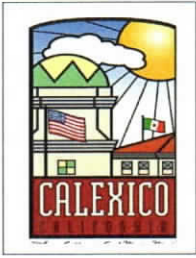


AGENDA
ITEM

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CITY COUNCIL AGENDA STAFF REPORT

DATE: October 19, 2022

TO: Mayor and City Council

APPROVED BY: Esperanza Colio Warren, City Manager *Esperanza Colio Warren*

PREPARED BY: Esperanza Colio Warren, City Manager *Esperanza Colio Warren*

SUBJECT: Discussion/Action/Direction Regarding Improvements to a City Building Located at 1100 Imperial Ave., Calexico, CA 92231 Leased for \$1 per year to the Chamber of Commerce for Greater Calexico

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Recommendation:

Discussion/Action/Direction on request by Chamber of Commerce for Greater Calexico for repairs to the city building located at 1100 Imperial Ave., Calexico, CA 92231.

Background:

On March 3, 2022 the City of Calexico leased a city building located at 1100 Imperial Ave., Calexico, CA 92231 to the Chamber of Commerce for Greater Calexico. The term of the lease is 10 years with an annual rent of \$1.00.

On September 19, 2022, three chamber board members discussed with the city manager the many issues with the building recently leased by the city and requested the city to make the following repairs:

1. Mold abatement as the building was found to be flooded
2. Roof repair or replacement.
3. Carpet removal and replacement
4. Removal of debris in the premises of the building
5. Placement of a trash container/dumpster

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Discussion & Analysis:

The Calexico building located in at the 1100 Imperial Ave., Calexico, CA 92231 was occupied for many years by the Calexico Chamber of Commerce. In the last years, the building was unoccupied which resulted in damages to the building due to vandalism and lack of maintenance. The estimated cost to address all the damages is approximately \$50,000 (based on recent mold abatement, roof repairs, and other improvements cost estimate for other City buildings in similar circumstances).

The lease agreement, section **Condition of, and Improvements to, Premises #7 (A & B)** states the following:

A. Improvements. Landlord shall have no obligation or responsibility, actual or implied, to install, construct, accommodate, or make any improvements to the Premises prior to, or as a condition of, Tenant' s occupation of the Premises.

B. As- Is Condition. Tenant acknowledges that it has been in possession of the Premises under a prior Lease and has had extensive time to inspect the Premises and be familiar with its condition. Tenant agrees to take possession of the Premises in an AS-IS condition.

Currently, the City does not have the financial capacity to make the requested repairs. It is recommended that any repairs to said building be postponed until the City's financial allows for the City to carry out these repairs.

Fiscal Impact:

The approximately cost of repairs is \$ 50,000.

Coordinated With:

Finance Department.

Attachment(s):

1. Executed Commercial Lease Agreement between the City of Calexico and the Chamber of Commerce for Greater Calexico.

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT (the “**Lease**”) is made and entered into by and between THE CITY OF CALEXICO (“**Landlord**”) and CHAMBER OF COMMERCE FOR GREATER CALEXICO (“**Tenant**”), under the following terms and conditions:

1. Description of the Leased Premises. Landlord hereby leases to Tenant and Tenant hereby leases from Landlord certain real property located at the Northwest corner of the Intersection of Highway 98 and Highway 111 commonly known as 1100 Imperial Ave, Calexico, CA 92231, APN 058120043000 and more particularly described in Exhibit “A” attached hereto and incorporated herewith (“**Premises**”).

2. Term and Occupancy.

A. Term. The term of this Lease shall be for ten (10) years; said term shall commence on March 3, 2022 (the “**Commencement Date**”), and end on March 3, 2032. At any time during the term of this Lease, the Landlord shall have the right to provide the Tenant with a 90-day advance notice of termination of the Lease.

B. Occupancy. Tenant is currently in possession of the Premises and may, upon execution of this Lease, continue to occupy the Premises on the Commencement Date subject to all terms and conditions of this Lease. Tenant understands and acknowledges that the Premises may be required by Caltrans for highway-related uses. If and when, Caltrans does determine to use the Premises, then Tenant agrees to vacate the Premises forthwith and this Lease with the City shall terminate.

3. Rent. The annual rent during the term of this Lease shall be \$1 per year. Tenant shall, commencing on the Commencement Date and continuing thereafter on the first (1st) day of October at the commencement of each lease year during the term of this Lease, pay to Landlord in advance, such annual rent.

4. Place of Payment of Rent. Rent and any other sums which may become due under this Lease shall be payable by hand delivery or mail to City Hall located at 608 Heber Ave, Calexico, CA 92231, or at such other place as Landlord may designate from time to time in writing.

5. Utilities. Tenant shall pay all utilities and other operating expenses associated with its use of the Premises under this Lease.

6. Taxes And Assessments.

A. Real Property Taxes. Tenant shall pay all real property taxes (including, if applicable, any possessory interest taxes and personal property taxes), general and special taxes and assessments (“**Real Property Taxes**”) levied and assessed against the Premises. Tenant shall pay the Real Property Taxes not later than the taxing authority’s delinquency date.

B. Tenant’s Tax Liability Prorated. Tenant’s liability to pay Real Property Taxes and new assessments shall be prorated on the basis of a 365-day year to account for any fractional

Tenant is responsible for all maintenance and repair of said building and any of its parts. This includes but is not limited to, all air conditioning and plumbing maintenance and repair.

11. Alterations and Liens. Tenant shall not make or cause to be made any alterations, additions, or improvements to or of the Premises or any part thereof without the prior written consent of Landlord. Tenant shall keep the Premises free and clear of any liens or encumbrances which may arise from such work.

12. Assignment and Subletting. Tenant shall not assign or encumber this Lease or any interest therein or sublet the Premises or any portion thereof either voluntarily or by operation of law without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, delayed or denied.

13. Entry by Landlord. Except for emergencies such as fire, water intrusion, and the like which may be at any time, Landlord and its agents shall have the right to enter the Premises at reasonable times to inspect and examine the same and to make such repairs to the Premises as the Landlord shall deem advisable, and to show the Premises to prospective tenants, buyers or lenders.

14. Indemnification.

A. Waiver of Claims. To the extent permitted by law, Tenant waives all claims against Landlord for damage to person or property arising for any reason. Tenant assumes all such risks for Tenant and any employees, licensees, invitees, volunteers, directors, agents, or contractors.

B. General Indemnity. Tenant agrees, as an independent unsecured obligation, separate from any of its promises or covenants in this Lease, to indemnify, defend (with counsel selected by Landlord at Tenant's expense), protect and hold harmless Landlord, its elected officials, employees, agents, officers, legal counsel, assigns, any successor or successors to Landlord's interest in the Premises and any future owners of the Premises to whom this Lease is assigned (hereinafter collectively referred to as the "**Indemnitees**") from and against all claims, actual damages (including but not limited to special and consequential damages), punitive damages, injuries, costs, response costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses arising out of any damage to any person or property occurring in, on, or about the Premises, except for any acts of negligence or willful misconduct by Landlord.

15. Insurance. Tenant's insurance requirements are attached as **Exhibit "B"** and incorporated herein by reference.

16. Default. If Tenant, after notice, fails to remedy any default (a) in the payment of any sum due under this lease for fifteen (15) days or (b) in the keeping of any other term, covenant or condition of this lease with all reasonable dispatch, not exceeding fifteen (15) days, then the Landlord or its agents may enter upon the demised Premises, take possession thereof, and remove all persons therefrom and at Landlord's option, it may either terminate this Lease and all the Tenant's rights herein, or it may rent said Premises for the account of the Tenant, or it may follow

any other remedy provided by law. Any holding over beyond the term prescribed herein shall be construed as month-to-month tenancy.

17. Signs. Tenant shall not place any sign upon the Premises without Landlord's prior written consent. Under no circumstances shall Tenant place a sign on any roof of the Premises.

18. Attorneys' Fees. If either party commences an action against the other party arising out of or in connection with this Lease, the prevailing party shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

19. Notices. Any notice required or permitted to be given hereunder may be given by personal delivery or by United States certified mail, postage prepaid, addressed to Tenant at the Premises and to Landlord at 608 Heber Ave, Calexico, CA 92231; or at such other address as the Landlord shall designate in writing.

20. Waiver. No delay or omission in the exercise of any right or remedy of Landlord on any default by Tenant shall impair such right or be construed as a waiver.

21. Successors and Assigns. Except as otherwise provided herein, all of the terms and conditions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

22. Titles and Definitions. The titles of Sections herein are for identification only. They shall not be considered to be a part of this Lease and shall have no effect upon the construction or interpretation thereof.

23. Entire Agreement/Amendment. This Lease contains the entire agreement of the parties and supersedes all prior negotiations, drafts, and other understandings which the Parties may have concerning the subject matter hereof. This Lease may not be modified except by written instrument duly executed by the parties hereto or their successors in interest.

24. Choice of Laws; Interpretation. This Lease shall be governed by and construed pursuant to the laws of the State of California. The provisions of this Lease shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party.

25. Approval by Board of Directors. This Lease shall be approved by the Board of Directors of the Chamber of Commerce for Greater Calexico, and a copy of the resolution of approval and authorizing the Executive Director of the Chamber of Commerce for Greater Calexico to execute said Lease shall be attached to this Lease and made a part hereof.

26. Authority. Each of the persons executing this Lease on behalf of Tenant warrants and represents that Tenant is a duly organized and validly existing entity, that Tenant has full right and authority to enter into this Lease and that the persons signing on behalf of Tenant are authorized to do so and have the power to bind Tenant to this Lease.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease on the day and year set forth below.

Dated: 3/2/22

LANDLORD:

By: M.F.

Name: Miguel Figueroa

Its: City Manager

Dated: 03/02/22

TENANT:

By: Katie Luna

Name: Katie Luna

Its: President

EXHIBIT A

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE STATE OF CA, COUNTY OF IMPERIAL, WITH A SITUS ADDRESS OF 1100 IMPERIAL AVE W, CALEXICO CA 92231- CURRENTLY OWNED BY CITY OF CALEXICO HAVING A TAX ASSESSOR NUMBER OF 058120043000 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS POR PAR 1 OF SHM 2-47 SELY OF IMPERIAL AVE BEING ALSO SHOWN AS ABANDONMENT BY CITY OF CALEXICO AREA ON ROW MAP LO-73618 AND DESCRIBED IN DOCUMENT NUMBER [N/A] DATED [N/A] AND RECORDED [N/A].



EXHIBIT B

INSURANCE REQUIREMENTS

Without limiting Tenant's indemnification of Landlord, and prior to commencement of Lease, Tenant shall obtain, provide and maintain at its own expense during the term of this Lease, policies of insurance of the type and amounts described below and in a form satisfactory to Landlord.

1. **General Liability Insurance.** Tenant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$2,000,000 per occurrence, \$4,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Deductible shall not exceed \$5,000.

2. **Workers' Compensation Insurance.** Tenant shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000). Tenant shall submit to Landlord, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of Landlord, its officers, agents, employees, and volunteers.

3. **Property insurance.** Upon commencement of construction of Tenant improvements and betterments, or taking possession for occupancy, Tenant shall provide evidence to Landlord of insurance on Tenant's personal property, furniture, fixtures and equipment, and any tenant improvements and betterments. Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy.

4. **Commercial property insurance:** Landlord shall maintain commercial property insurance covering the leased building. Tenant shall be responsible for maintaining liability insurance and coverage for personal property, furniture, fixtures, and equipment that have no permanent connection to the structure or utilities. Landlord shall not be liable for any business income or other consequential loss sustained by Tenant. Landlord shall not be liable for any loss of Tenant's personal property even if such loss is caused by gross negligence of Landlord, Landlord's employees or agents.

5. **Other provisions or requirements**

a. **Proof of insurance.** Tenant shall provide certificates of insurance to Landlord as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by Landlord's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with Landlord at all times during the term of this contract. Landlord reserves the right to require complete, certified copies of all required insurance policies, at any time.

b. **Primary/noncontributing.** Coverage provided by Tenant shall be primary and any insurance or self-insurance procured or maintained by Landlord shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of Landlord before the Landlord's own insurance or self-insurance shall be called upon to protect it as a named insured.

c. **Landlord's Rights of Enforcement.** In the event any policy of insurance required under this Lease does not comply with these specifications or is canceled and not replaced, Landlord has the right but not the duty to obtain the insurance it deems necessary and any premium paid by Landlord will be promptly reimbursed by Tenant plus a 10% administrative charge or Landlord will withhold amounts sufficient to pay premium from Tenant payments. In the alternative, Landlord may cancel this Lease.

d. **Acceptable Insurers.** All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the Landlord's Risk Manager.

e. **Waiver of Subrogation.** All insurance coverage maintained or procured pursuant to this Lease shall be endorsed to waive subrogation against Landlord, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Tenant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Tenant hereby waives its own right of recovery against Landlord, and shall require similar written express waivers and insurance clauses from each of its subtenants.

f. **Enforcement of Contract Provisions (Non Estoppel).** Tenant acknowledges and agrees that any actual or alleged failure on the part of the Landlord to inform Tenant of non-compliance with any requirement imposes no additional obligations on the Landlord nor does it waive any rights hereunder.

g. **Requirements Not Limiting.** Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Tenant maintains higher limits than the minimums shown above, the Landlord requires and shall be entitled to coverage for the higher limits maintained by the Tenant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Landlord.

h. **Notice of Cancellation.** Tenant agrees to oblige its insurance agent or broker and insurers to provide to Landlord with a thirty (30) day notice of cancellation (except

for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

i. **Additional Insured Status.** General liability policies shall provide, or be endorsed to provide, that Landlord and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

j. **Prohibition of Undisclosed Coverage Limitations.** None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to Landlord and approved of in writing.

k. **Separation of Insureds.** A severability of interests provision must apply for all additional insureds ensuring that Tenant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

l. **Landlord's Right to Revise Specifications.** The Landlord reserves the right at any time during the term of the Lease to change the amounts and types of insurance required by giving the Tenant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Tenant, the Tenant and Landlord may renegotiate the Landlord's share of operating expenses.

m. **Self-Insured Retentions.** Any self-insured retentions must be declared to and approved by Landlord. Landlord reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by Landlord.

n. **Timely Notice of Claims.** Tenant shall give Landlord prompt and timely notice of claims made or suits instituted that arise out of or result from Tenant's performance under this Lease, and that involve or may involve coverage under any of the required liability policies.

o. **Additional Insurance.** Tenant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection. Tenant's personal property, fixtures, equipment, inventory and vehicles are not insured by Landlord against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause.