

## **BOND EXPENDITURE AGREEMENT**

This Bond Expenditure Agreement (the “Agreement”) is entered into effective January 21, 2021, by and between the City of Coalinga, a municipal corporation (the “City”), and the Successor Agency to the Coalinga Redevelopment Agency under Health and Safety Code Section 34173 (“Successor Agency”) pursuant to City Council Resolution No. 3998, Successor Agency Resolution No. SA-337, and the Fresno Countywide Oversight Board (“Oversight Board”) Resolution No. OB 2021-XX.

### **Recitals**

A. Successor Agency received its Finding of Completion under Health and Safety Code Section 34179.7 from the California Department of Finance on **December 15, 2012**.

B. Health and Safety Code Section 34191.4(c) allows a successor agency that has received a finding of completion to use bond proceeds from bonds issued prior to December 31, 2010 (“Bond Proceeds”) for purposes for which the bonds were sold, provides that Bond Proceeds in excess of amounts needed to satisfy approved enforceable obligations as defined in Health and Safety Code Section 34171(d) (“Excess Bond Proceeds”) shall be expended in a manner consistent with the original bond covenants, and further provides that such expenditures shall constitute “excess bond proceeds obligations” that shall be listed separately on the successor agency’s Recognized Obligation Payment Schedule (“ROPS”).

C. Successor Agency has Excess Bond Proceeds from the Tax Allocation Bonds, Series 2009A (“Bonds”).

D. Successor Agency has remaining Excess Bond Proceeds and wishes to use such proceeds for redevelopment purposes consistent with applicable bond covenants outlined on the fifth page of the Official Statement of the Bonds, under “Use of Bond Proceeds”.

E. The California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.) 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. Under Health and Safety Code Section 33220, a city may aid and cooperate in the planning, undertaking, construction, or operation of redevelopment projects. Health and Safety Code Section 33220(e) specifically authorizes a city to enter into an agreement with its redevelopment agency or any other public entity to further redevelopment purposes. Health and Safety Code Section 34178 allows a successor agency and its sponsoring city to enter into agreements with the approval of the oversight board.

F. Successor Agency desires to provide Excess Bond Proceeds to the City to enable the City to use such funds, in a manner consistent with the original bond covenants; to undertake projects and programs that were not previously funded and obligated by Successor Agency or the City. The transfer of these funds to the City would advance the City’s community

development goals while maximizing fiscal and social benefits flowing to the taxing entities from successful development. The City Council has found that the use of Excess Bond Proceeds to fund projects is in accordance with Health and Safety Code Sections 33445, 33445.1, and 33679, the bond covenants, and other applicable law. The Oversight Board has determined that the expenditure of Excess Bond Proceeds in accordance with this Agreement will benefit the affected taxing entities and has approved the execution of this Agreement and the provision of Excess Bond Proceeds to the City for the purposes described herein.

G. In order to facilitate the use of Excess Bond Proceeds consistent with the bond covenants, Successor Agency and the City have negotiated this Agreement requiring the transfer of current Excess Bond Proceeds by Successor Agency to the City, and the City's use of such proceeds consistent with applicable bond covenants. The parties intend that this Agreement shall constitute an excess bond proceeds obligation within the meaning of Health and Safety Code Section 34191.4(c)(1)(A) ("Excess Bond Proceeds Obligation") to be paid from Excess Bond Proceeds. Upon approval by the Oversight Board, Successor Agency will list this Agreement, and the requirement to transfer Excess Bond Proceeds herein, on its ROPS for July 1, 2021 through June 30, 2022 ("ROPS 21-22") as an Excess Bond Proceeds Obligation. The California Department of Finance shall review such listing pursuant to its statutory right of review and approval of a ROPS.

NOW, THEREFORE, the parties hereto do mutually agree as follows:

## 1. RECITALS

The recitals above are an integral part of this Agreement and set forth the intentions of the parties and the premises on which the parties have decided to enter into this Agreement.

## 2. SUCCESSOR AGENCY'S OBLIGATIONS

Successor Agency shall have the following obligations under this Agreement:

2.1. **CURRENT EXCESS BOND PROCEEDS.** Successor Agency shall transfer to the City Excess Bond Proceeds held by Successor Agency in an amount of up to three hundred forty-seven thousand eight hundred and sixty-four dollars (\$347,864).

2.2. **FUTURE EXCESS BOND PROCEEDS.** Successor Agency shall transfer to the City all future Excess Bond Proceeds held or received by Successor Agency. Such future Excess Bond Proceeds shall include, without limitation, (1) Bond Proceeds previously obligated to a project or other Enforceable Obligation that become unobligated for any reason, (2) Bond Proceeds that become available in the form of rents, sale proceeds, loan repayments, or other revenues that are generated by properties or other assets acquired and/or improved with Bond Proceeds and that are not otherwise obligated to a project or other Enforceable Obligation, and (3) any other funds held by Successor Agency that qualify as Excess Bond Proceeds under this Agreement. For purposes of this Agreement, "Enforceable Obligation" shall have the meaning ascribed to such term in Health and Safety Code Section 34171(d).

The parties intend that payments of future Excess Bond Proceeds be made to the City as soon as possible after such Excess Bond Proceeds become available. The transfer of future Excess Bond Proceeds shall be made pursuant to an approved ROPS within ninety (90) days of the commencement of the relevant ROPS period. Successor Agency shall be responsible for ensuring that payments of future Excess Bond Proceeds, as such funds become available, are included on the next possible ROPS.

2.3. **PROJECTS FUNDED BY EXCESS BOND PROCEEDS.** Successor Agency assigns to the City all responsibilities in relation to the administration of any projects or programs funded by Excess Bond Proceeds. Successor Agency assigns to the City all contracts entered into by Successor Agency or the former Coalinga Redevelopment Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by Successor Agency relating to Enforceable Obligations.

### 3. CITY'S OBLIGATIONS

The City shall have the following obligations under this Agreement:

3.1. **RETENTION OF EXCESS BOND PROCEEDS.** The City shall accept, hold, and disburse Excess Bond Proceeds transferred to the City by Successor Agency under this Agreement, including current Excess Bond Proceeds and future Excess Bond Proceeds. The City shall retain any Excess Bond Proceeds that it receives, such as revenue generated from properties acquired or improved with Excess Bond Proceeds or payments on loans funded from Excess Bond Proceeds, without any obligation to return such funds to Successor Agency, and shall use such funds for uses consistent with applicable bond covenants.

3.2. **BOND SPENDING PLAN.** The City may spend Excess Bond Proceeds received or retained under this Agreement on any project, program, or activity consistent with the original bond covenants applicable to the particular Excess Bond Proceeds, and must comply with all requirements of federal tax law and all applicable requirements of the California Community Redevelopment Law as to the use of such funds. The City intends to spend the Excess Bond Proceeds pursuant to the bond covenants, which state that bond proceeds shall be used to "fund certain redevelopment activities of benefit to the Project Area" (page 5 of 2009 Tax Allocation Bonds Official Statement).

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 may transfer funds between approved projects, programs and activities, as long as the transfer is within a single project area if applicable bond covenants restrict such funds to a particular project area.

The City shall indemnify and defend Successor Agency, and its officers and agents, against, and shall hold Successor Agency, and its officers and agents, harmless from, any claims, causes of action, or liabilities arising from the misuse of Excess Bond Proceeds by the City or the failure of the City to ensure that Excess Bond Proceeds are used in accordance with bond covenants, federal tax law, and the California Community Redevelopment Law.

The City assumes all contracts entered into by Successor Agency or the former Coalinga Redevelopment Agency related to activities to be funded by Excess Bond Proceeds, with the exception of those contracts retained by 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

4.1. 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.

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

4.3. All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

#### 5. SEVERABILITY

If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or 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. DEFAULT

If either party fails to perform or adequately perform an obligation required by this Agreement within thirty (30) calendar days of receiving written notice from the non-defaulting party, the party failing to perform shall be in default hereunder. In the event of default, the non-defaulting party will have all the rights and remedies available to it at law or in equity to enforce the provisions of this contract, including without limitation the right to sue for damages for breach of contract or to seek specific performance. The rights and remedies of the non-defaulting party enumerated in this paragraph are cumulative and shall not limit the non-defaulting party's rights under any other provision of this Agreement, or otherwise waive or deny any right or remedy, at law or in equity, existing as of the date of the Agreement or hereinafter enacted or established, that may be available to the non-defaulting party against the defaulting party.

## 7. BINDING ON SUCCESSORS

This Agreement shall be binding on and shall inure to the benefit of all successors and assigns of the parties, whether by agreement or operation of law.

## 8. 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.

**[SIGNATURES ON NEXT PAGE]**

In witness whereof, the undersigned parties have executed this Bond Expenditure Agreement effective as of the date first above written.

**“CITY”**

**THE CITY OF COALINGA,**  
a municipal corporation

By: \_\_\_\_\_  
City Manager

Attest:  
By: \_\_\_\_\_  
City Clerk

Approved as to form:

By: \_\_\_\_\_  
City Attorney

**“SUCCESSOR AGENCY”**

**THE SUCCESSOR AGENCY TO THE COALINGA REDEVELOPMENT AGENCY,**  
successor agency to the Coalinga Redevelopment Agency under Health and Safety Code Section 34173.

By: \_\_\_\_\_  
Agency Chair

Attest:  
By: \_\_\_\_\_  
Agency Secretary

Approved as to form:

By: \_\_\_\_\_  
Agency Counsel