

**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.

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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 PEPRA and will pay employee share of retirement contribution.

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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

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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

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Employee:
Diego Favila

[REDACTED]

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