

# AGENDA STAFF REPORT

**DATE:** January 10, 2018  
**TO:** Mayor and Members of the City Council of the City of Calexico  
**PREPARED BY:** Carlos Campos, Interim City Attorney  
**SUBJECT:** Interim City Manager Employment Agreement with David Dale

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## **Recommendation:**

It is recommended that the City Council approve and adopt the Interim City Manager Employment Agreement between the City of Calexico and David Dale ("Interim Agreement").

## **Background and Discussion:**

The City's former City Manager left his position with the City on or about December 15, 2017. On or about December 15, 2017, David Dale was appointed as the Interim City Manager to fulfill the duties and responsibilities of the City Manager position while the City conducts its search for a permanent City Manager. Mr. Dale also currently holds the position of Director of Public Works/City Engineer with the City.

The term of the Interim Agreement will be until the City finalizes its replacement search and a new permanent City Manager commences employment with the City. The Interim City Manager will be compensated at the range of G-73, with a monthly salary of Twelve Thousand Three Hundred Four Dollars and Zero Cents (\$12,304.00). Benefits will be as provided for in Mr. Dale's current "Director of Public Works/City Engineer" employment agreement, which has been attached hereto for reference.

## **Fiscal Impact:**

Unknown.

## **Attachments:**

Interim City Manager Employment Agreement  
Director of Public Works/City Engineer Employment Agreement

## CITY OF CALEXICO

### INTERIM CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (“Agreement”) is made and entered into this 10th day of January, 2018, by and between the City of Calexico (“City”), a California municipal corporation, and David Dale, PE, PLS (“Employee” or “Interim City Manager”), an individual, on the terms and conditions contained herein. City and Employee are sometimes referred to in this Agreement individually as “Party” and collectively as “Parties.”

#### RECITALS

WHEREAS, City requires the services of an Interim City Manager, and the City Council of the City (“City Council”) desires to employ Employee as its Interim City Manager to carry out the duties and responsibilities of the City Manager position as provided for by the Calexico Municipal Code, in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement; and

WHEREAS, Employee currently holds the position of Director of Public Works/City Engineer; and

WHEREAS, on December 15, 2017, Employee was appointed the Interim City Manager for the City of Calexico upon the departure of the former City Manager.

WHEREAS, Employee is familiar with the position’s legal requirements, industry standards and responsibilities, and duties as set forth in the job description and Chapter 2.02 of the Calexico Municipal Code; and

WHEREAS, Employee has the necessary education, experience, skills, expertise and abilities to serve as the City’s Interim City Manager; and

WHEREAS, Employee desires to accept employment as Interim City Manager in consideration of and subject to the terms, conditions, and benefits set forth in this Agreement.

NOW, THEREFORE, in consideration of the above recitals and the mutual covenants herein contained, the Parties agree as follows:

#### TERMS

##### **1. Position and Duties.**

1.1 Position. Employee accepts employment with City as its Interim City Manager and shall perform all functions, duties and services set forth in Section 1.5 [Duties] of this Agreement. Employee shall provide service at the direction and under the supervision of the City Council. It is the intent of the parties that Employee, as the Interim City Manager, shall

keep the City Council fully apprised of all significant ongoing operations of City. Toward that end, Employee shall report directly to the City Council and shall consult with the City Attorney regarding significant decisions affecting City operations. Employee shall also periodically, or as may be otherwise specifically requested by the City Council, provide status reports to the City Council on his activities and those of City.

1.2 Term. This Agreement is effective as of December 15, 2017. This Agreement shall expire upon whichever of the following events occurs first: (i) upon the employment commencement date of a permanent City Manager employed by City; or (ii) upon termination of this Agreement by either Employee or City as provided in Section 3 [Termination] of this Agreement.

1.3 Director of Public Works/City Engineer Position. In the event that Employee is not selected as the permanent City Manager, Employee shall reassume his position as Director of Public Works/City Engineer with the City immediately upon expiration of this Agreement. Upon return to his position as Director of Public Works/City Engineer, Employee will be subject to all terms and conditions contained in Employee's Director of Public Works/City Engineer Employment Agreement, entered into on or about July 24, 2017. Throughout the term of this Agreement, all terms and conditions of Employee's Director of Public Works/City Engineer Employment Agreement, which are hereby incorporated by reference herein, that are not inconsistent with or contrary to the terms and conditions contained in this Agreement shall remain in full force and effect and continue to govern Employee's employment with the City.

1.4 At-Will. Employee acknowledges that he is an at-will, temporary employee of City who shall serve at the pleasure of the City Council at all times during the period of his service hereunder. Nothing in this Agreement is intended to, or does, confer upon Employee any right to any property interest in continued employment, or any due process right to a hearing before or after a decision by the City Council to terminate his employment. Further, nothing contained in this Agreement shall in any way prevent, limit or otherwise interfere with the right of City to terminate the services of Employee.

1.5 Duties. Employee shall perform those duties and have those responsibilities that are commonly assigned to a city manager of a city in California, and as may be further set forth in the City's Municipal Code and those duties set forth in the City's classification specification for City Manager. In light of the temporary nature of this Agreement, Employee shall seek and receive prior approval from the City Council regarding significant decisions affecting City operations including, but not limited to, decisions relating to the hiring and termination of City employees. Employee shall consult with the City Attorney to determine whether a potential decision will significantly affect City operations so as to require obtaining prior approval from the City Council.

1.6 Hours of Work. The Interim City Manager is an exempt employee, but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The Interim City Manager does not have set hours of work, as the Interim City Manager is expected to be available at all times. It is recognized that the Interim City Manager must devote a great deal of time to the business of the City outside of the City's

customary office hours, and to that end the Interim City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed. The Interim City Manager shall spend sufficient hours on site to perform the Interim City Manager's duties; however, the Interim City Manager has discretion over his work schedule and work location.

1.7 Devotion to City Business. The Interim City Manager position is full-time. Employee shall not engage in any business, educational, professional, charitable, or other activities that would conflict or materially interfere with performance of his Interim City Manager duties, except as may be specifically authorized by the City Council.

## **2. Compensation.**

For all services performed by Employee as the Interim City Manager under this Agreement, Employee shall be compensated at the range of G-73, with a monthly salary of Twelve Thousand Three Hundred Four Dollars and Zero Cents (\$12,304.00), less all required and authorized deductions, 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. In the event that this Agreement terminates in the middle of a pay period or month, Employee will be compensated only for the days actually worked and will receive his monthly salary on an appropriate prorated basis.

## **3. Termination.**

3.1 By City. This Agreement may be terminated by City for any reason thirty (30) days after providing written notice to Employee of such termination. City's only obligation in the event of such termination will be payment to Employee of all compensation then due and owing as set forth in Section 2 [Compensation] up to and including the effective date of termination.

3.2 By Employee. This Agreement may be terminated by Employee for any reason thirty (30) days after providing written notice to City of such termination. City shall have the option, in its complete discretion, to make Employee's termination effective at any time prior to the end of such period, provided City pays Employee all compensation as set forth in Section 2. [Compensation] then due and owing him through the last day actually worked.

3.3 No Notice for Expiration. Nothing in this Section 3 [Termination] shall be construed to require either party to give advance written notice in order for the Agreement to expire as set forth in Section 1.2 [Term].

3.4 Termination Obligations. Employee agrees that all property, including, without limitation, all equipment, tangible Confidential Information (as defined below), documents, records, notes, contracts, and computer-generated materials furnished to or prepared by him incident to his employment belongs to City and shall be returned promptly to City upon termination of Employee's employment. Employee's obligations under this subsection shall survive the termination of his employment and the expiration of this Agreement.

#### **4. Confidential Information.**

“Confidential Information” shall include, but not be limited to, all information or material that Employee learns of or obtains during his employment with City as Interim City Manager that is or was confidential or privileged by virtue of it having been discussed or presented in a duly-noticed closed session meeting of the City Council, or otherwise privileged and/or confidential under applicable law, including but not limited to personnel information, information pertaining to on-going or potential litigation, information learned in the context of the attorney-client relationship with the City Attorney or special counsel to the City. Confidential Information as defined includes, but is not limited to, all data, materials, products, technology, computer programs, specifications, manuals, business plans, software, marketing plans, financial information, internal processes and procedures, and other information disclosed or submitted, orally, in writing, or by any other media, to Employee by City. Nothing herein shall require City to disclose any of its information to Employee.

During his employment with City as Interim City Manager, Employee shall use and disclose Confidential Information only for the benefit of City and as is, or may be, necessary to perform his job responsibilities under this Agreement. Following the termination of this Agreement, Employee shall not use or disclose any Confidential Information except with the express written consent of City. Employee’s obligations under this Section shall survive the termination of his employment and the expiration of this Agreement.

#### **5. Conflict Of Interest.**

Employee represents and warrants to City that he presently has no interest, and represents that he will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or interfere in any way with performance of his services under this Agreement.

#### **6. General Provisions.**

6.1 Recitals. The recitals, inclusive of all facts and representations, are incorporated into this Agreement.

6.2 Reimbursement. City shall reimburse Employee for reasonable and necessary travel, subsistence and other business expenses incurred by Employee in the performance of his duties. All reimbursements shall be subject to and in accordance with California law and City’s reimbursement policies.

6.3 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be effective upon delivery by hand or three (3) business days after deposit in the United States mail, postage prepaid, certified or registered, and addressed to City at the address below, and or at the last known address maintained in Employee’s personnel file. Employee agrees to notify City in writing of any change in his

address during his employment with City. Notice of change of address shall be effective only when accomplished in accordance with this Section.

**City's Notice Address:**

City of Calexico  
608 Heber Avenue  
Calexico, CA 92231  
Attn: Mayor and City Council

With a copy to:

Best Best Krieger LLP  
74760 Highway 111, Suite 200  
Indian Wells, CA 92210  
Attn: Calexico City Attorney

**Interim City Manager's Address:**

David Dale  
203 Countryside Drive  
El Centro, CA 92243

6.4 Indemnification. Subject to, in accordance with, and to the extent provided by the California Government Claims Act [Government Code Section 810 *et seq.*], City will indemnify, defend, and hold Employee harmless from and against any action, demand, suit, monetary judgment or other legal or administrative proceeding, and any liability, injury, loss or other damages, arising out of any act or omission occurring during Employee's tenure as Interim City Manager.

6.5 Bonding. City shall bear the full cost of any fidelity or other bonds required of the Interim City Manager under any law or ordinance.

6.6 Integration. This Agreement is intended to be the final, complete, and exclusive statement of the terms of Employee's employment by City, except as specifically provided for in Section 1.3 [Director of Public Works/City Engineer Position]. This Agreement supersedes all other prior and contemporaneous agreements and statements, whether written or oral, express or implied, pertaining in any manner to the employment of Employee, and it may not be contradicted by evidence of any prior or contemporaneous statements or agreements, except as specifically provided for in Section 1.3 [Director of Public Works/City Engineer Position]. To the extent that the practices, policies, or procedures of City, now or in the future, apply to Employee and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control.

6.7 Amendments. This Agreement may not be amended except in a written document signed by Employee, approved by the City Council and signed by the City's Mayor.

6.8 Waiver. Failure to exercise any right under this Agreement shall not constitute a waiver of such right.

6.9 Assignment. Employee shall not assign any rights or obligations under this Agreement. City may, upon prior written notice to Employee, assign its rights and obligations hereunder.

6.10 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.

6.11 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.

6.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, with venue proper only in Imperial County, State of California.

6.13 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. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the Parties to this Agreement and by no other means. Each Party waives their future right to claim, contest or assert that this Agreement was modified, cancelled superseded or changed by any oral agreement, course of conduct, waiver or estoppel.

6.14 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.

6.15 Abuse of Office; Reimbursement to City. Pursuant to Government Code section 53243, et seq. which became effective on January 1, 2012, if Employee is convicted of a crime involving an abuse of his office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse such amounts paid; (2) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse such amounts paid; and (3) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City. For this Section, abuse of office or



position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice, including a crime described in Title 7 commencing with section 92 of the Penal Code.

IN WITNESS WHEREOF, City has caused this Agreement to be signed and executed on its behalf by its Mayor and duly attested to by its City Clerk, and Employee has signed and executed this Agreement, as of the date first indicated above.

INTERIM CITY MANAGER

CITY OF CALEXICO

\_\_\_\_\_  
David Dale

\_\_\_\_\_  
Maritza Hurtado, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Gabriela Garcia, City Clerk

\_\_\_\_\_  
Best Best & Krieger LLP  
City Attorney

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

This AGREEMENT (hereinafter referred to as "Agreement") is made and entered into between David Dale, PE, PLS (hereinafter referred to as "Employee") and the CITY OF CALEXICO, CALIFORNIA (hereinafter referred to as the "City" or "Employer") as of 7-24-17 [date of signing].

WHEREAS, Employer agrees to hire Employee to render services as Director of Public Works/City Engineer; and

WHEREAS, Employee represents that he is a Registered Professional Engineer and Land Surveyor and agrees to maintain such certifications in good standing and to render such certification services to the city for governmental needs and purposes, 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 7-31-17 [date of employ]. 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 Director of Public Works/City Engineer (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.

EMPLOYMENT AGREEMENT WITH  
THE CITY OF CALEXICO, CALIFORNIA

(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.

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 (\$10,111.00), 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 personal vehicle to perform work-related duties, the City shall provide the Employee with a Two-Hundred and Fifty Dollar (\$250) monthly automobile allowance as well as mileage reimbursement for travel more than one hundred (100) miles outside of City limits in the performance of his work-related duties, as may be amended from time to time. The use of a City vehicle may also be assigned on an as needed basis.

C. *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 order 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 such time as he reduces his accrued hours below the cap. Proposed Employee vacation dates must be approved by the City Manager to best suit City needs.

D. *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.

E. *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.

F. *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.

G. *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.

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

H. *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. Employee shall be subject to PEPPRA and will pay employee share of retirement contribution.

**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

EMPLOYMENT AGREEMENT WITH  
THE CITY OF CALEXICO, CALIFORNIA

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 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:

EMPLOYMENT AGREEMENT WITH  
THE CITY OF CALEXICO, CALIFORNIA

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

Employee:  
David Dale  
203 Countryside Drive  
El Centro, CA 92243

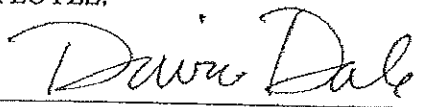
15. Acknowledgment. Employee acknowledges that he has had the opportunity to consult legal counsel in regard to this Agreement, that he has read and understands this Agreement, that he is fully aware of its legal effect, and that he has entered into it freely and voluntarily and based on his own judgment 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:   
ARMANDO G. VILLA  
CITY MANAGER

EMPLOYEE:

By:   
David Dale, PE, PLS

CITY OF CALEXICO

**CLASS TITLE: PUBLIC WORKS DIRECTOR/ENGINEER**

**BASIC FUNCTION:**

Under the direction of the City Manager, plan, organize, direct and control the activities of the Public Works Department; direct maintenance and operations of Calexico's public facilities and buildings including water treatment and distribution systems, wastewater treatment and collection systems, Capital Improvement Plan design and construction, streets, parkways & parks maintenance and repairs, traffic engineering, sanitation, storm drains & detention basins, vehicle/fleet support & maintenance, transit services and support, municipal airport and City shop; supervise and evaluate the performance of assigned staff.

**REPRESENTATIVE DUTIES:**

**ESSENTIAL DUTIES:**

Assume full management responsibilities for all Public Works Department services and activities to Calexico's public facilities and buildings including water treatment and distribution systems, wastewater treatment and collection systems, Capital Improvement Plan design and construction, streets & parks maintenance and repairs, traffic engineering, sanitation, storm drains & detention basin, fleet support & maintenance, transit services and support, municipal airport and City shop.

Plan, organize, direct, and control the programs, projects, services, and operations of the Public Works department to optimize departmental efficiency and effectiveness; monitor the activities and operations of the Engineering Department.

Train and evaluate the performance of assigned staff; interview and select employees and recommend transfers, reassignment, termination and disciplinary actions.

Provide overall direction and technical expertise, information and assistance to department staff, contractors and City management regarding assigned areas.

Assure the Public Works Department and project teams have appropriate and sufficient tools, equipment, and materials to conduct and complete projects.

Prepare and write grants for a variety of long and short-term public works maintenance and construction projects, including water treatment plan, water distribution system/sewage collection, airport, streets, economic development agency and others as assigned.

Supervise project developments; review projects and engineering construction plans; modify projects and priorities as needed to respond to changes in departmental demands; coordinate and schedule assignments.

Direct the preparation and maintenance of a variety of narrative and statistical reports, records, and files related to department activities and issues; review regulatory agency reports and respond as needed.

Develop and prepare the annual preliminary budget for various divisions within the Public Works Department; analyze and review budgetary and financial data; control and authorize expenditures in accordance with established limitations.

Develop, prepare and administer/implement the annual Capital Improvement Plan (CIP) in compliance with established engineering practices.

Represent the Department at meetings with other departments, cities, and agencies; develop and deliver oral and written reports, recommendations and other presentations to the City Council, citizen groups, committees and agencies; attend various conferences.

Communicate with City administrators, contractors, State and federal agencies and citizens to coordinate department activities and programs, to resolve issues and conflicts, and to exchange information.

Operate a variety of standard office equipment including a personal computer; drive a vehicle to various locations to conduct work.

**OTHER DUTIES:**

Perform related duties as assigned.

**KNOWLEDGE AND ABILITIES:**

**KNOWLEDGE OF:**

- Engineering and design principles and standards.
- Planning, organization and direction of the Public Works department.
- Budget development and control.
- Grant application and grant writing techniques.
- Principles and practices of administration, supervision and training.
- Policies and objectives of the department's programs and activities.
- Applicable laws, codes, regulations, policies and procedures related to department activities, services, and projects.
- Technical record-keeping techniques and requirements.
- Interpersonal skills using tact, patience and courtesy.
- Oral and written communication skills.
- Correct English usage, grammar, spelling, punctuation and vocabulary.
- Operation of a computer and assigned software.

**ABILITY TO:**

- Plan, organize, direct and control the programs, projects, services, and operations of the Department.
- Train, supervise and evaluate the performance of assigned personnel.
- Prioritize and schedule work.
- Inspect projects in progress and upon completion to assure compliance with specification, time lines, and safety standards.
- Develop, monitor, and control the Department's annual plan and budget.
- Develop, monitor and control the City's CIP.



- Interpret, apply, explain, and enforce rules, regulations, policies and procedures.
- Maintain current knowledge of program rules, regulations, requirements, and restrictions.
- Analyze situations accurately and adopt an effective course of action.
- Direct and participate in the preparation maintenance of a variety of comprehensive, narrative, statistical, and financial reports and files.
- Meet schedules and time lines.
- Prepare and deliver oral presentations.
- Establish and maintain effective working relationships with others.
- Work independently with little direction.

**EDUCATION AND EXPERIENCE:**

Any combination of experience and training that would likely provide the required knowledge and abilities. A typical way to obtain the knowledge and abilities would be:

1. Training: equivalent to a Bachelor's degree from an accredited college or university with major course work in civil engineering, public administration, business administration, or closely related field;
2. Experience: Five years of increasingly responsible experience in public works management, engineering, and project management, including two years in a supervisory capacity;
3. Licenses or Certificates: Possession of a valid California Driver's License, Possession of California Professional Engineer License (P.E), State certification of water/wastewater treatment plant operations, maintenance and distribution would be considered preferred.

**WORKING CONDITIONS:**

**ENVIRONMENT:**

- Indoor and outdoor work environment.
- Driving a vehicle to conduct work.

**PHYSICAL DEMANDS:**

- Sitting or standing for extended periods of time.
- Dexterity of hands and fingers to operate a computer keyboard.
- Seeing to inspect work and read a variety of materials.
- Hearing and speaking to exchange information and make presentations.