

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between City of Calexico (“City”) and the State Water Resources Control Board (“State Water Board” or “Board”), Division of Drinking Water (the “Division”), referred to hereinafter jointly as the Parties. This Agreement is executed on the last date of the signatures below.

RECITALS

This Agreement is made in the following circumstances which for purposes of this Agreement shall constitute recitals of fact:

1. The State Water Board is authorized to enforce the requirements of section 116906 of the Water Shut Off Protection Act (Health & Saf. Code, § 116900 et. seq.) and the Water and Wastewater System Payments Under the American Rescue Plan Act of 2021 (Health & Saf. Code, § 116773 et. seq.) (collectively, the “Acts”) using its authorities under Health and Safety Code Sections 116557, 116650 and 116655, including without limitation by issuing a citation with monetary penalties. (Health & Saf. Code, §§ 116906, subd. (c)(1) and 116773.6, subd. (d).) The Deputy Director of the Division is authorized to issue a citation and a compliance order to a public water system for certain violations of the Acts. (Health & Saf. Code, §§ 116650, 116655, 116271, subd. (k)(2).)
2. The Acts were enacted to reduce the number of Californians that lose access to water service due to their inability to pay and to provide financial assistance to those in need. The Division alleges that the City is in violation of both Acts and that the City’s alleged violations have deprived many Californians of their human right to water, as well as State-funded assistance to pay past due water bills. The Division also alleges that the City has also misused state funds allocated by the State Water Board for which it applied and received under the Water and Wastewater System Payments Under the American Rescue Plan Act of 2021 (“Water Arrearages Act”).
3. The Division alleges that the City committed multiple violations of the Acts, including, but not limited to, failing to have a written policy on the discontinuation of residential service for nonpayment available to customers in the languages required by section 1632 of the Civil Code from February 2020 through December 2022, during which time the City discontinued water service to 484 unique customers (violations of section 116906 of the Health and Safety Code, subdivisions (a) and (b)); failing to calculate or estimate the total amount of outstanding past-due bills that accumulated during the COVID-19 pandemic bill relief period (violations of section 116773.4 of the Health and Safety Code, subdivision (b)(5)); failing to credit customer accounts within 60 days of receiving funds under the Water Arrearages Act (violations of section 116773.4 of the Health and Safety Code, subdivision (c)); failing to provide customers with arrearages accrued during the COVID-19 pandemic bill relief period a notice that they may enter into a payment plan and that they have 30 days from the date of

the notice to enroll in the payment plan (violations of section 116773.4 of the Health and Safety Code, subdivision (d)(1)); and discontinuing water service due to nonpayment of past-due bills during the period of July 21, 2021 through December 31, 2021 (violations section 116773.4 of the Health and Safety Code, subdivision (d)(2)).

4. The Division also alleges that the City committed multiple violations of the California Water And Wastewater Arrearage Payment Program Guidelines, including violations of sections B, F.1.3 the requirement to waive late fees, and F.2.1 the requirement to notify customers that the bill credit was provided by the Water Arrearages Act.
5. The Division is authorized to issue a citation for the alleged violations of the Acts that includes a monetary penalty of up to \$1,000 per day for each day that a violation occurred, and for each day that a violation continues to occur. A separate penalty may be assessed for each violation. (*Id.*, § 116650.)
6. The California Attorney General's Office, through the independent authority of the Attorney General as the chief law enforcement officer of the State, has similarly alleged that the City has violated the Acts. The Division and the Attorney General's Office (referred to as the "State Enforcement Agencies") engaged in a joint investigation of the City's violations of the Acts. The State Enforcement Agencies and the City agreed to conduct a joint settlement negotiation to resolve the alleged violations collaboratively and efficiently. As a result of the joint negotiation, the State Enforcement Agencies and the City have agreed to settle the alleged violations in parallel settlement agreements whereby the City agrees to, *inter alia*, pay a monetary penalty, as more fully described below.
7. The State Enforcement Agencies and the City have also separately executed a Stipulation and Proposed Consent Judgment ("the Consent Judgment") that will be filed by the parties in the Superior Court for Imperial County. The Consent Judgment requires the City to, without limitation, make restitution to customers who were harmed by the City's violations of the Act and to comply with numerous injunctive relief provisions, including, without limitation, modification of the City's policies, billing practices, and staffing, and applying to the Extended Water and Wastewater Arrearages Program to provide further assistance to the City's customers.

STIPULATIONS

In consideration of the above recitals and in consideration of the mutual covenants set forth in this Agreement, the Parties agree to settle the City's monetary liability for violations of the Acts as follows:

1. **Recitals Incorporated.** The preceding recitals are incorporated herein.

2. **Settlement Conditionally Confidential.** The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence in any administrative or judicial proceeding or hearing and will be fully protected by California Evidence Code sections 1152 and 1154. If the State Water Board's Executive Director does not issue the Order Approving Settlement Agreement, this Agreement is not admissible in an adjudicative proceeding or civil action pursuant to Government Code section 11415.60.
3. **Payment of Monetary Penalty.** To settle the City's monetary liability, the City agrees to a penalty totaling \$350,000 to be accounted for as follows:
 - a. No later than 30 calendar days after the issuance of the Order Approving Settlement Agreement, the City shall pay \$150,000 to the State Water Board's Safe Drinking Water Account. Payment must be made by cashier's check, certified check, or money order made payable to the "State Water Resources Control Board Safe Drinking Water Account." Reference should be made to the order number appearing on the Order Approving Settlement Agreement. The City shall properly execute and deliver payment to:

State Water Resources Control Board
Attention: Accounting Office
P.O. Box 1888
Sacramento, CA 95812-1888

A copy of the check shall be sent to Laura Mooney, Attorney IV, State Water Board Office of Enforcement, 801 K Street, Suite 2300, Sacramento, CA 95814.

- b. Within 180 calendar days of issuance of the Order Approving Settlement Agreement, the City shall fund a Water Conservation Program for the benefit of City residential customers ("Program"). The City shall disburse at least \$200,000 in program benefits to City residential customers who qualify under the Program, exclusive of any administrative or other cost incurred by the City to create and/or operate the Program, including compensation of a third party to design and/or implement the Program.

The purpose of the Program shall be to promote water efficiency and conservation for residential water customers, thereby reducing a resident's water bill and the likelihood their water will be shut off due to the inability to pay the bill. The City is granted the discretion to design and implement the Program conditioned upon the following: (1) the Program must serve the agreed upon purpose. (2) The Program must provide a direct benefit to individual residential customers rather than promote water conservation generally. Examples of a direct benefit include distributing no cost low-flow showerheads and other easily installed water conservation devices, distributing vouchers or other direct payments for water conservation devices or services, providing no cost water

audits, distributing no cost irrigation control and/or weather-based devices, and other mechanisms that incentivize individual water conservation. (3) To the greatest extent possible, the Program will be designed to eliminate barriers to participation, such as favoring vouchers and direct payments over rebates or other conditions that require the customer to expend money or other resources in order to obtain Program benefits. (4) The Program will take into account that a high percentage of City residents rent their homes. The Program will be designed with a view towards benefiting the resident who uses the water and suffers when the water is shut off.

Within 120 calendar days of issuance of the Order Approving Settlement Agreement, the City shall submit to the State Enforcement Agencies a written proposal that sets forth the goals, detailed plans for implementation, implementation schedules and milestones, and a budget for the Program. The City shall consider and address the State Enforcement Agencies' response, if any, to the proposal to ensure the Program meets the agreed upon purpose, as set forth above.

4. **Reporting.** The City shall provide the State Enforcement Agencies with written quarterly progress reports identifying all steps taken to create and implement the Program and all disbursements made in connection with the Program. The first report is due 90 days after issuance of the Order Approving Settlement Agreement. The City must provide quarterly reports on program implementation to the State Enforcement Agencies until the entire \$200,000 in funding is disbursed, and it shall provide a certified closing report accounting for the disbursement of all funds under the Program as of the date of the closing report, which shall be no later than 36 months of the Order Approving Settlement Agreement. If the City has not disbursed the entire \$200,000 in funding by this date, the balance shall be paid to the account listed in Stipulation 3 subdivision (a).
5. **Satisfaction of Monetary Liability.** The City's completion of Stipulations 3 and 4 will constitute a complete and final satisfaction of the City's monetary liability associated with the Division's alleged violations described in Recitals 2, 3 and 4, above. The State Water Board will not bring any further administrative civil liability or other enforcement action regarding the same alleged violations.
6. **Performance by City.** The City shall comply with Sections 8, 9, and 10 in the Consent Judgment. If the Consent Judgment is not entered by the court then the City shall comply with Sections 8, 9 and 10 in the Stipulation and Proposed Consent Judgment filed by the parties in the Superior Court for Imperial County, and (i) references in the Agreement to paragraph numbers in the Consent Judgment shall instead apply to paragraph numbers in the Stipulation and Proposed Consent Judgment filed by the parties in the Superior Court for Imperial County; and (ii) the State Water Board may enforce any violation of Sections 8, 9, and 10 as if each term was fully set forth herein. Further, if any

term in Sections 8, 9 and/or 10 of the Consent Judgment is stricken or deemed unenforceable by the court, then the State Water Board may enforce the term as if fully set forth herein. The State Water Board's enforcement of any term in Sections 8, 9, or 10 of the Stipulation and Proposed Consent Judgment shall not limit or preclude any enforcement authority, remedies, or action available by law to the Attorney General.

7. **Enforcement of this Agreement.** The State Water Board may exercise its enforcement authority under the California Safe Drinking Water Act for violation of the Agreement and the Order Approving Settlement Agreement pursuant to Health and Safety Code section 116740, in addition to any other remedy at law.
8. **State Water Board Authority.** The Agreement is not intended to and shall not be construed to limit or preclude the State Water Board from exercising its authority under any statute, regulation, ordinance, or other law. Nothing in the Agreement shall excuse the City from meeting any other requirements that may be imposed hereafter by applicable legally binding legislation, regulation, or other authority.
9. **Waiver of Reconsideration and Petition for Writ of Mandate.** The City waives its right to request reconsideration of the State Water Board Executive Director's Order Approving Settlement Agreement pursuant to Health and Safety Code section 116701, provided no material modifications to this Agreement or additional requirements beyond the requirements of this Agreement are included in the Order Approving Settlement Agreement. The City further waives its right to petition the superior court for a writ of mandate pursuant to Health and Safety Code section 116700.
10. **Successors.** The Agreement is binding on any successors or assigns of the Parties.
11. **Additional Documents.** Each party agrees that it will cooperate fully in executing any additional documents necessary to give full effect to the Agreement, including without limitation documents in connection with the City's compliance with Stipulations 3 and 4, above.
12. **Entire Agreement.** The Agreement reflects and represents the entire agreement between and among the Parties and supersedes all prior understandings, representations, and agreements whether written or unwritten, with the exception of the understandings, representations, and agreements in the Consent Judgment. Each Party represents that it has not relied on any inducements, promises or representations made by the other party other than those contained in the Agreement, or the Consent Judgment.
13. **Counterparts.** The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

14. **Reasonableness of Settlement.** The Parties represent and warrant that the Agreement is made in good faith and in full recognition of the implications of such agreement.
15. **Section Headings.** The parties intend that the paragraph headings of this Agreement be used solely as a convenient reference and that they shall not in any manner amplify, limit, modify or otherwise aid in the interpretation of this Agreement.
16. **Representations.** The City represents and warranties that: (1) its response to investigation Interrogatory No. 8, with supporting spreadsheet CALEXICO Chart Responsive to Interrogatory 8.xlsx, is true and correct and that the data provided accurately accounts for each water shutoff conducted between February 2020 through 2022; and (2) its response to Request Nos. 6 and 7 in the City of Calexico's Verified Response to Information Requests Nos. 1-10 is true and correct and that the responses accurately account for all late fees charged by the City on COVID-19 period arrearages.
17. **Effective Date.** The Agreement shall become effective immediately upon the State Water Board Executive Director's execution of the Order Approving the Settlement Agreement.
18. **Choice of Law.** The Agreement shall be interpreted and governed by the laws of the State of California.
19. **Authorization.** Each Party warrants that the individual executing the Agreement on behalf of such Party is duly authorized to do so.
20. **State Water Board Is Not Liable.** Neither the State Water Board members nor the Board's staff, attorneys, or representatives shall be liable for any injury or damage to persons or property resulting from acts or omissions by the City or its employees, agents, representatives, or contractors in carrying out activities pursuant to the Agreement, nor shall the State Water Board, its members or staff be held as parties to or guarantors of any contract entered into by the City or its employees, agents, representatives, or contractors in carrying out activities pursuant to the Agreement.
21. **Public Notice:** The Parties understand that the Agreement and Order Approving Settlement Agreement will be noticed for a fifteen (15)-day public review period prior to consideration by the State Water Board or its delegee. If significant new information is received that reasonably affects the propriety of presenting the Order to the State Water Board or its delegee for adoption, the Executive Director of the State Water Board Assistance may unilaterally decide not to issue an Order Approving Settlement. The City agrees that it may not rescind or otherwise withdraw its approval of the Agreement. The Parties agree that the procedure contemplated for adopting the Agreement and review of this Stipulated Order by the public is lawful and adequate. In the event procedural objections are

raised prior to the Order Approving Settlement Agreement becoming effective, the Parties agree to meet and confer concerning any such objections and may agree to revise or adjust the procedure as necessary or advisable under the circumstances.

IT IS SO STIPULATED

State Water Board, Division of Drinking Water

By: Signed original available upon request
Darrin Polhemus
Deputy Director

May 16, 2024
Date

Respondent, City of Calexico

By: Signed original available upon request
Esperanza Colio Warren
City Manager

May 16, 2024
Date

Approved as to Form:

By: Signed original available upon request
Nicholaus Norvell
Best Best & Krieger LLP
Attorneys for City of Calexico