



Department of Finance

ACTION CALENDAR

June 27, 2023

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance Department

Subject: Borrowing of Funds and the Sale and Issuance of FY 2023-24 Tax and Revenue Anticipation Notes

RECOMMENDATION

Adopt a Resolution approving the borrowing of \$25,000,000 and the sale and issuance of Fiscal Year 2023-24 Tax and Revenue Anticipation Notes.

FISCAL IMPACTS OF RECOMMENDATION

Each year, the City (as do many local agencies) issues Tax and Revenue Anticipation Notes ("Notes") to help with its working capital needs during the first six months of the fiscal year. The reason for this issuance is that the City does not receive property tax revenues until December, thereby creating a negative cash flow in the General Fund. This annual issuance also enables the General Fund to recoup some of the interest earnings lost in advancing money to grant funds pending grant reimbursements, since the interest rate earned on any note proceeds invested will exceed the cost of borrowing.

The City's General Fund cash flow has become more volatile due to (1) The City now receives property tax in December and April; and (2) also receives the payment of Vehicle In Lieu fees in December and May with the property taxes, instead of monthly.

The money will be deposited in the General Fund and used by the City for any purpose for which it is authorized to expend General Fund monies. The interest earned on these monies will be allocated to the General Fund. The repayment of principal and interest on the Notes are to be made from General Fund taxes and other revenues.

CURRENT SITUATION AND ITS EFFECTS

The General Fund advances grant funds in the amounts needed to pay for their expenditures, until these funds receive reimbursement from the granting agencies. During the first six months of the fiscal year until property tax receipts are received, General Fund operating expenditures exceed revenues. Under the interpretation of Sections 53850-53858 of the California Government Code and federal tax law by the City's Bond Counsel,

Jones Hall, the City may borrow an amount not to exceed the maximum anticipated cash flow deficit plus five percent of working capital reserve if all the note proceeds, including investment earnings, are deemed spent within 6 months of the date of the issue of the Notes. This method of financing involves the sale of the Notes and is a traditional means used by local governments to ensure a consistent cash flow during the fiscal year. This year the City will borrow Note funds of \$25,000,000 to help with working capital needs in the first six months of the fiscal year and, when expenditures exceed incoming revenues. In the last six months of the fiscal year, the Notes will be repaid from General Fund taxes and other revenues, mainly property taxes and business license taxes.

For Fiscal Year 2023-24, the City will require a Note sale of an amount not to exceed twenty-five million dollars (\$25,000,000). The interest rate on the Notes will depend on competitive rates at the time of the sale.

DISCLOSURE

The attached Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the City's financing team. The distribution of the Preliminary Official Statement by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Notes. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Notes. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the Notes, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been "deemed final."

The Securities and Exchange Commission (the "SEC"), the agency with regulatory authority over the City's compliance with the federal securities laws, has issued guidance as to the duties of the City Council with respect to its approval of the Preliminary Official Statement. In its "Report of Investigation in the Matter of County of Orange, California as it Relates to the Conduct of the Members of the Board of Supervisors" (Release No. 36761 / January 24, 1996) (the "Release"), the SEC indicated that, if a member of the City Council has knowledge of any facts or circumstances that an investor would want to know about prior to investing in the Notes, whether relating to their repayment, tax-exempt status, undisclosed conflicts of interest with interested parties, or otherwise, he or she should endeavor to discover whether such facts are adequately disclosed in the Preliminary Official Statement. In the Release, the SEC indicated that the steps that a member of the City Council could take include becoming familiar with the Preliminary Official Statement and questioning staff and consultants about the disclosure of such facts.

The information about the sources of payment for the Notes, including the City's financial and operating data, is set forth in the sections of the Preliminary Official Statement entitled

“SECURITY FOR AND SOURCES OF PAYMENT FOR THE NOTES” and “APPENDIX A - CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY.”

The information about the tax-exempt status of the Notes is set forth in the section of the Preliminary Official Statement entitled “TAX MATTERS.”

RATIONALE FOR RECOMMENDATION

The General Fund advances grant funds the amounts needed to pay for their expenditures, until these funds receive reimbursement from the granting agencies. During the first six months of the fiscal year, General Fund operating expenditures exceed revenues. As a result, the General Fund’s working capital is depleted during this period, and borrowing these funds will alleviate that situation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON

Henry Oyekanmi, Director of Finance, Finance Department, 981-7326

Attachments:

1. Resolution
2. Draft Form of Official Notice of Sale
3. Form of Bond Counsel Opinion
4. Form of the Preliminary Official Statement

***** PLEASE DO NOT PLACE THIS ITEM ON THE CONSENT CALENDAR PURSUANT TO GOVERNMENT CODE SECTION 53635.7*****

RESOLUTION NO. _____-N.S.

APPROVING THE BORROWING OF FUNDS FOR FISCAL YEAR 2023-24 AND THE ISSUANCE AND SALE OF 2023-24 TAX AND REVENUE ANTICIPATION NOTES

WHEREAS, pursuant to Article 7.6 (commencing with section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code (the "Law"), this City Council (the "Council") has found and determined that moneys are needed for the requirements of the City, a municipal corporation and charter city duly organized and existing under the laws of the State of California, to satisfy obligations payable from the General Fund of the City (the "General Fund"), and that it is necessary that said sum be borrowed for such purpose at this time by the issuance of temporary notes therefor in anticipation of the receipt of taxes, income, revenue, cash receipts and other moneys to be received by the City for the General Fund during or allocable to the fiscal year of the City beginning July 1, 2023 and ending June 30, 2024 ("Fiscal Year 2023-24"); and

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the following:

Section 1. Limitation on Maximum Amount. The principal amount of notes issued pursuant hereto, when added to the interest payable thereon, shall not exceed eighty-five percent (85%) of the estimated amount of the uncollected taxes, income, revenue, cash receipts and other moneys of the City for the General Fund attributable to Fiscal Year 2023-24, and available for the payment of said notes and the interest thereon (as hereinafter provided).

Section 2. Authorization and Terms of Notes. Solely for the purpose of anticipating taxes, income, revenue, cash receipts and other moneys to be received by the City for the General Fund during or allocable to Fiscal Year 2023-24, and not pursuant to any common plan of financing, the City hereby determines to and shall borrow the principal amount of not-to-exceed Twenty-Five Million Dollars (\$25,000,000) by the issuance of temporary notes under the Law, designated "City of Berkeley, California 2023-24 Tax and Revenue Anticipation Notes" (the "Notes"). The Notes shall be dated the date of initial delivery, shall mature (without option of prior redemption) no later than thirteen months after their date of issuance, and shall bear interest, payable at maturity and computed on a 30-day month/360-day year basis, at a rate not in excess of eight percent (8%) per annum. Both the principal of and interest on the Notes shall be payable in lawful money of the United States of America, as described below.

Section 3. Form of Notes; Book Entry Only System. The Notes shall be issued in fully registered form, without coupons, and shall be substantially in the form and substance set forth in Exhibit A attached hereto and by reference incorporated herein, the blanks in said form to be filled in with appropriate words and figures. The Notes shall be numbered from 1 consecutively upward in order of issuance, shall be in the denomination of \$5,000 each or any integral multiple thereof.

"CUSIP" identification numbers shall be imprinted on the Notes, but such numbers shall not constitute a part of the contract evidenced by the Notes and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for

the Notes. In addition, failure on the part of the City to use such CUSIP numbers in any notice to the registered owners of the Notes shall not constitute an event of default or any violation of the City's contract with such owners and shall not impair the effectiveness of any such notice.

Except as provided below, the owner of all of the Notes shall be The Depository Trust Company, New York, New York ("DTC"), and the Notes shall be registered in the name of Cede & Co., as nominee for DTC. The Notes shall be initially executed and delivered in the form of a single fully registered Note in the full aggregate principal amount of the Notes. The City may treat DTC (or its nominee) as the sole and exclusive owner of the Notes registered in its name for all purposes of this Resolution, and the City shall not be affected by any notice to the contrary. The City shall not have any responsibility or obligation to any participant of DTC (a "Participant"), any person claiming a beneficial ownership interest in the Notes under or through DTC or a Participant (a "Beneficial Owner"), or any other person not shown on the register of the City as being an owner, with respect to the accuracy of any records maintained by DTC or any Participant or the payment by DTC or any Participant by DTC or any Participant of any amount in respect of the principal or interest with respect to the Notes. The City shall pay all principal and interest with respect to the Notes only to DTC or its nominee, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal and interest with respect to the Notes to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Note. Upon delivery by DTC to the City of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the term "Cede & Co." in this Resolution shall refer to such new nominee of DTC.

If the City determines that it is in the best interest of the Beneficial Owners that they be able to obtain Notes and delivers a written certificate to DTC to that effect, DTC shall notify the Participants of the availability through DTC of Notes. In such event, the City shall issue, transfer and exchange Notes as requested by DTC and any other owners in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Notes at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City shall be obligated to deliver Notes to the Beneficial Owners as described in this Resolution. Whenever DTC requests the City to do so, the City will cooperate with DTC in taking appropriate action after reasonable notice to (a) make available one or more separate Notes evidencing the Notes to any DTC Participant having Notes credited to its DTC account or (b) arrange for another securities depository to maintain custody of Certificates evidencing the Notes.

Notwithstanding any other provision of this Resolution to the contrary, so long as any Note is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal and interest with respect to such Note and all notices with respect to such Note shall be made and given, respectively, to DTC as provided as in the representation letter delivered on the date of issuance of the Notes.

Section 4. Use of Proceeds. The proceeds of the sale of the Notes shall be deposited in a segregated account in the General Fund and used and expended by the City for any purpose for which it is authorized to expend funds from the General Fund.

Section 5. Security. The principal amount of the Notes, together with the interest thereon, shall be payable from taxes, income, revenue, cash receipts and other moneys which are received by the City for the General Fund for Fiscal Year 2023-24. As security for the payment of the principal of and interest on the Notes the City hereby pledges the first "unrestricted moneys" (as hereinafter defined) to be received by the City as follows: (a) an amount equal to fifty percent

(50%) of the principal amount of the Notes in the month of January, 2024; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2024; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2024 (such pledged amounts being hereinafter called the "Pledged Revenues"). The principal of the Notes and the interest thereon shall constitute a first lien and charge thereon and shall be payable from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, the Notes shall be paid from any other moneys of the City lawfully available therefor. In the event that there are insufficient "unrestricted moneys" received by the City to permit the deposit into the Special Account (as hereinafter defined) of the full amount of the Pledged Revenues to be deposited in any month by the last business day of such month, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon. The term "unrestricted moneys" shall mean taxes, income, revenue, cash receipts, and other moneys received by the City for the General Fund for Fiscal Year 2023-24 and which are generally available for the payment of current expenses and other obligations of the City.

Section 6. Special Account. There is hereby created, within the General Fund, a special account to be designated the "2023-24 Tax and Revenue Anticipation Note Special Account" (the "Special Account") and applied as directed in this Resolution. Any money placed in the Special Account shall be for the benefit of the owners of the Notes and, until the Notes and all interest thereon are paid or until provision has been made for the payment of the Notes at maturity with interest to maturity, the moneys in the Special Account shall be applied solely for the purposes for which the Special Account is created.

During the months of January, May, and June, 2024, the City shall deposit all Pledged Revenues in the Special Account. On the maturity date of the Notes, the City shall transfer to DTC the moneys in the Special Account necessary to pay the principal of and interest on the Notes at maturity and to the extent said moneys are insufficient therefor an amount of moneys from the General Fund which will enable payment of the full principal of and interest on the Notes at maturity. DTC will thereupon make payments of principal of and interest on the Notes to the DTC Participants who will thereupon make payments to the Beneficial Owners of the Notes. Any moneys remaining in the Special Account after the Notes and the interest thereon have been paid, or provision for such payment has been made, shall be transferred to the General Fund.

Section 7. Deposit and Investment of Special Account. All moneys held by the City in the Special Account, if not invested, shall be held in time or demand deposits as public funds and shall be secured at all times by bonds or other obligations which are authorized by law as security for public deposits, of a market value at least equal to the amount required by law.

Moneys in the Special Account shall, to the greatest extent possible, be invested by the City directly, or through an investment agreement, in investments as permitted by the laws of the State of California as now in effect and as hereafter amended, and the proceeds of any such investments shall be deposited in the Special Account.

Section 8. Execution of Notes. The Mayor of the City, the City Manager, or the Director of Finance (each an "Authorized Officer") is hereby authorized to execute the Notes by manual or facsimile signature, and the City Clerk of the City is hereby authorized to countersign the same by manual or facsimile signature (although at least one of such signatures shall be manual) and to affix the seal of the City thereto by facsimile impression thereof, and said officers are hereby authorized to cause the blank spaces thereof to be filled in as may be appropriate.

Section 9. Transfer of Notes. Any Note may, in accordance with its terms, but only if the City determines to no longer maintain the book entry only status of the Notes, DTC determines to discontinue providing such services and no successor securities depository is named or DTC requests the City to deliver Note certificates to particular DTC Participants, be transferred, upon the books required to be kept pursuant to the provisions of Section 11 hereof, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Note for cancellation at the office of the City Clerk, accompanied by delivery of a written instrument of transfer in a form approved by the City, duly executed.

Whenever any Note or Notes shall be surrendered for transfer, the City shall execute and the Paying Agent shall authenticate and deliver a new Note or Notes, for like aggregate principal amount.

Section 10. Exchange of Notes. Any Note may, in accordance with its terms, but only if the City determines to no longer maintain the book entry only status of the Notes, DTC determines to discontinue providing such services and no successor securities depository is named or DTC requests the City to deliver Note certificates to particular DTC Participants, be exchanged at the office of the City Clerk for a like aggregate principal amount of Notes of authorized denominations and of the same maturity.

Section 11. Note Register. The City shall keep or cause to be kept sufficient books for the registration and transfer of the Notes if the book entry only system is no longer in effect and, in such case, the City Clerk shall register or transfer or cause to be registered or transferred, on said books, Notes as herein before provided. While the book entry only system is in effect, such books need not be kept as the Notes will be represented by one Note registered in the name of Cede & Co., as nominee for DTC.

Section 12. Temporary Notes. The Notes may be initially issued in temporary form exchangeable for definitive Notes when ready for delivery. The temporary Notes may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the City, and may contain such reference to any of the provisions of this Resolution as may be appropriate. Every temporary Note shall be executed by the City upon the same conditions and in substantially the same manner as the definitive Notes. If the City issues temporary Notes it will execute and furnish definitive Notes without delay, and thereupon the temporary Notes may be surrendered, for cancellation, in exchange therefor at the office of the City Clerk and the City Clerk shall deliver in exchange for such temporary Notes an equal aggregate principal amount of definitive Notes of authorized denominations. Until so exchanged, the temporary Notes shall be entitled to the same benefits pursuant to this Resolution as definitive Notes executed and delivered hereunder.

Section 13. Notes Mutilated, Lost, Destroyed or Stolen. If any Note shall become mutilated the City, at the expense of the owner of said Note, shall execute and deliver a new Note of like maturity and principal amount in exchange and substitution for the Note so mutilated, but only upon surrender to the City Clerk of the Note so mutilated. Every mutilated Note so surrendered to the City Clerk shall be canceled and delivered to, or upon the order of, the City. If any Note shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence be satisfactory to the City and indemnity satisfactory to it shall be given, the City, at the expense of the owner, shall execute and deliver a new Note of like maturity and principal amount in lieu of and in substitution for the Note so lost, destroyed or stolen. The City may require payment of a sum not exceeding the actual cost of preparing each new Note issued under this Section 13 and of the expenses which may be incurred by the City in the premises. Any Note issued under the provisions of this Section 13 in lieu of any Note alleged to

be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the City whether or not the Note so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Resolution with all other Notes issued pursuant to this Resolution.

Section 14. Covenants and Warranties. It is hereby covenanted and warranted by the City that all representations and recitals contained in this Resolution are true and correct, and that the City and its appropriate officials have duly taken all proceedings necessary to be taken by them, and will take any additional proceedings necessary to be taken by them, for the prompt collection and enforcement of the taxes, income, revenue, cash receipts and other moneys pledged hereunder in accordance with law and for carrying out the provisions of this Resolution.

Section 15. Tax Covenants.

(a) *No Arbitrage.* The City shall not take, nor permit nor suffer to be taken any action with respect to the proceeds of the Notes which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the date of issuance of the Notes (the "Closing Date") would have caused the Notes to be "arbitrage bonds" within the meaning of section 148 of the Internal Revenue Code of 1986 (the "Code").

(b) *Rebate Requirement.* The City shall take any and all actions necessary to assure compliance with section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government.

(c) *Private Activity Note Limitation.* The City shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private business tests of section 141(b) of the Code.

(d) *Private Loan Financing Limitation.* The City shall assure that proceeds of the Notes are not so used as to cause the Notes to satisfy the private loan financing test of section 141(c) of the Code.

(e) *Federal Guarantee Prohibition.* The City shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause any of the Notes to be "federally guaranteed" within the meaning of section 149(b) of the Code.

(f) *Maintenance of Tax-Exemption.* The City shall take all actions necessary to assure the exclusion of interest on the Notes from the gross income of the owners of the Notes to the same extent as such interest is permitted to be excluded from gross income under the Code as in effect on the Closing Date.

Section 16. Official Statement. The City Council hereby approves the Official Statement describing the Notes, in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by an Authorized Officer. The City Council authorizes and directs an Authorized Officer on behalf of the City to deem "final" pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") the Official Statement prior to its distribution. The execution of the Official Statement, which shall include such changes and additions thereto deemed advisable by an Authorized Officer and such information permitted to be excluded from the Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Official Statement by the City.

An Authorized Officer is authorized and directed to execute the Official Statement and a statement that the facts contained in the Official Statement, and any supplement or amendment thereto (which shall be deemed an original part thereof for the purpose of such statement) were, at the time of sale of the Notes, true and correct in all material respects and that the Official Statement did not, on the date of sale of the Notes, and does not, as of the date of delivery of the Notes, contain any untrue statement of a material fact with respect to the City or omit to state material facts with respect to the City required to be stated where necessary to make any statement made therein not misleading in the light of the circumstances under which it was made. An Authorized Officer shall take such further actions prior to the signing of the Official Statement as are deemed necessary or appropriate to verify the accuracy thereof. The Official Statement is approved for distribution in the offering and sale of the Notes.

Section 17. Sale of Notes. An underwriter (the "Underwriter") to be designated by an Authorized Officer will purchase the Notes. An Authorized Officer is hereby authorized to designate the Underwriter, in consultation with the City's municipal advisor, NHA Advisors, LLC (the "Municipal Advisor") in one of the following ways:

(a) *Limited Negotiated.* An Authorized Officer may direct the Municipal Advisor to contact a limited number of Underwriters and negotiate the sale of the Notes. An Authorized Officer is hereby authorized to cause Jones Hall, A Professional Law Corporation, as bond counsel to the City ("Bond Counsel"), to prepare and to execute and deliver a Note Purchase Agreement in connection with a negotiated sale of the notes in such form (including designation of the Underwriter) as an Authorized Officer shall approve, such approval to be conclusively evidenced by his or her execution and delivery thereof.

(b) *Public Sale.* An Authorized Officer, in consultation with the Municipal Advisor, may determine to sell the Notes by competitive bid and award the sale of the Notes as set forth in an Official Notice of Sale (the "Official Notice of Sale"), the form of which is attached to this Resolution and is hereby approved, and which Bond Counsel is hereby authorized to finalize, consistent with this Resolution. If an Authorized Officer determines to proceed with a competitive bid, (a) Bond Counsel is hereby directed to arrange for the publication of a notice of intention of the sale of the Notes in accordance with Section 53692 of the Government Code and (b) an Authorized Officer is hereby directed to execute the Official Notice of Sale; to open the bids at the time and place specified in the Official Notice of Sale; to receive and record the receipt of all bids made pursuant to the Official Notice of Sale; to cause said bids to be examined for compliance with the Official Notice of Sale; to cause computations to be made as to which bidder has bid the lowest true interest cost, as provided in the Official Notice of Sale; to announce the bidder of the lowest true interest cost; and to award the sale to said bidder.

An Authorized Officer is further authorized to determine the maximum principal amount of the Notes and the maximum interest rate on the Notes not to exceed the maximum principal amount and interest rate set forth in Section 2.

Section 18. Engagement of Professional Services. The City hereby approves the engagement of Jones Hall, A Professional Law Corporation as Bond Counsel and Disclosure Counsel and NHA Advisors, LLC as Municipal Advisor to the City in connection with the issuance and sale of the Notes. The City Attorney is authorized to execute a legal services agreement with

Jones Hall, with Jones Hall's compensation to be contingent upon issuance of the Notes, and Jones Hall's compensation is not set by law but is negotiable.

Section 19. Preparation of Notes; Official Action. Jones Hall, A Professional Law Corporation, as bond counsel, is directed to cause suitable Notes to be prepared showing on their face that the same bear interest at the rate specified in the offer submitted by the successful bidder or bidders, and to cause the blank spaces therein to be filled in to comply with the provisions of this Resolution, and to procure their execution by the proper officers, and to cause the Notes to be delivered when so executed to DTC on behalf of the successful bidder or bidders therefor upon the receipt of the purchase price by the City Treasurer in accordance with such successful bid or bids.

An Authorized Officer is further authorized and directed to make, execute and deliver such certificates, agreements and other closing documents as are necessary to consummate the transactions contemplated by this Resolution.

Section 20. Effective Date. This Resolution shall take effect upon its adoption.

The foregoing Resolution was adopted by the Berkeley City Council on June 27, 2023 by the following vote:

Ayes:

Noes:

Absent:

Jesse Arreguin, Mayor

Attest: _____
City Clerk

to pay interest as due on the Notes at their maturity, in the month of June, 2024 (such pledged amounts being hereinafter called the "Pledged Revenues"). The principal of the Notes and the interest thereon shall constitute a first lien and charge thereon and shall be payable from the Pledged Revenues. To the extent not so paid from the Pledged Revenues, the Notes shall be paid from any other moneys of the City lawfully available therefor. In the event that there are insufficient "unrestricted moneys" received by the City to permit the deposit into the Special Account (as hereinafter defined) of the full amount of the Pledged Revenues to be deposited in any month by the last business day of such month, then the amount of any deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the repayment of the Notes and interest thereon. The term "unrestricted moneys" shall mean taxes, income, revenue, cash receipts, and other moneys received by the City for the General Fund of the City for Fiscal Year 2023-24 and which are generally available for the payment of current expenses and other obligations of the City.

The Notes are issuable as fully registered Notes, without coupons, in denominations of \$5,000 and any integral multiple thereof. Subject to the limitations and conditions as provided in the Resolution, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations and of the same maturity.

The Notes are not subject to redemption prior to maturity.

This Note is transferable by the Owner hereof, but only under the circumstances, in the manner and subject to the limitations provided in the Resolution. Upon registration of such transfer a new Note or Notes, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor.

The City may treat the Owner hereof as the absolute owner hereof for all purposes, and the City shall not be affected by any notice to the contrary.

Unless this Note is presented by an authorized representative of The Depository Trust Company to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of The Depository Trust Company and any payment is made to Cede & Co., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL since the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of Berkeley has caused this Note to be executed by the City Manager and countersigned by the City Clerk of the City, all as of the Issue Date stated above.

CITY OF BERKELEY

By _____
City Manager

Countersigned:

By _____
City Clerk

OFFICIAL NOTICE OF SALE

2023-24 TAX AND REVENUE ANTICIPATION NOTES

\$ _____ *
City of Berkeley
(Alameda County, California)

NOTICE IS HEREBY GIVEN that electronic bid proposals (see "TERMS OF SALE --- Electronic Bids" below) for the purchase of the captioned notes (the "Notes") will be received by the City Berkeley, California (the "City"), through BiDCOMP™/Parity® ("Parity") on:

TUESDAY, JULY 11, 2023

between 8:00 a.m. and 8:30 a.m. California Time.

Further information may be obtained from the municipal advisor to the City, NHA Advisors, 4040 Civic Center Drive, Suite 200, San Rafael, California 94903, Attn: Rob Schmidt, telephone: (415) 785-2025 ext. 2006, email: rob@NHAadvisors.com.

POSTPONEMENT: The City reserves the right to postpone or change the time or sale date upon notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (www.tm3.com).

ISSUE AND DENOMINATION; BOOK ENTRY ONLY SYSTEM; CUSIP NUMBER: The Notes consist of fully registered notes, without coupons. The Notes will be issued in minimum denominations of \$5,000. The Notes will be issued in a book entry only system with no physical distribution of the Notes made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Notes, which will be immobilized in its custody. The Notes will be registered in the name of Cede & Co., as nominee for DTC, on behalf of the participants in the DTC system and the subsequent beneficial owners of the Notes. Pursuant to MSRB Rule G-34, the City's Municipal Advisor will apply for CUSIP number assignment prior to the award of the issue, but the cost shall be payable by the underwriter.

DATE AND MATURITY: The Notes will be dated the date of delivery (expected to be July 25, 2023), and will mature on July 24, 2024 (the "Maturity Date").

INTEREST RATE: The maximum interest rate bid for the Notes may not exceed eight percent (8%) per annum, payable upon maturity of the Notes. Bidders must specify the rate of interest which the Notes shall bear, provided that: (i) bids must be for all Notes; and (ii) the Notes shall bear interest from its date to its stated maturity at the interest rate specified in the bid.

REDEMPTION: The Notes are not subject to call and redemption prior to maturity.

* Preliminary, subject to change

PAYMENT: Both principal of and interest on the Notes will be payable on the Maturity Date, in lawful money of the United States of America, to DTC which will immediately credit the account of the successful bidder or bidders as participants in the DTC system.

PURPOSE OF ISSUE: The Notes are to be issued by the City and are authorized pursuant to the provisions of Article 7.6 (commencing with Section 53850) of Chapter 4 of Part 1 of Division 2 of Title 5 of the California Government Code and the provisions of resolutions of the City for any purpose for which the City is authorized to expend moneys.

SECURITY: The Notes are an obligation of the City and are secured by a pledge of and first lien and charge against the first “unrestricted moneys,” as hereinafter defined, to be received by the City, (a) in an amount equal to 50% of the principal amount of the Notes to be received by the City in January 2024, (b) in an amount equal to 50% of the principal amount of the Notes to be received by the City in May 2024, and (c) in an amount equal to all interest due on the Notes at maturity to be received by the City in June 2024. The term “unrestricted moneys” mean taxes, income, revenue and other moneys intended as receipts for the general fund of the City and which are generally available for the payment of current expenses and other obligations of the City.

Said pledged moneys shall be deposited by the City in a special fund established, created and maintained by the City. Moneys shall be withdrawn from said fund for the sole purpose of paying the principal of and the interest on the Notes at their maturity.

By statute, the Notes are declared to be general obligations of the City, and to the extent not paid from said pledged moneys shall be paid, with the interest thereon, from any other moneys of the City lawfully available therefor. Under provisions of the California Constitution, the City is generally prohibited from incurring any indebtedness or liability exceeding in any year the income and revenue provided for such year, without the assent of two-thirds of its qualified electors voting at an election called for such purpose.

RATING: S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, has given the Notes a rating of “_____”.

TERMS OF SALE

BEST BID: *Bids must be for all of the Notes.* The Notes will be awarded on the basis of the lowest true interest cost including premium offered in the proposals. No bid for less than par will be entertained. In the event two or more bids setting forth identical interest rates and premium per dollar principal amount, if any, and aggregating a principal amount in excess of the principal amount of unawarded Notes are received, the City's Finance Director, pursuant to delegation by the Council, reserves the right to exercise his discretion and judgment in making the award and may award the Notes on a pro rata basis in such denominations as he shall determine.

ELECTRONIC BIDS: Solely as an accommodation to bidders, the City will accept bids in electronic form solely from Ipreo, a KKR portfolio company, through its BiDCOMP Competitive Bid Calculation System and Parity Electronic Bid Submission System ("Ipreo"). For information about Ipreo, bidders may contact Ipreo at 395 Hudson Street, New York, New York 10014, telephone (212) 849-5023. If any provision of this Notice of Sale conflicts with information provided by Ipreo, this Notice of Sale shall control. Each bidder submitting an electronic bid understands and agrees by doing so that it is solely responsible for all arrangements with Ipreo, that the City does not encourage the use of Ipreo, and that Ipreo is not acting as an agent of the City. Instructions for submitting electronic bids must be obtained from Ipreo, and the City does not assume any responsibility for ensuring or verifying bidder compliance with Ipreo procedures. Ipreo has advised the City that bidders must subscribe to Ipreo if such bidders intend to use Ipreo to submit bids. The City shall be entitled to assume that any bid received via Ipreo has been made by a duly authorized agent of the bidder.

Neither the City, the Municipal Advisor nor Bond Counsel has any responsibility for proper functioning of the Ipreo system, for any error contained in any bid submitted electronically, or for failure of any bid to be transmitted, received or opened at the official time for receipt of bids. The official time for receipt of bids will be determined by the City at the place of bid opening, and the City will not be required to accept the time kept by Parity as the official time. The City assumes no responsibility for informing any bidder prior to the deadline for receiving bids that its bid is incomplete, or not received.

PROMPT AWARD: The City Representative, pursuant to delegation by the City, will take action awarding the sale of the Notes or reject all bids not later than forty-eight (48) hours after the expiration of time herein prescribed for the receipt of bids and until such expiration of time all bids received shall be irrevocable. Unless such time of award is waived by the successful bidder, the award may be made after the expiration of the specified time if the bidder shall not have given to the City representative notice in writing of the withdrawal of such proposal. Notice of the award will be given promptly to the successful bidder.

ESTABLISHMENT OF ISSUE PRICE: (a) The winning bidder shall assist the City in establishing the issue price of the Notes and shall execute and deliver to the City at closing an "issue price" or similar certificate setting forth the reasonably expected initial offering price to the public of the Notes, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit 1, with such modifications as may be appropriate or necessary, in the reasonable judgment of the winning bidder, the City and Bond Counsel. All actions to be taken by the City under this Notice of Sale to establish the issue price of the Notes may be taken on behalf of the City by the City's municipal advisor identified herein and any notice or report to be provided to the City may be provided to the City's municipal advisor.

(b) The City intends that the provisions of Treasury Regulation Section 1.148-1(f)(3)(i) (defining "competitive sale" for purposes of establishing the issue price of the Notes) will apply to the initial sale of the Notes (the "competitive sale requirements") because:

- (1) the City shall disseminate this Notice of Sale to potential underwriters in a manner that is reasonably designed to reach potential underwriters;
- (2) all bidders shall have an equal opportunity to bid;
- (3) the City may receive bids from at least three underwriters of municipal bonds who have established industry reputations for underwriting new issuances of municipal bonds; and
- (4) the City anticipates awarding the sale of the Notes to the bidder who submits a firm offer to purchase the Notes at the highest price (or lowest interest cost), as set forth in this Notice of Sale.

Any bid submitted pursuant to this Notice of Sale shall be considered a firm offer for the purchase of the Notes, as specified in the bid. **By submitting a bid for the Notes, each bidder certifies that it has an established industry reputation for underwriting new issuances of municipal bonds.** The City will not accept bids from firms without an established industry reputation for underwriting new issuances of municipal bonds.

(c) In the event the City receives less than three bids that conform to the parameters contained herein such that the competitive sale requirements are not satisfied, the City intends to treat the initial offering price of the Notes set forth in the bid submitted by the winning bidder (the "initial offering price") as the issue price of the Notes (the "hold-the-offering-price rule"). Consequently, each bidder should assume for purposes of making its bid that the City will treat the initial offering price of the Notes as of the date that the Notes are awarded by the City to the successful bidder ("sale date") as the issue price of the Notes. The City will advise the winning bidder within one hour of receipt of bids if the hold-the-offering-price rule will apply. In the event that the competitive sale requirements are not satisfied and issue price is established pursuant to the hold-the-offering-price rule, the issue price certificate shall be modified as necessary in the reasonable judgment of Bond Counsel and the City.

(d) By submitting a bid, the successful bidder shall, on behalf of the underwriters participating in the purchase of the Notes, (i) confirm that the underwriters have offered or will offer the Notes to the public on or before the sale date at the initial offering price set forth in the bid submitted by the winning bidder, and (ii) agree that the underwriters will neither offer nor sell the Notes to any person at a price that is higher than the initial offering price for the Notes during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth business day after the sale date; or
- (2) the date on which the underwriters have sold at least 10% of the Notes to the public at a price that is no higher than the initial offering price for the Notes.

The winning bidder shall promptly advise the City when the underwriters have sold 10% of the Notes to the public at a price that is no higher than the initial offering price if that occurs prior to the close of the fifth (5th) business day after the sale date.

(e) The City acknowledges that, in making the representation set forth above, the successful bidder will rely on (i) the agreement of each underwriter to comply with the hold-the-offering-price rule, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Notes to the public, the agreement of each dealer who is a member of the selling group to comply with the hold-the-offering-price rule, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an underwriter is a party to a retail distribution agreement that was

employed in connection with the initial sale of the Notes to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the hold-the-offering-price rule, as set forth in the retail distribution agreement and the related pricing wires. The City further acknowledges that each underwriter shall be solely liable for its failure to comply with its agreement regarding the hold-the-offering-price rule and that no underwriter shall be liable for the failure of any other underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a retail distribution agreement to comply with its corresponding agreement regarding the hold-the-offering-price rule as applicable to the Notes.

(f) By submitting a bid, each bidder confirms that:

(1) any agreement among underwriters, any selling group agreement and each retail distribution agreement (to which the bidder is a party) relating to the sale of the Notes to the public, together with the related pricing wires, contains or will contain language obligating each underwriter, each dealer who is a member of the selling group, and each broker-dealer that is a party to such retail distribution agreement, as applicable, to

(A) report the prices at which it sells to the public the Notes until it is notified by the successful bidder that either the 10% test has been satisfied as to the Notes or all Notes have been sold to the public and

(B) comply with the hold-the-offering-price rule, if and for so long as directed by the successful bidder and in the related pricing wires, and

(2) any agreement among underwriters relating to the sale of the Notes to the public, together with the related pricing wires, contains or will contain language obligating each underwriter that is a party to a retail distribution agreement to be employed in connection with the initial sale of the Notes to the public to require each broker-dealer that is a party to such retail distribution agreement to

(A) report the prices at which it sells to the public the unsold Notes allotted to it until it is notified by the successful bidder or such underwriter that either the 10% test has been satisfied as to the Notes or all the Notes have been sold to the public and

(B) comply with the hold-the-offering-price rule, if and for so long as directed by the successful bidder or such underwriter and as set forth in the related pricing wires.

Sales of any Notes to any person that is a related party to an underwriter shall not constitute sales to the public for purposes of this Official Notice of Sale.

(g) For purposes of this Official Notice of Sale:

(1) "public" means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an underwriter or a related party,

(2) "underwriter" means (A) any person that agrees pursuant to a written contract with the City (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Notes to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Notes to the public (including a member of a selling

group or a party to a retail distribution agreement participating in the initial sale of the Notes to the public),

(3) a purchaser of any of the Notes is a "related party" to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) at least 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

In addition, the City reserves the right to cancel the public sale of the Notes if the City receives fewer than three bids that conform to the parameters contained herein such that the competitive sale requirements are not satisfied.

NO GOOD FAITH DEPOSIT: The City is not requiring the successful bidder to submit a good faith deposit.

DELIVERY AND PAYMENT: It is estimated that the delivery of the Notes will be made to DTC for the account of the successful bidders on or about July 25, 2023. Payment of the purchase price must be made in funds immediately available to the City by wire transfer or other means acceptable to the City.

RIGHT OF REJECTION: The City reserves the right, in its sole discretion, to reject any and all bids for the Notes and to waive any irregularity or informality in any bid.

CHANGE IN TAX EXEMPT STATUS: At any time before the Notes are tendered for delivery, any successful bidder may disaffirm and withdraw its proposal if the interest received by private holders from notes of the same type and character shall be declared to be taxable income under present federal income tax laws, either by ruling of the Internal Revenue Service or by a decision of any federal court, or shall be declared taxable or be required to be taken into account in computing any federal income taxes by the terms of any federal income tax law enacted subsequent to the date of this notice.

CONTINUING DISCLOSURE: In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City will undertake, pursuant to separate Continuing Disclosure Certificates, to provide notices of the occurrence of certain events, if material. A description of these undertakings is set forth in the preliminary official statement relating to the Notes (the "POS") and will also be set forth in a final official statement relating to the Notes (the "OS").

ACKNOWLEDGMENT OF NO FIDUCIARY DUTY: At closing, the City will execute a certificate to the effect that it acknowledges and agrees that (i) the purchase and sale of the Notes by the winning bidder (the "Purchaser") is an arm's-length commercial transaction between the City and the Purchaser, (ii) in connection with such transaction, the Purchaser is acting solely as a principal and not as an advisor, (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the City, (iii) the Purchaser has not assumed (individually or collectively) a fiduciary responsibility in favor of the City with respect to the offering of the Notes or the process leading thereto (whether or not the Purchaser, or any affiliate of an Purchaser, has advised or is currently advising the City on other matters) or any other obligation to the City except the obligation to purchase the Notes, (iv) the Purchaser has financial and other interests that differ

from those of the City and (v) the City has consulted with its own legal and municipal advisors to the extent it deemed appropriate in connection with the offering of the Notes.

CLOSING PAPERS; LEGAL OPINION: Each proposal will be conditioned upon the City furnishing to each successful bidder, without charge, concurrently with payment for and delivery of the Notes, the following closing papers, each dated the date of such delivery:

(a) The opinion of Bond Counsel, approving the validity of the Notes and stating that, subject to certain qualifications, under existing law, the interest on the Notes is (i) excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax, although interest on the Notes may be subject to the corporate alternative minimum tax, and (ii) exempt from State of California personal income taxes. A copy of Bond Counsel's opinion will be delivered with the Notes without cost to the purchaser.

(b) A certificate of the Finance Director or other appropriate official of the City that on the basis of the facts, estimates and circumstances in existence on the date of issue, it is not expected that the proceeds of the Notes will be used in a manner that would cause the Notes to be "arbitrage bonds" within the meaning of the Code;

(c) A certificate on behalf of the City that there is no litigation threatened or pending affecting the validity of the Notes;

(d) A certificate of the Finance Director or other appropriate official of the City, acting on behalf of the City solely in his or her official and not in his or her personal capacity, that at the time of the sale of the Notes and at all times subsequent thereto up to and including the time of the delivery of the Notes to the initial purchasers thereof, the OS did not, and does not, contain any untrue statement of a material fact or omit to state a material fact necessary which would make the statements misleading in the light of the circumstances under which they were made;

(e) The signature certificate of the officials of the City, showing that they have signed the Notes and impressed the seal of the City thereon, and that they were respectively duly authorized to execute the same; and

(f) The receipt of the City showing that the purchase price of the Notes has been received.

OFFICIAL STATEMENT: The City has approved a preliminary Official Statement relating to the Notes. Copies of such preliminary Official Statement will be distributed to any bidder, upon request, prior to the sale in a form "deemed final" by the City for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). Within seven business days from the sale date, the City will deliver to the purchaser copies of the final Official Statement, executed by an authorized representative of the City and dated the date of delivery thereof to the purchaser, in sufficient number to allow the purchaser to comply with paragraph (b)(4) of the Rule and to satisfy the Municipal Securities Rulemaking Board (the "MSRB") Rule G-32 or any other applicable rules adopted by the MSRB, which shall include information permitted to be omitted by paragraph (b)(1) of the Rule and such other amendments or supplements as shall have been approved by the City (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Notes unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. The City will furnish to the successful bidder, at no charge, an electronic copy of the Official Statement for use in connection with any resale of the Notes, and up to 20 printed copies upon request.

A letter of Jones Hall, A Professional Law Corporation, San Francisco, California, as disclosure counsel, will be addressed to the City and to the successful bidder, stating that, without passing upon or assuming any responsibility for the accuracy, completeness of fairness of the

statements contained in the final Official Statement and making no representations that they have independently verified the accuracy, completeness or fairness of an such statements, based upon the information made available to them in the course of their participation in the preparation of the final Official Statement, nothing has come to such counsel's attention which would lead them to believe that the final Official Statement, including the cover page and all appendices thereto (but excluding therefrom financial statements and statistical data, and information regarding The Depository Trust Company, and its book entry system, as to which no opinion need be expressed) contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading

GIVEN pursuant to a resolution of the City adopted June 27, 2023.

Dated: June 28, 2023

EXHIBIT 1
Issue Price Certificate

\$ _____
CITY OF BERKELEY
2023-24 TAX AND REVENUE ANTICIPATION NOTES

The undersigned, on behalf of [NAME OF UNDERWRITER] (“Underwriter”), hereby certifies as set forth below with respect to the sale of the above-captioned obligations (the “Notes”).

1. ***Reasonably Expected Initial Offering Price.***

(a) As of the Sale Date, the reasonably expected initial offering prices of the Notes to the Public by Underwriter are the prices listed in Schedule A (the “Expected Offering Prices”). The Expected Offering Prices are the prices for the Notes used by the Underwriter in formulating its bid to purchase the Notes. Attached as Schedule B is a true and correct copy of the bid provided by Underwriter to purchase the Notes.

(b) Underwriter was not given the opportunity to review other bids prior to submitting its bid.

(c) The bid submitted by Underwriter constituted a firm offer to purchase the Notes.

2. ***Defined Terms.***

(a) *Issuer* means the City of Berkeley.

(a) Reserved.

(b) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate generally means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(c) *Sale Date* means the first day on which there is a binding contract in writing for the sale of the Notes. The Sale Date of the Notes is July 11, 2023.

(d) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Notes to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Notes to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Notes to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents Underwriter's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in the Certificate of Arbitrage and with respect to compliance with the federal income tax rules affecting the Notes, and by Jones Hall, A Professional Law Corporation in connection with rendering its opinion that the interest on the Notes is excluded from gross income for federal income tax purposes, the preparation of the Internal Revenue Service Form 8038-G, and other federal income tax advice that it may give to the Issuer from time to time relating to the Notes.

[UNDERWRITER]

By: _____

Name: _____

Dated: [ISSUE DATE]

SCHEDULE A

EXPECTED OFFERING PRICES

<u>Maturity Date</u>	<u>Principal Amount</u> \$	<u>Interest Rate</u> %	<u>Reoffering Price</u> *
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* Stated as a percentage of par.

SCHEDULE B
COPY OF UNDERWRITER'S BID
(attached)

[LETTERHEAD OF JONES HALL, APLC]

July 25, 2023

City Council
City of Berkeley
2180 Milvia Street
Berkeley, California 94704

OPINION: \$ _____ City of Berkeley, California
2023-24 Tax and Revenue Anticipation Notes

Members of the City Council:

We have acted as bond counsel to the City of Berkeley, California (the "City") in connection with the issuance by the City, of the tax and revenue anticipation notes captioned above, dated the date hereof (the "Notes"). In such capacity, we have examined such law and such certified proceedings, certifications and other documents as we deem necessary to render this opinion.

The Notes are issued pursuant to Article 7.6 (commencing with Section 53850) of Chapter 4, Part 1, Division 2, Title 5 of the California Government Code (the "Act"), and a resolution (the "Resolution") of the City Council of the City, adopted on June 27, 2023.

Regarding questions of fact material to our opinion, we have relied upon representations of the City in the Resolution, and on the certified proceedings and other certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation. Regarding certain questions of law material to our opinion, we have assumed the correctness of certain legal conclusions contained in the written opinions of City Attorney, and others, without undertaking to verify the same by independent investigation

Based on the foregoing, we are of the opinion that, under existing law:

1. The City is a duly created and validly existing municipal corporation and charter city with the power to adopt the Resolution, perform the agreements on its part contained therein and issue the Notes.

2. The Resolution constitutes a valid and binding obligation of the City, enforceable against the City.

3. Pursuant to the Act, the Resolution creates a first lien on funds pledged by the Resolution for the security of the Notes.

City of Berkeley
July 25, 2023
Page 2

4. The Notes have been duly authorized and executed by the City and are valid and binding general obligations of the City.

5. The interest on the Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax. It should be noted however that interest on the Notes may be subject to the corporate alternative minimum tax. The opinions set forth in the preceding sentences are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Notes in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The City has made certain representations and covenants in order to comply with each such requirement. Inaccuracy of those representations, or failure to comply with certain of those covenants, may cause the inclusion of such interest in gross income for federal income tax purposes, which may be retroactive to the date of issuance of the Notes.

6. The interest on the Notes is exempt from personal income taxation imposed by the State of California.

We express no opinion regarding any other tax consequences arising with respect to the ownership, sale or disposition of, or the amount, accrual or receipt of interest on, the Notes.

The rights of the owners of the Notes and the enforceability of the Notes are limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights generally, and by equitable principles, whether considered at law or in equity.

This opinion is given as of the date hereof, and we assume no obligation to revise or supplement this opinion to reflect any facts or circumstances that may hereafter come to our attention, or any changes in law that may hereafter occur. Moreover, our opinions are not a guarantee of a particular result, and are not binding on the Internal Revenue Service or any court; rather, our opinions represent our legal judgment based upon our review of existing law that we deem relevant to such opinions, and any assumptions expressed herein, and in reliance upon the representations, covenants and opinions referenced above. Our engagement with respect to this matter has terminated as of the date hereof.

Respectfully submitted,

A Professional Law Corporation

NEW ISSUE BOOK-ENTRY ONLY

RATING
S&P: "_____"
See "RATING."

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described in this Official Statement, under existing law, interest on the Notes is excluded from gross income for federal income tax purposes, and such interest is not an item of tax preference for purposes of the federal alternative minimum tax. In the further opinion of Bond Counsel, interest on the Notes is exempt from California personal income taxes. See "TAX MATTERS."



\$24,000,000*
CITY OF BERKELEY
2023-24 TAX AND REVENUE ANTICIPATION NOTES

Dated: Date of Delivery

Due: _____, 2024

The tax and revenue anticipation notes captioned above (the "Notes") will be issued in denominations of \$5,000 or any integral multiple thereof. Principal and interest on the Notes will be payable upon maturity. The Notes are to be delivered as fully registered Notes, without coupons and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York (as described in APPENDIX E – BOOK-ENTRY ONLY SYSTEM). DTC will act as securities depository of the Notes. Purchases will be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof. **The Notes are not subject to redemption prior to maturity.**

The Notes are by statute general obligations of the City of Berkeley, California (the "City"), payable solely from taxes, income, revenues, cash receipts and other moneys that are received by the City for its General Fund for fiscal year 2023-24 and that are generally available for the payment of current expenses and other obligations of the City (the "Unrestricted Moneys"). The Notes are secured by a pledge of Unrestricted Moneys to be received by the City in (a) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of January, 2024; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2024; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2024 (such pledged amounts being hereinafter called the "Pledged Revenues"). The Pledged Revenues will be deposited into, and held by the City in, a special fund designated "City of Berkeley, California, 2023-24 Tax and Revenue Anticipation Notes Special Account," as established in the City's Resolution adopted on [June 27], 2023.

Principal of and interest on the Notes are payable in lawful moneys of the United States of America upon maturity, and interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months and accrues from the date of delivery.

The Notes are legal investments for commercial banks in California and are eligible to secure deposits of public moneys in California.

THIS COVER PAGE CONTAINS CERTAIN INFORMATION FOR QUICK REFERENCE ONLY. IT IS NOT A SUMMARY OF THIS ISSUE. INVESTORS MUST READ THE ENTIRE OFFICIAL STATEMENT TO OBTAIN INFORMATION ESSENTIAL TO THE MAKING OF AN INFORMED INVESTMENT DECISION.

The following firm, serving as municipal advisor to the City, has structured this issue.



MATURITY SCHEDULE

Interest Rate

Reoffering Yield

CUSIP†

The Notes are offered when, as and if issued and received by the Purchaser, subject to the approval of legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel, and by the City Attorney. It is anticipated that the Notes, in definitive form, will be available for delivery through DTC in New York, New York on or about [July 25], 2023.

Dated July __, 2023

* Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

No dealer, broker, salesman or other person has been authorized by the City to give any information or to make any representations with respect to the Notes other than those contained in this Official Statement and, if given or made, such information or representation must not be relied upon as having been authorized by the City. This Official Statement does not constitute an offer to sell nor the solicitation of an offer to buy, nor shall there be any sale of the Notes by any person to make such offer, solicitation or sale.

This Official Statement is not to be construed as a contract with the purchasers of the Notes. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as a representation of facts.

The information set forth in this Official Statement has been obtained from sources that are believed to be reliable, but is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the Purchaser. The information and expressions of opinion stated in this Official Statement are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the information or opinions set forth herein or in the affairs of the City since the date hereof. This Official Statement is submitted in connection with the sale of the Notes referred to herein and may not be reproduced or used, in whole or in part, for any purpose, unless authorized in writing by the City.

The Notes have not been registered under the Securities Act of 1933, as amended (the "**Securities Act**"), in reliance upon an exemption contained in such Act. The Notes have not been registered under the securities laws of any state.

IN CONNECTION WITH THIS OFFERING, THE PURCHASER MAY OVERALLOT OR EFFECT TRANSACTIONS THAT STABILIZE OR MAINTAIN THE MARKET PRICE OF THE NOTES AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE PURCHASER MAY OFFER AND SELL THE NOTES TO CERTAIN DEALERS AND BANKS AT PRICES LOWER THAN THE PUBLIC OFFERING PRICE STATED ON THE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICE MAY BE CHANGED FROM TIME TO TIME BY THE PURCHASER.

Certain statements included or incorporated by reference in this Official Statement constitute "forward-looking statements" within the meaning of the United States Private Securities Litigation Reform Act of 1995, Section 21E of the Securities Exchange Act of 1934, as amended, and Section 27A of the Securities Act. Such statements are generally identifiable by the terminology used such as "plan," "expect," "estimate," "budget" or other similar words.

The Purchaser has provided the following sentence for inclusion in this Official Statement. The Purchaser has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Purchaser does not guarantee the accuracy or completeness of such information.

THE ACHIEVEMENT OF CERTAIN RESULTS OR OTHER EXPECTATIONS CONTAINED IN SUCH FORWARD-LOOKING STATEMENTS INVOLVE KNOWN AND UNKNOWN RISKS, UNCERTAINTIES AND OTHER FACTORS WHICH MAY CAUSE ACTUAL RESULTS, PERFORMANCE OR ACHIEVEMENTS DESCRIBED TO BE MATERIALLY DIFFERENT FROM ANY FUTURE RESULTS, PERFORMANCE OR ACHIEVEMENTS EXPRESSED OR IMPLIED BY SUCH FORWARD-LOOKING STATEMENTS. THE CITY DOES NOT PLAN TO ISSUE ANY UPDATES OR REVISIONS TO THOSE FORWARD-LOOKING STATEMENTS IF OR WHEN ITS EXPECTATIONS, OR EVENTS, CONDITIONS OR CIRCUMSTANCES ON WHICH SUCH STATEMENTS ARE BASED OCCUR.

Although the City maintains an internet website for various purposes, none of the information on that website is incorporated by reference in this Official Statement or is intended to assist investors in making any investment decision or to provide any continuing information with respect to the Notes or any other bonds or obligations of the City.

CITY OF BERKELEY, CALIFORNIA

ELECTED OFFICIALS

Jesse Arreguín, Mayor
Rashi Kesarwani, Councilmember District 1
Terry Taplin, Councilmember District 2
Ben Bartlett, Councilmember District 3
Kate Harrison, Councilmember District 4
Sophie Hahn, Councilmember District 5
Susan Wengraf, Councilmember District 6
Rigel Robinson, Councilmember District 7
Mark Humbert, Councilmember District 8

CITY OFFICIALS

Dee Williams-Ridley
City Manager

LaTanya Bellow
Deputy City Manager

Henry Oyekanmi
Director of Finance

Anne Cardwell
Deputy City Manager

Farimah Brown
City Attorney

Jenny Wong
City Auditor

PROFESSIONAL SERVICES

Municipal Advisor

NHA Advisors, LLC
San Rafael, California

Bond Counsel and Disclosure Counsel

Jones Hall, A Professional Law Corporation
San Francisco, California

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OFFICIAL STATEMENT

\$24,000,000*
CITY OF BERKELEY
2023-24 TAX AND REVENUE ANTICIPATION NOTES

INTRODUCTORY STATEMENT

This Official Statement, which includes the cover page, the appendices hereto and this introductory statement, is provided to furnish information in connection with the sale by the City of Berkeley, California (the “**City**”), of its 2023-24 Tax and Revenue Anticipation Notes (the “**Notes**”).

The Notes are issued in full conformity with the Constitution and laws of the State of California (the “**State**”), including Article 7.6, Chapter 4, Part 1, Division 2, Title 5 (commencing with Section 53850 of the Government Code of the State), (the “**Law**”) and under the Law are general obligations of the City payable solely from those taxes, income, revenues, cash receipts and other moneys that are received by the City for its General Fund (the “**General Fund**”) for fiscal year 2023-24 and that are generally available for the payment of current expenses and other obligations of the City (the “**Unrestricted Moneys**”). The Notes are authorized by a resolution adopted by the City Council on June 27, 2023 (the “**Resolution**”). The City may, under the Law, issue the Notes only if the principal of and interest on the Notes will not exceed 85% of the estimated amount of the uncollected Unrestricted Moneys that will be available for the payment of said Notes. Proceeds from the sale of the Notes will be deposited into a segregated account in the General Fund and used and expended by the City for any purpose for which it is authorized to expend funds from the General Fund.

THE NOTES

Description of the Notes

The Notes will be issued in the principal amount and at the interest rate shown on the cover page of this Official Statement. Principal of and interest on the Notes are payable in lawful moneys of the United States of America upon maturity, and interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months and accrues from the date of delivery.

The Notes will be dated the date of delivery and will mature on July 24, 2024. The Notes are to be delivered as fully registered Notes, without coupons, and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company (“**DTC**”), New York, New York. DTC will act as securities depository of the Notes. Purchases will be made in book-entry form only, in the principal amount of \$5,000 or any integral multiple thereof.

* Preliminary; subject to change.

Purpose of Issue

Proceeds of the Notes will provide moneys to meet the City's General Fund cash flow requirements during the 2023-24 fiscal year commencing July 1, 2023, and ending June 30, 2024, including current expenses, capital expenditures, and the discharge of other obligations or indebtedness.

Book-Entry Only System

DTC will act as securities depository for the Notes. The Notes will be issued as fully-registered certificates registered in the name of Cede & Co. (DTC's partnership nominee). One fully-registered certificate will be issued for each maturity of the Notes, each in the aggregate principal amount of such maturity, and will be deposited with DTC. See "APPENDIX E – BOOK-ENTRY ONLY SYSTEM."

So long as the Notes are registered in the name of Cede & Co., as nominee of DTC, all payments with respect to the principal and interest with respect to the Notes will be made to DTC as provided as in the representation letter delivered on the date of issuance of the notes. The City cannot and does not give any assurances that DTC, participants in DTC's book-entry only system ("**DTC Participants**") or others will distribute payments of principal, interest or premium, if any, with respect to the Notes paid to DTC or its nominee as the registered owner, or will distribute any prepayment notices or other notices, to the Beneficial Owners, or that they will do so on a timely basis or will serve and act in the manner described in this Official Statement. The City is not responsible or liable for the failure of DTC or any DTC Participant to make any payment or give any notice to a Beneficial Owner with respect to the Notes or an error or delay relating thereto.

SECURITY FOR AND SOURCES OF PAYMENT OF THE NOTES

Security for the Notes

The principal amount of the Notes, together with the interest thereon, is payable from Unrestricted Moneys, being the first taxes, income, revenue, cash receipts, and other moneys that are received by the City for the General Fund for fiscal year 2023-24 and which are generally available for the payment of current expenses and other obligations of the City. Estimated Unrestricted Moneys exceed estimated payment requirements by more than eight to one. See "THE NOTES – Available Sources of Payment."

As security for the repayment of principal of and interest on the Notes, the City has pledged to deposit into a special fund designated as the "2023-24 Tax and Revenue Anticipation Note Special Account" (the "**Special Account**") the first Unrestricted Moneys to be received by the City as follows: (a) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of January, 2024; (b) an amount equal to fifty percent (50%) of the principal amount of the Notes in the month of May, 2024; and (c) an amount sufficient to pay interest as due on the Notes at their maturity, in the month of June, 2024 (such pledged amounts, the "**Pledged Revenues**"). The Notes are equally and ratably secured by the City's pledge of the Pledged Revenues.

The principal of the Notes and the interest thereon shall constitute a first lien and charge against and shall be paid from the first moneys received by the City from such Pledged Revenues, and to the extent not so paid shall be paid from any other moneys of the City lawfully available

therefor. In the event there are insufficient Unrestricted Moneys received by the City to permit the deposits into the Special Account of the full amount of the Pledged Revenues to be deposited in the applicable month, by the last business day of such month, then the amount of such deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the payment of the Notes and the interest thereon.

All Pledged Revenues, as and when received, shall be deposited by the City into the Special Account, which will be held by the City for the payment of the principal of and interest on the Notes at maturity. Amounts deposited by the City into the Special Account shall be applied solely for the purpose of paying the principal of and interest on the Notes. Such amounts shall be invested by the City in legal investments, as permitted by Section 53601 of the Government Code of the State. See "CITY INVESTMENT POLICY AND PORTFOLIO."

Available Sources of Repayment

The Notes, in accordance with State law, are general obligations of the City, but are payable only out of Unrestricted Moneys, which include the taxes, income, revenues, cash receipts and other moneys that are received by the City for the General Fund for fiscal year 2023-24 and that are generally available for payment of current expenses and other obligations of the City. The Constitution of the State substantially limits the City's ability to levy ad valorem taxes. See "CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS." The City may, under existing law, issue the Notes only if the principal of, and interest on, the Notes will not exceed 85% of the estimated uncollected Unrestricted Moneys that will be available for the repayment of the Notes.

The Note coverage ratio is shown in the following table and is the ratio of estimated Unrestricted Moneys to the amount of Unrestricted Moneys needed to pay principal of and interest on the Notes.

The table below gives detail as to the sources of estimated Unrestricted Moneys and the Note Coverage Ratio.

**CITY OF BERKELEY
Estimated Unrestricted Moneys
Fiscal Year 2023-24**

<u>Source</u>	<u>Amount</u>
Available Cash Balance, July 1, 2021	\$68,755,415
Taxes (including property tax, sales tax and other taxes)	222,794,315
Other Revenue	74,430,566
Proceeds of the Notes ^{(1)*}	24,004,531
Transfers In	<u>14,246,281</u>
 TOTAL UNRESTRICTED MONEYS*	 \$404,231,107
 ESTIMATED PRINCIPAL PLUS INTEREST NEEDED FOR NOTE REPAYMENT*	 \$24,801,350
 NOTE COVERAGE RATIO*	 16.3x

* Preliminary; subject to change.

(1) Excluding purchaser's discount and costs of issuance.

Source: City of Berkeley Finance Department.

Monthly Cash Flows

The City has prepared the accompanying monthly General Fund cash flow statements covering fiscal year 2022-23 and the projected fiscal year 2023-24. The General Fund is used to finance the ordinary operations of the City and is available for any legal authorized purposes. While expenditures generally occur evenly throughout the fiscal year, cash receipts occur unevenly. As a result, the General Fund cash balance tends to show a deficit during parts of the fiscal year. The projections are based on the City's budget and current financial condition.

City of Berkeley
Fiscal Year 2022-23 Actual and Projected General Fund Cash Flows ⁽¹⁾

	July	August	September	October	November	December	January	February	March	April	May	June	TOTAL
Beginning Balance	\$1,951,374	\$4,539,579	\$2,071,381	(\$5,406,993)	(\$9,220,099)	\$36,055,241	\$29,124,949	\$33,148,004	\$52,454,488	\$87,364,185	\$86,194,794	\$68,755,415	\$1,951,374
CASH RECEIPTS													
Property Tax	\$8,367,660	\$6,092,350	\$2,211,295	\$6,500,498	\$45,309,511	\$1,241,510	\$1,116,654	\$12,283,900	\$26,835,967	\$3,705,092	\$6,493,468	\$124,205,086	\$8,367,660
Sales Tax	1,699,066	1,424,792	1,699,483	1,842,605	1,239,340	1,598,062	1,800,621	1,523,287	1,468,261	2,253,396	1,220,716	19,654,225	1,699,066
Other Taxes	3,676,685	2,297,588	3,432,967	3,230,678	11,592,370	5,482,967	12,960,005	13,317,414	16,687,704	2,348,458	1,612,180	78,935,004	3,676,685
License and Permits	148,072	74,387	76,437	49,486	50,517	59,409	74,557	44,042	42,643	419,293	217,794	1,412,436	148,072
Franchises	151,863	8,275	--	156,067	--	7,849	28,719	--	1,223,317	143,966	--	1,720,056	151,863
Subventions & Grants	--	46,916	7,221	21,896	35,375	--	9,371	194,696	--	--	194,718	551,226	--
Service Fees	860,937	755,822	900,975	685,710	716,845	287,617	1,280,683	911,954	661,900	876,511	627,819	9,095,309	860,937
Fines and Penalties	425,551	442,246	566,840	508,899	593,419	374,267	429,018	561,084	525,528	479,354	479,527	5,944,366	425,551
Rents and Royalties	28,454	18,655	23,909	21,873	10,055	13,802	15,714	21,768	20,211	20,211	20,310	230,421	28,454
Interest Income and CalPERS Discount	282,075	1,005,683	501,927	967,850	1,317,736	421,133	282,353	1,456,041	730,172	1,028,909	1,821,288	10,313,437	282,075
Miscellaneous	18,636	8,832	8,380	16,269	91,432	132,574	19,312	82,702	73,296	4,570	171,560	689,929	18,636
Transfers In/Indirect Costs	438,828	436,682	1,360,339	439,308	581,163	2,618,842	435,142	432,665	2,608,474	436,639	1,906,254	14,246,281	438,828
CalPERS Prepayments from Other Depts	3,421,030	3,421,030	3,421,030	3,421,030	5,131,545	3,421,030	3,421,030	3,421,030	3,421,030	5,131,545	4,105,236	44,473,386	3,421,030
TRAN Proceeds	--	--	--	--	--	--	--	--	--	--	--	--	--
TOTAL RECEIPTS	\$19,518,857	\$16,033,256	\$14,210,803	\$17,862,169	\$66,669,308	\$15,659,061	\$21,873,178	\$34,250,584	\$54,298,502	\$16,847,944	\$18,870,869	\$311,471,162	\$19,518,857
CASH DISBURSEMENTS													
General Government	\$3,559,188	\$2,908,099	\$2,841,442	\$2,685,409	\$2,684,839	\$3,764,414	\$3,097,071	\$2,946,611	\$3,266,735	\$3,116,670	\$3,468,888	\$5,579,997	\$39,919,362
Public Safety	7,910,046	10,112,631	10,331,663	10,879,156	9,915,165	14,083,376	10,746,613	10,017,939	10,156,444	9,808,182	9,701,978	17,774,348	131,437,541
Highways and Streets	202,542	432,255	793,841	399,360	750,722	490,557	216,595	423,318	409,686	303,306	184,651	429,463	5,036,297
Health and Human Service	864,602	1,220,600	1,639,662	1,103,704	1,263,666	1,494,102	1,304,754	1,369,436	1,171,534	1,307,607	1,056,149	3,563,134	17,358,949
Culture - Recreation	638,827	764,144	1,051,321	973,494	638,850	785,373	598,040	595,838	707,330	783,633	744,618	1,630,126	9,911,593
Urban Redevelopment/Housing	528,309	1,566,606	404,971	1,048,379	633,222	1,827,689	1,008,896	1,218,175	1,345,650	1,756,142	1,092,067	2,942,272	15,372,377
Econ Dev & Assistance	106,216	263,564	455,476	399,786	440,606	385,298	417,492	116,054	380,764	113,381	106,234	275,436	3,460,308
Debt Service	15,897,554	162,752	162,752	3,699,891	6,848,205	162,752	3,699,891	162,752	162,752	3,699,885	162,752	162,752	34,984,690
Debt Service: Workers Comp Loan Repayment	2,000,000	--	320,326	--	--	400,407	--	--	343,206	--	--	423,287	3,487,226
Debt Service: 2016 Parking Revenue Bonds	2,200,000	--	--	--	--	--	--	--	--	--	--	--	2,200,000
Transfers Out/Other	1,800,000	--	--	--	--	--	--	--	--	--	--	--	1,800,000
Transfer Out to Pension Section 115 Trust Fund	44,473,386	--	--	--	--	--	--	--	--	--	--	--	44,473,386
Transfer Out of Excess of Property Transfer Tax	--	--	--	--	--	--	--	--	--	--	--	--	--
Transfer Out to Stabilization Reserve Fund	--	--	--	--	--	--	--	--	--	--	--	--	--
Transfer Out to Catastrophic Reserve Fund	2,000,000	(500,000)	500,000	500,000	(1,500,000)	(2,000,000)	1,500,000	1,000,000	(3,000,000)	(1,500,000)	1,500,000	3,000,000	1,500,000
Prepayment to CalPERS	\$82,180,670	\$16,930,652	\$18,501,455	\$21,689,177	\$21,675,275	\$21,393,968	\$22,589,353	\$17,850,123	\$14,944,100	\$19,388,805	\$18,017,336	\$35,780,815	\$310,941,729
TRAN Principal Pledge	\$3,559,188	\$2,908,099	\$2,841,442	\$2,685,409	\$2,684,839	\$3,764,414	\$3,097,071	\$2,946,611	\$3,266,735	\$3,116,670	\$3,468,888	\$5,579,997	\$39,919,362
TRAN Interest Pledge	7,910,046	10,112,631	10,331,663	10,879,156	9,915,165	14,083,376	10,746,613	10,017,939	10,156,444	9,808,182	9,701,978	17,774,348	131,437,541
Advances from GF/(Repayment to GF)	202,542	432,255	793,841	399,360	750,722	490,557	216,595	423,318	409,686	303,306	184,651	429,463	5,036,297
TOTAL DISBURSEMENTS	864,602	1,220,600	1,639,662	1,103,704	1,263,666	1,494,102	1,304,754	1,369,436	1,171,534	1,307,607	1,056,149	3,563,134	17,358,949
Interfund Borrowings	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--
Net Cash Flow	(\$66,804,040)	\$2,588,205	(\$2,468,198)	(\$7,478,374)	(\$3,813,106)	\$45,275,340	(\$6,930,292)	\$4,023,055	\$19,306,484	\$34,909,697	(\$1,169,392)	(\$16,909,946)	\$529,433
Ending Balance	\$1,951,374	\$4,539,579	\$2,071,381	(\$5,406,993)	(\$9,220,099)	\$36,055,241	\$29,124,949	\$33,148,004	\$52,454,488	\$87,364,185	\$86,194,794	\$69,284,848	\$69,284,848

(1) Cash and investment balances provided in the table above represent the City's available cash balance (i.e., General Fund cash and investments less the Stabilization and Catastrophic Reserve Fund cash balances and short term liabilities).
 Source: City of Berkeley.

**City of Berkeley
Fiscal Year 2023-24 Projected General Fund Cash Flows ⁽¹⁾
(Including the Notes)**

	July	August	September	October	November	December	January	February	March	April	May	June	TOTAL
Beginning Balance	\$68,755,415	\$25,955,905	\$28,544,110	\$26,075,912	\$18,597,538	\$14,784,432	\$60,059,772	\$41,204,480	\$45,227,535	\$64,534,019	\$99,443,716	\$86,349,324	\$68,755,415
CASH RECEIPTS													
Property Tax	\$4,047,181	\$8,367,660	\$6,092,350	\$2,211,295	\$6,500,498	\$45,309,511	\$1,241,510	\$1,116,654	\$12,283,900	\$26,835,967	\$3,705,092	\$6,493,468	\$124,205,086
Sales Tax	1,884,596	1,699,066	1,424,792	1,699,483	1,842,605	1,239,340	1,598,062	1,800,621	1,523,287	1,468,261	2,253,396	1,220,716	19,654,225
Other Taxes	2,295,988	3,676,685	2,297,588	3,432,967	3,230,678	11,592,370	5,482,967	12,960,005	13,317,414	16,687,704	2,348,458	1,612,180	78,935,004
License and Permits	155,801	148,072	74,387	76,437	49,486	50,517	59,409	74,557	44,042	42,643	419,293	217,794	1,412,436
Franchises	--	151,863	8,275	--	156,067	--	7,849	28,719	--	1,223,317	143,966	--	1,720,056
Subventions & Grants	41,032	--	46,916	7,221	21,896	35,375	--	9,371	194,696	--	--	194,718	551,226
Service Fees	528,535	860,937	755,822	900,975	665,710	716,845	287,617	1,280,683	911,954	661,900	876,511	627,819	9,095,309
Fines and Penalties	558,632	425,551	442,246	566,840	508,899	593,419	374,267	429,018	561,084	525,528	479,354	479,527	5,944,366
Rents and Royalties	15,458	28,454	18,655	23,909	21,873	10,055	13,802	15,714	21,768	20,211	20,211	20,310	230,421
Interest Income and CalPERS Discount	498,271	282,075	1,005,683	501,927	967,850	1,317,736	421,133	282,353	1,456,041	730,172	1,028,909	1,821,288	10,313,437
Miscellaneous	62,367	18,636	8,832	8,380	16,269	91,432	132,574	19,312	82,702	73,296	4,570	171,560	689,929
Transfers In/Indirect Costs	2,551,946	438,828	436,682	1,360,339	439,308	581,163	2,618,842	435,142	432,665	2,608,474	436,639	1,906,254	14,246,281
CalPERS Prepayments from Other Depts	2,736,824	3,421,030	3,421,030	3,421,030	3,421,030	5,131,545	3,421,030	3,421,030	3,421,030	3,421,030	5,131,545	4,105,236	44,473,386
TRAN Proceeds	24,004,531	--	--	--	--	--	--	--	--	--	--	--	24,004,531
TOTAL RECEIPTS	\$39,381,161	\$19,518,857	\$16,033,256	\$14,210,803	\$17,862,169	\$66,669,308	\$15,659,061	\$21,873,178	\$34,250,584	\$54,298,502	\$16,847,944	\$18,870,869	\$335,475,692
CASH DISBURSEMENTS													
General Government	\$3,559,188	\$2,908,099	\$2,841,442	\$2,685,409	\$2,684,839	\$3,764,414	\$3,097,071	\$2,946,611	\$3,266,735	\$3,116,670	\$3,468,888	\$5,579,997	\$39,919,362
Public Safety	7,910,046	10,112,631	10,331,663	10,879,156	9,915,165	14,083,376	10,746,613	10,017,939	10,156,444	9,808,182	9,701,978	17,774,348	131,437,541
Highways and Streets	202,542	432,255	793,841	399,360	750,722	490,557	216,595	423,318	409,686	303,306	184,651	429,463	5,036,297
Health and Human Service	864,602	1,220,600	1,639,662	1,103,704	1,263,666	1,494,102	1,304,754	1,369,436	1,171,534	1,307,607	1,056,149	3,563,134	17,358,949
Culture - Recreation	638,827	764,144	1,051,321	973,494	638,850	785,373	598,040	595,838	707,330	783,633	744,618	1,630,126	9,911,593
Urban Redevelopment/Housing	528,309	1,566,606	404,971	1,048,379	633,222	1,827,689	1,008,896	1,218,175	1,345,650	1,756,142	1,092,067	2,942,272	15,372,377
Econ Dev & Assistance	106,216	263,564	455,476	399,786	440,606	385,298	417,492	116,054	380,764	113,381	106,234	275,436	3,460,308
Debt Service: Workers Comp Loan Repayment	15,897,554	162,752	162,752	3,699,891	6,848,205	162,752	3,699,891	162,752	3,699,885	162,752	162,752	162,752	34,984,690
Debt Service: 2016 Parking Revenue Bonds	2,000,000	--	320,326	--	--	400,407	--	--	343,206	--	--	423,287	3,487,226
Transfers Out/Other	2,200,000	--	--	--	--	--	--	--	--	--	--	--	2,200,000
Transfer Out to Pension Section 115 Trust Fund	1,800,000	--	--	--	--	--	--	--	--	--	--	--	1,800,000
Transfer Out of Excess of Property Transfer Tax	44,473,386	--	--	--	--	--	--	--	--	--	--	--	44,473,386
Transfer Out to Stabilization Reserve Fund	--	--	--	--	--	--	11,925,000	--	--	--	11,925,000	--	23,850,000
Transfer Out to Catastrophic Reserve Fund	--	--	--	--	--	--	--	--	--	--	--	951,350	951,350
Prepayment to CalPERS	2,000,000	(500,000)	500,000	500,000	(1,500,000)	(2,000,000)	1,500,000	1,000,000	(3,000,000)	(1,500,000)	1,500,000	3,000,000	1,500,000
TRAN Principal Pledge	\$82,180,670	\$16,930,652	\$18,501,455	\$21,689,177	\$21,675,275	\$21,393,968	\$34,514,353	\$17,850,123	\$14,944,100	\$19,388,805	\$29,942,336	\$36,732,165	\$335,743,079
TRAN Interest Pledge	\$3,559,188	\$2,908,099	\$2,841,442	\$2,685,409	\$2,684,839	\$3,764,414	\$3,097,071	\$2,946,611	\$3,266,735	\$3,116,670	\$3,468,888	\$5,579,997	\$39,919,362
Advances from GF/(Repayment to GF)	7,910,046	10,112,631	10,331,663	10,879,156	9,915,165	14,083,376	10,746,613	10,017,939	10,156,444	9,808,182	9,701,978	17,774,348	131,437,541
TOTAL DISBURSEMENTS	202,542	432,255	793,841	399,360	750,722	490,557	216,595	423,318	409,686	303,306	184,651	429,463	5,036,297
Interfund Borrowings	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--	\$--
Net Cash Flow	(\$42,799,510)	\$2,588,205	(\$2,468,198)	(\$7,478,374)	(\$3,813,106)	\$45,275,340	(\$18,855,292)	\$4,023,055	\$19,306,484	\$34,909,697	(\$13,094,392)	(\$17,861,296)	(\$267,387)
Ending Balance	\$25,955,905	\$28,544,110	\$26,075,912	\$18,597,538	\$14,784,432	\$60,059,772	\$41,204,480	\$45,227,535	\$64,534,019	\$99,443,716	\$86,349,324	\$68,488,028	\$68,488,028

(1) Cash and investment balances provided in the table above represent the City's available cash balance (i.e., General Fund cash and investments less the Stabilization and Catastrophic Reserve Fund cash balances and short-term liabilities).
Source: City of Berkeley.

CITY INVESTMENT POLICY AND PORTFOLIO

The authority to invest the City's funds is derived from a resolution adopted annually by the City Council delegating to the Director of Finance and the Treasurer of the City the authority to invest these funds within the guidelines of Section 53600 et seq. of the Government Code of the State (the "**Government Code**"). The Government Code also directs the City to present an annual investment policy (the "**Investment Policy**") for confirmation to the City Council. The City Council voted to affirm the Investment Policy and designate the investment authority on July 1, 2022. The Investment Policy may be revised by the City Council at any time.

The objectives of the Investment Policy are preservation of capital, liquidity and yield. The Investment Policy addresses the soundness of financial institutions in which the City may deposit funds, types of investment instruments permitted by the City and the Government Code, investment duration and the amount which may be invested in certain instruments. The Investment Policy also reflects and supports the City's policy positions on important social and environmental issues, as contained in formal City Council actions including the Nuclear-Free Berkeley Act, the Responsible Investment Ordinance, the Oppressive States Contract Resolution and Divestment from Publicly-Traded Fossil Fuel Companies and Gun Manufacturers and Tobacco companies. Summarized below are the permitted investments under the Investment Policy. These policies may further restrict investment options available to the City.

Authorized Investment Type	Maximum Maturity	Maximum Percentage/Dollar of Portfolio	Maximum Investment in One Issuer
Bank/Time Deposit Accounts	5 years	100%	N/A
Money Market Funds	N/A	100	N/A
Repurchase Agreements	1 year	10	N/A
Reverse Repurchase Agreements	7 days	10	N/A
Banker's Acceptances	7 days	40	30%
U.S. Government Securities (Treasury bills, Notes and Bonds)	10 years*	100	N/A
U.S. Agency Securities by Agency	10 years*	100	N/A
Negotiable Certificates of Deposit	10 years*	30	\$250,000
Local Agency Bonds	5 years*	100	N/A
Commercial Paper	180 days	25	\$5M or 2%
Medium Term Notes	10 years	30	30%
Public Bank Obligations	30 years*	10% of unrestricted investments	30%
	5 years	10% of unrestricted investments	N/A

Source: City of Berkeley

* Maturities over five years, up to 30 years, are authorized for Retiree Medical Plan Trust and debt service reserve funds.

As of March 31, 2023, the City portfolio included \$522,457,468 in pooled investments. The average life of the investments was 1,322 days and the weighted yield was 2.238%. The following is the market value of investments held by the City as of March 31, 2023:

<u>Security</u>	<u>Market Value</u>	<u>% of Total Portfolio</u>
Certificates of Deposit	\$497,698	0.1%
Medium Term Notes	124,256,703	23.8
Federal Agency	392,797,667	75.2
Municipal Bonds	4,905,400	0.9
TOTAL ⁽¹⁾ :	\$522,457,468 ⁽¹⁾	100.0%

(1) Totals do not sum due to rounding.

Source: City of Berkeley Finance Department.

SPECIAL RISK FACTORS

The following information should be considered by prospective investors in evaluating the Notes; however, this information does not purport to be an exhaustive listing of the risks and other considerations, which may be relevant to an investment in the Notes.

Bankruptcy Considerations

In 1994, Orange County, California issued its 1994-1995 Tax and Revenue Anticipation Notes (the “**Orange County Notes**”) under the same statutory authority as the Notes. On December 6, 1994, Orange County filed a petition in bankruptcy. Subsequently, Orange County declined to set aside the taxes and revenues it had pledged for the repayment of the Orange County Notes and a noteholder brought suit to compel Orange County to do so. A March 8, 1995, ruling of the United States Bankruptcy Court for the Central District of California, held that the lien securing the Orange County Notes did not attach to revenues received by Orange County after the filing of its bankruptcy petition on December 6, 1994, and therefore, Orange County was not required to set aside the revenues pledged under the note resolution following the bankruptcy. The Bankruptcy Court ruled that under the United States Bankruptcy Code (the “**Bankruptcy Code**”), the lien did not attach to revenues received by Orange County after December 6, 1994, because the lien was a consensual security interest rather than a statutory lien. In July 1995, the United States District Court for the Central District of California reversed the decision of the Bankruptcy Court. Orange County appealed the decision of the District Court to the United States Court of Appeals for the Ninth Circuit. Before the Ninth Circuit rendered a decision, the parties settled their disputes. Accordingly, if the City were to file for bankruptcy, it is not clear whether it would be required to set aside revenues pledged under the Resolution as described above.

In addition, the Pledged Revenues and other moneys that will be set aside to pay the Notes will be held in the City’s General Fund, and these funds will be invested in the pooled investment fund. Should the City go into bankruptcy, a court might hold that the owners of the Notes do not have a valid lien on the Pledged Revenues. In that case, unless the owners could “trace” the funds, the owners would merely be unsecured creditors of the City. There can be no assurance that the owners of the Notes could successfully so “trace” the Pledged Revenues.

Limitations on Remedies

The rights of the owners of the Notes are subject to the limitations on legal remedies against cities in the State, including a limitation on enforcement of judgments against funds needed to serve the public welfare and interest. Additionally, enforceability of the rights and remedies of the owners of the Notes and the obligations incurred by the City, may become subject to the following: the Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditor's rights generally, now or hereafter in effect; equity principles which may limit the specific enforcement under State law of certain remedies; the exercise by the United States of America of the powers delegated to it by the Constitution; and the reasonable and necessary exercise in certain exceptional situations, of the police powers inherent in the sovereignty of the State and its governmental bodies in the interest of serving a significant and legitimate public purpose. Bankruptcy proceedings, or the exercise of powers by the federal or State government, if initiated, could subject the owners of the Notes to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

COVID-19 Pandemic

The ongoing spread of the COVID-19 coronavirus pandemic, and responses intended to slow its spread, may result in material adverse impacts to the City and its finances. There can be no assurances that the spread of the virus and the related shelter in place orders and social distancing requirements imposed by the State of California, or other State or local mandates and/or other responses intended to slow its spread will not materially adversely impact the revenues received by the City.

The City is not yet able to fully predict the effect it COVID-19 may continue to have on the financial performance or operations of the City. The COVID-19 pandemic and the governmental actions to respond to it resulted in a significant contraction of the national, state and local economies, including with respect to unemployment rates. In addition, stock markets in the U.S. and globally experienced sharp declines in market value following the onset of the outbreak that were attributed to COVID-19 concerns and, although rebounds have since occurred, no assurance can be given as to the future impact of COVID-19 on the City.

The City cannot predict future impacts of COVID-19, or other pandemics, on the City and its finances. Future costs to the City could also be increased in the event that a sustained deterioration in global stock market values as an economic consequence of the COVID-19 pandemic negatively impacts the market value of assets held to fund the City's pension plans, requiring future unanticipated increases in required plan contributions. Accordingly, prospective investors should consider that COVID-19 may adversely impact the City and its finances.

Climate Change

The adoption by the State of the California Global Warming Solutions Act of 2006 (AB 32) and subsequent companion bills demonstrate the commitment by the State to take action and reduce greenhouse gases ("GHG") to 1990 levels by 2020 and 80% below 1990 levels by 2050. The State Attorney General's Office, in accordance with SB 375, now requires that local governments examine local policies and large-scale planning efforts to determine how to reduce greenhouse gas emissions. Additionally, the State adopted Senate Bill No. 32, which established a revised statewide GHG emission reduction target of 40% below 1990 levels by 2030.

The City is vulnerable to the impacts of climate change. The severity of these impacts will depend on the amount of greenhouse gas emissions produced worldwide over the coming decades and the City's ability to adapt to the changing climate. These impacts will continue to grow in intensity and will disproportionately affect vulnerable communities such as the elderly, children, people with disabilities, and people with low incomes. In order to mitigate climate change locally, the City developed the Berkeley Climate Action Plan (CAP). The CAP sets a target of achieving 80% GHG reductions below 2000 levels by 2050. The City also has goals to achieve net zero carbon emissions by 2050, become a fossil fuel free city, and reach 100% renewable electricity citywide by 2035. From 2000 to 2020, the City reduced its greenhouse gas emissions by 31% despite a population increase of approximately 18% in that same period. Community-wide emissions in 2019 decreased 26% from the 2000 baseline and decreased 4% from 2018. The City has moved beyond its initial emissions reduction goal and, on May 11, 2021, the City Council committed to become zero net emissions by 2045, requiring an additional 74% reduction of GHG emissions. The City's mitigation efforts include developing plans, programs and policies to:

- Reduce energy use in building construction and operation, in transportation by shifting travel to walking, biking, and transit, and by minimizing landfilled waste;
- Clean the electricity used in the City and
- Electrify transportation and buildings to significantly reduce natural gas and petroleum use.

It is also critical that the City adapt to current and projected climate change impacts, including sea level rise, drought, severe storms, and extreme heat, in order to protect its community, infrastructure, buildings, and economy. The City has several plans that address climate adaptation including the Local Hazard Mitigation Plan, the Resilience Strategy, and the Climate Action Plan. The City is also developing a sea level rise plan for the Berkeley Marina and a green infrastructure plan. Some key climate resilience actions that the City is taking include implementing green infrastructure projects and identifying opportunities for clean energy assurance solutions, such as solar plus storage, for buildings. The City also actively participates in regional organizations such as the Bay Area Climate Adaptation Network to develop regional strategies and solutions to adapt to climate change.

Climate change will have new, direct impacts and will also exacerbate existing local natural hazards. Rising sea levels have the potential to impact infrastructure and community members in west Berkeley and the Berkeley waterfront. This could increase the City's exposure to tsunami inundation and to flooding of critical infrastructure in these areas, which includes sanitary sewers, state highways, and railroad lines. Increased temperatures, when coupled with prolonged drought events, can increase the intensity of wildfires that may occur, and pose significant health and safety risks for vulnerable communities. Shorter, more intense wet seasons could make flooding more frequent, and may increase the landslide risk in the Berkeley hills. California may experience greater water and food insecurity, and drought may become a more persistent issue as the effects of climate change deepen.

Cybersecurity

The City and its departments face multiple cyber threats including, but not limited to, hacking, viruses, malware and other attacks on computers and other sensitive digital networks and systems. There have been, however, only limited cyber-attacks on the computer systems of the City. No assurances can be given that the security and operational control measures of the

City will be successful in guarding against any and each cyber threat and attack. The results of any attack on the computer and information technology systems could have a material adverse impact on the operations of the City and damage the digital networks and systems. The resulting costs and/or impacts on operations and General Fund revenues could be material.

CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS

Limitations on Revenues

Article XIII A of the California Constitution. Article XIII A of the State Constitution, adopted and known as Proposition 13, was approved by the voters in June 1978. Section 1(a) of Article XIII A limits the maximum ad valorem tax on real property to one percent of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State law. Section 1(b) of Article XIII A provides that the one-percent limitation does not apply to ad valorem taxes levied to pay interest and redemption charges on (i) indebtedness approved by the voters prior to July 1, 1978, or (ii) bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast on the proposition, or (iii) bonded indebtedness incurred by a school district or community college district for the construction, reconstruction, rehabilitation or replacement of school facilities or the acquisition or lease of real property for school facilities, approved by 55% of the voters of the district, but only if certain accountability measures are included in the proposition. The tax for payment of the City’s general obligation bonds falls within the exception for bonds approved by a two-thirds vote.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the fiscal year 1975-76 tax bill, or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred. The full cash value may be adjusted annually to reflect inflation at a rate not to exceed two percent per year, or to reflect a reduction in the consumer price index or comparable data for the area under taxing jurisdiction or may be reduced in the event of declining property value caused by substantial damage, destruction or other factors. Legislation enacted by the State Legislature to implement Article XIII A provides that, notwithstanding any other law, local agencies may not levy any ad valorem property tax except the 1% base tax levied by each County and taxes to pay debt service on indebtedness approved by the voters as described above.

Since its adoption, Article XIII A has been amended a number of times. These amendments have created a number of exceptions to the requirement that property be reassessed when purchased, newly constructed or a change in ownership has occurred. These exceptions include certain transfers of real property between family members, certain purchases of replacement dwellings for persons over age 55 and by property owners whose original property has been destroyed in a declared disaster, and certain improvements to accommodate disabled persons and for seismic upgrades to property. These amendments have resulted in marginal reductions in the property tax revenues of the City.

Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

Article XIII C and Article XIII D of the California Constitution. On November 5, 1996, the voters of the State approved Proposition 218, known as the “Right to Vote on Taxes Act.” Proposition 218 adds Articles XIII C and XIII D to the California Constitution and contains a number

of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges.

On November 2, 2010, California voters approved Proposition 26, entitled the "Supermajority Vote to Pass New Taxes and Fees Act." Section 1 of Proposition 26 declares that Proposition 26 is intended to limit the ability of the State Legislature and local government to circumvent existing restrictions on increasing taxes by defining the new or expanded taxes as "fees." Proposition 26 amended Articles XIII A and XIII C of the State Constitution. The amendments to Article XIII A limit the ability of the State Legislature to impose higher taxes (as defined in Proposition 26) without a two-thirds vote of the Legislature. The amendments to Article XIII C define "taxes" that are subject to voter approval as "any levy, charge, or exaction of any kind imposed by a local government," with certain exceptions.

Taxes. Article XIII C requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City ("**general taxes**") require a majority vote; taxes for specific purposes ("**special taxes**"), even if deposited in the City's General Fund, require a two-thirds vote. The voter approval requirements of Proposition 218 reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase such taxes in the future to meet increased expenditure needs.

Property-Related Fees, Charges and Assessments. Article XIII D also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments must confer a "special benefit," as defined in Article XIII D, over and above any general benefits conferred, (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party, and (iv) a prohibition against fees and charges which are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

Reduction or Repeal of Taxes, Fees and Charges. Article XIII C also removes limitations on the initiative power in matters of reducing or repealing local taxes, assessments, fees or charges. No assurance can be given that the voters of the City will not, in the future, approve an initiative or initiatives which reduce or repeal local taxes, assessments, fees or charges currently comprising a substantial part of the City's General Fund. If such repeal or reduction occurs, the City's ability to pay debt service on the Notes could be adversely affected.

Burden of Proof. Article XIII C provides that local government "bears the burden of proving by a preponderance of the evidence that a levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the reasonable costs of the governmental activity, and that the manner in which those costs are allocated to a payor bear a fair or reasonable relationship to the payor's burdens on, or benefits received from, the governmental activity." Similarly, Article XIII D provides that in "any legal action contesting the validity of a fee or charge, the burden shall be on the agency to demonstrate compliance" with Article XIII D.

Impact on City's General Fund. The approval requirements of Articles XIII C and XIII D reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be

given that the City will be able to impose, extend or increase the taxes, fees, charges or taxes in the future that the City may need to meet increased expenditure needs.

The City does not believe that any material source of General Fund revenue is subject to challenge under Articles XIIC or XIID.

Judicial Interpretation. The interpretation and application of Articles XIIC and XIID will ultimately be determined by the courts with respect to a number of the matters discussed below, and it is not possible at this time to predict with certainty the outcome of such determination.

Expenditures and Appropriations

Article XIIB of the California Constitution. In addition to the limits Article XIII A imposes on property taxes that may be collected by local governments, certain other revenues of the State and local governments are subject to an annual “appropriations limit” or “Gann Limit” imposed by Article XIIB of the State Constitution, which effectively limits the amount of such revenues that government entities are permitted to spend. Article XIIB, approved by the voters in June 1979, was modified substantially by Proposition 111 in 1990. The appropriations limit of each government entity applies to “proceeds of taxes,” which consist of tax revenues, state subventions and certain other funds, including proceeds from regulatory licenses, user charges or other fees to the extent that such proceeds exceed “the cost reasonably borne by such entity in providing the regulation, product or service.” “Proceeds of taxes” exclude tax refunds and some benefit payments such as unemployment insurance. No limit is imposed on the appropriation of funds which are not “proceeds of taxes,” such as reasonable user charges or fees, and certain other non-tax funds.

Article XIIB also does not limit appropriation of local revenues to pay debt service on bonds existing or authorized by January 1, 1979, or subsequently authorized by the voters, appropriations required to comply with mandates of courts or the federal government, appropriations for qualified capital outlay projects, and appropriation by the State of revenues derived from any increase in gasoline taxes and motor vehicle weight fees above January 1, 1990, levels. The appropriations limit may also be exceeded in cases of emergency; however, the appropriations limit for the three years following such emergency appropriation must be reduced to the extent by which it was exceeded, unless the emergency arises from civil disturbance or natural disaster declared by the Governor, and the expenditure is approved by two-thirds of the legislative body of the local government.

The State and each local government entity have their own appropriations limit. Each year, the limit is adjusted to allow for changes, if any, in the cost of living, the population of the jurisdiction, and any transfer to or from another government entity of financial responsibility for providing services. Each school district is required to establish an appropriations limit each year. In the event that a school district’s revenues exceed its spending limit, the district may increase its appropriations limit to equal its spending by taking appropriations limit from the State.

Proposition 111 requires that each agency’s actual appropriations be tested against its limit every two years. If the aggregate “proceeds of taxes” for the preceding two-year period exceed the aggregate limit, the excess must be returned to the agency’s taxpayers through tax rate or fee reductions over the following two years.

Future Initiatives

Article XIII A, Article XIII B, Article XIII C, Article XIII D and Proposition 111 were each adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiative measures could be adopted, further affecting City revenues or the City's ability to expend revenues. The nature and impact of these measures cannot be predicted by the City.

LEGAL OPINION

The statements of law and legal conclusions set forth in this Official Statement under the heading "TAX MATTERS" have been reviewed by Bond Counsel. Bond Counsel's employment is limited to a review of the legal proceedings required for the authorization of the Notes and to rendering the opinion discussed below. Such opinion will not consider or extend to any documents, agreements, representations, offering circulars or other material of any kind concerning the Notes not mentioned in this paragraph. Bond Counsel takes no responsibility for the accuracy, completeness or fairness of this Official Statement. Bond Counsel's compensation is contingent upon the delivery of the Notes. Certain legal matters will be passed upon for the City by the City Attorney.

TAX MATTERS

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to the qualifications set forth below, under existing law, the interest on the Notes is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax.

The opinions set forth in the preceding paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986, as amended (the "**Tax Code**") that must be satisfied subsequent to the issuance of the Notes. The City has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of such interest in gross income for federal income tax purposes to be retroactive to the date of issuance of the Notes.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public at which a Note is sold is less than the amount payable at maturity thereof, then such difference constitutes "**original issue discount**" for purposes of federal income taxes and State of California personal income taxes. If the initial offering price to the public at which a Note is sold is greater than the amount payable at maturity thereof, then such difference constitutes "**original issue premium**" for purposes of federal income taxes and State of California personal income taxes. *De minimis* original issue discount and original issue premium are disregarded.

Under the Tax Code, original issue discount is treated as interest excluded from federal gross income and exempt from State of California personal income taxes to the extent properly allocable to each owner thereof subject to the limitations described in the first paragraph of this section. The original issue discount accrues over the term to maturity of the Note on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). The amount of original issue discount accruing

during each period is added to the adjusted basis of such Notes to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Note. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Notes who purchase the Notes after the initial offering of a substantial amount of such maturity. Owners of such Notes should consult their own tax advisors with respect to the tax consequences of ownership of Notes with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such Notes under federal alternative minimum taxes.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Note (said term being the shorter of the Note's maturity date or its call date). The amount of original issue premium amortized each year reduces the adjusted basis of the owner of the Note for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Note is amortized each year over the term to maturity of the Note on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized Note premium is not deductible for federal income tax purposes. Owners of premium Notes, including purchasers who do not purchase in the original offering, should consult their own tax advisors with respect to State of California personal income tax and federal income tax consequences of owning such Notes.

In the further opinion of Bond Counsel, interest on the Notes is exempt from California personal income taxes.

Owners of the Notes should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Notes may have federal or state tax consequences other than as described above. Bond Counsel expresses no opinion regarding any federal or state tax consequences arising with respect to the Notes other than as expressly described above.

A copy of the proposed form of opinion of Bond Counsel is attached hereto as APPENDIX C.

CONTINUING DISCLOSURE

The City has covenanted for the benefit of the holders of the Notes to provide notices of the occurrence of certain enumerated events. The notices of enumerated events will be filed by the City with the Municipal Securities Rulemaking Board. The specific nature of the information to be contained in the notices of enumerated events is summarized under the caption "APPENDIX D – Form of Continuing Disclosure Certificate." These covenants have been made in order to assist the purchaser of the Notes in complying with Rule 15c2- 12(b)(5) promulgated under the Securities Exchange Act of 1934, as amended (the "Rule").

The City and its related governmental entities have previously entered into numerous disclosure undertakings under the Rule in connection with the issuance of long-term obligations. See Note 8 of the City's Annual Comprehensive Financial Report attached to this Official Statement as APPENDIX B.

In the previous five years, the City failed to timely file a material event notice in connection with a rating change for one series of the City's outstanding bonds. To ensure future compliance with its continuing disclosure undertakings, the City has developed procedures for including all required continuing disclosure information in the supplementary section of its audited financial statements. In addition, the City has engaged NHA Advisors, LLC, to review this information annually to ensure compliance with its continuing disclosure undertakings, including the undertaking to be entered into in connection with the Notes.

ABSENCE OF MATERIAL LITIGATION

No litigation is pending or threatened concerning the validity of the Notes, and a certificate to that effect will be furnished by the City at the time of the original delivery of the Notes. The City is not aware of any litigation pending or threatened questioning the political existence of the City or contesting the City's ability to receive ad valorem taxes or to collect other Unrestricted Moneys or contesting the City's ability to issue and retire the Notes.

There are a number of lawsuits and claims pending against the City. The aggregate amount of the uninsured liabilities of the City, and the timing of any anticipated payments of judgments that may result from suits and claims, will not, in the opinion of the City, materially affect the finances of the City or impair its ability to repay the Notes. A certificate of the City to this effect will be available at the time of original delivery of the Notes.

UNDERWRITING

The Notes were purchased by _____ (the “**Purchaser**”) at a price of \$ _____ (representing \$ _____ aggregate principal amount of the Notes plus a purchase premium of \$ _____, less a Purchaser’s discount of \$ _____). The purchase contract for the Notes provides that the Purchaser will purchase all the Notes if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in such purchase contract, the approval of certain legal matters by counsel and certain other conditions.

The Purchaser may offer and sell Notes to certain dealers and others at prices lower than the offering price stated on the cover page hereof. The offering price may be changed from time to time by the Purchaser.

MUNICIPAL ADVISOR

The City has retained NHA Advisors, LLC, San Rafael, California, as municipal advisor (the “**Municipal Advisor**”) in connection with the preparation of this Official Statement and with respect to the issuance of the Notes. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The Municipal Advisor is a municipal advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities. The Municipal Advisor’s compensation is contingent upon the delivery of the Notes.

RATING

S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC, has assigned a rating to the Notes as shown on the cover of this Official Statement. The City supplied certain information to the rating agency to be considered in evaluating the Notes. The rating issued reflects only the views of such rating agency, and any explanation of the significance of such rating should be obtained from the rating agency. There is no assurance that the rating will be retained for any given period of time or that the same will not be revised downward or withdrawn entirely by such rating agency if, in its judgment, circumstances so warrant. Any downward revision or withdrawal of the rating obtained may have an adverse effect on the market price of the Notes.

ADDITIONAL INFORMATION

The purpose of this Official Statement is to supply information to purchasers of the Notes. Quotations from and summaries and explanations of the Notes and the Resolution and of statutes and documents contained herein do not purport to be complete, and reference is hereby made to the Resolution, statutes and documents for full and complete statements of their provisions. Additional information can be obtained from the City's Director of Finance.

This Official Statement speaks only as of its date, and the information presented in this Official Statement is subject to change. Any statements in this Official Statement involving matters of opinion, whether or not expressly stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement among the City and any purchaser or owners of the Notes. This Official Statement and its distribution have been authorized and approved by the City Council of the City.

CITY OF BERKELEY

By: _____
City Manager

APPENDIX A

CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY

Introduction

The City of Berkeley, California (the “City”) is located in Alameda County (the “County”) on the east side of the San Francisco Bay, approximately 10 miles northeast of San Francisco. The City encompasses a total area of approximately 19 square miles and had an estimated population of 123,562 as of January 1, 2023, giving it the highest population density of any city in the East Bay. The City is defined to a large degree, both culturally and economically, by the presence of the University of California campus located on the eastern side of the City. The University of California is a major component of the City's economy, employing more than 227,000 full and part-time workers across all University of California campuses statewide.

The City is among the oldest in California. The City was founded in 1864, incorporated as a town in 1878, and incorporated as a city in 1909. The City's first charter was adopted in 1895.

Population

Population figures for the City, County and State for the last five years are shown in the following table.

**CITY OF BERKELEY
Population Estimates
As of January 1**

Year	City of Berkeley	County of Alameda	State of California
2019	122,297	1,659,608	39,605,361
2020	122,364	1,663,114	39,648,938
2021	120,418	1,663,371	39,286,510
2022	123,188	1,644,248	39,078,674
2023	123,562	1,636,194	38,940,231

Source: State Department of Finance estimates (as of January 1).

City Government

The City operates under a Council-Manager form of government. The City is governed by a nine-member City Council, eight of whom are elected by district, plus the Mayor, who is elected on a city-wide basis. The Mayor and the City Council members serve four-year terms. The Council appoints a City Manager who is responsible for daily administration of City affairs and preparation and submission of the annual budget under the direction of the Mayor and the City Council for the Mayor's submission to the City Council. The City Manager appoints a Director of Finance to supervise the City's financial affairs. The Director of Finance also serves as the City's Treasurer.

The City Attorney, City Clerk and Director of Finance are appointed by the City Manager subject to City Council approval. The City Auditor is elected at the same time as the Mayor. Current members of the City Council are shown below:

<u>Member</u>	<u>District</u>	<u>Term Expires</u>
Jesse Arreguín	Mayor	11/30/2024
Rashi Kesarwani	1	11/30/2026
Terry Taplin	2	11/30/2024
Ben Bartlett	3	11/30/2024
Kate Harrison	4	11/30/2026
Sophie Hahn	5	11/30/2024
Susan Wengraf	6	11/30/2024
Rigel Robinson	7	11/30/2026
Mark Humbert	8	11/30/2026

CITY FINANCIAL INFORMATION

Although the City is including information about the City’s finances in this Appendix A, it is important to understand that the Notes described in this Official Statement are voter-approved general obligations of the City payable solely from the levy and collection of ad valorem property taxes, unlimited as to rate or amount, and are not payable from the general fund of the City.

Possible Impacts of COVID-19

As described in this Official Statement, while indications are that the COVID-19 pandemic is transitioning to its endemic stage, many variables will continue to contribute to the economic impact of the COVID-19 pandemic and the recovery. The ultimate impact of COVID-19 on the City’s operations and finances is not fully known, and it may be some time before the full impact of the COVID-19 pandemic is known. The Notes described in this Official Statement are not secured by the City’s general fund, but rather are voter-approved general obligations of the City payable solely from the levy and collection of *ad valorem* property taxes, unlimited as to rate or amount, and are not payable from the general fund of the City. See “SPECIAL RISK FACTORS – COVID-19 Pandemic.”

Accounting Policies and Financial Reporting

The accounts of the City are organized on the basis of funds and account groups, to account for different activities. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures or expenses, as appropriate. Government resources are allocated to and accounted for in individual funds based upon the purposes for which they are to be spent and the means by which the spending activities are controlled. The City’s general fund and other governmental fund types use the modified accrual basis of accounting. All of the City’s other funds, including proprietary fund types and fiduciary fund types use the accrual basis of accounting. The basis of accounting for all funds is more fully explained in the “Notes to the Financial Statements” contained in APPENDIX B.

The City Council employs, at the beginning of each fiscal year, an independent certified public accountant who, at such time or times as specified by the City Council, at least annually, and at such other times as he or she shall determine, examines the combined financial statements of the City in accordance with generally accepted auditing standards, including such tests of the accounting records and such other auditing procedures as such accountant considers necessary. As soon as practicable after the end of the fiscal year, a final audit and report is submitted by such

accountant to the City Council and a copy of the financial statements as of the close of the fiscal year is published.

The City, all its funds and the funds of certain other component entities of the City are audited annually by a certified public accounting firm. The firm of Badawi and Associates, Certified Public Accounts, Oakland, California, is the City's current auditor (the "**Auditor**"). The annual comprehensive financial report of the City for fiscal year 2021-22 is attached hereto as APPENDIX B. *The City's financial statements are public documents and are included within this Official Statement without the prior approval of the Auditor.*

The Governmental Accounting Standards Board ("**GASB**") published its Statement No. 34 "Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments" on June 30, 1999. Statement No. 34 provides guidelines to auditors, state and local governments and special purpose governments such as school districts and public utilities, on new requirements for financial reporting for all governmental agencies in the United States. Generally, the basic financial statements and required supplementary information should include (i) Management's Discussion and Analysis; (ii) government-wide financial statements prepared using the economic measurement focus and the accrual basis of accounting and fund financial statements prepared using both the current financial resources measurement focus and the modified accrual method of accounting (governmental funds) and funds using the economic measurement focus and the accrual basis of accounting (proprietary funds) and (iii) required supplementary information. The City's financial statements are prepared in conformance with the requirements of Statement No. 34.

Comparative Financial Statements

The following tables provide a recent history of the City's Comparative Balance Sheet, and both a recent history of General Fund revenues, expenditures, transfers, and ending fund balances and recently budgeted amounts.

**CITY OF BERKELEY
GENERAL FUND BALANCE SHEET
(Fiscal Year Ending June 30)
(Dollar amounts in thousands)**

	<u>Actual 2018-19</u>	<u>Actual 2019-20</u>	<u>Actual 2020-21</u>	<u>Actual 2021-22</u>
ASSETS:				
Cash and investments in treasury*	\$107,360	\$136,050	\$146,849	\$171,955
Receivables (net of allowance as applicable)				
Accounts	4,980	3,131	4,782	5,384
Interest	778	398	834	1,078
Taxes	9,953	6,502	13,092	10,795
Subventions/grants	450	1,582	1	--
Due from other funds	6,973	7,533	12,814	17,740
Notes receivable	3,697	4,820	6,197	13,818
Other	320	5	5	5
Prepaid Items	--	--	--	--
Total assets	<u>134,512</u>	<u>160,020</u>	<u>184,574</u>	<u>220,776</u>
LIABILITIES:				
Accounts payable	6,736	8,755	10,444	7,094
Accrued salaries and wages	5,989	7,009	8,081	8,934
Accrued interest payable	--	694	740	445
Advances from other funds	4,059	3,113	1,760	814
Deposits held	781	770	921	886
Unearned revenue	--	--	--	--
Tax and revenue anticipation notes	14,000	34,780	42,405	44,660
Other liabilities	3,899	3,975	4,955	6,129
Total liabilities	<u>35,463</u>	<u>59,095</u>	<u>69,307</u>	<u>68,962</u>
Deferred Inflows of Resources	5,813	2,856	3,385	3,770
FUND BALANCES				
Reserved for:				
Assigned to	42,667	44,705	19,577	12,163
Nonspendable	--	--	--	--
Restricted and Committed	3,697	4,820	35,941	60,697
Unreserved/Unassigned, report in:				
General fund	46,872	48,544	56,364	75,184
Total fund balances	<u>92,236</u>	<u>98,069</u>	<u>111,882</u>	<u>148,043</u>
Total liabilities and fund balances	<u>\$135,512</u>	<u>\$160,020</u>	<u>\$184,574</u>	<u>\$220,776</u>

* Cash and investments in treasury includes restricted cash and investments.

Source: City of Berkeley, Annual Comprehensive Financial Reports.

CITY OF BERKELEY
STATEMENT OF GENERAL FUND
REVENUES, EXPENDITURES, TRANSFERS AND BALANCES
(Fiscal Year Ending June 30)
(Dollar amounts in thousands)

	<u>Actual</u> <u>2018-19</u>	<u>Actual</u> <u>2019-20</u>	<u>Actual</u> <u>2020-21</u>	<u>Actual</u> <u>202122</u>
REVENUES:				
Taxes	\$173,216	\$182,470	\$187,395	\$225,100
Licenses and Permits	1,405	2,099	1,805	1,580
Subvention and Grants/Intergovernmental	1,868	1,771	3,700	652
Service Fees	8,433	8,597	6,990	7,806
Fines and Forfeitures	5,443	4,166	3,579	4,967
Rents	289	203	189	294
Franchises	1,800	1,812	1,714	1,713
Private contribution	--	179	184	45
Interest	6,915	9,287	8,110	(10,069)
Other	<u>1,722</u>	<u>356</u>	<u>74</u>	<u>506</u>
TOTAL REVENUES	201,090	210,941	213,740	232,595
EXPENDITURES:				
General Government	27,410	24,693	27,357	29,693
Public Safety	103,084	118,793	120,179	124,901
Highways and Streets	2,904	2,289	3,163	3,833
Health and Human Services	13,319	20,423	19,320	17,897
Culture-Recreation	5,943	7,014	7,362	8,708
Community Development	8,264	9,041	9,258	12,693
Economic Development	2,845	5,879	2,534	3,005
Debt Service	<u>270</u>	<u>473</u>	<u>139</u>	<u>98</u>
TOTAL EXPENDITURES	164,040	188,605	189,313	200,827
Excess Revenues Over (Under) Expenditures	37,050	22,334	24,427	31,767
Transfers In(out)/Other	(27,699)	(17,502)	(10,614)	4,394
Net Change in Fund Balance	9,351	4,883	13,813	36,161
Fund Balance, July 1	83,885	93,236	98,069	111,882
Prior Period Adjustment	<u> </u>	<u> </u>	<u> </u>	<u> </u>
Fund Balance, June 30*	<u>\$93,236</u>	<u>\$98,069</u>	<u>\$111,882</u>	<u>\$148,043</u>

* Totals may not sum due to rounding.

Source: City of Berkeley Annual Comprehensive Financial Reports

General Fund Budget

Budgetary Process and Administration. The City employs a two-year budget process. In year one of the biennial budget cycle, the City Council formally adopts authorized appropriations for the first fiscal year and approves “planned” appropriations for the second fiscal year. In year two, the City Council considers revisions and formally adopts authorized appropriations for the second fiscal year. Although the budget cycle covers a two-year period, the City Charter requires that the City Council adopt an annual appropriations ordinance for each budget year.

From January to May of each year, the City Council meets publicly to discuss policies and priorities for the upcoming budget. The City Manager prepares a proposed budget based on input from department heads and presents this to the City Council by the first Monday in May of a budget year or as fixed by the City Council. The City also maintains additional budgetary controls to ensure compliance with the annual appropriated budget. The City Manager is authorized to transfer budgeted amounts within funds as deemed necessary to meet the City’s needs; however, revisions that alter the total budget or move amounts from one fund to another must be approved by the City Council.

Revenues and expenditures relating to the City’s general governmental operations are budgeted and accounted for in the City’s general fund, including public safety, highways and streets, health, housing and human services, culture and recreation, community development and economic development. General taxes and fees support most of these activities. The “business” or proprietary activities of the City are accounted for in each of eight enterprise funds, which include those established for Refuse Collection, Marina Operations, Sanitary Sewers, Clean Storm Water, Permit Service Center, Off-Street Parking, Parking Meter, and Building Purchases & Management. These activities are intended to be completely or largely self-supporting through user fees and charges.

The balance of this Appendix is concerned with the operations and performance of the City’s General Fund, unless otherwise noted.

Adopted Biennial Budget. The City generally adopts a biennial budget, adopting its Fiscal Years 2022-23 and 2023-24 biennial budget on June 28, 2022. For Fiscal Year 2022-23, the City authorized operating and capital budget expenditures of \$754.2 million based on revenues of approximately \$608.1 million. For Fiscal Year 2023-24, the City authorized operating and capital budget expenditures of \$726.0 million based on revenues of approximately \$604.0 million. In both fiscal years, prior year savings (accumulated fund balance), bond proceeds collected in prior fiscal years and/or anticipated grant funding offset the net increase in expenditures among the different funds to balance the budget.

The General Fund comprises less than one-half of the total budget, with the remainder of the budget consisting of various special funds that are restricted in purpose. Fifty-five percent of the City’s General Fund revenue is derived from real and unsecured property, sales and soda taxes, and business license taxes.

For Fiscal Year 2022-23, baseline revenues for the general fund are projected to be \$258.7 million, while baseline expenditures are projected to be \$280.7 million, resulting in a deficit of \$22 million. For Fiscal Year 2023-24, baseline revenues for the general fund are projected to be \$262.2 million, which baseline expenditures are projected to be \$274.0 million, resulting in a deficit of \$11.8 million. Accumulated fund balance, largely from Fiscal Year 2021-22 excess

property tax transfer, addressed the operational shortfall in both fiscal years, along with the use of remaining unspent American Rescue Plan Act funds in Fiscal Year 2023-24.

Preliminary Five-Year Forecast

On June 8, 2023, the Budget and Finance Policy Committee was presented with a preliminary five-year forecast, showing A structural annual deficit in Fiscal Years 2022-23 through 2026-27. The following table shows the projected revenues and expenditures over the next five fiscal years for the City’s General Fund and Special Funds.

**CITY OF BERKELEY
Preliminary Five-Year Forecast
Fiscal Years 2022-23 through 2026-27**

	<u>2022-23</u>	<u>2023-24</u>	<u>2024-25</u>	<u>2025-26</u>	<u>2026-27</u>
Beginning Fund Balance	\$71,577,871	\$65,156,400	\$56,294,337	\$32,248,907	\$14,807,120
Total Revenues	265,958,729	266,418,324	269,654,570	277,558,213	285,676,851
Total Expenditures	272,380,200	275,280,387	293,700,000	295,000,000	299,600,000
Annual Surplus/(Shortfall)	(6,421,471)	(8,862,063)	(24,045,430)	(17,441,787)	(13,923,149)
Projected Ending Balance	65,156,400	56,294,337	32,248,907	14,807,120	883,971

Source: City of Berkeley Annual Comprehensive Financial Reports

Given the decreasing level of precision to be expected in the later years of a multi-year forecast, the significance of the projections in the out years is not so much in terms of their absolute amounts, but rather in the relative size of the decrease or increase from the prior year. This information should be used to provide a multi-year perspective to budgetary decision-making, rather than as a precise prediction of what will occur.

General Fund Reserves

Establishment of General Fund Reserve. On December 13, 2016, the City Council adopted a General Fund reserve policy, establishing a General Fund reserve (the “Reserve”), to prepare for the impact of economic cycles and catastrophic events and assure fluctuations in revenue do not impede the City’s ability to meet expenditure obligations. When revenues fail to meet the City’s normal operating requirements, or the need for disbursements temporarily exceeds receipts, the Reserve, upon a 2/3 vote of the City Council, may be used in accordance with the standards set forth therein.

The Reserve is composed of two elements, a Stability Reserve and a Catastrophic Reserve:

- 1) A Stability Reserve is maintained to mitigate loss of service delivery and financial risks associated with unexpected revenue shortfalls during a single fiscal year or during a prolonged recessionary period. The purpose of the Stability Reserve is to provide fiscal stability in response to unexpected downturns or revenue shortfalls, and not to serve as a funding source for new programs or projects.

2) A Catastrophic Reserve is maintained for the purpose of sustaining General Fund operations in the case of a public emergency, such as a natural disaster or other catastrophic event. The Catastrophic Reserve will be used to respond to extreme, onetime events, such as earthquakes, fires, floods, civil unrest, and terrorist attacks. The Catastrophic Reserve will not be accessed to meet operational shortfalls or to fund new programs or projects.

The Reserve is accounted for in the Unassigned fund balance of the City's balance sheet.

Target Reserve Levels. 55% of the Reserve is allocated to the Stability Reserve and 45% to the Catastrophic Reserve.

The long-term goal for the Reserve is a minimum of 30% of the adopted General Fund revenues, to be achieved by 2026-27 ("**Long-Term Goal**"). Based on a risk assessment (according to best practices), to be updated at least every five years, the City Council may consider increasing or lowering the Reserve level.

As of July 1, 2023, the Stability Reserve is projected to have \$22,260,236, and the Catastrophic Reserve is projected to have \$16,894,828, which total 15.14% of adopted General Fund revenues, significantly below the long-term goal.

Replenishment of the General Fund Reserve. The City Manager will recommend a replenishment schedule for all monies proposed for appropriation from the Reserve. The replenishment schedule will be adopted simultaneous with the appropriation to withdraw Reserve funds or, if infeasible due to emergency circumstances, no more than three months from the date of the withdrawal appropriation. Repayment shall begin no more than five years from the date of withdrawal and be completed within 10 years from the date of withdrawal.

While staff envisions that, in most cases, repayment will start as soon as possible, the repayment guidelines are meant to reflect a commitment to maintain a sufficient Reserve, while also recognizing that a use of Reserve amounts may occur during an economic downturn, and it may be necessary to postpone repayment while the economy improves. In Fiscal Year 2021-22, the City repaid \$3,646,005 to the Stability Reserve, and \$3,025,000 is expected to be repaid in Fiscal Year 2022-23. In Fiscal Year 2021-22, the City repaid \$2,974,913 to the Catastrophic Reserve and \$2,475,000 is expected to be repaid in Fiscal Year 2022-23.

Unfunded Liability Obligations and Unfunded Infrastructure Needs

General. On February 23, 2023, the City Manager presented a biennial report of the City's unfunded liability obligations and unfunded infrastructure needs (the "**Report**"). The Report includes, among other things:

1. Employee and retiree benefit costs over a 10-year horizon
2. Costs for current active employees including:
 - a. total payroll costs for active employees during the current year;
 - b. projected payroll costs for the same number of employees for the next 10-year period.
3. A summary of all current City obligations including:
 - a. general obligation bonds;

- b. certificates of participation;
 - c. loans;
 - d. all other current long-term obligations.
4. Summary of all capital assets and infrastructure including:
- a. Appraisal of Public Buildings valued at \$5 million or more
 - b. Condition of Streets and Roads, projecting costs to bring streets and roads condition to an average Pavement Condition Index of 75 within 5 years.
 - c. Sewers: updated asset management plan for public sewers including projected costs for succeeding 5 years and projected revenue from sewer fees for the succeeding 5 years.

Certain provisions of the Report, which is available on the City's internet website but is not incorporated by reference herein, are described below. The link to the Report on the City's internet website is the following: [https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/ITEM%204%20SUPPLEMENTAL%20\(UNFUNDED%20LIABILITIES\).pdf](https://berkeleyca.gov/sites/default/files/legislative-body-meeting-attachments/ITEM%204%20SUPPLEMENTAL%20(UNFUNDED%20LIABILITIES).pdf). *The information contained within the website may not be current and is not incorporated in this Official Statement by reference.*

The Report concludes that maintaining a careful balance between cash on hand to fund daily operations and liquidity to cover unfunded liabilities is a key challenge for all governments, and reports that liabilities tied to benefits total \$613.8 million (of which only 72.0% is funded), and the City's unfunded infrastructure requires a total of \$2.23 billion.

Unfunded Liabilities. Due to projected increases in expenses, primarily pension and medical expenses, the City is projecting a General Fund structural deficit.

The City provides retirement benefits to its employees through three plans in the California Public Employees' Retirement System ("CalPERS"). See "- Retirement Programs" below for additional information. The City has a significant pension liability that is anticipated to grow, increasing by more than \$40 million over the next ten years, which will put a strain on resources and services.

In addition, the City's retiree health plans are significantly underfunded, as detailed in the Report.

Unfunded Infrastructure Needs. The City has an extensive portfolio of capital assets and infrastructure, including 95 buildings, 254 miles of public sanitary mains and 130 miles of sewer laterals, 216 centerline miles (450 lane miles) of public streets, 52 parks, 2 pools, 3 camps and 42 facilities served by the City's IT systems. In addition, Berkeley is a relatively older city, and faces related challenges with its aging infrastructure. Despite the passage of several local bond measures to support capital facilities, there are significant unfunded needs related to parks, pools, camps, waterfront property, streets, sidewalks, storm drain/watershed, sewer, transportation and buildings/facilities. As needed improvements continue to be deferred, operating and maintenance costs rise and rehabilitation and replacement costs increase substantially. The Report details available annual funding and unfunded needs for capital and major maintenance.

As a result of the age of the City's infrastructure and limited resources allocated to infrastructure, the projected costs of the City's aging infrastructure needs are anticipated to reach more than \$2.23 billion by Fiscal Year 2024-25.

The Report also highlights that the City is located on the east side of the San Francisco bay, and has waterfront property with docks, pilings, parking lots and streets that have reached the end of their useful life. The City's mechanism for managing its waterfront revenues and expenditures (the "**Marina Fund**") is projected to have insufficient funding due to decreasing revenues and increasing expenditures, a trend that could be aggravated by failure to maintain the marina infrastructure. The City has created the Berkeley Marina Area Specific Plan to address an estimated \$113 million in infrastructure repairs but has not identified any specific funding sources.

State Budget and its Impact on the City

Fiscal Year 2022-2023 State Budget. On January 10, 2022, the Governor released the proposed State budget for fiscal year 2023-24 (the "**Proposed 2023-24 State Budget**"). The Proposed 2022-2023 State Budget is anticipated to represent a \$286.4 billion operating budget that is balanced.

Voters approved Proposition 1A in November 2004 to amend the State Constitution to place constraints on the State's ability to divert certain specified revenues from local agencies to the State. Subsequently, in November 2010, voters approved Proposition 22 to amend the State Constitution to further constrain or eliminate the State's ability to redirect revenues from local agencies. "CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS – Proposition 1A" and "– Proposition 22."

Additional Information. Information about the Proposed 2023-24 State Budget and other State budgets is available at www.ebudget.ca.gov. An impartial analysis of the budget is posted by the Legislative Analyst Office at www.lao.ca.gov. In addition, various State official statements, many of which contain a summary of the current and past State budgets, may be found at the website of the State Treasurer, www.treasurer.ca.gov. *The information referred to in this paragraph is prepared by the respective State agency maintaining each website and not by the City. The City takes no responsibility for the continued accuracy of the Internet addresses or for the accuracy or timeliness of information posted there, and such information is not incorporated in this Official Statement by these references.*

Ad Valorem Property Taxes

Tax Levies and Collections. Property taxes collected by the City increased \$25.8 million, or 23.0%, to \$138.4 million in fiscal 2021-22, up from \$112.6 million in fiscal year 2020-21, primarily as a result of increases in the following revenue sources:

- Real property taxes increased \$2.5 million, or 3.7%, to \$70.6 million in fiscal year 2021-22, up from \$68.1 million in fiscal year 2020-21. This increase was consistent with the fiscal year 2021-22 increase in assessed valuation of 4.48%.
- Property transfer taxes increased \$13.2 million, or 50.0%, to \$39.6 million in fiscal year 2021-22, up from \$26.4 million in fiscal year 2020-21. This resulted primarily from a 59.7% increase in the dollar value of property sales during fiscal year 2021-22.
- Property transfer tax-Measure P increased \$8.9 million, or 76.1%, to \$20.6 million in fiscal year 2021-22, from \$11.7 million in fiscal year 2020-21. This

increase resulted from an 88.6% increase in the dollar value of property sales for properties selling for more than \$1.5 million in fiscal year 2021-22.

- Vehicle in-lieu taxes increased \$0.6 million, or 4.4%, in fiscal year 2021-22, to \$15.0 million from \$14.4 million in fiscal year 2020-21. This was consistent with the 4.48% increase in fiscal year 2021-22 assessed values reported by the County.

Taxes are levied for each fiscal year on taxable real and personal property that is situated in the City as of the preceding January 1. A supplemental roll is developed when property changes hands, which produces additional revenue.

A ten percent penalty attaches to any delinquent payment for secured roll taxes. In addition, property on the secured roll with respect to which taxes are delinquent becomes tax-defaulted. Such property may thereafter be redeemed by payment of the delinquent taxes and the delinquency penalty, plus a redemption penalty to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to auction sale by the County Tax Collector.

In the case of unsecured property taxes, a 10% penalty attaches to delinquent taxes on property on the unsecured roll, and an additional penalty of 1.5% per month begins to accrue beginning November 1 of the fiscal year, and a lien is recorded against the assessee. The taxing authority has four ways of collecting unsecured personal property taxes: (1) a civil action against the taxpayer; (2) filing a certificate in the office of the County Clerk specifying certain facts in order to obtain a judgment lien on specific property of the taxpayer; (3) filing a certificate of delinquency for recording in the County Recorder's office in order to obtain a lien on specified property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee.

The County levies (except for levies to support prior voter-approved indebtedness) and collects all property taxes for property falling within that county's taxing boundaries. The City does not participate in the Teeter Plan.

Other General Fund Revenues and Transfers

In addition to property taxes, the City has several other major tax and fee revenue sources, as described below. The following table summarizes the City's actual audited general fund revenues and transfers from fiscal year 2018-19 through fiscal year 2021-22.

**CITY OF BERKELEY
GENERAL FUND REVENUES AND TRANSFERS**

	Actual Revenue <u>FY 2019</u>	Actual Revenue <u>FY 2020</u>	Actual Revenue <u>FY 2021</u>	Actual Revenue <u>FY 2022</u>
Real Property	\$59,178,773	\$63,192,678	\$68,166,155	\$70,657,482
Unsecured Property	2,878,275	3,164,168	3,448,412	4,422,414
Supplemental Taxes	2,174,903	2,334,597	2,249,517	2,317,723
Property Transfer Tax	19,952,981	22,095,507	21,469,955	42,901,750
Property Transfer Tax-Measure P	2,932,313	9,512,603	10,919,576	20,591,313
Sales Tax	18,663,550	17,557,539	15,792,305	18,928,278
Soda Tax	1,547,349	1,331,313	953,069	1,025,800
Business License	19,848,804	20,863,685	17,809,332	20,324,937
Business License – Cannabis Recreation	1,168,794	1,300,887	1,712,641	1,250,792
Measure U1	4,828,443	5,597,359	4,818,740	4,913,872
Utility Users Tax	13,973,744	13,475,915	13,892,200	14,750,065
Hotel Tax	7,995,188	6,387,495	2,292,480	5,727,046
Vehicle In-Lieu	12,540,784	13,356,044	14,380,453	15,006,003
Parking Fines	6,002,211	3,900,595	3,571,391	4,765,819
Moving Violations	177,824	200,894	131,756	156,253
Interest	4,334,404	6,702,564	5,917,722	6,694,122
Ambulance Fees	4,424,808	4,996,193	3,081,204	3,833,730
Franchise Fees	1,821,316	1,839,102	1,726,470	1,720,056
Other Revenue	18,662,025	20,074,732	18,514,060	17,185,630
Transfers	<u>5,356,132</u>	<u>5,386,188</u>	<u>21,180,762</u>	<u>29,445,571</u>
TOTAL	<u>\$208,462,620</u>	<u>\$223,364,309</u>	<u>\$232,028,200</u>	<u>\$286,618,657</u>

Source: City of Berkeley Budget Office. Revenues were recorded using the budget basis of accounting (i.e., Cash).

Sales and Use Tax. The sales tax is an excise tax imposed on retailers for the privilege of selling or leasing tangible personal property. The use tax is an excise tax imposed for the storage, use, or other consumption of tangible personal property purchased from any retailer. The total sales tax rate within the City is currently 9.25%. The proceeds of sales and uses taxes imposed within the City are distributed by the State to various agencies, with the City receiving 1.0% of the amount collected.

Collection of the sales and use tax is administered by the California Department of Tax and Fee Administration (the “CDTFA”). This process was formerly administered by the State Board of Equalization. The Taxpayer Transparency and Fairness Act of 2017, which took effect July 1, 2017, restructured the State Board of Equalization and separated its functions among three separate entities: the State Board of Equalization, the CDTFA and the Office of Tax Appeals. The State Board of Equalization will continue to perform the duties assigned to it by the state Constitution, while all other duties will be transferred to the newly established CDTFA and the Office of Tax Appeals. CDTFA will handle most of the taxes and fees previously collected by the State Board of Equalization, including sales and use tax. According to the CDTFA, it distributes quarterly tax revenues to local jurisdictions (like the City) using the following method:

Using the prior year’s like quarterly tax allocation as a starting point, the CDTFA first eliminates nonrecurring transactions such as fund transfers, audit payments and refunds, and then adjusts for growth, in order to establish the estimated base amount. The CDTFA disburses 90% of the base amount to each local jurisdiction in three monthly installments (advances) prior to the final computation of the quarter’s actual receipts. Ten

percent is withheld as a reserve against unexpected occurrences that can affect tax collections (such as earthquakes, fire or other natural disaster) or distributions of revenue such as unusually large refunds or negative fund transfers. The first and second advances each represent 30% of the 90% distribution, while the third advance represents the remaining 40%. One advance payment is made each month, and the quarterly reconciliation payment (clean-up) is distributed in conjunction with the first advance for the subsequent quarter. Statements showing total collections, administrative costs, prior advances and the current advance are provided with each quarterly clean-up payment.

The CDTFA receives an administrative fee based on the cost of services provided by the Board to the City in administering the City's sales tax, which is deducted from revenue generated by the sales and use tax before it is distributed to the City.

Sales tax revenues increased \$2.4 million or 13.4% to \$19.98 million in fiscal year 2021-22 from \$17.62 million in fiscal year 2020-21. The City currently projects that sales tax revenue will increase by 4.07% and 2.0%, respectively in fiscal years 2023-24 and 2024-25.

**CITY OF BERKELEY
TAXABLE TRANSACTIONS
(Figures in Thousands)**

	2018	2019	2020	2021	2022
Retail and Food Services:					
Apparel Stores	\$52,991	\$42,772	\$20,385	\$37,143	\$43,166
Gen. Merchandise Stores	20,782	21,434	16,902	19,066	22,498
Food Stores	149,662	155,025	169,569	144,467	115,170
Eating and Drinking Places	374,792	391,474	208,146	283,279	366,323
Home Furnishings and Appliances	69,746	66,188	45,479	87,133	59,435
Bldg. Materials, Farm Implements	109,052	101,937	113,116	141,811	152,845
Auto Dealers, Auto Supplies	119,883	119,679	94,927	114,276	135,123
Gas/Service Stations	93,694	94,217	57,950	87,759	110,009
Other Retail Stores	<u>262,209</u>	<u>261,020</u>	<u>188,434</u>	<u>236,279</u>	<u>245,362</u>
Total Retail and Food Services	1,252,813	1,263,746	914,910	1,151,213	1,249,931
All Other Outlets	<u>361,292</u>	<u>372,108</u>	<u>315,081</u>	<u>341,988</u>	<u>431,788</u>
TOTAL ALL OUTLETS	<u>1,614,105</u>	<u>\$1,635,854</u>	<u>\$1,229,990</u>	<u>\$1,493,201</u>	<u>\$1,681,719</u>

Source: State Department of Tax and Fee Administration.

Factors that have historically affected sales tax revenues include the overall economic growth of the Bay Area, competition from neighboring cities, the growth of specific industries within the City, the City's business attraction and retention efforts, and catalog and Internet sales.

Utility Users Tax. The City imposes a 7.5% tax on users of gas, electricity and telephone, as well as cellular telephone services for billing addresses within the City. The tax is not applicable to State, County, or City agencies, or to insurance companies and banks. Some of the factors affecting this revenue stream include consumer demand for these utilities, legislative and regulatory action, rate changes, and the evolution of technology. Approximately 62% of the utility users tax revenue is generated from utility usage from gas and electric services and 38% from telecommunications during fiscal year 2021-22. For fiscal year 2021-22, utility users tax revenue totaled \$15.0 million, which was \$1.1 million or 8.1% more than the \$13.9 million received in fiscal year 2020-21. Utility users tax is projected to decrease in fiscal year 2022-23 by approximately 6.44% and level off in fiscal year 2023-24, before increasing slightly in fiscal year 2024-25.

Business License Tax. The City requires all businesses within the City to be licensed and imposes a business license tax on all business locations and a new license registration fee on applicants for a new license. The annual tax is generally determined based on the type of business and the business's gross receipts. The tax rate varies between \$0.60 per \$1,000 gross receipts for grocers, on the low end, and \$50.00 per \$1,000 gross receipts for adult cannabis sales on the high end. Most types of businesses are required to pay a minimum tax of at least \$51 per year. The overall revenue from this tax is dependent on the number of license renewals each year and the growth of businesses and industries within the City and the Bay Area more generally. The City is currently projecting a decrease of approximately 6.88% of business license tax in fiscal year 2022-23 and then remain flat in fiscal year 2023-24 before increasing by 2.0% in fiscal year 2024-25.

Property Transfer Tax. The City's transfer tax rate is 1.5% for properties with a consideration up to \$1.8 million and 2.5% for transferred properties with a consideration over \$1.5 million. The \$1.5 million threshold will be adjusted annually to capture approximately the top 33% of such transfers based on transfers that occurred in the 12 months preceding September 1 of the preceding year. However, the threshold cannot be reduced below \$1.5 million, meaning that the tax on properties transferred for \$1.5 million or less would remain at 1.5%, notwithstanding any adjustment. The tax is due when the transfer is recorded with the County. Title companies collect the tax as part of the sale closing process and remit the funds to the County when sales or transfers are finalized. The County remits the amounts due monthly, and the amounts are credited to the general fund. A buyer of residential housing built before 1989 may voluntarily choose to reserve up to one-third of the transfer tax to perform seismic upgrades. Buyers typically have up to one year to complete the work and file for a rebate. Previously, title companies held the reserved amount in escrow until the work was completed, but since May 2007, the City has held the money in escrow accounts, with the interest going to the City.

Prior to fiscal year 2017-18, it was the City Council's policy that property transfer tax in excess of \$10.5 million was treated as one-time revenue to be transferred to the Capital Improvement Fund for capital infrastructure needs, but that amount was increased to \$12.5 million in fiscal year 2017-18.

Parking Fines. The City issues and adjudicates citations and civil penalties for parking violations through its own administrative structure. It has a great degree of control over the administration of parking fines, although issuing agencies within the County try to standardize parking penalties to the extent possible. Revenue from parking fines is affected by the penalties imposed for violations, the number of employees issuing tickets, how many tickets employees are able to issue, and the number of working parking meters, among other factors. Currently, the City must remit an additional \$12.50 per citation to the State/County for State and County construction funds, Maddy emergency medical fund, and DNA identification fund.

Vehicle in Lieu Fees. Vehicle license fees ("VLF") imposed for the operation of vehicles on state highways are collected by the State Department of Motor Vehicles in lieu of personal property taxes on vehicles. In connection with the offset of the VLF, the State Legislature authorized appropriations from the State General Fund to "backfill" the offset so that local governments, which receive all of the vehicle license fee revenues, would not experience any loss of revenues. The legislation that established the VLF offset program also provided that if there were insufficient State General Fund moneys to fully "backfill" the VLF offset, the percentage offset would be reduced proportionately (i.e., the license fee payable by drivers would be increased) to assure that local governments would not be underfunded.

As part of the 2004 Budget Act negotiations, an agreement was made between the State and local government officials under which the VLF rate was permanently reduced from 2% to 0.65%. In order to protect local governments, the reduction in VLF revenue to cities and counties from this rate change was replaced by an increase in the amount of property tax they receive. Commencing in fiscal year 2004-05, local governments began to receive their full share of replacement property taxes, and those replacement property taxes now enjoy constitutional protection against certain transfers by the State because of the approval of Proposition 1A at the November 2004 election.

As a part of its fiscal year 2009-10 budget, California increased the vehicle license fee from 0.65% to 1.15% for registration fees due on or after the May 19, 2009 special election. This provision expired on July 1, 2011. On July 1, 2011, vehicle license fees returned to 0.65%, and the City is unaware of any current State legislative efforts likely to increase these in fees in the future.

Vehicle in-lieu taxes increased \$0.63 million or 4.35% in fiscal year 2021-22 to \$15.0 million from \$12.4 million in fiscal year 2021-22. This was consistent with the 4.5% increase in fiscal year 2020-21 assessed values reported by the County.

Other Revenues. The City also collects additional general fund revenues from franchise fees, transient occupancy taxes, ambulance fees, a tax on sugar-sweetened beverages, and other more minor sources. Under the City's cable and electric and gas franchise fee arrangements, the local cable provider pays an annual franchise fee of 5% of gross revenues, and the electricity and gas providers pay the greater of 2% of gross receipts attributable to miles of line operated or 0.5% of gross receipts. The transient occupancy tax, also known as the hotel tax, is a 12% tax on the room charge for rental of transient lodging, which was significantly reduced due to restrictions on travel and events due to COVID-19. The City also has an agreement with the County to be the exclusive provider of all emergency ground ambulance services within the City; the specific ambulance fee depends on the type of service delivered and is billed to clients or their insurance companies. Finally, other more minor revenue sources include payments for moving violations, interest on existing funds, and other service fees.

Retirement Programs

PERS Plan Description. The City contributes to three plans in California Public Employees' Retirement System ("PERS"). The first plan covers all of the City's full-time and part-time benefited sworn uniformed fire employees and all chiefs (and is referred to as the Safety Fire Plan in this Official Statement). The second covers all of the City's full-time and part-time benefited sworn uniformed police employees and all chiefs (and is referred to as the Safety Police Plan in this Official Statement). The third plan covers all remaining eligible City employees (and is referred to as the Miscellaneous Plan in this Official Statement). These plans are agent multiple-employer defined benefit pension plans administered by PERS, which acts as a common investment and administrative agent for participating public employers within the State of California.

PERS Plan Eligibility. For a more detailed discussion of the eligibility requirements for the City's PERS retirement plans, see Appendix B, Note 12.

PERS Plan Contributions. The City is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members. The actuarial methods and assumptions used are those adopted by the PERS Board of Administration (the "**Board of Administration**"). For the measurement period ended June 30, 2021 (the measurement date),

the average active employee contribution rate is 8.0% of annual pay for the Miscellaneous Plan and 9.0% of annual pay for the Safety Plan (Fire and Police), and the employer contribution rate is 32.479% of annual payroll for the Miscellaneous Plan, 48.235% of annual payroll for the Public Safety Fire Plan, and 66.606% of annual payroll for the Public Safety Police Plan. The contribution requirements of the plan members are established by State statute, and the employer contribution rates are established and may be amended by PERS.

Implementation of GASB Nos. 68. Commencing with fiscal year ended June 30, 2015, the City implemented the provisions of GASB Statement Nos. 68, which require certain new pension disclosures in the notes to its audited financial statements commencing with the audit for fiscal year 2014-15. Statement No. 68 generally requires the City to recognize its proportionate share of the unfunded pension obligation by recognizing a net pension liability measured as of a date (the measurement date) no earlier than the end of its prior fiscal year. As a result of the implementation of GASB Statement Nos. 68, the City reflected a restatement of its beginning net position as of July 1, 2014.

For a more detailed discussion of the eligibility requirements for the City's retirement plans, see Appendix B, Note 12 for detailed information about the actuarial assumptions underlying the contributions. The City's fiscal year 2021-22 contributions to the pension plans and the funded status of the pension plans are set forth below.

Fiscal Year Ended	Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability	Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	Covered Employee Payroll	Plan Net Pension Liability as a Percentage of Covered Employee Payroll	Contributions Employer
PERS – Miscellaneous Plan							
6/30/2021	\$1,150,466,172	\$946,389,527	\$204,076,645	82.26%	\$106,633,060	191.38%	\$26,643,623
PERS – Public Safety Fire Plan							
6/30/2021	\$299,157,455	\$248,128,384	\$51,029,071	82.94%	\$18,330,455	278.38%	\$9,176,919
PERS – Public Safety Police Plan							
6/30/2021	\$463,555,530	\$332,552,929	\$131,002,601	71.74%	\$25,356,914	516.63%	\$16,765,193

Recent Actions by PERS. At its April 17, 2013, meeting, the Board of Administration approved a recommendation to change the PERS amortization and smoothing policies. Prior to this change, PERS employed an amortization and smoothing policy that spread investment returns over a 15-year period with experience gains and losses paid for over a rolling 30-year period. After this change, PERS will employ an amortization and smoothing policy that will pay for all gains and losses over a fixed 30-year period with the increases or decreases in the rate spread directly over a 5-year period. The new amortization and smoothing policy were used for the first time in the June 30, 2013, actuarial valuations in setting employer contribution rates for fiscal year 2015-16.

On February 18, 2014, the Board of Administration approved new demographic actuarial assumptions based on a 2013 study of recent experience. The largest impact, applying to all benefit groups, is a new 20-year mortality projection reflecting longer life expectancies and that longevity will continue to increase. Because retirement benefits will be paid out for more years,

the cost of those benefits will increase as a result. The Board of Administration also assumed earlier retirements for Police 3% at 50, Fire 3% at 55, and Miscellaneous 2.7% at 55 and 3% at 60, which will increase costs for those groups. As a result of these changes, rates will increase beginning in fiscal year 2016-17 (based on the June 30, 2014, valuation) with full impact in fiscal year 2020-21.

On November 18, 2015, the Board of Administration adopted a funding risk mitigation policy intended to incrementally lower its discount rate - its assumed rate of investment return - in years of good investment returns, help pay down the pension fund's unfunded liability, and provide greater predictability and less volatility in contribution rates for employers. The policy establishes a mechanism to reduce the discount rate by a minimum of 0.05 percentage points to a maximum of 0.25 percentage points in years when investment returns outperform the existing discount rate, currently 7.5%, by at least four percentage points. PERS staff modeling anticipates the policy will result in a lowering of the discount rate to 6.5% in about 21 years, improve funding levels gradually over time and cut risk in the pension system by lowering the volatility of investment returns. More information about the funding risk mitigation policy can be accessed through PERS' web site at the following website address: <https://www.calpers.ca.gov/page/newsroom/calpers-news/2015/adopts-funding-risk-mitigation-policy>. *The reference to this Internet website is provided for reference and convenience only. The information contained within the website may not be current, has not been reviewed by the City and is not incorporated in this Official Statement by reference.*

On December 21, 2016, the Board of Administration voted to lower its discount rate from the current 7.5% to 7.0% over three years according to the following schedule.

<u>Fiscal Year</u>	<u>Discount Rate</u>
2018-19	7.375%
2019-20	7.250
2020-21	7.000

For public agencies like the City, the new discount rate would take effect July 1, 2018. Lowering the discount rate means employers that contract with PERS to administer their pension plans will see increases in their normal costs and unfunded actuarial liabilities. Active members hired after January 1, 2013, under the Public Employees' Pension Reform Act will also see their contribution rates rise. The three-year reduction of the discount rate will result in average employer rate increases of about 1 percent to 3 percent of normal cost as a percent of payroll for most miscellaneous retirement plans, and a 2 percent to 5 percent increase for most safety plans. Additionally, many PERS employers will see a 30 to 40 percent increase in their current unfunded accrued liability payments. These payments are made to amortize unfunded liabilities over 20 years to bring the pension fund to a fully funded status over the long-term.

On November 15, 2021, the CalPERS Board selected a new asset allocation mix that will guide the fund's investment portfolio for the next four years, while at the same time retaining the reduction of discount rate from 7.0% to 6.8%. Notable changes for employers include a decrease in median total employer contribution rates, from less than 1% in miscellaneous plans to a decrease of more than 2% in some safety plans. Contribution changes will take effect in fiscal year 2023-24 for public agencies.

Dollar Contribution Based on Projected PERS Rate Increases. The City's projected annual financial contributions as a result of the PERS rate changes for the next four years are shown in the table below, with dollar amounts shown in millions:

	2020-21	2021-2022	2022-2023 Projected	2023-2024 Projected
Miscellaneous ⁽¹⁾	\$35.87	\$39.19	\$41.64	\$40.57
Police	16.66	17.99	20.04	20.32
Fire	9.47	10.06	10.58	10.24
Total	\$61.99	\$67.24	\$72.27	\$71.13

Berkeley Police Retirement Income Benefit Plan. Prior to December 22, 2012, the City maintained the Berkeley Police Retirement Income Benefit Plan (“**BPRIBP**”), a single-employer defined benefit income plan, for its police retirees and surviving spouses. Effective September 19, 2012, police retired on or after this date are no longer covered by BPRIBP. The City replaced this plan with the “Retiree Health Premium Assistance Coverage Plan.”

The City’s fiscal year 2021-22 contribution to the BPRIBP and the funded status of the BPRIBP is set forth below.

Fiscal Year Ended	Total Pension Liability	Plan Fiduciary Net Position	Plan Net Pension Liability	Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	Covered Payroll	Plan Net Pension Liability as a Percentage of Covered Employee Payroll	Contributions Employer
6/30/2022	\$64,814,093	\$4,629,686	\$60,184,407	7.14%	\$21,718,842	379.40%	\$2,147,614

For a more detailed discussion of the BPRIBP, see APPENDIX B to this Official Statement.

Peace Officers Research Association of California. Effective December 23, 2012, the City established a new sick leave program called Peace Officers Research Association of California (“**PORAC**”). If a sworn member of the Berkeley Police department has an accrued sick leave balance on December 23, 2012, that exceeds 200 hours, one half of all those hours in excess of 200 shall be maintained in a separate account. The financial value of those hours shall be converted and deposited into the employee’s PORAC medical trust account over five successive years in equal installments commencing on January 1, 2013. The conversion was at the employee’s rate of pay on December 23, 2012. The City may accelerate the payment of hours to be converted. The remaining fifty percent of the sick leave balance in excess of 200 hours was credited into the employee’s separate “catastrophic/service time” bank no later than February 1, 2013, up to a maximum of 500 hours.

The City’s contribution to PORAC for the calendar year ending December 31, 2022, was \$425,865.

Safety Members Pension Fund. In addition, the City maintains the Safety Members Pension Fund (“**SMPF**”), a defined benefit plan for fire and police officers who retired prior to March 1973. In March 1973, all active fire and police officers were transferred from SMPF to PERS. The City pays the benefits to SMPF members on a pay-as-you-go basis, primarily through a Funding Agreement, purchased by the Berkeley Civic Improvement Corporation on behalf of the City in 1989. For the fiscal year ended June 30, 2022, the City’s contribution to SMPF was \$493,937.

The funded status of the SMPF as of June 30, 2022, the most recent actuarial date, is set forth below:

Actuarial Valuation Date	Plan Fiduciary Net Position	Total Pension Liability	Plan Net Pension Liability	Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	Covered Payroll	Plan Net Pension Liability as a Percentage of Covered Employee Payroll
6/30/2022	--	\$1,134,809	\$1,134,809	--%	N/A	N/A

For a more detailed discussion of the SMPF, see APPENDIX B of this Official Statement.

Post-Employment Health Benefits

The City offers certain post-employment health benefits to retirees. There are three plans: (i) the City of Berkeley Fire Employees Retiree Health Plan (“**FRHF**”), (ii) the City of Berkeley Miscellaneous Employees Retiree Health Plan (“**RHPAP**”) and (iii) the Police Retiree Premium Assistance Plan (“**PRPAP**”).

The City has adopted Government Accounting Standards Board Statement 75 which requires governmental agencies to change their accounting for Other Post-Employment Benefits (“**OPEB**”) from pay-as-you-go to an accrual basis.

See Appendix B, Note 3 for information about the City’s OPEB liabilities.

City of Berkeley Fire Employees Retiree Health Plan. The FRFH is a single-employer defined benefit medical plan. To be eligible for benefits, sworn Fire employees must retire from the City on or after July 1, 1997, be vested in a PERS pension, and retire from the City on or after age 50. Benefits commence immediately upon retirement. Benefits are payable for the retiree’s lifetime and continue for his or her covered spouse’s/domestic partner’s lifetime. The amount the City contributes toward the Fire Employees Retiree Health Plan is 4.5% per year regardless of the amount of increase in the underlying premium rate. The establishment and amendments of benefit provisions are negotiated between the employee bargaining units and the City Labor Negotiating Team, and are approved by the City Manager and City Council. As of June 30, 2022, there were 130 active employees, 58 retirees deferred and 38 retirees receiving benefits.

The City’s targeted funding policy is equal to the service cost for active employees plus an amount to amortize unfunded liabilities over 30 years (rolling 30-year amortization) as a level percentage of payroll. The City strives to contribute the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement 45.

For the FRFH, the City’s annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and the net OPEB asset for fiscal year 2021-22 and the four preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Cost Contributed	Net OPEB Liability
6/30/2018	\$2,163,028	34%	\$17,251,382
6/30/2019	2,326,493	36	19,633,312
6/30/2020	2,104,622	36	21,177,486
6/30/2021	2,575,970	35	23,873,248
6/30/2022	1,354,619	39	18,507,610

The funded status of the FRFH as of June 30, 2022, the date of the most recent actuarial report, is set forth below:

Actuarial Valuation Date	Actuarial Value of Assets	Actuarial Accrued Liability (AAL)- Unit Credit	Unfunded Actuarial Accrued Liability- UAAL	Funded Ratio	Covered Payroll	UAAL as Percentage of covered Payroll
7/1/2022	\$11,768,942	\$30,276,552	\$18,507,610	38.9%	\$16,924,571	109.35%

City of Berkeley Miscellaneous Employees Retiree Health Premium Assistance Plan. The RHPAP is a single-employer defined benefit medical plan. It provides retiree health benefits to eligible retirees and his/her spouse or domestic partner. The establishment and amendments of benefit provisions are negotiated between the employee bargaining units and the City and are approved by the City Council.

Retirees who are at least age 50, with at least 8 years of service with the City at the time of separation from service are eligible to receive retiree health benefits commencing at age 55. Benefits are payable for the retiree's lifetime and continue for his or her covered spouse's/domestic partner's lifetime. The City pays the monthly cost of the monthly premiums up to a participant's applicable percentage of the base dollar amount and subject to annual 4.5% increases regardless of the amount of increase in the underlying premium rate. As of June 30, 2022, there were 1,085 active employees.

The City's targeted funding policy is equal to the normal cost for active employees plus an amount to amortize unfunded liabilities over 30 years as a level percentage of payrolls. The City is required to contribute the annual required contribution of the employer (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement 45. Any changes to the contribution requirements of the plan are negotiated by the bargaining units and City negotiating staff, and approved by the City Council.

For the RHPAP, the City's annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and the net OPEB obligation for fiscal year 2021-22 and the four preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Cost Contributed	Net OPEB Obligation
6/30/2018	\$4,729,448	42.3%	\$34,215,614
6/30/2019	5,051,655	43.3	37,219,746
6/30/2020	5,534,572	32.7	60,659,492
6/30/2021	4,871,995	42.9	41,895,470
6/30/2022	2,071,289	50.2	29,470,744

The funded status of the RHPAP as of June 30, 2022, the most recent actuarial report, is set forth below:

Actuarial Valuation Date	Actuarial Accrued Liability (AAL)	Actuarial Value of Assets	Unfunded Actuarial Accrued Liability- UAAL	Funded Ratio	Covered Payroll	UAAL as Percentage of covered Payroll
7/1/2022	\$59,184,799	\$29,714,055	\$29,470,744	50.2%	\$102,205,676	28.839%

Police Retiree Premium Assistance Plan. Effective September 19, 2012, the City replaced the “Berkeley Police Retirement Income Benefit Plan” with the “Retiree Health Premium Assistance Coverage Plan” for any police employees hired on or after that date, as well as any current employees who retire on or after such date. Under the newly established retiree health premium assistance plan, benefits will be the paid by the City directly to the provider who is providing retiree health coverage to the retiree or his or her surviving spouse. The maximum amount will be equal in value to the City sponsored health plan.

In order to be eligible for the Retiree Health Premium Assistance Coverage a “Retiree” must meet all of the following criteria:

- (a) A person who is vested in, and
- (b) Has reached the age of 50, and
- (c) Has retired from the City at age 50 or thereafter, and
- (d) Has applied for and is receiving a pension from at the time of retirement.

The maximum amount the City will contribute toward the payment of medical insurance premiums is based on the employee’s years of service as a sworn member of the Berkeley Police Department at time of retirement. The retiree must have at least 10 years of service as a sworn member of the Berkeley Police Department to qualify for this benefit.

<u>Years of Service</u>	<u>City Percentage</u>
10 to 14	25%
15 to 19	50
20 or more	100

Beginning September 19, 2012, each month after the employee retires the City will pay the health care service provider an appropriate percentage based on years of service above an amount equal to \$1,200 per month for two-party coverage for the retiree and a qualifying spouse/domestic partner or \$600 per month for single party coverage. Upon death of either the retiree or the retiree’s spouse, the City will only pay the appropriate percentage of the single party rate to the provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse/domestic partner at the time of retirement, the City shall only pay the single party rate.

The retiree and/or surviving spouse/domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost. The funds for this difference will come from the retiree's retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013 and effective each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the retiree medical premium for that year, or 6%, whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost. As of June 30, 2022, there were 158 active employees, 24 active retirees, and 17 retirees entitled to, but not yet receiving, benefits.

For the retiree health premium assistance plan, the City's annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and the net OPEB asset for fiscal year 2021-22 and the four preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Cost Contributed	Net OPEB Liability
6/30/2018	\$4,929,429	6.0%	\$41,652,588
6/30/2019	5,155,293	6.0	46,252,565
6/30/2020	4,432,549	4.0	57,472,394
6/30/2021	5,076,625	5.0	49,355,501
6/30/2022	4,636,861	6.2	32,429,614

The actuarial cost method used for determining the benefit obligations is the Projected Unit Credit Cost Method. Under this method, the actuarial present value of projected benefits is the value of benefits expected to be paid for current actives and retirees and is calculated based on the assumptions and census data described this report. The Actuarial Accrued Liability (AAL) is the actuarial present value of benefits attributed to employee service rendered prior to the valuation date. The AAL equals the present value of benefits multiplied by a fraction equal to service to date over service at expected retirement. The Normal Cost is the actuarial present value of benefits attributed to one year of service. This equals the present value of benefits divided by service at expected retirement. Since retirees are not accruing any more service, their normal cost is zero. In determining the Annual Required Contribution, the Unfunded AAL is amortized as a level percentage of payroll over 30 years.

As of July 1, 2021, the most recent actuarial valuation date, the plan was 6.2% funded. The actuarial accrued liability for benefit was \$34.6 million, and the actuarial value of assets was \$2.1 million, resulting in an unfunded accrued liability of \$32.4 million. The covered payroll (annual payroll of active employees covered by the plan) was approximately \$21.7 million. The fair value of the assets was determined using market values as of the date of the actuarial report. The schedule of funding progress, presented as required supplementary information following the notes to the financial statements, presents multi-year trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits. Funded status of the plan as of June 30, 2022, the most recent actuarial valuation date is as follows:

Actuarial Valuation Date	Actuarial Value of Assets	Actuarial Accrued Liability (AAL)- Unit Credit	Unfunded Actuarial Accrued Liability- UAAL	Funded Ratio	Covered Payroll	UAAL as Percentage of covered Payroll
7/1/2022	\$2,148,963	\$34,578,577	\$32,429,614	6.2%	\$21,681,336	149.6%

Defined Contribution Plans

The City offers certain supplemental retirement and income plans to retirees. See Appendix B, Note 12 for information about the City's defined contribution plans.

Labor Relations

As of May 23, 2023, the City employed approximately 1,735 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 115 unrepresented employees that include Executive Management, Confidential professional or Confidential Office support positions. The City has not experienced any work stoppages or strikes by its employees.

CITY OF BERKELEY Labor Relations

<u>Labor Organization</u>	<u>Employees</u>	<u>Contract Expiration Date</u>
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	132	06/20/2023
Berkeley Police Association	144	06/30/2023
I. B. E. W. Local 1245	8	06/30/2025
Service Employees International Local 1021 Maintenance and Clerical Chapters	440	06/26/2024
Service Employees International Local 1021 Community Services and Part-Time Recreation Leaders Association Chapters	304	06/26/2024
Public Employees Local 1	186	06/26/2024
Unrepresented Employees	115	06/26/2024

Source: City of Berkeley.

Risk Management

The City is exposed to various risks of loss related to torts; theft of, damage to, or restriction of assets; errors or omissions; injuries to employees; or acts of God.

The City is self-insured for liability claims below \$350,000. The City is a member of the Bay Cities Joint Powers Insurance Authority ("BCJPIA"). The BCJPIA consists of 20 municipal or public agency members, all located within the metropolitan San Francisco Bay Area. The BCJPIA provides general liability, auto liability, and errors and omissions coverage between \$350,000 and \$1,000,000. The California Affiliated Risk Management Authority ("CARMA") provides additional

coverage to the BCJPIA and its member entities for claims in excess of \$1,000,000, up to \$29,000,000.

The City is self-insured for workers' compensation. Payments are made to the Workers' Compensation Self-Insurance Internal Service Fund by transfers from the City's general fund and other funds of the City on a pay-as-you-go basis.

The City requires pre-employment physical examinations for high risk, high hazard employees as well as annual examination for all uniformed officers. As part of its workers' compensation program, copies of all injured employee medical reports are monitored by a third-party agent to ensure that injured employees receive proper care.

At June 30, 2022, \$6,084,219 and \$37,111,000 have been accrued for public liability and workers' compensation claims, respectively. These accruals represent estimates of amounts to ultimately be paid for reported claims and, upon past experience, recent claim settlement trends and other information. It is the City's practice to obtain an actuarial study on an annual basis. Although the amount of actual losses incurred through June 30, 2022 are dependent on future developments, based upon information from the administrators and others involved with the administration of the programs, the City's management believes that the aggregate accrual is adequate to cover such losses.

City Debt Structure

Short-Term Debt. The City has issued Tax and Revenue Anticipation Notes ("TRANS") in each recent year. The City's TRANS are a general obligation of the City, payable from the City's general fund and any other lawfully available moneys. The fiscal year 2022-23 TRANS have an outstanding principal amount of \$28,000,000 and mature on July 25, 2023.

General Fund Obligations. The City currently has outstanding long-term General Fund debt and lease obligations described below. The City has never defaulted on the payment of principal of or interest on any of its indebtedness.

Certificates of Participation. On June 2, 2021, Berkeley Joint Powers Financing Authority (the "**Authority**") executed and delivered certificates of participation in the aggregate principal amount of \$3,975,000 (the "**Certificates of Participation**"). The City's underlying rental obligation is a general fund obligation of the City. The bonds bear interest at rates between 2.00%-5.00%, and the final maturity date is October 1, 2039. As of April 1, 2023, the principal balance outstanding was \$3,975,000.

Lease Revenue Bonds. In October 2012, Authority issued lease revenue bonds on behalf of the City in the aggregate principal amount of \$27,260,000 to refund the Authority's 1999 Lease Revenue Bonds and 2003 Certificates of Participation. The City's underlying rental obligation is a general fund obligation of the City. The bonds bear interest at rates between 3.00%-5.00%, and the final maturity date is October 1, 2037. As of April 1, 2023, the principal balance outstanding was \$14,940,000.

General Obligation Bonds. The City has previously issued general obligation and general obligation refunding bonds that are secured by ad valorem taxes levied and collected in the City.

Employment

The unemployment rate in the Oakland-Hayward-Berkeley MD was 3.9% in March 2023, unchanged from a revised 3.9% in February 2023, and above the year-ago estimate of 3.6%. This compares with an unadjusted unemployment rate of 4.8% for California and 3.6% for the nation during the same period. The unemployment rate was 3.8% in the County and 4.0% in Contra Costa County.

The table below list employment by industry group for Alameda and Contra Costa Counties for the years 2018 to 2022.

OAKLAND- HAYWARD-BERKELEY MD
(Alameda and Contra Costa Counties)
Annual Averages Civilian Labor Force, Employment and Unemployment,
Employment by Industry
(March 2022 Benchmark)

	2018	2019	2020	2021	2022
Civilian Labor Force ⁽¹⁾	1,401,700	1,403,400	1,362,300	1,352,300	1,382,300
Employment	1,357,700	1,360,500	1,239,100	1,268,700	1,333,200
Unemployment	44,000	42,900	123,200	83,600	49,100
Unemployment Rate	3.1%	3.1%	9.0%	6.2%	3.6%
<u>Wage and Salary Employment:</u> ⁽²⁾					
Agriculture	1,300	1,400	1,500	1,600	1,900
Mining and Logging	200	200	200	200	300
Construction	74,900	75,500	70,700	73,000	74,300
Manufacturing	100,600	101,000	98,700	105,200	111,000
Wholesale Trade	47,500	45,400	42,100	41,300	41,200
Retail Trade	114,500	111,800	101,100	105,300	105,200
Transportation, Warehousing, Utilities	42,300	43,700	45,200	48,600	54,100
Information	27,600	27,600	25,800	25,000	24,900
Finance and Insurance	37,500	37,200	35,900	34,700	34,200
Real Estate and Rental and Leasing	17,800	18,100	16,700	16,800	18,200
Professional and Business Services	189,500	193,200	184,800	189,900	195,800
Educational and Health Services	194,300	198,400	191,300	198,200	207,400
Leisure and Hospitality	117,700	121,000	84,700	91,700	103,900
Other Services	41,000	41,200	33,100	35,000	38,500
Federal Government	13,400	13,400	14,200	13,500	13,100
State Government	39,400	39,600	38,200	37,900	33,700
Local Government	121,800	121,800	113,500	111,900	116,200
Total, All Industries ⁽³⁾	1,181,300	1,190,300	1,097,700	1,129,700	1,176,300

(1) Labor force data is by place of residence; includes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(2) Industry employment is by place of work; excludes self-employed individuals, unpaid family workers, household domestic workers, and workers on strike.

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

The following tables show the major employers in the City and the County.

**CITY OF BERKELEY
Major Employers
2022**

<u>Employer</u>	<u>Number of Employees</u>	<u>% of Total Employment</u>
University of California Berkeley	12,944	19.95%
Lawrence Berkeley National Laboratory	3,469	5.35
Sutter East Bay Medical Foundation/Hospitals	1,898	2.93
Berkeley Unified School District	1,697	2.62
City of Berkeley	1,510	2.33
Bayer Corporation	1,099	1.69
Kaiser Permanente Medical Group	886	1.37
Touchstone Golf LLC	782	1.21
Siemens Corporation/Healthcare Diagnostics, Inc.	628	0.97
Lifelong Medical Care	501	0.77

Source: City of Berkeley, Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2022.

**COUNTY OF ALAMEDA
Major Employers (Listed Alphabetically)
May 2023**

Employer Name	Location	Industry
Alameda County Law Enforcement	Oakland	Government Offices-County
Alameda County Sheriff's Dept	San Leandro	Government Offices-County
Alameda County Sheriff's Ofc	Oakland	Sheriff
Alta Bates Summit Med Ctr Alta	Berkeley	Hospitals
Alta Bates Summit Med Ctr Lab	Oakland	Laboratories-Medical
BART PD	Oakland	Transit Lines
California State Univ East Bay	Hayward	Schools-Universities & Colleges Academic
Cooper Vision Inc	Pleasanton	Optical Goods-Wholesale
Dell EMC	Pleasanton	Computer Storage Devices (mfrs)
East Bay Mud	Oakland	Water & Sewage Companies-Utility
Ebmud	Oakland	Utilities
Grifols Diagnostic Solutions	Emeryville	Pharmaceutical Research Laboratories
Kaiser Permanente Oakland Med	Oakland	Hospitals
Lawrence Berkeley Lab	Berkeley	Laboratories-Research & Development
Lawrence Livermore Natl Lab	Livermore	University-College Dept/Facility/Office
Peoplesoft Inc	Pleasanton	Computer Software-Manufacturers
Sanfrancisco Bayarea Rapid	Oakland	Transit Lines
Transportation Dept-California	Oakland	Government Offices-State
UCSF Benioff Children's Hosp	Oakland	Hospitals
University of CA Berkeley	Berkeley	Schools-Universities & Colleges Academic
University of CA-BERKELEY	Berkeley	University-College Dept/Facility/Office
University-Ca-Berkeley Dept	Berkeley	University-College Dept/Facility/Office
Valley Care Health System	Livermore	Health Services
Washington Hospital Healthcare	Fremont	Health Care Management
Western Digital Corp	Fremont	Computer Storage Devices (mfrs)

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2023 2nd Edition.

Effective Buying Income

“Effective Buying Income” is defined as personal income less personal tax and nontax payments, a number often referred to as “disposable” or “after-tax” income. Personal income is the aggregate of wages and salaries, other labor-related income (such as employer contributions to private pension funds), proprietor’s income, rental income (which includes imputed rental income of owner-occupants of non-farm dwellings), dividends paid by corporations, interest income from all sources, and transfer payments (such as pensions and welfare assistance). Deducted from this total are personal taxes (federal, state and local), nontax payments (fines, fees, penalties, etc.) and personal contributions to social insurance. According to U.S. government definitions, the resultant figure is commonly known as “disposable personal income.”

The following table summarizes the total effective buying income for the City of Berkeley, the County of Alameda, the State and the United States for the period 2019 through 2023.

CITY OF BERKELEY AND COUNTY OF ALAMEDA
Effective Buying Income
As of January 1, 2019 through 2023

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2019	Berkeley	\$5,517,451	\$72,412
	Alameda County	67,609,653	79,446
	California	1,183,264,399	62,637
	United States	9,017,967,563	52,841
2020	Berkeley	\$5,843,576	\$76,294
	Alameda County	72,243,436	84,435
	California	1,243,564,816	65,870
	United States	9,487,165,436	55,303
2021	Berkeley	\$6,203,796	\$79,437
	Alameda County	77,794,202	88,389
	California	1,290,894,604	67,956
	United States	9,809,944,764	56,790
2022	Berkeley	\$6,646,946	\$88,676
	Alameda County	85,225,529	99,940
	California	1,452,426,153	77,058
	United States	11,208,582,541	64,448
2023	Berkeley	\$6,074,419	\$88,720
	Alameda County	80,766,211	98,721
	California	1,461,799,662	77,175
	United States	11,454,846,397	65,326

Source: Claritas, LLC.

Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2018 through 2022.

CITY OF BERKELEY					
Total Building Permit Valuations					
(Valuations in Thousands)					
<u>Permit Valuation</u>	2018	2019	2020	2021	2022
New Single-family	\$13,808.7	\$9,666.3	\$6,444.7	\$13,533.1	\$9,058.9
New Multi-family	24,506.9	7,513.6	12,643.5	53,032.6	12,373.6
Res. Alterations/Additions	<u>80,130.0</u>	<u>40,596.9</u>	<u>26,204.9</u>	<u>47,099.2</u>	<u>28,834.2</u>
Total Residential	118,445.6	57,776.8	45,293.1	113,664.9	50,266.7
New Commercial	18,732.1	10,816.3	25,867.1	15,167.2	5,577.0
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	3,236.6	4,718.7	272.0	1,760.3	3,501.9
Com. Alterations/Additions	<u>52,522.6</u>	<u>12,885.4</u>	<u>23,290.5</u>	<u>65,213.8</u>	<u>13,158.1</u>
Total Nonresidential	74,491.3	28,420.4	49,429.6	82,141.3	22,237.0
<u>New Dwelling Units</u>					
Single Family	63	46	21	69	40
Multiple Family	<u>129</u>	<u>42</u>	<u>117</u>	<u>286</u>	<u>72</u>
TOTAL	192	88	138	355	112

Source: Construction Industry Research Board, Building

APPENDIX B

**THE CITY'S ANNUAL COMPREHENSIVE FINANCIAL REPORT
FOR YEAR ENDED JUNE 30, 2022**

APPENDIX C
FORM OF OPINION OF BOND COUNSEL

APPENDIX D

FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (the “**Disclosure Certificate**”) is executed and delivered by the City of Berkeley (the “**City**”) in connection with the issuance by the City, of the \$_____ City of Berkeley 2023-24 Tax and Revenue Anticipation Notes (the “**Notes**”). The Notes are being issued pursuant to a resolution adopted by the City Council of the City on June 27, 2023 (the “**Resolution**”). The City covenants and agrees as follows:

Section 1. Purpose of the Disclosure Certificate. This Disclosure Certificate is being executed and delivered by the City for the benefit of the holders and beneficial owners of the Notes and in order to assist the Participating Underwriters in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. In addition to the definitions set forth in the Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“**Dissemination Agent**” shall mean NHA Advisors, LLC, or any successor Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation.

“**Listed Events**” shall mean any of the events listed in Section 3(a) of this Disclosure Certificate.

“**MSRB**” means the Municipal Securities Rulemaking Board, which has been designated by the Securities and Exchange Commission as the sole repository of disclosure information for purposes of the Rule.

“**Participating Underwriter**” shall mean any of the original underwriters of the Notes required to comply with the Rule in connection with offering of the Notes.

“**Rule**” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

Section 3. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 3, the City shall give, or cause to be given, notice of the occurrence of any of the following Listed Events with respect to the Notes:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults, if material.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.

- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
- (7) Modifications to rights of security holders, if material.
- (8) Bond calls, if material, and tender offers.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.
- (11) Rating changes.
- (12) Bankruptcy, insolvency, receivership or similar event of the City or other obligated person.
- (13) The consummation of a merger, consolidation, or acquisition involving the City or an obligated person, or the sale of all or substantially all of the assets of the City or an obligated person (other than in the ordinary course of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.
- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (15) Incurrence of a financial obligation of the obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the obligated person, any of which affect security holders, if material.
- (16) Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a financial obligation of the obligated person, any of which reflect financial difficulties.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, the City shall, or shall cause the Dissemination Agent (if not the City) to, file a notice of such occurrence with the MSRB, in an electronic format as prescribed by the MSRB, in a timely manner not in excess of 10 business days after the occurrence of the Listed Event. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) above need not be given under this subsection any earlier than the notice (if any) of the underlying event is given to holders of affected Notes under the Resolution.

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), and (a)(14) of this Section 3 contain the qualifier

“if material.” The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that the City determines the event’s occurrence is material for purposes of U.S. federal securities law.

(d) For purposes of this Disclosure Certificate, any event described in paragraph (a)(12) above is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the City in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the City, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the City.

(e) For purposes of Section 3(a)(15) and (16), “financial obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of (i) or (ii). The term financial obligation shall not include municipal securities as to which a final official statement has been provided to the Municipal Securities Rulemaking Board consistent with the Rule.

Section 4. Termination of Reporting Obligation. The City’s obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Notes. If such termination occurs prior to the final maturity of the Notes, the City shall give notice of such termination in the same manner as for a Listed Event under Section 3(b).

Section 5. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent shall be NHA Advisors, LLC.

Section 6. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of Section 3(a) it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of an obligated person with respect to the Notes, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Notes, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Notes, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Notes.

Section 7. Additional Information. Nothing in this Disclosure Certificate shall be deemed to prevent the City from disseminating any other information, using the means of dissemination set forth in this Disclosure Certificate or any other means of communication, or including any other information in any notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Certificate. If the City chooses to include any information in any notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Certificate, the City shall have no obligation under this Disclosure Certificate to update such information or include it in any future notice of occurrence of a Listed Event.

Section 8. Default. In the event of a failure of the City to comply with any provision of this Disclosure Certificate any holder or beneficial owner of the Notes may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Resolution, and the sole remedy under this Disclosure Certificate in the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

Section 9. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys' fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Notes.

Section 10. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriters and holders and beneficial owners from time to time of the Notes and shall create no rights in any other person or entity.

Date: _____, 2023

CITY OF BERKELEY

By _____
City Manager

APPENDIX E

DTC AND THE BOOK-ENTRY ONLY SYSTEM

The following description of the Depository Trust Company (“DTC”), the procedures and record keeping with respect to beneficial ownership interests in the Notes, payment of principal, interest and other payments on the Notes to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Notes and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.

Neither the issuer of the Notes (the “Issuer”) nor the trustee, fiscal agent or paying agent appointed with respect to the Notes (the “Agent”) take any responsibility for the information contained in this Appendix.

No assurances can be given that DTC, DTC Participants or Indirect Participants will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Notes, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Notes, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Notes, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.

1. The Depository Trust Company (“DTC”), New York, NY, will act as securities depository for the securities (the “Securities”). The Securities will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Security certificate will be issued for each issue of the Securities, each in the aggregate principal amount of such issue, and will be deposited with DTC. If, however, the aggregate principal amount of any issue exceeds \$500 million, one certificate will be issued with respect to each \$500 million of principal amount, and an additional certificate will be issued with respect to any remaining principal amount of such issue.

2. DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust

companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“**DTCC**”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

3. Purchases of Securities under the DTC system must be made by or through Direct Participants, which will receive a credit for the Securities on DTC’s records. The ownership interest of each actual purchaser of each Security (“**Beneficial Owner**”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners are, however, expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Securities are to be accomplished by entries made on the books of Direct and Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in Securities, except in the event that use of the book-entry system for the Securities is discontinued.

4. To facilitate subsequent transfers, all Securities deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co. or such other name as may be requested by an authorized representative of DTC. The deposit of Securities with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Securities; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Securities are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holdings on behalf of their customers.

5. Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time. Beneficial Owners of Securities may wish to take certain steps to augment the transmission to them of notices of significant events with respect to the Securities, such as redemptions, tenders, defaults, and proposed amendments to the Security documents. For example, Beneficial Owners of Securities may wish to ascertain that the nominee holding the Securities for their benefit has agreed to obtain and transmit notices to Beneficial Owners. In the alternative, Beneficial Owners may wish to provide their names and addresses to the registrar and request that copies of notices be provided directly to them.

6. Redemption notices shall be sent to DTC. If less than all of the Securities within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

7. Neither DTC nor Cede & Co. (nor such other DTC nominee) will consent or vote with respect to Securities unless authorized by a Direct Participant in accordance with DTC’s MMI

Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts Securities are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and interest payments on the Securities will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts, upon DTC's receipt of funds and corresponding detail information from Issuer or Agent on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, Agent, or Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of Issuer or Agent, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

9. DTC may discontinue providing its services as securities depository with respect to the Securities at any time by giving reasonable notice to Issuer or Agent. Under such circumstances, in the event that a successor depository is not obtained, Security certificates are required to be printed and delivered.

10. Issuer may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Security certificates will be printed and delivered to DTC.

11. The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that Issuer believes to be reliable, but Issuer takes no responsibility for the accuracy thereof.

