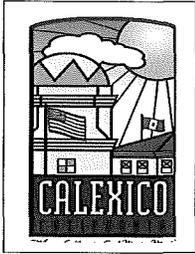


**AGENDA  
ITEM**

**11**



# AGENDA STAFF REPORT

**DATE:** June 5, 2019

**TO:** Mayor and City Council

**APPROVED BY:** David B. Dale, City Manager *DF for D.D.*

**PREPARED BY:** David B. Dale, City Manager *DF for D.D.*

**SUBJECT:** Approval of a Resolution Authorizing Adoption of a Continuing Disclosure Undertaking Policy and Authorizing Certain Actions Related Thereto

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**Recommendation:**

It is recommended that the City approve a Resolution and corresponding actions of the City of Calexico (the "City") adopting a Continuing Disclosure Undertaking Policy related to the City's ongoing obligation under certain Continuing Disclosure Agreements of the City and its agencies as previously entered into. This will be required in association with the issuance of municipal securities by the City and its agencies to provide financial information and operating data and notice of the occurrence of certain material events to the municipal securities market.

**Background:**

The City of Calexico, the Redevelopment Successor Agency, the Public Financing Authority and other City agencies that are authorized to issue municipal securities (collectively, the "City") have previously entered into, and will be required in the future to enter into, Continuing Disclosure Agreements obligating the City to provide certain financial information and operating data and notice of the occurrence of certain material events to the municipal marketplace. The Continuing Disclosure Agreements were and will be entered into in order to comply with Securities and Exchange Commission Rule 15c2-12, thereby enabling the City to continue to have access to the municipal marketplace and issue its securities to obtain financing for its various capital projects from time to time.

**Discussion & Analysis:**

Rule 15c2-12 prohibits bond underwriters from selling the securities of a municipal entity, such as the City, to investors unless that entity has agreed to provide, and continues to abide by its agreements to provide, certain financial information, operating data and notice of the occurrence of certain events, if material, to the municipal marketplace. The purpose of Rule 15c2-12 is to foster access to information



necessary for investors to be able to make informed investment decisions when considering a purchase of the City's securities on the secondary market. The continuing disclosure requirements include the annual provision of the City's audited financial statements, in a timely manner; the updating of certain operating data and information similar to what was originally disclosed in the Official Statement prepared in connection with an issuance of securities; and the provision of notice of the occurrence of certain specific material events if and when they occur.

The City is poised to issue refunding Tax Allocation Bonds to generate substantial savings to the City as well as other affected taxing entities associated with the former Redevelopment Agency, and is also preparing to enter the bond market over the summer to finance certain Water and Wastewater System capital improvements, as previously authorized. The adoption of this Continuing Disclosure Undertaking Policy will provide a road map for the City to stay in compliance with its current and future Continuing Disclosure obligations, enabling a bond underwriter to buy the City's obligations and sell them to investors, thus giving the City continued access to the municipal capital markets to acquire financing as needed.

**Fiscal Impact:**

The City must annually prepare specific disclosure reports as required for each unique financing. For example, Successor Agency bonds contain certain financial information unique to the Successor Agency and the security for its bonds, while General Fund-backed Certificates of Participation will require updates to and disclosure of a different set of financial information and operating data. Therefore, multiple annual reports may need to be prepared. The preparation of each report can range in cost from \$1,500 to \$5,000, depending on the complexity of updating the financial information for any given security structure. The City's annual audited financial statements, which are required to be prepared regardless of this obligation, must be completed and disseminated to the municipal marketplace by a time certain (generally nine months after the close of a fiscal year) in order for the City and its agencies to be in compliance with its continuing disclosure commitments and retain ongoing access to the municipal capital marketplace.

**Coordinated With:**

Finance Department.

**Attachment:**

1. Resolution Authorizing Adoption of a Continuing Disclosure Undertaking Policy and Authorizing Certain Actions Related Thereto.



RESOLUTION NO. \_\_\_\_\_

**RESOLUTION AUTHORIZING ADOPTION OF A CONTINUING DISCLOSURE UNDERTAKING POLICY AND AUTHORIZING CERTAIN ACTIONS RELATED THERETO**

**WHEREAS**, in connection with the sale of obligations by, or on behalf of, the City of Calexico (the "City"), U.S. Securities and Exchange Commission Rule 15c2-12, as amended (the "Rule"), requires that an underwriter of such obligations confirm that the City will undertake continuing disclosure responsibilities set forth in an undertaking, such as an agreement or certificate, relating to such obligations that may be issued by, or on behalf of, the City (each, a "Continuing Disclosure Undertaking"); and

**WHEREAS**, to ensure compliance with the continuing disclosure obligations set forth in each Continuing Disclosure Undertaking, the City has determined to implement certain compliance procedures attached as Exhibit A to this Resolution (the "Continuing Disclosure Undertaking Policy"), which will be followed by the City as long as any obligations subject to the Rule are outstanding;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY HEREBY DETERMINES, FINDS, AND RESOLVES AS FOLLOWS:**

**Section 1.** The City finds and determines that the foregoing recitals are true and correct.

**Section 2.** The Continuing Disclosure Compliance Policy, attached as Exhibit A hereto, is hereby approved. The City Manager and the Finance Director are each hereby authorized and directed to implement the Continuing Disclosure Undertaking Policy, and are authorized to take any necessary actions consistent with the purposes of this Resolution to effect such implementation.

**Section 4.** This Resolution shall become effective immediately upon adoption.

**Section 5.** The City Clerk shall certify to the adoption of this Resolution, and thenceforth and thereafter the same shall be in full force and effect. Notwithstanding the foregoing, such certification and any of the other duties and responsibilities assigned to the City Clerk pursuant to this Resolution may be performed by a Deputy City Clerk with the same force and effect as if performed by the City Clerk hereunder.

**PASSED AND ADOPTED** by the City Council of the City of Calexico, California,  
at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2019.

CITY OF CALEXICO, CALIFORNIA

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

STATE OF CALIFORNIA            )  
  ) ss  
COUNTY OF IMPERIAL            )

I, \_\_\_\_\_, City Clerk of the City of Calexico, DO HEREBY CERTIFY that the foregoing Resolution was duly adopted at a regular meeting of the City Council held on the \_\_\_ day of \_\_\_\_\_ 2019, by the following vote to wit:

AYES:            Councilmembers:

NOES:            Councilmembers:

ABSENT:         Councilmembers:

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CITY CLERK

**EXHIBIT A**

**CONTINUING DISCLOSURE UNDERTAKING POLICY**

**CITY OF CALEXICO, CALIFORNIA**  
**CONTINUING DISCLOSURE UNDERTAKING POLICY**

**PURPOSE:**

The following policy of the City of Calexico, California (including other of the City's related entities, the "City") is intended to ensure compliance with securities law requirements applicable to the City's issues, whether comprising bonds, bond anticipation notes, certificates of participation, revenue obligations or other instruments.

**IN GENERAL**

The Securities and Exchange Commission Rule 15c2-12, as amended (the "Rule"), requires certain information regarding an entity responsible for the repayment of a municipal security (an "Issuer") be disclosed to the municipal marketplace. In 2010, the U.S. Securities and Exchange Commission ("SEC") amended the Rule to enhance the disclosure requirements of Issuers in an effort to improve the quality and availability of information regarding outstanding municipal securities. In SEC Rel. No. 34-62184, accompanying an expansion of the Rule, the SEC summarized its "mandate to adopt rules reasonably designed to prevent fraudulent, deceptive or manipulative acts or practices in the market for municipal securities." The release reiterates the SEC's position that material non-compliance by an Issuer with past continuing disclosure obligations may warrant, without corrective actions, an underwriter being prohibited from underwriting such an Issuer's municipal securities, and thus would prevent the Issuer from accessing the municipal securities market.

The City Council of the City (the "City Council") acknowledges that, pursuant to the Rule, the City is required on an ongoing basis to provide certain financial and operating data to those persons and firms who own or are interested in purchasing the bonds, bond anticipation notes, certificates of participation, revenue obligations and other municipal obligations of the City previously issued and those which may in the future be issued by or on behalf of the City (the "Obligations"). Pursuant to the Rule, the City has entered into a number of undertakings, such as an agreement or certificate, under the Rule (each, a "Continuing Disclosure Undertaking") regarding its outstanding Obligations and will be required to enter into a new Continuing Disclosure Undertaking with regard to any additional Obligations of the City.

Inasmuch as the Rule prevents an investment banking firm, or underwriter (each, an "Underwriter") from purchasing the Obligations of the City in the absence of a Continuing Disclosure Undertaking and adequate assurances from the City that it will comply with the terms thereof, it is vital that the City maintain compliance with the Rule and its Continuing Disclosure Undertakings.

## **SELECTION OF RESPONSIBLE OFFICER**

The City will identify, on an annual basis, the individual or individuals (“Responsible Officer”) within the City that will be responsible for compiling and filing annual reports (the “Annual Reports”) and notices (the “Listed Event Notices”) of the occurrence of certain listed events (found in each Continuing Disclosure Undertaking), if necessary. In the absence of such delegation by the City Council, the Responsible Officer shall be the City Manager of the City.

## **ELECTRONIC MUNICIPAL MARKET ACCESS**

The Responsible Officer will familiarize themselves with the Municipal Securities Rulemaking Board’s Electronic Municipal Market Access (“EMMA”) website. The Responsible Officer will understand how to locate the City’s Obligations on EMMA. If the City is serving as its own Dissemination Agent, the Responsible Officer will establish a user identification and password for EMMA and become familiar with uploading documents onto EMMA.

## **IDENTIFYING AND UNDERSTANDING EXISTING CONTINUING DISCLOSURE OBLIGATIONS**

The Responsible Officer will, for each separate issue of outstanding municipal securities to which the Rule applies, read the related Continuing Disclosure Undertaking and identify the following:

- The date by which the Annual Report must be filed;
- The contents that need to be included in the Annual Report;
- The Listed Event Notices that must be filed; and
- When Listed Event Notices are required to be filed.

## **PREPARING AND SUBMITTING THE ANNUAL REPORT**

*Preparing Annual Audited Financial Statements.* The City will begin the process of completing its audited financial statements as soon as practicable after the close of each Fiscal Year. Such audited financial statements should be completed at least one month prior to the date the Annual Report must be filed.

*Preparation of Tables and Other Information.* The Responsible Officer will identify any information that is required to be included in the Annual Report but is not part of the City’s audited financial statements, and contact the sources necessary to compile such information as soon as possible after the close of each Fiscal Year. The City should consider adding any information required by its Continuing Disclosure Undertakings not included already in its audited financial statements into a supplementary information section of its audited financial statements.

*Submission of Annual Report.* Following the compilation of the information that is to be included in the Annual Report and prior to the date on which the Annual Report must be filed, the Responsible Officer will submit the Annual Report to the Dissemination Agent identified in the Continuing Disclosure Undertaking or to EMMA, as applicable.

*Review of EMMA.* Following the submission of the Annual Report to EMMA or the Dissemination Agent, as applicable, the Responsible Officer should review the EMMA website to confirm that the Annual Report has been posted. If the Annual Report has not been posted, the Dissemination Agent should be notified, or the Responsible Officer should file the Annual Report, as applicable.

## **IDENTIFYING AND REPORTING LISTED EVENTS**

*Understanding the Listed Events.* The Responsible Officer should be aware of the listed events (found in each Continuing Disclosure Undertaking) (the “Listed Events”) necessitating the filing of a Listed Event Notice. The Listed Events required to be included in each Continuing Disclosure Undertaking pursuant to the Rule have been included as Appendix A to this policy. Appendix A also includes two Listed Events that became effective for all Continuing Disclosure Undertakings entered into on or after February 27, 2019. These Listed Events are discussed in further detail below. If clarification is required regarding what is meant by each such Listed Event, the City’s disclosure counsel should be contacted to clarify such meaning.

*Filing Event Notices.* Each such notice shall be filed by the City, or by the Dissemination Agent, if any, on behalf of the City, to EMMA in a timely manner.

*Occurrence of a Listed Event.* The Issuer should contact its disclosure counsel if it has any questions regarding the occurrence of a Listed Event, and whether such occurrence may require the filing of an Event Notice.

*Additional Listed Events Required in Continuing Disclosure Undertakings Entered Into On and After February 27, 2019.* As a result of an amendment to the Rule, Continuing Disclosure Undertakings entered into on or after February 27, 2019, are required to include certain additional Listed Events relating to (a) the incurrence of certain financial obligations if material (other than bonds or notes for which an official statement has been posted to EMMA), (b) the modification of the terms of a financial obligation which affects security holders, if material, and (c) a default, event of default, acceleration, waiver or other modification or similar events with respect to a financial obligation that reflects financial difficulties. Included as Appendix A is a list of the Listed Events required by the Rule, identifying the two additional events that were incorporated by the amendment to the Rule and are required to be in all Continuing Disclosure Undertakings following February 27, 2019.

As provided in the amendment to the Rule, “[t]he term “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or

pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term “financial obligation” does not include municipal securities as to which a final official statement has been provided to the MSRB consistent with the Rule (i.e., posted to EMMA).

Debt Obligations. SEC Rel. No. 34-83886 (the “SEC Release”), the adopting release published in connection with the amendments to the Rule, interprets debt obligations to include both debt and debt-like obligations, and requires them to be disclosed when incurred or amended, if material.

Debt obligations exclude bonds, notes or other obligations (including lease revenue bonds or certificates of participation) offered pursuant to an official statement that complies with the Rule, and is posted by the underwriter or the Issuer to EMMA. Debt obligations also exclude ordinary financial and operating liabilities incurred in the normal course of the Issuer’s business.

The SEC Release interprets debt-like obligations to include leases that are “vehicles to borrow money.” The SEC Release points to lease-revenue transactions and certificates of participation transactions as examples of such vehicles, as these transactions involve a person advancing money to an Issuer which will be used by the Issuer to acquire or improve property, obtaining title to or a lease of the property, and leasing or subleasing the property to the Issuer in consideration for rent that repays the advance. Most operating leases would not fall into the category of debt obligations for purposes of the amendment either because they do not result in the receipt of money by or for the benefit of an Issuer or are ordinary obligations incurred in the normal course of Issuer operations.

Derivative Instruments. The SEC defines “derivative instrument” as “a derivative instrument entered into in connection with, or pledged as a security or a source of payment for, an existing or planned debt obligation.” The SEC Release interprets “derivative instrument” to include any swap, security-based swap, future contract, forward contract, option, any combination of the foregoing, or any similar instrument,” but only if related to an existing or planned debt, either because entered into to hedge the debt or pledged as security for the debt.

Guarantees. The SEC Release states that an Issuer’s “guarantee” of a “debt obligation” or covered derivatives instrument would also be considered a “financial obligation.” For these purposes, “guarantee” is intended to include any obligation to pay or secure a third party’s or Issuer’s financial obligation. This term would include a payment guarantee by an entity such as the City.

It is hereby the policy of the City, that the Responsible Officer be notified of the incurrence of any financial obligation to be entered into by or on behalf of the City. The Responsible Officer shall take measures to advise all applicable City staff of this City policy.

In addition, such Responsible Officer will notify the City's municipal advisor and the City's bond counsel and/or disclosure counsel of the receipt by the City of any default, event of acceleration, termination event, modification of terms (only if material or reflecting financial difficulties), or other similar events under any agreement or obligation to which the City is a party and which may be a "financial obligation" as discussed above. Such notice should be provided by the Responsible Officer as soon as the Responsible Officer receives notice from City staff, consultants or external parties of such event or receives direct written notice of such event so that the City can determine, with the assistance of the municipal advisor and bond counsel and/or disclosure counsel, whether notice of such event is required to be filed on EMMA pursuant to the Rule. If filing on EMMA is required, the filing is due within 10 business days of the occurrence of such event to comply with the applicable Continuing Disclosure Undertaking entered into after February 27, 2019.

The City will develop a system whereby a designated member of City Staff will create a list identifying the execution by the City of any agreement or other obligation which might constitute a "financial obligation" for purposes of the Rule and which is entered into after February 27, 2019. Amendments to existing agreements or financial obligations which relate to covenants, events of default, remedies, priority rights, or other similar terms should be reported to the City's municipal advisor and the City's bond counsel and/or disclosure counsel as soon as notice of amendment requests is received by City staff, consultants, or external parties of such event. Such notice is necessary so that the City can determine, with the assistance of bond counsel and/or disclosure counsel, whether such agreement or other obligation constitutes a material "financial obligation" for purposes of the Rule. If such agreement or other obligation is determined to be a material "financial obligation" or a material amendment to a "financial obligation" described above, notice thereof would be required to be filed on EMMA within 10 business days of execution or incurrence.

## **RECORD RETENTION**

The City should retain the transcript containing the documents related to each issue of municipal securities of the City. The City will retain electronic and paper copies of each Annual Report submitted to EMMA. The City will retain electronic and paper copies of each Listed Event Notice submitted to EMMA. The City should retain all source data used to complete the Annual Report. For example, source material pertaining to assessed valuation, tax rates or other tables noted in the Continuing Disclosure Undertaking that are required to be updated annually.

The Responsible Officer should create an index cataloging the aforementioned documents (the "retained documents"). Such index and documents should be stored at the main office of the City. The Responsible Officer should be responsible for the maintenance and updating of such index. If the individual serving as Responsible Officer is replaced, the index, the retained documents and a copy of these procedures should be provided to the individual assuming the position of Responsible Officer.

The retained documents identified in this Section 8.0 should be retained for a period of at least six years following the maturity, prepayment or redemption of the related issue of municipal securities.

## **TRAINING; REPORTS**

*Training.* Promptly following the implementation of this policy and no less than on an annual basis, the Responsible Officer shall receive training from a qualified consultant regarding the requirements of the Rule and the implementations for the City and future sales of its Obligations. If the Responsible Officer should leave the City, a new Responsible Officer shall receive such training as soon as possible upon appointment.

*Consultants.* In meeting his or her obligations as Responsible Officer under this policy, the Responsible Officer may, upon notice to and approval by the City Council, engage a consultant with expertise as to compliance with the Rule to act as Dissemination Agent. Such a consultant will be required to have demonstrated the ability to provide full and timely information to EMMA as required by the Rule and to provide competent advice to the Responsible Officer as to whether and when a Notice Event has taken place. The costs of any Dissemination Agent services shall be charged to the proceeds of the related Obligations so long as available, and subsequently shall be paid from the General Fund of the City. The retention of a Dissemination Agent does not vitiate the responsibility of the City Council or the Responsible Officer to comply with this Policy.

*Reports.* The Responsible Officer shall make a report to the City Council in an information item at the regular meeting following his or her submission of each Annual Report and any report of a Notice Event hereunder.

## **EFFECTIVE DATE**

This Continuing Disclosure Undertaking Policy is effective as of \_\_\_\_\_, 2019.

**Appendix A****Listed Events – Pre-February 27, 2019**

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulties;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulties;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB), or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security;
- (vii) modifications to rights of security holders, if material;
- (viii) bond calls, if material, and tender offers;
- (ix) defeasances;
- (x) release, substitution, or sale of property securing repayment of the security, if material;
- (xi) rating changes;
- (xii) bankruptcy, insolvency, receivership, or similar event of the Issuer or another obligated person;
- (xiii) the consummation of a merger, consolidation, or acquisition involving the Issuer or another obligated person or the sale of all or substantially all of its assets, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material; and
- (xiv) appointment of a successor or additional trustee or the change of name of a trustee, if material.

**New Events – Post-February 27, 2019 Transactions**

- (xv) incurrence of a Financial Obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the

obligated person, any of which affect security holders, if material;  
and

- (xvi) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the obligated person, any of which reflect financial difficulties.