TO: Rules and Open Government Committee

FROM: California Community Housing Agency ("CalCHA") & Catalyst Housing Group ("Catalyst")

DATE: November 29, 2020

SUBJECT: RESPONSE TO NOVEMBER 23, 2020 MEMO TITLED "PUBLIC PURPOSE BONDS ISSUED BY A JOINT POWERS AUTHORITY FOR MODERATE-INCOME RENTAL HOUSING"

Mayor Liccardo and Honorable Members of the City Council,

On November 23, 2020, the City's Housing Department issued the above-referenced memorandum. Below are a number of excerpts (in italics) along with CalCHA and Catalyst clarifications (in bold) that we hope the Committee will find helpful:

"Rents would be set at income levels that the City may have some control over, to the extent feasible, in conjunction with the bond issuance. For example, a development might have one-third of its apartments at 90% Area Median Income (AMI), one-third at 100% AMI, and one-third at 110% AMI. Recent projects by CalCHA have been offered at 120% of AMI. Further, the City could negotiate to cap tenants' rent increases at no more than 4% per year." (Page 3, ¶ 4 – Page 4, ¶ 1)

- **While CalCHA's middle-income housing program provides for flexibility across the income spectrum, every existing CalCHA acquisition to date maintains a Regulatory Agreement restricting at least one-third of the units to Low-Income Households (<80% AMI), at least one-third of the units to Median-Income Households (81-100% AMI) and the remainder to Moderate-Income Households (<120% AMI).**

- **Every existing CalCHA property maintains Regulatory Agreements restricting annual rent increases to no more than 4%."**

"The use of these products thus far has primarily been used to acquire newer apartment buildings with basically no needed capital improvements. In theory, the strategy could be used for new construction, but added requirements due to waived property taxes, and additional risks associated with escalating materials and labor costs, overseeing construction, and managing lease-up would likely make it difficult without additional subsidy in the current cost environment. This type of bond issuance could also be used to acquire and rehabilitate older buildings. However, the amount of capital needed for substantial rehabilitation for older buildings is a different business model, would also involve construction risk and materials and labor costs, and may also require subsidies." (Page 4, ¶ 2)

- **CalCHA and Catalyst have partnered to acquire in excess of $550 million of premier market-rate rental communities throughout Northern California. Our acquisition strategy includes the preservation of existing NOAH (naturally occurring affordable housing), as well as protections against the displacement of existing NOAH residents that often results from aggressive value-add investment.**

- **In addition to the newer properties in its portfolio, CalCHA and Catalyst have acquired and preserved rental communities built in the 1970s and 1980s, including the funding of capital**

improvements. Our current transaction pipeline includes new developments as well as large-scale redevelopments (>$100k/unit in asset renovations). None of this pipeline requires subsidies.

- **None of CalCHA's activities to further middle-income housing across the State ever require local subsidy from our city partners.**

"CalCHA was formed pursuant to a joint powers authority with two original charter members, Kings County and the Housing Authority of Kings County. CalCHA is a political subdivision of the State of California under the Joint Powers Act and is authorized to issue revenue bonds and to conduct a range of activities including acquisition, ownership, maintenance and operation of any property. Additional cities, counties, and other local government entities may, and have, joined CalCHA. This includes the cities of Menlo Park, Santa Rosa, Mountain View, and Fairfield, among others. The City has no existing relationship with this newly formed JPA and no large city peer of the City yet belongs to CalCHA JPA. CalCHA hires and fires the asset manager (currently, Catalyst Housing Group)." (Page 4, ¶ 5 – Page 5, ¶ 1*)*

- **GPM Municipal Advisors, LLC ("GPM") serves as Program Administrator / Municipal Advisor to CalCHA. From 1988 to June 2015, GPM, its affiliates and personnel served as the Program Manager / Municipal Advisor to the California Statewide Communities Development Authority ("CSCDA") facilitating hundreds of tax-exempt multifamily affordable housing bond transactions throughout California, including numerous transactions within the City of San Jose.**

- **CalCHA currently has 17 members of its JPA and has been unanimously approved within each jurisdiction. Bay Area CalCHA members include the Cities of Mountain View, Menlo Park, Hayward, Walnut Creek, Dublin, Livermore, Larkspur, Santa Rosa, Fairfield and Napa, among others**.

"The California Statewide Communities Development Authority (CSCDA) is a joint powers authority founded and sponsored by the League of California Cities and the California State Association of Counties. CSCDA was created in 1988 to enable local government and eligible private entities access to low-cost, tax-exempt financing for projects that provide public benefit. CSCDA is comprised of more than 530 cities, counties and special districts, including the City of San José, which has been a member since 1990. CSCDA has issued more than $65 billion through 1,700 plus transactions across its diverse public benefit financing programs.

Recently, CSCDA has created an affiliate joint powers authority in order to create its own moderate-income housing program. The City of Anaheim has recently become a member. CSCDA expects the Cities of Oakland, Long Beach, and Los Angeles to join in the coming months. The basics of the new program are similarly structured to CalCHA, but with some distinctions." (Page 5, ¶ 2-3)

- **As previously stated, GPM Municipal Advisors, currently staff to CalCHA, served as staff to CSCDA for the first 27 years of its 32 year existence – a period of time that includes the successful execution of the vast majority of the $65 billion and 1,700 transactions listed above.**

- **CalCHA remains the only JPA in existence to have successfully completed a middle-income housing transaction of the type described herein. CalCHA has closed four such transactions to date, all of which closed on schedule following successful bond sales.**

"Given that the programs rely heavily on contribution of City tax revenues and borrowing authority, is either program the most efficient means of delivering the benefits, or could other governmental or nonprofit providers or the City itself provide those benefits more readily?" (Page 6, ¶ 3)

- **The issuance of CalCHA bonds does not rely upon the City's borrowing authority.**

- **Nonprofit housing providers and some governmental entities (most housing authorities, for example) are not legally able to address housing needs >80% AMI.**

- **Any California governmental entity with the powers of >80% AMI asset ownership and municipal bond issuance has the ability to replicate our middle-income housing model. That said, we have found that sourcing transactions, closing within 60 days, providing significant at-risk pursuit capital, and taking on the liabilities of direct asset ownership is generally outside the comfort level of most public entities.**

"While the CSCDA product assumes that the City, at its discretion, would share some portion of proceeds generated by the property with other taxing entities, the CalCHA product does not." (Page 6, ¶ 6)

- **CalCHA has no authority to direct any portion of the proceeds generated by our middle-income housing program, nor have we made such requests. CalCHA's program provides revenues to the City after the repayment of debt and does not prohibit the City from sharing such revenues with other taxing entities. It is the City's sole discretion as to how any proceeds generated from the middle-income housing program are utilized.**

"The CalCHA structure recommends an approval by the City Council for the program and approval of a delegation of authority to the City Manager or designee to approve individual property acquisitions, while CSCDA's structure allows for a public hearing for each agreement." (Page 7, ¶ 1)

- **Each CalCHA transaction is approved at a CalCHA Board Meeting which can be attended by the public.**

- **While the issuance of Private Activity Bonds legally requires a TEFRA hearing, such a requirement does not exist for the issuance of governmental bonds.**

- **As previously mentioned, CalCHA remains the only JPA in existence to have ever closed upon the type of middle-income housing transaction being contemplated herein. We have learned from experience that it is not possible to move quickly enough and successfully acquire marketed transactions if TEFRA hearings are required.**

- **CalCHA is committed to implementing the program in a manner that suits the individual needs of each member jurisdiction.**

"Current rent conditions may make market rent in some locations at similar levels to those allowed for moderate-income units, thus providing a lower overall benefit than if the product were used in higher-rent submarkets or if income targeting were lower." (Page 7, ¶ 4)

- **As previously stated, while CalCHA's middle-income housing program provides for flexibility across the income spectrum, every existing CalCHA acquisition to date maintains a Regulatory Agreement restricting at least one-third of the units to Low-Income Households (<80% AMI), at least one-third of the units to Median-Income Households (81-100% AMI) and the remainder to Moderate-Income Households (<120% AMI). We ensure that at least two-thirds of our units are set to below-market rents from the day we take title to any asset.**

- **Current rent conditions, caused primarily by COVID-19-related issues, should not serve as a prediction to future rent conditions. In the 10-year economic boom following the last financial crisis, apartment rents in San Jose increased 90%. Had rent controls like those that we are offering been in place, thousands of San Jose families could have avoided painful displacement and unsustainable rental increases.**

"Because housing stock to be acquired is relatively new existing housing with existing tenants who qualified based on market rents, and because neither program relies on evictions, the delivery of affordability will necessarily be delayed. The City and other taxing entities would forego property taxes immediately, but the affordability benefit would be deferred." (Page 7, ¶ 5)

- **Annual turnover generally averages 50% across institutionally managed market-rate rental properties. Without displacing the existing tenant population, an important program goal, our experience has been that we can rely solely upon natural turnover and immediately make great strides towards providing significant affordability across at least two-thirds of our units.**

- **We have also found that many households in the communities CalCHA acquires income-qualify for our program yet are paying upwards of 50% of their incomes towards rent. Such households thus immediately qualify for a rent reduction.**

"The structure of these programs leaves the hiring of the property management up to the asset manager, i.e., the JPA. While this typical of market-rate apartments, staff has had previous experiences on properties with third-party bond issuers in which there was insufficient oversight and an unwillingness or inability of property managers to fulfill the City's requests to make the properties safer without using the City's formal code enforcement authority. Staff recommends that properties' bond regulatory agreements include provisions that require good maintenance of the property and would allow for the City's right to enforce safe property conditions in cases of mismanagement or if the property falls into disrepair. While there are other legal avenues for this type of enforcement, having these added avenues will help avert problems in the long run. Staff would develop recommendation for such provision and discuss with the JPAs whether they would be viable." (Page 8, ¶ 1)

- **Unlike traditional affordable housing transactions, where it has become relatively standard for bonds to be issued through third-party conduits, CalCHA is the direct issuer and owner of each of its assets.**

- **The property manager is retained by the owner of each property, which is CalCHA. The property manager is held responsible for the state of the property and is subject to further oversight by bondholders.**

- **As bondholders maintain 100% of the financial risk within these transactions, they ultimately have the final say on who performs property management. Providing a City with the powers to hire and fire the property manager would render these transactions unfinanceable.**

"Both programs allow the City to buy out the project contingent on repaying all outstanding bonds. This creates a direct City interest in the amount of leverage placed on the housing (including the fees charged to the program and payable from the bonds). It also in essence has the City guarantying that the bonds will be repaid if the City ever elects to take over control of the property. Unlike property managers or JPA members from other jurisdictions, the City has a direct interest in the welfare and safety of its residents and to keep them housed. Staff needs to explore each of the scenarios that could cause the City to want or need to take over the project and ensure that it is not creating moral hazards by, in effect, guarantying projects that encounter operating or public safety difficulty, leaving the City no other options but to assume control of the projects." (Page 8, ¶ 2)

- **The City in no way provides any guaranty, implicit or explicit, of the bonds or any other debt in connection with the CalCHA/Catalyst program. CalCHA's bonds are fully non-recourse and backed solely by project revenues. The City is not named as an obligor in any respect. As is the case with other properties in its jurisdiction, there is no requirement for the City to repay in-place financing and/or to take over an underperforming asset.**

- **The City will be granted an option, not an obligation, to acquire or assign control of CalCHA assets within its jurisdiction, and at its sole discretion. Even if this option is never exercised, the City is still granted all surplus revenues, including all future net sales proceeds.**

It is not clear that the units acquired and subsequently income-restricted would count towards the City's moderate-income RHNA goals. CSCDA reports that its structure could produce units eligible for RHNA credit, but they are not now. (Page 8, ¶ 4)

- **While there is a limited window for cities to get "credit" for the conversion of existing market-rate housing to deed-restricted housing serving Very Low- and Low-Income households, current Housing Element law does not provide the same path for Moderate-Income units. Catalyst and CalCHA are currently working on a legislative solution to expand the provisions of existing law to include Moderate-Income housing created through conversion programs like ours.**

- **To the extent CalCHA embarked upon a ground-up construction project which created net new housing units, those units would count towards a city's RHNA targets. There is no difference between the CalCHA program and that offered by any other JPA or local government entity in this regard.**

November 30, 2020

VIA EMAIL

Jacky Morales-Ferrand
Director of Housing
City of San José
200 E. Santa Clara Street
San José, CA 95113

Re: CSCDA Workforce Housing Program

Dear Ms. Morales-Ferrand:

Thank you for sharing the memorandum dated November 23, 2020, from Ms. Cooper, Ms. Klein, and yourself, prepared in advance of the Rules and Open Government Committee meeting scheduled for December 2, 2020. Your memorandum thoroughly describes the critical need for more moderate-income housing in the City and identifies important criteria that the City should consider when evaluating program options. We greatly appreciate the City's interest in CSCDA's Workforce Housing Program and believe that it provides an attractive platform to increase moderate-income housing throughout San José. After reviewing your memorandum, we thought that it would be helpful to provide some additional comments to further illustrate and differentiate CSCDA's Workforce Housing Program.

- Existing Relationship

Since 1990, the City has participated in a variety of CSCDA programs, including its 501c3 nonprofit bond program, affordable housing bond program, equipment leasing program, and Proposition 1A securitization program. CSCDA has issued $825 million in tax-exempt bonds for more than 50 projects throughout the City. CSCDA is specifically referenced in the City's current housing bond policy.

- Accountability & Governance

CSCDA remains accountable to its 530 city and county members via its founders and sponsors, the League of California Cities and the California State Association of Counties. The CSCDA Commission is comprised of a diverse group of current and retired City Managers, County Treasurer-Tax Collectors and other city and county officials from across the State.

- Transparency

CSCDA has always supported and been compliant with all public agency transparency requirements. Meeting agendas, staff reports, audits, and other required financial disclosures are promptly posted to the CSCDA website. Under its Workforce Housing Program, cities are free to evaluate specific projects and CSCDA provides cities with detailed financial proformas (including fees) for prospective projects.

- Program Breadth

CSCDA is currently working with five project sponsors/administrators and four national underwriting firms, providing cities with expansive, unparalleled access to eligible projects and the capital markets. Goldman Sachs, RBC Capital Markets, Citibank and Stifel are currently underwriting moderate-income housing projects for the program. CSCDA's project sponsors have deep relationships with existing institutional property owners and have direct access to nearly all off-market project opportunities within San José. The following experienced sponsors are currently participating in the program:

  - Waterford Property Company is a diversified real estate company which has developed or acquired over $1 billion in commercial and multifamily projects throughout California and Arizona, including the creation of more than 5,000 units.

  - Standard Communities has been actively engaged in institutional multifamily investment, acquisition, development financing and asset management since 2008 across more than $2 billion of transactions. Standard's current multifamily investments include residential rental facilities throughout the United States, totaling more than 15,000 units market rate and affordable units.

  - Manatt Housing Solutions LLC (MHS) is a subsidiary of Manatt, Phelps & Philip, LLP and draws on its deep bench of highly respected real estate, land use and governmental affairs professionals. The MHS team has decades of California multi-family housing experience with hundreds of transactions and billions of dollars, negotiating, executing and structuring sophisticated, acquisitions and financings.

  - Plenary is an independent long-term investor, developer and manager of public infrastructure. As a public-private partnership (PPP or P3) specialist, Plenary has a portfolio of 70 assets under management worth more than $42 billion across Australia, Canada and the United States.

  - Blake Griggs Properties develops, acquires, leases and manages residential, mixed-use, and retail projects throughout California. It has developed or acquired more than 15,000 multifamily units through $6 billion in transactions.

CSCDA's Workforce Housing Program also facilitates new construction projects and we are currently in discussions with one of San José's most prominent multifamily developers regarding a specific opportunity.

- Location and Number of Units

It is important for each city (especially California's largest cities) to determine which projects and how many units meet the city's moderate-income needs. At its November 10th council meeting, the City of Anaheim joined CSCDA's Workforce Housing Program and approved three specific projects that will provide an additional 1,017 moderate-income housing units. Three of our program sponsors (Waterford, Plenary and MHS) are the project sponsors and will administer these assets. CSCDA has already shown the City of San José one specific eligible property and upon the City's request, could have a half-dozen additional properties under contract and available for the City's consideration.

- Program Customization

CSCDA works closely with each city to ensure that its specific needs are met through the program. For instance, CSCDA worked with the City of Anaheim to determine the appropriate affordability levels for the three approved projects. In addition, CSCDA worked with Anaheim's City Attorney and outside counsel to incorporate important, compatible provisions into the form regulatory agreement for the projects.

- Public Benefit Agreement

CSCDA's program utilizes a unique Public Benefit Agreement which provides a number of disposition options to the City. Under the Public Benefit Agreement, the City, at its sole discretion, may force a sale of a property between year 15 and year 30 of the bonds, and the City, along with certain other taxing agencies (including the County and School Districts) would receive a portion of the net sale proceeds. The City could also elect to purchase the property, or even have the property sold but conditioned upon the regulatory agreement remaining in place. Given that school districts and counties often collectively receive more than 70% of property taxes, a more equitable sharing of surplus revenue includes these agencies.

- Efficiency of Affordability

The lease turnover rate for Class-A urban located properties is actually 40% or higher. We estimate that the properties would reach near complete affordability within three years.

- Property Management and Condition

Unique features of the program's 100% tax-exempt bond financing are the requirement of extensive reserves and the fact that every revenue dollar can only go to one of two places: right back into the property or to pay down bond principal. Without equity investors looking for a financial return, or the possibility of near-term property resale, projects in the program should be the best maintained multifamily assets in the City.

Thank you for your interest in CSCDA's Workforce Housing Program and we look forward to discussing next steps. We are confident that CSCDA's program will be the most accepted and utilized platform throughout the State and among the City of San José's peers. Please let me know if you have any other questions.

Sincerely,

[redacted]

Jon Penkower
Managing Director

cc : Julia H. Cooper (via email)
Nanci Klein (via email)
Kristen Clements (via email)
Jerad Ferguson (via email)

December 1, 2020

Mayor Liccardo and Honorable Members of the City Council
City of San Jose
200 East Santa Clara St.
San Jose, CA 95113

Re: Supporting innovative financing solutions that facilitate the production, protection and preservation of Low- and Moderate-Income housing for San Jose's essential middle-income workforce

Dear Mayor Liccardo and Honorable Members of the City Council,

We, the undersigned organizations and individuals, are writing in support of the resolution for the City of San Jose to join the California Community Housing Agency (CalCHA) to encourage the production, protection and preservation of Low- and Moderate-Income housing within City limits. Now, more than ever, at a time when San Jose residents face continued financial hardships related to the ongoing COVID-19 public health crisis, unsustainable housing costs and the persistent threat of displacement, we need innovative solutions to drive housing affordability for all.

CalCHA's middle-income housing program proposes to utilize revenues generated from the sale of CalCHA-issued governmental revenue bonds to fully finance new construction of deed-restricted affordable housing targeting the missing-middle, as well as the acquisition and conversion of existing market-rate apartment communities to rent-restricted housing for households earning between 60% and 120% of area median income. In San Jose, this equates to housing for essential workers like nurses, teachers, first responders, librarians, and social workers – each of whom earn too much to qualify for traditional affordable housing programs, yet increasingly not enough to live within the communities they serve.

Over the past 10 years, average rents in the City of San Jose have risen faster than wages. We have seen the effect of this disparity firsthand. Increasing traffic, congestion, pollution, and rent-burdened households are all symptoms of what happens to a community when it cannot provide sustainable and affordable housing opportunities for all.

CalCHA's housing would not only immediately be made available to San Jose's essential middle-income workforce, but all financial upside of its local assets would be granted to the City of San Jose. This public benefits package stands to generate significant revenue for the City and provides the City with the ability to ensure these buildings are perpetually preserved as affordable housing. Additionally, the program does not require any subsidy from the City and does not redirect scarce resources away from programs that support housing for Very Low- and Low-Income households.

The City of San Jose has proven to be a thought leader when it comes to championing innovative policy solutions. To add another tool to the City's housing toolbox, and to encourage the development of missing-middle housing, we strongly urge you support the proposed resolution to join CalCHA as an Additional Member. Thank you for your consideration.

Respectfully,

Ahmad Thomas, CEO, Silicon Valley Leadership Group
Leslye Corsiglia, Executive Director, Silicon Valley at Home
Linda Mandolini, President, Eden Housing
Sandy Jamison, President, Santa Clara County Association of REALTORS®
Tomiquia Moss, Founder & Chief Executive, All Home
Michael Lane, San Jose Director, SPUR
Matt Regan, Senior Vice President of Public Policy, Bay Area Council
Bryon Wolf, Partner, Bay West Development
Ben Metcalf, Principal, Stronger Foundations LLC
Anil Babbar, Vice President of Public Affairs, California Apartment Association