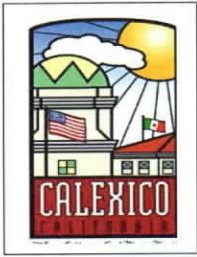


**AGENDA  
ITEM**

**6**



# AGENDA STAFF REPORT

**DATE:** December 16, 2020

**TO:** Mayor and City Council

**APPROVED BY:** Miguel Figueroa, City Manager *MF*

**PREPARED BY:** Miguel Figueroa, City Manager

**SUBJECT:** Approve and Authorize the City Manager to Sign the Enclosed Lease Agreement with Spencer Construction.

=====

**Recommendation:**

Consideration to approve and authorize the City Manager to sign the enclosed Lease Agreement with Spencer Construction located at 465 West Second Street, Calexico, California.

**Background:**

Spencer Construction has been sub-contracted to perform professional services for infrastructure projects in the City of Calexico. Their purpose to lease this property is to lease approximately 1.5 acres of land for the following uses: storage, preconstruction, fabrication, parking of vehicles, trucks, trailers, and containers.

**Discussion & Analysis:**

If approved, this lease agreement will begin December 16, 2020 and ending June 30, 2021. At the end of the term Spencer Construction shall have the right to extend the lease agreement on a month-to-month basis for up to six (6) additional one (1) month periods notifying the City of Calexico with an extension request not less than one (1) month prior to the expiration of the term.

**Fiscal Impact:**

\$1,000.00 in monthly payments. Funds are deposited to General Fund.

**Coordinated With:**

City Manager's Office.

**Attachment:**

1. City of Calexico – Spencer Construction Lease Agreement



## LEASE AGREEMENT

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**Preamble:** This Lease Agreement (hereinafter "Lease") is intended to memorialize the terms of a lease agreement between the City of Calexico (hereinafter referred to as "Landlord") and Spencer Construction (hereinafter referred to as "Tenant"), to lease certain real property owned by the City of Calexico.

IT IS HEREBY AGREED THAT:

1. **Leased Property:** Landlord and Tenant hereby agree that in consideration of the terms, conditions and covenants herein contained, Tenant shall lease from Landlord that certain land generally located at 465 West Second Street Calexico CA (hereinafter "Property"). A more specific description of this Property is included on Exhibit "A" attached hereto. The Property approximates 3.5 acres of which approximately 1.5 acres will be leased.

2. **Purpose:** It is intended by the parties that the Tenant's use of said Property is for the sole purpose of storage, preconstruction, fabrication, parking of vehicles, trucks, trailers, and containers. Tenant shall not use the Property for any other purpose than specified above without first obtaining the written consent of Landlord. Tenant shall not store any toxic waste products on said Property. Using the Property for any other purpose than that specified above, shall constitute a material breach of the terms of this Lease. Any use of the Property that is unlawful, or is in conflict with the Calexico Municipal Code, shall be a material breach of the terms of this Lease.

3. **Term:** The term of this Lease shall be beginning December 16, 2020 and ending June 30, 2021 (hereinafter "Term"). At the end of the Term, if Tenant is not in default, Tenant shall have the right to extend the Lease on a month-to-month basis for up to six (6) additional one (1) month periods, or as negotiated between Tenant and Landlord, by providing Landlord with notice of intent to extend not less than one (1) month prior to the expiration of the Term.

4. **Rent:** Tenant agrees to pay \$1,000.00 per month. In the event that Tenant elects to extend the Term on a month-to-month basis, the Rent payable during any such extension shall be \$1,250.00 per month. The rent for any fractional calendar month shall be prorated. Acceptance of a partial rental payment shall not constitute a waiver of the Landlord's right to demand full payment of all rent as required by this agreement.

Base rent shall include all operating expenses and real estate taxes and Tenant shall not be responsible for any such costs or other rents not specifically provided for under the terms of this Lease.

5. **Deposit:** Security Deposit shall be required of the Tenant in the amount equal to one month's rent of One Thousand Dollars (\$1,000.00). The said sum is to be returned promptly to the Tenant after this lease is terminated, according to these terms.

6. **Right to enter Property for purpose of inspection:** Landlord retains the right to enter the Property at reasonable times for the purpose of inspecting the facility as to its

maintenance and repair and compliance with City Municipal Code and all laws.

7. **Compliance with all City, State and Federal Laws:** Tenant hereby agrees to comply with all City, County, State, and Federal ordinances and statutes that are applicable to this Lease and the purposes outlined above.

8. **Licenses and Certification:** Tenant will not conduct any business activity, nor offer any services without obtaining, and maintaining in current status at all times, all licensing and/or certification as may be required by applicable Federal, State, and local authorities. Tenant will satisfy all land use requirements of the City of Calexico.

9. **Assignment and Subletting:** Tenant shall not sublet the premises or any part thereof, nor assign this lease, or any rights therein, without first obtaining the written consent of the Landlord. Any sublease or assignment of this lease without first obtaining the written consent of Landlord shall allow Landlord the option of canceling this lease however Landlord's consent shall not be unreasonably withheld.

10. **Liability of Landlord:** Tenant agrees to save and hold Landlord harmless from any injury to person or damage to Property arising out of or in connection with Tenant's occupancy, and/or use of the Property covered by this Lease. Tenant agrees to indemnify Landlord for any and all damage that may result to Landlord from Tenant's use of the Property pursuant to this Lease.

11. **Surrender of Premises:** At any time during the lease period, Tenant can terminate this Lease Agreement upon sixty (60) days written notice to Landlord at no additional cost or penalty. Upon the termination of the Lease, including any month-to-month tenancies as provided for herein, Tenant shall surrender the Premises to Landlord, clean and in the same condition as received except for ordinary wear and tear which Tenant was not otherwise obligated to remedy under any provision of this Lease. Tenant shall not be obligated to repair any damage which Landlord is required to repair. In addition, Landlord may require Tenant to remove any improvements (whether or not made with Landlord's consent) prior to the expiration of the Lease and to restore the Premises to its prior condition, all at Tenant's expense. All improvements which Landlord has not required Tenant to remove or improvements Tenant has not removed prior to the expiration of this Lease shall be Landlord's property and shall be surrendered to Landlord upon the expiration of the Lease. Tenant shall repair, at Tenant's expense, any damage to the Premises caused by the removal of any of Tenant's improvements. In the event, Tenant does not remove Tenant's personal property from the Premises prior to the end of the term, however ended, Landlord may, at its option, remove the same in accordance with all laws then in effect, or at Landlord's option, deliver the same to any other place of business of Tenant or warehouse the same, and Tenant shall pay the cost of such removal (including the repair of any injury or damage to the Premises resulting from such removal), delivery and warehousing to Landlord on demand, or Landlord may treat such property as having been conveyed to Landlord with this Lease as a bill of sale, without further payment or credit by Landlord or Tenant.

11. **Fire and Casualty Insurance:** Tenant agrees to carry fire and casualty insurance on any, and all, buildings, and the Property, in an amount not less than one million dollars

(\$1,000,000)

12. **Public Liability Insurance:** Tenant shall provide public liability insurance for personal injury and/or property damage arising out of or in connection with Tenant's occupancy of the Property in an amount of not less than one million dollars (\$1,000,000). The Tenant shall provide the Landlord with a Certificate of Insurance naming the Landlord as an "additional insured" covering said liability.

13. **Maintenance:** Tenant agrees to keep the Property of this Lease including all improvements thereon clean, neat and painted and otherwise reasonably maintained.

14. **Repairs:** All repairs to the Property and its improvements including all maintenance, servicing and replacement parts shall be at Tenant's expense. For the avoidance of doubt, Tenant shall not be responsible for repair or correction of conditions, including environmental conditions, existing on the Property prior to the commencement date of this Lease. The photographs attached hereto depict the condition of the Property as of the commencement date of this lease.

15. **Utilities:** Tenant agrees to pay for all utilities and services furnished to said Property.

16. **Default:** If Tenant, after notice from Landlord, fails to remedy within fifteen (15) days any default in the payment of any sum due under this Lease or in the keeping of any other term, covenant or condition of this Lease, then the Landlord or its agents may enter upon the Property, take possession thereof, and remove all persons therefrom and at Landlord's option, either terminate this Lease and all the Tenant's rights herein, or rent said Property for the account of the Tenant, or follow any other remedy provided by law. Any holding over beyond the term prescribed herein shall be construed as a month-to-month tenancy.

17. **Alterations:** Tenant may install temporary fence and gates to section off Property Boundaries. Tenant must receive prior written confirmation from Landlord before any alterations or additional improvements are made to the Property. At the end of the Term, Tenant shall remove all temporary fencing and gates and return Property to the condition it was in on the Commencement Date, ordinary wear and tear expected. A violation of this section of the Lease shall be cause for default by the Tenant.

18. **Attorney's Fees:** Should Landlord be compelled to institute any legal action to enforce any of the terms, covenants or conditions hereof, then in the event of the termination of said proceedings in the Landlord's favor, the Tenant hereby agrees to pay such sums as the court may deem reasonable on account of the Landlord's attorney's fees.

19. **Binding Upon Heirs:** The covenants and agreements contained in this Lease shall inure to the benefit of and be binding on the parties hereto, their heirs, legal representatives, successors or assigns.

20. **Notice:** Notices between the parties hereto may be served by mailing in the United States Mail to the following addresses:

Landlord: City Hall, 608 Heber Avenue, Calexico, CA 92231

Tenant: 10132 N. Oracle Road – Suite 160, Tucson, AZ 85704

21. **Modification:** This Lease constitutes the full and complete agreement between the parties. Any modification must be in writing and shall be signed by both parties and authorized by the Calexico City Council.

22. **Severance:** If any provision of this Lease is determined to be void by a court of competent jurisdiction, then such determination shall not affect any other provision of this Lease, and all such other provisions shall remain in full force and effect. It is the intention of the parties hereto that if any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

23. **Miscellaneous:** This Lease is the final agreement between the Parties pertaining to the lease of the Premises and supersedes all prior negotiations and agreements relating thereto. All amendments to this Lease shall be in writing and signed by all Parties. Any other attempted amendment shall be void.

This Lease binds any Party who legally acquires any rights or interest in this Lease from Landlord or Tenant. However, Landlord shall have no obligation to Tenant's successor unless the rights or interests of Tenant's successor are acquired in accordance with the terms of this Lease.

The laws of California shall govern this Lease regardless of that state's conflict of laws jurisprudence, and the exclusive venue for any action relating to this Lease shall be in the county where the Premises is located. THE PARTIES EXPRESSLY WAIVE ANY RIGHT THEY MAY HAVE TO HAVE ANY CONTROVERSY OR PROCEEDING BETWEEN THEM DECIDED BY A JURY. However, the parties agree to mediate any dispute(s) out of this agreement. If mediation does not resolve the issue, the parties agree to binding arbitration. Parties agree to share the costs 50/50.

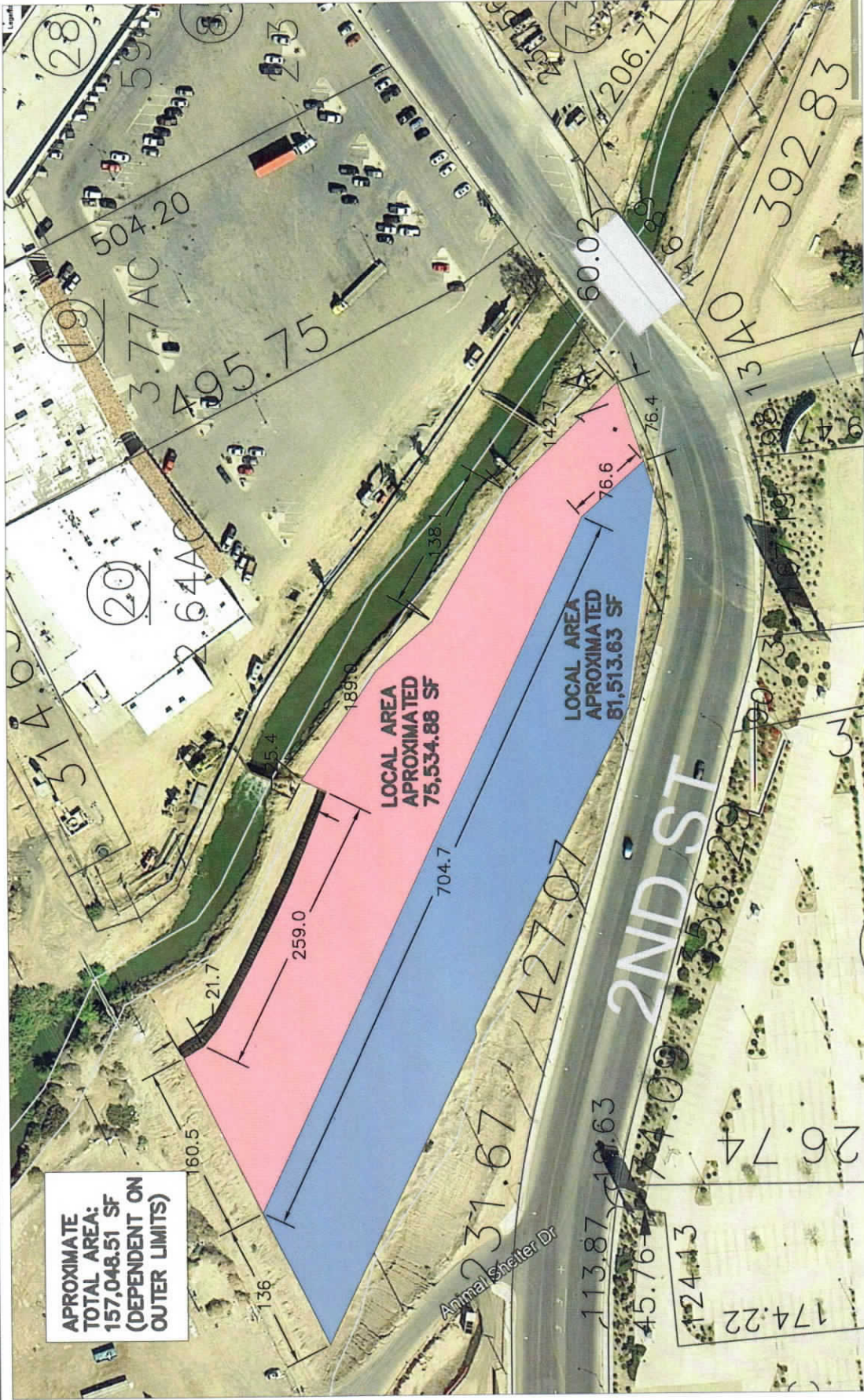
Tenant:

City of Calexico:

\_\_\_\_\_  
Spencer Construction

\_\_\_\_\_  
Rosie Arreola-Fernandez, Mayor

CITY OF CALEXICO, CA



REVISION	SIZE	DRAWN BY	PROJECT DESCRIPTION	SHEET TITLE	SHEET
*	A	I NEG DATE 11/30/2020	465 W 2ND ST	APPROX. AREAS	01 OF 01