AGENDA
ITEM

13

AGENDA STAFF REPORT

DATE: August 2, 2016

TO: Honorable Mayor and City Council Members

FROM: Armando G. Villa, City Manager
J. Eduardo Gutierrez, Acting Finance Director
Steven H. Dukett, Urban Futures, Inc.

SUBJECT: A Resolution of the City Council of the City Of Calexico Reconfirming its March 15, 2016 Approval of the Bond Expenditure Agreement Between the Successor Agency to the Calexico Community Redevelopment Agency and the City of Calexico and Approving a Numerical Correction with Respect to Available Funding and Certain Related Actions

==========

Recommendation:

It is recommended that the City Council adopt the attached resolution reconfirming its March 15, 2016 approval of the Bond Expenditure Agreement between the Successor Agency to the Calexico Community Redevelopment Agency and the City of Calexico and approving a numerical correction with respect to available funding and certain related actions.

Background:

Pursuant to Health and Safety Code ("HSC") § 34172 (a)(1), the Calexico Community Redevelopment Agency was dissolved on February 1, 2012. Consistent with the provisions of the HSC, the City Council of the City of Calexico previously elected to serve in the capacity of the Successor Agency. The Oversight Board for the Successor Agency ("Oversight Board") has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency.

HSC § 34191.4 (c) allows a successor agency that has received a Finding of Completion (the "FOC") to use bond proceeds from bonds issued prior to 2011 and a percentage of proceeds from bonds issued between January 1, 2011 and June 27, 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute excess bond proceeds

AGENDA ITEM
13

(the "Excess Bond Proceeds") obligations that shall be listed separately on a successor agency's Recognized Obligation Payment Schedule (the "ROPS").

In addition, the HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies. In that regard, HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Moreover, HSC § 34178 (c) allows a successor agency and its sponsoring city to enter into agreements for the purpose of conducting the work of winding-down the former redevelopment agency as set forth in HSC § 34177.3 (b), subject to the obtaining the approval of its oversight board.

As a consequence of receiving its FOC on October 3, 2013, the Successor Agency may now utilize its Excess Bond Proceeds for their intended purposes. In furtherance of this, on March 15, 2016, the Successor Agency adopted Resolution No. 2016-02-SA and the City Council adopted Resolution No. 2016-03, which approved that certain Bond Expenditure Agreement between the Successor Agency and the City (the "Bond Expenditure Agreement"), setting forth the terms and limitations related to the City's use of the Excess. As originally reported in Resolution No. 2016-02-SA and in Resolution No. 2016-03, the Successor Agency had Excess Bond Proceeds in the amount of $2,784,958 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2003C (the "2003C TABs") and $6,184,410 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2011 (the "2011 TABs") that together total $8,969,368 that are to be transferred to the City to facilitate the handling of proceeds of the TABs as more particularly provided described in the Bond Expenditure Agreement in conformity with the covenants applicable to each of the TAB issues. Subsequent to the adoption of the Resolutions it was discovered through a review of the City's general ledger that the amount of available funds from the 2003C TABs as of December 31, 2015 was $2,582,892, rather than the originally estimated amount of $2,784,958.

Although *de minimis*, the above noted minor variance was discovered prior to the Oversight Board's consideration of the Bond Expenditure Agreement, which the Oversight Board approved on April 7, 2016, inclusive of the correction related to the amount available from the 2003C TABs. Therefore. to ensure that the City's, Successor Agency's and the Oversight Board's approvals related to the Bond Expenditure Agreement are identical, it is recommended that the City Council and the Successor Agency reconfirm their approvals of the Bond Expenditure Agreement, attached hereto as Exhibit "A", inclusive of the correction related to the amount available from the 2003C TABs.

The Bond Expenditure Agreement shall only be effective subsequent to its approval by the California Department of Finance.

Fiscal Impact:

On May 17, 2016, DOF authorized the expenditure of $2,860,296 of Excess Bond Proceeds, consisting of $2,582,592 attributable to 2003C TABs and $277,704 attributable to the 2011 TABs. Approval of the recommended action will ensure that the Excess Bond Proceeds are used for their intended purpose in an expeditious manner. The City Council will allocate those funds at a later date.

Attachment:

1. A Resolution of the City Council of the City Of Calexico Reconfirming its March 15, 2016 Approval of the Bond Expenditure Agreement Between the Successor Agency to the Calexico Community Redevelopment Agency and the City of Calexico and Approving a Numerical Correction with Respect to Available Funding and Certain Related Actions

RESOLUTION NO. 2016-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CALEXICO RECONFIRMING ITS MARCH 15, 2016 APPROVAL OF THE BOND EXPENDITURE AGREEMENT BETWEEN THE SUCCESSOR AGENCY TO THE CALEXICO COMMUNITY REDEVELOPMENT AGENCY AND THE CITY OF CALEXICO AND APPROVING A NUMERICAL CORRECTION WITH RESPECT TO AVAILABLE FUNDING AND CERTAIN RELATED ACTIONS

WHEREAS, pursuant to Health and Safety Code (the "HSC") § 34172 (a)(1), the Calexico Community Redevelopment Agency was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the HSC, the City Council of the City of Calexico (the "City") previously elected to serve in the capacity of the Successor Agency to the Calexico Community Redevelopment Agency (the "Successor Agency"); and

WHEREAS, the Oversight Board for the Successor Agency (the "Oversight Board") has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

WHEREAS, HSC § 34191.4 (c) allows a successor agency that has received a Finding of Completion (the "FOC") to use bond proceeds from bonds issued prior to 2011 and a percentage of proceeds from bonds issued between January 1, 2011 and June 27, 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute excess bond proceeds (the "Excess Bond Proceeds") obligations that shall be listed separately on a successor agency's Recognized Obligation Payment Schedule (the "ROPS"); and

WHEREAS, the HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies; and

WHEREAS, HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

WHEREAS, HSC § 34178 (c) allows a successor agency and its sponsoring city to enter into agreements for the purpose of conducting the work of winding-down the former redevelopment agency as set forth in HSC § 34177.3 (b), subject to the obtaining the approval of its oversight board; and

WHEREAS, as a consequence of receiving its FOC on October 3, 2013, the Successor Agency may now utilize its Excess Bond Proceeds for their intended purposes; and

WHEREAS, on March 15, 2016, the Successor Agency adopted Resolution No. 2016-02-SA and the City Council adopted Resolution No. 2016-03, which approved that certain Bond Expenditure Agreement between the Successor Agency and the City (the "Bond Expenditure Agreement"), setting forth the terms and limitations related to the City's use of the Excess; and

WHEREAS, as originally reported in Resolution No. 2016-02-SA and in Resolution No. 2016-03, the Successor Agency had Excess Bond Proceeds in the amount of $2,784,958 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2003C (the "2003C TABs") and $6,184,410 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2011 (the "2011 TABs") that together total $8,969,368 that are to be transferred to the City to facilitate the handling of proceeds of the TABs as more particularly provided described in the Bond Expenditure Agreement in conformity with the covenants applicable to each of the TAB issues; and

WHEREAS, subsequent to the adoption of Resolution No. 2016-02-SA and Resolution No. 2016-03, it was discovered through a review of the City's general ledger that the amount of available funds from the 2003C TABs as of December 31, 2015 was $2,582,892, rather than the originally estimated amount of $2,784,958; and

WHEREAS, although *de minimis*, the above noted minor variance was discovered prior to the Oversight Board's consideration of the Bond Expenditure Agreement, which the Oversight Board approved on April 7, 2016, inclusive of the correction related to the amount available from the 2003C TABs; and

WHEREAS, to ensure that the City's, Successor Agency's and the Oversight Board's approvals related to the Bond Expenditure Agreement are identical, it is recommended that the City Council and the Successor Agency reconfirm their approvals of the Bond Expenditure Agreement, attached hereto as Exhibit "A", inclusive of the correction related to the amount available from the 2003C TABs; and

WHEREAS, the Bond Expenditure Agreement shall only be effective subsequent to its approval by the California Department of Finance; and

WHEREAS, on May 17, 2016, DOF authorized the expenditure of $2,860,296 of Excess Bond Proceeds, consisting of $2,582,592 attributable to 2003C TABs and $277,704 attributable to the 2011 TABs; and

WHEREAS, all of the prerequisites with respect to the approval of this Resolution have been met.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Calexico, as follows:

Section 1. The foregoing recitals are true and correct and are a substantive part of this Resolution.

Section 2. The March 15, 2016 approval of the Bond Expenditure Agreement between the Successor Agency and the City is reconfirmed and the numerical correction related to the amount of funding available from the 2003C TABs, as described in this Resolution and included within the Bond Expenditure Agreement, attached hereto as Exhibit "A", is approved.

Section 3. The City Manager, or designee, is authorized to take such actions and execute such documents as are necessary to effectuate the intent of this Resolution.

Section 4. This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED this 2nd day of August 2016.

Luis J. Castro, Mayor

ATTEST

Gabriela T. Garcia, Deputy City Clerk

CERTIFICATION:

I, Gabriela T. Garcia, Deputy City Clerk for the City of Calexico, do hereby certify that the foregoing Resolution No. 2016-__ was duly adopted by the City Council of the City of Calexico, at a meeting thereof held on the 2nd day of August 2016, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Gabriela T. Garcia, Deputy City Clerk

EXHIBIT "A"

BOND EXPENDITURE AGREEMENT
BETWEEN THE
SUCCESSOR AGENCY TO THE
CALEXICO COMMUNITY REDEVELOPMENT AGENCY
AND THE
CITY OF CALEXICO

(See Attachment)

BOND EXPENDITURE AGREEMENT

This Bond Expenditure Agreement (the "Agreement") is entered into on August 2, 2016, by and between the City of Calexico, a municipal corporation (the "City") and the Successor Agency to the Calexico Community Redevelopment Agency, a public body corporate and politic (the "Successor Agency"). The City and the Successor Agency are collectively referred to herein as "Parties" or individually referred to as a "Party".

RECITALS

WHEREAS, pursuant to Health and Safety Code (the "HSC") § 34172 (a)(1), the Calexico Community Redevelopment Agency was dissolved on February 1, 2012; and

WHEREAS, consistent with the provisions of the HSC, the City Council of the City of Calexico previously elected to serve in the capacity of the Successor Agency to the Calexico Community Redevelopment Agency (the "Successor Agency"); and

WHEREAS, the Oversight Board for the Successor Agency (the "Oversight Board") has been established pursuant to HSC § 34179 to assist in the wind-down of the dissolved redevelopment agency; and

WHEREAS, HSC § 34191.4 (c) allows a successor agency that has received a Finding of Completion (the "FOC") to use bond proceeds from bonds issued prior to 2011 and a percentage of proceeds from bonds issued between January 1, 2011 and June 27, 2011 for purposes for which the bonds were sold, provides that such proceeds in excess of amounts needed to satisfy approved enforceable obligations shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute excess bond proceeds (the "Excess Bond Proceeds") obligations that shall be listed separately on a successor agency's Recognized Obligation Payment Schedule (the "ROPS"); and

WHEREAS, the HSC provides for a cooperative relationship between cities and their redevelopment agencies, as well as their successor agencies who have assumed the duties and obligations of the former redevelopment agencies; and

WHEREAS, HSC § 33220 authorizes a city to aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects; and

WHEREAS, HSC § 34178 (c) allows a successor agency and its sponsoring city to enter into agreements for the purpose of conducting the work of winding-down the former redevelopment agency as set forth in HSC § 34177.3 (b), subject to the obtaining the approval of its oversight board; and

WHEREAS, as a consequence of receiving its FOC on October 3, 2013, the Successor Agency may now utilize its Excess Bond Proceeds for their intended purposes; and

WHEREAS, the Successor Agency has Excess Bond Proceeds in the amount of $2,582,892 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2003C (the "2003C TABs") and $6,184,410 from the Community Redevelopment Agency of the City of Calexico Merged Central Business District and Residential Redevelopment Project Area Tax Allocation Bonds, Issue of 2011 (the "2011 TABs") that together total $8,767,302 that are to be transferred to the City of Calexico (the "City") to facilitate the handling of proceeds of the TABs as more particularly provided herein in conformity with the covenants applicable to each of the TAB issues; and

WHEREAS, the Successor Agency does not have the technical capability of causing the development of capital projects; however, the City does have the requisite technical capability of causing the development of capital projects; and

WHEREAS, pursuant to this Agreement, the Successor Agency desires to provide the Excess Bond Proceeds to the City for the purpose of enabling the City to use such funds in the manner consistent with the covenants applicable to the 2003C TABs and 2011 TABs, respectively; and

WHEREAS, the expenditure of proceeds from the 2011 TABs shall be governed by the provisions of HSC § 34191.4 (c) (2), as such provisions may be amended from time to time; and

WHEREAS, the Parties intend that this Agreement shall constitute an excess bonds proceeds obligation within the meaning of HSC § 34191.4 (c) to be paid from Excess Bond Proceeds; and

WHEREAS, the Successor Agency has listed the use of Excess Bond Proceeds on its ROPS 16-17 A & B as obligations to be funded with Excess Bond Proceeds.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth hereinafter, the parties agree as follows:

1. **Incorporation.** The foregoing Recitals are true and correct and are a substantive part of this Agreement.

2. **Successor Agency's Obligations:** Subsequent to the Effective Date, as defined below, the Successor Agency shall: i) transfer to the City all of the Excess Bond Proceeds from the TABs, plus all interest accrued thereon up to the date of such transfer; and ii) assign to the City all duties and responsibilities with respect to the administration of any capital projects that are funded with Excess Bond Proceeds, including without limitation, as set forth therefor in the indenture or indentures of trust under which the TABs were issued.

3. **City's Obligations**: The City shall have the following obligations under this Agreement:

a) Retention of Excess Bond Proceeds: The City shall accept, hold, and disburse Excess Bond Proceeds transferred to the City pursuant to this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City shall retain any Excess Bond Proceeds that it receives and shall use such funds for uses consistent with applicable bond covenants.

b) Use of Excess Bond Proceeds: The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity authorized by the City Council of the City (the "Selected Projects"). The Selected Projects may include projects that are described in the Official Statement for the TABs or as otherwise allowable under the tax certificate executed and delivered for all or a portion of the TABs. The expenditure of proceeds from the 2011 TABs shall be governed by the provisions of HSC § 34191.4 (c) (2), as such provisions may be amended from time to time. Further, the City must spend the Excess Bond Proceeds consistent with the original bond covenants applicable to the particular Excess Bond Proceeds, and must comply with all requirements of the federal tax law and all applicable requirements of the HSC as to the use of such funds. The City shall be solely responsible for ensuring that Excess Bond Proceeds are maintained and spent in accordance with bond covenants and other applicable laws.

The City shall indemnify and defend the Successor Agency, and its officers and agents, against, and shall hold the Successor Agency, and its officers and agents, harmless from, any claims causes of action, or liabilities arising from any use of Excess Bond Proceeds by the City that is inconsistent with or unallowable pursuant to the applicable bond covenant or the failure of the City to ensure that Excess Bond Proceeds are used in accordance with bond covenants, federal tax law, and the HSC.

The City assumes all contracts, if any, entered into by the Successor Agency or the former redevelopment agency related to activities to be funded by Excess Bonds Proceeds, with the exception of those contracts retained by the Successor Agency relating to Enforceable Obligations. The City shall perform its obligations hereunder, and under such assumed contracts, in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA, and shall timely complete the work required for each project.

4. Entire Agreement; Waivers; and Amendments:

a) This Agreement constitutes the entire understanding and agreement of the Parties with respect to the transfer and use of Excess Bond Proceeds. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to the subject matter of this Agreement.

b) This agreement is intended solely for the benefit of the City and the Successor Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Successor Agency, there shall be no third party beneficiaries under this agreement.

c) All waivers of the provisions of the Agreement and all amendments to this Agreement must be in writing and signed by the authorized Representative of the Parties.

5. **Severability**: If any term, provisions, covenant or condition to this Agreement is held by a court of competent jurisdiction to be invalid, void of unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged by such invalidation, voiding or unenforceability. In addition, the Parties shall cooperate in good faith in an effort to amend or modify this Agreement in a manner such that the purpose of any invalidated or voided provision, covenant, or condition can be accomplished to the maximum extent legally permissible.

6. **Further Assurances**: Each Party agrees to execute, acknowledge and deliver all additional documents and instruments, and to take such other actions as may be reasonably necessary to carry out the intent of this agreement.

7. **Effective Date:** This Agreement shall only be effective subsequent to its approval by the Successor Agency's Oversight Board and the California Department of Finance.

8. **Governing Law:** This Agreement shall be construed and interpreted according to the laws of the State of California.

(Signatures on Following Page)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the dates indicated below.

CITY OF CALEXICO

By: _____
Luis J. Castro, Mayor

Date: _____

SUCCESSOR AGENCY TO THE CALEXICO COMMUNITY REDEVELOPMENT AGENCY

By: _____
Luis J. Castro, Chairman

Date: _____

APPROVED AS TO FORM:

By: _____
Interim City Attorney

ATTEST:

By: _____
Gabriela T. Garcia, Deputy City Clerk