CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY (Authority)

STAFF SUMMARY RECOMMENDATION

RESOLUTION OF THE CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS RELATED TO BOND FINANCINGS

Resolution Number 2020-06

December 3, 2020

BACKGROUND:
By statute, the Authority is authorized to delegate to the Executive Director or any other official or employee of the Authority, any powers and duties that the Authority deems proper. For the last several years, the Authority has authorized a resolution delegating specific powers and duties to the Chairperson, or any deputy to the Chairperson, and designated Authority staff. The existing delegation resolution expires January 31, 2021. Authority staff seeks approval of a new resolution, delegating the same authority and duties as the current resolution, with an expiration date of January 31, 2023.

PURPOSE OF THE RESOLUTION:
From time to time, a participating health institution may desire to seek consent of the Authority relating to amendments to Bond Documents; removing or replacing participants or agents in a transaction; the delivery of an alternate credit facility or alternate liquidity facility; the sale, encumbrance or transfer of project assets; arranging for the redemption, prepayment or defeasance of Bonds; or a merger, consolidation, affiliation or dissolution involving a participating health institution. Absent a delegation of such powers to staff, Authority approval is necessary for the Authority to give its consent to many of these amendments. In the interest of streamlining the borrowing processes, the Authority authorizes the Chairperson, or any deputy to the Chairperson, the Executive Director, and the Deputy Executive Director to consent to various amendments without first obtaining approval of the Authority.

The proposed new resolution delegates to the Chairperson, or any deputy to the Chairperson, and the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to perform the following, when consent or approval by the Authority is required by the applicable Bond Documents and such actions are made in accordance with the terms and conditions of the Bond Documents or as otherwise provided in the delegation resolution. All of the below delegated actions were contained in the Authority's existing delegation resolution and will be in the proposed resolution:

(i) Sign and certify resolutions adopted by the Authority.

(ii) Execute and deliver all Bond Documents previously or hereafter approved by the Authority.

(iii) Execute, amend, supplement and deliver certain Bond Documents.

(iv) Approve certain changes, modifications, deletions and additions to Bond Documents only during the period after Authority approval and prior to delivery of the relevant document.

(v) Appoint, consent to, or approval of (or removal of the same) defined parties.

(vi) Approve or consent to the delivery of any substitute, alternate or replacement credit enhancement or liquidity facility for bonds of the Authority (or termination of the same).

(vii) Approve or consent to the sale, encumbrance or other transfer of all or a portion of a project financed with bonds of the Authority.

(viii) Approve or consent to a merger, dissolution, or the sale of substantially all assets by a participating party.

(ix) Execute and deliver escrow agreements and escrow instructions in connection with the redemption, prepayment, defeasance or discharge of Bonds.

(x) Carry out any ministerial actions contemplated by any Bond Documents.

(xi) Waive, on behalf of the Authority, any provision of any Bond Document that is expressly for the benefit of the Authority and has not been assigned by the Authority, including, but not limited to, deadlines for delivery of notices, certificates, reports and other items to the Authority.

(xii) Respond to any litigation or claim made against the Authority in connection with any bond issue, or any investigation of any bonds by any state or federal regulatory or law enforcement authorities when such response is required by law and is necessary to protect the interests of the Authority, the bondholders, or to effectuate the terms of the applicable resolution adopted by the Authority.

The proposed resolution will replace Resolution Number 2018-09, which had similar purposes.

RECOMMENDATION:
Staff recommends the Authority approve Resolution No. 2020-06 authorizing the delegation of certain functions related to bond financings to the Chairperson, or any deputy to the Chairperson, and the Executive Director or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable.

RESOLUTION NO. 2020-06

RESOLUTION OF THE
CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY
DELEGATING CERTAIN POWERS AND AUTHORIZING CERTAIN ACTIONS
RELATED TO BOND FINANCINGS

WHEREAS, the California Health Facilities Financing Authority (the "Authority"), a public instrumentality of the State of California, is authorized and empowered by the provisions of the California Health Facilities Financing Authority Act (the "Act") to issue bonds to finance or refinance the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of a health facility operated by participating health institutions as defined in Government Code section 15432;

WHEREAS, the Authority issued various series of bonds pursuant to separate Bond Documents (as defined herein) for each such series of bonds between the Authority and other parties to the transaction, for the benefit of the respective participating health institutions;

WHEREAS, the Authority anticipates entering into future bond financed transactions for the benefit of participating health institutions;

WHEREAS, from time to time a participating health institution may desire to seek consent of the Authority relating to: amendments to Bond Documents; removing or replacing participants or agents in a transaction; the delivery of an alternate credit facility or alternate liquidity facility; the sale, encumbrance or transfer of project assets; arranging for the redemption, prepayment or defeasance of Bonds (as defined herein); or a merger, consolidation, affiliation or dissolution involving a participating health institution;

WHEREAS, the Authority desires to authorize the Chairperson, or any deputy to the Chairperson, the Executive Director, and the Deputy Executive Director to consent to: amendments to Bond Documents; removing or replacing participants or agents in the transaction; the delivery of an alternate credit facility or liquidity facility; the sale, encumbrance or transfer of project assets; arrangements for redemption, prepayment or defeasance of Bonds; a merger, consolidation, affiliation or dissolution involving a participating health institution; and other related matters, including, without limitation, certifying resolutions; executing and delivering Bond Documents; waiving provisions of Bond Documents; redeeming, prepaying or defeasing Bonds; responding to audits, investigations, claims, litigation or the threat of litigation; and other ministerial duties; and

WHEREAS, approval of the Authority is now sought;

NOW, THEREFORE, BE IT RESOLVED by the California Health Facilities Financing Authority, as follows:

Section 1. Certification of Resolutions. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to sign and certify resolutions adopted by the Authority.

Section 2. Bond Documents, Disclosure Documents, etc. (a) The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to execute and the power to deliver all documents previously or hereafter approved by the Authority in connection with the sale, issuance, delivery, credit enhancement, liquidity support, conversion, redemption, prepayment, defeasance, discharge, or remarketing of bonds, notes, or other evidences of indebtedness or securities of or issued by the Authority (herein collectively referred to as "Bonds"), including, without limitation: (1) loan agreements, indentures, trust agreements, bond purchase agreements, lease agreements (whether as lessee or lessor), installment sale or purchase agreements, finance agreements, remarketing agreements, escrow agreements, continuing disclosure undertakings, credit enhancement or liquidity agreements, and contracts described in subdivision (a) of section 5922 of the California Government Code (herein collectively referred to as "Hedging Agreements"); (2) any official statement, reoffering memorandum or other disclosure document in connection with Bonds, and (3) all other documents, instructions, directions, identifications, requests or certificates in connection with (A) the sale, issuance or delivery of Bonds, (B) delivery of credit enhancement or liquidity agreements or Hedging Agreements in connection with Bonds, (C) conversion, redemption, prepayment, defeasance, discharge or remarketing of Bonds, (D) the investment of bond proceeds or other funds pledged to the payment of Bonds or (E) in connection with the tax-exemption of interest on such Bonds (including without limitation tax certificates and agreements, subscriptions for escrow securities and declarations of intent to reimburse) (all of the foregoing items (1) through (3) referred to as "Bond Documents"). Approval by the Authority of any Bond Document described in clause (a)(1) of this Section (a "Primary Document") includes, without limitation, approval of any Bond Documents described in clause (a)(3) of this Section and contemplated or required to be delivered by the Authority pursuant to the Primary Document prior to or upon execution and delivery of the Primary Document.

(b) Bonds approved by the Authority shall be executed by the manual or facsimile signature of the Chairperson, or any deputy to the Chairperson, and the seal of the Authority may be affixed thereon (or a facsimile reproduced thereon) by the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, in the form set forth in and otherwise in accordance with, and to the extent required by, the indenture, trust agreement, resolution, financing agreement or other document pursuant to which the Bonds are issued.

(c) The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to execute and the power to deliver in connection with any preliminary disclosure document for Bonds approved by the Authority: (i) a certificate or certificates, in a form acceptable to the signatory thereof, to the effect that the portions of such preliminary disclosure document describing the Authority and litigation as it relates to the Authority and the Bonds are deemed final as of its date for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934; and (ii) a final disclosure document for the related Bonds in substantially the form of said preliminary disclosure document, with such insertions and changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof or other writing to such effect.

(d) The Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, are hereby authorized and directed to attest the signature of the Chairperson, or any deputy to the Chairperson, and to cause to be affixed (either manually or by facsimile) and attested the seal of the Authority as may be requested in connection with the execution and delivery of Bonds and Bond Documents approved by the Authority.

Section 3. Amendments and Supplements. (a) The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to execute and the power to deliver (1) any amendment to any Bond Documents provided that such amendment (A) is made in accordance with the terms of the applicable agreement or other document being amended, (B)(i) does not require bondholder consent pursuant to the terms of the agreement or any other agreement to which the Authority is a party, if applicable, or (ii) any required consent has been acquired or (iii) such amendment, by its own terms, shall become effective only upon acquiring such consent, (C) does not provide for any additional material duties of or costs to the Authority, other than costs that will be reimbursed no later than the effective date of the amendment, (D) does not modify any provision for indemnification of the Authority or any members, directors, officers, employees or agents of the Authority, and (E) does not modify any provision for payment to the Authority except for payments that are assigned by the Authority to the trustee or any other third party pursuant to the Bond Documents and (2) any amendment or supplement to any disclosure document in connection with Bonds which is designed to state any material fact necessary to make the statements in the disclosure document as then in effect not misleading, in light of the circumstances under which they were made, or to correct any misstatement.

(b) The delegation in subsection (a) of this Section shall not include the power to execute and deliver any amendment that (i) would modify provisions relating to: (A) the description of all or any portion of a project financed with Bonds if such amendment would (1) result in the project failing to satisfy the documentation requirements set forth in California Government Code section 15455; (2) result in the project failing to be eligible for financing or refinancing pursuant to the Act; (3) change the location of the project to property not described in the original approval of the Authority; (4) in the case of tax-exempt Bonds, would, in and of itself, cause interest on the Bonds to be included in gross income for purposes of federal income taxation; (B) the sale or other transfer of all or any portion of a project financed with Bonds or all or any portion of the property pledged to secure Bonds; (C) merger, consolidation or affiliation by a participating health institution, the dissolution of a participating health institution, or the sale or other transfer of substantially all of the assets of a participating health institution; or (ii) would result in provisions inconsistent with the Authority's bond issuance guidelines then in effect (if any).

Section 4. Pre-Closing Modifications. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to approve on behalf of the Authority changes, modifications, deletions and additions to Bond Documents. The delegated power in this Section in respect of any document may be exercised only after Authority approval of the relevant document and expires upon delivery of that document. Such delegated power includes only the power to approve such changes, modifications, deletions and additions to the documents that do not: (a) provide for any additional material duties of or costs to the Authority, other than costs that will be reimbursed no later than the delivery date of the related Bonds; (b) modify any provision for indemnification of the Authority or any members,

directors, officers, employees or agents of the Authority diminishing the right of such parties to receive indemnity; (c) modify any provision for payment to the Authority (except for payments that are assigned by the Authority to the Trustee or any other third party pursuant to the documents) so as to reduce payments to the Authority; (d) modify provisions relating to (i) the description of all or any portion of the related approved project if such modification would: (1) result in the project failing to be eligible for financing or refinancing pursuant to the Act; or (2) change the location of the project to property not described in the Authority resolution approving the document; (3) the sale or other transfer of all or any portion of the project financed or refinanced with the Bonds or all or any portion of the property pledged to secure the Bonds; (4) the merger, consolidation or affiliation by a participating party (as defined in the Act) that is party to a document or a user of the project, the dissolution of any such participating party, or the sale or other transfer of substantially all of the assets of any such participating party; (e) result in provisions inconsistent with the Authority's bond issuance guidelines in effect in respect of the Bonds; or (f) change any party to any contract approved in the related Authority resolution or the owner or user of the project identified in the documents.

This Section does not limit changes, modifications, deletions and additions otherwise permitted under the Authority resolution approving the document.

Section 5. Appointments. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to appoint or remove, or consent to or approve the appointment or removal of, any trustee, co-trustee, paying agent, issuing and paying agent, registrar, tender agent, fiscal agent, escrow agent, verification agent, auction agent, underwriter, placement agent, remarketing agent, commercial paper dealer, broker-dealer, credit enhancer, liquidity provider, investment provider, Hedging Agreement counterparty, securities depository, rating agency or counsel to any of the foregoing, including, without limitation, bond counsel, to the extent such appointment or removal, consent or approval by the Authority is required or permitted by the applicable Bond Document(s) and such appointment or removal (1) is made in accordance with the terms of the Bond Documents, if applicable, (2)(A) does not require bondholder consent pursuant to the terms of the Bond Documents or other agreement to which the Authority is a party, if applicable, or (B) any required consent has been acquired or (C) such consent or approval, by its own terms, shall become effective only upon acquiring such bondholder consent, (3) the Executive Director or Deputy Executive Director, as applicable, has consulted with the Public Finance Division of the State Treasurer's Office prior to such appointment, consent or approval, and (4) with respect to any underwriter, placement agent, remarketing agent, broker-dealer or commercial paper dealer, such firm is among the firms listed on the State Treasurer's pool of underwriters approved for negotiated offerings pursuant to California Government Code section 5703 to the extent participation in the State Treasurer's Office pool is required by the Bond Documents. Prior to removing, or consenting to or approving the removal of, any of the foregoing agents or entities, the Executive Director or the Deputy Executive Director, as applicable, shall consult with the participating health institution under the related Bond Documents.

The foregoing delegation does not include the power to replace or substitute any of the foregoing agents or entities named or approved in the final resolution or otherwise in connection with the original issuance of any issue of Bonds until after such Bonds are issued.

Section 6. Credit Enhancement and Liquidity Support. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to approve or consent to the delivery of any substitute, alternate or replacement credit enhancement or liquidity facility for Bonds, and the power to terminate any credit enhancement or liquidity facility or eliminate any requirement that a credit enhancement or liquidity facility be maintained for Bonds, if and to the extent such approval or consent by the Authority is required by the applicable Bond Documents and such approval or consent (1) is given in accordance with the terms of the applicable Bond Documents (including, without limitation, qualifications required by such Bond Documents for a provider of credit enhancement or liquidity support, if applicable), (2)(A) does not require bondholder consent pursuant to the terms of the Bond Documents or other agreement to which the Authority is a party, if applicable, or (B) any required consent has been acquired or (C) such approval or consent, by its own terms, shall become effective only upon acquiring such bondholder consent, (3) such substitute, alternate or replacement credit enhancement or liquidity facility and the provider thereof, the termination of the credit enhancement or liquidity facility or the elimination of the requirement therefore, as applicable, are such as to qualify and cause the Bonds to qualify under the Authority's bond issuance guidelines then in effect (if any) and (4) the Executive Director or Deputy Executive Director, as applicable, has consulted with the Public Finance Division of the State Treasurer's Office prior to such approval or consent.

Section 7. Sale, Encumbrance or Other Transfer of Projects. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to approve or consent to the sale, encumbrance or other transfer of all or a portion of a project financed with Bonds when such approval or consent by the Authority is required by the applicable Bond Documents and is provided in compliance with the applicable Bond Documents.

Section 8. Merger, Dissolution, etc. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to approve or consent to a merger, consolidation or affiliation of a participating health institution, the dissolution of a participating health institution, or the sale or other transfer of substantially all of the assets of a participating health institution when such approval or consent by the Authority is required by the applicable Bond Documents and is provided in compliance with the applicable Bond Documents.

Section 9. Refunding Actions. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to execute and the power to deliver escrow agreements and escrow instructions providing for deposit, investment and application of amounts to be used in connection with the redemption, prepayment, defeasance or discharge of Bonds and related matters.

Section 10. Ministerial Actions. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to carry out any ministerial actions contemplated by any Bond Documents, including, but not limited to, publication or other dissemination of notices of redemption, prepayment, defeasance or tender, certifications or other documentation to effect a substitution of credit enhancement or liquidity facility, publication or other dissemination of notices contemplated by the Bond Documents, filing of hedging identification certificates, and establishment of record dates or other arrangements to obtain or solicit bondholder consents.

Section 11. Waivers. (a) The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to waive on behalf of the Authority any provision of any Bond Document that is expressly for the benefit of the Authority and has not been assigned by the Authority, including, but not limited to, deadlines for delivery of notices, certificates, reports and other items to the Authority as well as the requirement for such documents to be provided to the Authority (other than upon request of the Authority).

(b) The delegation in subsection (a) of this Section shall not include the power to waive (1) any provision that could not be amended pursuant to the delegation under Section 3, (2) any provision requiring delivery of an opinion of counsel, and (3) any provision, the waiver of which would, in and of itself, result in the inclusion of interest on Bonds in gross income for purposes of federal income taxation.

Section 12. Litigation, etc. The Authority hereby delegates to the Executive Director, or the Deputy Executive Director upon the Executive Director's written authorization or when the Executive Director is unavailable, the power to respond on behalf of the Authority to any audit, investigation, litigation or claim or threat of litigation or claim made to or against the Authority or any of its members, directors, officers or employees in connection with any Bonds, or any investigation or audit or other review of any Bonds by any state or federal regulatory or law enforcement authorities when such response is required by law and is necessary to protect the interests of the Authority or the bondholders (hereinafter "Claims Made"), or to effectuate the terms of the applicable resolution authorizing the Bonds adopted by the Authority. The Executive Director or the Deputy Executive Director, as applicable, shall provide immediate notice (within three working days) to each of the members of the board regarding any Claims Made, prior to taking any action as permitted by this section, to provide all members with the opportunity to convene a formal board meeting to discuss the Claims Made.

Section 13. Exercise of Delegations Discretionary. Nothing in this Resolution shall require the Executive Director or any Deputy Executive Director to exercise the powers delegated herein in any particular case, and the Executive Director and Deputy Executive Director, as applicable, may in any instance instead bring a proposed action before the Authority for consideration.

Section 14. Delegations Supplemental. The Authority may in any future resolution delegate additional powers to the Executive Director, Deputy Executive Director or other officers or employees of the Authority, or eliminate, modify or restrict any delegation granted in this Resolution. Except as expressly provided in Section 3, Section 4, and Section 11, the powers delegated in this Resolution shall be deemed to be in addition to, and shall not limit, any prior delegation of power or authorization. The authorization contained in this Resolution shall apply to any issue of Bonds now or hereafter outstanding.

Section 15. Delivery. The power delegated under this Resolution to each of the Executive Director and the Deputy Executive Director to deliver executed documents extends to documents executed by either such officer or both such officers. Notwithstanding anything to the contrary in this Resolution, any document executed by the Executive Director in accordance with this Resolution may be delivered by the Deputy Executive Director, regardless of whether the Deputy Executive Director was authorized to execute such document.

Section 16. Reporting. Except as may be otherwise required within this Resolution, including as specified in Section 12, the Executive Director and the Deputy Executive Director, as applicable, shall report to the Authority monthly or, at a minimum, at the next scheduled meeting, all actions taken pursuant to the delegations of powers under this Resolution, unless such action is a subject for closed session pursuant to the Bagley-Keene Open Meeting Act, in which case the action will be reported in closed session or in writing to individual Authority members.

Section 17. Opinion of Counsel. The Executive Director or Deputy Executive Director, as the case may be, shall seek and rely upon a formal or informal opinion from the Authority's in-house legal counsel, who may then seek for the Authority a formal or informal opinion from the Attorney General's Office, to confirm compliance with one or more of the provisions of this Resolution.

Section 18. The Chairperson of the Authority or any deputy to the Chairperson, acting singly, is hereby authorized to execute and deliver each and every document the Executive Director or the Deputy Executive Director has been delegated the power to execute and deliver pursuant to this Resolution. The Chairperson may act by and through a deputy in connection with the delegations and authorizations under this Resolution.

Section 19. Resolution No. 2018-09 is hereby rescinded, provided all actions previously taken pursuant to the powers delegated thereby or otherwise authorized shall remain valid.

Section 20. This Resolution shall take effect from and after its adoption, and shall expire on January 31, 2023, unless extended by action of the Authority prior to that date; provided Section 2 hereof shall remain in effect for all Bond Documents approved by the Authority prior to such date (including any such extension thereof); provided further Sections 3, 4, 10, 13, 14, 15, 16, 17 and 18 hereof shall remain in effect until rescinded by action of the Authority.

Date of Adoption: _____