



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** John Stufflebean

**SUBJECT:** SEE BELOW

**DATE:** 01-04-10

Approved

Date

1/8/10

**COUNCIL DISTRICT:** City-Wide

**SUBJECT** PARTICIPATION IN THE CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY CALIFORNIAFIRST PROGRAM

## **RECOMMENDATION**

1. Hold a public hearing inviting public testimony regarding the public benefits of the California Statewide Communities Development Authority's CaliforniaFIRST Program.
2. Adopt a resolution authorizing San José to join the CaliforniaFIRST Program, including the authorization to pay set-up fees in the amount of \$25,000 for participation in the CaliforniaFIRST Program.

## **OUTCOME**

Approval of this recommendation will allow the City to participate in the California Statewide Communities Development Authority ("California Communities") CaliforniaFIRST program. By joining the CaliforniaFIRST Program, residential and commercial property owners in San José will have the ability to finance energy and water efficiency improvements and renewable energy measures, and repay the amount financed through their property tax bill in the amounts and at the times specified in the Assessment Contract. Implementation of this program will increase clean tech job opportunities and expand vital energy efficiency retrofits and the use of renewable technologies, including solar, in San José thus moving the City towards achieving Goals #1, 2, and 3 of the Green Vision.

## **EXECUTIVE SUMMARY**

In June 2009, the City Council passed a resolution declaring San José's interest in joining the CaliforniaFIRST program and authorized related actions including staff review of program documentation.

In October 2009, the California Communities Board of Directors was presented with a staff report from Renewable Funding, the CaliforniaFIRST program administrator, identifying the 14 counties that had provided a soft commitment or indicated a high level of interest in participating in the program. The counties included: Alameda, Fresno, Kern, Monterey, Sacramento, San Benito, San Diego, San Luis Obispo, San Mateo, Santa Clara, Santa Cruz, Solano, Ventura, and Yolo. San José was the only city in the state approved to participate in the first phase (pilot) of the CaliforniaFIRST program without an associated county also participating. It was granted this exemption due to the City's size and population.

In November 2009, Renewable Funding, the CaliforniaFIRST Program administrator, provided pilot communities with program documentation, including a proposed resolution and attached CaliforniaFIRST Program Report, for internal staff review and revision.

In order to join the initial pilot stage of the CaliforniaFIRST Program, San José must submit a Council approved resolution to California Communities by January 26, 2010. This resolution will authorize California Communities to accept applications financing of energy efficiency improvements and renewable energy measures through the CaliforniaFIRST Program from owners of property within San José. It also authorizes California Communities to conduct assessment proceedings and levy assessments to repay bonds issued to finance these improvements against the property of participating owners within San José's boundaries. The City will not have any obligation or credit exposure on the bonds issued by California Communities. Bondholders will be paid principal and interest from the contractual assessments levied on the properties of the participating property owners and will look only to California Communities for repayment. California Communities anticipates that residents and businesses will first be able to enroll in the CaliforniaFIRST Program in June 2010.

The resolution also authorizes payment of a set-up fee payable to California Communities to cover legal, procedural, and technology costs associated with the CaliforniaFIRST Program. Those fees are set forth in the Cost Summary/Implications section of this memo.

Any jurisdiction can withdraw from the CaliforniaFIRST Program at any time by passing a resolution rescinding the authorization.

## **BACKGROUND**

With the passage of AB 32, California set ambitious goals for reducing carbon emissions and building alternative energy use. Property owners can help the City achieve its greenhouse gas reductions goals and reduce water use through investments in energy and water efficiency improvements and distributed generation renewable energy sources. Yet most people still refrain from making these improvements due to the large up-front cost.

In July 2008, the State of California passed AB 811, allowing local governments to form assessment districts that enable property owners to install energy efficiency and renewable

energy improvements on their property and pay the cost of the projects over an extended period of time through their property tax bill.

California Communities is a joint powers authority (JPA) sponsored by the League of California Cities and the California State Association of Counties. The member agencies of California Communities include all 58 counties and more than 400 other local agencies throughout California, including the City of San José. To facilitate implementation of AB811, California Communities is offering the CaliforniaFIRST Program on a statewide basis to allow residential and commercial owners of property in participating cities and counties to finance energy and water improvements, and renewable energy measures. California Communities will create the assessment districts, issue bonds to fund the improvement, and levy “contractual assessments” on the owner’s property to repay the portion of the bonds issued to finance the improvements on that property. The repayment terms for each property owner will be specified in his/her associated Assessment Contract. California Communities has selected Renewable Funding LLC and the Royal Bank of Canada Capital Markets to provide administration and financing for the program.

The benefits to the property owner include:

- Affordable financing for energy efficiency/renewable energy improvements. By virtue of regional aggregation provided by the CaliforniaFIRST Program, residential and commercial projects have access to the municipal bond market, which may produce a lower borrowing cost.
- Assessments that transfer with the property on sale. Most private loans are due upon the sale of the benefited property, which makes it difficult for property owners to match the life of the repayment obligation with the useful life of the financed improvements. Under the CaliforniaFIRST Program, the assessment obligation will transfer with the property upon sale.
- Prepayment options. The property owner can choose to pay off the assessments at any time, subject to applicable prepayment penalties.
- Completely voluntary program. Only property owners who choose to participate in the program will have assessments imposed on their property.

The benefits to the City of San José include:

- Leading by example. The City, as a pilot program participant, promotes energy efficiency improvements and renewable energy measures to property owners through the CaliforniaFIRST Program – which enables community participation in achieving the goals of the Green Vision.
- No administrative role. California Communities handles all assessment administration, bond issuance and bond administration functions.
- No repayment obligation. As in conventional assessment financing, the City is not obligated to repay the bonds issued by California Communities or to pay the assessments levied on the participating properties.

- No credit exposure. The City will not have any obligation or credit exposure on the bonds issued by California Communities. Bondholders will be paid principal and interest from the contractual assessments levied on the properties of the participating property owners and will look only to California Communities for repayment.

## ANALYSIS

### Overview of Proposed City Council Actions

The California Communities Board is scheduled to consider adoption of its Resolution of Intent to form the assessment district within San José's boundaries on January 27, 2010. In order to participate in the initial pilot stage of the program, the City must, by that date, submit a Council approved resolution authorizing the City to join the CaliforniaFIRST Program. If approved, the proposed resolution authorizes California Communities to accept applications from owners of property within San José for financing of energy efficiency improvements and renewable energy measures through the CaliforniaFIRST Program and to conduct assessment proceedings and levy assessments against the property of participating owners within San José's boundaries. The Program will be offered to the public once California Communities completes their authorization and validation process described below.

In accordance with State law, the City must hold a public hearing in order to take public testimony regarding the public benefits of the proposed CaliforniaFIRST Program. The Council meeting will serve as that public hearing. Notice of the January 26 public hearing/Council meeting will be published in the San José Mercury News on or about January 19, 2010 so that the City Council may consider the adoption of the proposed resolution at its meeting on January 26, 2010. Following the conclusion of the public hearing, the City Council may consider adoption of the proposed resolution to join the CaliforniaFIRST Program. Exhibit A to the proposed resolution to join the CaliforniaFIRST Program is the draft Resolution of Intent to be considered by California Communities at its January 27, 2010 meeting. This is provided for informational purposes only and no action is required by the City Council on the California Communities Resolution of Intent.

### Overview of CaliforniaFIRST Program, Validation Proceedings

The CaliforniaFIRST Program (Program) uses land-secured financing, a tool widely implemented by local agencies in California to finance public benefit projects: California law provides cities and counties with the ability to issue bonds and levy assessments on County property tax bills to finance public projects such as sewers, parks, and the undergrounding of utilities.

Under the Program, a contractual assessment lien is placed on each participating property in an amount necessary to:

- (i) finance the installation of authorized energy and water efficiency improvements and renewable energy measures over a 10-20 year period of time, depending upon the useful life of the financed improvements; and
- (ii) pay the costs of administering the Program.

The Program is completely voluntary and is repaid through an incremental increase in the participating property owners' annual property tax bill in an amount and over the duration as specified in the contract between the property owner and California Communities. Property taxes for properties in the City that do not choose to participate are completely unaffected by the Program. If the owner sells the property, the repayment obligation remains an obligation of the property and is transferred to the then current owner.

California Communities will issue bonds payable from the contractual assessments. The City will not have any obligation or credit exposure on the bonds issued by California Communities. Bondholders will be paid principal and interest from the contractual assessments levied on the properties of the participating property owners and will look only to California Communities for repayment.

The Assessment Contract establishes that if any Assessment installment is not paid when due, California Communities has the right to have the delinquent installment and its associated penalties and interest stripped off the secured property tax roll and immediately enforced through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all cost of suit, including attorneys' fees. In the Assessment Contract, the property owner acknowledges that, if bonds are sold to finance the improvements, California Communities may obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent Assessment installments under specified circumstances.

California Communities will also undertake a judicial validation proceeding as part of its initiation of the CaliforniaFIRST Program. These validation proceedings will obtain the court's approval of the legal validity of the Program, including bonds to finance the program. The validation proceeding is a legal action in which California Communities will give notice to "all persons" (e.g., newspaper publication and service on interested parties) and, if they do not respond to the legal action within a certain time, then they are barred from bringing a later legal challenge to that matter. But, if they do respond in a timely manner, then that would result in a contested legal action that will require California Communities and the responding party(ies) to litigate the validity of the Program.

The following items will be validated:

1. That California Communities has the authority to validate the assessments to be levied and the bonds to be issued, and the publication of the summons (and any additional notice provided) pursuant to Section 861 of the Validation Statute was sufficient to establish jurisdiction in the superior court over the subject matter and "all interested persons".
2. That the assessments are valid assessments. In particular, that it is a valid public purpose for California Communities to levy assessments to finance renewable energy/energy efficiency/water efficiency improvements on private property, and to the extent that Proposition 218 (Article XIID of the California Constitution) applies, that the assessments will not violate Article XIID.

3. That the assessments have the senior lien status afforded assessments pursuant to Government Code.
4. That the bonds are valid bonds, and the contracts/agreements related to the issuance of the bonds are valid.
5. That, because the renewable energy/energy efficiency improvements financed through the Program are privately-owned and will be installed pursuant to a contract between the property owner and a private installer, the improvements are not "public works" under the Labor Code, and the installer is not obligated to pay prevailing wages.

California Communities will be responsible for implementing the Program in the City. California Communities has selected Renewable Funding, LLC to administer the Program and the Royal Bank of Canada Capital Markets to serve as the bond underwriter for the Program. Renewable Funding will review applications and provide marketing and customer service through its custom websites, email, and toll-free phone number.

#### CaliforniaFIRST Program Requirements

The attached Program Report developed by Renewable Funding for California Communities identifies the Program requirements relating to the eligibility criteria that a property must meet to receive financing from the Program. The Program Report also lists the types of improvements that can be financed under the Program. Based on guidelines established by the California Energy Commission, authorized energy efficiency measures must be installed before or contemporaneously with renewable energy improvements to be eligible for financing under the Program.

The Program requires contractors installing energy efficiency measures to meet the eligibility requirements of the California Public Utilities Commission statewide energy efficiency rebate program currently under development. Contractors installing solar photovoltaics and/or solar hot water must meet the eligibility requirements of the statewide California Solar Initiative. Other renewable energy technologies must be installed by licensed contractors who meet the eligibility requirements of other state rebate programs.

The initial pilot stage of CaliforniaFIRST will not include financing for water efficiency. These measures will be added within the first year of the Program.

The pilot includes 14 counties as described in the Executive Summary of this report. The goal of the pilot is to quickly reach a bond issuance volume of \$25M. After the first successful bond issuance, the pilot stage will end and the CaliforniaFIRST Program will be open to additional communities outside of the 14 counties in the pilot.

The minimum installation cost that can be financed is \$5,000. Residential properties are eligible for financing up to the lesser of (i) \$75,000 or (ii) 10% of the assessed and/or market value of the property. Residential properties include detached single-family homes, duplexes, triplexes, quadplexes, townhouses, twin homes, and multi-family and tenancy in common properties with up to four units. Non-residential properties are eligible for financing up to 10% of the assessed

and/or market value of the property. Non-residential properties consist of commercial, industrial, large multi-family, community facilities, and non-profit-owned properties.

Applications from property owners for financing will be considered based on a first-come-first-served basis from the pilot program communities throughout the state. California Communities will review and approve the application and approve an application only after confirming that the property meets the underwriting criteria, energy loading order process (efficiency, renewables), and other Program requirements.

The process for property owners to receive financing through the CaliforniaFIRST Program is designed to be straightforward. Property owners will visit a dedicated CaliforniaFIRST website administered by Renewable Funding to apply on-line for a funding reservation from the CaliforniaFIRST Program. Property owners will be required to pay a non-refundable application fee not to exceed \$300.00 to CaliforniaFIRST. Applications will include a proposed project and contractor bid. Property owners must electronically agree to the CaliforniaFIRST Program Terms as part of the application. If a property owner's application is approved, they will receive a reservation for funding.

Market conditions will determine the interest rate on bonds issued to finance the Program. The contractual assessments will reflect a not-to-exceed interest rate on the pooled bonds. No bonds will be issued if the not-to-exceed interest rate would be exceeded. Property owners must wait to receive a Notice to Proceed before beginning the work on their property in order to make certain bond issuance is successful.

Property owners have six months after receiving the Notice to Proceed to install their energy efficiency and renewable energy improvements and return to the CaliforniaFIRST website to request payments. A qualified installer must complete the installation of authorized improvement on the property. After the property owner has provided all required documentation and met Program requirements, California Communities will release funds to the property owner to pass on to their contractor.

Environmental Services Department staff will work with Renewable Funding to promote the Program through community education and outreach. Support funds for staff to promote this program are included in the two Department of Energy Solar America City grants awarded to San José. "*Linking the Green Vision*" Project (funds appropriated in September 2008) and "*Market Transformation Special Project*" (funds appropriated in December 2009). Activities will focus on increasing the awareness of property owners on clean energy financing strategies available to the community and the viability of solar technologies.

### **EVALUATION AND FOLLOW-UP**

Updates on this program and other Green Vision goal activities will be provided annually as part of the Green Vision reports.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the criteria listed above, this memorandum and the proposed resolution to join the CaliforniaFIRST Program will be posted on the City's agenda webpage for the January 26, 2010 City Council meeting. A notice of public hearing will be published in the San José Mercury News on or about January 19, 2010.

### **COORDINATION**

The CaliforniaFIRST Program was coordinated with the City Attorney's Office, City Manager's Office, Office of Economic Development, and the Departments of Planning, Building and Code Enforcement, and Finance.

### **FISCAL/POLICY ALIGNMENT**

This item is consistent with Council approved Green Vision, and Budget Strategy Memo General Principle #2, "We must focus on protecting our vital core City services."

### **COST SUMMARY/IMPLICATIONS**

The cost to the City associated with participating in the CaliforniaFIRST Program will be a \$25,000 set-up fee to cover California Community's legal, procedural, and technology administration. City staff time and expenses related to marketing of the Program are anticipated to be paid through the US Dept. of Energy Solar America Cities Market Transformation grant. The City Council authorized execution of that grant agreement at its meeting on December 15, 2009.

As the Board of Supervisors of Santa Clara County approved joining the CaliforniaFIRST Program on December 15, 2009, the set-up fee reflects the reduced validation costs to the City due to Santa Clara County's participation in the Pilot Program. This allows for the validation proceedings to occur at the County level rather than at the City level.

There is the potential that the City's fees to participate in the program will be covered pending approval of a California Energy Commission (CEC) State Energy Program (SEP) grant proposal. Sacramento County submitted a proposal to the Energy Commission that would, among other things, cover these fees and provide an interest rate buy-down for the municipal entities participating in the pilot stage of the CaliforniaFIRST Program. CEC SEP grant recipients will be notified in February 2010. If awarded these funds, Sacramento County will provide the CaliforniaFIRST program with monies to cover the City of San José's participation fees. If these funds are not awarded, the City will pay the Program fees from the Department of Energy Solar America grant Department of Energy Solar America grant.

### **BUDGET REFERENCE**

The table below identifies the fund and existing appropriation proposed to fund the set up fee to participate in the program in the event the SEP grant is not awarded. The costs related to the marketing of this program are anticipated to be 100% covered by the Community Education on Clean Technology Financing Programs element of the DOE Solar America Cities Market Transformation grant described above. That Appropriation Ordinance was also adopted on December 15, 2009 but the Ordinance information was not yet available as of the writing of this memo.

Fund #	Appn #	Appn. Name	RC #	Total Appn	Recommended Funding	2009-10 Adopted Operating Budget Page	Last Budget Action (date, Ord. No.)
001	0762	Non-Personal/ Equipment ESD	300334	\$439,536	\$25,000	VIII-66	12/15/2009 28683

### **CEQA**

Exempt, File No. PP09-209

/s/

JOHN STUFFLEBEAN

Director, Environmental Services

For questions please contact MaryEllen Dick, Manager, Office of Sustainability,  
at 408-535-8555

**Attachment:** CaliforniaFIRST Program Report



Founding Co-Sponsors:



## CaliforniaFIRST Program Report

County of \_\_\_\_\_  
(as of November 24, 2009)

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# I. Introduction

This CaliforniaFIRST Program Report (this "Program Report") outlines the basic design and financing structure of a property assessed municipal financing program called CaliforniaFIRST (the "CaliforniaFIRST Program") for the County of \_\_\_\_\_ (the "County").

## A. California Communities

The California Statewide Communities Development Authority ("California Communities") is a statewide joint powers authority sponsored by the California State Association of Counties and the League of California Cities. California Communities' mission is to provide local governments access to low-cost financing for projects that provide a tangible public benefit, contribute to social and economic growth, and improve the overall quality of life in local communities.

## B. Purpose of the CaliforniaFIRST Program

California Communities is offering the CaliforniaFIRST program on a statewide basis, and the County is offering the CaliforniaFIRST Program in the County, to encourage utilization, by the existing building stock, of distributed generation renewable energy sources, energy efficiency and water efficiency improvements. California Communities will facilitate a statewide bond pool, which will allow property owners to access competitive interest rates offered by the public bond markets.

With the passage of AB 32, California set ambitious goals for reducing carbon emissions and building alternative energy use. The California Public Utilities Commission has set a goal of retrofitting over 13 million residences in the State to be at least 30% more energy efficient. Many California cities and counties have also set their own greenhouse gas reduction targets. Similarly, water conservation efforts, including the promotion of water-related improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of chronic water shortages in California.

Property owners can help to achieve greenhouse gas reductions and reduce water use and, at the same time, save money by investing in distributed generation renewable energy sources, energy efficiency, and/or water efficiency improvements. Yet most people still resist making these improvements. The number one barrier is the large upfront cost.

Utilities sell power and water to their customers as a simple pay-as-you-go service. Homes and businesses can be converted to clean energy and reduce water use quickly, but many believe that it can happen only if paying for distributed generation renewable energy sources, energy efficiency improvements and water efficiency improvements is more like paying a utility bill. The CaliforniaFIRST Program can make this happen.

## C. Assessment Financing; Contractual Assessments

The CaliforniaFIRST Program uses a tool that is widely used by local agencies in California to finance public benefit projects: land-secured financing. California law has long provided cities and counties with the power to issue bonds and levy assessments on the County property tax bill to finance public projects such as sewers, parks, and the undergrounding of utilities.

Chapter 29 of the Improvement Act of 1911, commencing with Section 5898.10 of the Streets & Highways Code of the State of California ("Chapter 29"), authorizes the levy of "contractual assessments" to finance the installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements to be permanently affixed to residential, commercial, industrial, agricultural, or other real property.

A "contractual assessment" is an assessment that is levied by contract pursuant to Chapter 29. For the CaliforniaFIRST Program, the assessment contract will be an "Agreement to Pay Assessment and Finance Improvements" in the form attached to this Program Report as Exhibit A (the "Assessment Contract"). The Assessment Contract will be executed by each participating property owner and California Communities.

Under the CaliforniaFIRST Program, a contractual assessment lien is placed on each participating property in an amount necessary to (i) finance the installation of authorized renewable energy, energy efficiency and water efficiency improvements over a 10-20 year period of time, depending upon the useful life of the financed improvements and (ii) pay the costs of administering the CaliforniaFIRST Program. The contractual assessments are paid on the County property tax bill. If the owner sells the property, the repayment obligation remains an obligation of the property. California Communities will issue bonds payable from the contractual assessments.

The CaliforniaFIRST Program is completely voluntary and property taxes for properties in the County that do not choose to participate are completely unaffected by the Program.

## **D. Purpose of this Program Report**

This Program Report constitutes the report required pursuant to Section 5898.22 of Chapter 29 for the County's CaliforniaFIRST Program. The CaliforniaFIRST Program will be offered throughout the entire County as shown on the boundary map attached as Exhibit B. If a property is located in a city's incorporated territory within the County, a property may participate in the CaliforniaFIRST Program only after the city has adopted a resolution asking California Communities to offer the CaliforniaFIRST Program within its boundaries.

## **E. Program Administration**

California Communities will be responsible for implementing the CaliforniaFIRST Program in the County, including providing assessment administration and issuing the bonds. California Communities has selected Renewable Funding to administer the CaliforniaFIRST Program. Renewable Funding will review applications and provide marketing and customer service through its custom websites, email, and toll-free phone number. California Communities has selected Royal Bank of Canada Capital Markets to serve as the bond underwriter for the CaliforniaFIRST Program.

The California Center for Sustainable Energy (CCSE) and EcoMotion are program partners. They are participating in program design and will be involved in providing services to some communities. Other program partners or affiliates may be added. The program's legal counsel includes Jones Hall (bond counsel to California Communities) and Orrick, Herrington & Sutcliffe LLP (issuer's counsel and disclosure counsel to California Communities).

## **II. Duration**

The CaliforniaFIRST Program will continue as long as there is sufficient demand.

## **III. Program Requirements**

This Program Report identifies the CaliforniaFIRST Program requirements relating to the types of improvements that can be financed under the CaliforniaFIRST Program (including the required "loading order"), eligible properties and financing parameters. Additional requirements are set forth in the CaliforniaFIRST Program Terms, which are attached as Exhibit C.

### **A. Authorized Improvements**

The CaliforniaFIRST Program offers financing of the installation of those distributed generation renewable energy sources, energy efficiency and water efficiency improvements listed on Exhibit D (the "Authorized Improvements"). In the pilot stage of the CaliforniaFIRST Program, water efficiency measures are ineligible for financing.

Property owners are responsible for the Authorized Improvements installed on their property. Property owners must address performance and other system-related issues directly with the installer according to the terms of the contract with the installer. The CaliforniaFIRST Program is a financing program only.

Neither California Communities nor the administrator is responsible for the system or its performance.

## B. Loading Order Process

Based on guidelines established by the California Energy Commission (the "CEC") as part of its competitive grant program, authorized energy efficiency measures from an approved list or recommended by an energy audit must be installed before or contemporaneously with renewable energy improvements to be eligible for financing under the CaliforniaFIRST Program. The CaliforniaFIRST Program will comply with all state and federal requirements for loading order.

Due to the need for additional market development to meet demand, there are two pathways to meet the loading order requirement. First, a property owner can obtain a whole house energy audit by a Building Performance Institute<sup>1</sup> ("BPI"), Home Performance with Energy Star<sup>2</sup> ("HPwES") or Home Energy Rating System<sup>3</sup> ("HERS") II rater. Energy efficiency measures can be implemented based on the outcome of the audit. Second, a property owner may install a basic package of standard energy efficiency measures. This "prescriptive path" would include measures such as air sealing, attic and water heater insulation. This second pathway is currently under development by the CEC and California Public Utilities Commission (the "CPUC") and is scheduled to be completed by the CaliforniaFIRST program launch.

## C. Quality Assurance

**Renewable Energy; Energy Efficiency.** The CaliforniaFIRST Program will use the quality assurance protocols of existing renewable energy programs and pending energy efficiency programs as the basic platform for its quality assurance and quality control, and adjust requirements as necessary to remain compliant with state and federal requirements. The CaliforniaFIRST Program will not provide quality assurance beyond the third party services described below.

Until otherwise indicated by the standards of a CPUC statewide rebate program, energy efficiency projects will be subject to one of two levels of review depending on whether the project falls under an existing certification program or if the project is completed without contractor certification.

- 5% of projects reviewed by BPI, HPwES and HERS II raters will be subject to field inspection and review as part of existing programs and carried out by the California Building Performance Contractors Association (CBPCA).
- 15% of projects undertaken by licensed contractors that do not have BPI, HPwES or HERSII certification, and are installing the prescriptive package, will be subject to field inspection and review by CBPCA, and the contractors will be required to become BPI certified by 01/01/11. These projects are subject to an additional administrative fee to cover the cost of the quality assurance inspection. This cost is explained in the Administrative Fees section of this Program Report.

Approximately 14% of solar photovoltaic ("PV") and solar water heating ("SWH") projects will be subject to field inspection and review within the California Solar Initiative ("CSI") program.

**Water Efficiency.** A quality assurance procedure for water efficiency installations is currently under development.

**Subject to Change.** All quality assurance and quality control procedures are subject to review and

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<sup>1</sup> BPI is a global organization that supports the building performance industry through individual and organizational credentialing and a rigorous quality assurance program. More information on BPI is available here: <http://www.bpi.org/>

<sup>2</sup> HPwES is a national program from the U.S. Environmental Protection Agency and U.S. Department of Energy, which offers a comprehensive, whole-house approach to improving energy efficiency and comfort at home. More information on HPwES is available at the following link, [http://www.energystar.gov/index.cfm?c=home\\_improvement.hm\\_improvement\\_hpwes](http://www.energystar.gov/index.cfm?c=home_improvement.hm_improvement_hpwes)

<sup>3</sup> A HERS II rater is part of the Home Energy Rating System Program, developed by the CEC. The CEC developed the program "to provide reliable information to differentiate the energy efficiency levels among California homes and to guide investment in cost-effective home energy efficiency measures". More information on HERS is available at <http://www.energy.ca.gov/HERS/>.

adjustment based on applicable state and federal standards.

#### D. Property Eligibility Criteria

In order to receive financing from the CaliforniaFIRST Program, a property must meet the following requirements:

- a. The property to be improved with the Authorized Improvements (the "subject property") must be located in the boundaries of the CaliforniaFIRST Program. If a property is located in the unincorporated territory of the County, then it is eligible to participate. If a property is located in a city's incorporated territory within the County, a property may participate in the CaliforniaFIRST Program only after the city has adopted a resolution asking California Communities to offer the CaliforniaFIRST Program within its boundaries.
- b. The subject property may be used for residential, commercial or industrial purposes. If the subject property is used for residential purposes, the property owner(s) do not have to occupy the subject property as their primary residence.
- c. The contractual assessments levied pursuant to an Assessment Contract will constitute a senior lien on the related property, which means pre-existing private liens, such as purchase money mortgages, will be subordinate to the contractual assessment lien. Owners of residential properties (including owners of individual condominiums and townhouses) must, at a minimum, notify their pre-existing private lenders in writing of the proposed contractual assessment lien, unless otherwise provided by applicable law. Owners of residential properties will be required to obtain the consent of their lenders if their mortgage documents required consent. Owners of properties that are not residential properties (which may include owners of multi-unit residential properties) must receive written consent from their pre-existing private lenders. Property owners are responsible for complying with consent if it is required by the mortgage documents. California Communities will provide property owners with lender notification and consent forms.
- d. All owners of the fee simple title to the subject property must sign the Program Documents, as described in the CaliforniaFIRST Program Terms. Therefore, before submitting an initial application, applicants must ensure that all owners of the fee simple title to the subject property wish to participate in the Program on the terms set forth in the CaliforniaFIRST Program Terms.
- e. All participating properties will be required to meet local, state and federal program requirements and guidelines, including those described in "Loading Order Process" above.
- f. California Communities reserves the right to waive the energy efficiency audit requirement for buildings seeking water efficiency improvements only. However, such projects may be required to provide similar audit or project technical analysis documentation in order to verify the expected benefits of the project.
- g. Property owners will be required to participate in appropriate state incentive programs. For example, property owners planning to finance the installation of a solar PV system will be required to participate in the CSI program with respect to the subject property. Property owners will also be required to participate in similar incentive programs for solar thermal (hot water) systems and home energy efficiency retrofits.
- h. The property owners(s) must agree to participate in surveys and CaliforniaFIRST Program evaluations directed by California Communities. In addition, property owners will be required to sign a waiver allowing the CaliforniaFIRST Program to collect utility usage data as appropriate to comply with state and federal reporting standards.
- i. The property owner is highly encouraged to participate in a workshop about or on-line review of the CaliforniaFIRST Program before deciding whether to participate. All property owners will be required to read and acknowledge their agreement to the CaliforniaFIRST Program Terms before applying.
- k. California Communities will review all applications to ensure that the proposed Authorized

Improvements, the subject property, the property owners and the contractors meet CaliforniaFIRST eligibility requirements. At the completion of installation of the Authorized Improvements, property owners will be required to submit a set of project verification documents. Verification forms may include but are not limited to a customer sign-off form, final invoices from contractor(s), building permit(s), and rebate documents before financing is available. Details on the verification documents can be found in the CaliforniaFIRST Program Terms.

- i. The property owner(s) must not have declared bankruptcy in the past 7 years.
- j. The property owners must be current in the payment of all obligations secured by the subject property, including property taxes, assessments and tax liens, within the past 3 years (or since ownership commenced, if it has been less than 3 years). California Communities may review public records, including the County real property records, to verify compliance with this requirement. Certain allowances may be made for property tax payment delays that do not reflect financial distress. Commercial properties that are currently appealing a property tax assessment will be reviewed and eligibility will be determined on a case-by-case basis.
- k. There must be no notices of default or foreclosure filed against the subject property within the last 5 years (or since ownership commenced, if less than 5 years). California Communities reserves the right to deny a reservation and a request for funding to a property owner if any other property it owns has been subject to foreclosure in the past 5 years. However, a property with a notice of default or foreclosure may be allowed to participate in the CaliforniaFIRST Program if it receives consent from the property's current lender(s).
- l. The property owners must not have involuntary liens other than a tax or assessment lien with respect to which the property owner is current in payment, defaults or judgments applicable to the subject property in excess of \$500. California Communities may review public records, including the county real property records and court documents, to verify compliance with this requirement. A property owner with an involuntary lien of greater than \$500 may be allowed to participate in the CaliforniaFIRST Program if it can demonstrate an acceptable reason for the lien, default or judgment and a path for resolution. A commercial property with an involuntary tenant's lien will be reviewed and eligibility will be determined on a case-by-case basis.
- m. The "private loan to value ratio" must be 80% or less based on (i) private property debt including mortgages and (ii) the assessed value of the property and/or the average market value of comparable properties. If the private loan to value ratio is only met with respect to the assessed value or the average market value of comparable properties, but not both, California Communities may request additional information before ruling on the application. If the title search does not provide adequate information to calculate the private loan to value ratio, the property owner will also be asked to provide a current mortgage statement reflecting the outstanding balance and any payment delinquencies. Lender consent to participation can allow for waiver of the private loan to value ratio requirement. This ratio may be adjusted in order to comply with state and federal requirements.
- n. The "public loan to value ratio" must be 10% or less based on (i) the CaliforniaFIRST assessment and overlapping special assessments and special tax debt and (ii) the assessed value of the property and average market value of comparable properties. If the public loan to value ratio is only met with respect to the assessed value or the average market value of comparable properties, but not both, California Communities may request additional information before ruling on the application.
- o. Because the CaliforniaFIRST Program involves issuance of bonds by California Communities, California Communities is concerned that property owners who participate in the program will pay their assessments in full on a timely basis. Therefore, California Communities reserves the right to request additional information.

## E. Eligible Costs

The CaliforniaFIRST program may finance the costs of installing Authorized Improvements, audit costs and application fees. All local and state rebates must be deducted from the financed amount prior to approval. The federal Income Tax Credit value may be included in the financed amount.

## F. Eligible Contractors

Contractor eligibility is being standardized throughout the country, and the CaliforniaFIRST Program will comply with applicable state and federal laws.

**Renewable Energy; Energy Efficiency.** The CaliforniaFIRST Program requires contractors installing energy efficiency measures to meet the eligibility requirements of the pending CPUC statewide energy efficiency rebate program. The current draft requirements include BPI certification, HPwES certification, and/or a HERS II rating.

Contractors installing solar PV and/or SWH must meet the eligibility requirements of the CSI. Other renewable energy technologies must be installed by licensed contractors who qualify for other state rebate programs such as the Self Generation Incentive Program and/or Emerging Renewables Program.

**Water Efficiency.** The CaliforniaFIRST Program is currently developing the eligibility criteria for contractors installing water conservation measures. At a minimum, contractors must be properly licensed and abide by the codes and standards of the local building department.

# IV. Financing of the CaliforniaFIRST Program

## A. Minimum and Maximum Financing Amounts

**Maximum Financing Amount for the CaliforniaFIRST Program.** The maximum aggregate dollar amount of the principal component of contractual assessments to be levied under the CaliforniaFIRST Program for the County is \$1 billion.

**Minimum Financing Amount for each Property.** The minimum installation cost that can be financed is \$5,000.

**Residential Properties.** Residential properties are eligible for financing up to the lesser of (i) \$75,000 or (ii) 10% of the assessed and/or market value of the property. For this purpose, residential properties include detached single-family homes, duplexes, triplexes, quadplexes, townhouses, twin homes, and multi-family and tenancy in common properties with up to four units.

**Non-residential Properties.** Non-residential properties are eligible for financing up to 10% of the assessed and/or market value of the property. For this purpose, non-residential properties consist of commercial, industrial, large multi-family, community facilities, and non-profit-owned properties. Large multi-family properties are defined as those that contain five or more units.

## B. Financing Structure

California Communities will finance the installation of Authorized Improvements using three different financing structures at the County level, as described below. In order to provide the lowest possible interest rates through credit diversification, California Communities will purchase bonds issued for each county's CaliforniaFIRST program and issue bonds to the public bond market on a statewide basis.

The CaliforniaFIRST Program may utilize three different bond structures to finance the installation of Authorized Improvements in the County. In all three cases, bonds will be issued to finance the installation of Authorized Improvements for a specific list of properties in the County and debt service on the bonds will be secured by and payable from contractual assessments paid by participating properties in the County. The interest rate on bonds issued for the CaliforniaFIRST Program will be reflected in the amount of the

contractual assessments paid by property owners.

- Microbonds: "Micro-bonds" are bonds issued to finance the installation of Authorized Improvements for one or a limited number of properties. These bonds will be purchased by Renewable Funding and will be remarketed by RBC Capital Markets to the public bond market when a significant number of micro-bonds have been issued. The interest rate on micro-bonds will be set daily or weekly. The interest rate on bonds issued for the CaliforniaFIRST Program will be reflected in the amount of the contractual assessments paid by property owners, and, with micro-bonds, the contractual assessments will be fixed for the duration of the repayment period in the Assessment Contract. Property owners may drop out of the program up to the time the lien is placed on the home without penalty beyond the cost of the application fee.
- Pooled bond: "Pooled bonds" are bonds issued to finance the installation of Authorized Improvements for a large group of properties. Pooled bonds will be sold to the market on a quarterly or more frequent basis depending upon the demand for financing by property owners in the County. In order to facilitate pooled bond financings, Assessment Contracts will be signed by property owners prior to issuance of the pooled bonds. The contractual assessments will reflect a not-to-exceed interest rate on the pooled bonds. No bonds will be issued if the not to exceed interest rate would be exceeded. If a property owner withdraws from the CaliforniaFIRST program after the Assessment Contract has been signed and/or pooled bonds have been issued, the property owner must pay the costs associated with removing the lien, including the administrative, financing, and pre-payment costs.
- Stand-Alone: Large commercial projects may be eligible for a stand-alone bond issuance dependent on the size and type of project. Banks and other financing partners may be utilized to provide funding for these projects. Under this approach, California Communities will issue a bond and the bank or other financing partner will purchase the bond.

In the pilot stage of the CaliforniaFIRST program, it is anticipated that both residential and non-residential properties will utilize the pooled bond approach.

### C. Financing Process

The process for property owners to receive financing through the CaliforniaFIRST Program is designed to be straightforward.

- **Education.** Property owners visit the dedicated website to: learn about the program, the financing terms and other details; read the terms and conditions; and find approved contractors and improvements. Property owners must determine that they will meet the eligibility requirements.
- **Application.** Property owners apply on-line for a funding reservation from the CaliforniaFIRST Program and pay a non-refundable application fee. Applications will include a proposed project and contractor bid. Property owners must electronically agree to the CaliforniaFIRST Program Terms as part of the application.
- **Review and Approval.** California Communities performs title work to confirm ownership, screens for unpaid taxes or other delinquent property-based debt, applies loan-to-value metrics, and evaluates the proposed project. California Communities will approve an application only after confirming that the property meets the underwriting criteria, loading order process, and other CaliforniaFIRST Program requirements.
- **Reservation.** If their application is approved, property owners then receive a reservation for funding. In a micro-bond approach, the property owner then proceeds with installation of the Authorized Improvements and requests funding when the property has met all the applicable requirements for funding. The property owner will sign the Assessment Contract and the lien of the contractual assessment will be placed on the property at this time. In a pooled bond approach, property owners sign the Assessment Contract and the lien of the contractual assessment will be placed on the property when the funding reservation is approved. However, property owners must wait to receive a Notice to Proceed before beginning the work on their property in order to make certain bond issuance is successful. Property owners have at least six months after receiving the Notice to Proceed to install their renewable energy, energy efficiency or water efficiency

improvements and return to the website to request payment. Residential properties are eligible for reservation extensions. The fee for reservation extension will be defined in the CaliforniaFIRST Program Terms.

- **Installation.** A qualified installer must complete the installation of Authorized Improvements on the property. See "Eligible Contractors" above.
- **Evidence of Compliance; Funding.** After the property owner has provided all required documentation and met all applicable CaliforniaFIRST Program requirements, California Communities will release funds to the property owner. The property owner must make a funding request and submit all required documents within a minimum of 180 days of application approval for residential projects and within the determined reservation period set at application approval for non-residential projects.
- **Repayment.** The property owner will be expected to pay the contractual assessment installments in the amounts and at the times specified in the Assessment Contract.

Applications from property owners for financing will be considered based on a first-come-first-served basis. If a request from a property owner for financing would cause the CaliforniaFIRST Program to exceed the authorized amount, then the last property that caused the authorization amount to be exceeded will be ineligible for financing. All applications receive a time stamp in order to allow for first-come-first-served priority.

#### D. Interest Rate

Market conditions will determine the interest rate on bonds issued to finance the CaliforniaFIRST Program.

#### E. Administrative Costs

The costs of administering the CaliforniaFIRST Program will be financed through city/county set-up fees, participant application fees, and an administrative component of the contractual assessment installments.

Application fees for property owners will not exceed \$300. On-going administrative fees will not result in an increase to the aggregate interest rate reflected in the contractual assessment installments of more than 1%.

Energy efficiency improvements installed by a contractor without BPI or HPwES certification and without a HERS II evaluation will be subject to an additional fee to cover increased quality assurance requirements. The anticipated fee for an energy efficiency improvement installed without BPI, HPwES or HERS II will not exceed \$100.

The fee charged by the County for the collection of the contractual assessment installments on the County property tax bill and the cost of recording the various notices in the real property records will be included in each property's contractual assessment. California Communities has consulted with the County and determined that the fee charged by the County for the collection of the contractual assessment installments on the County property tax bill will not exceed 3% of each annual installment.

#### F. Other Financed Amounts

The costs of issuing bonds will be financed through the contractual assessments. California Communities estimates that the costs of issuance will not exceed 5% of the cost of installing the Authorized Improvements.

The contractual assessments may also finance a debt service reserve fund to pay debt service on the bonds in the event of contractual assessment installment delinquencies. Debt service reserve funds will typically be equal to approximately 10% of the principal component of the contractual assessment.

In addition, because there is a July 1 deadline for placing the contractual assessments on the County property tax bill, contractual assessments may also finance the first year's installments if the deadline cannot be met.

## G. Prepayment

The assessment may be prepaid, in whole or in part, at any time upon the payment of the unpaid principal component of the assessment, the accrued but unpaid interest component of the assessment through the prepayment date and a prepayment premium in the amount set forth in the Assessment Contract. The premium may vary based upon the timing of the prepayment.

## V. Public Agency Official

California Communities will, from time to time, authorize certain representatives to execute Assessment Contracts on its behalf; the current authorized representative is:

<b>Name:</b>	Daniel B. Harrison
<b>Title:</b>	Administrative Director
<b>Phone:</b>	(916) 658-8267
<b>Email:</b>	dharrison@cacities.org
<b>Address:</b>	1400 K Street, Suite 400 Sacramento, CA 95814

## VI. Changes to the Report

California Communities may make changes to this Report and the CaliforniaFIRST Program documents from time to time in its absolute discretion. No such changes will affect the amounts payable by a property owner under an existing Assessment Contract.

## VII. Appendices and Exhibits

Exhibit A: Assessment Contract – Agreement to Pay Assessment and Finance Improvements

Exhibit B: Boundary Map – Territory of contractual assessments (not included)

Exhibit C: Draft CaliforniaFIRST Program Terms (not included)

Exhibit D: Draft CaliforniaFIRST Program Authorized Improvements

**AGREEMENT TO PAY ASSESSMENT AND FINANCE IMPROVEMENTS**

**CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY  
CALIFORNIAFIRST  
(COUNTY OF \_\_\_\_\_)**

This AGREEMENT TO PAY ASSESSMENT AND FINANCE IMPROVEMENTS (this "Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the California Statewide Communities Development Authority, a joint exercise of powers authority (the "Authority"), and the record owner(s) (the "Property Owner") of the fee title to the real property identified on Exhibit A (the "Property").

**RECITALS**

**WHEREAS**, the Authority is a joint exercise of powers authority the members of which include numerous cities and counties in the State of California; and

**WHEREAS**, the Authority has established the CaliforniaFIRST program (the "CaliforniaFIRST Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently fixed to real property (the "Authorized Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29") and the issuance of improvement bonds under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid contractual assessments; and

**WHEREAS**, Chapter 29 provides that assessments may be levied under its provisions only with the free and willing consent of the owner of each lot or parcel on which an assessment is levied at the time the assessment is levied pursuant to a contract between the property owner and the public agency; and

**WHEREAS**, the Authority has conducted the proceedings required by Chapter 29 with respect to the territory within the boundaries of the County of \_\_\_\_\_ (the "County"); and

**WHEREAS**, the Property is located in the boundaries of [the City of \_\_\_\_\_ (the "City")][the County], and the [City/County] has consented to (i) owners of property within its jurisdiction (the "Participating Property Owners") participating in the CaliforniaFIRST Program and (ii) the Authority conducting assessment proceedings under Chapter 29 and issuing bonds under the 1915 Act to finance the Authorized Improvements; and

**WHEREAS**, pursuant to Chapter 29, the Authority and the Property Owner wish to enter into a contract pursuant to which the Property Owner would agree to pay an assessment in order to finance the installation on the Property of the Authorized Improvements described in Exhibit B (the "Improvements") and the Authority would agree to provide financing, all on the terms set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the foregoing and the material covenants hereinafter contained, the Property Owner and the Authority formally covenant, agree and bind

themselves and their successors and assigns as follows:

## AGREEMENT

**Section 1.** Purpose. The Property Owner and the Authority are entering into this Agreement for the purpose of financing the installation of the Improvements identified on Exhibit B on the Property.

**Section 2.** The Property. This Agreement relates to the real property identified on Exhibit A. The Property Owner has supplied to the Authority current evidence of its ownership of fee title to the Property and possesses all legal authority necessary to execute this Agreement on behalf of the Property Owner.

**Section 3.** Agreement to Pay Assessment; Prepayment; Non-Completion Assessment.

(a) Payment of Initial Assessment. The Property Owner hereby freely and willingly agrees to pay the initial assessment set forth on Exhibit C (the "**Initial Assessment**"). Except as otherwise set forth in this Agreement, the Initial Assessment will be paid in the installments set forth on Exhibit C.

(b) Payment of Non-Completion Assessment. The Property Owner hereby freely and willingly agrees to pay the additional assessment (the "**Non-Completion Assessment**"; together with the Initial Assessment, the "**Assessment**") identified on Exhibit A in the event that, following issuance of bonds by the Authority to finance installation of the Improvements, the Property Owner fails to install the Improvements in compliance with the CaliforniaFIRST Program rules or otherwise fails to meet the conditions established by the Authority for financing through the CaliforniaFIRST Program. The Property Owner acknowledges that the purpose of the Non-Completion Assessment is to provide for redemption of the related bonds. The Property Owner further acknowledges that the Non-Completion Assessment will be levied in full by the Authority as set forth in Section 5898.30 of Chapter 29 in the first fiscal year in which the Authority is able to cause the Non-Completion Assessment to be placed on the County property tax roll.

(c) Prepayment of the Assessment. The Assessment may be prepaid, in whole or in part, at any time upon the payment of (a) the whole or a portion of the unpaid principal component of the Assessment, (b) the accrued but unpaid interest component of the whole or applicable portion of the unpaid principal component of the Assessment through the prepayment date, (c) a prepayment premium in the amount set forth on Exhibit A and (d) the reasonable costs of the Authority related to such prepayment.

(d) Absolute Obligation. The Property Owner hereby agrees that the Assessment will not be subject to reduction, offset or credit of any kind in the event that the bonds secured thereby are refunded or for any other reason.

**Section 4.** Collection of Assessment; Lien. The Assessment, and the interest and penalties thereon as a result of a delinquency in the payment of any installment of the Assessment, shall constitute a lien against the Property until they are paid and shall be collected and shall have the lien priority as set forth in Chapter 29.

The Property Owner acknowledges that if any Assessment installment is not paid when

due, the Authority has the right to have the delinquent installment and its associated penalties and interest stripped off the secured property tax roll and immediately enforced through a judicial foreclosure action that could result in a sale of the Property for the payment of the delinquent installments, associated penalties and interest, and all costs of suit, including attorneys' fees. The Property Owner acknowledges that, if bonds are sold to finance the Improvements, the Authority may obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent Assessment installments under specified circumstances.

**Section 5. Financing of the Improvements.**

(a) Agreement to Finance Improvements. The Authority hereby agrees to use the Assessment to finance the Improvements, including the payment of the Authority's reasonable costs of administering the CaliforniaFIRST Program.

(b) Assessment Installments. The Property Owner agrees to the issuance of bonds by the Authority to finance the installation of the Improvements. The interest rate used to calculate the Initial Assessment installments set forth on Exhibit C is identified on Exhibit A. If the Authority determines in its reasonable discretion that the Initial Assessment installments may be reduced because the applicable interest rate on the bonds issued to finance installation of the Improvements is lower than the interest rate specified in Exhibit A, then the Authority may substitute a revised Exhibit C for the attached Exhibit C, shall provide a copy of such revised Exhibit C to the Property Owner and shall cause a notice of such revision to be recorded in the office of the County Recorder.

**Section 6. Term.** Except as otherwise set forth in this Agreement, this Agreement shall expire upon the final payment or prepayment of the Assessment.

**Section 7. Recordation of Documents.** The Property Owner hereby authorizes and directs the Authority to cause to be recorded in the office of the County Recorder the various notices and other documents required by Chapter 29 and other applicable laws to be recorded against the Property.

**Section 8. Notice.** To the extent required by applicable law, the Property Owner hereby agrees to provide written notice to any subsequent purchaser of the Property of the obligation to pay the Assessment pursuant to this Agreement.

**Section 9. Waivers, Acknowledgment and Agreement.** The Property Owner hereby waives its right to repeal the Assessment by initiative or any other action, or to file any lawsuit or other proceeding to challenge the Assessment or any aspect of the proceedings of the Authority undertaken in connection with the CaliforniaFIRST Program. The Property Owner hereby agrees that the Property Owner and its successors in interest to fee title in the Property shall be solely responsible for the installation, operation and maintenance of the Improvements. The Property Owner hereby acknowledges that the Property will be responsible for payment of the Assessment regardless of whether the Improvements are properly installed, operated or maintained as expected.

The Property Owner hereby agrees that the Authority is entering into this Agreement solely for the purpose of assisting the Property Owner with the financing of the installation of the Improvements, and that the Authority and [the City/County] have no responsibility of any kind for, and shall have no liability arising out of, the installation, operation, financing, refinancing or

maintenance of the Improvements. Based upon the foregoing, the Property Owner hereby waives the right to recover from and fully and irrevocably releases the Authority, the [City/County] and any and all agents, employees, attorneys, representatives and successors and assigns of the Authority and the [City/County] from any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), relating to the subject matter of this Agreement that the Property Owner may now have or hereafter acquire against the Authority, the [City/County] and any and all agents, employees, attorneys, representatives and successors and assigns of the Authority or the [City/County].

To the extent that the foregoing waivers and agreements are subject to Section 1542 of the California Civil Code or similar provisions of other applicable law, it is the intention of the Property Owner that the foregoing waivers and agreements will be effective as a bar to any and all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees), of whatever character, nature and kind, known or unknown, suspected or unsuspected, and Property Owner agrees to waive any and all rights and benefits conferred upon the Property Owner by the provisions of Section 1542 of the California Civil Code or similar provisions of applicable law. Section 1542 reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

By initialing below, the Property Owner agrees to waive the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.

Property Owner's Initials: \_\_\_\_\_

The waivers, releases and agreements set forth in this Section 9 shall survive termination of this Agreement.

**Section 10. Indemnification.** The Property Owner agrees to indemnify, defend, protect, and hold harmless the Authority, the [City/County] and any and all agents, employees, attorneys, representatives and successors and assigns of the Authority or the [City/County], from and against all losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, (i) the Assessment, (ii) the financing by the Authority of the Improvements, (iii) the Improvements, (iv) or any other fact, circumstance or event related to the subject matter of this Agreement, regardless of whether such losses, liabilities, claims, damages (including consequential damages), penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorney's fees) accrue before or after the date of this Agreement.

The provisions of this Section 10 shall survive the termination of this Agreement.

**Section 11. Amendment.** Except as set forth in Section 5(b), this Agreement may be modified only by the written agreement of the Authority and the Property Owner.

**Section 12. Binding Effect; Assignment.** This Agreement inures to the benefit of and is binding upon the Authority, the Property Owner and their respective successors and assigns.

The Authority has the right to assign any or all of its rights and obligations under this Agreement without the consent of the Property Owner. The obligation to pay the Assessment set forth in this Agreement is an obligation of the Property and no agreement or action of the Property Owner will be competent to impair in any way the Authority's rights, including, but not limited to, the right to pursue judicial foreclosure of the Assessment lien or the right to enforce the collection of the Assessment or any installment thereof against the Property.

**Section 13. Exhibits.** The Exhibits to this Agreement are incorporated into this Agreement by this reference as if set forth in their entirety in this Agreement.

**Section 14. Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision of this Agreement.

**Section 15. Corrective Instruments.** The Authority and the Property Owner agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required in order to carry out the expressed intention of this Agreement.

**Section 16. Governing Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Sacramento, State of California; provided, however, actions to foreclose delinquent installments of the Assessment will be instituted in the superior court of the County or as otherwise provided by law.

**Section 17. Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which constitutes one and the same instrument.

IN WITNESS WHEREOF, the Authority and the Property Owner have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first above written.

**CALIFORNIA STATEWIDE COMMUNITIES  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

The following are the authorized signatories of the Property Owner:

Name: _____ By: _____ Its: _____	Name: _____ By: _____ Its: _____
Name: _____ By: _____ Its: _____	Name: _____ By: _____ Its: _____

**EXHIBIT A**

Agreement Number: \_\_\_\_\_

Property Owner: \_\_\_\_\_

Property (APN/Legal Description): \_\_\_\_\_

Prepayment Premium: \_\_\_\_\_

Interest Rate Used to Calculate Initial Assessment Installments (prior to issuance of Bonds): \_\_\_\_\_

Non-Completion Assessment: An amount equal to \_\_\_\_\_% of the Initial Assessment identified on Exhibit C

**EXHIBIT B**  
**IMPROVEMENTS**

The Improvements are described on the attached documentation.



[Attach notary pages]

# CaliforniaFIRST Program Report Authorized Improvements

DRAFT  
10/26/09

CaliforniaFIRST Program  
Authorized Improvements

Category	Measures	Minimum Requirements		Rebates and Incentives		Verification (P=Permit, R=Rebate Docs, A=Test-Out Audit, I=Invoice)
		Lifespan	Description	Federal	State	
Air Sealing and Ventilation	Air Balancing					
	Air Filtration					
	Air Sealing	30				
	Air Barriers					
	Bathroom fan	10				
	Ceiling fan	10				
	Crawlspace Sealing					
	Duct Sealing and Cleaning	18				
Insulation	Whole House Fan	20		30% Federal tax credit up to \$1,500 for advanced air circulating		
	Roof	20	Must meet 2009 IECC for Federal tax credit	Federal tax credit of 30% of cost up to \$1,500		
	Attic	30				
	Duct	15				
	Floor	20				
	Hot Water System	13				
Wall	20					
Space Heating and Cooling	Cogeneration furnace		AFUE, EER or SEER rating?			
	Desuperheaters					
	Demand Recirculation Pump					
	Duct Installation					
	Duct Replacement					
	Ducted Heat Pump	15				
	Ductless Heat Pump		Air Source Heat Pump (HSPF 8.5, EER 12.5, SEER 15 Split Systems; HSPF 8, EER 12, SEER 14 Package Systems) for Federal tax credit	30% of cost up to \$1,500		
	Evaporative coolers	15	Evaporative effectiveness of 0.85 or better for Level 1, or 0.95 or better overall system efficiency for the Level 2 federal tax credit.			
	Exhaust Fan					
	Furnace Tune Up					
	Geothermal Heat Pump		EER 14.1 COP 3.3 closed loop; EER 16.2 COP 3.6 open loop; EER 15 COP 3.5 direct expansion for Federal tax credit	30% of cost		
	Heat Recovery Ventilation System					
	High Efficiency Air Conditioner	15	Central Air Conditioning (EER 13/SEER 16 split systems & EER 12/SEER 14 package systems) for Federal tax credit.	30% up to \$1,500 for central w/specifications		
	High Efficiency Furnace	20	Minimum 90% (oil), 95% (natural gas, propane) AFUE for Federal tax credit	30% tax rebate up to \$1,500 (92% AFUE requirement)		
	HVAC Zoning					
	Hydronic Air Handler					
	Hydronic Radiator Installation					
	Mechanical Dampers Installation					
Mechanical ventilation and cooling systems						
Permanent Exterior Shading Devices						
Radiant Barrier Installation						
Radiant Heating System Install						
Thermostat Installation	11					
Weatherization	11					
Water Heating	High Efficiency Hot Water Boiler Install		Minimum AFUE 90% for Federal tax credit			
	High Efficiency Water Heater Install	11	Minimum EF 0.82 for natural gas, and minimum EF 2.0 for electric for Federal tax credit.	30% tax rebate up to \$1,500 (EF .82 required)		
	Water Heater - Tankless	20				
	On demand Recirculation Pump					
Energy Efficiency	High Efficiency Lighting Retrofit		T8 and T5			

CaliforniaFIRST Program  
Authorized Participants

		Minimum Requirements		Rebates and Incentives		Verification (P=Permit, R=Rebate Docs, A=Test-Out Audit, I=Invoice)	
Category	Measures	Lifespan	Description	Federal	State		
	Lighting	Lighting (hard wired)	16				
		Lighting controls, including occupancy sensors					
	Daylighting	Solar Tube Installation	10				
	Windows, Doors and Skylights	Window Replacement	20	Exterior Window Replacement. U factor less than or equal to 0.30, SHGC less than or equal to 0.30	30% tax credit up to \$1,500		
		Window Film	10				
	Reflective Roof	White Roofing	20	Energy star asphalt and metal roofs eligible for cool roof for Federal tax credit	30% tax credit up to \$1,500		
	Pool Equipment	High Efficiency Pool Pump Install	10				
Response and Storage	Demand Response Controls						
	Energy Storage Systems (electricity or thermal)						
Renewable Energy	Solar	Solar Thermal Installation	15	Must meet CSI requirements	30% Federal tax credit	CPUC: CSI-Thermal \$12.82/therm, Low Income \$25.64/therm	P, R, I
		Solar PV System	25	Must meet CSI Requirements	30% Federal tax credit	CPUC: \$1.55-1.9/watt CSI, \$4.75-7.0/watt Solar for Low-income and Affordable Housing	
	Wind	Wind Turbine Power Systems		Must be UL listed, SWCC certification when applicable	30% Federal tax credit	CEC: \$1.6-\$2.6/watt	P, R (if applicable), I
	Fuel Cell	Fuel Cell Power Systems			30% Federal tax credit up to \$500/0.5kW (must have 30% efficiency and be at least 0.5kW)	CEC: \$3/watt for solar thermal fuel cells	
Water Efficiency (after pilot)	Fixtures	Low Flow Showerheads	10				
		Low flow showers					
		Toilets: flush a 1.28 gpf or less	20				
		Urinals: flushing at 0.5 gpf or less	20				
		Showerheads: flow at 1.5 gpm or less	10				
		aerators: flow at 1.0 gpm or less	10				
	Landscaping	Grey water systems					
Other	Other measures such as potable water offsets, efficiency improvements, irrigation measures, process improvements and storm water management improvements shall be considered on a case-by-case basis in consultation with the CaliforniaFIRST program.	Minimum 10					