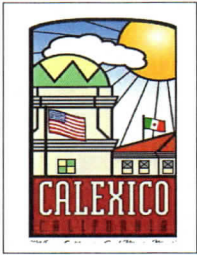


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AGENDA STAFF REPORT

DATE: October 19, 2022

TO: Mayor and City Council

APPROVED BY: Esperanza Colio Warren, City Manager

PREPARED BY: Sandra Fonseca, Interim Finance Manager

SUBJECT: Adopt Resolution Approving Settlement Agreement between the Calexico Unified School District, the City of Calexico and the Successor Agency to the Community Redevelopment Agency of the City of Calexico (Imperial County Superior Court Case No. ECU10114)

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Recommendation:

That the City Council adopt a resolution approving the settlement agreement between the Calexico Unified School District, the City of Calexico and the Successor Agency to the Community Redevelopment Agency of the City of Calexico (Case No. ECU10114), and approving certain related actions.

Background:

Pursuant to Health and Safety Code (the "HSC") § 34172 (a) (1), the Community Redevelopment Agency of the City of Calexico ("RDA") was dissolved on February 1, 2012 ("RDA Dissolution"). Consistent with the provisions of the HSC, on January 10, 2012, the City Council of the City of Calexico ("City") previously elected to serve in the capacity of the Successor Agency to the Community Redevelopment Agency of the City of Calexico ("Successor Agency").

Per HSC § 34179, the Successor Agency previously established the Calexico Oversight Board to assist in the wind-down of the former redevelopment agency through June 30, 2018, at which time it was dissolved by operation of law. Consistent with HSC § 34179 (j), on July 1, 2018 the Imperial Countywide Oversight Board ("CWOB") was established to assist in winding-down the dissolved redevelopment agencies within the County of Imperial.

On January 4, 1990, the Calexico Unified School District ("CUSD") and the RDA entered into a Public Improvements Agreement ("PIA") regarding certain areas within CUSD's jurisdictional boundaries added by Amendment No. 1 to the Redevelopment Plan ("Amendment No. 1") for the Merged Central Business District and Residential Project Area ("Merged Project Area"), which was

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superseded by the First Amended and Restated PIA dated March 16, 1993 regarding certain areas within CUSD's jurisdictional boundaries added by both Amendment No. 1 and Amendment No. 2 to the Redevelopment Plan ("Amendment No. 2") for the Merged Project Area; followed by a separate PIA dated December 20, 1993 regarding certain areas within the CUSD's jurisdictional boundaries added by Amendment No. 3 to the Redevelopment Plan ("Amendment No. 3") for the Merged Project Area (collectively, "PIA Agreements"). The PIA Agreements are "facilities agreements" adopted pursuant to California Health and Safety Code ("HSC") § 33445, not "pass-through agreements" per a former version of HSC § 33401.

The PIA Agreements require the RDA to pay the CUSD a certain share, as defined in the PIA Agreements (collectively, the "PIA Agreements Share"), of tax increment revenue received by the RDA for the area added to the Merged Project Area by Amendment Nos. 1, 2 and 3 into a special fund of the RDA known as the Calexico Unified School District Capital Facilities Fund ("CUSD Special Fund").

Statutory pass-through payments (per "AB 1290") by the RDA directly to the CUSD are required for the Central Business District and Residential portions of the Merged Project Area pursuant to HSC 33607.7, following amendments to the redevelopment plan for the Merged Project Area on June 8, 2005 per Ordinance No. 1022. The Successor Agency continued to be bound to the terms of the PIA Agreements, and CUSD continued to be legally entitled to receive the AB 1290 pass-through payments, following the RDA Dissolution.

At the request of the CUSD, on May 12, 2011, the RDA issued Community Redevelopment Agency of the City of Calexico, Merged Central Business District and Residential Redevelopment Project Area, Tax Allocation Bonds (School District), Issue of 2011 ("2011 Bonds") for the sole benefit of the CUSD, for which the Pledged Tax Revenues were defined as "the portion of . . . tax increment [which] the Agency [is required by] three agreements [to] pay . . . into a special fund (the CUSD Capital Facilities Fund) . . . pledged as security for indebtedness incurred by the Agency to finance capital facilities projects for the benefit of CUSD". In addition, the CUSD is solely responsible for making debt service payments on the 2011 Bonds.

Following RDA Dissolution, the Imperial County Auditor-Controller ("County") began paying the AB 1290 pass-through payments directly to the CUSD, as required by HSC § 34183(a)(1), for the Central Business District and Residential portions of the Merged Project Area. Following RDA Dissolution, the County also began paying the Agreements Share payments directly to the CUSD and the Successor Agency began invoicing the CUSD for debt service for the 2011 Bonds to be paid by the CUSD from the Agreements Share payments made directly to the CUSD by the County.

As a part of the Successor Agency's annual requirement to file a Recognized Obligation Payment Schedule ("ROPS"), during November 2015, the Successor Agency sought approval by the California Department of Finance ("DOF") of the Successor Agency's ROPS 15-16B which included the conveyance of all of the net proceeds from the 2011 Bonds, in the amount of \$1,446,592.00 ("Net 2011 Bonds Proceeds"), to the CUSD to be used for CUSD projects in accordance with the PIA Agreements and the covenants of the 2011 Bonds. Notwithstanding the Successor Agency's efforts to seek authorization to release the Net 2011 Bonds Proceeds

to the CUSD, the DOF denied the Successor Agency's request. Because the Successor Agency believes that the CUSD is the rightful owner of the Net 2011 Bonds Proceeds, the Successor Agency continued to seek DOF's approval of the conveyance of the Net 2011 Bond Proceeds to the CUSD in following ROPS periods (i.e., ROPS 15-16B, 16-17, 17-18, 18-19, 19-20, 20-21, 21-22 and 22-23) for which DOF denied each request. Further, the DOF is the sole arbiter of the approval and allocation of revenue to California successor agencies, all successor agencies lack authority over DOF's decisions and the CUSD was aware of the Successor Agency's limitations of its authority with respect to the release of the Net 2011 Bonds Proceeds.

Discussion & Analysis:

On April 5, 2016, the CUSD advised the Successor Agency that the CUSD would no longer make debt service payments on the 2011 Bonds, which necessitated the Successor Agency's use of debt service reserve funds to pay current debt service. Following a notification that the 2011 Bonds may default, the DOF in its letter of May 17, 2017, ordered the Imperial County Auditor-Controller to begin withholding the Agreements Share from the CUSD, and allocating those payments to the Successor Agency instead to ensure that debt service payments for the 2011 Bonds would be timely made and to avoid a default.

In addition to withholding the Agreements Share from the CUSD and allocating those payments to the Successor Agency, the County unilaterally withheld the 56.7% facilities share of the AB 1290 pass-through payments from the CUSD, and allocated those payments to the Successor Agency where they have been held in trust. Although the Successor Agency had no control over the DOF's order to the County to withhold funds from the CUSD, during November 2017 the CUSD filed a lawsuit against the City and the Successor Agency in Imperial County Superior Court (Case No. ECU10114) for the actions ordered by DOF and implemented by the County ("CUSD Lawsuit"). The CUSD did not include the DOF and the County in the lawsuit. On July 16, 2018, the CUSD, City and Successor Agency entered into a Tolling Agreement which tolled the statute of limitations for any subsequent action based on the allegations set forth in the CUSD Lawsuit ("Tolling Agreement").

Notwithstanding the forgoing, because it is possible for the Successor Agency (with the CUSD's authorization) to prepay and fully redeem the 2011 Bonds at par, the CUSD has proposed to settle the CUSD Lawsuit to, among other matters, retire the debt created by the 2011 Bonds and thus eliminate any debt service requirements for the 2011 Bonds. In that regard, the settlement of the CUSD Lawsuit includes the following:

1. The CUSD Lawsuit Settlement Agreement ("Settlement Agreement"), a copy of which is included as Exhibit "A" to the attached Resolution, is contingent, and will only be effective, upon approval by the governing bodies of the CUSD, City and Successor Agency and concurrence by the CWOB and DOF. In the event that the CUSD, City, Successor Agency, CWOB or DOF rejects the Settlement Agreement, the Agreement shall not be binding and the parties shall retain all former rights.
2. The Settlement Agreement requires the parties to take the following actions to settle the disputes:

- a. The Successor Agency will cause the redemption of the 2011 Bonds using the Bond Proceeds held in the CUSD Special Fund on the first date available for such redemption after the effective date of the Settlement Agreement. The Successor Agency shall fund the redemption of the 2011 Bonds from the Bond Proceeds held in the CUSD Special Fund, with the CUSD having no additional financial responsibility for such prepayment and redemption.
 - b. Following the redemption of the 2011 Bonds, the City and Successor Agency will cooperate with the CUSD and take any and all reasonably necessary steps to: (i) request DOF to repeal the pertinent portions of its May 17, 2017 order to the Imperial County Auditor-Controller to divert payments due to the CUSD; and (ii) support the CUSD's direct receipt from the County of (a) the Agreements Share payments, and (b) the CUSD's full share of the AB 1290 pass-through payments. The City's and Successor Agency's cooperation shall include, but not be limited to, (a) sending correspondence to the DOF and County supporting the CUSD's right to direct receipt of the Agreements Share payments and the 56.7% facilities share of the AB 1290 pass-through payments, and (b) confirming that the Successor Agency no longer requires any of the CUSD's share of such payments and AB 1290 pass-through payments.
 - c. The termination of the Tolling Agreement, effective as of the effective date of the Settlement Agreement and an acknowledgement that with the termination of the Tolling Agreement, the statute of limitations for the allegations set forth in the Action has expired.
3. The purpose of the Settlement Agreement is to provide a reasonable compromise to resolve certain contested claims asserted by the CUSD and to avoid substantial costs, expenses and uncertainties associated with otherwise resolving the parties' disputes. The Settlement Agreement provides that neither the execution nor the performance of the Settlement Agreement shall constitute or be construed as an admission of any fact, claim, or allegation of liability or responsibility on the part of any party, and/or of any liability or any fact or indication that any of the claims or defenses made have any merit.
 4. Each party shall bear its own fees and costs.

The Settlement Agreement was approved by the CUSD Board on September 8, 2022 (signed on September 9, 2022) and the CWOB on October 7, 2022.

The attached Resolution has been reviewed with respect to applicability of the California Environmental Quality Act (the "CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, § 15000 *et seq.*, hereafter the "CEQA Guidelines"), and the City's environmental guidelines. The Resolution does not constitute a "project" for purposes of CEQA, as that term is defined by CEQA Guidelines § 15378, because the Resolution is an administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378 (b) (5) of the CEQA Guidelines.

In addition, the Settlement Agreement has been approved as to form by the City Attorney.

Fiscal Impact:

With respect to the 2011 Bonds and their contemplated redemption pursuant to the Settlement Agreement, the City and Successor Agency have not and will not incur any expenses whatsoever. With respect to the defense of the CUSD Lawsuit, the Successor Agency's has incurred certain costs, which have been funded from the Successor Agency's Administrative Cost Allocation which is included within the Successor Agency's annual ROPS.

Coordinated With:

Steven H. Dukett, Managing Director of Development Services, TKE Engineering, Inc.

Attachment(s):

1. Resolution (including its Exhibit "A" as mentioned above).

RESOLUTION NO. 2022- __

RESOLUTION OF THE CITY COUNCIL AND APPROVING A LAWSUIT SETTLEMENT AGREEMENT BETWEEN THE CALEXICO UNIFIED SCHOOL DISTRICT, THE CITY OF CALEXICO AND THE SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO (IMPERIAL COUNTY SUPERIOR COURT CASE NO. ECU10114), AND CERTAIN RELATED ACTIONS

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

WHEREAS, consistent with the provisions of the HSC, on January 10, 2012, the City Council of the City of Calexico previously elected to serve in the capacity of the Successor Agency to the Community Redevelopment Agency of the City of Calexico (the “Successor Agency”); and

WHEREAS, pursuant to HSC § 34179, the Successor Agency previously established the Calexico Oversight Board to assist in the wind-down of the former redevelopment agency through June 30, 2018, at which time it was dissolved by operation of law; and

WHEREAS, consistent with HSC § 34179 (j), on July 1, 2018 the Imperial Countywide Oversight Board (the “CWOB”) was established to assist in winding-down the dissolved redevelopment agencies within the County of Imperial; and

WHEREAS, on January 4, 1990, the Calexico Unified School District (“CUSD”) and the RDA entered into a Public Improvements Agreement (“PIA”) regarding certain areas within CUSD’s jurisdictional boundaries added by Amendment No. 1 to the Redevelopment Plan (“Amendment No. 1”) for the Merged Central Business District and Residential Project Area (“Merged Project Area”), which was superseded by the First Amended and Restated PIA dated March 16, 1993 regarding certain areas within CUSD’s jurisdictional boundaries added by both Amendment No. 1 and Amendment No. 2 to the Redevelopment Plan (“Amendment No. 2”) for the Merged Project Area; followed by a separate PIA dated December 20, 1993 regarding certain areas within the CUSD’s jurisdictional boundaries added by Amendment No. 3 to the Redevelopment Plan (“Amendment No. 3”) for the Merged Project Area (collectively, “PIA Agreements”). The PIA Agreements are “facilities agreements” adopted pursuant to California Health and Safety Code (“HSC”) § 33445, not “pass-through agreements” per a former version of HSC § 33401; and

WHEREAS, the PIA Agreements require the RDA to pay the CUSD a certain share, as defined in the PIA Agreements (collectively, the “PIA Agreements Share”), of tax increment revenue received by the RDA for the area added to the Merged Project Area by Amendment Nos. 1, 2 and 3 into a special fund of the RDA known as the Calexico Unified School District Capital Facilities Fund (“CUSD Special Fund”); and

WHEREAS, statutory pass-through payments (per “AB 1290”) by the RDA directly to

the CUSD are required for the Central Business District and Residential portions of the Merged Project Area pursuant to HSC 33607.7, following amendments to the redevelopment plan for the Merged Project Area on June 8, 2005 per Ordinance No. 1022, the Successor Agency continued to be bound to the terms of the PIA Agreements, and CUSD continued to be legally entitled to receive the AB 1290 pass-through payments, following the RDA Dissolution; and

WHEREAS, at the request of the CUSD, on May 12, 2011, the RDA issued Community Redevelopment Agency of the City of Calexico, Merged Central Business District and Residential Redevelopment Project Area, Tax Allocation Bonds (School District), Issue of 2011 (“2011 Bonds”) for the sole benefit of the CUSD, for which the Pledged Tax Revenues were defined as “the portion of . . . tax increment [which] the Agency [is required by] three agreements [to] pay . . . into a special fund (the CUSD Capital Facilities Fund) . . . pledged as security for indebtedness incurred by the Agency to finance capital facilities projects for the benefit of CUSD” and the CUSD is solely responsible for making debt service payments on the 2011 Bonds; and

WHEREAS, following RDA Dissolution, the Imperial County Auditor-Controller (“County”) began paying the AB 1290 pass-through payments directly to the CUSD, as required by HSC § 34183(a)(1), for the Central Business District and Residential portions of the Merged Project Area; and

WHEREAS, following RDA Dissolution, the County also began paying the Agreements Share payments directly to the CUSD and the Successor Agency began invoicing the CUSD for debt service for the 2011 Bonds to be paid by the CUSD from the Agreements Share payments made directly to the CUSD by the County; and

WHEREAS, as a part of the Successor Agency’s annual requirement to file a Recognized Obligation Payment Schedule (“ROPS”), during November 2015, the Successor Agency sought approval by the California Department of Finance (“DOF”) of the Successor Agency’s ROPS 15-16B which included the conveyance of all of the net proceeds from the 2011 Bonds, in the amount of \$1,446,592.00 (“Net 2011 Bonds Proceeds”), to the CUSD to be used for CUSD projects in accordance with the PIA Agreements and the covenants of the 2011 Bonds; and

WHEREAS, notwithstanding the Successor Agency’s efforts to seek authorization to release the Net 2011 Bonds Proceeds to the CUSD, the DOF denied the Successor Agency’s request; and

WHEREAS, because the Successor Agency believes that the CUSD is the rightful owner of the Net 2011 Bonds Proceeds, the Successor Agency continued to seek DOF’s approval of the conveyance of the Net 2011 Bond Proceeds to the CUSD in following ROPS periods (i.e., ROPS 15-16B, 16-17, 17-18, 18-19, 19-20, 20-21, 21-22 and 22-23) for which DOF denied each request; and

WHEREAS, further, the DOF is the sole arbiter with respect to the approval and allocation of revenue to California successor agencies, all successor agencies lack authority over

DOF's decisions and the CUSD was aware of the Successor Agency's limitations of its authority with respect to the release of the Net 2011 Bonds Proceeds; and

WHEREAS, on April 5, 2016, the CUSD advised the Successor Agency that the CUSD would no longer make debt service payments on the 2011 Bonds, which necessitated the Successor Agency's use of debt service reserve funds to pay current debt service; and

WHEREAS, following a notification that the 2011 Bonds may default, the DOF in its letter of May 17, 2017, ordered the Imperial County Auditor-Controller to begin withholding the Agreements Share from the CUSD, and allocating those payments to the Successor Agency instead to ensure that debt service payments for the 2011 Bonds would be timely made and to avoid a default; and

WHEREAS, in addition to withholding the Agreements Share from the CUSD and allocating those payments to the Successor Agency, the County unilaterally withheld the 56.7% facilities share of the AB 1290 pass-through payments from the CUSD, and allocated those payments to the Successor Agency where they have been held in trust; and

WHEREAS, although the Successor Agency had no control over the DOF's order to the County to withhold funds from the CUSD, during November 2017 the CUSD filed a lawsuit against the City and the Successor Agency in Imperial County Superior Court (Case No. ECU10114) for the actions ordered by DOF and implemented by the County ("CUSD Lawsuit"); the CUSD did not include the DOF and the County in the lawsuit; and

WHEREAS, on July 16, 2018, the CUSD, City and Successor Agency entered into a Tolling Agreement which tolled the statute of limitations for any subsequent action based on the allegations set forth in the CUSD Lawsuit ("Tolling Agreement"); and

WHEREAS, notwithstanding the forgoing, because it is possible for the Successor Agency (with the CUSD's authorization) to prepay and fully redeem the 2011 Bonds at par, the CUSD has proposed to settle the CUSD Lawsuit to, among other matters, retire the debt created by the 2011 Bonds and thus eliminate any debt service requirements for the 2011 Bonds; and

WHEREAS, the settlement of the CUSD Lawsuit includes the following:

1. The CUSD Lawsuit Settlement Agreement ("Settlement Agreement"), a copy of which is attached as Exhibit "A" hereto, is contingent, and will only be effective, upon approval by the governing bodies of the CUSD, City and Successor Agency and concurrence by the CWOB and DOF. In the event that the CUSD, City, Successor Agency, CWOB or DOF rejects the Settlement Agreement, the Agreement shall not be binding and the parties shall retain all former rights.
2. The Settlement Agreement requires the parties to take the following actions to settle the disputes:

- a. The Successor Agency will cause the redemption of the 2011 Bonds using the Bond Proceeds held in the CUSD Special Fund on the first date available for such redemption after the effective date of the Settlement Agreement. The Successor Agency shall fund the redemption of the 2011 Bonds from the Bond Proceeds held in the CUSD Special Fund, with the CUSD having no additional financial responsibility for such prepayment and redemption.
 - b. Following the redemption of the 2011 Bonds, the City and Successor Agency will cooperate with the CUSD and take any and all reasonably necessary steps to: (i) request DOF to repeal the pertinent portions of its May 17, 2017 order to the Imperial County Auditor-Controller to divert payments due to the CUSD; and (ii) support the CUSD's direct receipt from the County of (a) the Agreements Share payments, and (b) the CUSD's full share of the AB 1290 pass-through payments. The City's and Successor Agency's cooperation shall include, but not be limited to, (a) sending correspondence to the DOF and County supporting the CUSD's right to direct receipt of the Agreements Share payments and the 56.7% facilities share of the AB 1290 pass-through payments, and (b) confirming that the Successor Agency no longer requires any of the CUSD's share of such payments and AB 1290 pass-through payments.
 - c. The termination of the Tolling Agreement, effective as of the effective date of the Settlement Agreement and an acknowledgement that with the termination of the Tolling Agreement, the statute of limitations for the allegations set forth in the Action has expired.
3. The purpose of the Settlement Agreement is to provide a reasonable compromise to resolve certain contested claims asserted by the CUSD and to avoid substantial costs, expenses and uncertainties associated with otherwise resolving the parties' disputes. The Settlement Agreement provides that neither the execution nor the performance of the Settlement Agreement shall constitute or be construed as an admission of any fact, claim, or allegation of liability or responsibility on the part of any party, and/or of any liability or any fact or indication that any of the claims or defenses made have any merit.
 4. Each party shall bear its own fees and costs; and

WHEREAS, the Settlement Agreement was approved by the CUSD Board on September 8, 2022 (signed on September 9, 2022) and the CWOB on October 7, 2022; and

WHEREAS, this Resolution has been reviewed with respect to applicability of the California Environmental Quality Act (the "CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, § 15000 *et seq.*, hereafter the "CEQA Guidelines"), and the City's environmental guidelines; and

WHEREAS, this Resolution does not constitute a “project” for purposes of CEQA, as that term is defined by CEQA Guidelines § 15378, because this Resolution is an administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378 (b) (5) of the CEQA Guidelines; and

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

NOW, THEREFORE, BE IT HEREBY RESOLVED, DETERMINED, AND ORDERED 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 Settlement Agreement between the Calexico Unified School District, the City of Calexico and the Successor Agency to the Community Redevelopment Agency of the City of Calexico (Imperial County Superior Court Case No. ECU10114), is approved (copy of which is attached as Exhibit “A to this Resolution).
- Section 3.** The City Manager is authorized to sign the Settlement Agreement on behalf of the City and to take such other actions and execute such other documents as are necessary to effectuate the Settlement Agreement and as may otherwise be required to fulfill the intent of this Resolution.
- Section 4.** This Resolution is not a “project” for purposes of CEQA, as that term is defined by Guidelines § 15378, because this Resolution is an administrative activity that will not result in a direct or indirect physical change in the environment, per § 15378 (b)(5) of the Guidelines.
- Section 5.** This Resolution shall take effect upon the date of its adoption.

PASSED, APPROVED AND ADOPTED this 19th day of October 2022.

Javier Moreno, Mayor

ATTEST:

Gabriela T. Garcia, City Clerk

APPROVED AS TO FORM:

Carlos L. Campos, City Attorney

CERTIFICATION:

State of California }
County of Imperial } ss
City of Calexico }

I, Gabriela T. Garcia, City Clerk of the City of Calexico, California, do hereby certify that the above and foregoing Resolution No. 2022- __ was duly passed, approved adopted by the City Council at a regular meeting held on the 19th day of October 2022, by the following vote, to-wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Gabriela T. Garcia, City Clerk

EXHIBIT "A"

**Settlement Agreement
Between
The Calexico Unified School District,
The City of Calexico
And
The Successor Agency to the Community Redevelopment Agency of the City of Calexico
Imperial County Superior Court Case No. ECU10114

(See Attachment)**

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into as of the 8th day of September, 2022 ("Effective Date") by and between CALEXICO UNIFIED SCHOOL DISTRICT ("District"), CITY OF CALEXICO ("City"), and SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO ("SA") (City and SA are, together, "Calexico"; District, City, and SA are each a "Party" and, together, "Parties").

Recitals

WHEREAS, the District and Redevelopment Agency of the City of Calexico ("RDA") entered into a Public Improvements Agreement dated January 4, 1990, regarding certain area within District's jurisdictional boundaries added by Amendment No. 1 to the Redevelopment Plan ("Amendment No. 1") for the Merged Central Business District and Residential Project Area ("Merged Project Area"), which was superseded by the First Amended and Restated Public Improvements Agreement dated March 16, 1993, regarding certain area within District's jurisdictional boundaries added by both Amendment No. 1 and Amendment No. 2 to the Redevelopment Plan ("Amendment No. 2") for the Merged Project Area; followed by a separate Public Improvements Agreement dated December 20, 1993, regarding certain area within the District's jurisdictional boundaries added by Amendment No. 3 to the Redevelopment Plan ("Amendment No. 3") for the Merged Project Area (collectively, "Agreements");

WHEREAS, the Agreements require the RDA to pay the District a certain Share, as defined in the Agreements, (collectively, the "Agreements Share") of tax increment revenue received by the RDA for the area added to the Merged Project Area by Amendment Nos. 1, 2 and 3 into a special fund of the RDA known as the Calexico Unified School District Capital Facilities Fund ("Special Fund");

WHEREAS, the Agreements do not require any payments by the RDA into the Special Fund or directly to the District for the original Central Business District or Residential portions of the Merged Project Area;

WHEREAS, statutory payments ("AB 1290 Pass-Through") by the RDA directly to the District are required for the Central Business District and Residential portions of the Merged Project Area pursuant to Health and Safety Code ("HSC") Section 33607.7, following amendments to the redevelopment plan for the Merged Project Area on June 8, 2005, per Ordinance No. 1022;

WHEREAS, SA, as successor agency to the RDA, continued to be bound to the terms of the Agreements, and District continued to be legally entitled to receive the AB 1290 Pass-Through, following the dissolution of redevelopment agencies on February 1, 2012 pursuant to ABX1 26 ("RDA Dissolution Law");

WHEREAS, in May 2011, the RDA issued Community Redevelopment Agency of the City of Calexico, Merged Central Business District and Residential Redevelopment Project Area, Tax Allocation Bonds ("2011 Bonds") for the benefit of the District, for which the Pledged Tax Revenues were defined as "the portion of . . . tax increment [which] the Agency [is required by] three agreements [to] pay [i.e., the Agreements Share, as defined above] . . . into a special fund (the CUSD Capital Facilities Fund) . . . pledged as security for indebtedness incurred by the Agency to finance capital facilities projects for the benefit of CUSD";

WHEREAS, following dissolution of the RDA, the Imperial County Auditor-Controller ("County) began paying the AB 1290 Pass-Through directly to the District, as required by HSC

Section 34183(a)(1) of the RDA Dissolution Law, for the Central Business District and Residential portions of the Merged Project Area;

WHEREAS, following dissolution of the RDA, the County also began paying the Agreements Share payments directly to the District;

WHEREAS, following dissolution of the RDA, the SA began invoicing the District for debt service for the 2011 Bonds to be paid by the District from the Agreements Share payments made directly to the District by the County;

WHEREAS, as a part of the SA's annual requirement to file a Recognized Obligation Payment Schedule ("ROPS"), during November 2015, the SA sought approval by the California Department of Finance ("DOF") of the SA's ROPS 15-16B to convey proceeds in the amount of \$1,446,592.00 from the 2011 Bonds that were held by the SA in the Special Fund ("Bond Proceeds") to be used for District projects in accordance with the Agreements and the covenants of the 2011 Bonds, but DOF denied the SA's request to convey the Bond Proceeds to the District;

WHEREAS, the SA has continued to seek DOF's approval of the conveyance of the Bond Proceeds in each following ROPS (i.e., ROPS 15-16B, 16-17, 17-18, 18-19, 19-20, 20-21, 21-22 and 22-23) for which DOF denied each such request;

WHEREAS, on April 5, 2016, the District advised the SA that the District would no longer make debt service payments on the 2011 Bonds, which necessitated the use of debt service reserve funds to pay current debt service;

WHEREAS, in its letter of May 17, 2017, the DOF ordered the Imperial County Auditor-Controller to begin withholding the "pass-through payments . . . As applied to the . . . Agreements" (i.e., the Agreements Share) from the District, and allocating those payments to the SA instead so they could be used to pay debt service for the 2011 Bonds;

WHEREAS, in addition to withholding the Agreements Share from the District and allocating those payments to the SA, the County also withheld the 56.7% facilities share of the AB 1290 Pass-Through from the District, and allocated those payments to the SA;

WHEREAS, as a result of the withholding by the County, the District filed a lawsuit against Calexico in November 2017 in Imperial County Superior Court, Case No. ECU10114 (the "Action");

WHEREAS, the District and Calexico settled the 2017 lawsuit pursuant to a Tolling Agreement executed by Calexico and the District on July 16, 2018, which agreement tolled the statute of limitations for any subsequent action based on the allegations set forth in the Action ("Tolling Agreement");

WHEREAS, the SA is now able to prepay and redeem the 2011 Bonds by their terms, so that debt service on the 2011 Bonds will no longer be due; and

WHEREAS, the Parties have agreed to settle their disputes and now enter into this Agreement.

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

Terms

1. Board /Council and Oversight Board/DOF Approval Contingency. This Agreement is contingent, and will only be effective, upon approval by District's Board ("Board"), Calexico's Council ("Council"), the Imperial County-Wide Oversight Board ("CWOB") and DOF. The District and Calexico further acknowledge that the CWOB approving resolution must be submitted to DOF for its review, and the CWOB's action shall not be effective until five business days after submission to DOF, or if DOF requests review of the CWOB's action, until DOF approval or waiver of its approval of such action according to its protocols in such matters. In the event that the Board, Council, CWOB or DOF rejects this Agreement, the Agreement shall not be binding and the Parties shall retain all former rights.
2. Settlement Terms. The Parties agree to take the following actions to settle their disputes:
 - a. The SA will cause the prepayment and redemption of the 2011 Bonds using the Bond Proceeds held in the Special Fund on the first date available for such prepayment and redemption after the Effective Date. The SA shall be responsible for any financial contribution necessary to prepay and redeem the 2011 Bonds from the Bond Proceeds held in the Special Fund, with the District having no additional financial responsibility for such prepayment and redemption.
 - b. Following prepayment and redemption of the 2011 Bonds, Calexico will cooperate with the District and take any and all reasonably necessary steps to: (i) request DOF to repeal its May 17, 2017, order to the Imperial County Auditor-Controller to divert the Agreements Share due to the District; and (ii) support the District's direct receipt from the County of (a) the Agreements Share payments, and (b) the District's full share of the AB 1290 Pass-Through. Calexico's cooperation shall include, but not be limited to, sending correspondence to the DOF and County supporting the District's right to direct receipt of the Agreements Share payments and the 56.7% facilities share of the AB 1290 Pass-Through, and withdrawing any requirement that Calexico previously asserted with respect to the receipt of the District's Agreements Share and AB 1290 Pass-Through.
 - c. The Parties agree to terminate the Tolling Agreement without further action, effective as of the date of the last approval of the Board, Council, CWOB and DOF, pursuant to section one above. The Parties agree and acknowledge that upon the termination of the Tolling Agreement, the statute of limitations for the allegations set forth in the Action will have expired.
3. No Admission of Fault. The Parties agree and acknowledge that liability is disputed, and this Agreement is entered into as a compromise to resolve certain contested claims and avoid substantial costs, expenses and uncertainties associated with otherwise resolving the Parties' disputes. The Parties agree and acknowledge that neither the execution nor the performance of this Agreement shall constitute nor be construed as an admission of any fact, claim, or allegation of liability or responsibility on the part of any Party, and/or of any liability or any fact or indication that any of the claims or defenses made have any merit.
4. Fees and Costs. Each Party shall bear its own fees and costs.

5. No Assignment. The Parties represent and warrant that they have not assigned or transferred or purported to transfer or assign to any person, firm, corporation, or other entity any claim, demand, damage, debt, liability, action or cause of action herein released.
6. Entire Understanding. This Agreement constitutes the entire understanding of the Parties with respect to the matters set forth in this document. None of the Parties have made any statement, representation, warranty, agreement, arrangement, understanding, oral or written, in connection herewith which has been relied upon by any other Party, or which has been an inducement for any Party to enter into this Agreement, except as expressly set forth in this Agreement. This Agreement shall be interpreted according to its own terms, as defined in this Agreement or otherwise according to their ordinary meaning without any parol evidence. This is an integrated Agreement. This Agreement may not be altered, amended, modified or otherwise changed in any respect whatsoever, except by a writing duly executed by the Parties. The Parties, and each of them, agree that they will make no claim at any time that this Agreement has been altered or modified or otherwise changed by oral communication of any kind or character. The Parties, and each of them, have carefully read and understand the contents of this Agreement and sign it as their own free act pursuant to the advice of their respective legal counsel.
7. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of the Parties and each of their respective legal successors, heirs, administrators, assigns, affiliates, agents, attorneys, and other representatives, and each of them.
8. No Unwritten Waiver of Breach. No breach of any provision of this Agreement can be waived unless it is done so in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision hereof.
9. Governing Law. This Agreement shall be construed under and shall be governed by the laws of the State of California, notwithstanding any choice of law statutes, or requirements to the contrary. In the event any action is filed in connection with this Agreement, the Parties agree to bring such action in a court with appropriate jurisdiction in the County of Imperial.
10. Enforcement. Pursuant to California Evidence Code section 1123, the Parties acknowledge that this Agreement is exempt from the confidentiality provisions of California Evidence Code section 1152 et seq., and is admissible as evidence to enforce the settlement. The Parties agree that this Agreement shall constitute a full and complete defense to, and may be used as a basis for a permanent injunction against, any action, suit, or other proceeding which may be instituted, prosecuted, or attempted by any of them in breach of this Agreement. In any proceeding to enforce this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred therein.
11. Joint Preparation of Agreement. This Agreement or any uncertainty or ambiguity herein shall not be construed against any of the Parties but shall be construed as if all the Parties jointly prepared this Agreement. The Parties, and each of them, expressly waive the provisions of California Civil Code section 1654.
12. Partial Invalidity. If any provision or any part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable, or contrary to public policy or any law, the invalidity of that provision or part of that provision of this Agreement shall not affect the enforceability of the remainder of this Agreement.

13. Other Documents and Actions. The Parties, and each of them, agree to execute such other documents and to take such actions as may be reasonably necessary to effectuate the purposes of this Agreement.
14. Headings. Headings in this Agreement are for convenience only and shall not be employed in interpreting this Agreement.
15. Incorporation of Recitals. The Recitals are hereby incorporated herein by reference.
16. Signatories. Each of the signatories below warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the Party for whom he or she purports to sign.
17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original. A facsimile or electronic signature shall be deemed to be the equivalent of the actual original signature. All counterparts so executed shall constitute one Agreement binding all the Parties.

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS HEREOF the Parties have caused this Agreement to be executed on the dates identified below.

CALEXICO UNIFIED SCHOOL DISTRICT

CITY OF CALEXICO



ARTURO JIMENEZ

PRINT NAME

PRINT NAME

SUPERINTENDENT

PRINT TITLE

PRINT TITLE

SEPTEMBER 09, 2022

DATE

DATE

SUCCESSOR AGENCY TO THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF CALEXICO

PRINT NAME

PRINT TITLE

DATE

END OF DOCUMENT.