchase the employee a retirement flat badge and wallet and retirement ID card. The employee will have the option on buying the service weapons assigned to him at their current market value.

6. Amendments. This Agreement may not be amended or modified except by a writing signed by both parties.

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

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

9. Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

10. Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be appropriate in the Superior Court of Imperial County, California.

12. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. Furthermore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

13. Conflict of Interest. The Employee agrees that he will abide with all applicable local State and Federal

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

rules on conflicts of interest and receipt of gifts, including without limitation those rules found in the California Fair Political Practices Act and related regulations and those found in Government Code Sections 1090, *et seq.*

14. Entire Agreement. Each party agrees and acknowledges that this Agreement, together with its exhibits, shall constitute the entire understanding and final written integrated expression of all of the agreements between the City and Employee and that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

15. Notices. All notices and other communication required, or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Services. Notice shall be given to:

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

Employee:
Gonzalo C Gerardo
671 Mc Carran Ct W.
Imperial, CA 92251

16. Acknowledgment. Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the CITY OF CALEXICO has caused this Agreement to be signed and duly executed by its City Manager, and the Employee has signed and executed this Agreement as of the day and year first above written.

CITY OF CALEXICO

By: David Dale
DAVID B. DALE, CITY MANAGER

EMPLOYEE:

By: Gonzalo Gerardo
Gonzalo Gerardo

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

EXHIBIT "A"

JOB DESCRIPTION



CITY OF CALEXICO

CLASS TITLE: POLICE CHIEF

SALARY: \$8,516.00 - \$10,351.00

BASIC FUNCTION:

Under the direction of the City Manager, plan, organize, control and direct the activities and personnel of the Calexico Police Department; assure the protection of life and property and prevention of crimes; direct Department operations including crime prevention, law enforcement, public relations, border patrols and related functions; supervise and evaluate the performance of assigned personnel.

REPRESENTATIVE DUTIES:

ESSENTIAL DUTIES:

Plan, organize, control and direct the activities and personnel of the Calexico Police Department; develop, coordinate and evaluate Departmental activities and programs; meet with staff, City officials, citizens and others regularly to discuss day-to-day problems, develop strategies to resolve future problems and to assure maximum benefit from available resources.

Prepare department annual operating budget; control and monitor expenses within budget; assure fiscal responsibility and cost consciousness; prepare budget and grant applications, reports and letters as appropriate; identify sources for grants.

Assure federal, State, County and municipal laws and ordinances are enforced; develop Department operating policies and procedures.

Coordinate and assign personnel and delegate work for appropriate and efficient use of resources; direct the maintenance, improvement, repair, replacement and acquisition of property and equipment.

Supervise and evaluate the performance of assigned staff; interview and select employees and make transfers, reassignment, termination and disciplinary actions; plan, coordinate and arrange for appropriate training of subordinates.

Establish and assign patrols for the Border Safety Zone; monitor daily flow of pedestrians and vehicles through the Calexico Port of Entry from Mexico into the United States; monitor and assure compliance with State and federal regulations regarding narcotics trafficking, contraband, technology, money, weapons and crimes against people or property.

October 2006

Ewing Consulting Services

Communicate with various department directors, the public and other governmental officials as appropriate regarding crime prevention and law enforcement administration, and resolve sensitive issues and public concerns.

Provide technical expertise, information and assistance to various administrators, officials and Council members regarding Police Department functions; assist in the formulation of policies, procedures and programs to assure an economical, safe and efficient work environment; provide consultation concerning unusual trends or problems and recommend appropriate corrective action.

Resolve complaints, concerns, issues or questions regarding Police Department personnel or Departmental policies or procedures; conduct private or group meetings or respond by telephone or written communications as needed; meet with Council and City Manager regarding priorities and services; oversee Internal Affairs investigations.

Prepare and review a variety of administrative reports, correspondence and other written materials; direct the preparation and maintenance of Police files, records and reports; review and revise written policy based on legislative changes, court decisions and City Council directives.

Operate office equipment including personal computer, calculator, copier and telephone; operate other police equipment including a document scanner, firearms, police radios, motor vehicles, cameras and others as assigned.

Represent the City at various functions and meetings; attend City Council, staff, community, citizen and other meetings as assigned; meet with various State and federal agencies including Mexican state, federal and related agencies.

Confer with other law enforcement officials to coordinate investigations and enforcement efforts and discuss law enforcement issues.

OTHER DUTIES:

Perform related duties as assigned.

KNOWLEDGE AND ABILITIES:

KNOWLEDGE OF:

Technical and administrative phases of crime prevention, law enforcement, rules of evidence and related functions.

Modern principles, practices and methods of Police administration, organization and operations.

Rules, regulations and procedures of the Police Department.

Municipal, State and federal criminal and related laws, ordinances and codes.

Powers and limitations of peace officers.

Behavior of criminals and the causes of underlying criminality.

Definitions and terminology of major crimes.

Fundamental principles and modern practices of administration, including those related to office management, personnel and general budgetary and fiscal practices with special emphasis in the area of public safety.

Oral and written communication skills.

Principles and practices of administration, supervision and training.

Interpersonal skills using tact, patience and courtesy.

ABILITY TO:

Plan, evaluate and direct the work of subordinates performing varied operations connected with Police activities.

Direct and control Police services and operations.

Enforce federal, State, County and City laws and ordinances.

Assure effective Police protection of the citizens of Calexico.

Oversee and direct diversified programs and activities within the Police Department.

Establish and maintain effective and cooperative working relationships with other City officials, State and federal authorities, civic leaders and the general public.

Prepare technical and administrative reports.

Analyze complex Police problems and adopt quick, effective and reasonable courses of action with due regard to surrounding hazards and circumstances.

Regulate the control of employees, expenditures and equipment for efficient and effective use.

Read, interpret, apply and explain rules, regulations, policies and procedures.

Communicate effectively both orally and in writing.

Work courteously and tactfully with customers and employees.

EDUCATION AND EXPERIENCE:

Any combination equivalent to: bachelor's degree in law enforcement, criminal justice or public administration and seven years experience in a qualified federal, State, county or municipal law enforcement agency including at least three years division supervisory experience.

LICENSES AND OTHER REQUIREMENTS:

Valid California driver's license.

Possession of Supervisory and Management POST Certification.

WORKING CONDITIONS:

ENVIRONMENT:

Office environment.

Equivalent to performance of all police duties.

Driving a vehicle to conduct work.

PHYSICAL DEMANDS:

Equivalent to performance of all police duties.

Speaking to deliver presentations.

HAZARDS:

Equivalent to performance of all police duties.

Frequent contact with dissatisfied or irate individuals.

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

This AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between **Diego Favila** (hereinafter referred to as "Employee") and the CITY OF CALEXICO, CALIFORNIA (hereinafter referred to as the "City" or "Employer") as of March 23, 2018.

WHEREAS, Employer agrees to hire Employee to render services as **FIRE CHIEF**; and

WHEREAS, The City Manager has the duty and responsibility under the Calexico Municipal Code Sections 2.02.100 and 2.02.110 to appoint, control, direct and remove subordinate officers and employees, and

WHEREAS, the parties agree that the Employee will serve at the will and pleasure of the City Manager per the terms of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

1. Employment and Term. The City hereby agrees to employ Employee, and Employee agrees and does accept at will employment upon the terms and conditions set forth herein. The effective date of employment shall be March 23, 2018. The term of this Agreement shall be for three (3) years, unless sooner terminated or extended by the parties as set forth in this Agreement ("Initial Term"). In the event that the City Manager determines that the Employee is not to be reemployed upon expiration of the Initial Term, he shall be given written notice thereof by the City at least two (2) months in advance of the expiration of the Initial Term. Should the City fail to give notice at least two (2) months prior to the expiration of the Initial Term, the Agreement shall automatically be extended on the same terms and conditions for additional successive periods of one (1) year ("Succeeding Term"), unless and until the City Manager provides written notice to Employee two (2) months prior to the expiration of any Succeeding Term

2. Duties and Obligations of Employee.

A. Employee will be appointed at will for City as **FIRE CHIEF** (hereinafter referred to as "Position"). As of the date of this Agreement, the parties formalize the employment agreement and Employee's job responsibilities as set forth in the relevant job description, attached as Exhibit "A." Employee hereby agrees to perform the functions and duties of the Position as set forth in the applicable job description, the City's Resolutions, Rules, Regulations and Policies as they may be changed by the City from time to time, and to perform such other duties and functions as the City and specifically the City's City Manager may assign. It is expressly understood that the terms of this Agreement, including but not limited to those governing termination of employment, supersede any rights conferred by City Resolution, Rules, Regulations or Policies where in contradiction.

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

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

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

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

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

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

3. Salary and Benefits.

- A. *Salary.* Employee shall be compensated at the range of G-66, Step 4, with a monthly salary of Nine Thousand Eight Hundred Fifty Eight Dollars and Zero Cents (**\$9,858.00**), which shall be payable in installments at the same time as other employees of the City are paid, pursuant to the procedures regularly established, and as they may be amended by the City. The Employee will also be eligible for annual Cost of Living Adjustment ("COLA") and "step" merit increases to salary based on performance reviews at the discretion of the City Manager, as provided to all other City employees.
- B. *Automobile Allowance.* As consideration for use of his need for a vehicle to perform work-related duties, the City shall provide the Employee with a city vehicle.
- C. *Uniform Allowance.* A uniform allowance for \$1,500.00 will be provided on an annual basis.
- D. *Vacation.* Employee shall accrue Twelve (12) days of vacation for each year of service. The City may, in its discretion, allow Employee a weekly prorated accrual per week in to total a twelve (12) day accrual by year end. Such vacation may be carried over, if not used, and may accumulate to a cap of Two-year balance. Once the accrual cap is reached, the Employee will not accrue additional vacation hours until he reduces his accrued hours below the cap. Proposed Employee vacation dates must be approved by the City Manager to best suit City needs.
- E. *Holidays.* Employee shall receive the following paid holidays: New Year's Day, Washington's Birthday, Martin Luther King, Jr. Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, California Admissions Day, Veterans Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.
- F. *Sick leave.* Employee shall accrue 3.69 hours of sick leave per pay period. Accrued but unused sick leave will not be paid out upon Employee's separation from employment with the City for any reason. The number of sick leave hours that Employee may have accrued at a given time may not exceed 240 hours.
- G. *Executive leave.* Upon execution of this Agreement and each year thereafter, Employee will be allotted sixty-four (64) hours away from the office, to be scheduled and used throughout the year to complete administrative tasks and duties without undue office interference. These hours off do not accrue, are not subject to carry over, are not subject to any cash-out option, and will not be paid out upon termination of employment.
- H. *Professional development.* The City shall budget and pay for approved professional dues and association memberships necessary for continued participation in approved organizations necessary for Employee's continued professional growth and advancement. The City shall also pay for travel and subsistence expenses (as set out by applicable City policy) for approved professional or official travel, meetings, training, seminars or similar functions.
- I. *Other benefits pursuant to City policy.* In addition, Employee shall be provided all those benefits for which Employee is eligible pursuant to policies and procedures of City Management Personnel as may be amended by the City from time to time, including but not limited to \$50,000 term life insurance and Social Security. Employee shall be required to pay the employee share of Social Security. Employee shall also be required to pay 20% of medical, dental and prescription and optical benefits insurance costs. Employee shall be subject to PEPR and will pay employee share of retirement contribution.

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

4. At-Will Employment Status, Termination of Agreement and Severance Pay.

A. *Nature of Employment.* The parties hereby expressly agree that the employment relationship created by the Agreement is "at will" and that Employee serves at the will and pleasure of the City. Nothing in this Agreement, any Resolution, Statute, Ordinance, Rule or Policy shall prevent, limit or otherwise interfere with the right of the City to terminate the services of Employee at any time without cause or right of notice, *Skelly* conference, hearing, appeal or grievance. Accordingly, Employee agrees that this Agreement sets forth the only terms and conditions applicable to the termination of his employment and that he hereby waives any rights he would otherwise have thereunder.

B. *By the Employee.* The Employee may terminate this Agreement upon written notice to the City Manager and shall endeavor to give thirty (30) days prior notice. The City shall have the option, in its complete discretion, to terminate the Employee any time prior to the end of such notice period, provided the City pays the Employee all compensation due and owing through the last day actually worked, plus an amount equal to the base salary the Employee would have earned through the remainder of the notice period. Thereafter, all the City's obligations under this Agreement shall cease.

C. *By the City, Without Cause.* At any time, and without prior notice, the City may terminate the Employee's employment for any reason, with or without cause. In the event the City exercises its right under this provision to terminate employment without cause, the City shall pay Employee all compensation due and owing through the last day actually worked, plus twelve weeks of the Employee's salary as of the time of the termination or pursuant to the requirements of Government Code § 53260, an amount equivalent to the remainder of the term of this Agreement, whichever is less. The payment of such severance benefit shall be conditioned upon Employee executing a general release agreement containing a general release of all claims Employee may have against the City at the time of any such termination, in such form as may be reasonably required by Employer's attorney. Such severance benefit shall not be payable unless and until Employee executes such a general release and until expiration of all waiver and rescission rights as provided by law at the time of such termination. Failure by the Employee to satisfy his termination obligations pursuant to Section 4(E) shall nullify the City's obligation to provide severance payment pursuant to this Section. If Employee is convicted of a crime involving an abuse of his office or position, whether before or after release from employment, Employee shall fully reimburse the City for any severance pay, paid leave salary disbursed pending an investigation, or legal criminal defense funds relevant to the crime paid for by the City.

D. *By the City, For Cause.* At any time, and without prior notice, the City may terminate Employee for Cause (as defined below). The City shall pay Employee all compensation then due and owing; thereafter, all of the City's obligations under this Agreement shall cease. Termination shall be for "cause" if Employee: (1) acts in bad faith and to the detriment of the City; (2) refuses or fails to act in accordance with any specific legal direction or order of the City; (3) exhibits in regard to his employment unfitness or unavailability for service, unsatisfactory performance, misconduct, dishonesty, habitual neglect, or incompetence; (4) is convicted of a crime involving dishonesty, breach of trust, or physical or emotional harm to any person; or (5) breaches any material term of this Agreement. Any dispute between the City Manager and Employee regarding whether the Employee's conduct constitutes cause for termination shall be resolved conclusively by the City Council, in its discretion, without right of appeal.

E. *Termination Obligations.* Employee agrees that all property, including, without limitation, all equipment, tangible proprietary information, documents, records, notes, contracts, and computer-generated materials furnished to or prepared by Employee incident to his employment belongs to the City and shall be returned promptly to the City upon termination of Employee's employment. Further, any and all debts to the City shall be paid upon termination. Employee's obligations under this subsection shall survive the termination of his employment.

5. Amendments. This Agreement may not be amended or modified except by a writing signed by both parties.

6. Waiver. The failure of either party to insist on strict compliance with any of the terms, covenants, or

**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

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

8. Severability. If a court or arbitrator holds any provision of this Agreement to be invalid, unenforceable, or void, the remainder of this Agreement shall remain in full force and effect.

9. Attorneys' Fees. In any legal action, arbitration, or other proceeding brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the law of the State of California. Venue shall be appropriate in the Superior Court of Imperial County, California.

11. Interpretation. This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. By way of example and not in limitation, this Agreement shall not be construed in favor of the party receiving a benefit nor against the party responsible for any particular language in this Agreement. Captions are used for reference purposes only and should be ignored in the interpretation of the Agreement. Furthermore, no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.

12. Conflict of Interest. The Employee agrees that he will abide with all applicable local State and Federal rules on conflicts of interest and receipt of gifts, including without limitation those rules found in the California Fair Political Practices Act and related regulations and those found in Government Code Sections 1090, *et seq.*

13. Entire Agreement. Each party agrees and acknowledges that this Agreement, together with its exhibits, shall constitute the entire understanding and final written integrated expression of all of the agreements between the City and Employee and that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein and that any agreement, statement, or promise not contained in this Agreement shall not be valid or binding on either party.

14. Notices. All notices and other communication required, or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Services. Notice shall be given to:

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

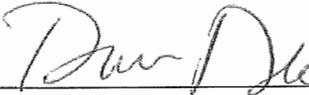
**EMPLOYMENT AGREEMENT WITH
THE CITY OF CALEXICO, CALIFORNIA**

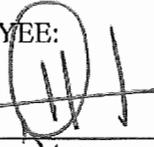
Employee:
Diego Favila
667 Yucca
Imperial, CA 92251

15. Acknowledgment. Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment and not on any representations or promises other than those contained in this Agreement.

IN WITNESS WHEREOF, the CITY OF CALEXICO has caused this Agreement to be signed and duly executed by its City Manager, and the Employee has signed and executed this Agreement as of the day and year first above written.

CITY OF CALEXICO

By: 
David B. Dale
City Manager

EMPLOYEE:
By: 
Diego Favila



CITY OF CALEXICO

CLASS TITLE: FIRE CHIEF

SALARY: \$8,516.00 - \$10,351.00

BASIC FUNCTION:

Under the direction of the City Manager, plan, organize, control and direct the activities, personnel, resources and operations of the Calexico Fire Department including fire suppression, investigation and prevention, training programs, public education, hazardous materials and emergency medical treatment; coordinate and implement the City's Emergency Disaster Planning programs and related services; train, supervise and evaluate the performance of assigned staff.

REPRESENTATIVE DUTIES:

ESSENTIAL DUTIES:

Plan, organize, control and direct the activities and personnel of the Calexico Fire Department, including fire suppression, investigation and prevention, training programs, public education and hazardous materials; establish and maintain Department time lines and priorities; assure related functions and activities comply with established standards, requirements, laws, codes, regulations, ordinances, policies and procedures.

Formulate and develop long- and short-range plans, goals and objectives for the Department; assess progress and performance in achieving established goals.

Develop and implement departmental policies, rules, regulations and general orders designed to prevent and minimize the loss of life and property in emergency situations; coordinate and implement the City's Emergency Disaster Planning programs and related services.

Supervise and evaluate the performance of assigned staff; interview employees and recommend hires, transfers, reassignment, termination and disciplinary actions; coordinate employee work assignments and review work to assure compliance with established standards, requirements and procedures; assure employee understanding of established requirements.

Plan and organize Fire Department operations and activities with respect to equipment, apparatus and personnel to assure maximum efficiency and effectiveness.

Respond to major emergency incidents and assume or delegate command; direct appropriate actions to protect life and property and control the spread of fire; serve on 24-hour on-call status as required.

Coordinate, direct and participate in the response to medical calls, fire alarms and other emergency situations; direct and participate in fire suppression and rescue activities; operate pumps, hoses, hydrants, compressors and a variety of hydraulic and electronic equipment; enter burning buildings to rescue inhabitants and access fires for suppression.

Direct the maintenance and repair of Fire Department equipment, apparatus and facilities; evaluate departmental requirements and approve appropriate purchases of supplies and equipment.

Plan, organize and direct training and educational activities in fire suppression, emergency medical aid, hazardous materials, use of equipment, special assignments and other matters to enhance departmental readiness and efficiency.

Organize and direct fire prevention inspections of commercial and residential buildings; investigate complaints from citizens regarding fire hazards; assure proper enforcement of fire prevention codes and ordinances; review community development plans to assure compliance with fire prevention codes and ordinances.

Attend, chair and participate in a variety of meetings, boards and committees; attend civic events and represent the Fire Department; provide information to civic groups regarding departmental functions and activities.

Prepare, analyze, review and supervise the preparation of comprehensive reports and records related to personnel, property and operations of the department; assure mandated reports are submitted to appropriate governmental agency in accordance with established time lines and requirements.

Communicate with the Council, City Manager, other City officials, community leaders and outside agencies to resolve problems, coordinate activities, exchange information and provide expertise.

Operate a variety of specialized equipment including hand and power tools; test hoses, hydrants and other apparatus and equipment to assure proper functioning; maintain and repair Fire Department equipment as needed; drive Fire Department vehicles as needed in emergency situations; utilize a computer and assigned software.

Assure adequate resources to meet City emergency medical, fire suppression and fire prevention needs; direct and participate in inventory activities; coordinate the purchase of materials and equipment as needed; prepare equipment specifications.

Formulate and prepare plans for continual improvement of the department in fire prevention, fire suppression and emergency medical services; recommend laws and ordinances.

Investigate fire scenes to determine cause and origin of fire as requested; assist with arson investigations; gather and document evidence.

Facilitate fire prevention by directing community educational activities and demonstrations.

OTHER DUTIES:

Perform related duties as assigned.

KNOWLEDGE AND ABILITIES:

KNOWLEDGE OF:

Planning, organization and direction of fire department activities, personnel, resources and operations.

Principles of municipal fire department administration.

Development of long-range plans and objectives for a large organization.

Fire Department organization, policies, rules and regulations.

Municipal, State and federal laws, ordinances and codes related to fires and emergencies.

Principles and practices of modern firefighting, fire inspection and fire prevention and EMS services.

Practices and procedures of emergency disaster planning.

Budget preparation and management.

Maintenance, repair, purchase and operation of a variety of fire suppression equipment and apparatus.

Proper handling of hazardous materials.

Fire suppression strategies, tactics and procedures.

Oral and written communication skills.

Correct English usage, grammar, spelling, punctuation and vocabulary.

Interpersonal skills using tact, patience and courtesy.

Principles and practices of administration, supervision and training.

Technical aspects of field of specialty.

City organization, operations, policies and objectives.

ABILITY TO:

Plan and organize diversified programs in fire department administration, public education, hazardous materials, training and fire prevention.

Formulate, develop and implement policies, plans and goals in a large emergency-response organization.

Manage and direct fire suppression and emergency services operations.

Coordinate and implement the City's Emergency Disaster Planning programs and related services.

Prepare and manage the Fire Department's budget.

Enforce federal, State and City Fire codes, laws and ordinances.

Respond to major emergency situations and assume or delegate command.

Direct the maintenance and repair of Fire Department property, equipment and apparatus.

Physically participate in fire suppression and emergency activities as needed.

Communicate effectively both orally and in writing.

Read, interpret, apply and explain rules, regulations, policies and procedures.

Establish and maintain cooperative and effective working relationships with others.

Analyze situations accurately and adopt an effective course of action.

Meet schedules and time lines.

Plan and organize work.

Train, supervise and evaluate personnel.

Work courteously and tactfully with customers and employees.

October 2006

Ewing Consulting Services

EDUCATION AND EXPERIENCE:

Any combination equivalent to: bachelor's degree in fire science, public administration or related field and five years increasingly responsible fire supervisory, management or command experience.

LICENSES AND OTHER REQUIREMENTS:

Valid California Class B driver's license.
California State EMT certification.
Valid and appropriate State Fire Officer certification.

WORKING CONDITIONS:

ENVIRONMENT:

Indoor and outdoor environment.
Adverse weather conditions.
Working around fumes and smoke.
Driving a vehicle to conduct work.
Evening or variable hours, and emergency call-out.

PHYSICAL DEMANDS:

Heavy lifting.
Bending, stooping, crawling, and pulling hoses to suppress fires and rescue victims.
Reaching overhead and above shoulders.
Carrying victims.
Standing and walking for extended periods of time.
Climbing ladders for rescue.
Dexterity of hands and fingers to utilize hand and power tools for medical and fire emergencies.
Seeing to fight fires, perform medical procedures and read a variety of materials.
Physical agility and stamina.

HAZARDS:

Smoke and fumes inhalation including toxic gases.
Working with people with unknown medical problems.
Working at heights.
Working in confined spaces.
Extreme weather conditions.
Exposure to contagious diseases, blood and bloodborne pathogens.
Working with hostile or abusive individuals.
Extreme heat.
Fire.
Various immediate dangers to life or health.
Falling objects.

CITY OF CALEXICO
 CONTRACT DETAIL - CHEIFS



FIRE CHIEF - 3 YR CONTRACT									
MEDICAL INSURANCE	RETIREMENT	LONGEVITY	LIFE INSURANCE	UNIFORM ALLOWANCE	AUTOMOBILE ALLOWANCE	OBSERVED HOLIDAYS	VACATION	SICK	EXECUTIVE LEAVE
City pays 80% for employee and dependents EPO PLAN	2% at 50 City pays employer portion	\$80 per month for 20 to 24 yrs of continuous service	City pays 100% of premium \$50,000 per employee	\$1,500 fiscal year	City vehicle provided	12 days	96 hours per year may accumulate to a cap of 2-year balance (192.00 hours)	3.69 hours per pay period may not exceed 240 hours	64 hours per year These hours are not subject to carry over
FINANCIAL IMPACT									
\$15,352.22	\$22,272.90	\$960.00	\$105.82	\$1,500.00		\$5,459.97	\$5,459.97 \$10,919.94 (CAP)	\$5,459.97 \$13,649.93 (CAP)	\$3,639.98

POLICE CHIEF - 3 YR CONTRACT									
MEDICAL INSURANCE	RETIREMENT	LONGEVITY	LIFE INSURANCE	UNIFORM ALLOWANCE	AUTOMOBILE ALLOWANCE	OBSERVED HOLIDAYS	VACATION	SICK	EXECUTIVE LEAVE
City pays 80% for employee and dependents PPO PLAN	2% at 50 City pays employer portion	\$20 every five years of continuous service.	City pays 100% of premium \$50,000 per employee \$2,500 per dependent	\$1,500 fiscal year	City vehicle provided	12 days	176 hours per year may accumulate to a cap of 2-year balance (352.00 hours)	96 hrs per year	72 hours per year These hours are not subject to carry over
FINANCIAL IMPACT									
\$16,813.42	\$19,261.32	\$1,206.00	\$105.82	\$1,500.00		\$5,599.78	\$10,266.26 \$20,532.52 (CAP)	\$5,599.78 \$11,199.56 (CAP)	\$4,199.83