



REPORT TO HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

DATE ISSUED: September 2, 2021

REPORT NO: HAR21-011

ATTENTION: Chair and Members of the Housing Authority of the City of San Diego
For the Agenda of October 5, 2021

SUBJECT: Approval of a Memorandum of Understanding between the San Diego Housing Commission, Housing Authority of the City of San Diego, and the California Housing Finance Agency to Participate in a Tax-Exempt Bond Recycling Program

COUNCIL DISTRICT: Citywide

REQUESTED ACTION

Authorize the necessary actions to enter into a Memorandum of Understanding between the San Diego Housing Commission, a public body, corporate and politic of the State of California; the Housing Authority of the City of San Diego, a public body, corporate and politic of the State of California; and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California, for the express purpose of participating in a tax-exempt bond recycling program.

STAFF RECOMMENDATION

That the Housing Authority of the City of San Diego (Housing Authority) take the following actions:

- 1) Authorize the execution of a Memorandum of Understanding (MOU) between the Housing Commission, the Housing Authority, and the California Housing Finance Agency (CalHFA) to participate in a tax-exempt bond recycling program;
- 2) Authorize the Housing Commission's President & CEO, or designee, to modify MOU, if necessary, without further action by the Housing Commission's Board of Commissioners (Board) or the Housing Authority, but only if and to the extent that such changes comply with the terms of the executed MOU and are necessary to fulfill federal and state funding requirements;
- 3) Authorize the Housing Commission's President & CEO, or designee, to take such actions as are necessary, convenient and/or appropriate to implement this approval and delegation of authority by the Housing Commission upon advice of the General Counsel; and
- 4) Authorize the Housing Commission's President & CEO, or designee, to execute all necessary documents and instruments that are necessary and/or appropriate to implement these approvals, in a form and format approved by General Counsel, and to take such actions necessary and/or appropriate to implement these approvals.

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SUMMARY

Tax-exempt Multifamily Housing Revenue Bonds, also known as private activity bonds, are an essential resource to finance the creation and preservation of affordable housing. The Housing Commission authorizes the issuance of Multifamily Housing Revenue Bonds to support affordable housing developments. The Housing Authority of the City of San Diego approves these bonds. However, private sources of funds, such as revenue from the development, are used to repay the bonds. The Housing Commission, and the Housing Authority are not financially liable for these bonds. With these bonds, affordable housing developers are able to obtain below-market financing because the interest income from the bonds is exempt from state and federal taxes.

Federal law limits how much tax-exempt private activity bond debt a state can issue (Annual State Ceiling) in a calendar year. The limit is determined by a state's population, multiplied by a specified dollar amount. The Annual State Ceiling, also known as a volume cap, for California in 2021 is approximately \$4.1 billion.

To issue bonds for a development, the Housing Authority must first submit an application to the California Debt Limit Allocation Committee (CDLAC) for a Bond allocation. Beginning in 2020, demand for tax-exempt bonds exceeded CDLAC's annual bond allocation. As a result, previously non-competitive tax-exempt bonds became competitive.

Traditionally, an affordable housing project would pay off the majority of its tax-exempt bonds when the construction phase was completed. At this stage, the bonds are "retired" and no longer available. Recycled bonds allow the reuse of volume cap authority that would otherwise be retired after completion of construction. Recycling is explicitly allowed under Federal Law through the Housing and Economic Recovery Act of 2008 (Section 3007). CalHFA has a large capital investment from Apple and is using a portion of that multimillion dollar investment to purchase and reissue the recycled bonds.

In response to the housing crisis in the City of San Diego and State of California, CalHFA has established a program to preserve private activity bond volume cap as described in 26 U.S.C. § 146 (Volume Cap) and subsequently recycle this preserved Volume Cap in accordance with 26 U.S.C. § 146(i)(6) (CalHFA Volume Cap Recycling Program).

Due to the shortage of housing for low- and moderate-income individuals and families, the Housing Commission and CalHFA desire to enter into this MOU to permit the Housing Authority and the Housing Commission to participate in the CalHFA Volume Cap Recycling Program that will enable CalHFA to both preserve a portion of the tax-exempt volume cap for bonds initially issued by the Housing Authority and issue new CalHFA Conduit Bonds, including bonds issued using recycled Volume Cap, for affordable housing. CalHFA will, in coordination with San Diego, issue taxable refunding obligations to refund portions of conduit revenue bonds previously issued by the Housing Authority, and will subsequently issue CalHFA Conduit Bonds in part to refund said taxable obligations and to provide financing for projects in accordance with the terms and provisions outlined in the MOU.

AFFORDABLE HOUSING IMPACT

The Volume Cap Recycling Program will have a positive impact on future affordable housing developments in the City of San Diego and the State of California, at no cost to the City or residents of San Diego by reissuing bonds to provide low-cost financing to affordable housing developments.

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Recycling previous bond allocations is an innovative way to issue bonds outside of the \$4.1 billion cap, grow the aggregate amount of resources available in California, and provide developers with another financing option.

FISCAL CONSIDERATIONS

Approving this action will not create any financial obligations for the Housing Commission. CalHFA shall pay, in advance, any external legal expenses and costs, including those incurred by the Housing Commission or Housing Authority, associated with preserving the Preserved Bond Volume Cap, by the redemption of previously-issued Housing Authority bonds.

KEY STAKEHOLDERS and PROJECTED IMPACTS

Stakeholders include households with very low, low and moderate income in the City of San Diego, the Housing Commission, the Housing Authority, and CalHFA. This action is expected to have a positive impact on the community by preserving private activity bond volume cap that would otherwise be lost.

INDEMNIFICATION

Pursuant to the provisions of Section 895.4 of the California Government Code, each party agrees to indemnify and hold the other harmless from all liability for damage, actual or alleged, to persons or property arising out of or resulting from the indemnifying party's (Indemnitor) acts or omissions in its performance of this MOU without requirement that such liability be paid first by the indemnified party (Indemnitee). In the event of third-party loss caused by negligence, wrongful act or omission of both parties, each party shall bear financial responsibility in proportion to its percentage of fault as may be mutually agreed or judicially determined. The provisions of California Civil Code Section 2778 regarding interpretation of indemnity agreements are hereby incorporated.

ENVIRONMENTAL REVIEW

This activity is not a project as defined by the California Environmental Quality Act (CEQA) Section 21065 and CEQA Guidelines Section 15378(b)(5), as it is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c)(3), is not appealable and a Notice of Right to Appeal the Environmental determination (NORA) is not required.

Processing under the National Environmental Policy Act is not required as no federal funds are involved in this action.

Respectfully submitted,

Colin Miller

Colin Miller
Vice President
Multifamily Housing Finance
Real Estate Division

Approved by,

Jeff Davis

Jeff Davis
Deputy Chief Executive Officer
San Diego Housing Commission

Attachment: Draft Memorandum of Understanding

Docket materials are available in the "Governance & Legislative Affairs" section of the San Diego Housing Commission website at www.sdhc.org.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the “MOU”) is dated as of _____, 2021 and is entered into by and among the Housing Authority of the City of San Diego, a public body, corporate and politic of the State of California (“SDHA”), the San Diego Housing Commission, a public body, corporate and politic of the State of California (“SDHC”), and the California Housing Finance Agency, a public instrumentality and political subdivision of the State of California (“CalHFA”).

RECITALS

WHEREAS, SDHA, SDHC (together, “San Diego”) and CalHFA are agencies committed to providing and/or facilitating low-cost acquisition, construction, rehabilitation and financing for multifamily housing for very low to moderate income individuals and families in the City of San Diego and the State of California, respectively; and

WHEREAS, San Diego operates a conduit bond issuance program whereby SDHA issues tax-exempt and taxable housing bonds to provide construction and permanent financing for projects located or to be located in the City of San Diego; and

WHEREAS, CalHFA has a conduit bond issuance program, a description of which is attached hereto and incorporated herein as Exhibit A (the “CalHFA Conduit Issuer Program”), whereby CalHFA issues tax-exempt and taxable conduit revenue bonds (“CalHFA Conduit Bonds”) to provide construction and permanent financing for projects, including those located or to be located in the City of San Diego; and

WHEREAS, CalHFA has established a program to preserve private activity bond volume cap as described in 26 U.S.C. § 146 (“Volume Cap”) and subsequently recycle this preserved Volume Cap in accordance with 26 U.S.C. § 146(i)(6) (the “CalHFA Volume Cap Recycling Program”); and

WHEREAS, due to the shortage of housing for low and moderate income individuals and families, San Diego and CalHFA desire to enter into this MOU in order to permit San Diego to participate in the CalHFA Volume Cap Recycling Program (as implemented with San Diego, the “Program”) that will enable CalHFA to both preserve a portion of the tax exempt volume cap for bonds initially issued by SDHA and issue new CalHFA Conduit Bonds, including bonds issued using recycled Volume Cap, for affordable housing; and

WHEREAS, pursuant to the Program, CalHFA will, in coordination with San Diego, issue taxable refunding obligations to refund portions of conduit revenue bonds previously issued by SDHA, and will subsequently issue CalHFA Conduit Bonds in part to refund said taxable obligations and to provide financing for projects in accordance with the terms and provisions outlined in this MOU (hereinafter “Projects”), a description of which is attached hereto and incorporated herein as Exhibit B (the “CalHFA Conduit Issuer Program Matrix”) ; and

NOW THEREFORE, in consideration of the mutual terms and conditions contained herein, SDHA, SDHC and CalHFA hereby agree as follows:

AGREEMENT

1. PROGRAM DESCRIPTION.

A. San Diego shall identify for CalHFA previously-issued SDHA bonds for which \$7,000,000 or more shall be redeemed at the conversion of a project's construction financing to permanent financing and which are eligible for inclusion in the Program so as to preserve Volume Cap in accordance with 26 U.S.C. § 146(i)(6) ("Preserved Bond Volume Cap"). CalHFA and SDHC shall equally split the legal fees associated with initial MOU negotiations.

B. CalHFA shall pay, in advance, any external legal expenses and costs, including those incurred by SDHC or SDHA, associated with preserving the Preserved Bond Volume Cap, by the redemption of previously-issued SDHC bonds.

C. CalHFA shall issue taxable obligations to redeem previously issued SDHA bonds identified by San Diego for Volume Cap preservation pursuant to the preceding paragraph.

D. In connection with each preservation of Volume Cap as described above, San Diego shall no later than three (3) months following the date on which such Volume Cap was preserved as described above, make a request to CalHFA to issue CalHFA Conduit Bonds using all or a portion of the applicable Preserved Bond Volume Cap for specific Projects within the City of San Diego, and CalHFA shall use its best efforts to issue its CalHFA Conduit Bonds in accordance with any such request. As required by 26 U.S.C. § 146(i)(6), the CalHFA Conduit Bonds must be issued within six (6) months following the date the specific Volume Cap is preserved.

E. If San Diego does not identify Projects that will use all of the Preserved Bond Volume Cap within the above-mentioned timelines, or otherwise earlier affirmatively transfers the Preserved Bond Volume Cap to CalHFA by written communication, including by email, with the approval of SDHC or SDHA, the Preserved Bond Volume Cap shall be placed in the "Statewide Pool" and CalHFA may use the Preserved Bond Volume Cap to issue CalHFA Conduit Bonds for projects located throughout the State of California.

F. For any of the Projects, or other projects using Recycled Bond Volume Cap, CalHFA shall be the conduit bond issuer for both the issuance of CalHFA Conduit Bonds using the Preserved Bond Volume Cap (the "Recycled Bond Volume Cap") as well as for any CalHFA Conduit Bonds issued using new private activity bond volume cap awarded by the California Debt Limit Allocation Committee ("CDLAC").

G. For any Projects financed pursuant to the Program as requested by San Diego pursuant to Paragraph 1.D. of this section, CalHFA shall charge and remit to SDHC, or allow SDHC to charge directly, with respect to all CalHFA Conduit Bonds issued to finance the Project, fees equivalent to SDHC's regular upfront conduit issuance fees. CalHFA shall additionally charge and retain its upfront Bond Recycling Transaction Fee, in an amount as set forth in its Bond

H. For any Projects financed pursuant to the Program as requested by San Diego pursuant to Paragraph 1.D. of this section, CalHFA shall charge SDHC's annual issuer fee of twelve and one half basis points (12.5bps), but not less than Ten Thousand and NO/100 dollars (\$10,000.00) per year, and ongoing monitoring/compliance fees with respect to all CalHFA Conduit Bonds issued to finance the Project. SDHC shall retain 7.5bps of the total 12.5bps basis points of the outstanding principal balance amount of the loans funded by the CalHFA Conduit Bonds immediately after conversion to permanent financing, but not less than Six Thousand and NO/100 dollars (\$6,000.00) per year and CalHFA shall retain an annual fee of five (5) basis point of the above-mentioned 12.5bps fee, but not less than Four Thousand and NO/100 dollars (\$4,000.00) per year. The bond trustee or fiscal agent shall be required to calculate the distributions to CalHFA and SDHC and make such distributions to CalHFA and SDHC.

I. In the event there is no trustee or fiscal agent for the previously issued SDHC bonds, the parties shall cooperate to ensure a trustee or fiscal agent is engaged at no expense to SDHC to facilitate the preservation of the Preserved Bond Volume Cap.

J. Except as set forth herein, CalHFA shall have no obligation, monetary or otherwise, to SDHC or SDHA for any Preserved Bond Volume Cap that is used for Recycled Bond Volume Cap subject to Section 1.E. above or that expires or otherwise is not used for Recycled Bond Volume Cap.

2. ADDITIONAL RESPONSIBILITIES OF THE PARTIES.

A. SDHC agrees to:

i. Provide CalHFA with a construction debt conversion pipeline as required to facilitate the management of the Program, updated monthly;

ii. Execute a tri-party amendment to existing bond documents, or comparable documents(s), with the consent of applicable lender(s), SDHC or SDHA, and any required trustees, fiscal agents, borrowers or other parties, consistent with Exhibit B, to provide for the following:

- a. On the conversion date of initial bonds, the borrower loan prepayment amount shall be delivered to the trustee for the initial bonds;
- b. An amount equal to the loan prepayment amount shall be drawn from CalHFA's taxable credit facility and applied to refund the initial bonds; and

- c. Instructions to the trustee on the application of funds will be provided prior to the conversion date.
- d. These amendments shall be effected at no cost to SDHC, SDHA or applicable project participants.

B. CalHFA agrees to:

- i. Manage the Program, including but not limited to; the taxable credit facility, tax compliance, and transaction tracking;
- ii. coordinate the timing of preservation of SDHC issued bonds with lenders and SDHC;
- iii. preserve tax-exempt bond Volume Cap;
- v. coordinate timing of new issuances of CalHFA Conduit Bonds for Projects with lenders and SDHC;
- vii. monitor and ensure compliance with the affordability, condition of the development, and other local, State (including CDLAC) and federal requirements, consistent with its obligations as a conduit bond issuer, by encumbering each property with a Regulatory Agreement and Declaration of Restrictive Covenants (the “Conduit Bond Regulatory Agreement”);
- viii. SDHC shall be included as a noticed party within the Conduit Bond Regulatory Agreement and CalHFA shall notify SDHC of any defaults to the Conduit Bond Regulatory Agreement or defaults on the Conduit Bonds; and
- ix. inform SDHC in writing, within five (5) business days of its request for CalHFA to issue CalHFA Conduit Bonds for a specific Project pursuant to this MOU, whether the Project complies with the eligible uses as defined by 26 U.S.C. § 146(i)(6). Notwithstanding the notice requirements of Section 8 of this MOU, notices under this subsection may be made to email addresses provided by SDHC in writing, as may be amended, to CalHFA.
- x. for Qualified Residential Rental Projects using recycled private activity bond volume cap pursuant to 26 U.S.C. 146(i)(6), CalHFA shall not apply to CDLAC, without the consent of SDHC which shall not be unreasonably withheld, under the following set asides and apportionments within the State Ceiling Pools determined by CDLAC: (a) the QRRP New Construction Pool: Coastal Region Geographic Apportionment, (b) the QRRP New Construction Pool: ELI/VLI Set Aside, or (c) the QRRP New Construction Pool: Homeless Set Aside. Should CDLAC modify the State Ceiling Pools, CalHFA and SDHC shall jointly consider whether an amendment to this provision is necessary to effectuate the limitation set forth above. Any to amendment of this provision shall be mutually agreed upon.. This paragraph (i) shall only be in effect as long as Section 5230 (h) of the CDLAC regulations and Section 10325 (C) (9)(A)(v) of the TCAC regulations allow recycled bonds to be fully counted as Leveraged Soft Resources for the purposes of CDLAC scoring.

xi. while projects located in the City of San Diego and receiving funding from each of the following sources: (a) CalHFA mixed-income program financing; (b) CalHFA recycled bonds; and (c) San Diego Housing Commission financing, are not subject to the requirements of this MOU, CalHFA shall pay to SDHC the upfront CalHFA Issuance Fee received pursuant to the requirements of its Conduit Issuer Program.

xii. CalHFA acknowledges and agrees that if CalHFA issues tax-exempt bonds, notes or other evidence of indebtedness (collectively, “Bonds”) using recycled and/or new volume cap for any project located in the City of San Diego, the Housing Authority intends to be the issuer of any refinancing of such Bonds or tax credit resyndication of such project if all of the below factors apply to the project:

- a. The project utilizes recycled bond volume cap generated from the preservation of bonds subject to this MOU;
- b. At the time of original issuance, the City committed a predevelopment loan, permanent loan, or gap loan of more than \$1,000,000, or a ground lease.
- c. The project will not be utilizing a CalHFA long-term, first lien, permanent loan as part of refinancing or re-syndicating of such project.

xiii. In accordance with section 2.B.xii. above, CalHFA agrees that:

- a. CalHFA will not also seek to be the issuer for any refinancing or resyndication if all three of the conditions outlined above exist;
- b. in the event CalHFA is not the issuer, it will cooperate in the termination of any pre-existing CalHFA conduit bond regulatory agreement relating to Bonds previously issued on a project, , subject to applicable federal tax laws and CDLAC regulations and requirements concerning the termination of bond regulatory agreements and CalHFA’s monitoring and reporting obligations; and
- c. unless, and to the extent, there is a prepayment prohibition or lockout period for prepayment expressly provided under permanent, first-lien, amortized loan documents related to a loan made by CalHFA with Bonds inclusive of recycled volume cap preserved pursuant to this MOU, CalHFA will not impose any economic penalty on such project for repaying such Bonds or terminating such regulatory agreement in connection with a refinancing or resyndication where the Housing Authority is the issuer, including, without limiting the generality of the foregoing, imposing or enforcing any prepayment penalty or redemption premium with respect to such Bonds, or any termination penalty or premium with respect to such regulatory agreements, such as an acceleration of any issuer fees not yet due to CalHFA by the owner of such project. For any projects financed with recycled bonds pursuant to this MOU, sections 2.B.xii. and 2.B.xiii. shall survive the termination of the MOU.

xiv. CalHFA acknowledges and agrees that, absent an enforceable contractual provision to the contrary, the Housing Authority currently has no legal basis for requiring any

owner of any project located in the City (each, an “Owner”), the original construction lender of such project, the fiscal agent or trustee, or any new owner or lender to cooperate in the recycling of volume cap associated with such project. Accordingly, CalHFA agrees that any obligation of the Housing Authority hereunder or otherwise to assist in the recycling of Volume Cap for the CalHFA recycling program shall be conditioned on cooperation by the applicable Owner and such other parties. The Housing Authority agrees to use good faith efforts to secure such cooperation but shall have no liability to CalHFA if such efforts fail, and the Housing Authority shall not be obligated to expend its own funds, grant development or land use concessions of any kind, or subject itself to greater economic, administrative or legal burdens or risks in order to secure such cooperation. In the event of any conflict between this paragraph and any other provision of this MOU, the provisions of this paragraph shall prevail.

3. TERM OF THE AGREEMENT.

The term of the MOU shall commence on the date the MOU is fully executed by all parties (the “Effective Date”) and shall remain in full force and effect until three (3) years from the Effective Date (the “Termination Date”), provided, however, that the term may be extended for up to one (1) additional three (3) year term subject to the approval of all parties and executed prior to the Termination Date. This section shall not limit the right of either party to terminate under Section 6.B.

4. INDEMNIFICATION

Indemnification. To the fullest extent provided by law, parties agree to indemnify, protect, and hold harmless one another, including their elected officials, officers, agents, representatives, departments, subcontractors, and employees, from and against any and all claims, demands, actions, proceedings, suits, liabilities, damages, costs (including reasonable attorneys’ fees) or expenses for, including damage to property, the loss or use thereof, or injury or death to any person, caused by, arising out of, or related to the performance of services under this MOU by their elected officials, officers, agents, representatives, departments, subcontractors and employees. The parties’ duty to indemnify and hold harmless one another shall not include any indemnification or defense, for claim or liability arising from the established sole negligence or willful misconduct of the other, or the other’s elected officials, officers, agents, representatives, departments, subcontractors, and employees.

5. AMENDMENT.

Unless otherwise stated, this MOU, along with its attachments, may only be amended in writing upon mutual consent of all parties.

6. TERMINATION AND REMEDIES FOR BREACH:

A. If a party fails to perform any of the provisions of this MOU, the other parties may provide written notice of such default with a sixty (60) day period to cure the default. If such default is not cured or a plan provided to cure such default, which is acceptable to the noticing party, within ten (10) days after receipt of notice, the noticing party may terminate this MOU.

B. Any party shall have the right to terminate this MOU, by delivering written notice of such termination to all parties at least ten (10) days in advance of the termination date.

C. No termination of this MOU shall extend to or affect any party's obligations hereunder with respect to Recycled Bonds previously issued or in the process of being issued in accordance with this MOU, without the approval of SDHC, SDHA, and CalHFA.

D. The rights and remedies of the parties provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this MOU.

7. NOTICES.

Any notices to be given pursuant to this MOU shall be in writing and all such notices and any other document to be delivered shall be delivered by personal service or by deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, and addressed to the party for whom intended as follows:

To SDHC: San Diego Housing Commission
1122 Broadway, Suite 500
San Diego, CA 92101
Attention: _____

To SDHA: Housing Authority of the City of San Diego
1122 Broadway, Suite 500
San Diego, CA 92101
Attention: _____

To CalHFA: California Housing Finance Agency
500 Capital Mall, Suite 1400
Sacramento, Ca 95814
Attention: Kevin Brown

With a copy to: California Housing Finance Agency
500 Capital Mall, Suite 1400
Sacramento, Ca 95814
Attention: Office of General Counsel

8. ASSIGNMENTS.

This MOU is personal to CalHFA, SDHA and SDHC, and no party shall have the right or ability to transfer or assign any rights or obligations stated herein. In the event that CalHFA,

SDHA or SDHC shall attempt to assign or transfer the same in whole or in part, all rights of the respective party hereunder shall immediately terminate.

9. WAIVERS.

No waiver of any provision of this MOU shall be deemed, or constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. No waiver shall be binding unless executed in writing by the party making the waiver.

10. CONFLICTS

SDHA, SDHC and CalHFA each agree that in the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this MOU and the provisions of CalHFA Conduit Issuer Program, the provisions of this MOU will be deemed to be controlling for the issuance of CalHFA Conduit Bonds from the Preserved Bond Volume Cap within the City of San Diego, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the MOU.

11. MISCELLANEOUS.

A. The parties acknowledge and agree that this MOU is solely intended to memorialize the general understandings of the parties and, notwithstanding anything to the contrary, is not a commitment by SDHA, SDHC or CalHFA to issue CalHFA Conduit Bonds, make a loan(s) or otherwise be required to participate in any rental housing program. This MOU is intended to be an indication of the good faith intent of the parties hereto to work together with respect to the matters set forth herein.

B. Each party hereto shall bear its own costs and expenses in connection with this MOU and in connection with any eventual CalHFA Conduit Bonds and/or loan originated hereunder except as may be otherwise stated herein or agreed to in writing between the parties.

C. This MOU and any undertakings by San Diego pursuant hereto are not binding upon any officers, agents, employees, attorneys, trustees of or participants in San Diego personally; any undertakings by San Diego pursuant hereto bind only and may only be enforced against San Diego.

D. This MOU and any undertakings by CalHFA pursuant hereto are not binding upon any of the employees, officers, board members, agents or trustees of or participants in CalHFA personally; any undertakings by CalHFA pursuant hereto bind only and may only be enforced against CalHFA.

E. The parties acknowledge and agree that the CalHFA Conduit Issuer Program is solely the approved program of CalHFA and not of SDHA or SDHC. Except with respect to the assessment of SDHC's fees as describe in Paragraph 1.G. above, CalHFA has the sole and absolute discretion in determining fees, structure, underwriting, and other related terms of its CalHFA Conduit Issuer Program.

F. CalHFA shall require that the borrower shall be in compliance with all applicable statutes, rules, regulations and order of the United States, the State of California (“State”), and San Diego, including any amendments or revisions thereto.

G. San Diego acknowledges that CalHFA is entering into this MOU solely for the interest of CalHFA and within the expectations and parameters of the CalHFA Conduit Issuer Program to the extent not inconsistent with the terms and provisions of this MOU.

H. San Diego acknowledges that CalHFA has statewide authority to approve and issue tax exempt private activity bonds, including CalHFA Conduit Bonds, and CalHFA reserves the right to approve and issue private activity bonds, including CalHFA Conduit Bonds, throughout the State of California for any project, under this statewide authority.

I. Notwithstanding any other provision of this MOU, the parties acknowledge and agree that this MOU does not require exclusivity on the part of any party with respect to recycling private activity bond volume cap. CalHFA may agree with other third party local agencies to provide converting bond volume cap for its recycling program in addition to or instead of converting bond volume cap from SDHA and SDHC, and SDHA and SDHC may agree to provide their converting bond volume cap to third party agencies conducting their own recycling programs or to their own recycling program in addition to or instead of providing such volume cap to CalHFA. SDHA and SDHC agree that they shall provide notice to CalHFA within 30 days of determining that they will keep, or have entered into an agreement to provide to a third party agency, all or a portion of SDHA and SDHC’s converting bond volume cap for their respective recycling programs. Any such notice shall not alone effect a termination of this MOU.

J. As set forth in the CalHFA Conduit Issuer Program Matrix, attached as Exhibit B, Projects that will be financed by CalHFA permanent or subordinate financing shall only use Preserved Bond Volume Cap, including Preserved Bond Volume Cap transferred with SDHA or SDHC’s approval, from the Statewide Pool.

IN WITNESS WHEREOF, the parties have caused this MOU to be executed by their duly authorized representatives.

HOUSING AUTHORITY OF THE CITY OF SAN DIEGO

By: _____

SAN DIEGO HOUSING COMMISSION

By: _____

CALIFORNIA HOUSING FINANCE AGENCY, a
Public instrumentality and political subdivision of the
State of California

By: _____

Name:

Title:

EXHIBIT A
MOU - CalHFA Conduit Issuer Program
[Attached]

A

SAN DIEGO BOND RECYCLING PROGRAM

CalHFA- SDHC RECYCLING PARTNERSHIP

Multifamily Bond Recycling program provides a new source of tax-exempt debt for multifamily financing, outside of California’s volume cap. As authorized by the Housing and Economic Recovery Act of 2008, Bond Recycling allows issuers to preserve the tax-exemption in multifamily private activity bonds being redeemed on the day of permanent conversion, and later deploy new tax exempt bonds for a new multifamily project. CalHFA issued the first recycled bonds in California on July 29th, 2020 and is now establishing a partnership with SDHC to provide recycling opportunities in San Diego.

Purpose	<p>The CalHFA-SDHC Recycling Partnership is designed to:</p> <ul style="list-style-type: none"> Facilitate access to recycled bonds in San Diego by providing a new tax exempt debt source for SDHC pipeline projects. Increase the aggregate size of the recycled bond volume in California to relieve pressure on the State’s volume cap and increase housing production.
Design of CalHFA-SDHC Recycling Partnership	<ul style="list-style-type: none"> CalHFA preserves tax exemption on local projects undergoing permanent conversion The amount of recycling volume generated by SDHC will be reserved for them for deployment at their discretion. CalHFA will be the issuer for recycled bonds. <ul style="list-style-type: none"> CalHFA has designed a tracking mechanism that will ensure that we can track how much recycling volume they have generated, deployed and is available within a given time frame. This system will also allow SDHC and CalHFA to ensure the maximum amount of recycling volume is utilized before it burns off at its 6-month limit. If SDHC cannot deploy an amount of their available recycling volume within 6-month timeframe (burn-off), SDHC may make its reserved volume available to CalHFA to deploy as part of the statewide program.
Allowable Projects	<p>Recycling bonds can be deployed on any multifamily housing projects that complies with Private Activity Bond occupancy requirements, including but not limited to the following:</p> <ol style="list-style-type: none"> Projects with CDLAC allocation and 4% LIHTC equity, in need of additional tax-exempt debt. New financing mechanisms with local subsidy but no volume cap. 80/20 deals that do not need tax credit equity.^[1] RAD projects
Roles and Responsibilities	<ul style="list-style-type: none"> CalHFA: <ul style="list-style-type: none"> Manages recycling program, including warehousing credit facility, tax compliance, and transaction tracking. Coordinates timing of preservation with lenders and issuers Preserves tax-exempt bonds Coordinates timing of new issuances with lenders and issuers Issues recycled bonds + new CDLAC allocation bonds. After careful analysis and consultation with partners and bond counsel, CalHFA has determined that having a single issuer of tax exempt bonds will greatly simplify the execution of the entire transaction.

B

	<ul style="list-style-type: none"> <ul style="list-style-type: none"> ○ CalHFA will inform local partner when it is deploying recycled bonds from the statewide pool in the local partner's jurisdiction. • SDHC: <ul style="list-style-type: none"> ○ Provides permanent conversion pipeline to CalHFA to facilitate management of recycling program. ○ Executes a multi-party amendment to bond documents: lender, issuer, trustee (and potentially the existing Borrower). Issuer will need to consent to document amendments that provide for the following: <ul style="list-style-type: none"> ▪ On conversion date, Borrower loan prepayment amount will be delivered to custodian/trustee for CalHFA line of credit instead of being applied to redeem like amount of bonds ▪ At the same time, equivalent amount of proceeds drawn from CalHFA line of credit will be applied to refund like amount of bonds ▪ On the conversion date, Issuer may need to execute direction to trustee/fiscal agent for the construction bonds to enable the funds swap described above. ○ Decides where recycling volume it has generated is deployed and shall communicate this direction to CalHFA no later than 3 months after the date of preservation. ○ With the approval of SDHC, expected burn-off volume shall be available for statewide deployment by CalHFA. • Original Construction Lender: <ul style="list-style-type: none"> ○ Executes a multi-party amendment to bond documents. Will need to consent to document amendments that provide for the following: <ul style="list-style-type: none"> ▪ On conversion date, Borrower loan prepayment amount will be delivered to custodian/trustee for CalHFA line of credit instead of being applied to redeem like amount of bonds ▪ At the same time, equivalent amount of proceeds drawn from CalHFA line of credit will be applied to refund like amount of bonds ▪ [Taken together, these two steps put construction lender in same position they would have been in absent the amendments] ▪ On the conversion date, trustee/fiscal agent for construction bonds will need to cooperate with other parties in effecting funds swap described above • New Lender: <ul style="list-style-type: none"> ○ Modified documents to reflect use of recycled proceeds. ○ Receives recycled proceeds to use it to make the new loans.
Rules of Recycling	<ul style="list-style-type: none"> • New loans must be made to an eligible project within 6 months of the effective date of the redemption of construction bonds. • The bond refunding must occur within 4 years of the issuance of the original bonds. For this reason, typically preservation of bond cap occurs at permanent conversion. ^{[[1]]}_{SEP} • Recycled bonds cannot have a term beyond 34 years from the initial bond issuance. ^{[[1]]}_{SEP} • Recycled bonds are subject to public notice requirements (TEFRA). ^{[[1]]}_{SEP} • Recycled bonds cannot generate 4% LIHTC. • Recycled bonds cannot be re-recycled. ^{[[1]]}_{SEP} • Recycled bonds can only be used for multifamily housing. ^{[[1]]}_{SEP}

Minimum Amount	A minimum of \$7,000,000 of bonds must be redeemed and volume cap preserved for each individual transaction to be eligible for the CalHFA- CalHFA-SDHC Recycling Partnership.
Fees	<p>Fee Structure for Recycled Bonds Issued at SDHC's Request pursuant to CalHFA-SDHC Recycling Partnership:</p> <ul style="list-style-type: none"> ○ Upfront Fees: <ul style="list-style-type: none"> ▪ CalHFA will charge SDHC's upfront conduit issuance fees for both the recycled + new CDLAC allocation bonds. CalHFA will retain the upfront fees from issuance, and cover legal costs, including any external legal costs incurred by SDHC in preserving volume cap through this partnership. ○ Ongoing Fees: <ul style="list-style-type: none"> ▪ CalHFA will charge the SDHC ongoing monitoring/compliance fees for both recycled + new CDLAC allocation bonds of 12.5 bps ▪ CalHFA will keep 5 bps in order to cover its costs of operating the recycling program and compliance costs. ▪ CalHFA will revert the remaining 7.5 bps in ongoing fees to SDHC <p>Recycled Bonds issued under CalHFA's statewide recycling program will not be subject to this fee structure, and will instead be covered under CalHFA's conduit and/or recycled bond issuance term sheets, even if the preserved volume was generated through SDHC pay-downs and was reverted to CalHFA's statewide recycling pool.</p>
Compliance Monitoring	CalHFA will follow the same compliance monitoring protocol for the tax exempts bonds under the CalHFA-SDHC Recycling Partnership as for the CalHFA conduit program.

D

Regulatory Requirements

Recycled Bond occupancy requirements mirror those of multifamily private activity bonds:

- Either (A) 20% of the units must be rent restricted and occupied by individuals whose incomes are 50% or less of the area median income as determined by HUD ("AMI") with adjustments for household size ("20% @ 50% AMI"), or (B) 40% or more of the units must be both rent restricted and occupied by individuals whose income is 60% or less of the AMI, with adjustments for household size ("40% @ 60% AMI"); however in the latter case, a minimum of 10% of the units must be rent restricted and occupied by individuals whose income is 50% or less of AMI.
- Borrower will be required to enter into a Regulatory Agreement which will be recorded against the Project for the Qualified Project Period (as defined in the CalHFA Regulatory Agreement). This includes the latter of the federally-required qualified project period, repayment of the Bond funded loan, redemption of the Bonds or the full term of the CDLAC Resolution requirements.

CalHFA's conduit and recycling program do not include any additional regulatory requirements, however the locality, through its provision of soft/subordinate financing, may impose additional requirements on the project through a separate regulatory agreement.

The information provided in this program description is for guidance only. While we have taken care to provide accurate information, we cannot cover every circumstance nor program nuance. This program description is subject to change from time to time without prior notice. The California Housing Finance Agency does not discriminate on any prohibited basis in employment or in the admission and access to its programs or activities. Not printed at taxpayer expense.

EXHIBIT B
MOU - CalHFA Conduit Issuer Program Matrix
[Attached]

CalHFA Recycling Deals located within the City of San Diego

Effective after CalHFA-SDHC Recycling

	Conduit-Only Deal	SDHC Lending; No CalHFA financing	CalHFA Perm and/or Subordinate Lending; No SDHC financing	CalHFA Perm and/or Subordinate Lending with SDHC financing
San Diego Recycling Pool <i>generated through SDHC paydowns.</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i>	Local Partnership Issuance <i>Revenue Sharing per MOU</i>	<i>N/A. If SDHC elects to contribute recycling volume to this type of project, it would revert its volume to the statewide pool.</i>	<i>N/A. If SDHC elects to contribute recycling volume to this type of project, it would revert its volume to the statewide pool.</i>
Statewide Recycling Pool <i>generated through CalHFA paydowns, or through left-over volume reverted from local pools.</i>	CalHFA Statewide Issuance <i>No Revenue Sharing. *Non-Compete Agreement: Prior to proceeding with this type of project CalHFA will confirm with SDHC that developer has not approached SDHC first for recycled bonds.</i>	Local Partnership Issuance <i>Revenue Sharing per MOU *subject to statewide pool availability and approval by CalHFA</i>	CalHFA Statewide Issuance* <i>No Revenue Sharing.</i>	CalHFA Statewide Issuance* <i>* CalHFA reverts upfront conduit issuer fee to SDHC (15K, 18.5bps, or 37.5K + 5bps, depending on the size of the issuance. *CalHFA retains Annual Administrative Fee, Bond Recycling Transaction Fee, and any other fees associated with the issuance.</i>
Combination of Pools <i>recycled volume deployed is a mix of local pool and statewide pool.</i>	Local Partnership Issuance <i>Revenue Sharing per MOU *subject to statewide pool availability and approval by CalHFA</i>	Local Partnership Issuance <i>Revenue Sharing per MOU *subject to statewide pool availability and approval by CalHFA</i>	<i>N/A. If SDHC elects to contribute recycling volume to this type of project, it would revert its volume to the statewide pool.</i>	CalHFA Statewide Issuance* <i>* CalHFA reverts upfront conduit issuer fee to SDHC (15K, 18.5bps, or 37.5K + 5bps, depending on the size of the issuance. *CalHFA retains Annual Administrative Fee, Bond Recycling Transaction Fee, and any other fees associated with the issuance.</i>

Key:

Local Partnership Issuance

SDHC Fees;; Revenue Sharing per MOU with SDHC retaining 7.5 bps ongoing.

CalHFA Statewide Issuance Fees

CalHFA Fees; No Revenue Sharing unless otherwise stated

G

SDHC/CalHFA MOU 9/22/2021[MJV 01.20.2021]

4137-4728-2218.2

HOUSING AUTHORITY OF
THE CITY OF SAN DIEGO

RESOLUTION NUMBER HA-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE HOUSING AUTHORITY OF THE
CITY OF SAN DIEGO APPROVING A MEMORANDUM OF
UNDERSTANDING BETWEEN THE HOUSING AUTHORITY,
THE SAN DIEGO HOUSING COMMISSION AND THE
CALIFORNIA HOUSING FINANCE AGENCY TO
PARTICIPATE IN A TAX-EXEMPT MULTIFAMILY
HOUSING REVENUE BOND RECYCLING PROGRAM.

WHEREAS, the Housing Authority of the City of San Diego (Authority) is authorized to issue tax-exempt and taxable multifamily housing revenue bonds, also known as private activity bonds, to finance the creation and preservation of affordable housing in the City of San Diego (City); and

WHEREAS, federal law limits how much tax-exempt private activity bond debt a state can issue in a calendar year and sets an annual state ceiling (Volume Cap), determined by a state's population, multiplied by a specified dollar amount; and

WHEREAS, to issue bonds for a development, the Authority must first submit an application to the California Debt Limit Allocation Committee (CDLAC) for a bond allocation; and

WHEREAS, beginning in 2020, demand for tax-exempt bonds exceeded CDLAC's annual bond allocation and as a result, previously non-competitive tax-exempt bonds became competitive; and

WHEREAS, the federal Housing and Economic Recovery Act of 2008 explicitly allows for recycled bonds to reuse the Volume Cap authority of existing tax-exempt bonds that would otherwise be retired and no longer available once those tax-exempt bonds are paid off upon

completion of the construction phase of an affordable housing project for which they were issued; and

WHEREAS, the California Housing Finance Agency (CalHFA) issues tax-exempt and taxable conduit revenue bonds to provide construction and permanent financing for affordable housing projects, including those located in the City; and

WHEREAS, the CalHFA has established a program to preserve and recycle private activity bond Volume Cap in accordance with 26 U.S.C. section 146(i)(6) (CalHFA Volume Cap Recycling Program); and

WHEREAS, the San Diego Housing Commission (Housing Commission) and CalHFA desire to enter into a Memorandum of Understanding (MOU) with the Authority to permit the Authority and the Housing Commission to participate in the CalHFA Volume Cap Recycling Program, which will enable CalHFA to both preserve a portion of the tax-exempt Volume Cap for bonds initially issued by the Authority and issue new CalHFA conduit bonds, including bonds issued using recycled Volume Cap, for affordable housing projects; and

WHEREAS, CalHFA will, in coordination with the Authority and Housing Commission, issue taxable refunding obligations to refund portions of conduit revenue bonds previously issued by the Authority, and will subsequently issue CalHFA conduit bonds in part to refund said taxable obligations and to provide financing for projects in accordance with the terms and provisions outlined in the MOU; NOW, THEREFORE,

BE IT RESOLVED, by the Housing Authority of the City of San Diego, as follows:

1. The Housing Commission President and Chief Executive Officer (President & CEO), or designee, is authorized and directed to sign the MOU on behalf of the Authority and Housing Commission.

2. The President & CEO, or designee, is authorized to modify MOU, if necessary, without further action by the Board of Commissioners of the Housing Commission (Housing Commission Board) or the Authority, but only if and to the extent that such changes comply with the terms of the MOU and are necessary to fulfill federal and state funding requirements.

3. The President & CEO, or designee, is authorized to take such actions as are necessary, convenient and appropriate to implement this Resolution and delegation of authority by the Housing Commission, upon the advice of General Counsel.

4. The President & CEO, or designee, is authorized to execute any documents and instruments that are necessary and appropriate to implement this Resolution, in a form approved by General Counsel, and to take such actions necessary and appropriate to implement these approvals without further action of the Housing Commission Board or the Housing Authority.

APPROVED: MARA W. ELLIOTT, General Counsel

By _____
Marguerite E. Middaugh
Deputy General Counsel

MEM:jdf
09/20/2021
Or.Dept: SDHC
Doc. No.: 2765090



The City of San Diego
Item Approvals

Item Subject: Approval of a Memorandum of Understanding between the City of San Diego, San Diego Housing Commission, Housing Authority of the City of San Diego, and the California Housing Finance Agency to Participate in a Tax-Exempt Bond Recycling Program.

Contributing Department	Approval Date
DOCKET OFFICE	04/23/2021

Approving Authority	Approver	Approval Date
HOUSING COMMISSION FINAL DEPARTMENT APPROVER	MARSHALL, SCOTT	04/22/2021
EXECUTIVE VICE PRESIDENT	DAVIS, JEFF	04/29/2021
CITY ATTORNEY	MIDDAUGH, MARGUERITE	09/21/2021