

**LICENSE AGREEMENT BETWEEN
CALEXICO UNIFIED SCHOOL DISTRICT
AND
IMPERIAL COUNTY BEHAVIORAL HEALTH
FOR THE USE PROPERTY**

THIS LICENSE AGREEMENT (“Agreement”) is approved and entered into as of this _____ day of _____, 2018 (“Effective Date”), by and between the CALEXICO UNIFIED SCHOOL DISTRICT, a California public school district duly organized and existing under Chapter 1 of Division 3 of Title 2 of the Education Code of the State of California (the “District”) and IMPERIAL COUNTY BEHAVIORAL HEALTH, a public entity located in Imperial County (“County”). District and County may be referred to individually as a “Party” and collectively as “Parties.”

RECITALS

WHEREAS, District is the owner of certain real property located at 641 Rockwood Street, Calexico, California 92231, as more particularly described in Exhibit “A,” attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, County desires and the District is willing to grant to County a license for the non-exclusive use of a portion of the Property designated in Exhibit “A” (“Facilities”) for the County’s Behavioral Health Services and Family Resource Center in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Parties desire by this Agreement to provide for the terms and conditions for the use of the Facilities.

AGREEMENT

NOW, THEREFORE, the Parties hereto for the consideration hereinafter expressed, covenant and agree as follows:

Section 1. Grant of License and Use of Facilities. District grants a non-exclusive license to County to use the Facilities for the sole use of office space and related services for the County’s Behavioral Health Services and Family Resource Center. Any reference to County’s use of the Facilities shall include use by County’s employees, contractors, volunteers or invitees.

Section 2. Scheduling. Reserved.

Section 3. Term. The original term of this Agreement shall be for 120 months beginning from the first month of occupancy after the completion of tenant improvements (“Term”). The Parties may mutually agree to extend the Term. Any extension terms will be referenced to collectively as to the Term. This Agreement may be terminated immediately by District if: (1) District determines there are unsafe and/or dangerous conditions, threats to life or property, or (2) in the event that a natural disaster or emergency makes it necessary for the District to use the Facilities for alternative purposes. This Agreement may be terminated by District upon thirty (30) days’ notice for a material breach of the Agreement, unless County cures

such breach within the thirty (30) days. This Agreement may be terminated by either Party without cause upon ninety (90) days' written notice.

Section 4. Tenant Improvement and License Fee. Within thirty (30) calendar days after the approval and final execution of this Agreement, County shall pay District the sum of \$352,821.27, which amount shall represent one-half of the County's share of the project costs (Exhibit B) for the improvement to the Property for the County's Behavioral Health Services and Family Resource Center that are identified in Exhibit A. The remainder of the project costs shall be paid over the course of the original Term as follows:

License Fee Years 1 through 3 (Months 1 through 36)

County shall pay a license fee ("License Fee") of ***nine thousand eight hundred and fifty-nine cents (\$9,800.59)*** per month to the District for the use of the Facilities. The first payment is due within ten (10) business days after the first day of occupancy by the County and subsequent payments are due on or before the 1st of each month. The License Fee shall include all utilities with the exception of phone and internet. County shall be responsible for the connection and payment of phone and internet services during the Term of this Agreement and any agreed-upon extensions. Additionally, County is responsible to provide janitorial services and security services for the County's space identified in this License Agreement. The Parties acknowledge and agree that the License Fee is not a rental or lease payment for the Facilities.

License Fee Years 4 through 6 (Months 37 through 72)

County shall pay a License Fee of seven thousand five hundred and six and sixty four cents (\$7,506.64) per month. The License Fee shall include all utilities with the exception of phone and internet. County shall be responsible for the connection and payment of phone and internet services during the Term of this Agreement and any agreed-upon extensions. Additionally, County is responsible to provide janitorial services and security services for the County's space identified in this License Agreement.

License Fee Years 7 through 10 (Months 73 through 120)

County shall pay a License Fee of seven thousand five hundred and six and sixty four cents (\$7,506.64) per month. The License Fee shall include all utilities with the exception of phone and internet. County shall be responsible for the connection and payment of phone and internet services during the Term of this Agreement and any agreed-upon extensions. Additionally, County is responsible to provide janitorial services and security services for the County's space identified in this License Agreement.

Section 5. Conditions to Use.

④ Repair of Facilities. County shall be responsible for and shall pay for any and all repairs or replacements of any character whatsoever which are occasioned or are made necessary by reason of the negligence or misuse of the Facilities by County, its employees, contractors, volunteers or invitees, excluding only those caused by the sole active negligence or

willful misconduct of the District. County shall notify District immediately of any damage caused to the Facilities. In the event that County fails to repair or replace the Facilities, District may, at District's sole discretion, undertake any repair or replacement of the Facilities and County shall reimburse District for the costs of such repairs or maintenance within thirty (30) days of invoice by District.

⑥ Annual Maintenance, Routine Maintenance and Clean Up of Facilities. District shall provide annual and routine maintenance during the Term of the Agreement. County shall be responsible for the janitorial and full and complete cleanup of the Facilities and any other portion of the Property used by County, its employees, contractors, volunteers or invitees at the close of each and every day, leaving it in a comparable state as existed prior to County's activities. As used herein, the term "cleanup" shall mean putting away equipment and supplies, picking up trash, cleaning or sweeping up spills, and similar related activities. Additionally, County shall be responsible for providing its own security for the Facilities occupied by the County.

⑥ Hazardous Materials. Under no circumstances during the term of this Agreement shall County use or cause to be used at the Facilities any hazardous or toxic substances or materials, and under no circumstance during the term of this Agreement shall County store or dispose of any such substances or materials in the Facilities. Notwithstanding the foregoing, county may use, at its own risk, in compliance with any applicable laws and District policies, any ordinary and customary materials reasonably required to be used in the normal course of office use.

⑥ Non-Interference with District Activities. This Agreement shall not grant County, its employees, contractors, volunteers or invitees the right to interfere with any activities of District, as determined by the District in its sole discretion.

⑥ Conduct of County, Employees, Contractors, Volunteers and Invitees. County shall ensure that all employees, contractors, volunteers, invitees, and all others in attendance have appropriate background and medical clearance (as applicable) and will adhere to proper standards of public conduct and comply with all District policies. There is to be no consumption of intoxicating liquors or other controlled substances, smoking, gambling, quarreling, fighting, use of profane language, or indecent exposure on or near the Facilities. In the event the District determines, in its sole and absolute discretion, that an employee, contractor, volunteer or invitee of County is failing to adhere to proper standards of public conduct, is in violation of any District policy and/or is in any way disrupting the activities of the District's employees, students and/or invitees, the District reserves the right to remove said individual, and/or require County to remove said individual from the District's Property and prohibit future access to the Property.

⑥ Insurance.

⑥ Public Liability and Property Damage. County agrees to maintain in full force and effect throughout the duration of the Agreement a suitable policy or policies of general liability and property damage insurance, insuring against all bodily injury, property damage, personal/advertising injury, and other loss or liability caused by or connected with County's use of the Facilities under this Agreement. Such insurance

shall be in amounts not less than \$1,000,000 per occurrence; \$3,000,000 for general aggregate and \$1,000,000 for property damage.

Ⓜ Automobile Liability. County also agrees to maintain in full force and effect with regard to any County-owned vehicles which County brings onto the Facilities a suitable policy or policies of automobile liability insurance with a combined single limit of \$1,000,000 per accident throughout the duration of the Agreement.

Ⓜ Workers' Compensation. County shall also maintain, in full force and effect throughout the term of this Agreement, Workers' Compensation insurance in accordance with the laws of California, and employers' liability insurance with a limit of not less than \$1,000,000 per employee and \$1,000,000 per occurrence for bodily injury or disease.

Ⓜ Notice; Additional Named Insureds. All insurance required under this Agreement shall be issued as a primary policy and contain an endorsement requiring thirty (30) days' written notice from the insurance company to both Parties hereto before cancellation or change in coverage, scope or amount of any policy. District, its directors, officers, agents, employees and consultants, shall be designated as additional named insureds.

Ⓜ Insurance Endorsements. Concurrent with the execution of the Agreement and prior to any use by County of the Facilities, County will provide District with an endorsement(s) verifying such insurance and the terms described herein.

Ⓜ Self-Insurance or Joint Powers Agreement. District recognizes that insurance practices and requirements of a municipality may differ from that of private parties and may change from time to time. During any period of time in which the County, as regular practice does not maintain insurance but rather self-insures or participates in a Joint Powers Agreement with other governmental entities, the County may meet their insurance requirements under this Section in the same manner.

Ⓜ Indemnification. County shall be responsible for, and District, its board members, officers, agents, employees, students and invitees ("District Parties") shall not be answerable or accountable in any manner for any loss or expense by reason of any damage, injury or death to person or property, or both, arising out of the acts, omissions, and/or negligence of County, its agents, officers, employees, contractors, volunteers, guests or invitees ("County Parties"), or resulting from County Parties' activities at the Property including the Facilities or from any cause whatsoever arising out of or in connection with this Agreement or any other use or operations at the Property including the Facilities. County shall indemnify and defend District Parties against and will hold and save them and each of them harmless from any and all actions, claims, liens, damages to persons or property, penalties, obligations or liabilities, including attorney's fees, that may be asserted or claimed by any person, firm, association, entity, corporation, political subdivision, or other organization arising out of or in connection with County Parties' activities at the Property including the Facilities, this Agreement, and any other use of and operations at the Property including the Facilities pursuant to this Agreement, whether or not there is concurrent passive negligence on the part of District Parties, but excluding such actions, claims, damages to persons or property, penalties, obligations or liabilities arising from the sole active negligence or willful misconduct of District Parties. County further agrees to indemnify, defend and hold harmless District Parties and each of them from any claim or cause

of action arising out of or related to liability resulting from violation of any applicable federal, state or local statute, ordinance, order, requirement, law or regulation that may adversely affect the Property including the Facilities. County further agrees to indemnify, defend and hold harmless District Parties and each of them from any claim or cause of action arising out of or related to any personal property of County Parties stored at the Property including the Facilities. In connection therewith:

§ Actions Filed. County shall defend any action or actions filed in connection with any of said claims, liens, damages, penalties, obligations or liabilities, and will pay all costs and expenses, including attorneys' fees incurred in connection therewith.

§ Judgments Rendered. County shall promptly pay any judgment rendered against County Parties or District Parties covering such claims, liens, damages, penalties, obligations and liabilities arising out of or in connection with such use of and operations at the Property including the Facilities referred to herein and agrees to save and hold District Parties harmless therefrom.

§ Costs and Expenses; Attorneys' Fees. In the event any District Parties are made a party to any action or proceeding filed or prosecuted against County Parties for such damages or other claims arising out of the use of and operations at the Property including the Facilities referred to herein, County agrees to pay District Parties any and all costs and expenses incurred by them in such action or proceeding together with reasonable attorneys' and expert witness fees.

The provisions of this Section shall survive the termination or expiration of this Agreement.

§ Materials, Furnishings and Equipment. County shall provide all materials, furnishings and equipment for its use. County is responsible for all costs associated with its use.

§ Supervision and Security. County shall provide all necessary supervision of its employees, contractors, volunteers and invitees while using the Facilities. County is solely responsible for the safety and security of its employees, contractors, volunteers and invitees at all times.

§ Locks — Keying and Access Authorization. The lock style, types of gates, and key/code authorization to be utilized at the Facilities will be coordinated in such a manner as to allow dual access while maintaining the safety and security of people and property.

§ Parking. Parking in the parking lot shall not be reserved and shall be limited to standard-sized automobiles, except in specifically-designated areas. No vehicles shall be parked in driveways, loading areas, or other areas not specifically designated for parking or marked as reserved.

§ Utilities. District shall be responsible for payment of utilities costs associated with operation and use of the Facilities during the term of this Agreement.

(n) Taxes. County shall be responsible for all taxes associated with its use of the Facilities. In the event possessory interest taxes are assessed, County shall be solely responsible for the payment of all County's possessory interest taxes, if any, during the term of the Agreement. Pursuant to Section 107.6 of the California Revenue and Taxation Code, District hereby notifies County that: (i) the Facilities are subject to possessory interest taxes, and that such taxes shall be paid by County; and (ii) County may be subject to the payment of property taxes levied on the possessory interest obtained by County. The Parties acknowledge that during the term of this Agreement, County shall be solely responsible for any and all possessory interest taxes and related charges and expenses (collectively, "Possessory Interest Taxes") imposed with respect to the Facilities, and shall indemnify, defend and hold harmless District against all possessory interest taxes. This statement is intended to comply with Section 107.6 of the Revenue and Taxation Code.

Section 6. Compliance with Law.

(a) County shall comply with all laws, ordinances, zoning, rules, and regulations applicable to the Facilities, enacted or promulgated by any public or governmental authority or agency, including without limitation District, having jurisdiction over the Facilities. County shall be responsible for obtaining and maintaining throughout the Term of the Agreement all permits, licenses, approvals, including a conditional use permit if necessary, from any local, state or federal agency necessary for the program and/or use of the Facilities. County shall comply with requirements of state law regarding fingerprinting and background checks, as applicable.

(b) District has made no representation or warranty as to the suitability of the Property and/or the Facilities for County's program, and County waives any implied warranty that the Property and/or the Facilities are suitable for County's intended purposes. Prior to the commencement date of the program, County shall have taken the appropriate steps and made the appropriate inquiries to confirm that County is or will be as of the commencement date of the program in compliance with all laws, ordinances, zoning, rules, and regulations applicable to the program and County's operation of the program, enacted or promulgated by any public or governmental authority or agency and will maintain compliance throughout the duration of the Term.

County's INITIALS: _____

Section 7. Installation of Improvements by County. County shall not construct or install any improvements at the Facilities or otherwise alter the Facilities without the prior written consent of District, and if required, the Division of the State Architect ("DSA"). District's approval of any improvements, including the construction schedule, work hours, and modifications, shall be at District's sole and absolute discretion, and District may disapprove of such improvements for any reason. Unless otherwise specified in this Agreement, in each case where prior written consent of the District is required under any other provision of this Agreement, such consent shall be obtained exclusively from the District's chief business officer, and consent obtained from any other source shall be invalid. Contractors retained by County with respect to the construction or installation of improvements shall be fully licensed and bonded as required by law and must maintain levels of casualty, liability and workers' compensation insurance and performance and payment bonds consistent with District construction requirements. The construction or installation of improvements shall be performed

in a sound and workmanlike manner, in compliance with all laws applicable including, but not limited to building codes, fingerprinting requirements and prevailing wage laws. District or District's agent shall have a continuing right at all times during the period that improvements are being constructed or installed to enter the premises and to inspect the work, provided that such entries and inspections do not unreasonably interfere with the progress of the construction or interrupt instruction to students. County shall indemnify, defend and hold harmless District, its directors, officers and employees from any loss, damage, claim, cause of action, cost, expense or liability arising out or caused by any violation by County or its directors, officers, employees or contractors of any applicable federal, state or local statute, ordinance, order, governmental requirement, law or regulation that applies to any work, including, without limitation, any labor laws and/or regulations requiring that persons performing work on any improvements be paid prevailing wages.

County shall deliver to District, promptly after County's receipt thereof, originals or, if originals are not available, copies of any and all of the following instruments and documents pertaining to any testing, construction, repair or replacement of improvements on the Facilities:

(a) plans and specifications for the subject improvements, (b) test results, physical condition and environmental reports and assessments, inspections, and other due diligence materials related to the subject improvements, (c) permits, licenses, certificates of occupancy, and any and all other governmental approvals issued in connection with the subject improvements, (d) agreements and contracts with architects, engineers and other design professionals executed with respect to the design of the subject improvements, (e) construction contracts and other agreements with consultants, construction managers, general and other contractors, and equipment suppliers pertaining to the construction, repair or replacement, as the case may be, of the subject improvements and (f) all guaranties and warranties pertaining to the construction, repair or replacement, as the case may be, of the subject improvements.

County will not permit any liens or claims to stand against the Facilities or the Property for labor or material furnished in connection with any work performed by County. Upon reasonable and timely notice of any such lien or claim delivered to County by District, County may bond and contest the validity and the amount of such lien, but County will immediately pay any judgment rendered, will pay all proper costs and charges, and will have the lien or claim released at its sole expense. Additionally, County may not use or operate the improvements until the project is closed-out and certified by DSA, if applicable, and/or final approval is received from any applicable agency. County shall provide evidence of close-out and certification or approval, in a form reasonably acceptable to the District.

Section 8. Legal Interpretation of Instrument. The Parties expressly understand and agree that this Agreement constitutes a non-exclusive license for use of the Property, including the Facilities. This Agreement is not intended by the Parties, nor shall it be legally construed, to convey a leasehold, easement, or other interest in real property. Both Parties acknowledge that a license is a valid form of agreement and shall not contest the validity of the form of this Agreement in any action or proceeding brought by County against the District, or by the District against County. Should either Party be compelled to institute arbitration, legal, or other proceedings against the other for or on account of the other Party's failure or refusal to perform or fulfill any of the covenants or conditions of this Agreement on its part to be performed or fulfilled, the Parties agree that the rules and principles applicable to licenses shall govern such

actions or proceedings. This Agreement shall be governed by the laws of the State of California with venue in Imperial County, California.

Section 9. Attorneys' Fees. If any legal action is necessary to enforce any of the terms or conditions of this Agreement, each Party shall bear their own attorneys' fees, except as set forth above.

Section 10. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements made prior to the date hereof. This Agreement may not be changed except in writing executed by both Parties.

Section 11. Notices. Any notice, request, information or other document to be given hereunder to any of the Parties by any other Parties shall be in writing and shall be deemed given and served upon delivery, if delivered personally, or three (3) days after mailing by United States mail as follows:

If to COUNTY:

Imperial County Behavioral Health
202 N. 8th St.
El Centro, CA 92243
[contact person]

With a copy to:

Clerk of the Board of Supervisors
940 Main St., Suite 209
El Centro, CA 92243

If to DISTRICT:

Calexico Unified School District
901 Andrade Ave.
Calexico, CA 92231
Attn: Assistant Superintendent, Business Services

Any Party may change the address or persons to which notices are to be sent by giving written notice of such change of address or persons to the other Party in the manner provided for giving notice.

Section 12. Official Representatives. The official representative for District shall be **Cesar Vega**, or his/her designee. The official representative for County shall be **[contact person]**, or his/her designee. The Parties will provide each other after-hours emergency contact phone numbers of appropriate supervisory staff which shall be periodically updated.

Section 13. Employees/Independent Contractors.

(a) For purposes of this Agreement, all persons employed by County in the performance of services and functions with respect to this Agreement shall be deemed employees of County and no County employee shall be considered as an employee of the District under the jurisdiction of District, nor shall such County employees have any District pension, civil service, or other status while an employee of County.

(b) County shall have no authority to contract on behalf of District. It is expressly understood and agreed by both Parties hereto that County, while engaged in carrying out and complying with any terms of this Agreement, is not acting as an agent, officer, or employee of District.

Section 14. Assignment. County shall not assign this Agreement.

Section 15. Nondiscrimination. In utilizing the Agreement, County shall comply with all applicable non-discrimination laws and shall not discriminate against any person on account of race, color, religion, age, sex, marital status, mental or physical disability, gender, gender identity, gender expression, sexual orientation, genetic information, ethnicity, ethnic group identification, national origin or nationality, ancestry, or a perception that a person has any of these characteristics or that the person is associated with a person who has, or is perceived to have, any of these characteristics.

Section 16. As-Is Condition. The Facilities are licensed in as-is condition and District makes no representation or warranty of any kind regarding the character of the Facilities.

Section 17. Exhibits. The following exhibits which are attached hereto are incorporated herein and made a part of this Agreement:

Exhibit A:	Proposed Site Plan and Schematic Design
Exhibit B:	Estimate of Project Costs

Section 18. Recitals. The Recitals are incorporated into this Agreement as though fully set forth herein.

Section 19. Joint Venture. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other agreement between the District and County. No term or provision of this Agreement is intended to be, or shall be, for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

Section 20. Ambiguities Not to Be Construed Against Drafting Party. The doctrine that any ambiguity contained in a contract shall be construed against the Party whose counsel has drafted the contract is expressly waived by each of the Parties hereto with respect to this Agreement.

Section 21. Days/Holidays. All references to days herein shall refer to calendar days unless otherwise noted. When performance of an obligation or satisfaction of a condition set forth in this Agreement is required on or by a date that is a Saturday, Sunday, or legal holiday, such performance or satisfaction shall instead be required on or by the next business day following that Saturday, Sunday, or holiday, notwithstanding any other provisions of this Agreement.

Section 22. Non-liability of Officials. No officer, member, employee, agent, or representative of the Parties shall be personally liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon, shall be personally enforced against any such officer, official, member, employee, agent, or representative.

Section 23. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not signatory to this Agreement.

Section 24. Time of the Essence. Time is of the essence with respect to each of the terms, covenants, and conditions of this Agreement.

Section 25. Severability. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

Section 26. No District Affiliation/Endorsement. County shall not imply, indicate or otherwise suggest that County's use and/or any related activities are connected or affiliated with, or are endorsed, favored or supported by, or are opposed by the District. No signage, flyers or other material may reference the District, any school name, logo or mascot without the District's prior written consent, except that County may indicate the location of County's office.

Section 27. Board Approval. This Agreement is not valid or an enforceable obligation against the District until approved or ratified by motion of the District's Board of Education duly passed and adopted.

Section 28. Scanned/Electronic Signatures. This Agreement may be executed and transmitted to any other Party by PDF, which PDF shall be deemed to be, and utilized in all respects as, an original, wet-inked document.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

DISTRICT:

CALEXICO UNIFIED SCHOOL DISTRICT

By:_____

Its:

COUNTY:

IMPERIAL COUNTY BEHAVIORAL HEALTH

By:_____

Its:

EXHIBIT “A”
Proposed Site Plan and Schematic Design
(To Be Inserted)

EXHIBIT “B”
Project Cost Estimates
(To Be Inserted)