Guidelines for Purchasing and Developing Permanent Housing through the Regional Center Community Placement Plan

For

Fiscal Year 2015-16 Requests and Amendments

June 2015

Table of Contents

Department of Developmental Services

Community Placement Plan Housing Guidelines Fiscal Year 2015-16

I. Introduction……... 1

II. Authority…….. 2

III. Regional Center Requirements…… 3

IV. CPP Housing Proposal Contents……. 4

A. Proposal Overview…….… 4

B. Budget Section…… 5

C. NPO Documents……. 7

V. Housing Requirements……..…..……... 8

A. Restrictive Covenants……..……. 8

B. The DDS Deed of Trust …… 10

C. The DDS Profit Participation Agreement or Promissory Note…….…… 10

D. Order of Recording…….. 11

E. Performance Bond……. 11

F. Property Safety Standard……. 11

G. Insurance Requirements…… 11

H. Requirement Regarding Lender Notices…… 11

I. Property Tax Exemption Requirement…… 12

J. Debt Service Pay Off……. 12

VI. Allowable Costs…… 12

A. Acquisition…… 12

B. Renovation of NPO Owned Property…….. 14

C. Ineligible Costs……..……. 15

VII. Proposed Schedule of Development/Implementation Plan...…… 15

VIII. Project Status and Reporting……... 16

A. Documentation…… 16

B. Reporting……. 16

C. Performance Measurement…….. 16

D. Reconciliation of Funds…… 18

IX. Review of Proposal…….…… 18

A. Initial Determination…… 18

B. Housing Proposal Review……. 19

X. Housing Approval Process……... 19

A. Conditional Approval…….. 19

B. Acquisition Approval…… 20

Appendixes

A – CPP Restrictive Covenant

B – DDS Profit Participation Agreement

C – DDS Promissory Note

D – DDS Deed of Trust

E – Request for Notice (DDS form)

F – Request for Notice (Regional Center form)

G – Agreement to Provide Notice and Cure Rights

H – Required Proposal and Project Documents

I – Annual One-Time Submission of NPO Documents

J – NPO Conflict of Interest Statement

K – CPP Proposal Checklist

Department of Developmental Services

Guidelines for Purchasing and Developing Permanent Housing

The "Effective Date" of these Housing Guidelines is July 1, 2015. These Housing Guidelines apply to all Housing Proposals submitted by a regional center (RC) to the Department after the Effective Date; and where a nonprofit ownership-entity organization (NPO) will be the fee owner of a property purchased in part with Community Placement Plan (CPP) funds.

I. Introduction

The Department of Developmental Services' (Department or DDS) CPP Housing Guidelines (Housing Guidelines) were created to achieve the development of safe, affordable and sustainable housing for individuals with a developmental disability. To protect the State of California's (State) interest and investment, the Department uses CPP funds in collaboration with RCs to develop permanent housing through the "Buy It Once" model. This model is designed for the RCs to contract with NPOs to purchase real property that will be used exclusively, in perpetuity[1], by individuals who receive services from the RC (consumers). Pursuant to these FY 2015-16 Housing Guidelines, a RC must submit a CPP Housing Proposal to the Department that describes the use of CPP start-up funding (CPP funds) for the acquisition (purchase) of housing and the modification of the housing to meet the unique housing needs of consumers.

The RC's CPP Housing Proposal(s) must:

- Be consistent with the RC's authority to conduct resource development as described in Welfare and Institutions Code (WIC) Section 4418.25 and be submitted and approved through the CPP process.

- Be consistent with the Department issued FY 2015-16 CPP Guidelines (CPP Guidelines) released on January 8, 2015, and these Housing Guidelines.

- Demonstrate a contractual agreement between the RC and a NPO that will own the property through an Agreement or Contract that includes, but is not limited to, the following: the tasks to be accomplished, who is responsible for those tasks, and an accountability by each entity for the timely development of the project.

- Demonstrate a separation of property ownership from the delivery of services and supports within the home (i.e., the NPO cannot be both the property owner and the service provider).

[1] For purposes of the Housing Guidelines, "in perpetuity" is interchangeable with "for 99 years."

- Contain sufficient detail for the Department to determine the intended use of the requested funds.

- Demonstrate the restrictive use of the property, in perpetuity, for consumers.

- Demonstrate compliance with State fiscal oversight, accountability and audit requirements in Title 17 Regulations.

The Department may, by means it deems appropriate, determine the accuracy of the proposal, and may contact any entity named in the proposal, including funding sources, contractors, and other agencies for the purpose of clarifying the information provided in the proposal. Prior to making contact with any third-party, the Department will notify the RC.

The approval of RC proposals is contingent on the RC's current and future compliance with the Housing Guidelines and the RC's ability to promptly and directly provide the Department, as needed or as requested, current, complete and accurate information as specified in these Housing Guidelines. Further, by submitting a CPP Housing Proposal and accepting CPP funds, the RC agrees to submit to all reviews conducted by the Department, including examination and review of books, records, documents and files, in whatever form they exist, of the named NPO and its affiliate organizations, and to interviews with its principals, agents, and employees.

II. Authority

Development of permanent housing must adhere to resource development provisions pursuant to WIC Section 4418.25, in which the development of community resources are allowed within a RC's approved CPP.

CPP funding requests must adhere to the submission and approval process outlined in the FY 2015-16 CPP Guidelines, these Housing Guidelines, and all provisions contained in the RC contract with the Department. Approval and funding priority will be aligned with the priorities and goals in the CPP Guidelines. The Department supports collaborative proposals between two or more RCs to develop specialized resources to meet the statewide needs of individuals who have challenging service needs. Proposals for the development of community residential resources shall be for:

- Individuals residing in developmental centers (DC), mental health facilities ineligible for federal financial participation (FFP), or out-of-state placements;
- Residential homes that offer specialized services for individuals with challenging service needs, e.g., Adult Residential Facilities for Persons with Special Health Care Needs (ARFPSHN), Enhanced Behavioral Supports Homes, etc.;
- Delayed egress and secured perimeter homes that maximize community living options and provide specialized residential services and supports to individuals who have challenging behavioral or health and safety needs; and

- Projects approved to utilize CPP funds earmarked for strategic development to meet the residential needs of individuals who have challenging service needs, as outlined in the FY 2015-16 CPP Guidelines.

III. Regional Center Requirements

The Department uses CPP funds in collaboration with RCs to develop permanent housing through the "Buy It Once" model where NPOs purchase residential property that will be used exclusively by consumers in perpetuity. To ensure that homes purchased using CPP funds are always available for use by consumers, RCs and NPOs are required to fully comply with each of the requirements in these Housing Guidelines including, but not limited to, the following:

- The recordation of a restrictive covenant against the developed property as outlined in Section V(A) of these Housing Guidelines. [see also Appendix A]
- The DDS Profit Participation Agreement (see also Appendix B) or Promissory Note (see also Appendix C), acceptable to the Department, is completed and fully executed, as outlined in Section V(C) of these Housing Guidelines.
- The recordation of a Deed of Trust in favor of the Department as outlined in Section V(B) of these Housing Guidelines. [see also Appendix D]
- If the NPO is obtaining a secured loan, the recordation of Requests for Notice as outlined in Section V(H) of these Housing Guidelines (referenced under Section 2924b, Civil Code). [see also Appendixes E and F]
- If the NPO is obtaining a secured loan, the NPO's secured lender's execution of an Agreement to Provide Notice and Cure Rights, as outlined in Section V(H) of these Housing Guidelines. [see also Appendix G]
- Details of the provisions to be included in the agreement/contract between the NPO and RC and in the agreement/lease between the NPO and the RC service provider regarding the adjustment of the lease rate and the service provider reimbursement/service rate upon reduction or elimination of the debt service. [see also Section V(J) of these Housing Guidelines]
- Details of the provisions to be included in the lease between the NPO and the RC service provider. This includes, but is not limited to, the terms for funding short and long term maintenance and a replacement reserve for the replacement of capital improvements.

Changes to the required documents and any future encumbrances against the property are not allowed without the prior written consent of the Department. Proper adherence to these requirements will ensure that the property will be properly maintained, in perpetuity, for use by consumers.

IV. CPP Housing Proposal Contents

A. Proposal Overview

The proposal[2] shall include a detailed description that:

i. Demonstrates that the NPO's[3] mission includes the development and management of safe, accessible, affordable and sustainable housing to meet the needs of consumers with challenging service needs, as specified in their Individual Program Plans.

ii. Identifies the type of housing to be developed. The type of housing may include, but is not limited to, Adult Residential Facility, Residential Care Facility for the Elderly, Specialized Residential Facility, ARFPSHN, Family Home Agency, or units within a multifamily housing development[4] (five or more units in a condominium, apartment, or single story structure).

iii. Identifies the applicable NPO that will acquire ownership of the property. In instances where the Developer is different than the NPO, the Department may request additional information including, but not limited to, information that demonstrates the Developer's experience, financial strength and development ability. All documents required in Section IV(C) of these Housing Guidelines must be included in the proposal, or upon selection and approval by the Department of the NPO, prior to the acquisition of real property. If the RC has not selected an NPO at the time the proposal is submitted to the Department, the RC may describe the process that will be used to select an NPO or the pending Request for Proposal process. For further details, see Section IV(C)(v) of these Housing Guidelines.

iv. Describes how the proposed property meets the needs of consumers who are moving into the community from a DC, a mental health facility ineligible for FFP, or out-of-state placement, and/or for consumers at risk of admission to FDC or SDC due to an acute crisis, a mental health facility ineligible for FFP, and/or out-of-state services consistent with the provisions of AB 1472 (Chapter 25, Statutes of 2012).

v. Describes the design features of the proposed property that supports consumers to remain in the property as they age. The California Department of Housing and Community Development (HCD) created a resource guide on aging in place/universal design that can be accessed electronically at www.hcd.ca.gov/hpd/aginginplace.pdf.

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[2] Proposals and accompanying documents, once received by the Department, are subject to disclosure pursuant to the Public Records Act (California Government Code Section 6250 et seq.).

[3] If an RC proposes to use a Limited Partnership or Limited Liability Company as the property owner, the RC should contact the Department to discuss requirements and request approval prior to proposal submission.

[4] If an RC is interested in developing multifamily projects, the RC should contact their CPP Liaison for guidance.

vi. Describes the neighborhood of the proposed property, the impact of the project on the surrounding community, and local resources for support and services, including day program and vocational services that are available for consumers residing in the proposed development.

vii. Describes the capacity of the NPO to expedite new development, any specialty services the home will provide, whether the proposal is for new construction or renovation, and parking considerations.

viii. Provides detailed financial information and audited financial statements of the NPO that demonstrate the ability and capacity of the NPO to secure long-term financing (e.g., "letters of commitment", lending history, etc.) to fund the required percentage of costs associated with the acquisition, development and management of the housing. For additional requirements regarding audited financial statements of the NPO, refer to Section IV(C)(iii).

ix. Describes the RC and NPO's long-term plan for the NPO to maintain the property, which may include a plan for maintenance and/or a replacement reserve account.

x. Demonstrates that property ownership and management will be separate and distinct from the provision of services and supports (i.e., the NPO cannot be both the property owner and the service provider).

xi. Describes a schedule for development (implementation plan), including project milestones. [see Appendix H]

xii. Demonstrates how the NPO shall comply with all state and local building requirements, including the RC's verification that all projects have, or shall receive, all required permits prior to the start of any demolition, construction, or renovation. (This can be demonstrated through appropriate language in the agreement between the NPO and the RC adequate to the satisfaction of the Department.)

B. <u>Budget Section</u>

The proposal shall include a detailed budget that:

i. Describes how the RC and the NPO will maintain accounting, financial, and other records related to the use of CPP funding.

ii. Unless waived by the Department, demonstrates, a leverage ratio of a minimum of three dollars in leveraged funds to each one dollar in CPP funds. For "multifamily" projects, the leverage ratio applies to, either the units to be occupied by consumers, or to the entire project.

iii. Includes sources of funds.
   a) Priority will be given to plans and developments demonstrating leveraging of funds from grants, gifts and other like sources rather than, or in addition to, funds from long-term financing.
   b) Entities providing project funds may include, but are not limited to, federal, state and county housing programs, private parties, banks and foundations.

iv. Outlines the terms of the loan(s) and/or debt service (mortgage).
   a) If long-term funding is a mortgage loan, includes proposed loan terms.
   b) Mortgage loans shall not exceed a 15-year term without Department approval.

v. Includes a detailed Sources and Uses of Funds for the project. If the Sources and Uses of Funds are not available, the budget must describe the funds targeted for acquisition, administrative cost of the NPO (to include developer fees), pre-development cost, renovation and transition estimate. Sources and Uses will need to be updated, as needed, at the following times:
   a) Upon the acquisition of the property (during escrow period);
   b) Upon approval of the renovation bid/budget;
   c) Upon submission of a request to modify the approved Housing Proposal;
   d) At reconciliation of CPP funds upon completion of each project; and,
   e) At any time requested by the Department.

vi. Includes the projected cost for acquiring and/or renovating the property and the methodology for establishing the proposed developer fee(s) from all sources. The developer fee methodology must clearly describe the basis for calculating the fee(s) (e.g., flat fee, percentage of CPP funds, percentage of total project costs, etc.) or if it is separately calculated for acquisition, renovation or rehabilitation of new construction. The Department may request discussion with the RC regarding the methodology and administrative cost prior to approving the CPP Housing Proposal and/or the acquisition of a property.

vii. Addresses the proposed use of any unused CPP funds toward the completion of the proposed project or excess funds deposited into a replacement reserve account, and ensures that permanent financing and CPP funds are not utilized for the same cost/expense. Examples of unused CPP funds include funds that may be generated from funds (acquisition or renovation) that were not used for the project, permanent financing, closing costs, reimbursements to the developer, NPO, or RC for acquisition, pre-development or construction costs, or reimbursement due to tax exempt status. The purpose(s) for which unused funds of five thousand dollars ($5,000), or greater, will be used requires Department approval. Upon reconciliation of all funds, any unused balance of CPP funds must be returned to the Department within 120 days of the reconciliation of funds.

viii. Includes contract provisions between the RC and NPO that will require the NPO to return CPP funding to the RC and the Department for properties that will not be completed, projects that do not conform to the purpose of these Housing Guidelines, and/or projects that have unspent funds.

a) Projects where CPP funds are used for renovation require a contract between the RC and the NPO and/or the service provider. The contract shall include a detailed plan and description for recoupment of CPP funds to the Department in the event that, for any reason whatsoever, the real property ceases to be used as housing for RC consumers; provided, however, a temporary cessation of use of the housing by RC consumers due to casualty or temporary condemnation not effected by the NPO shall not require the NPO to repay CPP funds.

ix. Includes a fifteen (15) year pro forma budget that demonstrates the project's financial feasibility along with anticipated rent roll (lease payment) as follows:

a) Anticipates income from all sources to be used to fund and operate the project to completion.
b) Accounts for required replacement or maintenance reserve funds.
c) Estimates total amount of debt service (e.g., mortgage payment), property taxes, property insurance, and property management expenses (if applicable).
d) Details the process and management of application for property tax exemption and payment of property taxes as required by the city, county or local municipality.
e) Demonstrates ongoing pro forma of costs and lease terms that support financial sustainability.

C. <u>NPO Documents</u>

For NPOs, the RC shall submit with the proposal:

i. A description of the development and management experience of the NPO, any person, agency, business, and/or organization retained by the NPO and other development team members (e.g., developer, architect, accountant, consultants, etc.). The proposal should include resumes, a description of the financial ability to complete the project, a summary of past projects, and a narrative of proposed property ownership from acquisition to conversion to permanent financing.

ii. As applicable, the RC may elect to submit the required NPO documents listed below, one-time annually with the first housing proposal of the funding year, excluding the Certificate of Good Standing with the California Secretary of State. If any of the information changes in the required documents, the RC must provide the Department with the updated document(s) within 30 days of the change.

Required NPO documents include, but are not limited to, the following:

a) Internal Revenue Service approval of 501(c)(3) status.
b) A current, within 240 days of proposal submission, Certificate of Status of Good Standing with the California Secretary of State.
c) Articles of Incorporation demonstrating that the organization's mission includes the development and management of housing for RC consumers.
d) By-laws of the NPO.
e) A list of current officers and Board of Directors.
f) A corporate resolution authorizing the execution of documents by the designated signatory of the NPO.
g) A summary of the history of development of housing for individuals with a developmental disability or special needs. For projects developed with the use of CPP funds, an accounting by property, that is maintained in a replacement reserve account.
h) All required NPO documentation listed in Appendix I.
i) An executed Conflict of Interest Statement. [see Appendix J]

iii. Three (3) years of audited financial statements with the most recent audit being an unqualified audit opinion completed by a Certified Public Accountant using generally accepted accounting and auditing standards. The following is required for NPOs that have operated for less than three (3) years:

a) For NPOs that have operated for at least one (1) year but less than two (2) years, the audit for the year of operation.
b) For NPOs that have operated for two (2) years but less than three (3) years, audits for both years of operation with the most recent audit being an unqualified audit.

To ensure the current fiscal viability of the NPO, the Department will consider qualified audits, based on the nature of the qualification, as long as the qualified audits are not for the most recent full year of operation.

iv. Current year-to-date financial statements of the NPO.

v. If an NPO has not been selected prior to the submission of the Housing Proposal, please outline the process for NPO selection. Upon selection of the NPO, the RC shall submit to the Department the above listed documents. The Department will not issue a final approval until the RC is in current contract with an NPO. There shall be no property acquisitions until final approval of the NPO by the Department.

V. Housing Requirements

A. <u>Restrictive Covenants</u>

An approved project (property) shall have a recorded restrictive covenant entered into between the RC and NPO (owner of the property) and be filed/recorded on the

property on the day the NPO becomes the fee owner of the property (close of escrow), subsequent to the recordation of a private or federal governmental agency lender's Deed of Trust (if any). The purpose of the restrictive covenant is to restrict the use of the property as housing for consumers in perpetuity. Accordingly, the restrictive covenants shall include a restriction on the use of the property as housing for consumers in perpetuity, from the date of the close of escrow on which the NPO becomes the fee owner of the property.

Failure to record a Department approved restrictive covenant on current and prospective properties acquired with CPP funds shall impact future RC CPP project and fund approvals and/or recoupment of funds with respect to such RC and the applicable NPO. If (i) the RC has provided acquisition funding to an NPO under any prior fiscal year DDS Housing Guidelines, (ii) the NPO has used any portion of such funding to purchase one or more properties, and (iii), as of July 1, 2015, any of those properties are not encumbered by a restrictive covenant, or are encumbered by restrictive covenants that contain terms inconsistent with the terms of such prior fiscal year Housing Guidelines, then (iv) the RC must cause each of such properties to be encumbered by the form of restrictive covenant attached to these FY 2015-16 Housing Guidelines prior to the Department's approval of such RC's FY 2015-16 CPP Housing Proposal, unless the RC has received an alternative written approval from the Department.

The enclosed Restrictive Covenant (Appendix A) as approved by the Department should be utilized. RCs may submit a request for approval of an alternative document; however, it must contain content that is substantially similar to Appendix A. The alternative restrictive covenant proposed by any RC must be consistent with these Housing Guidelines that include, but are not limited to, the following:

- Default Notice: A requirement that the RC and the Department receive written notification from the NPO within five (5) days upon any default by the NPO under its loan with its lender.
- Consent Notification: A requirement that no real property encumbrance, sale, pledge, assignment, hypothecation, or conveyance of the property, or any of its interest therein, including the benefit of use of the property for RC consumers, occur without the prior written consent of the Department.
- Agreement to Provide Notice of Cure Rights: A requirement that the RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the lender by not later than the close of escrow (in a form substantially similar to Appendix G).

In the event of a breach or violation of the provisions of the restrictive covenant, the Department may give written notice to the NPO. If the breach or violation is not cured to the satisfaction of the Department within the time period specified in the notice, which shall not be less than twenty (20) days, the Department may declare a default and may seek legal and equitable remedies.

B. *The DDS Deed of Trust*

An approved project (property) shall have a Deed of Trust in favor of the Department (the "DDS Deed of Trust") signed by the NPO (as owner of the property) and filed for record concurrently with the Restrictive Covenant on the day the NPO becomes the fee owner of the property (e.g., on the close of escrow). If an NPO obtains a secured loan from a private or federal governmental agency lender to finance a portion of the purchase price, then the DDS Deed of Trust may be filed subsequent to the recording of such lender's deed of trust. The enclosed sample DDS Deed of Trust (Appendix D) is approved by the Department for use by RCs. An RC may submit a request for approval of an alternative format; however, it must contain content substantially similar to Appendix D.

The Department delegates, unless delegation is withdrawn by the Department, non-monetary obligations under the DDS Deed of Trust to the RC, to include, but not be limited to, insurance and inspections.

C. *The DDS Profit Participation Agreement or Promissory Note*

The NPO shall either (i) enter into a Profit Participation Agreement, or elect to (ii) execute a Promissory Note, as follows:

i. Profit Participation Agreement: The NPO shall execute a Department approved Profit Participation Agreement reflecting the receipt of CPP funds. This agreement must be recorded against the property on the same day the NPO becomes the fee owner of the property (close of escrow) and at the same time the DDS Deed of Trust and Restrictive Covenant are recorded. The Profit Participation Agreement will be recorded in order to provide notice to any potential purchaser that CPP funds must be paid to the Department on conveyance and that various approvals are required in order to affect any valid sale of the property. A sample of a DDS approved Profit Participation Agreement is included as Appendix B.

ii. Promissory Note: The RC and NPO may elect the option to execute a promissory note, in lieu of a Profit Participation Agreement as described in Section (V)(C)(i) above. If so elected, the NPO shall execute a Department approved Promissory Note in favor of the Department reflecting the receipt of CPP funds. This promissory note must be executed and delivered to the RC prior to the day the NPO becomes the fee owner of the property (close of escrow). In consideration of the receipt of CPP funds, the NPO is agreeing that occupancy of the property will be restricted in perpetuity for RC consumers. This obligation shall continue even if the CPP funds are repaid. The Restrictive Covenant may only be terminated consistent with the terms of the Restricted Covenant or as may be acceptable to the Department at its sole discretion.

Should the NPO elect to submit alternative language for the documents in Appendix A, B, or C, specified above, the RC and NPO should anticipate a minimum

turnaround time of thirty (30) days, although DDS will use its commercially reasonable efforts to respond within sixty (60) days.

D. *Order of Recording*

The Department's documents may be recorded subordinate to another Lender's Deed of Trust, subject to the Department's approval.

E. *Performance Bond*

The RC must outline in their proposal how the RC and NPO will provide documentation that the NPO has secured a sufficient performance bond to cover the proposed housing project(s). If the NPO cannot secure a sufficient performance bond, the RC may request approval from the Department to use alternative performance assurances, such as:

- Contract provisions based on achievement of project milestones;
- A contract with an independent licensed, and/or professional construction manager, who will review and verify project performance and progress prior to the release of contractor payments;
- A stipulation in the NPO/RC contract that the NPO must require its Contractor to accept payments based upon performance, as well as, commit to providing interim mechanics lien releases; and,
- Retaining ten percent (10%) of the NPO contract funds. These funds would be released only when a Certificate of Occupancy (or its equivalent) is provided by the local agency (e.g., building inspector), Construction Manager/Consultant, and upon delivery of appropriate lien releases and final walk through approval by the RC.

Any alternative performance assurance must be approved by the Department prior to the start of construction.

F. *Property Safety Standard*

The RC's proposed plan shall outline how it will ensure the interior, exterior, and any detached structures of the property(ies) are in good condition and properly maintained, are decent, safe and sanitary, and pose no threat to the health, welfare, and safety of individuals living or working at the property(ies).

G. *Insurance Requirements*

These requirements are consistent with those required by HCD. The RC must ensure that the NPO-owner procures and maintains the minimum property hazard insurance of one million dollars ($1,000,000) / two million dollars ($2,000,000) in the aggregate of general liability requirements related to the property(ies) as specified in the DDS Deed of Trust. The Department must be named as loss payee. The recommended deductible for all policies is ten thousand dollars ($10,000) per policy.

H. *Requirement Regarding Lender Notices*

This section applies only if the NPO obtains financing from a lender to assist in the acquisition and/or renovation of the property.

The RC must ensure the NPO obtains an executed Agreement to Provide Notice and Cure Rights from the lender by not later than the close of escrow (in form substantially similar to Appendix G). The RC should provide the form to the NPO so the NPO can coordinate execution of such instrument with the lender. A copy of the executed Agreement to Provide Notice and Cure Rights shall be submitted to the Department no later than fifteen (15) days after close of escrow.

In addition, the RC must record Requests for Notice in the form provided in Appendix E [Request for Notice (benefit of the Department)] and Appendix F [Request for Notice (benefit of the RC)]. The Requests for Notice shall be recorded within fifteen (15) days after the closing of escrow, and as soon as practicable after the RC has the necessary information from the escrow company to complete the forms. Any delayed filing post fifteen (15) days requires Department approval.

I. Property Tax Exemption Requirement

When the service provider is a 501(c)(3) nonprofit organization, the agreement between the RC and the NPO shall contain a provision obligating the NPO to file a property tax exemption application as early as possible after the NPO purchases the property and has signed a lease with the service provider, but in any event not later than the first day the first consumer occupies the property.

i. In the instances when the property tax is paid directly by the NPO, and the property tax cost is incorporated into the lease payment, the lease agreement must include provisions requiring the reduction of the rent based on the actual county property tax once the exemption is granted.
ii. In the instances when the property tax is paid directly by the service provider (additive to the base rent rate), the lease must spell out such an agreement.
iii. In the instances when rent is reduced under either (i) or (ii) above, the RC shall reduce the service provider reimbursement rate by the same amount.
iv. In the instances where a property is no longer eligible for a tax exemption, the RC must describe the process that will be used for managing the increased expense.

J. Debt Service Pay Off

Once the initial Department approved real estate loan on the project property is paid in full, the RC must ensure that the existing service provider rate agreement, along with the lease rate, is adjusted accordingly to reflect the reduction in debt service.

VI. Allowable Costs

A. Acquisition

CPP funds shall be used only for pre-development and acquisition as described below and cannot be encumbered, expended, or otherwise legally obligated to any provider of service or entity until the RC receives Department approval of its CPP Housing Proposal.[5]

[5] Allocation of any funds for CPP is conditioned on appropriation of the annual State budget.

Eligible costs are subject to the following:

- Unless the RC receives prior written approval by the Department, requested CPP funds cannot exceed twenty-five percent (25%) per property of the total acquisition cost.[6] Given unique and compelling circumstances, a different match ratio *may* be considered by the Department. Prior to the close of escrow, the RC shall submit, along with the written request for consideration, site identification, an updated Sources and Uses Budget and fifteen (15) year pro forma.
- Eligible property acquisition cost cannot exceed the appraised value of the property. The NPO may use the lender's appraisal in establishing the property's appraised value for the purposes of this provision.
- Ongoing costs are supported and will be met within the provisions of the median rate requirement in WIC Sections 4681.6, 4689.8, and 4691.9.
- Resulting services from Housing development must be eligible for FFP [WIC § 4418.25(b)(5)], unless the RC receives prior written approval by the Director of the Department.

Eligible Acquisition Costs

Acquisition costs include pre-development costs, which are costs incurred prior to final purchase and long-term financing of a property and are required to ensure proper due diligence for assessing the purchase, estimating the capital cost for renovation, and long term sustainability of the home. Costs include:

- Acquisition and Development Costs: Acquisition funds may be used as down payment by the NPO to acquire property or "set asides" in scattered-site units. The funds used for the down payment are subject to a three-to-one (3:1) match requirement (e.g., three dollars to every one CPP dollar), as referenced in Section IV(B)(ii) of these Housing Guidelines.
- Due Diligence Costs: It is expected that the NPO and RC conduct a thorough due diligence process to determine the feasibility of developing a property. Due diligence is performed during the period of escrow. For existing structures, due diligence includes various inspections and reports related to pests and other physical aspects (e.g., termite reports, roof inspections, etc.), jurisdiction required building inspections, and a determination of code compliance. Additionally, research is performed related to title, including preliminary title reports, Covenants, Conditions, and Restrictions (CC&Rs), and zoning and easement restrictions. All findings are reviewed for consistency with the intended use.
- Preliminary Title Report (PTR): The RC/NPO shall secure and provide a copy of the PTR that details all existing encumbrances, levies, liens, and CC&Rs, as well as other pertinent information about the identified property that is in escrow.
- Licensing: The RC and NPO must verify with the appropriate State licensing entity (Department of Public Health or Department of Social Services) that

[6] "Total acquisition cost" is defined as costs associated with the acquisition and escrow closing of each property.

the home does not present an overconcentration issue pursuant to Health and Safety Code Sections 1267.9 and 1520.5.

- Architectural and Engineering: Design professionals, including mechanical, civil, and structural engineers, may be employed to conduct preliminary construction review and estimate costs required for the renovation or construction of an identified property.
- Appraisal Cost: Prior to closing, both the Department and an institutional or governmental lender may require an appraisal to establish the value of the subject property.
- Closing Cost: The cost associated with the "close of escrow". The RC/NPO may request one hundred percent reimbursement of closing costs with a claim to CPP funds when the requirements in Section IV(B)(vii) of these Housing Guidelines are met and justification is provided. Reimbursement will not be considered for closing costs that are funded by the seller or rolled into a mortgage loan.
- Environmental Impact Report (EIR) and Reviews: Some properties may require an EIR to determine existing or potential impacts to the environment from the project. Impacts may include impacts to endangered species. A team of experts may be required to determine the most cost-effective means and methods to mitigate an environmental impact. It is incumbent on the RC and NPO to make this determination. Some properties may require an environmental review to determine if historical use of the site included any handling or storage of toxic substances.
- Survey and Soil Analysis: A land surveyor may be engaged to determine proper site boundaries, to determine if the proposed project fits on the site, or to determine if the subject property is encroaching on adjacent properties. Some properties require a soils expert to determine what is needed to overcome poor soil conditions so a structure can be placed on the property and to assist in estimation of cost impact to the project. It is incumbent on the RC and NPO to make this determination.

B. Renovation of NPO Owned Property

To ensure that the unique needs of individuals with a wide-range of disabilities can be accommodated, CPP funds may be used to renovate or construct new improvements involving changes to the layout of real property and amenities.

Allowable Renovation Costs

Allowable renovation costs include the following:

- Specialized items required to provide a benefit to new or existing consumer's needs. (e.g., ramps, bathroom modifications, etc.)
- Replacement of old items with new items. (e.g., water heaters, HVAC, etc.)
- Repainting, patching, and repairing of items in an existing structure for code compliance.
- Permits and Fees – Local jurisdictions require a variety of permits and fees to be paid prior to the start of any construction or renovation. Requisite demolition, lead paint abatement, asbestos abatement, grading, sewer,

water, fire, school, building permit, or other fees required by the local agencies must be paid before the project can begin.

- Legal, Accounting, Consultant, and Project Management Fees – A variety of professional expertise may be required to effectively manage the pre-development phase of the project. Associated costs may be allowable and should be included in the Sources and Uses budget.
- Housing development transition costs, but not to exceed a period of six (6) months without prior written approval from the Department. Extensions will be time-limited and only be considered in rare and extraordinary circumstances.
- Allowable transition costs include monthly debt service payment, utility expense, yard maintenance, and property insurance policy costs required by the Department, including hazard, general liability, and recommended deductibles for all policies.
- Fire sprinkler installation and maintenance at each property.

C. Ineligible Costs

Ineligible property costs include, but are not limited to, the following:

- RCs acquiring or developing real property for CPP housing.
- Purchase of real property that would be owned by a consumer or their family members, a provider of services, or any entity other than the Department approved NPO.
- Purchase of real property for which another funding source is available or CPP funds are proposed to be used to supplant existing funding [CPP funds may supplement or enhance funding combinations (leverages), but cannot be used in lieu of other available sources].
- Ancillary costs not associated with the production of, or improvements to, housing, as determined by the Department at its sole discretion (e.g., the Department will not pay for any pool or barn removals, unless the project proposal demonstrates to the Department's satisfaction that such removals have a total project cost savings or removals benefit the consumers of a particular project).
- NPO transition expenses exceeding a period of six (6) months without Department approval.

VII. Proposed Schedule of Development/Implementation Plan

The RC shall provide a detailed schedule of the proposed development process outlining estimated timeframes and conditions for project completion that includes the following:

- Realistic, but structured, timeframes projected at the time of submittal for the type of projects proposed by the RC.
- Sequenced schedule of development activities from property identification to occupancy. If the project contains more than one property, each property must have a separate implementation plan.

- A process that ensures compliance with all state and local building requirements, including without limitation the RC's receipt of verification that any project has received all required permits prior to the start of any demolition, construction, or renovation.
- An outline of the process to request, from the Department, an extension which includes, but is not limited to, a revised timeline, notification and a plan for mitigation (additional time lost).
- If the CPP project is to be licensed, a courtesy notification procedure must be included in the Housing Proposal to inform the local licensing entity regarding plans for acquiring, developing, and/or renovating/rehabilitating homes within its jurisdiction.

VIII. Project Status and Reporting

The purpose of these property documents and status reporting requirements is to protect and preserve homes developed with CPP funds for use by consumers.

A. Documentation

All documents must be submitted according to Appendix H, Required Proposal and Project Documents.

B. Reporting

Once the Housing Proposal is approved by the Department, the RC must provide progress reports on a quarterly and annual basis (State fiscal year) starting on the next calendar quarter (e.g., a Housing Proposal is approved in September; the first quarterly progress report is due by the end of December). Quarterly reports convert to annual reports upon all of the following conditions:

i. The last consumer is placed in the home;
ii. The submission of a reconciliation of CPP funds. A final Sources and Uses Budget may be used to confirm the utilization of CPP funds; and,
iii. DDS issues verification that the RC submitted all required Milestone documents for the project (e.g., restrictive covenants).

C. Performance Measurement

i. Describes measurable performance expectations and results, including:
   a) Progress reports submitted to the Department on project status, including data regarding the amounts and use of CPP funds, (1) quarterly during pre-development and development phases, and (2) annually thereafter upon the conditions specified in Section VIII(B) of these Housing Guidelines.
   b) Evidence that the property will be made available for occupancy by consumers within one (1) year of the CPP funding allocation. If housing will not be available for occupancy within one (1) year, provide detailed information outlining the cause for development delays and requesting an extension.

c) If applicable, a schedule of installment payments tied to meeting the milestones.

If development is substantially delayed on any project, the Department, in partnership with the RC, will review the cause(s) of the delay. If necessary, the Department may require the RC to submit, for the Department's review and approval, a revised targeted development plan to resolve any issues impeding the ability of the project to meet and maintain satisfactory progress. The plan may include, but not be limited to, the following actions:

- Increased development monitoring requirements for the project.
- Increased fiscal review and financial reporting requirements.

The plan will remain in effect until the non-performing project achieves satisfactory progress as jointly determined by the Department and the RC.
If the delayed project does not achieve satisfactory progress, the Department may take some or all of the following actions:

- The reversion of some or all of allocated CPP funds held by the RC;
- Disapprove, or temporarily stay, the RC and NPO from any CPP Housing Project in which Department funds are used; and/or,
- Any other action the Department deems appropriate.

ii. <u>CPP Modification Requests (changes to approved projects or plans)</u>
If the RC intends to submit an amended Housing Proposal using CPP funds or to request modification to an existing project, including requests to change acquisition and/or renovation funds, the RC must submit a CPP Modification Request to the Department that contains documents necessary to support and implement the new proposal, amended current Housing Proposal, or proposed changes to an approved housing project. The Department will review the CPP Modification Request using review standards as described in these Housing Guidelines. The RC must not make any significant changes to projects without prior <u>written approval</u> from the Department. Following the written approval of a CPP Modification Request, the RC must continue to maintain satisfactory performance as described above.

A significant change includes, but is not limited to, a proposed change in the following:

- NPO;
- Request for additional, or release of unused funds;
- Number of beds/units (capacity);
- Address/location of the property when specified in the proposal or subsequent updates;
- Purpose of project and use of the funds.

iii. Required Documents and Checklist
The CPP Proposal Checklist (Appendix K) is provided as a reference for document verification. It is incumbent on the RC to ensure the proposal includes all requested information outlined throughout these Housing Guidelines. The CPP Proposal Checklist must be submitted with the Housing Proposal.

D. Reconciliation of Funds
Within ninety (90) days of completion of the project, the RC shall require the NPO to submit to the RC for verification, a reconciliation statement of final cost and CPP funds expended and claimed. The RC shall provide to the Department a statement of verification of reconciled funds, by project.

IX. Review of Proposal

A. Initial Determination
The Department will make an initial determination of the merits of each Housing Proposal and the ownership capacity of the proposed NPO based on the following criteria:

i. The feasibility and reasonableness of the proposed project.

ii. The RC has satisfactorily placed consumers in prior CPP-funded housing projects.

iii. The RC has demonstrated the need in their community for the added capacity for consumers living in a developmental center, a mental health facility ineligible for FFP, an out-of-state placement, and/or for RC consumers at risk of admission to FDC or SDC due to an acute crisis, a mental health facility ineligible for FFP, or an out-of-state service consistent with the provisions of AB 1472 (Chapter 25, Statutes of 2012).

iv. The proposed housing is consistent with the unique and specialized service and support needs of consumers transitioning from a developmental center, mental health facility ineligible for FFP, or an out-of-state service.

v. The RC has demonstrated satisfactory progress, including timely submission of quarterly reports and all required documents identified in Appendix H, for all previously approved CPP-funded housing projects. [As a general Department guideline, the time period from close of escrow to the completion of renovation (certificate of occupancy) should not exceed six (6) months for a single-family project.]

vi. The proposal includes sufficient organizational and financial documentation, detailed in Appendix I and Section IV(C) of these Housing Guidelines, that provides evidence of the NPO's organizational capacity to own and operate the property before, during, and after the project is completed based on

history of resource development, experience, background, and financial/staffing resources.

B. Housing Proposal Review

The Department will conduct a detailed review of each proposal using the following criteria and/or procedural guidelines:

i. Project Requirements Checklist: The Department shall use this checklist to ensure that all components of the proposal and project requirements have been properly submitted; including milestone documents to be submitted by the RC (see Appendix H).

ii. Accuracy and Completeness: The Department shall, by means it deems appropriate, determine the accuracy and completeness of the proposal and the documents provided, and may contact any entity named in the proposal, including funding sources, contractors, clients, and other agencies for the purpose of verifying the information provided in the proposal.

iii. Documentation: All required supporting documents are submitted.

iv. Records Review: Pursuant to WIC Section 4648.1, the Department shall monitor services and supports provided by the RC, including fiscal reports, with or without prior notice.

v. Continuous Property Safety Standard: Prior to and during occupancy, the RC must certify that the interior, exterior, and any detached structures of the proposed property are in good working condition and properly maintained, and that there is no threat to the health, welfare and safety of RC consumers living or working at the property.

vi. RC Monitoring: The RC shall ensure the satisfactory progress of all the Department approved proposals (projects). The RC shall regularly monitor projects and shall report the progress of the projects on a quarterly basis, as outlined in Section VIII of these Housing Guidelines.

X. Housing Approval Process

A. Conditional Approval

i. The Department will not approve or conditionally approve any RC housing proposal until such RC has caused Restrictive Covenants to be signed and recorded on all existing properties within such RC's catchment area that have been purchased with CPP funds. If, as of the Effective Date of these Housing Guidelines, (i) an NPO is the fee owner of a property purchased in part with CPP funds, and (ii) the NPO's property is not yet encumbered by a recorded Restrictive Covenant, then the RC shall cause the NPO to execute and record a Restrictive Covenant consistent with the restrictive covenant requirements set forth in these Housing Guidelines before the Department will fund any new housing proposal from such RC.

ii. If the proposal meets the requirements contained in these Housing Guidelines, the Department will issue a Letter of Conditional Approval to the RC that authorizes the RC to implement the proposal and proceed with the acquisition of the property(ies). Upon conditional approval, the proposal will be referred to as the "CPP Housing Project" and the Department will assign a CPP identification number to each project property for communication and tracking purposes.

iii. If the proposal does not meet the requirements contained in these Housing Guidelines, the Department will work with the RC to modify its submitted proposal to come into compliance. Once the proposal meets the requirements, the Department will issue a Letter of Conditional Approval.

B. Acquisition Approval

The RC is required to obtain the Department's final written approval for the acquisition of each property prior to close of escrow. The RC shall submit the acquisition approval request for each property to the Department, no later than five (5) business days after signing the purchase agreement (acceptance of the final offer by seller and NPO). With written approval from the Department, the request may be submitted after the five (5) days, but no later than seven (7) business days prior to the end of the "contingency period," as outlined in the property purchase agreement. The acquisition approval request shall contain the following:

i. A copy of the purchase agreement;
ii. A loan commitment letter(s) specifying interest rate, amortization terms, and loan fees.
iii. An estimated Sources and Uses Budget;
iv. An estimated fifteen (15) year pro forma;
v. The name of the institutional lender;
vi. A summary of the project's financial structure (e.g., loan terms, leveraged funds, etc.); and
vii. A brief summary of the property/project including the service type (e.g., ARFPSHN, specialized residential home, etc.).
viii. Certification by the RC that the home qualifies for licensure (e.g., does not present an overconcentration issue pursuant to Health and Safety Code Sections 1267.9 and 1520.5, etc.).

Upon receipt of all documents specified in Section X(B) above, the Department shall provide final approval or disapproval to the RC's request for the acquisition of the property within five (5) business days of the Department's verified receipt of such request. The request shall be sent to:

Brian Winfield *(or designee as specified by the Department)*
Department of Developmental Services
1600 Ninth Street, Room 340 (MS 3-8)
Sacramento, CA 95814
brian.winfield@dds.ca.gov