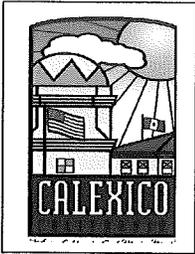


**AGENDA
ITEM**

6



AGENDA STAFF REPORT

DATE: July 3, 2019

TO: Mayor and City Council

APPROVED BY: David Dale, City Manager *DD*

PREPARED BY: David Dale, City Manager

SUBJECT: Approval of Employment Agreement with, Appointment and Swearing in of City Clerk

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Recommendation:

Approval of employment agreement with, appointment and swearing in of City Clerk.

Background/Discussion:

On April 3, 2019, the City Council adopted Ordinance No. 1198 amending Section 2.02.110 and adding Chapter 2.07 to the Calexico Municipal Code regarding the appointment process and duties of the City Clerk. The second reading occurred on April 17, 2019. Ordinance No. 1198 went into effect on May 17, 2019 and vested the City Manager with the authority to appoint the City Clerk as well as to remove, promote and demote the City Clerk.

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 attorney.

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

The terms of the employment contract with Ms. Garcia include:

- Salary of \$77,792.00 (Step 3)
- Health, retirement, holidays, sick leave, executive leave, vacation and insurance benefits.
- Termination at any time, with or without cause.



- Executive leave (64 hours)
- Professional development
- Maintains the pre-1993 Retiree Health Coverage
- Ability to revert to the Executive Assistant position or leave with (3) months' severance
- Retroactive to July 1, 2018

Fiscal Impact:

Under the Employment Agreement with Ms. Garcia, the City will pay Ms. Garcia \$77,792 retroactive from July 1, 2018. The estimated yearly benefit package for Ms. Garcia's employment is \$ 40,494.95.

Coordinated with:

City Attorney.

Attachments:

1. Proposed Employment Agreement for City Clerk.
2. Benefit Calculations for City Clerk Agreement.

EMPLOYMENT AGREEMENT WITH THE CITY OF CALEXICO, CALIFORNIA

This AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between GABRIELA T. GARCIA (hereinafter referred to as "Employee") and the CITY OF CALEXICO, CALIFORNIA (hereinafter referred to as the "City" or "Employer") as of July 1, 2018.

WHEREAS, Employer agrees to hire Employee to render services as City Clerk;

WHEREAS, The City Council 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 July 1, 2018; and Employee shall be entitled to retroactive pay to cover the difference in salary back to that date.

The term of this Agreement shall be for five (5) 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, she 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 City Clerk (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 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 her 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 Council 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 her duties pursuant to this Agreement shall be furnished to and become the property of the City, without restriction or

EMPLOYMENT AGREEMENT WITH THE CITY OF CALEXICO, CALIFORNIA

limitation on their use.

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 her 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 her 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-51, Step 3 Starting July 1, 2018, with a monthly salary of Sixty Thousand Four Hundred Eighty-Three dollars (\$6,483.00); and July 1, 2019 at G-51, Step 4; and July 1, 2020 at G-51, Step 5, 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. *Vacation.* Employee shall accrue Twenty-Two (22) days of vacation per year as per the City Personnel Rules and Regulations 6.77 Annual Vacation Accrual. The City may, in its discretion, allow Employee a weekly prorated accrual per week in order to total a Twenty-two (22) 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 such time as she reduces her accrued hours below the cap. Proposed Employee vacation dates must be approved by the City Manager to best suit City needs.

C. *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, Christmas Day, and two (2) Floating Holidays.

D. *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 with the City for any reason. Sick Leave Buy-Back option: If employee has 200 or more hours of accumulated sick leave, employee shall be eligible once per year to sell up to 40 hours of sick leave at the employee's current hourly pay rate.

E. *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.

F. *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.

G. *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 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. The Employee is entitled to the "Pre-1993 Retiree Health Coverage which will provide the Employee with lifetime medical coverage under the health plan. Employee will be provided benefit under Retiree Health Plan in which it is stated that the Retiree Health Plan Policy adopted by the City Council in May 18, 1993 outlines the criteria for the retiree health for those hired on or after May 18, 1993 as follows: "Pre-1993 Retiree Health Coverage:

EMPLOYMENT AGREEMENT WITH THE CITY OF CALEXICO, CALIFORNIA

For those employees who were hired before May 18, 1993 and who elect to continue coverage with the City's health plan upon their retirement from City service, they shall be entitled to lifetime medical coverage. Cost of the coverage shall be \$120.00 a month. At age 65, the City's health plan shall become secondary and Medicare shall be primary, and all claims shall be adjudicated accordingly. Any eligible employee, hired before May 18, 1993, who retires from City service after July 1, 2008, shall have the option of either selecting Pre-1993 Retiree Health Coverage, as described herein, or, in the alternative, if the employee chooses, the employee may elect the Post-1993 Retiree Health Coverage”

H. *Longevity Pay.* Employee will continue to receive Longevity Pay as outlined in the Rules and Regulations for City Personnel.

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 her employment and that she hereby waives any rights she would otherwise have thereunder.

B. *By the Employee.* The Employee may terminate this Agreement upon written notice to the City Council 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.* The City agrees to refrain from terminating Employee's employment without cause in any sixty (60) day period immediately following a new City Councilmember's installation so that the new Councilmember may have sufficient time to apprise his- or herself with Employee's performance prior to the termination. At any other 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 either revert Employee back to her original position as Executive Assistant at the City, within the established pay scale for that position, or release Employee with severance as established here. Should Employee decline employment as an Executive Assistant or should the City decide to release with severance in lieu of reversion to the Executive Assistant position, then it shall pay Employee all compensation due to include vacation and sick leave (as such may be paid pursuant to city policies and practices) and owing through the last day actually worked, plus three months of employee's salary as of the time of the termination or pursuant to the 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. If Employee is convicted of a crime involving an abuse of her 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. At the time of termination, should a budgeted position be available, and the Employee meets the minimum qualifications and experience for that position, the Employee will be offered the position and will be eligible for the equivalent salary range and benefits for that position.

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

EMPLOYMENT AGREEMENT WITH THE CITY OF CALEXICO, CALIFORNIA

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 her 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 or City Council and Employee regarding whether the Employee's conduct constitutes cause for termination shall be resolved conclusively by the City Manager, in his or her discretion, without the further 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 her 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 her 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 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.

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

12. Conflict of Interest. The Employee agrees that she 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

Employee:
Gabriela T. Garcia
927 Ollie Avenue
Calexico, CA 92231

15. Acknowledgment. Employee acknowledges that she has had the opportunity to consult legal counsel in regard to this Agreement, that she has read and understands this Agreement, that she is fully aware of its legal effect, and that she 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, CITY MANAGER

EMPLOYEE:

By: _____
GABRIELA T. GARCIA

CITY OF CALEXICO
 CONTRACT DETAIL - City Clerk



CITY CLERK - 5 YEAR CONTRACT							
MEDICAL INSURANCE	RETIREMENT	LONGEVITY	LIFE INSURANCE	OBSERVED HOLIDAYS	VACATION	SICK	EXECUTIVE LEAVE
City pays 80% for employee and dependents EPO PLAN	2% at 60 City pays employer portion	\$200 per month for 20 to 25 yrs of continuous service	City pays 100% of premium \$50,000 per employee	12 days	176 hours per year may accumulate to a cap of 2-year balance (352.00 hours)	96 hours per year	64 hours per year These hours are not subject to carry over
FINANCIAL IMPACT							
\$15,907.20	\$5,476.31	\$2,400.00	\$105.84	\$4,039.20	\$6,582.40	\$3,590.40	\$2,393.60
					\$13,164.80 (CAP)	\$1,496.00 (Sick buy Back if 200 accum)	