

CITY COUNCIL AGENDA STAFF REPORT

DATE: January 10, 2018
TO: Mayor and City Council
APPROVED BY: David Dale, Interim City Manager
PREPARED BY: Miguel Figueroa, Community and Economic Development Director *MK*
SUBJECT: Approve And Authorize the Interim City Manager to Sign the Enclosed Commercial Lease Agreement with the Mexican Consulate

=====

Recommendation:

Consideration to approve and authorize the Interim City Manager to sign the enclosed Commercial Lease Agreement with the Mexican Consulate located at 408 Heber Ave., Calexico, CA.

Background:

The Mexican Consulate is an official branch of the Mexican government and operates its' consulate offices in the United States and other countries. The consulate is a point of contact to Mexican citizens and provides services that include, but are not limited to, issuing Mexican passports, officially stamps and notarizes legal documents to be used in Mexico and distributes information about the protection of Mexicans in the United States. The existing commercial lease between the City of Calexico and Mexican Consulate is for one year.

Discussion & Analysis:

The commercial lease is for the period beginning January 1, 2018 through December 31, 2018. The rent for the term of this agreement will be monthly payments of \$5,507.00 due on the tenth day of every month.

Fiscal Impact:

\$ 5,507.00 in monthly rent payments. Funds are deposited to General Fund.

Coordinated With:

Interim City Manager's Office.

Attachment:

1. City of Calexico – Mexican Consulate Commercial Lease Agreement.

**AGENDA
ITEM**

7

COMMERCIAL LEASE AGREEMENT

Preamble: This Lease Agreement is intended to memorialize the terms of a Commercial Lease Agreement between the CITY OF CALEXICO (hereinafter referred to as "Landlord") and the MEXICAN CONSULATE (hereinafter referred to as "Tenant"), to lease certain real property owned by the City of Calexico.

IT IS HEREBY AGREED THAT:

1. Lease Premises: Landlord and Tenant hereby agree that in consideration of terms, conditions and covenants herein contained, Tenant shall lease from Landlord that certain land generally located at 408 Heber Avenue, Calexico California (hereinafter referred to as "Premises") which was the previous City Hall for City of Calexico. A more specific description of this Premises is shown on the map attached hereto as Exhibit "A" attached hereto.
2. Purpose: It is intended by the parties that the Tenant use said Premises for the purpose of a Mexican Consulate. Using the Premises for any other purpose than that specified above, shall constitute a material breach of the terms of this Lease. Any use of the Premises that is unlawful, or is in the conflict with the Calexico Municipal Code, shall be a material breach of the terms of this Lease.
3. Vienna Convention: According with the 29th Article of the Vienna Convention on Consular Relations the parties agree with the prerogative to place the Mexican Flag and National Emblem in a visible place.
4. Term: The term of this Lease is one (1) year from 01-01-2018 to 12-31-2018, which will be renewed automatically, unless otherwise notified 60 days before the expiration date., for up to 5 periods of one year, without increase in the amount of the rent. Should Tenant wish to continue the Lease, the request must be presented to the Calexico City Council and approved by it before any extension will be effective and binding on the City of Calexico.
5. Rent: Tenant agrees to pay \$5,507.00 (Five Thousand Five Hundred and Seven dollars 00/100) per month until expiration of the Lease Agreement. This rent payment shall be due on the tenth day of each month.
6. Tenant Leases Premises "As Is": Landlord makes no warranty, guarantee, or covenant including but not limited to covenants of title and quiet enjoyment, or averment of any nature concerning the condition of the Premises, including the physical condition thereof or any condition which may affect the Premises. Landlord shall not be responsible for any loss, damage or cost which may be incurred by Tenant by reason of any such condition or conditions. Tenant has inspected this Premises and agrees to lease the Premises "As Is"
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 Agreement 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 /or certification as may be required by applicable Federal, State, and local authorities. Tenant will satisfy all of the 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 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 Premises 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 Premises pursuant to this Lease Agreement. I, tenant, agree to save and hold the Landlord harmless from any injury to person or damage to property excepting where the injury of damage is cause by the negligence or misconduct of Landlord.
11. Fire and Casualty Insurance: Tenant shall provide public liability insurance or its equivalent, for personal injury and / or property damage arising out of or in connection with Tenant's occupancy of the Premises. The Tenant shall provide the Landlord with proof satisfactory to the City Manager, that Tenant will hold Landlord harmless and will defend Landlord with respect to any claims that may arise in connection with the leased Premises.
12. Public Liability Insurance: Tenant shall provide public liability insurance or its equivalent, for personal injury and / or property damage arising out of or in connection with Tenant's occupancy of the Premises. The Tenant shall provide the Landlord with proof satisfactory to the City Manager, that Tenant will hold Landlord harmless and will defend Landlord with respect to any claims that may arise in connection with the lease Premises. Likewise, there exists an insurance policy contracted by Secretary of Foreign Relations ex-process for all representation of the government of Mexico in the United States of America.
13. Maintenance: Tenant agrees to keep the Premises of this Lease including all improvements there on clean, neat, painted and otherwise reasonably maintained.
14. Maintenance and Repairs: The Tenant agrees to keep the Premises clean, neat, painted and otherwise well maintained. All major repairs to the Premises and improvements including those related to its conservation, structure, function, security and accessories replacement, shall be at the Landlord's expense.
15. Utilities: Tenant agrees to pay for all utilities and services furnished to said Premises.
16. Alterations: Tenant must receive prior written confirmation from Landlord before any alterations or additional improvements are made to the Premises. A violation of this section of the Lease shall be cause for the default by the Tenant.
17. Attorney's Fees: Should Landlord be compelled to institute any legal action to enforce any of the terms, covenants or conditions hereof, 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.
18. Possessory interest: California Revenue and Taxation Code Section 107.6 requires that every City lease include a paragraph that states that Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and the Tenant may be subject to the payment of property taxes levied on such interest. Tenant is correct in saying that no tax may be assessed against its consular post because it is exempt, based on the Vienna Convention on Consular Relations Article 32 subsection (1), which is related to the tax exemption of consular premises.

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 of Calexico, 608 Heber Avenue, Calexico, CA 92231

Tenant: 408 Heber Avenue, Calexico, CA 92231

21. Modification: This Lease Agreement constitutes the leasing contract 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. Early Termination Clause: Due to the consular nature of its own functions, the Tenant keeps the right to terminate this Lease Agreement at any time, without further responsibility, and by communicating it in writing in no less than 30 (thirty) days. At the end of the aforesaid notification, this Lease Agreement, and all herein contained will be automatically terminated.

24. Conflict with the Vienna Convention on Consular Relations: Nothing in this Lease shall be construed as a waiver or a surrender of the rights and privileges afforded to Tenant under the Convention. To the extent that the provisions of this Lease conflict with the provisions of the Convention, the terms of the Convention shall govern and override the conflicting provisions of this Lease.

25. Applicable Laws: The parties hereto agree that this Lease Agreement shall be governed by the laws of the State of California, United States of America, and that venue shall be the Superior Court of the State of California, County of Imperial.

26. Negotiations in Good Faith: Landlord and Tenant shall endeavor to settle any dispute or difference concerning the interpretation or implementation of this Lease Agreement, as well as any other linked to the same, through negotiations conducted in good faith.

27. Difference of Opinion: For any dispute of difference of opinion unsettled through good-faith negotiations after reasonable period of time, the dispute shall be referred to the tribunals of the state in which the Premises are located.

28. Notice of Entry: Landlord and/ or its agents or designees shall have the right to enter or pass through the Premises at all times after sending a written notice to Tenant with 48 (forty-eight) hours of anticipation of such entry.

IN WITNESS WHEREFORE, the parties hereto have executed this Lease Agreement on the day year above written. This Lease Agreement was authorized by the City of Calexico at its meeting of January 10, 2018.

Landlord: **CITY OF CALEXICO**

By: David Dale, Interim City Manager _____

Date: _____

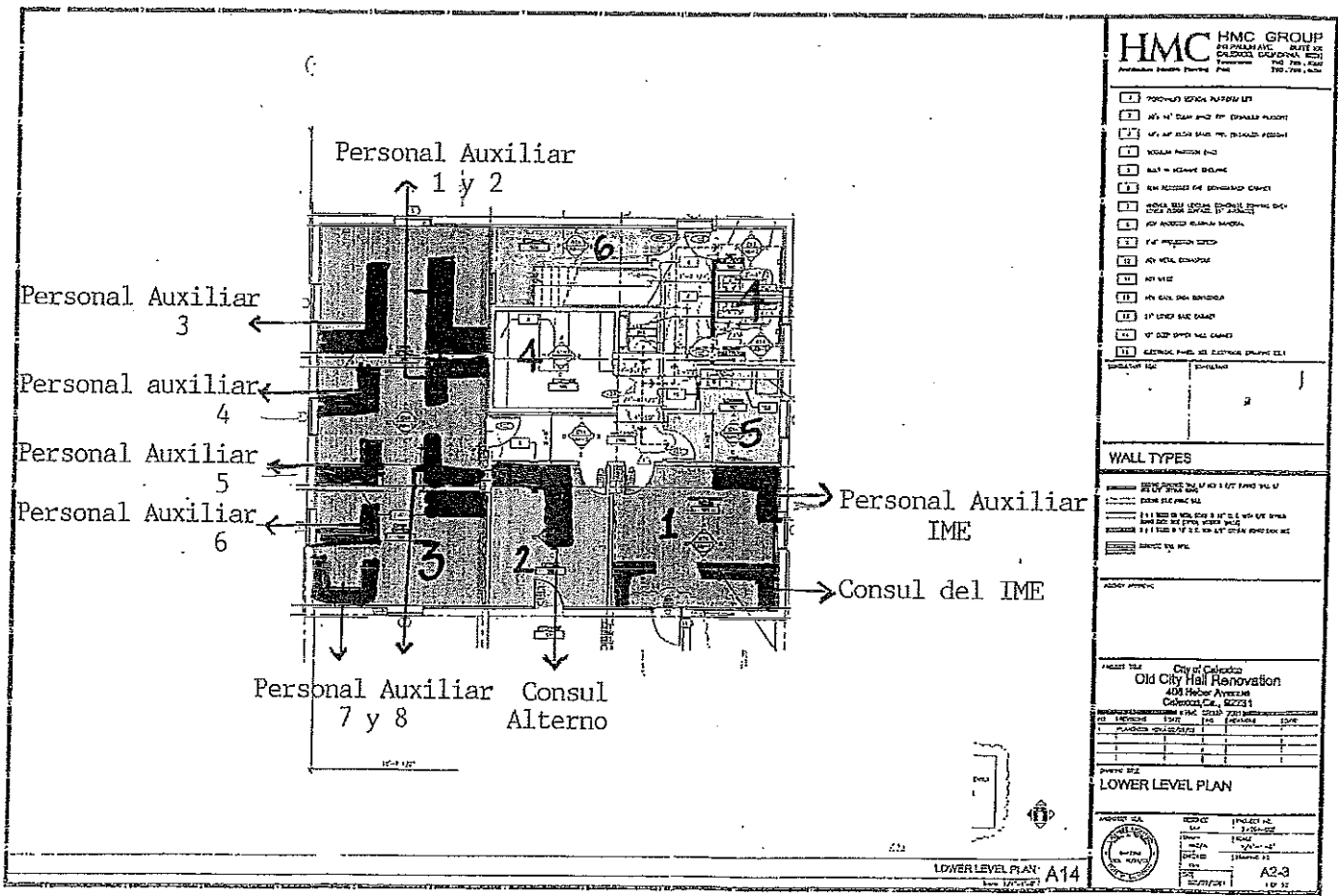
Tenant: **MEXICAN CONSULATE**

By: The Mexican Consulate in Calexico, California, Represented by the Head of Post, General Consul

Carlos Flores Vizcarra  _____

Date: _____

Exhibit “A”



- 1. Oficina IME
- 2. Oficina Cónsul Alterno
- 3. Oficina de Protección
- 4. Bóveda y Baños
- 5. Cocina
- 6. Cuarto de Informática

PROJECT DATA

OCCUPANCY GROUP:

GROUP B

TYPE OF CONSTRUCTION:

TYPE V. NR

FIRE SPRINKLERS

NO

BUILDING HEIGHT:

±22'-7" FROM GRADE TO
TOP OF PARAPET

NUMBER OF STORIES:

TWO STORIES

1st FLOOR AREA:

2,091 sf.

2nd FLOOR AREA:

2,071 sf.

TOTAL FLOOR AREA:

4,162 sf.

ALLOWABLE FLOOR

GROUP B

AREA / HEIGHT

8,000 SF / TWO STORY

UBC TABLE 5-B

SECOND STORY INCREASE
UBC 504

8,000 X 2 = 16,000 SF

ALLOWABLE AREA INCREASE

UBC 505

SEPERATION OF FOUR SIDES

5% X 20 FEET = 100

16,000 X 2.0 = 32,000 SF

4,162 SF < 32,000 SF