



Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: February 23, 2021

Item Number: 6

Item Description: California Community Housing Agency Middle Income Rental Housing Program

Submitted by: Lisa Warhuus, Director, Health, Housing, and Community Services

The California Community Housing Agency (CalCHA)'s program manager, Catalyst Housing Group, contacted staff with a revised Community Benefits Agreement and resolution.

The Community Benefit Agreement (CBA) is intended to replace the Purchase Option Agreement. This revision will provide more detailed language to the City's executed documents. The CBA provides explicit instructions for how any surplus cash flow and/or equity will be shared by the City. The agreement also more clearly outlines the City's options regarding eligible properties within the jurisdiction (i.e., purchasing the property, directing CalCHA to sell to a third party). There is also new language clarifying the City's ongoing membership in the JPA is required to ensure the property's exemption from property taxation beyond any doubt.

The revised resolution clarifies the role of the Community Benefit Agreement and ratifies its approval.

RESOLUTION NO. _____

AUTHORIZING THE CITY OF BERKELEY TO BECOME AN ADDITIONAL MEMBER OF THE CALIFORNIA COMMUNITY HOUSING AGENCY (“CALCHA”); DIRECTING THE EXECUTION OF ONE OR MORE PUBLIC BENEFIT AGREEMENTS WITH CALCHA; AND SUPPORTING CALCHA’S ISSUANCE OF BONDS FOR THE PRODUCTION, PRESERVATION AND PROTECTION OF ESSENTIAL MIDDLE-INCOME RENTAL HOUSING WITHIN CITY LIMITS

WHEREAS, the City of Berkeley (“City”) recognizes decent and affordable housing is a basic human right and adopted addressing this right and the statewide housing goal of “attaining decent housing and suitable living environments for every California family” in the 2015-2023 City of Berkeley Housing Element; and

WHEREAS, CalCHA is a Joint Powers Authority created pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”), and a Joint Exercise of Powers Agreement Relating to CalCHA among certain public agencies (the “Agreement”), in order to produce, preserve and protect quality affordable rental housing made available to California’s essential middle-income workforce; and

WHEREAS, one of the primary goals of the City is to meet the growing housing needs of its residents by actively supporting the production, preservation and protection of market-rate and affordable rental housing for all; and

WHEREAS, the City, has determined that it is in the public interest and for the public benefit that the City become an Additional Member of CalCHA pursuant to Section 12 of the Agreement in order to facilitate the production, preservation and protection of quality affordable rental housing for the City’s essential middle-income workforce, including the financing of projects therefor by CalCHA; and

WHEREAS, the Agreement has been filed with the City, and the members of the City Council of the City of Berkeley (the “City Council”), with the assistance of its staff, have reviewed said document, and the City proposes to become an Additional Member of CalCHA; and

WHEREAS, CalCHA proposes to issue from time to time its governmental purpose revenue bonds (the “Bonds”) and use the proceeds thereof to finance the acquisition, construction, development and certain related costs of multifamily housing developments within the City (each, a “Project”); and

WHEREAS, CalCHA intends to implement regulatory agreements at each Project to avoid the displacement of existing residents, restrict future occupancy to middle-income households earning no more than 120% of area median income, and impose limitations on the annual rent increases of such qualified middle-income households; and

WHEREAS, CalCHA proposes, pursuant to one or more Public Benefit Agreements (the "Public Benefit Agreements"), between CalCHA and the City, the form of which has been filed with the City Council, to grant the City the option, but never the obligation, to purchase each Project or to cause CalCHA to sell such Project, commencing on the date fifteen (15) years after CalCHA's acquisition of such Project; and

WHEREAS, it is in the public interest and for the public benefit that the City Council approve the issuance of the Bonds by CalCHA for the aforesaid purposes;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF BERKELEY, AS FOLLOWS:

Section 1. The foregoing recitals are true and correct.

Section 2. The City Council hereby authorizes the City to become an Additional Member of CalCHA. The Agreement is hereby approved and the City Manager or the designee thereof is hereby authorized and directed to execute the Agreement and the City Clerk or such Clerk's designee is hereby authorized and directed to attest thereto.

Section 3. The proposed form of Public Benefit Agreement on file with the City Council is hereby approved. In connection with any Project, the City Manager or the designee thereof is hereby authorized and directed to execute an agreement in substantially said form, with such changes therein as such officer executing the same may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The City Council hereby supports and approves CalCHA's issuance of Bonds from time to time as a means towards the production, preservation and protection of essential middle-income rental housing within City limits.

Section 5. The issuance of Bonds shall be subject to the approval of CalCHA of all financing documents relating thereto to which CalCHA is a party. The City shall have no responsibility or liability whatsoever with respect to the Bonds.

Section 6. The adoption of this Resolution shall not obligate the City or any department thereof to (i) provide any financing to acquire or construct any Project or any refinancing of any Project; (ii) approve any application or request for or take any other action in connection with any planning approval, permit or other action necessary for the acquisition, construction, rehabilitation or operation of any Project; (iii) make any contribution or advance any funds whatsoever to CalCHA; or (iv) except as provided in this Resolution, take any further action with respect to CalCHA or its membership therein.

Section 7. The executing officers(s), the City Clerk and all other proper officers and officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates, and to perform such other acts and deeds, as

may be necessary or convenient to effect the purposes of this Resolution and the transactions herein authorized.

Section 8. The City Clerk shall forward a certified copy of this Resolution and an originally executed Agreement to CalCHA:

California Community Housing Agency
1400 W. Lacey Boulevard
Hanford, California 93230
Attention: Michael LaPierre

Section 9. This resolution shall take effect immediately upon its passage.

IN CITY COUNCIL DULY PASSED this [DAY] day of [MONTH] 2021.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: _____ APPROVED: _____
City Clerk Mayor

APPROVED AS TO FORM:

City Attorney

Exhibit A – Joint Exercise of Powers Agreement Relating to the California Community Housing Agency

Exhibit B – Public Benefit Agreement

RECORDING REQUESTED BY
California Community Housing Agency

WHEN RECORDED RETURN TO:
Orrick, Herrington & Sutcliffe LLP
405 Howard Street
San Francisco, CA 94105
Attention: [●]

PUBLIC BENEFIT AGREEMENT

By and Between

CALIFORNIA COMMUNITY HOUSING AGENCY

and

CITY OF BERKELEY

Relating to

**CALIFORNIA COMMUNITY HOUSING AGENCY
ESSENTIAL HOUSING REVENUE BONDS**

([●])

PUBLIC BENEFIT AGREEMENT

This PUBLIC BENEFIT AGREEMENT (“*Agreement*”), dated _____ 1, 2021 and effective as of the Effective Date (as hereinafter defined), by and between the CALIFORNIA COMMUNITY HOUSING AGENCY, a joint exercise of powers agency organized and existing under the laws of the state of California (including its successors and assigns, “*Owner*”), and the CITY OF BERKELEY (“*Host*”).

BACKGROUND

WHEREAS, Owner is a public entity organized pursuant to a joint exercise of powers agreement (the “*Agreement*”) among a number of California counties, cities and special districts, including Host, and is validly existing under the laws of the State of California, in particular, Title 1, Division 7, Chapter 5 of the California Government Code (the “*Joint Exercise of Powers Act*”); and

WHEREAS, Owner and Host have determined that there is an undersupply of affordable housing for “middle-income” residents of Host and wish to provide for the public good and promote the health and welfare of such residents by making dwelling units available to middle-income tenants according to income criteria to be established by Owner from time to time; and

WHEREAS, pursuant to the Joint Exercise of Powers Act and the Agreement, Owner proposes to issue Bonds (as hereinafter defined) to finance Owner’s acquisition of the certain multi-family rental housing project (the “*Project*”) located at [●] in the City of BERKELEY, California, located on the real property site described in Exhibit A hereto; and

WHEREAS, the Project will provide public benefit through the production, preservation and/or protection of below-market-rate rental housing, pursuant to a Regulatory Agreement and Declaration of Restrictive Covenants (the “*Regulatory Agreement*”) by and between Owner and Trustee (as hereinafter defined); and

WHEREAS, Owner intends to make a contribution to Host by (a) paying or causing to be paid to Host all excess revenues derived from the Project after payment in full of related debt, taxes and other expenses, and (b) granting to Host an option (but under no circumstances an obligation) to purchase the Project or direct the sale of the Project and receive the net sale proceeds thereof, in each case as set forth herein.

AGREEMENT

In consideration of the mutual covenants herein contained, and such other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner and Host mutually agree as follows:

Section 1. Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1; capitalized terms used in this Agreement and not defined in this Section 1 or elsewhere herein shall have the meanings assigned to them in the Indenture (herein defined).

(a) “Appraised Value” – the value of the Optioned Property as determined by an independent appraiser, selected by Owner, regularly engaged in making appraisals of property similar to the Optioned Property.

(b) “Authority Indemnified Parties” – Owner and each of its officers, governing members, directors, officials, employees, attorneys, agents and members.

(c) “Bonds” – bonds of the Owner issued to finance its acquisition of the Project and related transaction costs, bearing the designation “Essential Housing Revenue Bonds ([●]),” issued in one or more series or sub-series with such series and sub-series designations as may be set forth in the Indenture, including subordinate bonds which may be placed with Project Administrator, or an affiliate thereof, if applicable, and including bonds issued to refund the Bonds, if applicable.

(d) “Bond Trustee” – Wilmington Trust, National Association or any successor trustee under the Indenture.

(e) “Closing” – shall have the meaning set forth in Section 8 of this Agreement.

(f) “Conveyance” – that transaction or series of transactions by which Owner shall transfer, bargain, sell and convey any and all right, title or interest in and to the Optioned Property.

(g) “County” – the County of Alameda.

(h) “Effective Date” – shall have the meaning set forth in Section 12 of this Agreement.

(i) “Extraordinary Costs and Expenses” – shall have the meaning set forth in the Indenture.

(j) “Fair Market Value” – the price, in no event less than the Purchase Option Price, a willing purchaser and a willing seller in an arm’s length transaction would agree upon as a fair sales price that could reasonably be expected to be received upon the sale of the Optioned Property, as determined by Owner pursuant to such means as Owner shall deem suitable for such purpose; provided that Owner’s determination of the manner of sale and Fair Market Value shall be final and incontestable.

(k) “Indenture” – the Indenture of Trust between Owner, as issuer, and the Bond Trustee, as trustee, pursuant to which the Bonds are issued.

(l) “Option” – has the meaning set forth in Section 2 of this Agreement.

(m) “Option Term Commencement Date” – the date sixteen (16) years from the date of issuance of the Bonds.

(n) “Option Term” – shall commence on the Option Term Commencement Date and, if not exercised, shall terminate at 11:59 p.m. local time on the date that is nineteen (19) years from the Option Term Commencement Date.

(o) “Optioned Property” – means all of Owner’s right, title and interest (which includes fee simple title to the real property) in and to all property and assets used in or otherwise related to the operation of the Project including, without limitation, all real property and interests in real property, all tangible and intangible personal property including furniture, fixtures, equipment, supplies, intellectual property, licenses, permits, approvals, and contractual rights of any kind or nature together with the right to own and carry on the business and operations of the Project.

(p) “Outstanding” – with respect to Bonds, as of any given date, all Bonds which have been authenticated and delivered by Trustee under the Indenture, except: (i) Bonds cancelled at or prior to such date or delivered to or acquired by Trustee at or prior to such date for cancellation; (ii) Bonds deemed to be paid in accordance with Article VIII of the Indenture; and (iii) Bonds in lieu of which other Bonds have been authenticated under the Indenture.

(q) “Project Administrator” – [●], a [●], and its successors and assigns.

(r) “Project Administrator Sale” – a sale of the Optioned Property at its Appraised Value to Project Administrator in accordance with Section 6(c) of this Agreement.

(s) “Project Debt” – any debt secured by the Project and incurred to finance or re-finance Owner’s acquisition of the Project and related transaction costs, including any portion of the Bonds and any bonds, notes or other indebtedness issued by Owner to refund the Bonds in whole or in part.

(t) “Purchase Option Price” – the sum of the amounts set forth below:

i. an amount sufficient to either prepay, redeem in whole or fully defease for redemption on the earliest call date all Project Debt; plus

ii. any fees or other amounts not identified in clause (i) that may be necessary to effect the complete release from and discharge of any lien, mortgage or other encumbrance on the Optioned Property (the amounts in clauses (i) and (ii) being collectively referred to as the “Satisfied Indebtedness”); plus

iii. any amounts due to Owner (including the Authority Indemnified Persons, as provided in the Indenture), the Bond Trustee or any predecessor or successor, or any other Person under any indenture, loan agreement, bond, note or other instrument relating to any Satisfied Indebtedness (including, without limitation, indemnification amounts, Owner’s Extraordinary Costs and Expenses, recurrent and extraordinary fees and expenses, and reimbursable costs and expenses of any kind or nature); plus

iv. Transaction Costs; minus

v. The amount of any Project Debt assumed by Host; and minus

vi. Any funds held by or for Owner under the Indenture applied to the retirement of Project Debt, but, for avoidance of doubt, the Owner may retain amounts in

the Extraordinary Expense Fund or similar funds under the Indenture it deems reasonable as a reserve against future costs and expenses of the type described in subparagraph (iii) above, which amount shall be final and incontestable.

(u) “Third-Party Sale” - a sale of the Optioned Property to a third-party purchaser at Fair Market Value.

(v) “Transaction Costs” – to the extent not otherwise described herein, any costs or expenses of any kind or nature associated with or incurred by Owner and Host in connection with the consummation of the Conveyance, any refinancing of the Project or assumption of Project Debt regardless of whether such costs and expenses are customarily borne by the seller or purchaser in any such transaction, including but not limited to taxes, recording fees and other impositions, Owner’s and Host’s legal and other professional fees, fees for verification agents, bidding agents, escrow agents, custodians or trustees, assumption fees, prepayment fees, the cost of the appraisal (regardless of whether the Appraised Value is ultimately determined to be the Fair Market Value), surveys, inspections, title commitments, title insurance premiums and other title-related fees, and all amounts required for indemnification of Authority, Trustee and Project Administrator.

Section 2. Economic Contribution. To provide a public benefit and economic contribution to Host as described in the Recitals to this Agreement, Owner hereby (a) agrees to pay or cause to be paid to Host the amounts held in the Excess Revenue Fund pursuant to Section 3 and the Indenture, and (b) grants to Host an option (the “Option”) with respect to the Optioned Property, as more fully described in Section 6 of this Agreement.

Section 3. Excess Revenues.

(a) Owner shall cause Trustee to create an account (the “Excess Revenue Fund”) under the Indenture into which surplus cash from the Project will be deposited following payment of all other obligations and expenses as required pursuant to the Indenture. Upon exercise of the Option as provided herein, Trustee shall transfer the balance of the Excess Revenue Fund to Host in connection with the Conveyance.

(b) On the first date upon which no Bonds or other Project Debt remains Outstanding, which may be the date of the Conveyance, any and all moneys in the Excess Revenue Fund shall be transferred by Trustee to Host, to be applied by Host in its sole discretion. Thereafter, for so long as Owner remains the owner of the Project and there is no Project Debt outstanding, Owner shall pay or cause to be paid to Host, all Project-related revenue in excess of Project-related expenses, to be applied by Host in its sole discretion. At Host’s written request and expense, Owner will appoint a third-party paying agent or trustee to handle payment of excess revenues to Host following retirement of all Bonds and all Project Debt.

(c) Upon any Conveyance of the Project by Owner pursuant to the terms hereof, Owner shall apply the proceeds of the sale (i) to redeem the Bonds then Outstanding, (ii) to prepay, redeem in whole or fully defease any other Project Debt, and (iii) to pay any fees or other amounts listed in (iii) and (iv) of the Purchase Option Price definition. Any proceeds remaining following the foregoing payments shall be transferred to the Host.

Section 4. Option Term. The Option shall become effective on the Option Term Commencement Date and may be exercised during the Option Term at Host's sole discretion. Owner agrees that it will not enter into any agreement to sell all or any part of the Optioned Property during the Option Term, without the specific written request of Host and written consent of Owner, which consent shall not be unreasonably withheld, and, if Project Debt is outstanding, delivery of an Opinion of Bond Counsel to Owner substantially to the effect that such sale will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Upon the expiration of the Option Term, Owner shall use its best efforts to sell the Optioned Property at Fair Market Value. Following the expiration of the Option Term, Host shall not be precluded from purchasing all or any portion of the Optioned Property from Owner at a price and on the terms agreed upon by Host and Owner, but Owner shall not be precluded from seeking or agreeing to sell, or consummating the sale of, all or any portion thereof to any third party.

Section 5. Manner of Exercise of Option.

(a) General. Within the Option Term and in compliance with and observance of all of the terms and conditions of this Agreement, Host may, in its sole discretion, exercise the Option by:

- i. Purchasing the Optioned Property upon payment of the Purchase Option Price;
- ii. Directing Owner to cause a Third-Party Sale; or
- iii. Directing Owner to cause a Project Administrator Sale.

(b) Owner's Notice. At least six (6) months prior to the Option Term Commencement Date, Owner shall provide Host notice of the Option Term Commencement Date; provided, however, that failure to provide such notice shall not affect the sufficiency or validity of any proceedings taken in connection with the exercise of the Option.

(c) Host's Notice. To exercise the Option, Host shall provide Owner notice of its intent to exercise the Option at any time prior to the end of the Option Term.

(d) Owner's Response. Within fifteen (15) business days of its receipt of Host's notice of intent to exercise the Option, Owner shall provide Host with a written estimate of the amounts comprising the Purchase Option Price.

(e) Exercise Notice. Within fifteen (15) business days of its receipt of the estimated Purchase Option Price, Host shall provide Owner written notice either (i) that it is withdrawing its intent to exercise the Option, which will under no circumstances cause the Option Term to end, or (ii) that it intends to proceed with the exercise of the Option and specifying in accordance with subparagraph (a) above, whether Host elects to purchase the Optioned Property, cause a Third-Party Sale, or cause a Project Administrator Sale (an "*Exercise Notice*").

Section 6. Fixing of Option and Purchase Price; Contractual Obligation.

(a) Purchase Option. If Host notifies Owner of its intent to purchase the Optioned Property in accordance with Section 5 hereof, Host shall deliver to Owner a purchase agreement therefor in form and substance satisfactory to Owner and its counsel subject to the terms and conditions of this Agreement. Unless Owner shall have objected to the form of purchase agreement within fifteen (15) business days of its receipt thereof, Owner shall be deemed to have accepted the terms of the purchase agreement without the need for the signature of Owner thereon, and Host shall be obligated to purchase and Owner shall be obligated to sell and convey to Host good and marketable title to the Optioned Property at the Purchase Option Price within ninety (90) days thereafter. Upon Closing, Host may apply amounts in the Excess Revenue Fund to the payment of the Purchase Option Price and thereafter shall apply such funds in its sole discretion.

(b) Third-Party Sale. If Host notifies Owner of its request for a Third-Party Sale in accordance with Section 5 hereof, within fifteen (15) business days of Owner's receipt of such Exercise Notice, Owner shall select an appraiser to provide the Appraised Value. Owner shall then market the Optioned Property at the Appraised Value and use its best efforts to negotiate, sell and convey good and marketable title to the Optioned Property at Fair Market Value. The Owner shall endeavor to sell the Optioned Property at Fair Market Value, by such means as it shall determine to be suitable for such purpose; provided that Owner's determination of the manner of sale shall be final and incontestable, and Owner shall incur no liability to any party as a result of or otherwise in connection with the sale or failure to sell. Nothing herein shall require or prevent Owner from selling the Optioned Property subject to the restrictions set forth in the Regulatory Agreement or similar types of restrictions established by Owner.

(c) Project Administrator Sale. If Host notifies Owner of its request for a Project Administrator Sale in accordance with Section 5 hereof, within fifteen (15) business days of Owner's receipt of such Exercise Notice, Owner shall select an appraiser to provide the Appraised Value to Owner, Host and Project Administrator. If within fifteen (15) business days of receipt of the Appraised Value, Project Administrator agrees to purchase the Optioned Property at the Appraised Value, Owner shall cause Project Administrator to deliver to Owner a purchase agreement therefor in form and substance satisfactory to Owner and its counsel subject to the terms and conditions of this Agreement, and Owner shall be obligated to sell and convey to Project Administrator good and marketable title to the Optioned Property at the Appraised Value, but in no event less than the Purchase Option Price, within ninety (90) days thereafter. If Project Administrator fails to agree to purchase the Optioned Property, Host may rescind the Exercise Notice or direct Owner to proceed to close the sale under the terms of a Third-Party Sale. It shall be a condition of effectiveness to any Project Administrator Sale that the new owner (Project Administrator or its designee) shall enter into a new regulatory agreement and/or declaration of restrictive covenants, and cause the same to be recorded in the real property records of the County, providing for the continued operation of the Project for a period of not less than fifteen (15) years, or such other term as Host may agree to in writing, as middle-income housing with occupancy and income restrictions on terms substantially similar to those contained in the Regulatory Agreement.

Section 7. Terms of Conveyance of Optioned Property.

(a) The Conveyance shall be in the nature of a grant deed in which Owner shall deliver one or more deeds, bills of sale, or other instruments of transfer without recourse or warranty of any kind or nature.

(b) The Optioned Property will be conveyed in AS IS CONDITION, WITH ALL FAULTS, and without representations or warranties of any kind or nature as to the condition of the Optioned Property.

(c) In the event of a Conveyance to the Host, Host acknowledges that Owner will convey the Optioned Property AS IS and that OWNER IS MAKING NO WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, with reference to the condition of the Optioned Property. HOST WAIVES ANY AND ALL CLAIMS AGAINST OWNER, INCLUDING BUT NOT LIMITED TO, CLAIMS BASED IN PART, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, STRICT LIABILITY AND STRICT RESPONSIBILITY, IN CONTRACT, IN WARRANTY, IN EQUITY, OR UNDER ANY STATUTE, LAW OR REGULATION ARISING DIRECTLY OR INDIRECTLY OUT OF ANY CONDITION OF THE OPTIONED PROPERTY.

(d) There shall be no partial transfer and that, upon consummation of the Conveyance, Owner shall be fully divested of any and all right, title or interest in and to the Optioned Property.

(e) Upon payment of the Purchase Option Price, as adjusted for any prorations, credits and charges, Owner shall convey title to the Optioned Property by quit claim deed reasonably satisfactory in form and substance to Host.

Section 8. Closing of Conveyance of Optioned Property. The closing of the Conveyance to the Host ("Closing") shall take place not later than the ninetieth (90th) calendar day following the date on which Owner and Host agree on the terms of the purchase agreement pursuant to Section 6(a) hereof at such time within normal business hours and at such place as may be designated by Host.

(a) Prorations. All general and special real property taxes and assessments, and rents shall be prorated as of the Closing, with Host responsible for all such items to the extent arising or due at any time following the closing. General real property taxes shall be prorated at the time of Closing based on the net general real property taxes for the year of Closing.

(b) Limitation. If, after taking into account all adjustments and prorations, the net amount due Owner at Closing is less than the Purchase Option Price, it is fully understood and agreed that in no event shall Owner receive proceeds less than the amount necessary to fully retire or defease the Bonds and otherwise satisfy all of the payments constituting the components of the Purchase Option Price and the prorations in Section 8(a).

(c) Possession. Physical possession of the Optioned Property shall be delivered to Host at the time of Closing.

Section 9. Optioned Property: Title Insurance, Title Defects.

(a) Within fifteen (15) business days after it receives an Exercise Notice specifying Host's intent to purchase the Optioned Property, Owner shall provide Host with a title commitment (the "Title Commitment") in the customary ALTA form of Standard Owner's Policy of Title Insurance in Host's favor, for the amount equivalent to the Purchase Option Price (whichever is

applicable), with a commitment to insure good and marketable fee simple title to the Optioned Property in Host, issued by a title insurance company licensed to do business in the State of California and acceptable to Host (the "Title Company"). The policy shall show the status of title to the Optioned Property and show all exceptions, including easements, restrictions, rights-of-way, covenants, reservations, and other conditions of record, if any, affecting the subject real estate. Accompanying the Title Commitment, Owner shall also have Title Company furnish Host with true, correct, complete, and legible copies of all documents affecting title to the subject real estate. The cost and expense of such Standard Owner's Title Commitment shall be payable as a Transaction Cost. Host shall pay the additional premium due if Host elects to obtain an extended coverage policy of title insurance and/or extended coverage endorsements. Owner shall cooperate with Host, at no expense to Owner, by providing an affidavit to Title Company to induce Title Company to issue to Host at Closing a "GAP" endorsement to the Title Commitment showing the effective date of the Title Commitment to be the time and date of Closing.

(b) If the Title Commitment shows exceptions to title which are unacceptable to Host, Host shall, within ten (10) business days after receipt of the Title Commitment and not later than twenty (20) business days before the date for Closing, notify Owner of such fact and Owner shall have twenty (20) business days after Owner receives Host's written objections to cure such defects and to present a Title Commitment on the basis of which Closing may occur or to notify Host that Owner will not cure same. If Owner cannot or will not cure such defects within such twenty (20) business day period and thereafter convey title to the Optioned Property as required in this Agreement, then Host shall have the right (at Host's option) to either:

(i) Rescind the Exercise Notice and Owner may proceed to close the sale under the terms of a Third-Party Sale, if there is a third-party offer; or

(ii) Accept whatever title Owner can or will convey, without reduction in the purchase price because of such title defects. Any exceptions to title disclosed on the Title Commitment to which Host does not timely object to in writing or to which Host objects but thereafter accepts by Closing shall be included as a "Permitted Exception."

Section 10. Assignment of Option. Host shall not assign the Option without the prior written consent of Owner, which consent shall not be unreasonably withheld, and delivery of an Opinion of Bond Counsel to Owner substantially to the effect that such assignment will not, in and of itself, adversely affect the exclusion of interest on the Bonds from gross income for purposes of federal income taxation. Notwithstanding the foregoing, neither party to this Agreement shall assign its interests, obligations, rights and/or responsibilities under this Agreement without the prior written consent of the other party.

Section 11. Recording of Agreement. This Agreement, and any amendment thereto, shall be recorded with the recorder's office of the County. Host shall cooperate with Owner to remove any such recorded Agreement or amendment thereto from title to the Optioned Property upon Owner's reasonable request therefor and, in any event, by no later than the earliest of (i) a Conveyance or (ii) the expiration of the Option Term. In the event that, within said time, Host fails to so cooperate and provide its original signature to a termination of such recorded Agreement or amendment thereto, then Host hereby irrevocably constitutes and appoints Owner as Host's true

and lawful attorney (and agent-in-fact) strictly for the purpose of executing in Host's name any such termination.

Section 12. Conditions Precedent; Effective Date. Effectiveness of this Agreement shall be conditioned upon satisfaction of each of the following conditions:

- (a) Issuance of the Bonds;
- (b) Purchase of the Optioned Property by Owner as evidenced by a grant deed or comparable instrument; and
- (c) Recording in the real property records of the County of this Agreement and the Regulatory Agreement.

The first date upon which each of the above conditions is satisfied shall be the effective date of this Agreement (the "Effective Date").

Section 13. No Individual Liability.

(a) The Owner shall not be directly, indirectly, contingently or otherwise liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement or any sale or Conveyance or failure or price thereof or application of proceeds thereof, except only as to moneys available therefor under and in accordance with the Indenture and this Agreement.

(b) No Authority Indemnified Person shall be individually or personally liable for the payment of any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement, or by any proceedings for the determination of the Purchase Option Price, or Host's exercise or waiver of same, or otherwise except in the case of such Authority Indemnified Person's own willful misconduct.

Section 14. Notices, Governing Law, Binding Effect and Other Miscellaneous Provisions.

(a) Notices. All notices provided for in this Agreement shall be in writing and shall be given to Owner or Host at the address set forth below or at such other address as they individually may specify thereafter by written notice in accordance herewith:

If to Owner: California Community Housing Agency
1400 W. Lacey Blvd., Building 1
Hanford, California 93230
Attention: Michael LaPierre

With a copy to: [●]

If to Host: City of Berkeley
Health, Housing, and Community Services

2180 Milvia St, Second Floor
Berkeley, CA 94704

Such notices shall be deemed effective upon actual delivery or upon the date that any such delivery was attempted and acceptance thereof was refused, or if mailed, certified return receipt requested, postage prepaid, properly addressed, three (3) days after posting.

(b) Consents and Approvals. All consents and approvals and waivers required or asserted hereunder shall be in writing, signed by the party from whom such consent, approval, waiver or notice is requested, provided that no written consent or approval of Owner shall be required for any action that Host may, in its reasonable good faith judgment, find it necessary to take in the event of an emergency.

(c) Cooperation. Owner will keep Host advised of its complete name at all times, including any change of such name. Host will keep Owner advised of its complete name at all times, including any change of such name. Unless the parties otherwise agree, Owner shall cooperate with Host and provide Host with all information and records in its possession, and access to counsel and other professionals, to assist Host in determining and updating the Purchase Option Price. On the first date that Project Debt is not Outstanding, and Owner remains the owner of the Project, Owner shall promptly notify Host of the Purchase Option Price.

(d) Maintenance of Membership. In order to preserve the Project's exemption from property tax, Host agrees to remain a member of the Owner joint powers authority so long as any Bonds remain outstanding.

(e) Pronouns. Where appropriate to the context, words of one gender include all genders, and the singular includes the plural and vice versa.

(f) Amendments. This Agreement may not be modified except in a written instrument signed by Host and Owner.

(g) Complete Agreement. This Agreement together with all schedules and exhibits attached hereto and made part thereof supersedes all previous agreements, understandings and representations made by or between the parties hereto.

(h) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to conflicts of law principles. All claims of whatever character arising out of this Agreement, or under any statute or common law relating in any way, directly or indirectly, to the subject matter hereof or to the dealings between Owner and any other party hereto, if and to the extent that such claim potentially could or actually does involve Owner, shall be brought in any state or federal court of competent jurisdiction located in Kings County, California. By executing and delivering this Agreement, each party hereto irrevocably: (i) accepts generally and unconditionally the exclusive jurisdiction and venue of such courts; (ii) waives any defense of forum non-conveniens; and (iii) agrees not to seek removal of such proceedings to any court or forum other than as specified above. The foregoing shall not be

deemed or construed to constitute a waiver by Owner of any prior notice or procedural requirements applicable to actions or claims against or involving governmental units and/or political subdivisions of the State of California that may exist at the time of and in connection with such matter.

(i) Subordination. This Agreement shall be subordinate to any claim, pledge or interest in the Optioned Property securing the Bonds or any Project Debt.

(j) Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalid provision shall be deemed severable, and shall not affect the validity or enforceability of any other provisions of this Agreement, all of which shall remain fully enforceable.

(k) Term. This Agreement shall terminate upon the earliest of a (i) Conveyance or (ii) the expiration of the Option Term in accordance with this Agreement.

(l) Captions. The captions used in this Agreement are solely for convenience and shall not be deemed to constitute a part of the substance of the Agreement for purpose of its construction.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**CALIFORNIA COMMUNITY HOUSING
AGENCY**

By:

CITY OF BERKELEY

By:

Signature Page to Public Benefit Agreement

A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

Notary Public, personally appeared _____,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY