



BERKELEY CITY COUNCIL MEETING

Tuesday, February 25, 2020 6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

This meeting will be conducted in accordance with the Brown Act, Government Code Section 54953. Any member of the public may attend this meeting. Questions regarding this matter may be addressed to Mark Numainville, City Clerk, (510) 981-6900.

The City Council may take action related to any subject listed on the Agenda. The Mayor may exercise a two minute speaking limitation to comments from Councilmembers. Meetings will adjourn at 11:00 p.m. - any items outstanding at that time will be carried over to a date/time to be specified.

Preliminary Matters

Roll Call:

Ceremonial Matters: In addition to those items listed on the agenda, the Mayor may add additional ceremonial matters.

- 1. Recognition of Partition Remembrance
- 2. Recognition of Raymond Nat Turner
- 3. Adjourn in memory of Eva Cohen, Berkeley Resident

City Manager Comments: The City Manager may make announcements or provide information to the City Council in the form of an oral report. The Council will not take action on such items but may request the City Manager place a report on a future agenda for discussion.

Public Comment on Non-Agenda Matters: Persons will be selected by lottery to address matters not on the Council agenda. If five or fewer persons submit speaker cards for the lottery, each person selected will be allotted two minutes each. If more than five persons submit speaker cards for the lottery, up to ten persons will be selected to address matters not on the Council agenda and each person selected will be allotted one minute each. Persons wishing to address the Council on matters not on the Council agenda during the initial ten-minute period for such comment, must submit a speaker card to the City Clerk in person at the meeting location and prior to commencement of that meeting. The remainder

AGENDA

of the speakers wishing to address the Council on non-agenda items will be heard at the end of the agenda. Speaker cards are not required for this second round of public comment on non-agenda matters.

The Council will first determine whether to move items on the agenda for "Action" or "Information" to the "Consent Calendar", or move "Consent Calendar" items to "Action." Items that remain on the "Consent Calendar" are voted on in one motion as a group. "Information" items are not discussed or acted upon at the Council meeting unless they are moved to "Action" or "Consent".

No additional items can be moved onto the Consent Calendar once public comment has commenced. At any time during, or immediately after, public comment on Information and Consent items, any Councilmember may move any Information or Consent item to "Action." Following this, the Council will vote on the items remaining on the Consent Calendar in one motion.

For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

Public Comment on Consent Calendar and Information Items Only: The Council will take public comment on any items that are either on the amended Consent Calendar or the Information Calendar. Speakers will be entitled to two minutes each to speak in opposition to or support of Consent Calendar and Information Items. A speaker may only speak once during the period for public comment on Consent Calendar and Information items.

Additional information regarding public comment by City of Berkeley employees and interns: Employees and interns of the City of Berkeley, although not required, are encouraged to identify themselves as such, the department in which they work and state whether they are speaking as an individual or in their official capacity when addressing the Council in open session or workshops.

Consent Calendar

1. Amendments to the Berkeley Election Reform Act; Amending BMC Chapter 2.12

From: Fair Campaign Practices Commission

Recommendation: Adopt second reading of Ordinance No. 7,691-N.S. amending the Berkeley Elections Reform Act, BMC Chapter 2.12, regarding the public financing program.

First Reading Vote: All Ayes.

Financial Implications: None

Contact: Samuel Harvey, Commission Secretary, (510) 981-6950

2. Repealing and Reenacting BMC Chapter 13.104, Wage Theft Prevention From: Mayor Arreguin and Councilmembers Harrison, Droste, and Hahn Recommendation: Adopt second reading of Ordinance No. 7,668-N.S. repealing and reenacting BMC Chapter 13.104, Wage Theft Prevention to improve enforcement of the ordinance by requiring a signed acknowledgement of ordinance requirements and signed attestation.

First Reading Vote: All Ayes.

Financial Implications: Staff time Contact: Jesse Arreguin, Mayor, (510) 981-7100

Consent Calendar

3. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21 and 12.22

From: City Manager

Recommendation: Adopt second reading of Ordinance No. 7,686-N.S. amending Berkeley Municipal Code Chapters 12.21 and 12.22 regarding general regulations and specific operating standards for cannabis businesses.

First Reading Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila; Absent – None. **Financial Implications:** See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

4. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of January 14, 2020 (special closed and special), January 21, 2020 (special closed and regular) and January 28, 2020 (special and regular).

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 25, 2020 From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: Various Funds - \$13,085,000 Contact: Henry Oyekanmi, Finance, (510) 981-7300

6. Contract: Worldwide Travel Staffing for Nurse Registry Services From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Worldwide Travel Staffing for nurse registry services for a total contract limit of \$313,800 for the period beginning March 1, 2020 and ending June 30, 2023. The contract will serve the needs of both the Mental Health and Public Health Divisions, providing fill-in nursing services as necessary at both the Mental Health clinics and the Berkeley High School Health Center.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Consent Calendar

7. Contract: Van Meter Williams Pollack for Professional Planning Services to Prepare Zoning Standards and an Environmental Impact Report for the Ashby and North Berkeley BART Stations Erom: City Managor

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Van Meter Williams Pollack to perform professional planning services to prepare Zoning Standards and an Environmental Impact Report and conduct associated community outreach for the Ashby and North Berkeley Bay Area Rapid Transit (BART) Stations, in an amount not to exceed \$500,000 for the period from March 1, 2020 to July 31, 2021.

Financial Implications: See report.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

8. Amendment to the Agreement for Maintenance of State Highways in the City between the California Department of Transportation and City of Berkeley From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to the Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley. The amendment will address roadway and traffic signal improvements from the City's Ninth Street Bicycle Boulevard Pathway Extension Phase II project. **Financial Implications:** See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

9. Contract: APB General Engineering for Sanitary Sewer Rehabilitation and Replacement - Urgent Sewer Repair Project FY 2020 From: City Manager

Recommendation: Adopt a Resolution approving plans and specifications for the Urgent Sewer Repair Project FY 2020 with sites located throughout the City; accepting the bid of the lowest responsive and responsible bidder, APB General Engineering; and, authorizing City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$388,489 which includes a 10% contingency of \$35,317. **Financial Implications:** Sanitary Sewer Fund - \$388,489

Contact: Phillip Harrington, Public Works, (510) 981-6300

Consent Calendar

10. Permit Fee Waiver for Pacific Gas and Electric Company for the Undergrounding of Existing Overhead Electrical Facilities and Electrical Service Conversions within Utility Undergrounding District No. 48 – Grizzly Peak/Summit

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to waive all permit fees for Pacific Gas and Electric Company for the undergrounding of existing overhead electrical facilities and electrical service conversions in Utility Undergrounding District No. 48.

Financial Implications: General Fund - \$100,000 Contact: Phillip Harrington, Public Works, (510) 981-6300

11. Resolution: Condemn the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence From: Peace and Justice Commission

Recommendation: Adopt a resolution affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence. **Financial Implications:** None.

Contact: Nina Goldman, Commission Secretary, (510) 981-7000

Council Consent Items

12. LifeLong Medical Care's March 7, 2020 Annual Gala Fundraiser:

Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmember Davila

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmember Cheryl Davila, to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

Financial Implications: See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

Council Consent Items

13. Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmembers Davila and Hahn

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmembers Cheryl Davila and Sophie Hahn, to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute. **Financial Implications:** See report

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120

14. Referral to Schedule a Special City Council Meeting on Ohlone History and Culture

From: Councilmembers Hahn and Davila

Recommendation: Refer to the Agenda & Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City. **Financial Implications:** None

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150

15. Support for S.2012 (Feinstein)

From: Councilmembers Wengraf, Hahn, and Harrison

Recommendation: Adopt a Resolution in support of S.2012, "Restoring Local Control Over Public Infrastructure Act of 2019" (Feinstein) and send copies to Senators Dianne Feinstein and Kamala Harris, and Congresswoman Barbara Lee. **Financial Implications:** None

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

16. Support for SB-431, SB-801 and SB-802 (McGuire and Glazer) From: Councilmember Wengraf, Mayor Arreguin, and Councilmembers Hahn

and Harrison

Recommendation: Adopt a resolution in support of three bills which aim to protect people whose lives could be endangered without use of needed electrical resources during PG&E's Public Safety Power Shut-offs. Send the resolution to California Senators Mike McGuire, Steve Glazer, Nancy Skinner and Buffy Wicks. The bills are: 1. SB-431 Mobile telephony service base transceiver station towers: performance reliability standards (McGuire & Glazer); 2. SB-801 Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol (McGuire & Glazer); 3. SB-802 Emergency backup generators: health facilities: permit operating condition exclusion (Glazer)

Financial Implications: None

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160

17. Referral: Street Lighting Near Campus

From: Councilmembers Robinson, Droste, Harrison, and Wengraf Recommendation: Refer to the Public Works Commission to include the following in the Street Lighting Subcommittee Work Plan, for the purposes of seeking input from key stakeholders and bringing together work that happens through parallel processes. The Subcommittee should: 1. Invite input from representatives from the UC Berkeley administration, UC Berkeley undergraduate and graduate students, UCPD and BPD, the Department of Public Works, and other relevant groups. 2. Develop a streamlined and accessible process for requesting street lights that includes neighborhood and campus input, while recognizing the overriding public safety concern posed by substandard lighting. 3. Develop a plan for expeditiously installing new streetlights near campus that prioritizes high-crime areas, high-injury pedestrian corridors, and student-priority areas as determined by student input. Financial Implications: Staff time

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170

Action Calendar

The public may comment on each item listed on the agenda for action as the item is taken up. For items moved to the Action Calendar from the Consent Calendar or Information Calendar, persons who spoke on the item during the Consent Calendar public comment period may speak again at the time the matter is taken up during the Action Calendar.

The Presiding Officer will request that persons wishing to speak line up at the podium to determine the number of persons interested in speaking at that time. Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may, with the consent of persons representing both sides of an issue, allocate a block of time to each side to present their issue.

Action items may be reordered at the discretion of the Chair with the consent of Council.

Action Calendar – New Business

18. Issuance of \$38,000,000 General Obligation Bonds for Measure O – Affordable Housing

From: City Manager

Recommendation: Adopt a Resolution authorizing the issuance and sale of general obligation bonds to finance acquisition and improvement of affordable housing and authorizing actions related thereto.

Financial Implications: See report

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Action Calendar – New Business

- Refinancing of 2009 and 2010 General Obligation Bonds (Measure FF) From: City Manager Recommendation: Adopt two Resolutions authorizing the issuance and sale of general obligation bonds to refund outstanding 2009 and 2010 bonds and authorizing actions related thereto. Financial Implications: See report Contact: Henry Oyekanmi, Finance, (510) 981-7300
- 20. Refinancing of 2010 Certificates of Participation Originally Issued to Finance Animal Shelter Project From: City Manager

Recommendation: Adopt a Resolution authorizing the issuance and sale of lease revenue bonds to refinance outstanding 2010 certificates of participation and approving related documents and official actions.

Financial Implications: See report

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Action Calendar – Public Hearings

Staff shall introduce the public hearing item and present their comments. This is followed by five-minute presentations each by the appellant and applicant. The Presiding Officer will request that persons wishing to speak, line up at the podium to be recognized and to determine the number of persons interested in speaking at that time.

Up to ten (10) speakers may speak for two minutes. If there are more than ten persons interested in speaking, the Presiding Officer may limit the public comment for all speakers to one minute per speaker. Speakers are permitted to yield their time to one other speaker, however no one speaker shall have more than four minutes. The Presiding Officer may with the consent of persons representing both sides of an issue allocate a block of time to each side to present their issue.

Each member of the City Council shall verbally disclose all ex parte contacts concerning the subject of the hearing. Councilmembers shall also submit a report of such contacts in writing prior to the commencement of the hearing. Written reports shall be available for public review in the office of the City Clerk.

21a. Public Hearing: Landmarks Preservation Commission Appeal: Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue From: City Manager

Recommendation: Conduct a public hearing on the appeal of the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 to modify and rehabilitate a City Landmark and National Register building and site.

Financial Implications: None.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – Public Hearings

21b. Public Hearing: Zoning Adjustments Board Appeal: Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue From: City Manager

Recommendation: Conduct a public hearing on the appeal of the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to convert

the Hillside School to residential use.

Financial Implications: None.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

21c. Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

From: City Manager

Recommendation: Upon conclusion of the agendized public hearings, adopt a Resolution affirming the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 and the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to rehabilitate and convert the Hillside School to residential use, and dismiss the appeals. **Financial Implications:** None.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

22. ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108 From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces, and dismiss the appeal.

Financial Implications: None.

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action Calendar – Old Business

23. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras (Continued from January 28, 2020. Item contains supplemental materials.) From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000

Information Reports

24. Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight From: City Manager

Contact: Erin Steffen, City Manager's Office, (510) 981-7000

25. Report on Regional Leadership and Goals for 2020 From: Mayor Arreguin Contact: Jesse Arreguin, Mayor, (510) 981-7100

Public Comment – Items Not Listed on the Agenda

Adjournment

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny a use permit or variance for a project the following requirements and restrictions apply: 1) No lawsuit challenging a City decision to deny (Code Civ. Proc. §1094.6(b)) or approve (Gov. Code 65009(c)(5)) a use permit or variance may be filed more than 90 days after the date the Notice of Decision of the action of the City Council is mailed. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a use permit or variance, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

Live captioned broadcasts of Council Meetings are available on Cable B-TV (Channel 33), via internet accessible video stream at http://www.cityofberkeley.info/CalendarEventWebcastMain.aspx and KPFB Radio 89.3.

Archived indexed video streams are available at <u>http://www.cityofberkeley.info/citycouncil</u>. Channel 33 rebroadcasts the following Wednesday at 9:00 a.m. and Sunday at 9:00 a.m.

Communications to the City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk Department at 2180 Milvia Street. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk Department for further information.

Any writings or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at the public counter at the City Clerk Department located on the first floor of City Hall located at 2180 Milvia Street as well as posted on the City's website at http://www.cityofberkeley.info.

Agendas and agenda reports may be accessed via the Internet at <u>http://www.cityofberkeley.info/citycouncil</u> and may be read at reference desks at the following locations:

City Clerk Department 2180 Milvia Street Tel: 510-981-6900 TDD: 510-981-6903 Fax: 510-981-6901 Email: clerk@cityofberkeley.info Libraries: Main - 2090 Kittredge Street Claremont Branch – 2940 Benvenue West Branch – 1125 University North Branch – 1170 The Alameda South Branch – 1901 Russell

COMMUNICATION ACCESS INFORMATION:

This meeting is being held in a wheelchair accessible location.

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at (510) 981-6418 (V) or (510) 981-6347 (TDD) at least three business days before the meeting date.

Attendees at public meetings are reminded that other attendees may be sensitive to various scents, whether natural or manufactured, in products and materials. Please help the City respect these needs.



Captioning services are provided at the meeting, on B-TV, and on the Internet. In addition, assisted listening devices for the hearing impaired are available from the City Clerk prior to the meeting, and are to be returned before the end of the meeting.

I hereby certify that the agenda for this meeting of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on February 13, 2020.

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Mark Numainville, City Clerk

Communications

Council rules limit action on Communications to referral to the City Manager and/or Boards and Commissions for investigation and/or recommendations. All communications submitted to Council are public record. Copies of individual communications are available for viewing at the City Clerk Department and through <u>Records Online</u>.

Item #21c: Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions – Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

- 1. Laura Atieri
- 2. Eric Schroeder
- 3. Zoe Scheffy
- 4. Patricia Slater
- 5. Greg Murphy
- 6. Krishen Laetsch
- 7. Kaethe Weingarten
- 8. Sondra Schlesinger
- 9. Fred Kellogg
- 10. Gertrude Allen
- 11. Tim and Jo Drescher
- 12. Marty Lorber
- 13. Eric Geoffroy
- 14. Cynthia Johnson
- 15. Robert Mains
- 16. Martin St. John
- 17. Patricia St. John
- 18. Eleanore Lee
- 19. Ronald Elson
- 20. Sophia Skoda
- 21. Sally Hindman
- 22. Paul and Susan Grossberg
- 23. David Helfant
- 24. Robert Jackson
- 25. Ernst and Lois Valfer
- 26. Beverly Cheney and Avrum Gratch
- 27. Michael Scott
- 28. Vicki Piovia
- 29. Bronwyn Hall
- 30. Michael Bank
- 31. Eric Van Dusen and Kara Nelson
- 32. Norma Lydon
- 33. Sandra Schlesinger
- 34. John Armitage
- 35. Peter Lydon
- 36. Clayton Smith
- 37. Kate and Dan Funk
- 38. Patricia O'Gillooly
- 39. Horst Haussecker, on behalf of Ali Bar-Bar
- 40. Eric Boskin
- 41. Mark Nitzbert
- 42. Ville Skogberg

Crime/Safety 43. Susan Freeman 44. Sharon Wong

Affordable Housing

45. Sue Martin

Luxury Housing 46. Margy Wilkinson

Measure T1 47. Janice Schroeder 48. Joan Hamilton

Civic Center Envisioning 49. Councilmember Hahn

5G/Telecom/Cell Towers

50. Isis Feral 51. Pat Robak 52. Miller Wise

Homelessness/Encampments

53. Diana Bohn 54. Avram Gur Arye (2)

Retailers Closing Stores

55. Steve Smith, on behalf of Norheim & Yost

Greenhouse Gas Emissions

56. Peter Drekmeier, on behalf of the Tuolumne River Trust

Berkeley Way

57. Avram Gur Arye

Adeline Corridor

58. Sara Bardeen 59. Councilmember Harrison 60. Abbie Turiansky 61. Margy Wilkinson

Developers

62. Vivian Warkentin

Cigarette Butt Receptacles

63. Carol Denney 64. Viviana Garcia, Public Works Department

Supplemental Communications and Reports

Items received by the deadlines for submission will be compiled and distributed as follows. If no items are received by the deadline, no supplemental packet will be compiled for said deadline.

- Supplemental Communications and Reports 1 Available by 5:00 p.m. five days prior to the meeting.
- Supplemental Communications and Reports 2 Available by 5:00 p.m. the day before the meeting.
- Supplemental Communications and Reports 3 Available by 5:00 p.m. two days following the meeting.

ORDINANCE NO. 7,691-N.S.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT RELATED TO PUBLIC FINANCING FOR CAMPAIGNS

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That Berkeley Municipal Code Section 2.12.167 is amended to read as follows:

2.12.167 Qualified contribution.

"Qualified Contribution" means a monetary contribution, excluding loans, made directly in aid of the nomination or election of one or more candidates not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley. This dollar amount may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

Section 2. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

2.12.500 Eligibility for Fair Elections campaign funding.

A. To be eligible to be certified as a participating candidate, a candidate must:

1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the Commission a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:

a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and

c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.

2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500). These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

4) Maintain such records of receipts and expenditures as required by the Commission;

5) Obtain and furnish to the Commission any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission;

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.

7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);

8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

9) Not accept loans from any source.

10) The Commission has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission may adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

Section 3. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

2.12.505 Fair Elections fund payments.

A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.505.B.

B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:

1) \$120,000 for a candidate running for the office of Mayor;

2) \$40,000 for a candidate running for the office of City Council.

These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.

1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publically disclosed with the contributor information required under Sections 2.12.280 and 2.12.283.

2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.

G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election.

Section 4. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

2.12.530 Use of Fair Elections funds.

A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.

B. A participating candidate shall not use Fair Elections funds or contributions for:

1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

2) The candidate's personal support or compensation to the candidate or the candidate's family;

3) Indirect campaign purposes, including but not limited to:

a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;

b) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;

c) A contribution or loan to the campaign committee of another candidate or to a party

committee or other political committee;

- d) An independent expenditure as defined in Berkeley Municipal Code Section
- 2.12.142 as may be amended;
- e) Any payment or transfer for which compensating value is not received;

C. The term "Contribution" is defined in 2.12.100 and includes "Qualified Contributions" as defined in 2.12.167 and contributions from non-residents of Berkeley as described in 2.12.500.A.7.

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

Section 5. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.3.b for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Section 2.12.505.B.

<u>Section 6.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 4, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

- Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.
- Noes: None.
- Absent: None.

ORDINANCE NO. 7,668-N.S.

REPEALING AND REENACTING BERKELEY MUNICIPAL CODE CHAPTER 13.104, WAGE THEFT PREVENTION

<u>Section 1.</u> That Berkeley Municipal Code Chapter 13.104 is hereby repealed and reenacted as follows:

Chapter 13.104 WAGE THEFT PREVENTION

Sections

13.104.010 Findings.
13.104.020 Definitions.
13.104.030 Pay Transparency Acknowledgment.
13.104.040 Pay Transparency Attestations Following Project Completion.
13.104.050 Posting of Ordinance.
13.104.060 Conditions of Approval.
13.104.070 Private Right of Action.
13.104.080 City Manager Regulations.
13.104.090 Severability.

13.104.010 Findings.

A. The City of Berkeley is committed to protecting the public health, safety and welfare. The construction industry involves unique labor standards compliance challenges. Construction workers who do not receive all of their wages and mandatory benefits are likely to discover that despite the best efforts of State enforcement officials, many employees continue to be victims of wage theft because they are unaware of their rights or the State lacks adequate resources to advocate on their behalf. General contractors and Developer/Owners who receive City-issued permits and licenses and who benefit from the construction workers' labor may disclaim responsibility for making underpaid workers whole.

B. Testimony presented to the State of California's "Little Hoover" Commission stated that existing studies suggest that "the underground economy" is at least a \$10 billion problem in California. Statewide, the construction industry is the industry with the second highest level of labor standards violations (as measured by State Labor Commissioner penalty assessments), surpassed only by the restaurant industry. Deputy Labor Commissioners conducted 985 inspections in the private construction industry in 2012-13, yielding 595 citations that assessed \$5.3 million in penalties. Enforcement actions, however, are dwarfed by the number of contractors and projects in California, including projects in Berkeley. Over 300,000 state-licensed contractors performed about \$48 billion worth of private construction work in the State in 2014. The mismatch between the resources of the State and the scope of the issue of fundamental wage projections through disclosure and transparency requires the involvement of local government police powers.

C. Assembly Bill 469, also known as the Wage Theft Protection Act of 2011, went into

effect on January 1, 2012, adding section 2810.5 to the Labor Code. The act requires that all employers provide each employee with a written notice containing specified information at the time of hire.

D. This Chapter will ensure compliance with the Wage Theft Protection Act of 2011 by requiring confirmation by owners, contractors and subcontractors of the rate of pay and other legally required information pursuant to Labor Code section 2810.5.

13.104.020 Definitions.

Whenever used in this chapter, the following terms shall have the meanings set forth below.

A. "City" means the City of Berkeley.

B. "Community Workforce Agreement" (CWA), Resolution No. 68,299-N.S., means an agreement in effect between a contractor and the City of Berkeley wherein capital improvement projects will be performed solely by union labor.

C. "Contractor" means the prime contractor for the Project.

D. "Labor Commissioner" means the Office of the Labor Commissioner within the State of California's Department of Industrial Regulations.

E. "Permittee" means any property owner, property owner's authorized agent, or licensed contractor who obtains a building permit for a Project.

F. "Project" means a newly constructed building of greater than 30,000 square feet that is not subject to local, state or federal prevailing wage requirements or does not have a valid Project Labor or Community Workforce Agreement.

G. "Project Labor Agreement" (PLA) means an agreement in effect between a contractor and the building and construction trades wherein construction work performed on a specific project will be performed solely by union labor.

H. "Qualifying Subcontractor" means a subcontractor of any tier whose portion of the work exceeds \$100,000 or one percent (1%) of the value of the construction cost of the Project.

I. "Responsible Representative" means an officer (if a corporation), general partner (if a partnership or a limited partnership), managing member (if a limited liability company), or a Qualifying Person associated with a Contractor or Qualifying Subcontractor. "Qualifying Person" is defined in Section 7068 of the California Business and Professions Code.

13.104.030 Pay Transparency Acknowledgment.

Prior to the issuance of a building permit for any Project subject to this Chapter:

A. A Responsible Representative of the Permittee shall certify under penalty of perjury that: (1) the Permittee has reviewed Chapter 13.104 of the Berkeley Municipal Code; and (2) the Permittee will be responsible for demonstrating compliance with this Chapter.

B. The Permittee shall provide to the City a Contractor Pay Transparency Acknowledgment on a form approved by the City for this purpose. A Responsible Representative of the Permittee shall certify under penalty of perjury that the Contractor and all Qualifying Subcontractors performing work on the Project will comply with Chapter 13.104 of the Berkeley Municipal Code and with Labor Code sections 226(a) and 2810.5 for each employee who works on the Project.

13.104.040 Pay Transparency Attestations Following Project Completion.

Within 10 days of the approved final inspection of any Project subject to this Chapter, each Permittee shall provide to the City for each Contractor and Qualifying Subcontractor a Pay Transparency Attestation on a form approved by the City. On each Pay Transparency Attestation, a Responsible Representative of the Contractor or Qualifying Subcontractor shall attest under penalty of perjury that the Contractor or Qualifying Subcontractor complied with Chapter 13.104 of the Berkeley Municipal Code and Labor Code sections 226(a) and 2810.5 for each employee who performed work on the Project. The City will maintain Pay Transparency Attestation forms for period of at least three years after their date of receipt by the City.

13.104.050 Posting of Ordinance.

Each day work is performed on the Project, each Permittee shall post, and keep posted in a conspicuous location where it may be easily read by employees during the hours of the workday, a notice that: (A) contains the text of Chapter 13.104 of the Berkeley Municipal Code; (B) explains that workers can report violations of Labor Code sections 226 and 2810.5 to the Labor Commissioner of the State of California; and (C) provides current contact information, including office address, telephone number, and email address of the Labor Commissioner of the State of California.

13.104.060 Conditions of Approval.

The requirements of Sections 13.104.030 through 13.104.050 shall be included as conditions of approval of any Use Permit or Zoning Certificate for any Project that is subject to this Chapter. Failure to comply with the requirements of any provision of this Chapter shall be grounds for issuance of an administrative citation under Chapter 1.28 and/or the revocation or modification of any Use Permit issued for the Project under Chapter 23B.60.

13.104.070 Private Right of Action.

A. Any person who suffers damages as a result of a violation of this Chapter shall have the right to file an action for injunctive relief and/or damages. Treble damages may be awarded for willful failure to comply with the requirements of this Chapter. In any action brought under this chapter, the court may award reasonable attorneys' fees to any prevailing party.

B. Nothing in this chapter shall be interpreted to authorize a right of action against the City.

13.104.080 City Manager Regulations.

The City Manager may promulgate regulations for the administration and enforcement of this Chapter.

13.104.090 Severability.

If any word, phrase, sentence, part, section, subsection, or other portion of this chapter, or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed application thereof, shall be severable, and the remaining provisions of this chapter, and all applications thereof, not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The City Council hereby declares that it would have passed this title, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional.

<u>Section 2.</u> Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 11, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

- Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.
- Noes: None.
- Absent: None.

ORDINANCE NO. 7,686-N.S.

AMENDING BERKELEY MUNICIPAL CODE TITLE 12 TO ESTABLISH GENERAL REGULATIONS AND SPECIFIC OPERATING STANDARDS FOR CANNABIS BUSINESSES; AMENDING CHAPTERS 12.21 AND 12.22

BE IT ORDAINED by the Council of the City of Berkeley as follows:

<u>Section 1</u>. That Berkeley Municipal Code Section 12.21.020 is amended to read as follows:

12.21.020 Definitions

A. "Active Ingredients" means, in the case of dried cannabis flowers, extractions or infusions, delta-9- tetrahydrocannabinolic acid, delta-9-tetrahydrocannabinol, cannabidiolic acid, cannabidiol, and any cannabinoid or propyl cannabinoid derivative when present in amounts greater that .5% by dry weight, and any mono- or sesquiterpenoid present in an amount exceeding .3% of a product's dry weight.

B. "Adult Use Cannabis" means Cannabis and Cannabis Products intended for consumption by adults 21 and over, and that is not Medicinal Cannabis.

C. "Adulterant" means any poisonous or deleterious substance that may render Cannabis or Cannabis Products impure or injurious to health, as determined by the City's Environmental Health or Public Health Divisions.

D. "Adulterated" means any Cannabis or Cannabis Product with Contaminants exceeding any testing thresholds and/or containing any Adulterant.

E. "Batch" shall have the same meaning as set forth in MAUCRSA, as amended from time to time.

F. "Cannabis" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both adultuse and medicinal cannabis.

G. "Cannabis Business" is a business possessing a State license as specified in Section 26050 of the Business and Professions Code, as amended from time to time, and includes Cannabis Businesses with an "A" designation ("ACB") and Cannabis Businesses with an "M" designation ("MCB").

H. "Cannabis By-Products" means delta-8-THC and cannabinol when present in amounts greater than 0.2% of a product's dry weight.

I. "Cannabis Compound(s)" means any or all of the following chemicals, as the context requires:

1. "THC" or ""9-THC" means "9-tetrahydrocannabinol, (")-(6aR,10aR)-6,6,9-trimethyl-3-pentyl-6a,7,8,10a-tetrahydro-6H-benzo[c]chromen-1-ol.

2. "THCA" or ""9-THCA" means the acid form of THC.

3. "CBD" or "Cannabidiol" means 2-[(1R,6R)-6-isopropenyl-3-methylcyclohex-2-en-1-yl]-5-pentylbenzene-1,3- diol.

4. "CBDA" or "Cannabidiolic acid" means the acid form of CBD.

5. "CBN" or "Cannabinol" means 6,6,9-trimethyl-3-pentyl-benzo[c]chromen-1-ol.

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J. "Cannabis Cultivation Facility" or "Facility" shall have the same meaning as "cultivation site" as set forth in Section 26001 of the Businesses and Professions Code. It includes "Major Cannabis Cultivation Facility", defined as follows:

"Major Cannabis Cultivation Facility" means a Facility that is between 10,000 sf and 22,000 sf in total canopy area.

"Minor Cannabis Cultivation Facility" means a facility that is less than 10,000 sf in total canopy area.

K. "Cannabis Products" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time, and includes both medicinal and adult-use Concentrates and Cannabis Products.

L. Cannabis Retailer

1. "Retailer" means both Storefront Retailers and Delivery-Only Retailers.

2. "Cannabis Retailer" shall mean an ACB ("A-Retailer") or MCB ("M-Retailer") that is authorized under Chapter 12.22, Title 23, and California law to dispense Cannabis at a non-residential location. A Retailer may deliver to its Qualified Patients, Primary Caregivers, or adult consumers and provide other incidental services to its Qualified Patients, Primary Caregivers, or adult consumers to the extent permitted by California law.

M. "Cannabis Waste" means contaminated Cannabis or Cannabis Products that cannot be rendered safe and any Cannabis or Cannabis Products that have been designated as a waste by a Cannabis Business, or regulatory authority. Cannabis Waste does not include materials from the cultivation and manufacturing processes not known to be contaminated with pesticide or heavy metal residues and which may be composted by an approved process.

N. "Concentrate" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

O. "Contaminant" means any pesticide, residual solvent or microbiological organism or product thereof, heavy metal, or any other Adulterant as determined by the Environmental Health Division.

P. "Cosmetic Cannabis Product" means any article, or its components, intended to be rubbed, poured, sprinkled, or sprayed on, introduced to, or otherwise applied to, the human body, or any part of the human body, that is not an Edible Cannabis product and includes tinctures.

Q. "Cultivate" and "Commercial Cultivation" mean any activity involving the planting, growing, harvesting, drying, curing, grading or trimming of cannabis requiring a license pursuant to MAUCRSA, as amended from time to time.

R. "Cultivator" means an individual or entity required to be licensed to cultivate cannabis pursuant to MAUCRSA, as amended from time to time.

S. "Deliver" and "Delivery" shall mean any transit of Cannabis or Cannabis Product from a Retailer to a Customer at a residence.

T. "Delivery-Only Retailer" is a Retailer that is limited to acquiring Cannabis and delivering it to its Qualified Patients, Primary Caregivers, and adult consumers, and does not have a location to which Qualified Patients, Primary Caregivers, and adult consumers may come to acquire Cannabis or any other good or service.

U. "Designated Cannabis Smoking Room" means a designated area on the premises of a Cannabis Business where customers may smoke cannabis.

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V. "Designated Cannabis Smoking Room Ventilation System" means a ventilation system capable of removing all detectable odors, smoke and by-products of combustion.

W. "Distributor" means an individual or entity required to be licensed as a distributor pursuant to MAUCRSA, as amended from time to time.

X. "Edible Cannabis Product" (or "Edible") means a cannabis product that is intended to be used, in whole or in part, for human consumption, including but not limited to, chewing gum, but excluding products set forth in Division 15 (commencing with Section 32501) of the Food and Agricultural Code. An edible cannabis product is not considered food, as defined by Section 109935 of the health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

Y. "Lounge" is a Storefront Retailer that has a Designated Cannabis Smoking Room or a room for consuming edibles that meets State requirements.

Z. "Manufacturer" means an individual or entity required to be licensed as a manufacturer pursuant to MAUCRSA, as amended from time to time.

AA. "Medicinal Cannabis" means Cannabis and Cannabis Products intended as medicine for those with a valid physician's recommendation in compliance with California law.

BB. "Microbusiness" shall have the same meaning set forth in MAUCRSA, as amended from time to time, and includes "Retail Nursery Microbusiness", defined as follows:

1. "Retail Nursery Microbusiness" is restricted to either a Class 1 or Class 2 Nursery that sells plants and seeds on a retail basis, either at a location to which Customers may come to acquire cannabis plants or seeds, or by delivering plants or seeds. No other cannabis products may be sold at this type of use. Distribution is limited to those products directly related to this business. No cannabis consumption is permitted on site.

CC. "Nursery" means an individual or entity required to be licensed as a Type 4 Cultivator pursuant to MAUCRSA, as amended from time to time, and includes "Class 1 Nursery" and "Class 2 Nursery," defined as follows:

1. "Class 1 Nursery" means a nursery that only produces immature plants, such as cuttings or clones.

2. "Class 2 Nursery" means a nursery that produces mature plants with flowers for the purpose of producing seeds, whether for distribution to a Retailer or for research purposes. A Class 2 Nursery may also produce cuttings or clones.

DD. "Primary Caregiver" shall have the same meaning as set forth in Section 26001 of the Business and Professions Code, as amended from time to time.

EE. "Principal" means any person that has direct or non-delegated indirect authority over the management or policies of a Cannabis Business.

FF."Protected Health Information" means documentation of a an MCB's Qualified Patient's medical history or condition other than a physician's recommendation, an identification card issued pursuant to Health and Safety Code Section 11362.7 et seq., or the written designation of a Primary Caregiver by a Qualified Patient or identification card holder. Protected Health Information shall not include information conveyed by a Qualified Patient to a Retailer regarding such Qualified Patient's medical condition, information conveyed by a Qualified Patient to a Retailer regarding efforts to ameliorate or otherwise address symptoms associated with such Qualified Patient's medical condition, or

information regarding Cannabis or Medicinal Cannabis Products provided to a Qualified Patient.

GG. "Qualified Patient" shall have the same meaning as provided in California Health and Safety Code Section 11362.7.

HH. "Solvent" means any substance in which another substance is dissolved, forming a solution.

II. "Storefront Retailer" is a Retailer with a location to which Customers, Qualified Patients or Primary Caregivers may come to acquire Cannabis or any other good or service.

JJ. "Tincture" means an extract of Cannabis or solution of such, typically made with food-grade alcohol or glycerin.

KK. "Temporary Cannabis Event" shall mean an activity required to be licensed as a temporary cannabis event pursuant to MAUCRSA, as amended from time to time. Such events may involve onsite sale and consumption of cannabis goods and must be operated by a state-licensed event organizer.

<u>Section 2</u>. That Berkeley Municipal Code Section 12.22.040 is amended to read as follows:

12.22.040 Retailers

Retailers shall comply with the operating standards set forth in this Section.

A. Retailers must obtain operating permits from and allow inspections by the City of Berkeley Environmental Health Division.

B. Retailers may be open to the public and conduct deliveries according to the hours of their respective zoning districts, except as restricted by State law (Code of Regulations Title 16, Division 42, Chapter 3, Section 5403).

C. A Retailer may deliver cannabis only to the extent allowed by its State license.

D. Accessibility. Retailers shall comply with all physical accessibility requirements that would be applicable to a newly-constructed building, except that pre-existing Retailers permitted under Ordinance No. 6826-N.S. shall not be required to comply with such requirements as long as they remain in the same location as when this Chapter became effective, except as may be required by other laws.

E. Signage.

1. All Retailers must either provide to each Customer or prominently display at all points of sale a notice containing the language set forth in this Section.

a. If provided to each Customer, the notice shall be printed on paper that is no less than 5 inches by 8 inches in size, and shall be printed in no smaller than 18-point font.

b. If prominently displayed at all points of sale, the notice shall be printed on a poster no less than 3 feet by 3 feet in size, shall be printed in no smaller than a 28-point font, displayed prominently behind the main dispensing counter at eye-level (i.e., with midpoint five feet above the floor).

2. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"The use of cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

3. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"WARNING: Cannabis is not tested by local, state or federal governmental agencies for health, safety, or efficacy. There may be health risks associated with the consumption of cannabis or cannabis products."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

4. Any M-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This M-Retailer provides medicinal cannabis only to Qualified Patients and their Primary Caregivers, who must have a valid California Medical Marijuana Identification Card or a verifiable, written recommendation from a physician for medicinal cannabis."

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

5. All M-Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This Medicinal Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of medicinal cannabis for non-medical purposes is a violation of State and local laws."

All M-Retailers that provide delivery services, including Delivery-only M-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

6. Any A-Retailer that allows Customer visits must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"This Adult-Use Cannabis Retailer is licensed in accordance with the laws of the City of Berkeley and the State of California. The sale or diversion of adult- use cannabis to persons under the age of 21 is a violation of State and local laws."

All A-Retailers that provide delivery services, including Delivery-only A-Retailers, must provide this notice to each delivery Customer as set forth in subsection 12.22.040.E.

7. All Retailers must prominently display a notice as set forth in subsection 12.22.040.E that contains the following language:

"GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE 1 CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION. DRIVING WHILE UNDER THE INFLUENCE OF CANNABIS IS ILLEGAL."

All Retailers that provide delivery services, including Delivery-only Retailers, must provide this notice to each Customer as set forth in subsection 12.22.040.E.

This notice shall be reviewed and updated annually by the Berkeley Public Health Department, who shall review the warning requirements and update them as needed to reflect current science on cannabis risks and science on the most effective means to communicate warnings.

F. Consumption of Cannabis

1. The consumption of Cannabis or Cannabis Products in public places is prohibited.

2. Notwithstanding subsection 12.22.040.F.1, the consumption of Cannabis and Cannabis Products is permitted at a Lounge. The consumption permitted at a Lounge will be based on whether the Lounge is equipped with a Designated Cannabis Smoking Room outfitted with a Designated Cannabis Smoking Room Ventilation System.

G. Delivery Requirements

1. Medicinal and Adult Use cannabis may be delivered by a Retailer, as long as the deliveries comply with the appropriate State license.

2. All Retailers that provide delivery services must comply with the following requirements.

a. All vehicles used for delivery shall be maintained and operated in a manner and in a condition required by law and applicable regulations.

b. The following persons may not drive delivery vehicles:

i. a person who does not possess a valid driver's license;

ii. a person who has been at fault within the immediately preceding two years in any motor vehicle accident causing death or personal injury;

iii. a person who has been at fault in three or more motor vehicle accidents within the previous 12 months;

iv. a person who has been under suspension, revocation or probation within the last five years by the Department of Motor Vehicles for a cause involving the safe operation of a motor vehicle;

v. a person who has been convicted of any of the following misdemeanor offenses within the past five years: driving under the influence or reckless driving involving alcohol or reckless driving involving bodily injury;

vi. a person who has been convicted of any of the following offenses: a second or subsequent conviction for driving under the influence, or any felony conviction for driving under the influence (with or without injury), or vehicular manslaughter, or habitual traffic offender.

c. The following persons may not be involved in making deliveries:

i. any person who is required to register as a sex offender under Section 290 of the California Penal Code;

ii. any person who has within the past ten years been convicted of any felony offense involving moral turpitude.

d. Persons involved in making deliveries must have in their possession a copy of the document memorializing the City's approval of the delivery service.

e. Persons involved in making deliveries may not be armed.

f. Delivery vehicles may not advertise any activity related to Cannabis, carry symbols or emblems related to Cannabis, or advertise the name of the Retailer.

g. Delivery of Cannabis shall be directly to the residence of the Customer unless said residence is in a park, school or hospital. Deliveries to parks, schools, hospitals, and all non-residential locations are prohibited.

h. Deliveries may occur only between the hours of 8:00 a.m. and 10:00 p.m.

i. Delivery vehicles shall not carry or transport at any one time an amount of Cannabis, Cannabis Products, cash and/or cash equivalents worth, in total, more than three thousand dollars (\$3,000).

j. All orders to be delivered shall be packaged by the name or identification number of the Customer for whom the delivery is intended.

k. The person responsible for making deliveries shall have a copy of the record of all delivery requests while making deliveries.

I. All Retailers that provide delivery service shall maintain at all times Commercial General Liability insurance providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than One Million Dollars (\$1,000,000) per occurrence and Comprehensive Automobile Liability (owned, non-owned, hired) providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than One Million Dollars (\$1,000,000). The Commercial General Liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the City shall be primary, and shall name the City, its officials and employees as additional insured. Failure to maintain insurance as required herein at all times shall be grounds for immediate suspension of the privilege of providing delivery service.

H. M-Retailers

1. M-Retailers must not admit any person without first verifying his or her status as a Qualified Patient or Primary Caregiver.

2. No physician recommendations for Medicinal Cannabis may be provided on site.

3. M-Retailers may not provide more Medicinal Cannabis to a Qualified Patient or Primary Caregiver than is necessary for the personal medicinal use of the Qualified Patient for whom the Medicinal Cannabis is intended, and may not dispense more Medicinal Cannabis to a Qualified Patient or Primary Caregiver per day than permitted by State law.

4. M-Retailers must take all practicable steps necessary to prevent and deter diversion of Medicinal Cannabis to any person who is not a Qualified Patient or Primary Caregiver. M-Retailers must limit access to Medicinal Cannabis to authorized personnel only. M-Retailers must maintain an inventory management system that accounts for all Medicinal Cannabis separately from Adult Use Cannabis if both types are sold or distributed at the Retailer.

5. M-Retailers must not admit any Qualified Patient under 18 years of age pursuant to MAUCRSA.

6. Medicinal Cannabis for low income persons

a. At least 2% (by weight) of the annual amount of Medicinal Cannabis in dried plant form provided by a M-Retailer to Qualified Patients and Primary Caregivers shall be provided at no cost to very low-income Qualified Patients who are Berkeley residents or their Primary Caregivers. This amount shall be calculated every six months, based on the amount dispensed during the immediately preceding six months. Medicinal Cannabis provided under this Section shall be the same quality on average as Medicinal Cannabis that is dispensed to other persons.

b. For purposes of this Section, income shall be verified using federal income tax returns or another reliable method approved by the City Manager.

c. For purposes of this Section, "very low income" shall mean the household income levels established by the U.S. Department of Housing and Urban Development.

d. M-Retailers shall keep an accurate roster of very low-income Qualified Patients who are Berkeley residents, which shall include a copy of either a California Medical Cannabis Identification Card or a physician's recommendation, and, if using a Primary Caregiver, a written authorization from the Qualified Patient to be represented by such Primary Caregiver. Such records shall be maintained in a manner that protects the confidentiality of the Qualified Patient and Primary Caregiver.

e. M-Retailers shall track distributions to very low-income Qualified Patients (or their Primary Caregivers) in an inventory management system compatible with the state Trackand-Trace program. M-Retailers shall generate a report every six (6) months showing the total percentage of Medicinal Cannabis sales distributed to Berkeley residents. If an M-Retailer voluntarily expands the program to residents outside of Berkeley, that percentage shall be calculated separately.

I. A-Retailers must not admit any person under 21 years of age. If an A-Retailer also holds an M-Retailer license, access to the M-Retailer portion of the establishment is subject to the requirements of subsection 12.22.040.H.

<u>Section 3</u>. That Berkeley Municipal Code Section 12.22.090 is amended to read as follows:

12.22.090 Microbusinesses

A. Microbusinesses must obtain separate City-issued operating permits for each activity conducted on the premises.

B. Microbusinesses are subject to the operating standards set forth in this Chapter for each activity conducted on the premises.

C. If the operating standards for the activities are different, the more restrictive standard shall apply, except as follows:

1. Signage for Retail Nursery Microbusinesses and Retail Storefront Microbusinesses shall be subject to the regulations for storefront Retailers.

D. If the operating permit for one of the activities is revoked, the entire Microbusiness must cease operation until all operating permits at the premises are reinstated.

<u>Section 4</u>: Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be

filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on February 11, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

- Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.
- Noes: None.
- Abstain: Davila.
- Absent: None.



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Mark Numainville, City Clerk

Subject: Minutes for Approval

RECOMMENDATION

Approve the minutes for the Council meetings of January 14, 2020 (special closed and special), January 21, 2020 (special closed and regular) and January 28, 2020 (special and regular).

<u>CONTACT PERSON</u> Mark Numainville, City Clerk, 981-6900

Attachments:

- 1. January 14, 2020 Special Closed City Council Meeting
- 2. January 14, 2020 Special City Council Meeting
- 3. January 21, 2020 Special Closed City Council Meeting
- 4. January 21, 2020 Regular City Council Meeting
- 5. January 28, 2020 Special City Council Meeting
- 6. January 28, 2020 Regular City Council Meeting

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, JANUARY 14, 2020

5:00 P.M.

School District Board Room – 1231 Addison Street, Berkeley, CA

JESSE ARREGUIN, MAYOR Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 5:04 p.m.

Present: Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Davila, Bartlett

Councilmember Kesarwani present at 5:10 p.m.

Councilmember Davila present at 5:17 p.m.

Councilmember Bartlett present at 5:20 p.m.

Public Comment - Limited to items on this agenda only - 0 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

- 1. PUBLIC EMPLOYEE APPOINTMENTS PURSUANT TO GOVERNMENT CODE SECTION 54957(b):
 - a. Title of position to be filled: Director of Health, Housing & Community Services

Action: No reportable action.

OPEN SESSION:

No reportable action.

Adjournment

Action: M/S/C (Droste/Robinson) to adjourn the meeting. Vote: All Ayes.

Adjourned at 5:55 p.m.

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This is to certify that the foregoing is a true and correct record of the special closed meeting of January 14, 2020 as approved by the Berkeley City Council.

Mark Numainville, City Clerk

MINUTES SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Tuesday, January 14, 2020

6:00 P.M.

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

Preliminary Matters

- **Roll Call:** 6:04 p.m.
- **Present:** Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin
- Absent: None

Worksession

- Civic Center Vision and Implementation Plan From: City Manager Contact: Eleanor Hollander, Economic Development, (510) 981-7530 Action: 6 speakers. Presentation made and discussion held.
- goBerkeley Program Update January 2020
 From: City Manager
 Contact: Phillip Harrington, Public Works, (510) 981-6300
 Action: Item postponed to January 28, 2020

Adjournment

Action: M/S/C (Davila/Wengraf) to adjourn the meeting. Vote: All Ayes.

Adjourned at 8:10 p.m.

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This is to certify that the foregoing is a true and correct record of the special meeting of January 14, 2020 as approved by the Berkeley City Council.

Mark Numainville, City Clerk

Communications

• None

Supplemental Communications and Reports 1

• None

Supplemental Communications and Reports 2

• None

Supplemental Communications and Reports 3

Item #1: Civic Center Vision and Implementation Plan

1. Presentation, submitted by the City Manager's Office

BERKELEY CITY COUNCIL SPECIAL MEETING MINUTES

TUESDAY, JANUARY 21, 2020

4:00 P.M.

School District Board Room – 1231 Addison Street, Berkeley, CA

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON

DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 4:05 p.m.

Present: Harrison, Wengraf, Robinson, Droste, Arreguin

Absent: Kesarwani, Davila, Bartlett, Hahn

Councilmember Kesarwani present at 4:06 p.m.

Councilmember Davila present at 4:07 p.m.

Councilmember Bartlett present at 4:31 p.m.

Public Comment - Limited to items on this agenda only - 5 speakers

CLOSED SESSION:

The City Council will convene in closed session to meet concerning the following:

1. CONFERENCE WITH LABOR NEGOTIATORS; GOVERNMENT CODE SECTION 54957.6

Negotiators: Dee Williams-Ridley, City Manager, David White, Deputy City Manager, LaTanya Bellow, Director of Human Resources.

Employee Organizations: Berkeley Police Association

Action: No reportable action.

OPEN SESSION:

No reportable action.

Adjournment

Action: M/S/C (Harrison/Droste) to adjourn the meeting. Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Adjourned at 5:37 p.m.

This is to certify that the foregoing is a true and correct record of the special meeting of January 21, 2020 as approved by the Berkeley City Council.

Mark Numainville, City Clerk

MINUTES BERKELEY CITY COUNCIL MEETING Tuesday, January 21, 2020 6:00 PM

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

Preliminary Matters

- **Roll Call:** 6:02 p.m.
- **Present:** Kesarwani, Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin
- Absent: None

Ceremonial Matters:

- 1. Recognition of 47th Anniversary of Roe v. Wade
- 2. Recognition in Memory of Hampton Smith, Former City Employee
- 3. Adjourned in memory of East Bay Regional Parks District Boardmember, Whitney Dotson
- 4. Adjourned in memory of Jim Slemp, Former Berkeley High School Principal

City Manager Comments: None

Public Comment on Non-Agenda Matters: 10 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 22 speakers

Action: M/S/C (Arreguin/Robinson) to accept revised material from Councilmember Robinson on Item 44. **Vote:** All Ayes.

Action: M/S/C (Wengraf/Robinson) to adopt the Consent Calendar in one motion except as indicated. Vote: All Ayes.

Tuesday, January 21, 2020

MINUTES

Recess Items

1. License Agreement: California Jazz Conservatory for Property at 1947 Center Street

From: City Manager

Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a license agreement with California Jazz Conservatory ("Jazz School") for non-exclusive use of space on the fifth floor at 1947 Center Street for a three-month term ending March 31, 2020. **Financial Implications:** See report

Contact: David White, City Manager's Office, (510) 981-7000 **Action:** Adopted Resolution No. 69,238–N.S.

2. Contract: Capoeira Arts Foundation

From: City Manager

Recommendation: Adopt a Resolution ratifying the action taken by the City Manager during recess to execute a contract with Capoeira Arts Foundation in an amount not to exceed \$150,000.

Financial Implications: See report

Contact: David White, City Manager's Office, (510) 981-7000 **Action:** Adopted Resolution No. 69,239–N.S.

Consent Calendar

3. Minutes for Approval

From: City Manager

Recommendation: Approve the minutes for the Council meetings of December 3, 2019 (special closed and regular), December 10, 2019 (special closed and regular) and December 16, 2019 (special closed).

Financial Implications: None Contact: Mark Numainville, City Clerk, (510) 981-6900 **Action:** Approved minutes as submitted.

 City Council Short Term Referral Process From: City Manager Recommendation: Approve moving Short Term Referral reporting to a quarterly basis, in alignment with Strategic Plan reporting. Financial Implications: None Contact: Mark Numainville, City Clerk, (510) 981-6900 Action: Approved recommendation.

5. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 21, 2020 From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: Various Funds - \$7,281,620 Contact: Henry Oyekanmi, Finance, (510) 981-7300 **Action:** Approved recommendation.

6. Contracts: Citywide Printing and Copying Services From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager to approve contracts and any amendments with the following named firms for Citywide Printing and Copying Services for a total amount not to exceed \$675,000 for a 3 year period starting February 1, 2020 through January 31, 2023, subject to the City's annual budget appropriation process:

1. Synthesis Group Inc. dba Minuteman Press Berkeley in an amount not to exceed \$575,000;

2. In and Out Printing Services, Inc. in an amount not to exceed \$100,000.

Financial Implications: Various Funds - \$675,000

Contact: Henry Oyekanmi, Finance, (510) 981-7300

Action: Adopted Resolution No. 69,240–N.S. (Synthesis) and Resolution No. 69,241–N.S. (In and Out).

7. Contract: Venture Tactical for Personal Protective Equipment for Firefighters From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Venture Tactical to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$112,000.

Financial Implications: See report

Contact: David Brannigan, Fire, (510) 981-3473 Action: Adopted Resolution No. 69,242–N.S.

8. Contract: First Spear Of California (FSOC) for Personal Protective Equipment for Firefighters

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with First Spear Of California (FSOC) to provide personal protective equipment (PPE) for Berkeley Firefighters in an amount up to \$47,000.

Financial Implications: See report

Contact: David Brannigan, Fire, (510) 981-3473 Action: Adopted Resolution No. 69,243–N.S.

9. Contract: Michael Brady for Emergency Management Training From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a contract with Michael Brady to provide emergency management training for City Emergency Operations Center (EOC) and Department Operations Center (DOC) staff in an amount up to \$166,680.

Financial Implications: See report Contact: David Brannigan, Fire, (510) 981-3473 **Action:** Adopted Resolution No. 69,244–N.S.

10. Designate the Line of Succession for the Director of Emergency Services From: City Manager

Recommendation: Adopt a Resolution approving the designated line of succession to the position of Director of Emergency Services in the event of an officially declared disaster, and rescinding Resolution No. 68,336-N.S.

Financial Implications: None

Contact: David Brannigan, Fire, (510) 981-3473 **Action:** Adopted Resolution No. 69,245–N.S.

11. Grant Application: Funding from Bay Area Urban Areas Security Initiative (UASI) to Support Emergency Medical Training Equipment and Fire/Rescue Utility Vehicle Purchases

From: City Manager

Recommendation: Adopt two Resolutions authorizing the City Manager or her designee to submit grant applications to the Bay Area Urban Areas Security Initiative grant program in the amount of \$56,472 to fund purchase of Emergency Medical Training Equipment and in the amount \$53,134 to fund purchase of a Polaris Fire/Rescue Utility Vehicle, and to accept grant funds and execute resulting grant agreements.

Financial Implications: See report

Contact: David Brannigan, Fire, (510) 981-3473

Action: Adopted Resolution No. 69,246–N.S. (Equipment) and Resolution No. 69,247–N.S. (Vehicle).

12. Grant Application: Funding from California Department of Forestry and Fire Protection to Support Hazardous Fuels Reduction in Berkeley Wildland Urban Interface

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to submit a grant application in the amount of \$800,484 to the California Department of Forestry and Fire Protection (Cal Fire) California Climate Investments (CCI) program to fund a three-year vegetation mitigation program to operate in the Wildland Urban Interface (WUI) of Berkeley's Fire Zones 2 and 3, and to accept grant funds and execute a resulting grant agreement.

Financial Implications: See report

Contact: David Brannigan, Fire, (510) 981-3473 **Action:** Adopted Resolution No. 69,248–N.S.

13. Contract No. 31900132 Amendment: BOSS for Representative Payee Services From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to execute an amendment to Contract No. 31900132 with vendor Building Opportunities for Self-Sufficiency (BOSS) to provide Representative Payee services. (A representative payee is a person or organization appointed by the Social Security Administration to receive the Social Security or Supplemental Security Income benefits for anyone who is unable to manage or direct the management of his or her benefits.) The amendment will add \$25,000 to the current contract and extend it through June 30, 2020 for a total contract not to exceed amount of \$100,000. The current contract would be extended by four months, pursuant to the MHSA Plan, with additional funding proportionate to the monthly payment terms of the original contract.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Adopted Resolution No. 69,249–N.S.

14. Contract No. 10631B Amendment: Resource Development Associates for HOTT Evaluation Consulting Services From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10631B with Resource Development Associates (RDA) to provide evaluation consulting services for the Mental Health Division's Homeless Outreach and Treatment Team (HOTT), in an amount not to exceed \$24,000, for a total contract amount not to exceed \$78,500.

Financial Implications: Mental Health Services Act Prevention and Early Intervention Homeless Outreach Fund - \$24,000

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Adopted Resolution No. 69,250–N.S.

15. Release of Resale Restrictions on former Redevelopment Agency Homeowner Loans

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute releases for resale restrictions on seven homeowner loans made by the former Berkeley Redevelopment Agency.

Financial Implications: None

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Adopted Resolution No. 69,251–N.S.

16. Grant Applications: California Affordable Housing and Sustainable Communities Infrastructure and Agreements in Connection with the Proposed Blake Apartments and Maudelle Miller Shirek Community Projects From: City Manager

Recommendation: Adopt a Resolution: 1. Authorizing the City Manager to negotiate, enter into, and cause the City to perform its obligation under agreements (including amendments) with the following developers and/or their affiliates relating to grant applications to the California Affordable Housing and Sustainable Communities program for project-related transportation and infrastructure improvements: a. Satellite Affordable Housing Associates for Blake Apartments (2527 San Pablo), for a total grant amount of up to \$1.422 million; and b. Resources for Community Development for Maudelle Miller Shirek Community (2001 Ashby), for a total grant amount of up to \$4.047 million in state AHSC funds from the projects and complete selected transportation improvements if awarded.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Adopted Resolution No. 69,252–N.S.

17. Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way

From: City Manager

Recommendation: Adopt first reading of an Ordinance approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement for 2012 Berkeley Way, the three ground leases outlined in the Disposition and Development Agreement, and two Reciprocal Easement, Maintenance and Joint Use Agreements required for project operations.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Adopted first reading of Ordinance No. 7,684–N.S. Second reading scheduled for February 11, 2020. Revisions to the leases attached to the ordinance include more precise definitions of the leasehold interest, expanding certain lender rights in the event of various possible negative outcomes such as property damage, destruction, condemnation, or foreclosure, and confirming that leases will be recorded at closing. 18. ***Removed from Agenda by the City Manager*** Contract No. 9649 Amendment: Sloan Sakai LLP for Continued Chief Labor Negotiator Services From: City Manager

Contact: LaTanya Bellow, Human Resources, (510) 981-6800

19. Classification and Salary: Establish Mental Health Nurse Classification Series From: City Manager

Recommendation: Adopt a Resolution amending Resolution No. 68,626-N.S. Classification and Salary Resolution for SEIU Local 1021 CSU & PTRLA to establish the classifications of Mental Health Nurse with a monthly salary range of \$9,348.02 -\$11,363; Senior Mental Health Nurse with a monthly salary range of \$9,815.87 -\$11,931.92; and amending Resolution No. 68,710–N.S. Classification and Salary Resolution for Public Employees Union Local to establish a Supervising Mental Health Nurse classification with a monthly salary range of \$10,307.24 - \$12,528.52 – effective January 21, 2020.

Financial Implications: See report

Contact: LaTanya Bellow, Human Resources, (510) 981-6800 **Action:** Adopted Resolution No. 69,253–N.S.

20. 2020 Fee Assessment – State of California Self-Insurance Fund (Workers' Compensation Program)

From: City Manager

Recommendation: Adopt a Resolution authorizing payment to the State of California Department of Industrial Relations for Fiscal Year 2020 for administering the Workers' Compensation Program, in an amount not to exceed \$285,609. **Financial Implications:** Workers' Compensation Self-Insurance Fund - \$285,609 Contact: LaTanya Bellow, Human Resources, (510) 981-6800 **Action:** Adopted Resolution No. 69,254–N.S.

21. Contract No. 9791 Amendment: Environmental Systems Research Institute, Inc. (ESRI) for Enterprise Graphical Information Systems (GIS) Software License Maintenance and Support

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 9791 with Environmental Systems Research Institute, Inc. (ESRI) for Enterprise GIS software license maintenance and support increasing the amount by \$225,000 for a not-to-exceed total of \$621,000 for the period of July 1, 2020 through June 30, 2023.

Financial Implications: Various Funds - \$225,000 Contact: Savita Chaudhary, Information Technology, (510) 981-6500 **Action:** Adopted Resolution No. 69,255–N.S.

22. Contract No. 10264B Amendment: ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Certification Training

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 10264B with ThirdWave Corporation for Digital Strategic Plan Refresh and RapidWorkflow® Process Modeling (RWPM) Workshops for an amount not to exceed \$73,658, and a total contract value not to exceed \$329,061 from May 1, 2016 through June 30, 2021.

Financial Implications: Various Funds - \$73,658 Contact: Savita Chaudhary, Information Technology, (510) 981-6500 **Action:** Adopted Resolution No. 69,256–N.S.

23. Contract No. 10988 Amendment: Presidio Network Solutions, LLC: Develop and Deliver a roadmap for Cyber Resilience Plan (CRP) From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No 10988 with Presidio Network Solutions ("Presidio") for an amount not to exceed \$28,620 and a total contract value not to exceed \$128,620 from September 21, 2018 through June 30, 2021.

Financial Implications: Various Funds - \$28,620 Contact: Savita Chaudhary, Information Technology, (510) 981-6500 **Action:** Adopted Resolution No. 69,257–N.S.

24. Donation: Memorial Bench at Cesar Chavez Park in memory of Michael H. Weiss

From: City Manager

Recommendation: Adopt a Resolution accepting a cash donation in the amount of \$3,400 for a memorial bench to be placed at Cesar Chavez Park at the Berkeley Marina in memory of Michael H. Weiss.

Financial Implications: \$3,400 (Donation)

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700 **Action:** Adopted Resolution No. 69,258–N.S.

25. Amendment to Contract No. 32000034 with Bellingham to Replace Additional Finger Docks at the Berkeley Marina

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 32000034 with Bellingham Inc. to replace damaged finger docks at the Berkeley Marina by increasing the construction contract amount by \$60,000 for a not-to-exceed amount of \$384,335.

Financial Implications: See report

Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700 **Action:** Adopted Resolution No. 69,259–N.S.

26. Contract No. 31900207 Amendment: Recruiting, Advertising, and Marketing Strategy for the Berkeley Police Department From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to amend Contract No. 31900207 with Epic Recruiting, to provide additional recruiting and advertising services for police and professional staff vacancies. This amendment would add \$90,000 for a total contract amount not to exceed \$190,000, and extending the term through April 30, 2021.

Financial Implications: General Fund - \$90,000

Contact: Andrew Greenwood, Police, (510) 981-5900

Action: Adopted Resolution No. 69,260–N.S.

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila.

27. Contract No. 10645 Amendment: Recology Blossom Valley Organics - North for the Hauling and Processing of Organic (Compostable) Materials From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute an amendment to Contract No. 10645 for a five (5) year term with Recology, Inc.'s Blossom Valley Organics - North facility for the hauling and processing of organic (compostable green and food waste) materials through February 28, 2025 increasing the amount of the contract by \$13,600,000 for a total amount not-to-exceed \$26,661,930.

Financial Implications: Zero Waste Fund - \$13,600,000 Contact: Phillip Harrington, Public Works, (510) 981-6300 **Action:** Adopted Resolution No. 69,261–N.S.

28. Appointments of Maria Moore, Edward Opton and Farzaneh Izadi to the Mental Health Commission

From: Mental Health Commission

Recommendation: Adopt a Resolution approving the appointment of Maria Moore as a representative of the Special Public Interest Category; Edward Opton, as a representative of the General Public Interest Category; and Farzaneh Izadi as a representative of the Special Public Interest Category to the Mental Health Commission, for three year terms beginning January 22, 2020 and ending January 21, 2023.

Financial Implications: None

Contact: Jamie Works-Wright, Commission Secretary, (510) 981-5400 **Action:** Adopted Resolution No. 69,262–N.S.

29. Resolution: Oppose the new U.S. base construction in Henoko-Oura Bay of Okinawa

From: Peace and Justice Commission
Recommendation: Adopt a resolution in opposition of the new U.S. base construction in Henoko-Oura Bay of Okinawa.
Financial Implications: None
Contact: Nina Goldman, Commission Secretary, (510) 981-7000
Action: No action taken.
Vote: Ayes – Davila, Bartlett, Harrison, Robinson; Noes – None; Abstain – Kesarwani, Hahn, Wengraf, Droste, Arreguin.

Council Consent Items

30. YMCA of the East Bay Youth & Government Program
 From: Mayor Arreguin and Councilmember Bartlett
 Recommendation: Adopt a Resolution approving the D-13 expenditure of \$1,500 in an amount not to exceed \$300 per Councilmember, to the YMCA of the East Bay's Youth & Government program.
 Financial Implications: Mayor's Discretionary Fund - \$300
 Contact: Jesse Arreguin, Mayor, (510) 981-7100
 Action: Councilmembers Hahn and Wengraf added as co-sponsors. Adopted Resolution No. 69 263–N S. revised to include contributions from the following

Resolution No. 69,263–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn - \$200; Councilmember Robinson - \$100; Councilmember Davila - \$100; Councilmember Harrison - \$100; Councilmember Wengraf - \$300.

31. Berkeley Youth Alternatives (BYA) 16th Crab Feed on Thursday, February, 27, 2020: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

From: Councilmembers Davila and Bartlett

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$120 from Councilmember Cheryl Davila, to support Berkeley Youth Alternatives, for their 16th Annual Crab Feed Fundraiser on Thursday, February 27, 2020, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Cheryl Davila and Mayor or any other Councilmembers who would like to contribute.

Financial Implications: Councilmember's Discretionary Fund - \$120 Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120 **Action:** Adopted Resolution No. 69,264–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Councilmember Hahn -\$100; Councilmember Robinson - \$100; Councilmember Wengraf - \$120.

Council Consent Items

32. Short Term Referral to the City Manager: 1. Improve and increase External Community Engagement; 2. Identify the funding resources needed to adequately implement number 1; and 3. Implement and require all City Council items and staff reports include Climate Impacts in addition to Environmental Sustainability (Reviewed by the Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee)

From: Councilmembers Davila and Bartlett

Recommendation: Adopt the following amended actions with a positive recommendation from the Council Facilities, Infrastructure, Transportation, Environment and Sustainability (FITES) Committee: 1. Short Term Referral to the City Manager: to look at how to improve and increase External Community Engagement – including funding for regular on- going town halls or neighborhood assemblies for external community engagement and collaboration to engage the community and allow for input on new policies and programs which affect "marginalized and front-line communities." 2. Short Term Referral to the City Manager to report back and identify funding resources and funding needed to adequately implement number 1, including different organizational structure options; and recommendations for funding. 3. Implement and require all City Council items, and staff reports include Climate Impacts in addition to Environmental Sustainability. **Financial Implications:** To be determined

Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120 **Action:** Approved recommendation.

33. Budget Referral to Conduct an Equal Pay Audit From: Councilmember Harrison Recommendation:

1. Refer to the June 2020 Budget Process \$20,000 to pay for an Equal Pay Audit for City of Berkeley employees. The audit would include pay band analyses and analyses of job segregation and glass ceilings.

2. Issue an RFP to complete the Equal Pay Audit

Financial Implications: \$20,000

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 Action: Councilmember Bartlett added as a co-sponsor. Approved recommendation.

Council Consent Items

34. National Zero Waste Conference: City Sponsorship and Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds From: Councilmember Hahn, Mayor Arreguin, and Councilmember Bartlett Recommendation:

1. Adopt a resolution co-sponsoring the National Zero Waste Conference at UC Berkeley on March 18-19, 2020.

2. Adopt a resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$250 from Councilmember Hahn, to the National Recycling Coalition, the fiscal sponsor of the conference, with funds relinquished to the City's general fund for this purpose from the discretionary Council office budget of Councilmember Hahn, and any other Councilmembers who would like to contribute.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150 **Action:** Councilmember Davila added as a co-sponsor. Adopted Resolution No. 69,265–N.S. (Sponsorship) and Resolution No. 69,266–N.S. (Relinquishment) revised to include contributions from the following Councilmembers up to the amounts listed: Mayor Arreguin - \$250; Councilmember Robinson - \$100; Councilmember Davila - \$100.

35. Small Business Listening Sessions From: Councilmember Hahn

Recommendation: Refer to the City Council's Land Use, Housing & Economic Development policy committee to establish regular Small Business/Enterprise Listening Sessions.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150 Action: Mayor Arreguin and Councilmembers Harrison and Bartlett added as cosponsors. Approved recommendation.

MINUTES

Council Consent Items

36. Recommendations Related to Code Enforcement and Receivership Actions (Reviewed by Health, Life Enrichment, Equity, and Community Committee) From: Health, Life Enrichment, Equity & Community Committee Recommendation: On November 25, 2019, the Health, Life Enrichment, Equity & Community Committee took action to send an item to Council with a positive recommendation that for purposes of understanding the issues and identifying potential changes to the City's codes, policies, and procedures the committee recommends the following:

a. That the City Manager provide an information session to the City Council regarding the various ways in which code enforcement issues have been brought to the attention of the City over the last 5 years;

b. How various code enforcement issues at residential properties are currently handled;

c. Timeframe and mechanisms for achieving code compliance at residential properties;

d. Any existing assistance programs available to support property owners found to have code violations;

e. Specific learnings/changes in City practices resulting from the Leonard Powell receivership case;

f. Other information deemed relevant and appropriate to understand the City's current code enforcement practices for residential properties

Additionally, the Policy Committee requests that the Mayor call a special meeting of the City Council for purposes of a forum based on the recommendations provided by Councilmember Bartlett as the draft plan for a public meeting on receivership. And third, the Committee requests from the City Manager a specific reply on creating a mechanism to provide legal and technical assistance by an independent third party for individuals who are facing City of Berkeley initiated receivership, and that the reply also include a process for the individual to pick legal and technical representatives of their choice. This response should also include a recommendation from the City Manager and a budget referral.

Financial Implications: See report

Contact: Sophie Hahn, Councilmember, District 5, (510) 981-7150; Rashi Kesarwani, Councilmember, District 1, (510) 981-7110; Cheryl Davila, Councilmember, District 2, (510) 981-7120

Action: Item 36 held over to February 11, 2020.

37. Co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall From: Councilmembers Wengraf and Bartlett

Recommendation: That the City of Berkeley co-sponsor Supervisor Keith Carson's Berkeley 2020 Census Town Hall to be held on February 20, 2020 from 5:30 - 7 PM at the Ed Roberts Campus. By co-sponsoring, the Mayor and Councilmembers pledge to publicize and promote the Town Hall to their constituents, and attend themselves if possible.

Financial Implications: None

Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160 Action: Mayor Arreguin added as a co-sponsor. Approved recommendation.

- 38. Holocaust Remembrance Day Event: Relinquishment of Council Office Budget Funds from General Funds and Grant of Such Funds From: Councilmembers Wengraf, Hahn, Bartlett, and Mayor Arreguin **Recommendation:** Adopt a Resolution approving the expenditure of an amount not to exceed \$500 per Councilmember, including \$500 each from Councilmembers Wengraf, Hahn and Bartlett and Mayor Arreguin, to support the City's Annual Holocaust Remembrance Day program with funds relinquished to the City's general fund. The relinguishment of funds from Councilmember Wengraf, Hahn, Bartlett and Mayor Arreguin's discretionary Council Office Budgets, and all other Councilmembers who would like to contribute, allows the City of Berkeley to hold the City's 18th Annual Holocaust Remembrance Day program. All are invited to attend on Sunday, April 19th, 11:30 AM at the Magnes Collection of Jewish Art and Life. Financial Implications: Mayor and Councilmembers' Discretionary Funds - \$500 Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160 Action: Adopted Resolution No. 69,267–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Mayor Arreguin - \$500: Councilmember Hahn - \$500; Councilmember Robinson - \$100; Councilmember Davila - \$100; Councilmember Harrison - \$100; Councilmember Kesarwani - \$100; Councilmember Droste - \$100; Councilmember Bartlett - \$500; Councilmember Wengraf - \$500.
- 39. Resolution Reaffirming the City of Berkeley's Commitment to Roe v. Wade From: Councilmembers Wengraf, Hahn, and Davila Recommendation: Adopt a Resolution reaffirming the City of Berkeley's commitment to Roe v. Wade and honoring the 47th anniversary of its passage. Financial Implications: None Contact: Susan Wengraf, Councilmember, District 6, (510) 981-7160 Action: Adopted Resolution No. 69,268–N.S.

40. No War With Iran

From: Councilmembers Robinson and Harrison, Mayor Arreguin, and Councilmember Davila

Recommendation: Adopt a resolution: 1. Condemning the Trump administration's assassination of a foreign government official, an act of war not authorized by Congress. 2. Endorsing the resolution by Senator Sanders and Representative Khanna to block funding for any military actions against or in Iran without prior Congressional authorization. 3. Endorsing the resolution by Representative Omar and Representative Lee directing the removal of all Armed Forces from hostilities with Iran and requiring that all future actions be explicitly authorized by Congress. **Financial Implications:** None

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170 **Action:** Adopted Resolution No. 69,269–N.S. amended to add a resolved clause regarding the endorsement of H.R. 2456.

Action Calendar – Public Hearings

41. Implement Residential Preferential Parking (RPP) Program on the 1500 Block of Lincoln Street (Continued from December 10, 2019) From: City Manager

Recommendation: Conduct a public hearing and upon its conclusion, adopt a Resolution amending Resolution No. 56,508-N.S. Section 25N by adding a subsection to implement Residential Preferential Parking (RPP) on the 1500 block of Lincoln Street in RPP Area N.

Financial Implications: General Fund - \$2,000 Contact: Phillip Harrington, Public Works, (510) 981-6300

Public Testimony: The Mayor opened the public hearing. 3 speakers.
M/S/C (Davila/Kesarwani) to close the public hearing.
Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Hahn, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Wengraf.

Councilmember Wengraf absent 7:15 p.m. – 7:17 p.m.

Action: M/S/C (Harrison/Kesarwani) to adopt Resolution No. 69,270–N.S. Vote: All Ayes.

42. Extension of the Urgency Ordinance Amending the Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development for a Period of 10 Months and 15 Days From: City Manager

Recommendation: Conduct a public hearing and, upon conclusion, adopt an extension of the Urgency Ordinance (Number 7,683-N.S.) amending Berkeley's ADU Ordinance to comply with new State law, and extend limits on ADU development for a period of 10 months and 15 days, pending further analysis and adoption of local regulations that ensure public safety in Fire Zones 2 and 3.

Financial Implications: None

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Public Testimony: The Mayor opened the public hearing. 0 speakers. M/S/C (Davila/Wengraf) to close the public hearing. **Vote:** All Ayes.

Action: M/S/C (Hahn/Wengraf) to adopt Ordinance No. 7,685–N.S. Vote: All Ayes.

Recess 8:15 p.m. – 8:26 p.m.

- 43a. Public Works Commission Recommendation for the Five-Year Paving Plan (Continued from December 10, 2019)
 From: Public Works Commission
 Recommendation: Adopt a resolution that recommends approval of the Five-Year Paving Plan for FY2020 to FY2024 as proposed by Staff and recommends the creation of a Long-Term Paving Master Plan.
 Financial Implications: See report.
 Contact: Nisha Patel, Commission Secretary, (510) 981-6300
- 43b. Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan (Continued from December 10, 2019) From: City Manager

Recommendation: Adopt a Resolution updating the City's Five-Year Street Rehabilitation Plan for FY 2020 to FY 2024 and refer to the City Manager consideration of a Long-Term Paving Master Plan to be started after the completion of the public process of T1 Phase 2. The City Council may consider the information put forth by the Public Works Commission relevant to adoption of the recommended plan.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

Action: 4 speakers. M/S/C (Hahn/Harrison) to adopt Resolution No. 69,271–N.S. as revised in Supplemental Communications Packet #1 to add Michigan Avenue from Maryland Avenue to Spruce Street; revised from Supplemental Communications Packet #2 to add Channing Way from Milvia Street to Shattuck Avenue, and Channing Way from MLK to Milvia Street; delay the Roosevelt Avenue segment to 2024; In addition, refer to the Facilities, Infrastructure, Transportation, Environment, & Sustainability Committee to work with the Public Works Department and the Commission to explore potential bonding and funding opportunities for improving the PCI of residential streets, and creating a paving master plan.

44. Establishing an Outdoor Emergency Shelter (*Reviewed by Health, Life Enrichment, Equity & Community Committee*)

From: Councilmembers Harrison and Davila, Mayor Arreguin, and Councilmember Robinson

Recommendation:

1. Refer to the City Manager to establish an outdoor emergency shelter in Berkeley. Such a shelter should consider the following amenities to be provided but not required: A. Climate-controlled, wind-resistant durable tents with wooden pallets for support. B. Seeking an agency to manage and oversee the emergency shelter. C. Portable toilet service and handwashing service. D. Shower and sanitation services E. Garbage pickup and safe needle disposal.

2. Refer to the November budget process \$615,000 to be considered alongside other Measure P recommendations.

3. Temporarily waive BMC Article 9 Section 19.28.100 Section N106, to allow for the installation of tents and membrane structures that may be erected for longer than 180 days even if they do not meet all physical requirements.

4. Refer to the City Manager protocol for selecting residents that mirror other shelter selection criteria and are less restrictive than HUD protocols.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140

Action: M/S/C (Wengraf/Droste) to accept supplemental materials from Councilmember Wengraf on Item 44.

Vote: Ayes – Kesarwani, Bartlett, Wengraf, Robinson, Droste, Arreguin; Noes – Davila, Harrison; Abstain – Hahn.

Action: M/S/C (Arreguin/Wengraf) to suspend the rules and extend the meeting to 11:30 p.m.

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – Davila.

Action: 28 speakers. M/S/C (Harrison/Davila) to adopt the item as written in Supplemental Communications Packet #1 and #2, amended as follows:

- Remove "November" from "November budget process"
- Refer to the City Manager to analyze what elements, if any, of the municipal code need to be amended to implement program; any suggested locations to be presented to Council prior to implementation; provide an updated budget; include a good neighbor policy
- Assess the program after one year

Vote: Ayes – Davila, Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – None; Abstain – Kesarwani, Droste.

45. Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021 From: Mayor Arreguin

Recommendation: Confirm the City Council's action taken on December 3, 2019 to allocate General Funds generated by the Measure P Transfer Tax increase for existing and new homeless programs and implementation for Fiscal Years 2020 and 2021. Detailed listing of approved expenditures is included in Attachment 1 to the report.

Financial Implications: See report

Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: M/S/C (Arreguin/Harrison) to suspend the rules and extend the meeting to 11:40 p.m.

Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Robinson, Droste, Arreguin; Noes – Davila, Wengraf.

Action: 3 speakers. M/S/C (Arreguin/Hahn) to approve the recommendation with the following revisions.

- Strike alternate sources of funding for 5150 transports
- Add conditions for YSA: 1) maximum stay of no more than 24 months; 2) YSA to provide housing, navigation, and case management services; 3) YSA must keep and provide accurate and complete documentation on services provided and financial records

Vote: Ayes – Bartlett, Harrison, Hahn, Wengraf, Robinson, Arreguin; Noes – Droste; Abstain – Kesarwani, Davila.

46. Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations (Continued from December 10, 2019)

From: City Manager

Recommendation: Adopt a Resolution satisfying requirements of City Charter Article XI Sections 67.2 allowing the City to participate in Sourcewell contract bid procedures, and authorizing the City Manager to execute a purchase order for nine (9) Ford Super Duty F-Series Pickup Trucks with varying service body configurations with National Auto Fleet Group in an amount not to exceed \$492,284, and a subsequent purchase order for the conversion of the nine (9) Ford Super Duty F-Series Pickup Trucks to plug in hybrid vehicles in an amount not to exceed \$245,000 using XL Fleet technology when it becomes commercially available.

Financial Implications: See report

Contact: Phillip Harrington, Public Works, (510) 981-6300

Action: Moved to Consent Calendar. Adopt Resolution No. 69,272–N.S. Vote: Ayes – Kesarwani, Bartlett, Harrison, Hahn, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – Davila.

47. Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow (Reviewed by Facilities, Infrastructure, Transportation, Environment, and Sustainability Committee) From: Councilmember Harrison

Recommendation:

1. Adopt an ordinance amending Berkeley Municipal Code (BMC) 19.32 to require kitchen exhaust ventilation in residential and condominium units prior to execution of a contract for sale or close of escrow.

2. Refer to the City Manager to develop a process for informing owners and tenants of the proper use of exhaust hoods.

Financial Implications: See report

Contact: Kate Harrison, Councilmember, District 4, (510) 981-7140 Action: Referred to the Agenda & Rules Committee for future scheduling.

48. City Council Rules of Procedure and Order Revisions (Reviewed by the Agenda & Rules Committee) (Continued from December 3, 2019. Item contains revised and supplemental material.)

From: City Manager

Recommendation: Adopt a Resolution revising the City Council Rules of Procedure and Order to integrate the previously adopted regulations for policy committees and make associated changes to other sections; update outdated references and practices; conform to the Open Government Ordinance; make other technical corrections; and rescinding any preceding amendatory resolutions.

Financial Implications: None

Contact: Mark Numainville, City Clerk, (510) 981-6900

Action: Item 48 (including revised and supplemental materials) held over to February 4, 2020 special meeting.

49a. Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales and Serving of Sugar-Sweetened Beverages From: Sugar Sweetened Beverage Product Panel of Experts

Recommendation: The Sugar Sweetened Beverage Product Panel of Experts recommends that the Berkeley City Council adopt a Resolution that City of Berkeley departments and City food services contractors shall not: 1. Serve sugar-sweetened beverages at City meetings and events on City property; 2. Procure sugar-sweetened beverages with City funds; or, 3. Sell sugar-sweetened beverages on City property, including in vending machines.

Financial Implications: See report

Contact: Dechen Tsering, Commission Secretary, (510) 981-5300

49b. Companion Report: Recommendation that the City Council Pass a Resolution Regarding Procurement, Sales, and Serving Sugar-Sweetened Beverages From: City Manager

Recommendation: Recommend that the City Council adopt an amended resolution that recognizes the important principles in the Commission recommendation, clarifies the intent of the measure and provides some flexibility for City programs and staff while still emphasizing availability of healthy options. This amended resolution would require that the majority of all beverages provided or sold at any City event or on any City property (including vending machines) be non-sugar sweetened beverages (as defined in chapter 7.72 of the Berkeley Municipal Code) and education materials be provided to all COB staff to actively discourage the consumption of sugar-sweetened beverages and encourage the consumption of water.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400

Action: Items 49a and 49b referred to the Health, Life Enrichment, Equity & Community Committee.

Information Reports

- 50. 2019 Business Survey Results
 From: City Manager
 Contact: Eleanor Hollander, Economic Development, (510) 981-7530
 Action: Received and filed.
- Referral Response: Small Business Retention Programs From: City Manager Contact: Eleanor Hollander, Economic Development, (510) 981-7530 Action: Received and filed.
- 52. Update on Measure T1 City Infrastructure Bond Program From: City Manager
 Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700; Phillip Harrington, Public Works, (510) 981-6300
 Action: Received and filed.
- 53. Animal Care Commission FY 2019/2020 Work Plan
 From: Animal Care Commission
 Contact: Amelia Funghi, Commission Secretary, (510) 981-6600
 Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 3 speakers.

Adjournment

Action: M/S/C (Robinson/Bartlett) to adjourn the meeting. Vote: Ayes – Kesarwani, Bartlett, Harrison, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Davila, Hahn, Wengraf.

Councilmember Davila absent 11:36 p.m. – 11:38 p.m.

Councilmember Hahn absent 11:36 p.m. – 11:38 p.m.

Councilmember Wengraf absent 11:36 p.m. – 11:38 p.m.

Adjourned at 11:38 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of January 21, 2020 as approved by the Berkeley City Council.

Mark Numainville, City Clerk

Communications

- Item #41: Implement Residential Preferential Parking (RPP) on the 1500 Block of Lincoln
- 1. Anonymous

Item #44: Establishing an Outdoor Emergency Shelter

- 2. Zipporah Collins
- 3. Councilmember Harrison
- Item #46: Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations
- 4. Donald Goldmacher
- Item #47: Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow
- 5. David Lerman

BART MOU

- 6. 11 identical form letter
- 7. Matt Rosen
- 8. Eric Glick Rieman
- 9. Jeannette McNeil
- 10. Laura Cochrane

- 11. Ignacio
- 12. Hayley Currier
- 13. Lee Bishop
- 14. Susi Marzuola
- 15. Paul Bickmore
- 16. Vivian Warkentin
- 17. Howard Goldberg
- 18. Avram

5G/Telecom

19. Vivian Warkentin (3) 20. Phoebe Sorgen (2) 21. Soula Culver 22. Cecile Leneman 23. Marge Turngren 24. Mary McGann 25. Whitney Vosburgh 26. Cynthia Papermaster (2) 27. Ellie Marks (3) 28. Councilmember Harrison 29. Cynthia Rahav 30. Ron Pollak (2) 31. Alexander Benn 32. Connie Anderson 33. Avram (2) 34. Pollock & James, Attorneys at Law 35. Ed Schmookler

Homelessness/Encampments

36. Carole Marasovic, on behalf of the Homeless Commission (2)
37. Ryan Hilton, on behalf of the Pacific Racing Association
38. David Lerman
39. Meta Baerwalk Pasternak
40. James Wood (4)
41. Erwan Illien
42. Russbumper
43. Pedro Alvarez

Request for Corrective Action

44. David Kellogg

City Manager's Evaluation

45. Margot Smith (2)46. Phoebe Sorgen47. Juli Dickey48. Judy Ann Alberti

Affordable Housing

49. Judith Turley

Bay Trail Extension

50. Mark Elgood
51. Lee Henderson
52. David Fraser, on behalf of the Cal Sailing Club
53. Caryl Woulfe
54. Tom Gandesbery
55. Leslie Buck
56. Molly Morelock
57. Nicholas Waton
58. Sheldon Coad
59. Sebastian Gomez Biggeri
60. Nick Goyhenetche
61. David Fraser
62. Rick Kosarchuk
63. Gene Golfus

Police Review

64. Racism and Criminal Justice Reform Group, et al 65. Phoebe Sorgen 66. Jane Welford

Banning Natural Gas

67.LR

Persons with Disabilities

68. Mary Behm-Steinberg 69. Councilmember Kesarwani 70. Mark Numainville

Berkeley Police

71. Carol Denney

Square Footage Based Special Taxes

72. Shirley Dean 73. Auditor

Youth Spirit Artworks (YSA)

74. Abby Hu 75. Eric Friedman 76. Hanna Lykke

Healthy Options at Point of Sale (HOPS)

77. Marty Lynch, CEO of LifeLong Medical Care 78. The Latinxas & the Environment Initiative 79. Mansour Id-Deen

Campaign Contributions from Real Estate Developers

80. Margot Smith

New Smoke-free Signage

81. Carol Denney

Homeless Measure P Funding

82. David Lerman

Under Grounding Utility Wires

83. Arek Goetz

Low Flying Aircraft over Berkeley 84. Judith McEnroe

Be Wise! Be Bright When Crossing at Night

85. Vivian Clayton

City Council May Direct the City Attorney

86. Thomas Lord

Gas Car Sales

87. Dale Miller, on behalf of the Golden Gate Electric Vehicle Association 88. Andy Shrader, on behalf of Councilmember Paul Koretz of Los Angeles

Development of 2435 San Pablo

89. The Berkeley Neighborhoods Council Executive Committee

Adeline Corridor 90. Chimey Lee

Acute Housing Crisis – AB 1482 91. Julia Cato, on behalf of the Berkeley Tenants Union

Misrepresented FCC Regulations, Etc.

92. Arthur Stopes, III (7)

Harriet Tubman Terrace

93. Harriet Tubman Terrace Tenant Council Steering Committee (3)94. DeAnna Gee, on behalf of the Agent for Owner, Harriet Tubman Terrace (2)

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Downtown Streets Team

95. Julia Lang

Drones at Cesar Chavez Park

96. Carol Denney 97. Max Newton

Trash Truck Purchases – Reducing Pavement Damage 98. Bryce Nesbitt

Pathways STAIR Center

99. James Wood (9)100. M. Zint101. Marcia Poole (3)102. Eric Friedman

Bbox Café – A Cashless Business

103. Carol Denney

3404 King Street – Covenant House

104. Pedro Alvarez

Supplemental Communications and Reports 1

Item #17: Approving a Partial Assignment and Third Amendment to the Disposition and Development Agreement, Ground Leases, and Certain Related Documents for 2012 Berkeley Way

105. Revised material, submitted by Health, Housing & Community Services

Item #40: No War With Iran

- 106. Morey Fox
- 107. Michael Katz
- 108. Karl Knobler
- 109. Judith White
- 110. Zipporah Collins
- 111. Marc Pilsuk
- 112. Tom Luce

Item #43b: Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan

113. Revised material, submitted by Public Works

Item #44: Establishing an Outdoor Emergency Shelter

- 114. Supplemental material, submitted by Councilmember Harrison
- 115. McGee-Spaulding Neighbors in Action
- 116. Councilmember Harrison
- 117. Marc Pilisuk

118. Tom Luce

Item #48: City Council Rules of Procedure and Order Revisions

119. Supplemental material, submitted by Councilmember Hahn

Supplemental Communications and Reports 2

Item #43b: Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan

- 120. Revised material, submitted by Councilmember Harrison
- 121. Ben Gerhardstein
- 122. Sarah (Sally) Nelson

Item #44: Establishing an Outdoor Emergency Shelter

- 123. Supplemental material, submitted by Councilmember Harrison
- 124. Alfred Manning
- 125. Rachel Doughty
- 126. Marc Pilisuk
- 127. David Fielder
- 128. Silvio Dobrovat
- 129. Elisa Mikiten
- 130. David Mayer
- 131. Kelly Hammargren
- 132. Julie Greer
- 133. Margy Wilkinson
- 134. Ann Jensen
- 135. Tess Taylor
- 136. East Bay Citizens for Action
- 137. Sally Abbott
- 138. Sally Nelson
- 139. Nancy DeNero
- 140. Emma Savo
- 141. Dane Shepard
- 142. beneficialbug@
- 143. Berkeley Citizens Action
- 144. Linda Franklin
- 145. Chimey Lee

Item #45: Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021

146. Katharine Gale, Chair of Homeless Services Panel of Experts

Item #46: Purchase Order: National Auto Fleet Group for Nine Ford F-Series Pickup Trucks with Various Service Body Configurations

147. Supplemental material, submitted by Public Works

Item #47: Amending Chapter 19.32 of the Berkeley Municipal Code to Require Kitchen Exhaust Hood Ventilation in Residential and Condominium Units Prior to Execution of a Contract for Sale or Close of Escrow

148. Toni Mester

Item #49a: Recommendation that the City Council pass a resolution regarding procurement, sales and serving of sugar-sweetened beverages

149. Margo Wootan, on behalf of Center for Science in the Public Interest

Item #44: Establishing an Outdoor Emergency Shelter

150. 1064 Communications submitted via Berkeley Considers, includes summary information.

Supplemental Communications and Reports 3

Item #12: No War With Iran

151. Revised material, submitted by Councilmember Robinson

Item #42: Extension of the Urgency Ordinance Amending the Accessory Dwelling Unit (ADU) Ordinance to Comply with New State Law and Establish Interim Limits on Development for a Period of 10 Months and 15 Days

152. Presentation, submitted by the Planning and Fire Department

Item 43a: Public Works Commission Recommendation for the Five-Year Paving Plan

153. Presentation, submitted by the Public Works Commission

Item #43b: Companion Report: Public Works Commission Recommendation for the Five-Year Street Rehabilitation Plan

- 154. Presentation, submitted by Public Works
- 155. Public Works

Item #44: Establishing an Outdoor Emergency Shelter

- 156. Supplemental material, submitted by Councilembers Droste & Wengraf
- 157. Steve Smith, on behalf of Norheim & Yost
- 158. Erin Diehm
- 159. Diana Gordon
- 160. Associated Students of Cal
- 161. Taylor Schreiner
- 162. The Suitcase Clinic
- 163. Anita Rice, on behalf of iCommLaw
- 164. Mary Elieisar
- 165. Summer Brenner
- 166. Sandy Simon
- 167. Terry Taplin
- 168. Jane Maxwell
- 169. Cal Berkeley Democrats
- 170. Scott McCreary
- 171. Cristine Peterson

- 172. Ednah Friedman
- 173. Susan Spath174. Barbara Michel
- 175. Wendy Patterson

Item #45: Confirm Council Action on Measure P Revenue Allocations for FY 2020-2021

176. Gael Alcock

Miscellaneous Communications

Gray Panthers

177. Gray Panthers.Org

MINUTES SPECIAL MEETING OF THE BERKELEY CITY COUNCIL

Tuesday, January 28, 2020

4:00 P.M.

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 4:04 p.m.

Present: Kesarwani, Wengraf, Robinson, Droste, Arreguin

Absent: Davila, Bartlett, Harrison, Hahn

Councilmember Davila present at 4:04 p.m.

Councilmember Harrison present at 5:52 p.m.

Action Calendar

 Fire and Emergency Services Funding and System Design From: City Manager Recommendation: Receive a presentation on fire and emergency services and various operational and system enhancements and provide direction on funding options including ballot measures, fees, and special studies. Financial Implications: See report Contact: David Brannigan, Fire, (510) 981-3473

Action: 7 speakers. Presentation made and discussion held.

Adjournment

Action: M/S/C (Robinson/Kesarwani) to adjourn the meeting. Vote: Ayes – Kesarwani, Davila, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Bartlett, Hahn.

Adjourned at 5:58 p.m.

Page 37 of 53

This is to certify that the foregoing is a true and correct record of the special meeting of January 28, 2020 as approved by the Berkeley City Council.

Mark Numainville, City Clerk

Communications

• None

Supplemental Communications and Reports 1

• None

Supplemental Communications and Reports 2

• None

Supplemental Communications and Reports 3

Item #1: Fire and Emergency Services Funding and System Design

- 1. Presentation, submitted by the Fire Department
- 2. Colin Arnold (2)
- 3. Kelly Hammargren

MINUTES BERKELEY CITY COUNCIL MEETING Tuesday, January 28, 2020

Page 38 of 53

SCHOOL DISTRICT BOARD ROOM - 1231 ADDISON STREET, BERKELEY, CA 94702

6:00 PM

JESSE ARREGUIN, MAYOR

Councilmembers:

DISTRICT 1 – RASHI KESARWANI DISTRICT 2 – CHERYL DAVILA DISTRICT 3 – BEN BARTLETT DISTRICT 4 – KATE HARRISON DISTRICT 5 – SOPHIE HAHN DISTRICT 6 – SUSAN WENGRAF DISTRICT 7 – RIGEL ROBINSON DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 6:15 p.m.

Present: Kesarwani, Harrison, Robinson, Droste, Arreguin

Absent: Davila, Bartlett, Hahn, Wengraf

Councilmember Davila present at 6:17 p.m.

Councilmember Wengraf present at 6:20 p.m.

Councilmember Bartlett present at 6:24 p.m.

Ceremonial Matters:

- 1. Recognition of the Young Musicians Choral Orchestra
- 2. Recognition of John McNamara, Local Artist
- 3. Recognition of Raquel Pinderhughes, Local Activist Scholar
- 4. Adjourned in memory of John Kelly, City Employee
- 5. Adjourned in memory of Kobe Bryant and the other victims of the January 26 helicopter accident
- 6. Adjourned in memory of the victims of the earthquake in Turkey

City Manager Comments:

1. Update on local preparations for coronavirus

Public Comment on Non-Agenda Matters: 7 speakers.

Consent Calendar

Public Comment on Consent Calendar and Information Items Only: 32 speakers.

MINUTES

Consent Calendar

Action: M/S/C (Arreguin/Robinson) to accept revised material from the City Manager on Item 5.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Action: M/S/C (Droste/Kesarwani) to adopt the Consent Calendar in one motion except as indicated.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – None; Abstain – None; Absent – Hahn.

Recess 8:25 p.m. – 8:42 p.m.

Consent Calendar

1. Contract: Lake Research Partners for 2020 Community Survey From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to approve a contract and any amendments with Lake Research Partners to develop and perform one (1) or two (2) surveys of registered voters, provide the associated analysis and reports, and any required polling services. The contract would be for a one year period, starting January 29, 2020 through January 31, 2021 for a total not to exceed amount of \$75,000.

Financial Implications: General Fund - \$75,000 Contact: Matthai Chakko, City Manager's Office, (510) 981-7000 **Action:** Adopted Resolution No. 69,273–N.S.

2. Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on January 28, 2020 From: City Manager

Recommendation: Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

Financial Implications: T1-Green Infrastructure Fund- \$462,000 Contact: Henry Oyekanmi, Finance, (510) 981-7300 **Action:** Approved recommendation.

Consent Calendar

3. Participation Agreement with Pension Stabilization Trust for an IRS Section 115 Trust Fund

From: City Manager

Recommendation: Adopt a Resolution repealing and replacing Resolution No. 68,853-N.S. and authorizing the City Manager, as City's Plan Administrator, to enter into a Participation Agreement with Pension Stabilization Trust (PST), an IRS Section 115 Trust Fund; and authorizing the City's Plan Administrator to execute the legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to enter into a Participation Agreement with PST. **Financial Implications:** See report

Contact: Henry Oyekanmi, Finance, (510) 981-7300 Action: Adopted Resolution No. 69,274–N.S.

4. Contract No. 3200086 Amendment: Albany Community Access to Resources and Services (Albany CARES)

From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager or her designee to amend Contract No. 3200086 with the Albany Community Access to Resources and Services (Albany CARES) in an amount not to exceed \$50,000 for a total not to exceed contract amount of \$100,000, through June 30, 2020. **Financial Implications:** Mental Health Services Act - \$50,000

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 Action: Adopted Resolution No. 69,275–N.S.

Vote: Ayes – Kesarwani, Davila, Harrison, Wengraf, Robinson, Droste, Arreguin; Noes – Bartlett; Abstain – None; Absent – Hahn.

5. Jointly Apply for Infill Infrastructure Grant Funding for 1601 Oxford From: City Manager

Recommendation: Adopt two Resolutions that enable Satellite Affordable Housing Associates to access State of California Infill Infrastructure Grant (IIG) funds for its 1601 Oxford project by:

1. Authorizing the City Manager to prepare and submit a joint application for IIG funds; and

2. Authorizing the City Manager to take actions needed for the City's participation in the IIG program by adopting state-required terms about submitting an application, entering into the State's Standard Agreement and other documents.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Adopted Resolution No. 69,276–N.S. (Joint Application); and Resolution No. 69,277–N.S. (Participation) as amended in the revised materials submitted by the City Manager at the meeting to use the resolution template required by the state.

Consent Calendar

6. Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street (Reviewed by the Land Use, Housing & Economic Development Committee)

From: City Manager

Recommendation: Adopt a Resolution authorizing the sale of the City-owned, former Redevelopment Agency property at 1631 Fifth Street at market rate and authorizing the City Manager to contract with a real estate broker to manage the sale.

Financial Implications: See report

Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 **Action:** Moved to Action Calendar. Item 6 held over to February 11, 2020.

7. Agreement with the East Bay Municipal Utility District for Pavement Rehabilitation of Portions of Ellsworth Street and Stuart Street From: City Manager

Recommendation: Adopt a Resolution authorizing the City Manager to execute a cost sharing Agreement with the East Bay Municipal Utility District for the pavement rehabilitation on Ellsworth Street and Stuart Street during construction of the East Bay Municipal Utility District's Wildcat Pipeline Improvement Project in an amount not to exceed \$855,264 which includes a 20% contingency.

Financial Implications: Street Capital Improvement - \$855,264 Contact: Phillip Harrington, Public Works, (510) 981-6300 **Action:** Adopted Resolution No. 69,278–N.S.

Council Consent Items

8. 2020 City Council Committee and Regional Body Appointments From: Mayor Arreguin

Recommendation: Adopt a Resolution approving the appointment of Council representatives to City Council Standing Policy Committees, Partnership Committees, Regional Bodies and Liaisons to City Boards and Commissions for a one-year term ending January 31, 2021 or until new appointments are made. **Financial Implications:** None

Contact: Jesse Arreguin, Mayor, (510) 981-7100 Action: Adopted Resolution No. 69,279–N.S.

Council Consent Items

9. Support the "New Border Vision" to expand public safety, protect human rights, and welcome people to our city From: Mayor Arreguin and Councilmembers Harrison, Hahn, and Robinson Recommendation: Adopt a resolution supporting the "New Border Vision", a 21st century border policy that begins with the belief that migrants are part of the human family and should be treated with dignity and respect. Send a copy of the Resolution to U.S. Senators Dianne Feinstein and Kamala Harris, Congresswoman Barbara Lee and President Donald Trump. Financial Implications: None Contact: Jesse Arreguin, Mayor, (510) 981-7100

Action: Adopted Resolution No. 69,280–N.S. as revised in Supplemental Communications Packet #1.

10. Dorothy Day House First Annual Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds From: Councilmember Davila

Recommendation: Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$150 from Councilmember Cheryl Davila, to Dorothy Day House for their First Annual Fundraiser on February 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

Financial Implications: Councilmember's Discretionary Funds - \$150 Contact: Cheryl Davila, Councilmember, District 2, (510) 981-7120 **Action:** Adopted Resolution No. 69,281–N.S. revised to include contributions from the following Councilmembers up to the amounts listed: Mayor Arreguin - \$250; Councilmember Harrison - \$150; Councilmember Wengraf - \$150; Councilmember Bartlett - \$250; Councilmember Robinson - \$100.

11. Letter in Support of a Dedicated Bus Lane on the Bay Bridge From: Councilmember Robinson and Mayor Arreguin

Recommendation: Send a letter to the California Department of Transportation (Caltrans), the Metropolitan Transportation Commission (MTC), Assemblymember Buffy Wicks, Assemblymember Rob Bonta, Assemblymember Jim Frazier, State Senator Nancy Skinner, and Senator Jim Beall in support of the reinstatement of a dedicated bus lane on the San Francisco-Oakland Bay Bridge.

Financial Implications: See report

Contact: Rigel Robinson, Councilmember, District 7, (510) 981-7170 **Action:** Councilmembers Kesarwani and Droste added as co-sponsors. Approved recommendation as revised in Supplemental Communications Packet #2.

12. Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

From: City Manager

Recommendation: Conduct a public hearing and upon conclusion, provide direction regarding proposed ordinance language alternatives and take the following action: Adopt the first reading of five ordinances to amend the Berkeley Municipal Code (BMC) Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F which would:

A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);

B. Allow Retailers to continue to operate as Microbusinesses;

C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;

D. Allow more opportunities for Commercial Cultivation by expanding location options; and

E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

Financial Implications: See report

Contact: Timothy Burroughs, Planning and Development, (510) 981-7400

Action: M/S/C (Arreguin/Kesawani) to suspend the rules and extend the meeting to 11:30 p.m. and hold over Item 6 and Item 15 to February 11, 2020.
Vote: Ayes – Kesarwani, Bartlett, Harrison, Robinson, Droste, Arreguin; Noes –

Davila, Wengraf; Abstain – None; Absent – Hahn.

Public Testimony: The Mayor opened the public hearing. 44 speakers.

Action: M/S/C (Arreguin/Kesarwani) to approve the Staff recommendation to adopt the first reading of five ordinances (1. Ordinance No. 7,686-N.S. amending BMC Title 12 (Health and Safety); 2. Ordinance No. 7,687-N.S. amending BMC Chapter 20.40 (Cannabis Business Signs and Cannabis Product Advertising); 3. Ordinance No. 7,688-N.S. amending BMC Chapter 23C.25 (Cannabis Uses); 4. Ordinance No. 7,689-N.S. amending BMC Sub-Title 23E (Provisions Applicable in All Non-Residential Districts); 5. Ordinance No. 7,690-N.S. amending BMC Sub-Title F (Definitions)) to amend the Berkeley Municipal Code which would:

A. Allow new business types (Delivery-Only Retailers, Consumption Lounges);

B. Allow Retailers to continue to operate as Microbusinesses;

C. Clarify cannabis business operational standards and development standards, such as quotas and buffers, for Storefront Retailers;

E. Protect the health of the general public and youth with additional advertising, signage and sales regulations.

With the following amendments:

• Page 17, Section 12.22.035 Approve Alternative A: Staff Recommendation to omit language

• Page 18, Section 12.22.040.B Modify the hours of operation to conform to state law. New language would read as follows:

12.22.040.B Retailers shall only allow Customer visits between the hours of 9:00 a.m. and 9:00 p.m. Retailers may be open to the public and conduct deliveries according to the hours of their respective zoning districts, except as restricted by State law (Code of Regulations Title 16, Division 42, Chapter 3, Section 5403).

• Page 19, Section 12.22.040.E Amend Subsection 7 to read as follows:

7. All Retailers must prominently display a notice as set forth in subsection 12.22.040E that contains the following language:

GOVERNMENT WARNING: THIS PRODUCT CONTAINS CANNABIS, A SCHEDULE I CONTROLLED SUBSTANCE. KEEP OUT OF REACH OF CHILDREN AND ANIMALS. CANNABIS PRODUCTS MAY ONLY BE POSSESSED OR CONSUMED BY PERSONS 21 YEARS OF AGE OR OLDER UNLESS THE PERSON IS A QUALIFIED PATIENT. THE INTOXICATING EFFECTS OF CANNABIS PRODUCTS MAY BE DELAYED UP TO TWO HOURS. CANNABIS USE WHILE PREGNANT OR BREASTFEEDING MAY BE HARMFUL. CONSUMPTION OF CANNABIS PRODUCTS IMPAIRS YOUR ABILITY TO DRIVE AND OPERATE MACHINERY. PLEASE USE EXTREME CAUTION.

This is the same language required by state law in California Business and Professions Code Section 26120(c)(1), and is included in labels on cannabis products.

- Page 19, Section 12.22.040.E Approve Alternative A: Staff Recommendation to omit language
- Page 20, Section 12.22.040.E Approve Alternative A: Staff Recommendation to omit language
- Page 20, Section 12.22.040.F Approve Alternative A: Staff Recommendation to permit consumption of cannabis at a Lounge with a Designated Cannabis Smoking Room Ventilation System.
- Page 23, Section 12.22.040.J Approve Alternative A: Staff Recommendation to omit language. The state already highly regulates packaging, dosage and has regulations to

prohibit products or marketing attractive to children.

- Page 25, Section 20.40.130.D Approve Alternative A: Staff Recommendation to allow signage with logos that depict cannabis or a cannabis product existing prior to the adoption of the ordinance, and prohibiting new signage with logos depicting cannabis or cannabis products.
- Page 27, Section 23C.25.010.A.3 Approve Alternative A: Staff Recommendation
- Page 28, Section 23C.25.010.B.1 Reject amendment. Continue to permit Storefront Retailers who comply with state and local regulations by Zoning Certificate.
- Page 28, Section 23C.25.010.B.6 Approve Alternative D: Planning Commission Recommendation

Buffers

a. Storefront Retailers may not be located within 600 feet of another Storefront Retailer or a public or private elementary school, 1,000 feet of a public or private middle school or high school, or 600 feet of a City-operated community center or skate park.

b. Notwithstanding Subsection 23C.25.010.B.6.a, a seventh Storefront Retailer, to be operated by an equity business, may not be located within 600 feet of another Storefront Retailer or School.

- Page 29, 23C.25.010.C.1 Approve Alternative A with the following modification:
 - 1. <u>Seven Delivery-Only Retailers are permitted citywide, four of which</u> <u>shall be operated by Equity Businesses, and three of which shall be</u> <u>non-Equity Businesses.</u>
- Page 29, Section 23C.25.010.C.4 Approve Alternative B: Planning Commission Recommendation
 - 4. <u>Delivery-Only Retailers are permitted in the M District, shall be</u> <u>evaluated and regulated for Zoning purposes in the same way as</u> <u>Warehouse-Based Non-Store Retailers, and shall be subject to the</u> <u>numeric and buffer requirements set forth in this Section for</u> <u>Delivery-Only Retailers.</u>

• Page 29, Section 23C.25.010.D Approve Alternative A: Staff Recommendation

Lounges

<u>1. A Lounge, as defined in Section 12.21.020, may be permitted at an approved Retailer subject to approval of a Use Permit.</u>

2. Lounges must comply with the operational standards established by the City's Department of Health, Housing and Community Services.

• Page 30, Section 23C.25.020.B - Commercial Cannabis Cultivation Approve Alternative B: Planning Commission Recommendation:

Commercial Cannabis

<u>Cultivation is permitted with a Zoning Certificate in the M District,</u> <u>subject to the following limitations:</u>

1. Commercial Cannabis Cultivation shall only occur at licensed Cannabis Businesses.

2. Cannabis may not be dispensed and client, patient or member services and retail sales are prohibited at Cannabis Cultivation Facilities.

• Page 48, Section 23F.04.010 Definitions, Microbusiness Approve Alternative B: Planning Commission Recommendation

Warehouse Based Non-Store

Retail: Retail activity that is based on sales without on-site customer visits. Such activity includes, but is not limited to, catalog sales, internet web sites, and phone orders. Goods are both stored and distributed from site. <u>This use includes Delivery-Only Retailers located in the Manufacturing (M) District.</u>

Second readings scheduled for February 11, 2020.

In addition, the Council referred to the City Manager to 1) determine if the City can require businesses to post notices on their website, and 2) analyze the impacts of artificial flavorings/additives and advise if any further regulations are necessary.

Vote: Ayes – Kesarwani, Davila, Bartlett, Harrison, Wengraf, Robinson, Droste,

Arreguin; Noes – None; Abstain – None; Absent – Hahn.

13. Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras (Continued from December 3, 2019. Item contains supplemental material.)

From: City Manager

Recommendation: Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

Financial Implications: None

Contact: Andrew Greenwood, Police, (510) 981-5900; Dave White, City Manager's Office, (510) 981-7000

Action: Moved to Consent Calendar. Adopted Resolution No. 69,282–N.S. as revised in supplemental material from City Manager to accept the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for GPS Trackers. Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras held over to February 25, 2020.

14. goBerkeley Residential Shared Parking Pilot Project Update and General Program Update (Continued from December 3, 2019 and January 14, 2020.) From: City Manager

Recommendation: Receive a presentation providing an update on the Residential Shared Parking Pilot project and the goBerkeley program, and offer any comments to staff on the implementation of the project.

Financial Implications: None

Contact: Phillip Harrington, Public Works, (510) 981-6300 **Action:** Item 14 removed from the agenda by the City Manager.

Council Action Items

Council Action Items

15. Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours From: Councilmember Kesarwani, Mayor Arreguin, and Councilmember Harrison

Recommendation: Adopt a resolution to allow recipients of a three-month "Grace Period" permit for safe RV parking to park overnight during non-business hours in designated City-owned parking lots pursuant to California Vehicle Code Section 21107.8(a)(1).

The resolution authorizes the City Manager to determine appropriate City-owned parking lots, with consideration for safe ingress and egress, accessibility of restroom facilities, and other health and safety considerations.

Financial Implications: See report

Contact: Rashi Kesarwani, Councilmember, District 1, (510) 981-7110 **Action:** Councilmember Hahn added as a co-sponsor. Item 15, including supplemental material from Councilmember Kesarwani, held over to February 11, 2020.

 Public Health Division's Recommendations on Cannabis From: City Manager Contact: Kelly Wallace, Housing and Community Services, (510) 981-5400 Action: Received and filed.

Public Comment – Items Not Listed on the Agenda - 1 speaker.

Adjournment

Adjourned at 11:30 p.m.

This is to certify that the foregoing is a true and correct record of the regular meeting of January 28, 2020 as approved by the Berkeley City Council.

Mark Numainville, City Clerk

Communications

Item #12: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

- 1. Elizabeth Starr
- 2. Carol Denney

BART MOU

3. North Berkeley Now!

Cashless Business'

4. Cassia

5G/Telecom

- 5. Vivian Warkentin
- 6. Max Ventura
- 7. Aria Cahir
- 8. Alexander Benn
- 9. Larry Rail
- 10. Charlie Schad

Barbara Ann White Recognition

11. Mansour Id-deen

Homelessness/Encampments

12. Liz Werner 13. Lori Pottinger

Echo Campground 14. Sage Linda Spatz

E-Scooters 15. Vivian Warkentin

The Next Power Outage 16. David Peattie

10. David Feattle

Supplemental Communications and Reports 1

Item #6: Disposition of City-Owned, Former Redevelopment Agency Property at 1631 Fifth Street

17. Rhiannon

Item #9: Support the "New Border Vision" to expand public safety, protect human rights, and welcome people to our City

18. Revised material, submitted by Mayor Arreguin

Item #12: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

- 19. Elizabeth Starr
- 20. Don Duncan, on behalf of Patient's Care Collective
- 21. Jack Saunders
- 22. Tom Miller
- 23.53 identical form letters, in support of consumption lounges

Item #15: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Lots During Overnight Non-Business Hours

24. Revised material, submitted by Councilmember Kesarwani 25. Diana Bohn

Supplemental Communications and Reports 2

Item #11: Letter in Support of a Dedicated Bus Land on the Bay Bridge

26. Revised material, submitted by Councilmember Robinson

Item #12: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

27.82 identical form letters, in support of consumption lounges

- 28. Carol Denney (3)
- 29. Kristi Knoblich Palmer
- 30. Bryan Buckley
- 31. Amanda Reiman
- 32. Lynn Silver
- 33. Chimey Lee
- 34. Sophia Scherr
- 35. Bronya Feldman
- 36. Margret Elliott
- 37. Carl Resnikoff
- 38. Jack Sack
- 39. Sabrina Fendrick, on behalf of the Berkeley Patients Group
- 40. Sean Craven
- 41. Alexandra Burk
- 42. Phil Flickinger
- 43. Michael Aschoff
- 44. Daniel Kosmal

Item #15: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Lots During Overnight Non-Business Hours

- 45. Supplemental material, submitted by Councilmember Harrison
- 46. Justin Dorset
- 47. Scott Huffman
- 48. Stephanie Thomas

Item #15: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Parking Lots During Overnight Non-Business Hours

49.209 Communications submitted via Berkeley Considers, includes summary information

Supplemental Communications and Reports 3

Item #5: Jointly apply for Infill Infrastructure Grant Funding for 1610 Oxford 50. Revised material, submitted by Health, Housing & Community Services

Item #7: Agreement with the East Bay Municipal Utility District for Pavement Rehabilitation of Portions of Ellsworth Street and Stuart Street 51. June Kodani

Item #13: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

52. Michael Olson

Item #12: Cannabis Ordinance Revisions; Amending Berkeley Municipal Code Chapters 12.21, 12.22, 20.40, 23C.25, and Sub-Titles 23E and 23F

- 53. Presentation, submitted by the Planning Department
- 54.33 identical form letters, in support of consumption lounges
- 55. Charles Pappas
- 56. Frank Jaffe
- 57. Bronya Feldmann
- 58. Jim Hicks
- 59. Zackary Babineau
- 60. Peter Basmarjian
- 61. Ben Kruse
- 62. Serena Chen
- 63. Elena Lingas
- 64. Roy Harkow
- 65. Kira McDonough
- 66. Mira Stein
- 67. Elliott Schwimmer
- 68. Ilona Sturm
- 69. Nigel Sussman
- 70. Shelly Andrade
- 71. Yakow Sack
- 72. Andrew Marrinson
- 73. Linda Henn
- 74. Legal Cannabis for Consumer Safety
- 75. Tracie Rowson
- 76. Peter Hanauer
- 77. Sandy Young
- 78. Lyan Pernala
- 79. Holly Callahan
- 80. Kristina Hill
- 81. Suzaynn Schick, on behalf of the Division of Occupational and Environmental Medicine
- 82. Cynthia Hallett
- 83. Judy Hunt
- 84. Amrita Singhal
- 85. Carol Denney
- 86. Allie Chiappetta

87. Timothy Carter
88. Mike Vanderman
89. Nicole Strasser
90. Rob Perez
91. Linda Worthman
92. Martha Belcher
93. Monika Mann
94. Joseph Cadiz
95. Mary Wyand

96. Brandy

Item #15: Resolution for Safe Recreational Vehicle (RV) Parking at Designated City-Owned Lots During Overnight Non-Business Hours

97. C. Mark Humbert, on behalf of the Claremont Elmwood Neighborhood Assoc.

- 98. Barbara Sullivan
- 99. Jed Donnelley
- 100. Cal Collier
- 101. Linda Franklin
- 102. Pam Speich
- 103. Beth Anderson
- 104. Crystal Brunzell
- 105. Michael Bolgatz
- 106. Fred Norton
- 107. Kristen Swehla, on behalf of Urban Remedy
- 108. Molly Kennedy
- 109. Laura Stachel
- 110. Dawn Thomas
- 111. Jonathan Jaffe
- 112. Patty Reidenbach
- 113. Samuel Hatton
- 114. Jenny Harrison
- 115. Meredith Paulley
- 116. Robyn del Rosario, on behalf of Goorin Brothers Hat Shop
- 117. Tamara White
- 118. Teresa, on behalf of Eastbay Tow
- 119. Joanne Harano
- 120. Kristi Roberts, on behalf of The Elmwood Business Association
- 121. Jason Goebl, on behalf of Summer Kitchen and Bake Shop
- 122. Sheila Jordan
- 123. Claudia Kawczynska
- 124. Genna Souza
- 125. Lobsang
- 126. Kara Hammond, on behalf of Baker & Commons
- 127. Marion Abbott & Ann Leyhe, on behalf of Mrs. Dalloway's Bookstore
- 128. David Salk, on behalf of the Elmwood Theater Foundation
- 129. Patrick Horan
- 130. Ezra Proctor, on behalf of Summer Kitchen and Bake Shop

- 131. Councilmember Harrison
- 132. Elisa Mikiten
- 133. Toni Mester
- 134. Jared Hammond
- 135. Julie McCormick
- 136. Bill Williams
- 137. Brie Fulton
- 138. Andrea Meghrouni-Brown
- 139. Ann Swidler
- 140. Margot Smith

Miscellaneous Communications Current PCI Conditions for Year 2020

141. Charles Clarke



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 25, 2020

RECOMMENDATION

Approve the request for proposals or invitation for bids (attached to staff report) that will be, or are planned to be, issued upon final approval by the requesting department or division. All contracts over the City Manager's threshold will be returned to Council for final approval.

FISCAL IMPACTS OF RECOMMENDATION

Total estimated cost of items included in this report is \$13,085,000.

PROJECT	Fund	Source	<u>Amount</u>
Towing Services Contract - Police	011	GF – Discretionary	\$200,000
Operation of Berkeley Recycling	601	Zero Waste	\$9,000,000
Measure T1 Phase1 Street Improvements Project - Monterey Avenue & Ward Street	511 130 134	Measure T1 Measure B – Local Street Measure BB – Local Street	\$3,240,000
West Frontage Road Sewer Rehab Project	611	Sanitary Sewer	\$645,000
Total:			\$13,085,000

CURRENT SITUATION AND ITS EFFECTS

On May, 6, 2008, Council adopted Ordinance No. 7,035-N.S. effective June 6, 2008, which increased the City Manager's purchasing authority for services to \$50,000. As a result, this required report submitted by the City Manager to Council is now for those

Formal Bid Solicitations and Request for Proposals Scheduled for Possible Issuance After Council Approval on February 25, 2020

purchases in excess of \$100,000 for goods; and \$200,000 for playgrounds and construction; and \$50,000 for services. If Council does not object to these items being sent out for bid or proposal within one week of them appearing on the agenda, and upon final notice to proceed from the requesting department, the IFB (Invitation for Bid) or RFP (Request for Proposal) may be released to the public and notices sent to the potential bidder/respondent list.

BACKGROUND

On May 6, 2008, Council adopted Ordinance No. 7,035-N.S., amending the City Manager's purchasing authority for services.

ENVIRONMENTAL SUSTAINABILITY

The Finance Department reviews all formal bid and proposal solicitations to ensure that they include provisions for compliance with the City's environmental policies. For each contract that is subject to City Council authorization, staff will address environmental sustainability considerations in the associated staff report to City Council.

RATIONALE FOR RECOMMENDATION Need for the services.

ALTERNATIVE ACTIONS CONSIDERED None.

CONTACT PERSON

Darryl Sweet, General Services Manager, Finance, 510-981-7329

Attachments:

- 1: Formal Bid Solicitations and Request for Proposals Scheduled For Possible Issuance After Council Approval on February 25, 2020
 - a) Towing Services Contracts Police
 - b) Operations of Berkeley Recycling
 - c) Measure T1 Phase 1 Street Improvements Project Monterey Avenue & Ward Street
 - d) West Frontage Road Sanitary Sewer Repair

Note: Original of this attachment with live signature of authorizing personnel is on file in General Services.

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
	Citywide towing services for Police Department	2/26/2020	3/11/2020	This project will establish a pool of towing companies to be dispatched by Police Department on a rotation basis for a three-year contract and two option two- year extensions.	\$200,000	011-71-702-805-0000-000-421-612990-	Police/Traffic	LT. Randy Files 981-5983
DEPT. TOTAL					\$200,000			
	Operation of Berkeley Recycling	2/26/2020	4/22/2020	Operation of Berkeley Recycling, which includes acceptance of recycling materials and universal waste drop-off center, California Redemption Value Buyback Center and acceptance, processing and marketing of curbside collected dual stream recyclable materials	\$1,800,000 FY2025 \$1,800,000 Total: \$9,000,000	Residential (70%): 601-54-627-732-3025-000-472-612990- Commercial (30%): 601-54-627-733-3025-000-472-612990-	PW/ Zero Waste	Greg Apa 981-6359
	Measure T1 Phase1 Street Improvements Project - Monterey Avenue & Ward Street	2/26/2020	3/26/2020	Install ADA curb ramps, sidewalk, driveways, and Asphalt Concrete pavement; Providing Bike Lane and Pavement striping, adjustment of utility covers.	\$1,840,000 \$500,000 \$900,000	511-54-623-673-0000-000-431-665110 (T1PW08) 130-54-623-673-0000-000-431-665110 (T1PW08) 134-54-623-673-0000-000-431-665110 (T1PW08)	PW/Eng	Srinivas Muktevi 981-6402 Joe Enke 981-6411

SPECIFICATION NO.	DESCRIPTION OF GOODS / SERVICES BEING PURCHASED	APPROX. RELEASE DATE	APPROX. BID OPENING DATE	INTENDED USE	ESTIMATED COST	BUDGET CODE TO BE CHARGED	DEPT. / DIVISION	CONTACT NAME & PHONE
	West Frontage Road Sewer Rehabilitation Project	2/26/2020	3/26/2020	Sewer rehabilition that needs to be completed prior to road closure now scheduled for July 2020	\$645,000	611-54-623-676-0000-000-473-665130- PWENSR2004	5	Nisha Patel 981-6406
DEPT. TOTAL					\$12,885,000			
GRAND TOTAL					\$13,085,000			



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Kelly Wallace, Interim Director, Health, Housing & Community Services

Subject: Contract: Worldwide Travel Staffing for Nurse Registry Services

RECOMMENDATION

Adopt a Resolution authorizing the City Manager or her designee to execute a contract and any amendments with Worldwide Travel Staffing for nurse registry services for a total contract limit of \$313,800 for the period beginning March 1, 2020 and ending June 30, 2023. The contract will serve the needs of both the Mental Health and Public Health Divisions, providing fill-in nursing services as necessary at both the Mental Health clinics and the Berkeley High School Health Center.

FISCAL IMPACTS OF RECOMMENDATION

Funds for the contract of \$313,800 will be divided between the Mental Health and Public Health Divisions. The Contract Management System number for this contract is CMS No. JMYYD.

\$228,800 total from Mental Health

Amount	ERMA GL Account
\$114,000	316-51-503-521-2007-000-451-612990
\$114,000	158-51-503-521-2006-000-451-612990

\$85,000 total from Public Health

Amount	ERMA GL Account
\$44,000	156-51-506-555-0000-000-451-612990
\$27,000	011-51-506-560-0000-000-451-612410
\$14,000	324-51-506-560-0000-000-451-612410

CURRENT SITUATION AND ITS EFFECTS

This Nurse Registry contract will allow the Mental Health and Public Health Divisions to utilize per diem nursing from the contractor when there are nursing vacancies that hinder the ability of the Mental and Public Health Divisions to provide required medical services to the needs of students and mental health clients. It will also allow the divisions to fulfill their obligations to ensure a healthy community and remain in compliance with federal, state, and local regulations around the provision of quality medical care. This contract aligns with the Strategic Plan goal to be a customer-

focused organization that provides excellent, timely, easily-accessible service and information to the community.

The Mental Health Division has 3.7 FTE nurse positions with an additional 1.0 FTE scheduled to be added in May 2020. This contract will allow us to continue to provide direct patient care when there is a vacancy while we recruit a City of Berkeley employee.

The Mental Health Division serves our community by caring for severely mentally ill individuals who either have Medi-Cal or no insurance. Due to their impairments, these patients have difficulty accessing psychiatric and general medical care. The Mental Health nurses provide treatment and care coordination for these patients in the clinic, in homes, and on the street. When we have vacancies in our nursing staff, the most vulnerable patients in our community lose access to the treatment and care they need.

Currently, the Public Health Division has 2.0 FTE Registered Nurse (RN) positions, one that provides immunizations and TB testing, and another that provides first aid services at the Berkeley High School Health Center. The first aid RN position at the Berkeley High School Health Center, which can see over 2,000 visits per year, has been experiencing significant gaps in service throughout the 2019/2020 school year. This nurse registry service would be a tremendous support for the continuity of services to address any current or future gaps in First Aid Services or the Immunization Program due to short or long term staff absences. In addition to the clinical services, the Public Health Division also has 8.75 FTE Public Health Nurses (PHNs) that provide a variety of services, including disease control and surveillance activities through the Communicable Disease Unit, case management for low-income and underserved families, as well as support services for early childhood development programs and school linked services. These services offer essential services for some of our most vulnerable community members throughout their lifespan.

We have experienced extended vacancies in both divisions due to the high demand for and shortage of available nurses in California

The City released a Request for Proposals (RFP) under Specification No. 19-11326-C, convened a panel of stakeholders, interviewed representatives from the highest ranked responses, and selected Worldwide Travel Staffing as the most responsive, responsible bidder for this contract.

BACKGROUND

The Public Health and Mental Health Divisions have experienced great difficulty in filling vacant positions for staff who can provide nursing services. Due to a variety of factors, including the Medi-Cal expansion through the Affordable Care Act, an existing shortage of nurses in the region has been greatly exacerbated. Many area providers are experiencing staff shortages in qualified nurses.

Given the continued staffing shortage and difficulty recruiting and retaining nurses, several measures have been put in place to locate permanent staffing for these positions. This includes partnering with the Human Resources Department in creating a new job classification, Mental Health Nurse, to better reflect the particular requirements of mental health nursing (as opposed to community nursing). This contract will allow the Mental Health and Public Health Divisions to utilize per diem nurses when permanent, career positions are vacant while we continue to take steps to secure permanent staffing.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the action requested in this report.

RATIONALE FOR RECOMMENDATION

Worldwide Travel Staffing was selected as the vendor for this contract through a competitive RFP process. They offer nurses who provide community health services to youth and psychiatry services to Medi-Cal, uninsured, disenfranchised, and underserved populations. These services are necessary for the provision of public and mental health treatment provided by the City. These services will only be utilized during staff shortages and are not a replacement of permanent staffing.

ALTERNATIVE ACTIONS CONSIDERED

The City could not provide necessary medication monitoring services and other nursing services for individuals with mental illness, or not provide nursing services at Berkeley High School. This was rejected because it would have led to harm to current and prospective patients.

CONTACT PERSON

Dr. Jeffrey Johns, Psychiatrist Supervisor, Mental Health, HHCS, (510) 981-7615 Janice Chin, Manager, Public Health, HHCS, (510) 981-5121 Conor Murphy, Assistant Management Analyst, Mental Health, HHCS, (510) 981-7611

Attachments: 1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT: WORLDWIDE TRAVEL STAFFING FOR NURSE REGISTRY SERVICES

WHEREAS, the City of Berkeley's Mental Health and Public Health Divisions have experienced great difficulty in filling vacancies in nursing positions; and

WHEREAS, Worldwide Travel Staffing offers nurses who provide mental health and community health services, provided by licensed nurses, to youth, Medi-Cal, uninsured, disenfranchised, and under-served populations; and

WHEREAS, Worldwide Travel Staffing's services support mental health goals of improving the health and well-being of the community during periods of staff shortages; and

WHEREAS, Worldwide Travel Staffing was selected through a competitive Request for Proposals process; and

WHEREAS, funds are available in the current year budget.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager or her designee is authorized to execute a contract and any amendments with Worldwide Travel Staffing for a total contract amount not to exceed \$313,800 for the period of March 1, 2020 to June 30, 2023 for the purpose of funding nurse registry services. A record signature copy of said contract any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning and Development

Subject: Contract: Van Meter Williams Pollack for Professional Planning Services to Prepare Zoning Standards and an Environmental Impact Report for the Ashby and North Berkeley BART Stations

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute a contract and any amendments with Van Meter Williams Pollack to perform professional planning services to prepare Zoning Standards and an Environmental Impact Report and conduct associated community outreach for the Ashby and North Berkeley Bay Area Rapid Transit (BART) Stations, in an amount not to exceed \$500,000 for the period from March 1, 2020 to July 31, 2021.

FISCAL IMPACTS OF RECOMMENDATION

Funding for this contract is provided by a \$310,000 allocation of SB 2 Planning Grant funds from the State of California's Housing and Community Development Department and a \$250,000 allocation from the City Council for the required environmental review. A separate contract has already been executed with Street Level Advisors for \$60,000 of the SB 2 Planning Grant funds to provide economic feasibility / fiscal consulting. The remaining funding (\$500,000 of the \$560,000), will be used for the contract with Van Meter Williams Pollack, which is the subject of this report.

Budget Codes:

336-53-583-611-0000-000-441-612990-	\$250,000.00
011-53-584-622-0000-000-441-612990-	\$250,000.00
Total Contract	\$500,000.00

Grant revenue will be deposited in 336-53-584-611-0000-000-000-434110- and appropriated as part of the third Amendment to the FY 2020 Annual Appropriations Ordinance. The funding needed for this contract will be included in the current year's budget upon appropriation.

CURRENT SITUATION AND ITS EFFECTS

On December 13, 2019, the City released a Request for Proposals (Specification No. 20-11376-C) for a planning consultant to assist in the development and adoption of zoning standards for Ashby and North Berkeley BART stations, pursuant to the requirements of California Assembly Bill (AB) 2923. The RFP's scope of work called on the selected consultant to assist City staff with:

- Creation of a Community Engagement Plan, the facilitation of meetings of the appointed Community Advisory Group, and the facilitation of community meetings for the general public;
- Development of zoning/site planning scenarios for each station and the refinement of a preferred zoning/site planning scenario into final zoning standards;
- Analysis of the economic feasibility of the proposed zoning/site planning scenarios;
- Preparation of an Environmental Impact Report for the final zoning standards, including the preparation of required technical background studies;
- Drafting of Zoning Ordinance amendments that reflect the final zoning standards; and
- Development of print and online background materials, and collecting, managing and summarizing public input.

The City received three proposals consistent with submittal guidelines and Planning Department staff interviewed all three teams. The consultant teams were reviewed and assessed based on the following criteria: project understanding, relevance of recent work, team composition, the proposed scope of work/approach and qualifications of the firm.

Staff recommends selection of the consultant team led by Van Meter Williams Pollack, which has extensive experience analyzing infill development potential and feasibility, and zoning for and construction of TOD projects in the Bay Area and nationally. The consultant team brings experience in designing planning processes that respect existing assets and communities, emphasize meaningful community engagement, and prioritize equity, sustainability and livability as lenses for developing recommendations, as well as demonstrated experience in developing zoning ordinance language and CEQA document preparation.

BACKGROUND

AB 2923, passed in 2018, requires the San Francisco BART District and affected jurisdictions to prepare TOD zoning standards for each BART station with developable

land, establishing minimum local zoning requirements for height, density, parking, and floor area ratio. The law requires that cities zone BART stations to meet those standards by July 1, 2022. Consistent with AB 2923, the City of Berkeley is coordinating with BART and community stakeholders to develop zoning standards and infrastructure enhancements for the Ashby and North Berkeley BART stations. On December 10, 2019, the City Council approved a Memorandum of Understanding (MOU) with BART that establishes a cooperative process for implementation of AB 2923 (BART Board subsequently approved the MOU on January 9, 2020).

The MOU (and the passage of AB 2923) was proceeded by significant community outreach related to future development at the Ashby and North Berkeley BART stations. For example, the Draft Adeline Corridor Specific Plan, which has been under development through a community outreach process since 2015, recognizes that the Ashby BART station has the potential to become a complete neighborhood center with high-density, transit-oriented housing at a range of affordability levels, with space for community-serving retail, office, and attractive public space for commerce, such as the Berkeley Flea Market and the South Berkeley Farmers Market. The Draft Plan also envisions improvements to bicycle and pedestrian access, transit connections, and new shared mobility technologies that make it easier to access the station without driving.

Future development of the North Berkeley BART station has also been the subject of significant community engagement and outreach. Mayor Jesse Arreguin, former District 1 Council Member Linda Maio, and current District 1 Council Member Rashi Kesarwani have led a series of community meetings to gather input on the future of the site. Informed by community input, on May 9, 2019, the City Council adopted goals and objectives for development at North Berkeley BART station, which directed that a Community Advisory Group be established to inform the zoning process and that emphasizes the importance of community input, station access for all users, housing affordability, livability, and environmental sustainability. Van Meter Williams Pollack would be tasked with assisting staff to facilitate the Community Advisory Group process.

ENVIRONMENTAL SUSTAINABILITY

Both the Ashby BART and North Berkeley BART stations are designated as "Priority Development Areas," as defined by the Metropolitan Transportation Commission, for proximity to transit and the potential to accommodate housing and commercial uses. The studies will address land use, housing, multi-modal transportation and green infrastructure, all of which will affect the community's greenhouse gas emissions for years to come.

RATIONALE FOR RECOMMENDATION

The consultant team was selected after an open public bidding process and demonstrated an excellent understanding of the needs of the City, and has successfully completed similar projects on time and on budget.

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ALTERNATIVE ACTIONS CONSIDERED

The scope of work and level of expertise required for preparation of zoning standards for the Ashby and North Berkeley BART stations exceed the capacity of existing City staff. As such, the City did not consider managing and executing the project with staff resources alone.

CONTACT PERSON

Timothy Burroughs, Director, Planning and Development, (510) 981-7437

Attachments: 1: Resolution

RESOLUTION NO. ##,###-N.S.

CONTRACT: VAN METER WILLIAMS POLLACK FOR PROFESSIONAL PLANNING SERVICES TO PREPARE ZONING STANDARDS AND ENVIRONMENTAL REVIEW DOCUMENT FOR THE ASHBY AND NORTH BERKELEY BART STATIONS

WHEREAS, the Planning and Development Department determined that consultant assistance is needed for preparation of the zoning standards for the Ashby and North Berkeley BART stations; and

WHEREAS, in December of 2019 the City of Berkeley released a Request for Proposals (RFP) Specification No. 20-11376-C for professional planning services to develop those zoning standards and an environmental impact report (EIR) pursuant to the California Environmental Quality Act, and received three proposals by the posted deadline and consistent with the submittal requirements; and

WHEREAS, after a thorough review and scoring according to the RFP criteria, the City decided to interview the three consultant teams who submitted proposals; and

WHEREAS, after interviewing the three consultant teams and based on the evaluation by the 4-person interview panel, the proposal from Van Meter Williams and Pollack was selected; and

WHEREAS, SB 2 grant revenue will be deposited into 336-53-584-611-0000-000-434110 and expended for the contract with Van Meter Williams and Pollack from 336-53-583-611-0000-000-441-612990 ; and

WHEREAS, a portion of the contract with Van Meter Williams Pollack in the amount of \$250,000 will be expended from Budget Code 336-53-583-611-0000-000-441-612990) for the purposes of completing the environmental review of the zoning standards; and

WHEREAS, the funding need for this contract will be appropriated as part of the third Amendment to the FY 2020 Annual Appropriations Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute a contract and any amendments with Van Meter Williams Pollack to perform professional planning services for the preparation of zoning standards for the Ashby and North Berkeley BART stations in an amount not to exceed \$500,000 for the period of March 2020 to July 31, 2021. A record signature copy of said contract and any amendments to be on file in the City Clerk Department.



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Amendment to the Agreement for Maintenance of State Highways in the City between the California Department of Transportation and City of Berkeley

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute an amendment to the Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley. The amendment will address roadway and traffic signal improvements from the City's Ninth Street Bicycle Boulevard Pathway Extension Phase II project.

FISCAL IMPACTS OF RECOMMENDATION

This amendment would modify the City's existing maintenance Agreement with Caltrans to include the improvements from the Ninth Street Bicycle Boulevard Pathway Extension Phase II project. Under this amendment, there would be no change to the current maximum annual authorized amount that Caltrans reimburses the City for maintenance of State Highways 13 (Tunnel Road and Ashby Avenue) and 123 (San Pablo Avenue).

Staff is in the process of negotiating an upcoming revision to the Citywide maintenance Agreement, which will include an updated annual maximum reimbursement amount to align with the City's costs of providing maintenance services of State owned Right-of-Way and a comprehensive updated listing of improvements on State Highways 13 (Ashby Avenue and Tunnel Road) and 123 (San Pablo Avenue), with an anticipated execution date in calendar year 2020.

CURRENT SITUATION AND ITS EFFECTS

City staff plan to begin construction of the Ninth Street Bicycle Boulevard Pathway Extension Phase II project in early 2020. This project will construct a bike and pedestrian pathway in the gap between the existing Ninth Street Bicycle Boulevard to the north and an existing path segment in Berkeley south of Murray Street leading to the Emeryville Greenway. Council authorized the City Manager to execute a contract with Redgwick Construction Company for the construction work on November 19, 2019, under Resolution No. 69,185-N.S.

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Amendment to the Agreement with the California Department of Transportation CONSENT CALENDAR for Maintenance of State Highways in the City of Berkeley February 25, 2020

The work of the Ninth Street Bicycle Boulevard Pathway Extension Phase II project includes work within the State right of way, and the City and its contractor are required to obtain an encroachment permit from Caltrans prior to performing work in this area. Caltrans requires that the existing maintenance Agreement be amended to include the improvements from this project that will occur within the State right of way prior to issuing the encroachment permit.

The Ninth Street Bicycle Boulevard Pathway Extension Phase II project has grant funding and contract execution deadlines, and construction must begin in early 2020 to minimize the risks of losing grant funding and bid prices expiring.

BACKGROUND

The City's current maintenance Agreement with Caltrans was executed on December 1, 1988. Council authorized execution of this Agreement on September 6, 1988, under Resolution No. 54,423-N.S. This Agreement replaced the previous Agreement from July 1, 1973, which was authorized by Council under Resolution No. 40,114-N.S.

Maintenance, as defined by Caltrans, is the preservation and keeping of right-of-way, and each type of roadway structure safety convenience or device, planting, illumination equipment, and other facility, in the safe and usable condition to which it has been improved or constructed, but does not include reconstruction or other major improvement.

Under the current maintenance Agreement, the City is responsible for performing maintenance work and the State will reimburse the City for the actual cost of specified work up to a maximum annual expenditure level.

The subject amendment to the maintenance Agreement complies with the City's strategic plan, to provide state-of-the-art, well-maintained infrastructure, amenities, and facilities.

The City and Caltrans are currently negotiating the terms of an upcoming revision to the citywide maintenance Agreement, which will replace the current Agreement. The revision will include an updated maximum annual reimbursement amount that takes into account improvements that have been implemented in the State right of way within the City since the time the current Agreement was executed.

RATIONALE FOR RECOMMENDATION

The City must obtain an encroachment permit from Caltrans in order to perform construction work in the State right of way for the Ninth Street Bicycle Boulevard Pathway Extension Phase II project, and Caltrans requires that the existing maintenance Agreement be amended to include improvements from this project prior to issuing the encroachment permit.

Therefore, in order to proceed with construction of the Ninth Street Bicycle Boulevard Pathway Extension Phase II project in a timely manner, Council would need to authorize the City Manager to execute an amendment to the Agreement with Caltrans for

Page 3 of 8

Amendment to the Agreement with the California Department of Transportation CONSENT CALENDAR for Maintenance of State Highways in the City of Berkeley February 25, 2020

maintenance of the State highways within the City of Berkeley to include roadway and traffic signal improvements from this project.

ALTERNATIVE ACTIONS CONSIDERED

There is no alternative that would allow the Ninth Street Bicycle Boulevard Pathway Extension Phase II project to proceed in a timely manner.

If Council does not approve the staff recommendation, this project could only proceed once the comprehensive revision to the maintenance Agreement is executed, which will likely take at least several months and possibly over a year to negotiate and execute. By that time, the construction bid price would have expired, and staff would need to rebid the project. Based on current construction cost trends, the price would increase. Also the construction of the project would be delayed, likely causing the City to lose its grants of \$750,000 in Alameda County Vehicle Registration Fee (VRF) and \$850,000 in State Active Transportation Program (ATP) funding.

CONTACT PERSON

Farid Javandel, Transportation Manager, Public Works Department (510) 981-7061 Kenneth Jung, Associate Civil Engineer, Public Works Department (510) 981-7028

Attachments:

- 1: Resolution
- 2: Amendment to Maintenance Agreement

RESOLUTION NO. ##,###-N.S.

AMENDMENT TO THE AGREEMENT FOR MAINTENANCE OF STATE HIGHWAYS IN THE CITY BETWEEN THE CALIFORNIA DEPARTMENT OF TRANSPORTATION AND CITY OF BERKELEY

WHEREAS, completion of the Ninth Street Bicycle Boulevard Pathway Extension Phase II project will close an existing gap in the bicycle network between West Berkeley and Emeryville; and

WHEREAS, a significant portion of this project includes improvements within the State of California right of way on Highway 13; and

WHEREAS, the California Department of Transportation (Caltrans) requires the City and its contractor to obtain an encroachment permit prior to performing any work within the State right of way; and

WHEREAS, Caltrans requires the existing Agreement, for maintenance of the State highways within the City, be amended to include roadway and traffic signal improvements from the Ninth Street Bicycle Boulevard Pathway Extension Phase II project as a precondition to issuing an encroachment permit; and

WHEREAS, the proposed amendment would not change the current maximum annual authorized amount that Caltrans reimburses the City for maintenance of State highways within the City; and

WHEREAS, the City has received State of California Active Transportation Program (ATP) funds and Alameda County Vehicle Registration Fee (VRF) funds for the work of this Project; and

WHEREAS, the current Citywide maintenance Agreement between the City and Caltrans was executed in 1988 and has not been updated since that time; and

WHEREAS, City staff and Caltrans are currently negotiating the terms of an upcoming revision to the Citywide maintenance Agreement, which will replace the current Agreement and the subject amendment by (1) updating the improvements that have been implemented in the State right of way since the Agreement was executed and (2) correspondingly updating the maximum annual reimbursement amount that the City would receive from Caltrans for said maintenance work.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute an amendment to the 1988 Agreement with the California Department of Transportation (Caltrans) for maintenance of the State highways within the City of Berkeley to include roadway and traffic signal improvements from the City's Ninth Street Bicycle Boulevard Pathway Extension Phase II project. A record signature copy of said amendment will be on file in the Office of the City Clerk.

AMENDMENT NUMBER 1 AGREEMENT FOR MAINTENANCE OF STATE HIGHWAYS IN THE CITY OF BERKELEY

This Amendment Number 1 ("AMENDMENT") to the "Agreement for Maintenance of State Highways in the City of Berkeley" ("AGREEMENT") is made and entered into by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE", and the City of Berkeley, hereinafter referred to as "CITY". CITY and STATE together are hereinafter referred to as "PARTIES".

WITNESSETH:

WHEREAS, AGREEMENT was executed on December 1, 1988; and

WHEREAS, AGREEMENT by its terms provides that it may be amended at any time upon mutual consent of PARTIES; and

WHEREAS, PARTIES now desire to amend AGREEMENT.

WHEREAS, Traffic signal modifications and intersection improvements will be installed on Route 13 at Ninth Street under Encroachment Permit No._____.

NOW, THEREFORE, PARTIES agree to amend AGREEMENT as follows:

- 1. AGREEMENT shall be amended in accordance with the attached pages, number 8 and 9. These pages shall be substituted for like numbered page in said AGREEMENT, and shall cancel and supersede previously like numbered page, becoming a part of said AGREEMENT for all purposes.
- 2. STATE costs and expenses assumed under the terms of this Agreement Amendment, if any, are conditioned upon the passage of the annual State of California Budget by the Legislature, the allocation of funding by the Legislature, the allocation of funding by the California Transportation Commission as appropriate, and the encumbrance of funding to the District office of STATE.

3. This AMENDMENT to AGREEMENT shall become effective on _______ and shall remain in full force and effect. In other respects, AGREEMENT shall remain in full force and effect.

By:

CITY OF BERKELEY

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION

TOKS OMISHAKIN Director of Transportation

City Manager

ATTEST:

DAVID AMBUEHL Deputy District Director Maintenance

DATE

City Clerk

APPROVED AS TO FORM:

City Attorney

H. DELEGATION OF MAINTENANCE

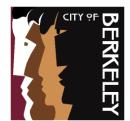
The specific maintenance function indicated below (and on EXHIBIT A") is hereby delegated to the CITY. This delegation of maintenance function setforthherein does not include areas and functions of which the control and maintenance rest with the local authority under the terms of Freeway Agreements and/or Freeway Maintenance Agreements.

ROUTE NO.	LENGTH MILES	DESCRIPTION OF ROUTING	PROGRAM DELEGATED	MAXIMUM ANNUAL AUTHORIZED EXPENDITURE
13 (a)	3.31	Ashby Avenue from Ninth Street to Tunnel Road; along Tunnel Road, from Ashby Avenue to southeast city limits at Landvale Road; a length of 3.31 miles for this section. See footnotes 1,3,4,5,6,7	HM1A,HM1B HM2C HM2D HM2E HM4M HM4K	\$20,000.00 1,000.00 11,500.00 2,000.00 0.00 <u>13,500.00</u>
		Authorized Expenditure Rte	13 (a)	\$48,000.00
13(b)	0.49	Ashby Avenue Connection; south leg of wye from south city limits near Eastshore Freeway, and north leg of wye from Eastshore Freeway, Route 80 to Ninth Street; a length of 0.49 mile for this section.	НМ4К	\$1,300.00
		Authorized Expenditure Rte	13 (b)	\$1,300.00
80	2.43	Eastshore Freeway from south city limits near Folger Avenue to north city limits at Codornices Creek; a length of 2.43 miles.	None	
123	2.34	San Pablo Avenue from south city limits at Haskell Street to north city limits at Codornices Creek; a length of 2.34 miles. See footnotes 2,4,5,6,7	HM1A,HM1B HM2C HM2D HM2E HM4M HM4K	\$5,000.00 1,000.00 8,000.00 0 20,900.00
	-	Authorized Expenditure Rte	123	\$34,900.00
		TOTAL AUTHORIZED EXPENDITURE		\$84,200.00

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Footnotes:

- (1) Length of street to be cleaned 7.5 curb miles.
- (2) Length of street to be cleaned 9.6 curb miles.
- (3) Extensive tree reconditioning work or removal in excess of authorized amount will require specific authorization by STATE.
- (4) STATE will maintain traffic stripe. City will maintain pavement markings.
- (5) Landscaping and trees installed by CITY under encroachment permit to be maintained by CITY at no expense to STATE.
- (6) Maintenance of improvements including, but not limited to, parking "TEE" pavement markings, non-STATE standard materials, sidewalks, non-STATE standard pavement markings, green pavement markings, non-STATE standard signs, bike lane signs, and all improvements constructed under an Encroachment Permit, will be performed by CITY at no expense to STATE.
- (7) Maintenance of video camera detection systems, emergency vehicle preemption, battery back-up system and IISNS including electrical energy, etc. will be performed by City at no expense to STATE.



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Contract: APB General Engineering for Sanitary Sewer Rehabilitation and Replacement - Urgent Sewer Repair Project FY 2020

RECOMMENDATION

Adopt a Resolution approving plans and specifications for the Urgent Sewer Repair Project FY 2020 with sites located throughout the City; accepting the bid of the lowest responsive and responsible bidder, APB General Engineering; and, authorizing City Manager to execute a contract and any amendments, extensions, or change orders until completion of the project in accordance with the approved plans and specifications, in an amount not to exceed \$388,489 which includes a 10% contingency of \$35,317.

FISCAL IMPACTS OF RECOMMENDATION

Funding is available in the FY 2020 budget in Sanitary Sewer Fund 611-54-623-676-0000-000-473-665130-PWENSR2005.

Low bid by APB General Engineering ...\$353,172 <u>10% Contingency</u> \$35,317 **Total construction cost\$388,489**

CURRENT SITUATION AND ITS EFFECTS

This sanitary sewer project is part of the City's ongoing program to rehabilitate or replace its aging sanitary sewer system, and to eliminate potential health hazards to the public. The project will be sited at various locations throughout the City as shown on the Location Map (Attachment 2). The sanitary sewer collection system in these areas needs immediate rehabilitation to prevent impending pipe failures, sewer blockages, and leakage problems. Field investigations performed using a closed circuit television camera revealed deteriorated piping and pipe defects in the existing sanitary sewer mains. These conditions are similar to problems previously found in other sanitary sewer mains prior to their replacement.

Planned work includes point (spot) repair of 6-inch, 8-inch and 15-inch diameter sanitary sewer pipes at various locations as shown in Attachment 2; rehabilitation of approximately 301 linear feet of 8-inch diameter sanitary sewer mains; rehabilitation of maintenance holes; point repair of sanitary sewer laterals; and related work. These repairs will correct existing acute defects including imminent structural failures identified

during the FY 2019 sanitary sewer system inspection and condition assessment program.

The scope of work also includes provisions for urgent/emergent actions related to acute sewer defects that will be undertaken at other citywide locations on an as-needed basis. As required by the United States Environmental Protection Agency (EPA) and Regional Water Quality Control Board Consent Decree, acute defects must be addressed no later than one year after they are identified. The eighty-five working day contract term includes a forty working day performance period, and an additional forty-five working days for project closeout. Finally, a 10% contingency of \$35,317 is included to pay for related unexpected future construction events.

BACKGROUND

To remain compliant with the September 22, 2014 Consent Decree, the City has implemented a long-term mandated Sanitary Sewer Capital Improvement Program to eliminate sanitary sewer overflows (SSOs) and reduce storm water infiltration and inflow into the sanitary sewer system. Under this program, the City utilizes a comprehensive asset management approach based on complex and evolving hydrologic and hydraulic modeling and condition assessments to repair, replace, or upgrade the City's portion of the sanitary sewer system. Ultimately, these actions will assist East Bay Municipal Utility District (EBMUD) in their goal of eliminating discharges from their wet weather facilities by the end of 2035.

This is the sixth year of the twenty two year Consent Decree requiring the City to inspect and assess sanitary sewer system condition at a minimum average annual rate of 79,200 feet (based upon a three fiscal year rolling average). Last year, the City inspected approximately 64,000 feet of pipe, and identified acute defects scheduled for repair in FY 2020 with the Urgent Sewer Repair Project FY 2020. The City had a three year annual average of approximately 123,383 linear feet of sewer main inspection at the end of fiscal year 2019. This project advances a Strategic Plan Priority Goal of providing state-of-the-art well-maintained infrastructure, amenities, and facilities.

An Invitation for Bids (Spec. No. 20-11362-C) for the project was released on December 17, 2019, and seven non-local bids were received, ranging from a low of \$353,172 to a high of \$605,854 (Attachment 3). The engineer's project estimate was \$488,000. APB General Engineering was the lowest responsive and responsible bidder. Previous work and references of APB General Engineering proved satisfactory, thus staff recommends award of the contract to APB General Engineering.

The Living Wage Ordinance does not apply to this project as Department of Public Works construction contracts are subject to State prevailing wage laws. APB submitted a Certification of Compliance with the Equal Benefits Ordinance. The Community Workforce Agreement (CWA) does not apply to this contract because the estimated project value does not exceed \$500,000.

ENVIRONMENTAL SUSTAINABILITY

Improvements to the City sanitary sewer system will help protect water quality by reducing the frequency of SSOs, and the amount of inflow and infiltration into the City sanitary sewer system which can negatively affect the San Francisco Bay.

RATIONALE FOR RECOMMENDATION

Contracted services are required for these large projects, as the City lacks in-house resources needed to complete scheduled sanitary sewer rehabilitation and replacement projects. Further, the City must take timely action to address urgent/emergent sewer repairs without delay. Finally, subject to fines and stipulated penalties, the Consent Decree demands the City to repair acute defects within one year of discovery, and complete the sanitary sewer main rehabilitation and replacement at a three-year annual average minimum of 22,120 feet per fiscal year. The City will have a three year annual average of approximately 23,220 linear feet of replaced or rehabilitated sewer mains after completing the FY 2020 work by June 30, 2020.

ALTERNATIVE ACTIONS CONSIDERED

No reasonable alternative exists as the City's sanitary sewer pipelines are in poor condition and in need of timely rehabilitation to prevent an increased probability of inflow and infiltration, sanitary sewer leakages, and backup problems in the sanitary sewer system.

CONTACT PERSON

Andrew Brozyna, Deputy Director, Public Works, (510) 981-6396 Nisha Patel, Manager of Engineering, Public Works, (510) 981-6406 Adadu Yemane, Associate Civil Engineer, Public Works, (510) 981-6413

Attachments:

- 1: Resolution
- 2: Location Map
- 3: Bid Results

RESOLUTION NO. ##,###-N.S.

CONTRACT: APB GENERAL ENGINEERING; FOR SANITARY SEWER REHABILITATION – URGENT SEWER REPAIR PROJECT FY 2020

WHEREAS, the Sanitary Sewer Project is part of the City's on-going Sanitary Sewer Capital Improvement Program to rehabilitate the aging and deteriorated sanitary sewer system; and

WHEREAS, the Capital Improvement Program is a requirement of compliance with the National Pollution Discharge Elimination System Permit and California Regional Water Quality Control Board Consent Decree; and

WHEREAS, the City has neither the staff nor the equipment necessary to undertake this Sanitary Sewer Rehabilitation and Replacement Project and other urgent/emergent sewer repairs; and

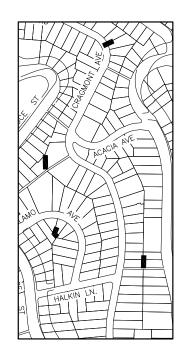
WHEREAS, on December 17, 2019, the City released an Invitation for Bids (Specification #20-11362-C) for the Urgent Sewer Repair Project FY 2020; and

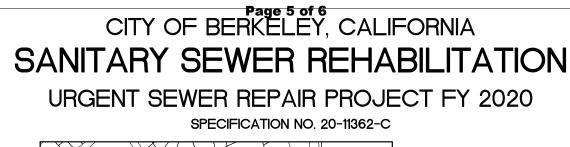
WHEREAS, the City received seven submission, and APB General Engineering; was the lowest responsive and responsive bidder; and

WHEREAS funds are available in the FY 2020 budget in Sanitary Sewer Fund 611.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Plans and Specifications No. 20-11362-C for the Urgent Sewer Repair Project FY 2020 are approved.

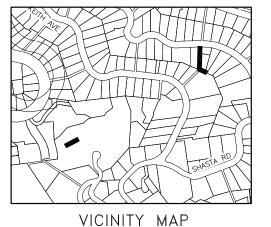
BE IT FURTHER RESOLVED that the Council authorizes the City Manager to execute a contract and any amendments, extensions, or change orders with APB General Engineering; until completion of the project in accordance with the approved specifications for the Urgent Sewer Repair Project FY 2020, with various locations throughout the City, in an amount not to exceed \$388,489, which includes a 10% contingency for unforeseen circumstances. A record signature copy of said agreement and any amendments will be on file in the Office of the City Clerk.



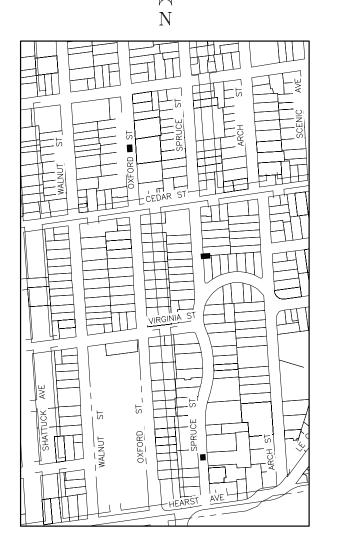


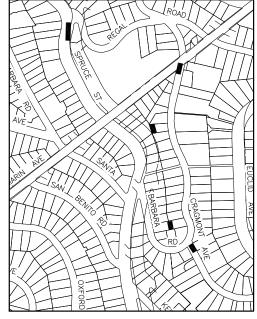






NOT TO SCALE





– CONSTRUCTION AREA

ATTACHMENT1125



Abstract of Bids Worksheet **City of Berkeley**

General Service Division

Rage 6 of 6 SAC. Addendum City FOI: SAULTARY SELVEN REHABILITATION-UNGENT SEVEN REPAIR PROJECT CARTINITY 20-11363-C Environments Ectimation + YZ020 Bid March Bid Bond EBO Bid Date: Living Wage Opp. States Work Force Comp Nuc Free Engineer's Estimate: 372,071.00 Base.Bid 361, 241. 50 LOS, 854.00 516, 873.00 545,236.00 30,885 00 353, 172.00 Remane 1/01/20 1 9 20 12/20 Glosacic Engineering, Inc. Pholes Construction, Inc. Gald Wing Engineering kerex Engineering, Inc. APB brender Engineering Bidders Westland Curtacturs. Inc. Radeu Mesto Construction Bid Recorder: **Bid Opener:**

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ATTACHMENT 3 2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.7320 TDD: 510: 510.981.6903 Fax: 510.981.7390 E-mail: finance@ci.berkeley.ca.us

Project Manager:

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Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Phillip L. Harrington, Director, Department of Public Works

Subject: Permit Fee Waiver for Pacific Gas and Electric Company for the Undergrounding of Existing Overhead Electrical Facilities and Electrical Service Conversions within Utility Undergrounding District No. 48 – Grizzly Peak/Summit

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to waive all permit fees for Pacific Gas and Electric Company for the undergrounding of existing overhead electrical facilities and electrical service conversions in Utility Undergrounding District No. 48.

FISCAL IMPACTS OF RECOMMENDATION

Approval of Resolution would waive approximately \$100,000 in permit fees for Pacific Gas and Electric Company (PG&E). The approximate permit fee breakdown is as follows:

Permit Fees Waived				
Building Permit Fees	\$	45,000		
Engineering/Utility Permit Fees	\$	55,000		

Fiscal Year (FY) 2020 funding to pay for plan review and inspection hours associated with the permits is currently available in the Department of Public Work's General Fund budget (Fund 011-54-623-679-0000-000-431-637110).

CURRENT SITUATION AND ITS EFFECTS

In 2012, the City executed agreements authorizing PG&E to design and construct the project to underground overhead utilities in Utility Undergrounding District (UUD) No. 48. Per the Agreements, Rule 20A work credits cannot be used to pay for permit fees. As required, the City will waive the permit fees and cover the cost of permit related inspections and plan review for the undergrounding project.

As of December 2019, the design is nearing completion and the necessary Rule 20A funding is in place to fund the construction of the project. PG&E expects to advertise the project for bids in the summer of 2020 and construction activities are expected to begin

in the winter of 2020, taking approximately 2 years to complete. The UUD No. 48 Undergrounding project is a Strategic Plan Priority Project, and its completion will advance the City's strategic goals of providing state-of-the-art, well-maintained infrastructure, amenities, and facilities; and of creating a resilient, safe, connected, and prepared city.

BACKGROUND

On April 27, 1993, the City Council adopted Resolution No. 56,934 establishing Utility Undergrounding District No. 48 covering Grizzly Peak Boulevard between Hill Road and the Southeastern City Limit; Summit road between Atlas Place and the southeastern City Limit; Summit Lane, Harvard Circle, and Fairlawn Drive between Avenida Drive and Senior Avenue; and Avenida Drive between Queens Road and Grizzly Peak Boulevard. UUD No. 48 was established under Berkeley Municipal Code, Chapter 16.24, Underground Utility Facilities and Rule 20A, Replacement of Overhead with Underground Electrical Facilities.

As UUD established under Rule 20A, undergrounding of utilities within UUD No. 48 meets the public benefit criteria established by the California Public Utilities Commission's (Commission) state-wide Rule 20A Overhead Utility Conversion Program. As part of this program, investor-owned utilities allocate funds to communities in their service territory for the purpose of undergrounding overhead utilities. These funds are not provided directly to communities, but are instead disbursed as 20A work credits to cover the utility's design and construction costs for approved 20A projects within that community. The City currently receives an annual allocation of \$530,000 of Rule 20A work credits from PG&E and as of June 2019 has accumulated a credit balance of approximately \$9 million.

In 2012, the City executed agreements with PG&E for the design and construction of the project to underground overhead utilities in UUD No. 48 using the City's Rule 20A work credits. The agreements, titled "Agreement to Perform Tariff Schedule Related Work, Rule 20A General Conditions" and "Agreement to Perform Tariff Scheduled Related Work, Rule 20A Electric Panel Service Conversions" (Agreements), are included as Attachments 2 and 3. Per the Agreements and in accordance with Rule 20A, PG&E was directed to:

- Relocate PG&E's overhead distribution lines into underground joint trenches.
- Relocate up to 100 feet of each service lateral to underground for each property in the district.
- Manage the electric service conversions and pay for the work (up to \$1,500 per service entrance) of replacing the existing overhead service with an underground feed for each property in the district.
- Remove existing utility poles in the District.

Per the Agreements and in accordance with Rule 20A, the City is required to cover certain project costs. These include the cost of City permit fees and associated inspections; the cost of installing stand-alone City street lighting upon removal of utility pole-mounted street lights; and other project support costs outlined in the Agreements. Excluding the City covered costs listed above, the Project has a total estimated cost of \$8.8 million at project completion.

ENVIRONMENTAL SUSTAINABILITY

New street lighting fixtures installed within UUD No. 48 will be solar powered, contributing to a reduction of greenhouse gases emitted and advancing the goals of the City's Climate Action Plan.

RATIONALE FOR RECOMMENDATION

Undergrounding of utilities using Electrical Rule 20A allocations requires that the City waive permit fees. Proceeding with the project to underground utilities in UUD No. 48 will require that all City permit fees be waived for PG&E.

CONTACT PERSON

Phillip L. Harrington, Director, Department of Public Works, (510) 981-6303 Nisha Patel, Manager of Engineering/City Engineer, (510) 981-6406 Ricardo Salcedo, Assistant Civil Engineer, Public Works, (510) 981-6407

Attachments:

1: Resolution

2: Agreement to Perform Tariff Scheduled Related Work – Rule 20A General Conditions

3: Agreement to Perform Tariff Scheduled Related Work – Service Conversions

RESOLUTION NO. ##,###-N.S.

APPROVING THE PERMIT FEE WAIVER FOR PACIFIC GAS AND ELECTRIC COMPANY FOR THE UNDERGROUNDING OF EXISTING OVERHEAD ELECTRICAL FACILITIES AND ELECTRICAL SERVICE CONVERSIONS WITHIN UTILITY UNDERGROUNDING DISTRICT NO. 48 – GRIZZLY PEAK/SUMMIT

WHEREAS, on City on April 27, 1993, the City Council adopted Resolution No. 53,934 establishing Utility Undergrounding District (UUD) No. 48 covering Grizzly Peak Boulevard between Hill Road and the Southeastern City Limit; Summit road between Atlas Place and the southeastern City Limit; Summit Lane, Harvard Circle, and Fairlawn Drive between Avenida Drive and Senior Avenue; and Avenida Drive between Queens Road and Grizzly Peak Boulevard; and

WHEREAS, UUD No. 48 was established under Berkeley Municipal Code, Chapter 16.24, Underground Utility Facilities; and Electrical Rule 20A, Replacement of Overhead with Underground Electrical Facilities; and

WHEREAS, in 2012 the City executed agreements with Pacific Gas and Electric Company (PG&E) titled "Agreement to Perform Tariff Schedule Related Work, Rule 20A General Conditions" and "Agreement to Perform Tariff Scheduled Related Work, Rule 20A Electric Panel Service Conversions" (Agreements) authorizing the design and construction of the project to underground overhead utilities in UUD No. 48 using the City's Electrical Rule 20A allocations held by PG&E; and

WHEREAS, the Agreements dictate that Rule 20A allocations cannot be used to pay for any City permits including but not limited to building, engineering, or utility permits; and

WHEREAS, Fiscal Year (FY) 2020 funding for plan review and inspection hours associated with the permits is currently available in the General Fund (Fund 011-54-623-679-0000-000-431-6371).

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that all City permit and staff service fees associated with the project to underground overhead utilities in Utility Undergrounding District No. 48 are hereby waived for Pacific Gas and Electric Company.



Pacific Gas and Electric Company

Agreement to Perform Tariff Scheduled Related Work, Rule 20A General Conditions PROJECT MGR. PM #

Donna Pontrello, Liaison 30817973

PROJECT NAME: GRIZZLY PEAK BLVD BERKELEY R20A

LOCATION: BERKELEY, CALIFORNIA

City: Berkeley

City/County of Berkeley, (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E) to perform the tariff scheduled related work as located and described herein.

General Conditions:

PG&E will, at its expense, replace its existing overhead electric facilities with underground electric facilities as outlined in the Rule 20 Tariff. To ensure the success of this program, the Applicant agrees to support the Rule 20A Program as follows:

Responsibilities of the Applicant:

- 1. Consult with PG&E to confirm the requirements and location of the project.
- 2. Provide a resolution and boundary map as required in Electric Rule 20.
- 3. Provide a list of all recorded property owners, APN#, phone number and address.
- 4. Provide a list of the most recent tenant (for rental properties).
- 5. Provide Base Map (in AutoCAD) showing the following: boundary, roads, future road improvements, sidewalks, curbs, property lines, buildings, existing water and sewer, easements, and any other known utilities or obstacles.
- Secure all required rights-of-way and easements, which must be satisfactory to and approved by PG&E.
 Own and manage all contaminated soils. (Bule 20A funding cannot be used for approved by PG&E.
- Own and manage all contaminated soils. (Rule 20A funding cannot be used for environmental remediation costs)
 Own and manage all cultural resource findings. (Rule 20A funding cannot be used for managing cultural resource findings).
- 9. Provide recent pot holing/core samplings and soils/paving information from projects that were recently completed.
- 10. Provide acceptable construction yard for materials and equipment storage.
- Pay for paving and restoration costs beyond the standard excavations and restorations necessary for the construction of the project. Joint trench participants will replace paving, landscaping, sidewalk, etc. that is removed during construction. (Rule 20A funding cannot be used for additional restoration costs).
- 12. Waive paving moratorium requirements, or pay for additional costs above PG&E's responsibility for restoration.
- 13. Stake and survey for any associated future grade changes.
- 14. Should applicant require additional traffic control beyond that which PG&E provides (per California Joint Utility Traffic Control Committee), Applicant will pay for the additional costs.
- 15. Should Applicant require a traffic control plan, Applicant will prepare or pay to prepare such a plan.
- 16. Pay for streetlight costs per Street Light Agreement.
- 17. Remove Applicant owned streetlights attached to utility poles and located within the underground district at Applicant cost.
- 18. Issue and waive cost of encroachment permit.
- 19. Waive work hour restrictions for construction, including holiday and/or special construction limitations.
- 20. Waive all permit fees and other incidental project specific costs, including but not limited to: parking charges; rental cost of city or county properties; and lost revenues.

Responsibilities of PG&E:

- 1. Provide consultation to Applicant to establish resolution and boundary map.
- 2. If designated as the design/trench lead, prepare the Intents, Composite and Form B (costs will be shared by all joint trench participants).
- 3. Provide electric design to the design/trench lead agency, if lead is other than PG&E.
- 4. Identify all locations that require an easement.
- 5. Prepare easement documents for signature.
- 6. Upon request of the Applicant, Rule 20A allocation may be used for the installation of no more than 100 feet of each customer's underground electric service lateral.
- 7. Upon request of the Applicant, the Rule 20A allocation may be used for the conversion of electric service panels to accept underground service, up to \$1,500 per service entrance (excluding permit fees). Alternatively, if the Applicant requests that PG&E manage the panel conversion work, perform such conversions by agreement (Form 79-1113, Agreement to Perform Tariff Schedule Related Work, Rule 20A).

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Pacific Gas and Electric Company

- 8. Provide inspection services for the installation of PG&E facilities.
- Remove poles, or portions of poles, from the underground district as required by the Joint Pole Utility Agreement.
 Provide proper notification to all affected customers when electrical outages are necessary to complete project conversion to the new underground system.

We have read the above information and understand and agree with the provisions and responsibilities as described above/.

16th day of Executed this 20

City/County of: BERKELEY Applicant

By: NamaNIEL (CHRPSTINPE INTERIM CITY MANAGER

Title:

PACIFIC GAS AND ELECTRIC COMPANY By:

Sindy Mikkelsen (Print or Type Name)

Principal Program Manager, Rule 20A

Title:

Mailing Address:

City/County of:

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Pacific Gas and Electric Company

 Agreement to Perform
 Image: APPLICANT (Original)
 MLX#

 Tariff Scheduled Related Work,
 Image: Division (Original)
 PM #
 3081797

 Rule 20A Electric Panel Service Conversions
 Image: Division (Original)
 PM #
 3081797

 Liaison
 Image: Division (Original)
 PM #
 3081797

30817973 Donna Pontrello, Liaison

City/County of Berkeley, (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E) to perform the tariff scheduled related work as located and described herein.

Electric Panel Service Conversion Program:

In order to expedite the completion of Rule 20A Projects, PG&E has offered to manage the electric service conversions, and pay for this work from the Applicant's allocation funds. The underground electric feed that replaces the existing overhead service will be installed in the most economical manner possible, as determined by PG&E. To ensure the success of this program, the Applicant agrees to support the Electric Panel Service Conversion Program as follows:

Responsibilities of the Applicant:

- 1. Provide accurate list of owner, parcel #, address, phone number.
- Mail informational letters to all residents describing the program and their responsibilities.
 a. PG&E will provide templates for these letters.
- Obtain Right of Entry agreements from property owners prior to scheduling construction.
 a. PG&E will provide the document for each property owner to complete and sign.
- 4. Provide a liaison for residents and property owners to contact with questions.
- 5. Waive permit fees.

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- 6. Waive Inspection fees.
- 7. Facilitate a preliminary job walk with the liaison, building inspector and others.
 - a. Review PG&E's intended placement of new equipment required for conversions.
 - b. Clarify the inspection and permit requirements and timing, if necessary.
 - Provide information enabling the field crews to determine the location of property lines.
- 9. Disclose all special circumstances
 - a. For example: historic buildings, hazardous materials, environmental issues, burial grounds and other items that may affect the overhead-to-underground conversion.
- 10. Communicate with the property owners if additional work beyond the conversion will be required.
 - a. PG&E will pay for the work required to replace the existing overhead electric feed with a new underground feed only. The cost of any additional work required to bring the property up to current codes will be borne by others (property owner or Applicant).
 - b. The Applicant will communicate to the property owner all items that must be brought up to code in a timely manner, and all code issues will be managed by the Applicant.
- 11. Disclose work hours and days.
- 12. Agree prior to construction regarding the required notifications to residents and property owners.
- 13. Failure to complete the above requirements may result in construction delays.

PROJECT NAME: Grizzly Peak Blvd Berkeley R20A

LOCATION: Berkeley, CALIFORNIA

City: Berkeley

Executed this 11 day of March 20 13

City/County of: BERKELEY Applicant By:

(Print or Type Name)

Mailing Address:

City/County of:

PACIFIC GAS AND ELECTRIC COMPANY By: Sibdy Mikkelsen

(Print or Type Name)

Principal Program Manager, Rule 20A

Title:

3395 McMaude Place

Santa Rosa, CA 95407



Office of the City Manager

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Berkeley Peace & Justice Commission

Submitted by: Igor Tregub, Chairperson

Subject: Resolution: Condemn the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

RECOMMENDATION

Adopt a resolution affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence.

FISCAL IMPACTS OF RECOMMENDATION None

CURRENT SITUATION AND ITS EFFECTS

In his June 11, 2018 decision in the asylum case *Matter of A-B-* (27 I&N Dec. 316 (A.G. 2018)), former Attorney General Sessions declared that asylum seekers presenting claims based on domestic violence will "generally" no longer qualify for relief. His decision included sweeping pronouncements undermining protections for individuals fleeing other forms of persecution perpetrated by nongovernment actors, including gangs and organized crime groups.

At its regular meeting on November 4, 2019, the Peace and Justice Commission recommended that the Council of the City of Berkeley adopt a resolution affirming Berkeley's commitment to our asylum-seeking residents and condemning the Federal government's administrative decision undermining asylum protection for survivors of domestic violence. The vote for the attached resolution was as follows:

M/S/C: Ayes:	Bohn/Rodriguez Askary, Bohn, Lippman, Maran, Meola, Morizawa, Pancoast, Pierce, Rodriguez
Noes:	None
Abstain:	None
Absent:	al-Bazian, Gussman, Tregub
Excused:	None

ENVIRONMENTAL SUSTAINABILITY

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

Page 2 of 6

RATIONALE FOR RECOMMENDATION

The Berkeley City Council has repeatedly affirmed its commitment to protecting our immigrant communities, and since January 2017 has consistently condemned actions of the Trump Administration that target our immigrant and asylum-seeking residents.

ALTERNATIVE ACTIONS CONSIDERED None

CITY MANAGER

The City Manager takes no position.

CONTACT PERSON

Igor Tregub, Chairperson, Peace and Justice Commission

Nina Goldman, Commission Secretary, City Manager's Office (510) 981-7537

Attachment:

1. Resolution Affirming Berkeley's Commitment to our Asylum-Seeking Residents and Condemning the Federal Government's Administrative Decision Undermining Asylum Protection for Survivors of Domestic Violence

Page 3 of 6

RESOLUTION NO. ##,###-N.S. AFFIRM BERKELEY'S COMMITMENT TO OUR ASYLUM-SEEKING RESIDENTS AND CONDEMN THE FEDERAL GOVERNMENT'S ADMINISTRATIVE DECISION UNDERMINING ASYLUM PROTECTIONS FOR SURVIVORS OF DOMESTIC VIOLENCE

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley's role in issues of peace and social justice (Berkeley Municipal Code Chapter 3.68.070); and

WHEREAS, the Berkeley City Council has repeatedly affirmed its commitment to protecting our immigrant communities, and since January 2017 has consistently condemned actions of the Trump Administration that target our immigrant and asylum-seeking residents; and

WHEREAS, the City of Berkeley has a long history and proud legacy of leading the fight to advance women's rights and combat gender-based violence;ⁱ and

WHEREAS, former U.S. Attorney General Jefferson B. Sessions, on June 11, 2018, issued a sweeping decision in the asylum case *Matter of A-B-* (27 I&N Dec. 316 (A.G. 2018)), involving a domestic violence survivor from El Salvador, which vacated the Board of Immigration Appeals' landmark decision in *Matter of A-R-C-G-* (26 I&N Dec. 388 (BIA 2014), which had recognized domestic violence as a basis for asylum; and

WHEREAS, in his decision then-Attorney General Sessions declared that asylum seekers presenting claims based on domestic violence will "generally" no longer qualify for relief, and his decision included sweeping pronouncements undermining protections for individuals fleeing other forms of persecution perpetrated by nongovernment actors, including gangs and organized crime groups; ⁱⁱ and

WHEREAS, in *Grace v. Whitaker* (344 F. Supp. 3d 96 (D.D.C. 2018)), the U.S. District Court for the District of Columbia found the heightened standards articulated by Sessions in *Matter of A-B-* to be inconsistent with existing legal precedents and congressional intent behind the Refugee Act of 1980, holding that there can be no blanket rule barring domestic violence asylum claims, and although the *Grace* decision has halted the implementation of *Matter of A-B-* in initial credible fear proceedings, the Departments of Homeland Security and Justice have instructed adjudicators that *Matter of A-B-* must continue to be used in deciding asylum claims on their merits. Berkeley's East Bay Sanctuary Covenant was a lead plaintiff in successful lawsuit challenging the Trump Administration in this matter;ⁱⁱⁱ and

WHEREAS, the majority of women and girls seeking asylum at the U.S. southern border hail from the Northern Triangle countries of Central America, El Salvador, Guatemala,

Page 4 of 6

and Honduras, where rates of femicide (gender motivated killings of women) are among the highest in the world, and which are currently experiencing epidemic levels of violence, including widespread domestic violence and other forms of gender-based violence, which is perpetrated with virtual impunity;^{iv} and

WHEREAS, according to data from the Syracuse University Transactional Records Access Clearinghouse (TRAC), in the 12 months following the issuance of the *Matter of A-B-* decision national asylum grant rates for applicants from El Salvador, Guatemala, and Honduras fell to an average of 15 percent, compared to a 24 percent grant rate in the year prior to the decision; and the Matter of A-B decision has put countless women, children, LGBTQ people, and families at heightened risk of removal to perilous situations where their lives are in danger;^v and

WHEREAS, United Nations guidance and international law reflect that domestic violence can form the basis of asylum protection when all other elements of the refugee definition are met, and the United Nations High Commissioner for Refugees (UNHCR) has asserted that the *Matter of A-B-* ruling stands at odds with the United States' international treaty obligations by creating a high barrier to women fleeing domestic violence;^{vi} and

WHEREAS, in 2018, 84 members of Congress, including Congresswoman Barbara Lee, cosponsored Congresswoman Jan Schakowsky's (D-III.) resolution (H. Res. 987) condemning the former Attorney General's decision in *Matter of A-B*;^{vii} and

WHEREAS, Senators Feinstein and Harris have decried the *Matter of A-B-* ruling and called for its reversal;^{viii} and

WHEREAS, 118 members of Congress, including Barbara Lee, signed a letter sent on September 12, 2018 to then-Attorney General Sessions requesting that he rescind his decision in *Matter of A-B-.^{ix}*

NOW THEREFORE BE IT RESOLVED, that the Council of the City of Berkeley declare its condemnation of former Attorney General Sessions' decision in *Matter of A-B*-seeking to close the door to women and others seeking asylum on the basis of domestic violence.

BE IT FURTHER RESOLVED, that Council of the City of Berkeley recognize the decision as a shameful attempt to eviscerate protections for women, children, LGBTQ people, and families fleeing harrowing violence.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley call on the U.S. Department of Justice to rescind the *Matter of A-B*- decision.

Page 5 of 6

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge congressional appropriators to instruct the Departments of Justice and Homeland Security that they may not use appropriated funds to implement *Matter of A-B.*

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge our representatives in Congress to enact laws that address the issues created by *Matter of A-B*- and restore justice and fairness to our asylum system.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley urge the federal courts of appeals to overturn *Matter of A-B-* and affirm that domestic violence may be a basis for asylum.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley ask the City Clerk to send a copy of this resolution to Congresswoman Barbara Lee, Senators Dianne Feinstein and Kamala Harris, the Chairs of the Congressional Appropriations Committees, and the Chairs of the Committees on the Judiciary.

^{iv} "Central America's Turbulent Northern Triangle," October 1, 2019, Center on Foreign Relations, <u>https://www.cfr.org/backgrounder/central-americas-turbulent-northern-triangle</u>

^v "Asylum Representation Rates Have Fallen Amid Rising Denial Rates," Transactional Records Access Clearinghouse (TRAC), <u>https://trac.syr.edu/immigration/reports/491/</u>

^{vi} "Why domestic abuse and anti-gay violence qualify as persecution in asylum law," June 15, 2018, http://theconversation.com/why-domestic-abuse-and-anti-gay-violence-qualify-as-persecution-in-asylum-law-98354

ⁱ "Adopt the Operative Principles of the UN Convention on the Elimination of All Forms of Discrimination Against Women," BMC Chapter 13.20, *https://www.codepublishing.com > CA > Berkeley > Berkeley1320020.html*

ⁱⁱ "Attorney General issues precedent decision, Matter of A-B-, seeking to limit protection for asylum seekers," Reena Arya: <u>https://cliniclegal.org/resources/attorney-general-issues-precedent-decision-matter-b-seeking-limit-protection-asylum</u>

And: Grace v. Whitaker (344 F. Supp. 3d 96 (D.D.C. 2018)), the U.S. District Court for the District of Columbia found the heightened standards articulated by Sessions in Matter of A-B- to be inconsistent with existing legal precedents and congressional intent: <u>https://casetext.com/case/grace-v-whitaker</u> and: <u>https://www.aclu.org/legal-document/grace-v-whitaker-opinion</u>

ⁱⁱⁱ "East Bay Sanctuary Covenant v. Trump," February 7, 2019, ACLU, https://www.aclu.org/cases/east-bay-sanctuary-covenant-v-trump And:

[&]quot;Groups file a federal lawsuit challenging new Trump Asylum restrictions," Feb 7, 2019, ACLU, https://www.aclu.org/press-releases/groups-file-federal-lawsuit-challenging-new-trump-asylum-restrictions and:

[&]quot;East Bay Sanctuary Covenant v. Trump. Restrictions on Asylum," Aug 13, 2019, https://www.ca9.uscourts.gov > content > view

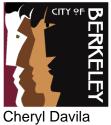
Page 6 of 6

^{vii} "H.Res.987 - Condemning the Attorney General's decision in "Matter of A-B-" seeking to declare domestic violence and gang violence as invalid grounds for seeking asylum," <u>https://www.congress.gov/bill/115th-congress/house-resolution/987/all-info</u>

viii "Feinstein Statement on Asylum Law Changes," June 11, 2018, Sen. Dianne Feinstein, <u>https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=51182C79-CC38-4A12-9395-10404C2C0044</u> and https://twitter.com/SenKamalaHarris/status/1017481406866444288

^{ix} "118 House Democrats to AG Sessions: Reverse Decision Ending Asylum for Victims of Domestic, Gang, and Gender-Based Violence," September 13, 2018, Rep. Jim McGovern,

https://mcgovern.house.gov/news/documentsingle.aspx?DocumentID=397246



Councilmember District 2

> CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

- From: Councilmember Cheryl Davila
- Subject: LifeLong Medical Care's March 7, 2020 Annual Gala Fundraiser: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmember Cheryl Davila, to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020 with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

BACKGROUND

LifeLong Medical Care has been committed to serving the community for over 40 years with compassion. LifeLong has a number of robust programs offering quality care including medical, dental and social services throughout Alameda and Contra Costa Counties for all ages. They have provided services to over 61,000 underserved individuals, many with complex health conditions every year.

LifeLong will hold their Annual Gala Fundraiser on Saturday, March 7, 2020, at 5:30 PM at the Claremont Club and Spa, 41 Tunnel Road in Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$100 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

ENVIRONMENTAL SUSTAINABILITY

Protecting low income residents and people who experience homelessness is itself an act of environmental sustainability.

CONTACT PERSON

Cheryl Davila Councilmember District 2 510.981.7120/ cdavila@cityofberkeley.info

ATTACHMENTS:

 Resolution
 LifeLong Medical Care's March 7, 2020 Annual Gala Fundraiser Information: <u>https://www.lifelongmedical.org/news-a-events/annual-fundraiser/2020-annual-gala.html</u>

Page 2 of 3

RESOLUTION NO. ##, ###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEYS AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has surplus funds in her office expenditure account (budget code 011-11-102-000-0000-000-411); and

WHEREAS, LifeLong Medical Care, a California non-profit tax-exempt corporation, is seeking donations for their First Annual Fundraiser on Saturday, March 7, 2020 at 5:30 PM at the Claremont Club and Spa, 41 Tunnel Road in Berkeley; and

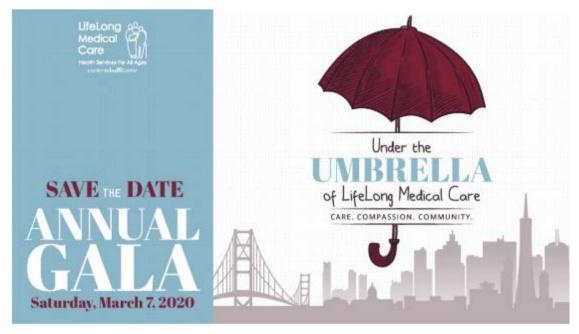
WHEREAS, LifeLong Medical Care has been committed to serving the community for over 40 years with compassion. LifeLong has a number of robust programs offering quality care including medical, dental and social services throughout Alameda and Contra Costa Counties for all ages; and

WHEREAS, LifeLong Medical Care provides services to over 61,000 underserved individuals, many with complex health conditions every year; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per Councilmember, including \$100 from Councilmember Cheryl Davila, shall be granted to LifeLong Medical Care for their Annual Gala Fundraiser on March 7, 2020.

https://www.lifelongmedical.org/news-a-events/annual-fundraiser/2020-annual-gala.html

2020 ANNUAL GALA



LifeLong Medical Care

invites you to join us at our

Annual Gala

Come and Celebrate our Commitment to Providing Care and Compassion to our Communities for more than 40 Years!

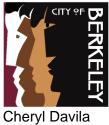
> Saturday, March 7, 2020 5:30pm

Claremont Club & Spa - A Fairmont Hotel 41 Tunnel Road | Berkeley, California

> Hosted wine Seated 3 course dinner Cocktail Attire

Drink, Bid, Mingle: 5:30 – 7:15 PM Dinner, Program, Dessert & Dancing: 7:15 PM

If you are interested in sponsoring our Gala, please contact Kara De La Paz at (510) 981-4154 or development@lifelongmedical.org



Councilmember District 2

> CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmember Cheryl Davila and Councilmember Sophie Hahn

Subject: Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala: Relinquishment of Council Office Budget Funds to General Fund and Grant of Such Funds.

RECOMMENDATION

Adopt a Resolution approving the expenditure of an amount not to exceed \$250 per Councilmember including \$100 from Councilmembers Cheryl Davila and Sophie Hahn, to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala, with funds relinquished to the City's general fund for this purpose from the discretionary Council Office Budgets of Councilmember Davila, the Mayor and any other Councilmembers who would like to contribute.

BACKGROUND

Luna Dance Institute is a community based 501(c)3 organization non-profit organization, whose mission is to bring creativity, equity and community to every child's life through the art of dance.

Luna Dance Institute exists as an example of what is possible when an organization seeks to defend and further children's freedom through the art of dance. Luna Dance Institute works with allies to champion systemic change in arts, education, and social justice.

Since 1992, Luna Dance Institute has grown from a local children's dance program to a nationally recognized dance education organization that develops future choreographers, leaders, and visionaries. Berkeley is proud to be the home of Luna Dance Institute who each year brings dance to more than 20,000 children and 300+ artists, teachers, and social service providers.

Luna Dance Institute will hold their Moon Dance Fundraising Gala on Saturday, March 7, 2020 from 7-10 PM at Emerytech Building (Clif Bar Theater), 1370 65th Street, Emeryville. The event features music from the Left Coast Sextet (an all women Jazz band), and auction items donated by local restaurants and performance venues.

FISCAL IMPACTS OF RECOMMENDATION

No General Fund impact. \$100 is available from Councilmember Cheryl Davila's Council Office Budget discretionary account (011-11-102-000-0000-000-411).

ENVIRONMENTAL SUSTAINABILITY Supporting our youth is itself an act of environmental sustainability.

<u>CONTACT PERSON</u> Cheryl Davila, Councilmember District 2 510.981.7120 cdavila@cityofberkeley.info ATTACHMENT: 1. Resolution 2. Luna Dance Institute March 7, 2020 Moon Dance Fundraising Gala Information: http://lunadanceinstitute.org/2020-gala/

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RESOLUTION NO. ##, ###-N.S.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEYS AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, Councilmember Cheryl Davila has surplus funds in her office expenditure account (budget code 011-11-102-000-0000-000-411); and

WHEREAS, Luna Dance Institute, a California non-profit tax-exempt corporation, is seeking donations for their Moon Dance Fundraising Gala on March 7, 2020 from 7PM-10 PM at Emerytech Building (Clif Bar Theater),1370 65th Street, Emeryville; and

WHEREAS, Luna Dance Institute mission is to bring creativity, equity and community to every child's life through the art of dance; and

WHEREAS, Since 1992, Luna Dance Institute has grown from a local children's dance program to a nationally recognized dance education organization that develops future choreographers, leaders, and visionaries. Each year, Luna Dance Institute brings dance to more than 20,000 children and 300+ artists, teachers, and social service providers; and

WHEREAS, Luna Dance Institute exists as an example of what is possible when an organization seeks to defend and further children's freedom through the art of dance. They work with allies to champion systemic change in arts, education, and social justice; and

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to \$250 per Councilmember, including \$100 from Councilmember Cheryl Davila, shall be granted to Luna Dance Institute for their March 7, 2020 Moon Dance Fundraising Gala.

http://lunadanceinstitute.org/2020-gala/



Moon Dance: A Marvelous Night...

Join us for a marvelous night of dancing, live music, games, hearty appetizers, desserts, & more.

Support our efforts to bring high quality dance education to 20,000 children at Luna Dance Institute's 2020 gala.

Date: March 7, 2020 Place: Emerytech Building (Clif Bar Theater), 1370 65th Street, Emeryville Time: 7:00 – 10:00 PM

Dance to the music of the Left Coast Sextet, an all women Jazz band, bid on auction items donated by local restaurants and performance venues. Check this page for entertainment updates. We look forward to dancing with you on March 7th!

RESERVE TICKETS

Can't make it but still want to support Luna's programming? Consider making a donation.

Interested in **donating goods or sponsoring** this event? Please contact Aiano (anakagawa@lunadanceinstitute.org). As a nonprofit 501(c)3 organization, your donation is considered a charitable gift and may be tax-deductible.

Luna Dance Institute EIN: 56-2467645.

SOPHIE HAHN





Berkeley City Council, District 5 2180 Milvia Street, 5th Floor Berkeley, CA 94704 (510) 981-7150 shahn@cityofberkeley.info

> CONSENT CALENDAR February 25, 2020

To:Honorable Mayor and Members of the City CouncilFrom:Vice Mayor Sophie Hahn and Councilmember Cheryl DavilaSubject:Referral to Schedule a Special City Council Meeting on Ohlone History and
Culture

RECOMMENDATION

Refer to the Agenda & Rules Policy Committee to schedule a Special City Council Meeting of at least one hour in duration immediately prior to a Regular City Council Meeting for representatives of the Ohlone community to present on Ohlone history and culture to provide additional context for the placement of signs stating "Welcome to the City of Berkeley Ohlone Territory" at entrances to our City.

BACKGROUND

Long before the City of Berkeley was incorporated, the Bay Area was inhabited by Indigenous peoples, including the Ohlone. The Ohlone Village of Huchiun existed in what is now the Berkeley City limits, and the Ohlone language Chochenyo was (and is still) spoken here. The Ohlone peoples established sacred sites and burial sites in Berkeley and throughout the Bay Area.¹

The City of Berkeley has a proud history of recognition, inclusiveness and diversity. For example, in 1992, Berkeley was the first city in the United States to rename as Indigenous Peoples' Day the federal holiday formerly recognized as Columbus Day. In recent years, Native American groups, including Ohlone tribal members and conservation activists, have been organized in spreading awareness throughout the community about their homeland and sacred sites in the Bay Area.

In January 2018, Councilmember Cheryl Davila introduced an item to change Berkeley's City Limits signs to "Welcome to Berkeley Ohlone Territory."² In October 2018, the City Council adopted a measure referring the City Manager to replace all Welcome to Berkeley signs with new signage, including "Ohlone Territory."³ The purpose of the referral was to recognize the Ohlone Peoples as the original inhabitants of the land now called Berkeley, including the Bay Area region, and to celebrate the City's Indigenous communities. The measure underscored the

¹ <u>https://www.cityofberkeley.info/Clerk/City_Council/2016/01_Jan/Documents/2016-01-</u>

<u>19 Item_31_Support_of_Indigenous_Peoples.aspx</u>

² <u>https://www.cityofberkeley.info/Clerk/City_Council/2018/01_Jan/Documents/2018-01-23_Item_39_Replace_City_Limit_Signs.aspx</u>

³ <u>https://www.cityofberkeley.info/Clerk/City_Council/2018/10_Oct/Documents/2018-10-</u> 02_Item_E_Welcome_to_Berkeley_Signage.aspx

importance of helping current Berkeley residents and visitors to understand what came before the current landscape.

In addition to recognizing and celebrating the Ohlone People through signage, the Council discussed the need for learning opportunities to add historical context, including a Council session on Ohlone history and culture, and a webpage on the City of Berkeley website linking to historic and cultural information about the Ohlone. In the spirit of that discussion, and in keeping with the City's commitment to recognize diversity, inclusion and to learning more about the original inhabitants of Berkeley, representatives of the Ohlone community are invited to present to the Council on Ohlone history and culture at a Special Meeting of the City Council.

FISCAL IMPACTS

There are no fiscal impacts associated with adopting the attached referral.

ENVIRONMENTAL SUSTAINABILITY & CLIMATE IMPACTS

This item is consistent with the City's vision on sustainability and environmental goals. Reports on the recent fires in Australia have highlighted the deep traditional ecological knowledge Australia's Indigenous people have about fire control and suppression.⁴ "What Australians should really learn from the Aboriginal people is custodianship over the land . . . The way Aboriginal people deeply know and care for the land is something Australians should ponder and embrace."⁵

The Ohlone people were also profoundly knowledgeable stewards of the land and environment of the Bay Area. Learning about their history, ecological practices, and cultural values will provide important information about how Berkeley can be more resilient, reduce our climate and environmental impacts, and how we can all become better stewards of our community, our land and water, and the planet.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

ATTACHMENTS

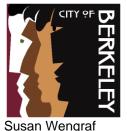
1. Photograph of "Welcome to the City of Berkeley Ohlone Territory" signage

⁴ <u>https://www.bbc.com/news/world-australia-51043828; https://www.cnn.com/2020/01/12/world/aboriginal-australia-fire-trnd/index.html; https://www.nytimes.com/2020/01/24/us/native-american-controlled-burns-california-wildfires.html</u>

⁵ https://www.cnn.com/2020/01/12/world/aboriginal-australia-fire-trnd/index.html

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Councilmember District 6

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Susan Wengraf, Sophie Hahn, and Kate Harrison

Subject: Support for S.2012 (Feinstein)

RECOMMENDATION

Adopt a Resolution in support of S.2012, "Restoring Local Control Over Public Infrastructure Act of 2019" (Feinstein) and send copies to Senators Dianne Feinstein and Kamala Harris, and Congresswoman Barbara Lee.

FINANCIAL IMPLICATIONS None

BACKGROUND

S.2012, the <u>Restoring Local Control Over Public Infrastructure Act</u> proposes to restore local government control over how wireless carriers deploy small cell and other wireless equipment on utility poles.

The legislation is in response to a pair of recent FCC rules that revoke local authority to regulate telecommunications equipment deployment. The FCC rules also determine how much wireless carriers would pay to use public phone and utility poles, without any local input.

Senator Feinstein's bill would overturn the new FCC rules and restore local control concerning the placement of small cell and other wireless equipment on phone and utility poles.

S.2012 would also overturn the FCC's 60 to 90 day limits for local governments to review applications to use public infrastructure before being automatically approved.

The bill is cosponsored by Senators Charles E. Schumer (D-N.Y.), Michael Bennet (D-Colo.), Kamala D. Harris (D-Calif.), Ron Wyden (D-Ore.), Ben Cardin (D-Md.) and Richard Blumenthal (D-Conn.).

The bill is supported by the U.S. Conference of Mayors, National Association of Telecommunications Officers and Advisors, American Public Power Association,

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Communications Workers of America, National Association of Counties, League of California Cities and American Public Works Association.

ENVIRONMENTAL SUSTAINABILITY

Local control over telecommunication equipment placement supports the city's efforts to provide a safe community.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

Attachments:

1: Resolution

2: Bill S-2012

3: FCC Press Release about its September 26, 2018 Declaratory Ruling

4: Link to FCCs 116 page Declaratory Ruling and Third Report and Order

RESOLUTION NO. ##,###-N.S.

City of Berkeley Support for S.2012 (Feinstein)

WHEREAS, The FCC passed the Declaratory Ruling and Third Report and Order, in September 2018 that allow telecom providers to install heavy equipment on local infrastructure with little input from the impacted local jurisdictions; and

WHEREAS, These rules, ostensibly intended to fast-track the 5G rollout, supersede local and state regulations, taking away local control over how wireless companies may attach small cell and other wireless transmission devices to utility poles, light poles and traffic lights; and

WHEREAS, The rules dictate how much local governments can charge wireless companies for permits and use of public infrastructure. The fee allowed is far less than it costs to the City of Berkeley to process; and

WHEREAS, The FCC Rules give jurisdictions just 60 days to review a wireless corporation's application for installation of small cell equipment, which is hardly enough time to consider the safety and aesthetic effects of the deployment. Applications that aren't processed within the 60 day period are automatically approved; and

WHEREAS, Wireless companies won't bear the responsibility when things go wrong from the weight of their equipment. Attaching small cells that are the size of a minirefrigerator to utility poles will make them more vulnerable to falling, posing danger to residents and property, including the increased potential of fires; and

WHEREAS, The City of Berkeley shouldn't be asked to subsidize private commercial development without local oversight. In order to prevent big wireless companies from sidelining local jurisdictions, Congress must act.

NOW THEREFORE, BE IT RESOLVED by the City of Berkeley that it fully supports S.2012 "Restoring Local Control Over Public Infrastructure Act of 2019" (Feinstein)

BE IT FURTHER RESOLVED that the Berkeley City Council appreciates Senator Feinstein's leadership on this item and Senator Harris' co-sponsorship.

Support for S.2012 (Feinstein)

116TH CONGRESS 1ST SESSION **S.2012**

To provide that certain regulatory actions by the Federal Communications Commission shall have no force or effect.

IN THE SENATE OF THE UNITED STATES JUNE 27, 2019 Mrs. FEINSTEIN (for herself, Mr. SCHUMER, Ms. HARRIS, Mr. BENNET, Mr. WYDEN, Mr. CARDIN, and Mr. BLUMENTHAL) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To provide that certain regulatory actions by the Federal Communications Commission shall have no force or effect.

- *1* Be it enacted by the Senate and House of Representa-
- *2 tives of the United States of America in Congress assembled,*
- **3** SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Restoring Local Con-
- 5 trol Over Public Infrastructure Act of 2019".
- 6 SEC. 2. DEFINITION.
- 7 In this Act, the term "Commission" means the Fed-
- 8 eral Communications Commission.

2

1 SEC. 3. PRESERVATION OF RIGHTS OF STATE AND LOCAL

2 GOVERNMENTS.

- 3 The following regulatory actions of the Commission
- 4 shall have no force or effect:
- 5 (1) The Declaratory Ruling in the "Third Re-
- 6 port and Order and Declaratory Ruling in the mat-
- 7 ter of Accelerating Wireline Broadband Deployment
- 8 by Removing Barriers to Infrastructure Investment
- 9 and Accelerating Wireless Broadband Deployment
- 10 by Removing Barriers to Infrastructure Investment"
- 11 adopted by the Commission on August 2, 2018

12 (FCC 18–111).

- 13 (2) The "Declaratory Ruling and Third Report
- 14 and Order in the matter of Accelerating Wireless
- 15 Broadband Deployment by Removing Barriers to In-
- 16 frastructure Investment and Accelerating Wireline
- 17 Broadband Deployment by Removing Barriers to In-
- 18 frastructure Investment" adopted by the Commis-
- 19 sion on September 26, 2018 (FCC 18–133).
- 20 (3) The rule adopted by the Commission enti-
- 21 tled "Accelerating Wireless and Wireline Broadband
- 22 Deployment by Removing Barriers to Infrastructure
- 23 Investment" (83 Fed. Reg. 51867 (October 15,
- 24 2018)).
- Æ

Media Contact: Cecilia Sulhoff, (202) 418-0587 cecilia.sulhoff@fcc.gov

For Immediate Release

FCC FACILITATES DEPLOYMENT OF WIRELESS INFRASTRUCTURE FOR 5G CONNECTIVITY

Action Removes Regulatory Barriers to Infrastructure Investment

WASHINGTON, September 26, 2018—Today, the Federal Communications Commission took another important step in its ongoing efforts to remove regulatory barriers that inhibit the deployment of infrastructure necessary for 5G and other advanced wireless services. This action, which builds upon those already taken by states and localities to streamline deployment, underscores the FCC's commitment to ensuring that the United States wins the global race to 5G.

The first part of the Commission's decision, a Declaratory Ruling, focuses primarily on local fees for the authorizations necessary to deploy small wireless facilities. Specifically, the Declaratory Ruling:

- 1 Explains when a state or local regulation of wireless infrastructure deployment constitutes an effective prohibition of service prohibited by Sections 253 or 332(c)(7) of the Communications Act;
- 2 Concludes that Section 253 and 332(c)(7) limit state and local governments to charging fees that are no greater than a reasonable approximation of objectively reasonable costs for processing applications and for managing deployments in the rights-of-way.
- 3 Removes uncertainty by identifying specific fee levels for small wireless facility deployments that presumably comply with the relevant standard; and
- 4 Provides guidance on when certain state and local non-fee requirements that are allowed under the Act—such as aesthetic and undergrounding requirements—may constitute an effective prohibition of service.

The second part of the Commission's decision, the Third Report & Order in the Wireless Infrastructure Docket:

- 5 Establishes two new shot clocks for small wireless facilities (60 days for collocation on preexisting structures and 90 days for new builds);
- 6 Codifies the existing 90 and 150 day shot clocks for wireless facility deployments that do not qualify as small cells that were established in 2009;
- 7 Concludes that all state and local government authorizations necessary for the deployment of personal wireless service infrastructure are subject to those shot clocks; and
- 8 Adopts a new remedy for missed shot clocks by finding that a failure to act within the new small wireless facility shot clock constitutes a presumptive prohibition on the provision of services.

Action by the Commission September 26, 2018 by Declaratory Ruling and Report and Order (FCC 18-133). Chairman Pai, Commissioners O'Rielly and Carr approving. Commissioner Rosenworcel approving in part and dissenting in part. Chairman Pai, Commissioners O'Rielly, Carr, and Rosenworcel issuing separate statements.

WT Docket No. 17-79; WC Docket No. 17-84

###

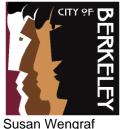
Office of Media Relations: (202) 418-0500

ASL Videophone: (844) 432-2275

TTY: (888) 835-5322

Twitter: @FCC www.fcc.gov/office-media-relations

This is an unofficial announcement of Commission Action. Release of the full text of a Commission order constitutes official action. See MCI v. FCC, 515 F.2d 385 (D.C. Cir. 1974)



Councilmember District 6

CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

- From: Councilmember Susan Wengraf, Mayor Jesse Arreguin, and Councilmembers Sophie Hahn and Kate Harrison
- Subject: Support for SB-431, SB-801 and SB-802 (McGuire and Glazer)

RECOMMENDATION

Adopt a resolution in support of three bills which aim to protect people whose lives could be endangered without use of needed electrical resources during PG&E's Public Safety Power Shut-offs. Send the resolution to California Senators Mike McGuire, Steve Glazer, Nancy Skinner and Buffy Wicks. The bills are:

1) <u>SB-431</u> Mobile telephony service base transceiver station towers: performance reliability standards (McGuire & Glazer)

2) <u>SB-801</u> Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol (McGuire & Glazer)

3) <u>SB-802</u> Emergency backup generators: health facilities: permit operating condition exclusion (Glazer)

FINANCIAL IMPLICATIONS None

BACKGROUND

PG&E and other utilities are working to improve their ability to provide power without fire risk during high wind and low moisture conditions. In the meantime, PG&E will continue to impose the Public Safety Power Shut-off program. These bills are vital to help residents deal with power outages.

SB–431 will require mobile phone companies to provide at least 72 hours of back-up power on their towers. Cell phones are lifelines in emergencies. Californians learned during the Public Safety Power Shut Offs that many cell towers were inoperable, leaving large numbers of people without access to receiving emergency notifications, or the ability to call for help.

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SB-801 will require that utilities provide back-up battery packs to **all** customers whose lives would be endangered by an extended, deliberate power outage. PG&E alone has over 10,000 people signed up for the "medical baseline" designation, meaning they depend on electricity for their health. However PG&E had only about 500 back-up battery packs to distribute to their medical baseline customers during last years' Public Safety Power Shut-offs, just a tiny percentage of the need. This legislation will mandate PG&E to provide emergency power to those whose lives depend on it.

SB-802 clarifies state laws and regulations so that hospitals don't need to shut down generators during an extended outage. Hospitals are currently allowed to run their diesel-powered generators without limits during a declared disaster. But most local air pollution districts have limits on how many hours a generator can run. Many hospitals are concerned that those limits apply even during a Public Safety Power Shut-off. Hospitals need to run their generators so they can take care of patients without fearing fines or other air quality regulation penalties.

ENVIRONMENTAL SUSTAINABILITY

Protecting people whose lives could be endangered without use of needed electrical resources supports the city's efforts to provide a healthy and environmentally sustainable community.

CONTACT PERSON

Councilmember Wengraf

Council District 6

510-981-7160

- Attachments: 1: Resolution 2: SB-431
- 3: SB-801
- 4: SB-802

RESOLUTION NO. ##,###-N.S.

City of Berkeley Supports SB-431, SB-801 and SB-802

WHEREAS, PG&E's Public Safety Shut-offs have demonstrated the need for legislation to protect lives that could be endangered without access to electrical resources: and

WHEREAS, SB-801 requires all California utility companies to provide back-up battery packs to all customers whose lives would be endangered by an extended, deliberate power outage; and

WHEREAS, SB-802 clarifies that hospitals can run back-up diesel generators for the duration of a planned utility power shut-off even if the governor has not declared a disaster or state emergency; and

WHEREAS, SB-431 requires mobile phone companies to provide at least 72 hours of backup power on their towers, and

WHEREAS, SB 801, SB 802 and SB 431 are critical state bills that will help protect Berkeley residents during PG&E's Public Safety Shut-offs and during other emergencies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it fully supports Senators Steve Glazer and Mike McGuire's bills: SB-801 Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol; SB-802 Emergency backup generators: health facilities; permit operating condition exclusion; and SB-431 Mobile telephony service base transceiver station towers: performance reliability standards.

AMENDED IN ASSEMBLY JUNE 12, 2019

SENATE BILL No. 431

Introduced by Senator McGuire

February 21, 2019

An act to amend Section 2146 of the Elections Code, add Section

776.2 to the Public Utilities Code, relating to elections. communications.

legislative counsel's digest

SB 431, as amended, McGuire. Elections: voter registration forms. Mobile telephony service base transceiver station towers: performance reliability standards.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including telephone corporations. Existing law requires the commission to develop and implement performance reliability standards for backup power systems installed on the property of residential and small commercial customers by a facilities-based provider of telephony services upon determining that the benefits of the standards exceed the costs.

This bill would require the commission, in consultation with the Office of Emergency Services, to develop and implement performance reliability standards, as specified, for all mobile telephony service base transceiver station towers, commonly known as "cell towers," located within a commission-designated Tier 2 or Tier 3 High Fire Threat District.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the provisions of this bill would be a part of the act and because a violation of an order or decision of the commission

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implementing its requirements would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Existing law requires the Secretary of State to annually provide every high school, community college, and California State University and University of California campus with voter registration forms, and to provide additional forms to a school, free of charge, if so requested by the school.

This bill would require the Secretary of State to provide additional forms requested by a school within 30 days.

Vote: majority. Appropriation: no. Fiscal committee: no-yes.

State-mandated local program: no-yes.

The people of the State of California do enact as follows:

SECTION 1. Section 776.2 is added to the Public Utilities Code, to read:

- *3* 776.2. (a) *The commission, in consultation with the Office of*
- 4 Emergency Services, shall develop and implement performance
- 5 reliability standards for all mobile telephony service base
- 6 transceiver station towers located within a commission-designated
- 7 Tier 2 or Tier 3 High Fire Threat District. Those standards shall
- 8 *do both of the following:*
- 9 (1) Establish a minimum operating life for backup power systems
 10 of no less than 48 hours.
- 11 (2) Establish means to warn a customer when the backup power
- 12 system is low or when the transceiver system can no longer be
- *13 supported by the backup power system.*
- *(b)* In developing and implementing any standards pursuant to
 subdivision (a), the commission shall consider current best
- *practices and technical feasibility for establishing backup powersystem requirements.*
- (c) The commission shall collect data necessary to identify the
 mobile telephony service base transceiver station infrastructure

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1 that shall be subject to the performance reliability standards

2 adopted pursuant to subdivision (a).

3 (*d*) *The commission may require a mobile telephony services*

4 provider to collect and forward to the commission any relevant

5 information that may be useful to the commission's development

6 or implementation of performance reliability standards pursuant7 to this section.

8 SEC. 2. No reimbursement is required by this act pursuant to

9 Section 6 of Article XIII B of the California Constitution because

10 the only costs that may be incurred by a local agency or school

11 district will be incurred because this act creates a new crime or

12 infraction, eliminates a crime or infraction, or changes the penalty

13 for a crime or infraction, within the meaning of Section 17556 of

14 the Government Code, or changes the definition of a crime within

15 the meaning of Section 6 of Article XIII B of the California

16 Constitution.

SECTION 1. Section 2146 of the Elections Code is amended
 to read:

19 2146. (a) The Secretary of State shall annually provide every

20 high school, community college, and California State University

21 and University of California campus with voter registration forms.

22 The Secretary of State shall provide additional forms to a school,

23 free of charge, within 30 days of receiving a request for additional

24 forms.

25 (b) The Secretary of State shall provide a written notice with

26 each registration form describing eligibility requirements and

27 informing each student that they may return the completed form

28 in person or by mail to the elections official of the county in which

29 the student resides or to the Secretary of State.

30 (c) (1) (A) Every community college and California State

31 University campus that operates an automated class registration

32 system on or before January 1, 2008, shall, through an automated

33 program, in coordination with the Secretary of State, permit

34 students, during the class registration process, to apply to register

35 to vote online by submitting an affidavit of voter registration

36 electronically on the internet website of the Secretary of State.

37 (B) A community college or California State University campus

38 that does not operate an automated class registration system on or

39 before January 1, 2008, shall, within two years of implementing

40 an automated class registration system, through an automated

- 1 program in coordination with the Secretary of State, permit 2 students, during the class registration process, to apply to register 3 to vote online by submitting an affidavit of voter registration 4 electronically on the internet website of the Secretary of State. 5 (2) As soon as a community college or California State 6 University or University of California campus complies with 7 paragraph (1), the Secretary of State may continue, at their
- 8 discretion, to provide the campus with voter registration forms
- 9 unless the campus requests not to receive the voter registration
- 10 forms.
- 11 (3) The University of California is encouraged to comply with 12 this subdivision.
- 13 (d) The Secretary of State shall submit to the Legislature, on or
- 14 before January 1 of each year, a report on its student voter
- registration efforts pursuant to this article. This report shall include 15
- 16 estimates as to how many voter registration forms were sent to
- 17 high schools, community colleges, and California State University
- 18 and University of California campuses; how many voter registration
- 19 forms were submitted; and how many electronic affidavits of voter
- 20 registration were submitted by students pursuant to subdivision 21 (c).
- 22 (e) It is the intent of the Legislature that every eligible high
- 23 school and college student receive a meaningful opportunity to
- 24 apply to register to vote. It is also the intent of the Legislature that
- 25 every school do all in its power to ensure that students are provided
- 26 the opportunity and means to apply to register to vote. This may 27
- include providing voter registration forms at the start of the school 28 year, including voter registration forms with orientation materials;
- 29 placing voter registration forms at central locations, including voter
- 30 registration forms with graduation materials; or providing
- 31
- hyperlinks to, and the internet website address of, the Secretary
- 32 of State's electronic voter registration system in notices sent by 33
- electronic mail to students and placed on the internet website of 34
 - the high school, college, or university.

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SENATE BILL No. 801

Introduced by Senators Glazer and McGuire (Principal coauthor: Assembly Member Bauer-Kahan)

(Coauthors: Senators Dodd, Hill, Nielsen, Stern, and Wilk)

January 7, 2020

An act to amend Section 8386 of the Public Utilities Code, relating to electricity.

legislative counsel's digest

SB 801, as introduced, Glazer. Electrical corporations: wildfire mitigation plans: deenergization: public safety protocol.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations. Existing law requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the commission for review and approval, as specified. Following approval, the commission is required to oversee compliance with the plans. Existing law requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety. As part of these protocols, an electrical corporation is required to include protocols related to mitigating the public safety impacts of deenergizing portions of the electrical distribution system that consider customers that receive medical baseline allowances. Existing law authorizes an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical resources to a customer receiving a medical baseline allowance if the customer meets specified conditions. This bill would require an electrical corporation to deploy backup electrical resources or provide financial assistance for backup electrical

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resources to a customer receiving a medical baseline allowance if the customer meets those conditions.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because this bill would add additional requirements to an electrical corporation's wildfire mitigation plan that would be approved and overseen by the commission and because a violation of an order or decision of the commission implementing its requirements would be a crime, the bill would impose a statemandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

- 20 SECTION 1. Section 8386 of the Public Utilities Code is
- 21 amended to read:
- 22 8386. (a) Each electrical corporation shall construct, maintain,
- 23 and operate its electrical lines and equipment in a manner that will
- 24 minimize the risk of catastrophic wildfire posed by those electrical
- 25 lines and equipment.
- 26 (b) Each electrical corporation shall annually prepare and submit
- 27 a wildfire mitigation plan to the Wildfire Safety Division for review
- 28 and approval. In calendar year 2020, and thereafter, the planshall
- 29 cover at least a three-year period. The division shall establish a
- 30 schedule for the submission of subsequent comprehensive wildfire
- 31 mitigation plans, which may allow for the staggering of compliance
- 32 periods for each electrical corporation. In its discretion, the division
- 33 may allow the annual submissions to be updates to the last
- 34 approved comprehensive wildfire mitigation plan; provided, that
- 35 each electrical corporation shall submit a comprehensive wildfire
- 36 mitigation plan at least once every three years.
- 37 (c) The wildfire mitigation plan shall include all of the38 following:

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- 41 (1) An accounting of the responsibilities of persons responsible
- 42 for executing the plan.
- 43 (2) The objectives of the plan.
- 44 (3) A description of the preventive strategies and programs to
- 45 be adopted by the electrical corporation to minimize the risk of its
- 46 electrical lines and equipment causing catastrophic wildfires,
- 47 including consideration of dynamic climate change risks.
- 48 (4) A description of the metrics the electrical corporation plans
- 49 to use to evaluate the plan's performance and the assumptions that 50 underlie the use of those metrics.
- 50 underne the use of mose metrics.51 (5) A discussion of how the application of previously identified
- 52 metrics to previous plan performances has informed the plan.
- 53 (6) Protocols for disabling reclosers and deenergizing portions
- 54 of the electrical distribution system that consider the associated
- 55 impacts on public safety. As part of these protocols, each electrical
- 56 corporation shall include protocols related to mitigating the public
- 57 safety impacts of disabling reclosers and deenergizing portions of
- 58 the electrical distribution system that consider the impacts on all
- 59 of the following:
- 60 (A) Critical first responders.
- 61 (B) Health and communication infrastructure.
- 62 (C) Customers who receive medical baseline allowances
- 63 pursuant to subdivision (c) of Section 739. The electrical
- 64 corporation may shall deploy backup electrical resources or provide
- 65 financial assistance for backup electrical resources to a customer
- 66 receiving a medical baseline allowance for a customer who meets
- 67 all of the following requirements:
- 68 (i) The customer relies on life-support equipment that operates69 on electricity to sustain life.
- 70 (ii) The customer demonstrates financial need, including through
- 71 enrollment in the California Alternate Rates for Energy program
- 72 created pursuant to Section 739.1.
- 73 (iii) The customer is not eligible for backup electrical resources
- 74 provided through medical services, medical insurance, or
- 75 community resources.
- 76 (D) Subparagraph (C) shall not be construed as preventing an
- 77 electrical corporation from deploying backup electrical resources
- 78 or providing financial assistance for backup electrical resources
- 79 under any other authority.

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- 21 (7) Appropriate and feasible procedures for notifying a customer
- 22 who may be impacted by the deenergizing of electrical lines,
- 23 including procedures for those customers receiving a medical
- 24 baseline allowance as described in paragraph (6). The procedures
- 25 shall direct notification to all public safety offices, critical first
- 26 responders, health care facilities, and operators of
- 27 telecommunications infrastructure with premises within the
- 28 footprint of potential deenergization for a given event.
- 29 (8) Plans for vegetation management.
- 30 (9) Plans for inspections of the electrical corporation's electrical31 infrastructure.
- 32 (10) Protocols for the deenergization of the electrical
- 33 corporation's transmission infrastructure, for instances when the
- 34 deenergization may impact customers who, or entities that, are
- 35 dependent upon the infrastructure.
- 36 (11) A list that identifies, describes, and prioritizes all wildfire
- 37 risks, and drivers for those risks, throughout the electrical
- 38 corporation's service territory, including all relevant wildfire risk
- 39 and risk mitigation information that is part of the Safety Model
- 40 Assessment Proceeding and the Risk Assessment Mitigation Phase
- 41 filings. The list shall include, but not be limited to, both of the 42 following:
- 43 (A) Risks and risk drivers associated with design, construction,
- 44 operations, and maintenance of the electrical corporation's
- 45 equipment and facilities.
- 46 (B) Particular risks and risk drivers associated with topographic
 47 and climatological risk factors throughout the different parts of
 48 the electrical corporation's service territory.
- 49 (12) A description of how the plan accounts for the wildfire risk
- 50 identified in the electrical corporation's Risk Assessment
- 51 Mitigation Phase filing.
- 52 (13) A description of the actions the electrical corporation will
- 53 take to ensure its system will achieve the highest level of safety,
- reliability, and resiliency, and to ensure that its system is prepared for a major event, including hardening and modernizing its
- 55 for a major event, including nardening and modernizing its
- 56 infrastructure with improved engineering, system design, standards,
- equipment, and facilities, such as undergrounding, insulation ofdistribution wires, and pole replacement.
- 59 (14) A description of where and how the electrical corporation
- 60 considered undergrounding electrical distribution lines within those

- 35 areas of its service territory identified to have the highest wildfire
- 36 risk in a commission fire threat map.
- 37 (15) A showing that the electrical corporation has an adequately
- 38 sized and trained workforce to promptly restore service after a
- 39 major event, taking into account employees of other utilities
- 40 pursuant to mutual aid agreements and employees of entities that
- 41 have entered into contracts with the electrical corporation.
- 42 (16) Identification of any geographic area in the electrical
- 43 corporation's service territory that is a higher wildfire threat than
- 44 is currently identified in a commission fire threat map, and where
- 45 the commission should consider expanding the high fire threat
- 46 district based on new information or changes in the environment.
- 47 (17) A methodology for identifying and presenting
- 48 enterprisewide safety risk and wildfire-related risk that is consistent
- 49 with the methodology used by other electrical corporations unless
- 50 the commission determines otherwise.
- 51 (18) A description of how the plan is consistent with the
- electrical corporation's disaster and emergency preparedness plan
 prepared pursuant to Section 768.6, including both of the following:
- 54 (A) Plans to prepare for, and to restore service after, a wildfire,
- including workforce mobilization and prepositioning equipment
 and employees.
- 57 (B) Plans for community outreach and public awareness before,
- 58 during, and after a wildfire, including language notification in
- 59 English, Spanish, and the top three primary languages used in the
- 60 state other than English or Spanish, as determined by the
- 61 commission based on the United States Census data.
- 62 (19) A statement of how the electrical corporation will restore63 service after a wildfire.
- 64 (20) Protocols for compliance with requirements adopted by
- 65 the commission regarding activities to support customers during
- 66 and after a wildfire, outage reporting, support for low-income
- 67 customers, billing adjustments, deposit waivers, extended payment
- 68 plans, suspension of disconnection and nonpayment fees, repair
- 69 processing and timing, access to electrical corporation
- 70 representatives, and emergency communications.
- 71 (21) A description of the processes and procedures the electrical
- 72 corporation will use to do all of the following:
- 73 (A) Monitor and audit the implementation of the plan.
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(B) Identify any deficiencies in the plan or the plan's

- 2 implementation and correct those deficiencies.
- 3 (C) Monitor and audit the effectiveness of electrical line and
- 4 equipment inspections, including inspections performed by
- 5 contractors, carried out under the plan and other applicable statutes
- 6 and commission rules.
- 7 (22) Any other information that the Wildfire Safety Division8 may require.
- 9 (d) The Wildfire Safety Division shall post all wildfire
- 10 mitigation plans and annual updates on the commission's internet
- 11 website for no less than two months before the division's decision
- 12 regarding approval of the plan. The division shall accept comments
- 13 on each plan from the public, other local and state agencies, and
- 14 interested parties, and verify that the plan complies with all
- 15 applicable rules, regulations, and standards, as appropriate.
- 16 SEC. 2. No reimbursement is required by this act pursuant to
- 17 Section 6 of Article XIIIB of the California Constitution because
- 18 the only costs that may be incurred by a local agency or school
- 19 district will be incurred because this act creates a new crime or
- 20 infraction, eliminates a crime or infraction, or changes the penalty
- 21 for a crime or infraction, within the meaning of Section 17556 of
- 22 the Government Code, or changes the definition of a crime within
- 23 the meaning of Section 6 of Article XIII B of the California
- 24 Constitution.

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SENATE BILL No. 802

Introduced by Senator Glazer (Principal coauthor: Assembly Member Bauer-Kahan) (Coauthors: Senators Dodd, Hill, Nielsen, and Wilk)

January 7, 2020

An act to add Article 9.3 (commencing with Section 42000) to Chapter 3 of Part 4 of Division 26 of the Health and Safety Code, and to amend Section 8385 of, and to add Section 8386.7 to, the Public Utilities Code, relating to nonvehicular air pollution.

legislative counsel's digest

SB 802, as introduced, Glazer. Emergency backup generators: health facilities: permit operating condition exclusion.

Existing law imposes various limitations on emissions of air contaminants for the control of air pollution from vehicular and nonvehicular sources. Existing law generally designates air pollution control and air quality management districts with the primary responsibility for the control of air pollution from all sources other than vehicular sources. Existing law requires the State Air Resources Board to identify toxic air contaminants that are emitted into the ambient air of the state and to establish airborne toxic control measures to reduce emissions of toxic air contaminants from nonvehicular sources.

This bill would require an air district to adopt a rule or revise its existing rules, consistent with federal law, to allow a health facility that has received a permit from the district to construct and operate an emergency backup generator to use that emergency backup generator during a deenergization event without having that usage count toward any time limitation on actual usage and routine testing and maintenance included as a condition for issuance of that permit. By requiring air

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districts to adopt or revise its rules, the bill would impose a statemandated local program.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, while local publicly owned electric utilities are under the direction of their governing boards. Electrical cooperatives are subject to the regulatory authority of the commission, except as specified. Existing law requires each electrical corporation to annually prepare and submit a wildfire mitigation plan to the commission for review and approval, as specified. Following approval, the commission is required to oversee compliance with the plans. Existing law requires each local publicly owned electric utility and electrical cooperative to annually prepare a wildfire mitigation plan and to verify that the wildfire mitigation plan complies with all applicable rules, regulations, and standards, as appropriate. Existing law requires a wildfire mitigation plan of an electrical corporation to include, among other things, protocols for deenergizing portions of the electrical distribution system that consider the associated impacts on public safety, as well as protocols related to mitigating the public safety impacts of those protocols, including impacts on critical first responders and on health and communications infrastructure. Existing law requires a wildfire mitigation plan of an electrical corporation to also include appropriate and feasible procedures for notifying a customer who may be impacted by the deenergizing of electrical lines and requires these procedures to consider the need to notify, as a priority, critical first responders, health care facilities, and operators of telecommunications infrastructure with premises within the footprint of a potential deenergization event. Existing law requires that an electrical cooperative and a local publicly owned electric utility consider these matters when developing and implementing a wildfire mitigation plan.

If an electrical corporation, electrical cooperative, or local publicly owned electric utility has undertaken a deenergization event during a calendar year, this bill would require the electrical corporation, electrical cooperative, or local publicly owned electric utility, by January 30 of the following calendar year, to submit a report with specified information to each air quality management district and air pollution control district affected by the deenergization event.

Under existing law, a violation of any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because this bill would require action by the commission to implement its requirements, and a violation of that action would be a crime, the

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bill would impose a state-mandated local program by creating a new crime. By requiring local publicly owned electric utilities to report matters to air quality management districts and air pollution control districts the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for specified reasons.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

39 SECTION 1. Article 9.3 (commencing with Section 42000) is

40 added to Chapter 3 of Part 4 of Division 26 of the Health and Safety

41 Code, to read:

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5 Article 9.3. Emergency Backup Generators 6

80 42000. For purposes of this article, the following terms apply:

81 (a) "Deenergization event" means the proactive interruption of

82 electrical service for the purpose of mitigating or avoiding the risk83 of causing a wildfire.

(b) "Electrical corporation" has the same meaning as definedin Section 218 of the Public Utilities Code.

86 (c) "Emergency backup generator" means a device used for the

87 generation of electricity for emergency use that is subject to the

88 State Air Resources Board's Airborne Toxic Control Measure for

89 Stationary Compression Ignition Engines (Section 93115.1 of Title

90 17 of the California Code of Regulations, and following). For these

91 purposes, "emergency use" has the same meaning as defined in

92 Section 93115.4 of Title 17 of the California Code of Regulations.

93 (d) "Health facility" has the same meaning as defined in Section 21 1250.

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61 (e) "Local publicly owned electric utility" has the same meaning

62 as defined in Section 224.3 of the Public Utilities Code.

63 (f) "Permit" means a permit issued by the district pursuant to

64 Article 1 (commencing with Section 42300) of Chapter 4.

65 42001. Consistent with federal law, a district shall adopt a rule,

66 or revise its existing rules, to allow a health facility that has

67 received a permit from the district to construct and operate an

68 emergency backup generator to use that emergency backup

69 generator during a deenergization event without having that usage

70 count toward any time limitation on actual usage and routine testing

71 and maintenance included as a condition for issuance of that permit.

For a health facility that receives notice of a planned deenergization
 event, whether made specifically to the facility or made generally

event, whether made specifically to the facility or made generallyto the public, the period of permissable use exempt from the time

to the public, the period of permissable use exempt from the timelimitation on actual usage shall encompass the period commencing

when the health facility is notified that the deenergization will or

will likely commence, and concluding when the health facility

receives notification, whether specific or general, that reliable

79 electrical service has been restored.

80 SEC. 2. Section 8385 of the Public Utilities Code is amended 81 to read:

82 8385. (a) For purposes of this chapter, the following shall83 apply:

84 (1) "Compliance period" means a period of approximately one 85 year.

86 (2) "Deenergization event" means the proactive interruption

87 of electrical service for the purpose of mitigating or avoiding the

88 risk of causing a wildfire.

29 (2)

- 74 (3) "Electrical cooperative" has the same meaning as defined $\frac{75}{100}$
- 75 in Section 2776.
- 76 (b) The commission shall supervise an electrical corporation's
- 77 compliance with the requirements of this chapter pursuant to the
- 78 Public Utilities Act (Part 1 (commencing with Section 201) of
- 79 Division 1). Nothing in this chapter affects the commission's
- 80 authority or jurisdiction over an electrical cooperative or local
- 81 publicly owned-electrical corporation. electric utility.
- 82 SEC. 3. Section 8386.7 is added to the Public Utilities Code,
- 83 to read:

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8386.7. If an electrical corporation, electrical cooperative, or 25 local publicly owned electric utility has undertaken a 26 deenergization event during a calendar year, the electrical utility 27 shall submit a report, by January 30 of the following calendar year, 28 to each air quality management district and air pollution control 29 district affected by the deenergization event that includes all of 30 the following: 31 (a) A description of the area affected by the deenergization 32 event. 33 (b) A description of when the deenergization event began and 34 when reliable electrical service was restored. 35 (c) A description of any notifications specifically provided to 36 health care facilities that they would or would likely be affected 37 by a deenergizing of electrical lines and when the deenergization 38 event would likely begin or, absent specific notification, any 39 notifications made generally to the public of when the 40 deenergization event would or would likely commence. 41 (d) A description of any notifications specifically provided to 42 health care facilities that reliable electrical service has been restored 43 or, absent specific notification, any notifications made generally 44 to the public that reliable electrical service has been restored. 45 SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain 46 47 mandates because a local agency or school district has the authority 48 to levy service charges, fees, or assessments sufficient to pay for 49 the program or level of service mandated by this act or because 50 costs that may be incurred by a local agency or school district will 51 be incurred because this act creates a new crime or infraction, 52 eliminates a crime or infraction, or changes the penalty for a crime 53 or infraction, within the meaning of Section 17556 of the 54 Government Code, or changes the definition of a crime within the 55 meaning of Section 6 of Article XIIIB of the California 56 Constitution. 57 With respect to other mandates, if the Commission on State 58 Mandates determines that this act contains costs mandated by the 59 state, reimbursement to local agencies and school districts for those 60 costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. 61

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CONSENT CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Councilmembers Robinson, Droste, Harrison, and Wengraf

Subject: Referral: Street Lighting Near Campus

RECOMMENDATION

Refer to the Public Works Commission to include the following in the Street Lighting Subcommittee Work Plan, for the purposes of seeking input from key stakeholders and bringing together work that happens through parallel processes. The Subcommittee should:

- 1. Invite input from representatives from the UC Berkeley administration, UC Berkeley undergraduate and graduate students, UCPD and BPD, the Department of Public Works, and other relevant groups.
- 2. Develop a streamlined and accessible process for requesting street lights that includes neighborhood and campus input, while recognizing the overriding public safety concern posed by substandard lighting.
- 3. Develop a plan for expeditiously installing new streetlights near campus that prioritizes high-crime areas, high-injury pedestrian corridors, and student-priority areas as determined by student input.

BACKGROUND

This referral comes out of discussion at the City-UC-Student Relations (4x6) Committee, made up of the four Councilmembers whose districts border the UC campus and six representatives from UC Berkeley, the ASUC, and the Graduate Assembly. The student-led effort within the Committee to improve street lighting near campus was initiated in November 2018, when City and UC staff delivered presentations to the Committee and provided a map of existing lighting locations.¹ The recommendation in this item carries out the intent of the unanimous motion made at the February 8, 2019 4x6 meeting,² as well as continued discussion that occurred at the November 18, 2019 meeting.³

¹ <u>https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-</u>

_General/DRAFT%20Combined%204x6%20Minutes%2013Nov2018.pdf

² <u>https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-Commissions/Approved%202-8-19%20Minutes.pdf</u>

³ <u>https://www.cityofberkeley.info/uploadedFiles/Clerk/Level_3_-</u> <u>Commissions/MINUTES%204x6%2011-</u> <u>18-19%20DRAFT.pdf</u>

Adequate street lighting is an especially important issue around the UC Berkeley campus. 77 percent of UC Berkeley students get to and from campus by walking — fewer than 5 percent use a motorized vehicle of any kind.⁴ These students often walk home from campus in the dark after extracurricular activities or study sessions. Sufficient street lighting is crucial late at night or in the early mornings, when light from building windows and porches cannot be used to supplement streetlights. Students, other residents, and visitors should feel safe walking at night. A well-lit streetscape near campus can help reduce crime and traffic crashes, and benefits not only students but the general population as well.

A combination of data analysis and community input is necessary to prioritize streetlight installation in a way that works for residents and the greater good of public safety. In order to ensure efficient use of City resources, the Subcommittee should examine UCPD and BPD crime data, City of Berkeley Vision Zero pedestrian injury data, and student input via organizations such as the ASUC and Graduate Assembly to develop a list of priority streetlight locations.

The Subcommittee should also develop a streamlined streetlight request process. Currently, residents can submit requests for a streetlight to the City of Berkeley Public Works Commission, which evaluates each request based on current available lighting; proximity to public transit, schools, and hospitals; crime statistics and other safety concerns; pedestrian and bicycle traffic; and current zoning. The application process requires the signature of the eight residents who live adjacent to and across from the proposed location before submission. In the case of multi-family residential buildings, 60 percent of tenants in each of these eight properties must approve.⁵

Input from neighborhood residents is important and should be included in the application process. However, individual households should not have the ability to veto streetlights, since inadequate lighting is a pressing public safety concern. Furthermore, the requirement for 60 percent of tenant approval is an overly burdensome condition that disproportionately disadvantages multi-family residential neighborhoods and discourages residents from requesting a streetlight. Students living near campus may not have the time nor resources to collect signatures in large apartment complexes. The Street Lighting Subcommittee should create a streetlight application process that is streamlined and accessible for all Berkeley residents.

FINANCIAL IMPLICATIONS Staff time.

ENVIRONMENTAL SUSTAINABILITY

⁴ <u>https://opa.berkeley.edu/sites/default/files/where_berkeley_students_live_0.pdf</u>

⁵ https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level 3 - Sidewalks, Streets -

Utility/PW%20Application%20for%20New%20Streetlight.pdf

None.

<u>CONTACT PERSON</u> Councilmember Rigel Robinson, (510) 981-7170 Rachel Alper, Intern

Attachments: 1: Public Works Application for New Streetlight <u>https://www.cityofberkeley.info/uploadedFiles/Public_Works/Level_3_-</u> <u>_____Sidewalks,_Streets_-_Utility/PW%20Application%20for%20New%20Streetlight.pdf</u>



Office of the City Manager

ACTION CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Issuance of \$38,000,000 General Obligation Bonds for Measure O – Affordable Housing

RECOMMENDATION

Adopt a Resolution authorizing the issuance and sale of general obligation bonds to finance acquisition and improvement of affordable housing and authorizing actions related thereto.

FISCAL IMPACTS OF RECOMMENDATION

The issuance of the Measure O general obligation bonds will allow proceeds to be applied to projects previously identified by City Council related to affordable housing. This is the first series of the \$135,000,000 bond authorization. The Measure O tax levy was started in FY 2019/20 in anticipation of the first financing in 2020.

BACKGROUND

In November 2018, the residents of Berkeley voted for and approved Ballot Measure O, authorizing \$135,000,000 of general obligation bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities. It is anticipated that the full authorization will be issued over the next 10 years through four series of bonds.

RATIONALE FOR RECOMMENDATION

The City has identified projects that need immediate funding and the bond authorization provides the ability to issue bonds at any time. Interest rates are at historical lows and the projected tax rate is anticipated to be lower than originally estimated in the election materials.

PRELIMINARY OFFICIAL STATEMENT

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 proposed bonds. Material information is information that there is a substantial

Issuance of \$38,000,000 General Obligation Bonds for Measure O – Affordable Housing

likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the bonds. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the bonds, 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 bonds, 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 bonds are payable solely from ad valorem property taxes levied by the City and collected by Alameda County, as described in the section of the Preliminary Official Statement captioned "SECURITY FOR THE BONDS."

However, investors in the bonds consider information about the City's financial position to be material, and the City has included that information in Appendix A to the Preliminary Official Statement: "FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY." The City's Comprehensive Annual Financial Report for fiscal year 2018-19 is included in Appendix B to the Preliminary Official Statement.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the issuance and sale of the bonds.

ALTERNATIVE ACTIONS CONSIDERED None

<u>CONTACT PERSON</u> Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

1: Resolution – Resolution of the City Council of the City of Berkeley Authorizing the Issuance and Sale of General Obligation Bonds to Finance Acquisition and Improvement of Affordable Housing and Authorizing Actions Related Thereto

Page 3 of 122

Issuance of \$38,000,000 General Obligation Bonds for Measure O -Affordable Housing

- 2: Draft Preliminary Official Statement3: Draft Custodian Agreement4: Draft Official Notice of Sale

- 5: Draft Notice of Intention

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$38,000,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS TO FINANCE ACQUISITION AND IMPROVEMENT OF AFFORDABLE HOUSING, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, the City of Berkeley (the "City") is empowered under Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law") to its issue general obligation bonds which are authorized by two-thirds of the electors voting on the proposition; and

WHEREAS, more than two-thirds of the electors voting at an election held on November 6, 2018, voted for a proposition (the "Ballot Proposition") authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$135,000,000 for the purpose of providing funds for the acquisition and improvement of affordable housing; and

WHEREAS, the City Council wishes at this time to authorize the issuance and sale of its general obligation bonds under such authority in the aggregate principal amount of not to exceed \$38,000,000 (the "Bonds") under this Resolution and in conformity with the Bond Law; and

WHEREAS, further, as required by Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix B is the information relating to the Bonds that has been obtained by the City Council and is hereby disclosed and made public; and

WHEREAS, pursuant to Resolution No. 67,871-N.S. (March 24, 2017), this City Council previously approved a Debt Management and Disclosure Policy which complies with Government Code Section 8855, and the delivery of the Bonds will be in compliance with said policy.

NOW THEREFORE, BE IT RESOLVED by the Council as follows:

ARTICLE I

DEFINITIONS; AUTHORITY

SECTION 1.01. *Definitions*. The terms defined in this Section 1.01, as used and capitalized herein, shall, for all purposes of this Resolution, have the meanings given them below, unless the context clearly requires some other meaning.

"<u>Bond Counsel</u>" means (a) Jones Hall, A Professional Law Corporation, and (b) any other attorney or firm of attorneys nationally recognized for expertise in rendering opinions as to the legality and tax exempt status of securities issued by public entities.

"<u>Bond Law</u>" means Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53506 of said Code, as in effect on the date of adoption hereof and as amended hereafter.

"<u>Bond Proposition</u>" means the proposition submitted to and approved by more than twothirds of the voters on November 6, 2018, under which the issuance of the Bonds has been authorized.

"<u>Bond Purchase Agreement</u>" means the Bond Purchase Agreement for the Bonds, which is approved under Section 3.02.

"<u>Bond Sale Documentation</u>" means (a) if the Bonds are sold by competitive bidding in accordance with Section 3.01(a), the Official Notice of Sale and the winning bid of the Original Purchaser, or (b) if the Bonds are sold by negotiation in accordance with Section 3.01(b), the Bond Purchase Agreement between the City and the Original Purchaser.

"<u>Bonds</u>" means the City of Berkeley 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable) authorized to be issued under this Resolution.

"<u>City</u>" means the City of Berkeley, a charter city and municipal corporation organized under the Constitution and laws of the State of California, and any successor thereto.

"<u>City Representative</u>" means the Mayor, the City Manager, the Finance Director and any other officer of the City authorized by resolution of the City Council of the City to act on behalf of the City with respect to this Resolution and the Bonds.

"<u>Closing Date</u>" means the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the Original Purchaser.

"<u>Costs of Issuance</u>" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, issuance, sale and delivery of the Bonds, including but not limited to the costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Paying Agent and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds.

"<u>County</u>" means the County of Alameda, a political subdivision of the State of California, duly organized and existing under the Constitution and laws of the State of California.

"<u>Debt Service Fund</u>" means the account established and held by the City under Section 4.03.

"<u>Depository</u>" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.09.

"<u>Depository System Participant</u>" means any participant in the Depository's book-entry system.

"<u>DTC</u>" means The Depository Trust Company, New York, New York, and its successors and assigns.

"<u>Federal Securities</u>" means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

"Interest Payment Date" means September 1, 2020, and the first day of each succeeding March and September, or such other dates determined by a City Representative in connection with the pricing of the Bonds.

"<u>Official Notice of Sale</u>" means the Official Notice of Sale for the Bonds, which is approved under Section 3.01.

"<u>Original Purchaser</u>" means the original purchaser of the Bonds at the public or negotiated sale thereof.

"<u>Outstanding</u>," when used as of any particular time with reference to Bonds, means all Bonds except: (a) Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.02; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Resolution.

"<u>Owner</u>", whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"<u>Paying Agent</u>" means the Paying Agent appointed by the City and acting as paying agent, registrar and authenticating agent for the Bonds, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01.

"<u>Principal Office</u>" means the office or offices of the Paying Agent for the payment of the Bonds and the administration of its duties hereunder, as such office or offices shall be identified in a written notice filed with the City by the Paying Agent.

"Project Fund" means the fund established and held by the City under Section 4.02.

"<u>Record Date</u>" means the 15th day of the month preceding an Interest Payment Date, whether or not such day is a business day.

"<u>Registration Books</u>" means the records maintained by the Paying Agent for the registration of ownership and registration of transfer of the Bonds under Section 2.08.

"<u>Resolution</u>" means this Resolution, as originally adopted by the City Council on February 25, 2020, and including all amendments hereto and supplements hereof which are duly adopted by the City Council from time to time in accordance herewith.

"<u>Securities Depositories</u>" means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate.

"<u>Supplemental Resolution</u>" means any resolution supplemental to or amendatory of this Resolution, adopted by the City in accordance with Article VIII.

"<u>Tax Code</u>" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

"<u>Written Request of the City</u>" means an instrument in writing signed by a City Representative or by any other officer of the City duly authorized to act on behalf of the City under a written certificate of a City Representative.

SECTION 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Resolution; the words

"herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.03. Authority for this Resolution; Findings. This Resolution is entered into under the provisions of the Bond Law. It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of the Bonds do exist, have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of the Bonds, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California.

ARTICLE II

THE BONDS

SECTION 2.01. *Authorization*. Bonds in the aggregate original principal amount of not to exceed \$38,000,000 are hereby authorized by the City to be issued by the City under and subject to the terms of the Bond Law and this Resolution, for the purpose of raising money to finance the acquisition and improvement of affordable housing, as provided in the Ballot Proposition, and to pay the Costs of Issuance incurred in connection therewith. This Resolution constitutes a continuing agreement between the City and the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal of and interest and premium, if any, on all Bonds which may be Outstanding hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The Bonds are designated the "City of Berkeley 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable)."

SECTION 2.02. Terms of Bonds.

(a) <u>Principal Amount of Bonds</u>. The Bonds are authorized to be issued in the aggregate principal amount of not to exceed \$38,000,000.

(b) <u>Form; Numbering</u>. The Bonds will be issued in fully registered form, without coupons, in authorized denominations of \$5,000 each or any integral multiple thereof. The Bonds will be lettered and numbered as the Paying Agent prescribes.

(c) <u>Date of Bonds</u>. The Bonds will be dated as of the Closing Date.

(d) <u>CUSIP Identification Numbers</u>. "CUSIP" identification numbers will be imprinted on the Bonds, but such numbers do not constitute a part of the contract evidenced by the Bonds and no error or omission with respect thereto will constitute cause for refusal of the Original Purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City to use such CUSIP numbers in any notice to Owners of the Bonds will not constitute an event of default or any violation of the City's contract with such Owners and will not impair the effectiveness of any such notice. (e) <u>Determination of Maturities and Interest Rates</u>. The Bonds shall mature (or, alternatively, be subject to mandatory sinking fund redemption as hereinafter provided) on September 1 in each year commencing September 1, 2021 and continuing to and including September 1, 2050. The exact principal amount of the Bonds maturing on September 1 in each year shall be determined upon the sale of the Bonds, in accordance with the Bond Sale Documentation.

Each Bond will bear interest at the respective rates to be determined upon the sale of the Bonds in accordance with Article III. Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- a Bond is authenticated prior to an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- a Bond is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date, or
- at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(f) <u>Manner of Payment</u>. Interest on the Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request. Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the Principal Office of the Paying Agent.

SECTION 2.03. Redemption.

(a) <u>Optional Redemption</u>. The Bonds shall be subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on the dates and upon payment of a redemption price (equal to the principal amount of Bonds to be redeemed together with a redemption premium, if any) as determined upon the sale of the Bonds in accordance with the Bond Sale Documentation.

(b) <u>Mandatory Sinking Fund Redemption</u>. If and to the extent specified in the Bond Sale Documentation, any maturity of the Bonds will be designated as "Term Bonds" which are subject to mandatory sinking fund redemption on September 1 in each of the years and in the respective principal amounts set forth in such bid, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, in each case without premium, together with interest accrued thereon to the redemption date. If some but not all of the Term Bonds have been redeemed under the preceding subsection (a) of this Section, the aggregate principal amount of Term Bonds to be redeemed in each year under this subsection (b) shall be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

(c) <u>Selection of Bonds for Redemption</u>. Whenever less than all of the Outstanding Bonds of any one maturity are designated for redemption, the Paying Agent shall select the Outstanding Bonds of such maturity to be redeemed by lot in any manner deemed fair by the Paying Agent. For purposes of such selection, each Bond shall be deemed to consist of individual Bonds of \$5,000 denominations which may be separately redeemed.

Redemption Procedure. The Paying Agent shall cause notice of any (d) redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books. Such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of Bonds. The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption of the Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paving Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent shall have no liability to the Owners or any other party related to or arising from such rescission.

Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and shall require that such Bonds be then surrendered at the Principal Office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date. Upon surrender of Bonds redeemed in part only, the City shall execute and the Paying Agent shall authenticate and deliver to the Owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under this Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice. The Paying Agent shall cancel all Bonds redeemed under this Section 2.03, and shall submit to the City a certificate of cancellation.

SECTION 2.04. *Form of Bonds*. The form of the Bonds, including the form of the Paying Agent's Certificate of Authentication and the form of Assignment to appear thereon, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Resolution, are set forth in Appendix A attached hereto.

SECTION 2.05. *Execution of Bonds*. The Bonds shall be executed on behalf of the City by the facsimile signatures of its Mayor and City Clerk who are in office on the date of adoption of this Resolution or at any time thereafter, and the seal of the City shall be impressed, imprinted or reproduced by facsimile thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Original Purchaser, such signature will nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Original Purchaser. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond are the proper officers of the City although at the nominal date of such Bond any such person does not serve as such officer of the City.

Only those Bonds bearing a Certificate of Authentication in the form set forth in Appendix A attached hereto, executed and dated by the Paying Agent, will be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such Certificate of Authentication of the Paying Agent constitutes conclusive evidence that the Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Resolution.

SECTION 2.06. *Transfer of Bonds*. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office at the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

Whenever any Bond or Bonds is surrendered for transfer, the City shall execute and the Paying Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

SECTION 2.07. *Exchange of Bonds*. Bonds may be exchanged at the Principal Office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

SECTION 2.08. *Registration Books*. The Paying Agent shall keep or cause to be kept sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein before provided.

SECTION 2.09. Book-Entry System. Except as provided below, DTC will be the Owner of all of the Bonds, and the Bonds will be registered in the name of Cede & Co. as nominee for DTC. The Bonds shall be initially executed and delivered in the form of a single fully registered Bond for each maturity date of the Bonds in the full aggregate principal amount of the Bonds maturing on such date. The Paying Agent and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for all purposes of this Resolution, and neither the Paying Agent nor the City shall be affected by any notice to the contrary. The Paying Agent and the City shall not have any responsibility or obligation to any Depository System Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or a Depository System Participant, or any other person which is 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 Depository System Participant or the payment by DTC or any Depository System Participant by DTC or any Depository System Participant of any amount in respect of the principal or interest with respect to the Bonds. The City shall cause to be paid all principal and interest with respect to the Bonds only to DTC, 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 Bonds to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Bond. 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 Bonds and delivers a written certificate to DTC and the City to that effect, DTC shall notify the Depository System Participants of the availability through DTC of Bonds. In such event, the City shall issue, transfer and exchange Bonds as requested by DTC and any other owners in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Bonds 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 Bonds 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 Bonds evidencing the Bonds to any Depository System Participant having Bonds credited to its DTC account or (b) arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

Notwithstanding any other provision of this Resolution to the contrary, so long as any Bond 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 Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided as in the representation letter delivered on the date of issuance of the Bonds.

SECTION 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond becomes mutilated the City, at the expense of the Owner of said Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. The Paying Agent shall cancel every mutilated Bond so surrendered to it. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence is satisfactory to the City and the City receives satisfactory indemnity, the City, at the expense of the Owner, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen.

The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the City and the Paying Agent. Any Bond issued under the provisions of this Section 2.10 in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and such Bond will be equally and proportionately entitled to the benefits of this Resolution with all other Bonds issued under this Resolution.

Notwithstanding any other provision of this Section 2.10, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Paying Agent may make payment of such Bond in accordance with its terms.

ARTICLE III

SALE OF BONDS

SECTION 3.01. Competitive Sale of Bonds

(a) <u>Approval of Official Notice of Sale; Competitive Sale Procedures</u>. The Bonds shall be offered for sale by competitive bid in accordance with the provisions of the Official Notice of Sale in substantially the form on file with the City Clerk together with such additions thereto and changes therein as may be approved by a City Representative. The City Council hereby authorizes and directs a City Representative to accept the best responsible bid for the Bonds, to be determined in accordance with the related Official Notice of Sale. A City Representative, on behalf of the City, may exercise his or her own discretion and judgment in awarding the sale of the Bonds, and may, in his or her discretion, reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds shall be awarded, or all bids shall be rejected, not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the successful bidder.

(b) <u>Publication of Notice of Intention</u>. The City Council hereby approves and authorizes the publication by Bond Counsel of a notice of the City's intention to sell the Bonds, in form and substance acceptable to Bond Counsel, in accordance with applicable law.

(c) <u>Furnishing of Documents</u>. The municipal advisor to the City, NHA Advisors, LLC is hereby authorized and directed by the City to cause to be furnished to prospective bidders a reasonable number of copies of said Official Notice of Sale and a reasonable number of copies of the Preliminary Official Statement relating to the Bonds.

SECTION 3.02. Negotiated Sale of Bonds. The Bonds are authorized to be sold by negotiated sale if either (a) no bids are received when the Bonds are offered for public sale under Section 3.01, or (b) bids are received but such bids are not satisfactory as to price or responsibility of the bidders as determined by a City Representative, as a result of which all bids are rejected. In such event, the Bonds are authorized to be sold by negotiation with an underwriter or investment bank which is designated by a City Representative upon consultation with NHA Advisors, LLC as municipal adviser to the City. The Bonds shall be sold to such underwriter or investment bank under the Bond Purchase Agreement in a form deemed advisable by a City Representative, whose execution shall be conclusive evidence of the City Council's approval of such Bond Purchase Agreement. A City Representative is hereby authorized to accept a bid from such underwriter or investment bank to purchase the Bonds, and to execute the Bond Purchase Agreement on behalf of the City; provided that the rate of interest on the Bonds shall not exceed 8.00% and the underwriter's discount shall not exceed 1.50% of the principal amount of the Bonds. If it is determined to sell the Bonds by negotiation, a City Representative shall disclose the identity of the underwriter at the public meeting first occurring after the bond underwriter has been selected, along with the estimated

costs associated with the bond issuance and the circumstances that led to the negotiated sale.

SECTION 3.03. Official Statement. The Board hereby approves, and hereby deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule"), the Preliminary Official Statement describing the Bonds in substantially the form on file with the City Clerk. A City Representative is hereby authorized to execute an appropriate certificate stating the City Council's determination that the Preliminary Official Statement has been deemed final within the meaning of such Rule. Distribution of the Preliminary Official Statement in connection with the sale of the Bonds is hereby approved. Each City Representative is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by a City Representative shall be conclusive evidence of the approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official Statement. The final Official Statement shall be executed in the name and on behalf of the City by a City Representative.

SECTION 3.04. *Costs of Issuance Custodian Agreement*. The City shall pay the costs of issuing the Bonds from original issue premium received from the Original Purchaser of the Bonds. The City Council hereby authorizes a City Representative to execute on behalf of the City a Costs of Issuance Custodian Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, amounts provided for payment of the costs of issuing the Bonds shall be deposited thereunder and the payment of costs shall be requisitioned by a City Representative in accordance with said agreement.

SECTION 3.05. *Paying Agency Agreement*. The City Council hereby authorizes a City Representative to execute on behalf of the City a Paying Agency Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, The Bank of New York Mellon Trust Company, N.A. will act as Paying Agent as described in this Resolution.

Section 3.06. *Professional Services*. The City Council hereby approves and confirms the engagement of NHA Advisors, LLC to act as the City's municipal advisor in connection with the issuance and sale of the Bonds, and the engagement of Jones Hall, A Professional Law Corporation, to act as the City's bond counsel and disclosure counsel in connection with the issuance of the Bonds.

ARTICLE IV

FUNDS AND ACCOUNTS

SECTION 4.01. Application of Proceeds of Sale of Bonds. On the Closing Date, the proceeds of sale of the Bonds shall be paid by the Original Purchaser to the City, and shall be applied on the Closing Date as follows: (a) the City shall transfer or cause to be

transferred an amount required to pay the estimated Costs of Issuance to The Bank of New York Mellon Trust Company, N.A., to be held and administered in accordance with the agreement which is approved under Section 3.04; (b) after making the transfer described in the preceding clause (a), the City shall deposit in the Debt Service Fund any remaining original issue premium received by the City on the sale of the Bonds; and (c) the City shall deposit the remainder of such proceeds in the Project Fund.

SECTION 4.02. *Project Fund.* The City Council hereby establishes a special fund to be held by the City separate and apart from all other funds of the City, to be known as the Project Fund. The proceeds from the sale of the Bonds, to the extent required under Section 4.01(b), shall be deposited by the City in the Project Fund, and shall be expended by the City solely for the payment of the costs of acquisition or improvement of real property for which the Bond proceeds are authorized to be expended under the Bond Proposition. All interest and other gain arising from the investment of amounts deposited to the Project Fund shall be retained in the Project Fund and used for the purposes thereof. Any amounts remaining on deposit in the Project Fund and not needed for the Debt Service Fund, to be applied to pay the principal of and interest and premium (if any) on the Bonds.

SECTION 4.03. *Debt Service Fund*. The City Council hereby establishes a special fund to be held by the City separate and apart from all other funds of the City, to be known as the Debt Service Fund. All taxes levied by the County, as directed by the City herein, for the payment of the principal of and interest and premium (if any) on the Bonds in accordance with Section 5.03 shall be deposited in the Debt Service Fund by the City promptly upon the receipt thereof from the County. The Debt Service Fund is hereby pledged for the payment of the principal of and interest and premium (if any) on the Bonds when and as the same become due. The City shall transfer amounts in the Debt Service Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent as required to pay the principal of and interest and premium (if any) on the Bonds. Alternatively, the City may direct the County to transfer such taxes, in whole or in part, directly to the Paying Agent for the purpose of making payments of principal of and interest and premium (if any) on the Bonds.

If, after payment in full of the Bonds, any amounts remain on deposit in the Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner which is consistent with the requirements of applicable state and federal tax law.

SECTION 4.04. *Investments*. The City shall invest all moneys held in any of the funds or accounts established with it hereunder in accordance with the investment policies of the City, as such policies shall exist at the time of investment, and in accordance with Section 53601 of the California Government Code.

ARTICLE V

OTHER COVENANTS OF THE CITY; SECURITY FOR THE BONDS

SECTION 5.01. *Punctual Payment*. The City shall punctually pay, or cause to be paid, the principal of and interest on the Bonds, in strict conformity with the terms of the Bonds and of this Resolution, and shall faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and of the Bonds. Nothing herein contained prevents the City from making advances of its own moneys howsoever derived to any of the uses or purposes permitted by law.

SECTION 5.02. *Extension of Time for Payment*. In order to prevent any accumulation of claims for interest after maturity, the City will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and will not, directly or indirectly, approve any such arrangement by purchasing or funding said claims for interest or in any other manner.

SECTION 5.03. Security for the Bonds. The Bonds are general obligations of the City and the City has the power, is obligated and hereby covenants to levy ad valorem taxes upon all property within the City subject to taxation by the City, without limitation of rate or amount, for the payment of the Bonds and the interest thereon, in accordance with the Bond Law and Section 43632 of the of the Government Code of the State of California. Amounts in the General Fund of the City are not pledged to the payment of the Bonds. However, nothing herein limits the ability of the City to provide for payment of the principal of and interest and premium (if any) on the Bonds from any source of legally available funds of the City. Any amounts so advanced by the City from legally available funds may be reimbursed from ad valorem property taxes subsequently collected under this Section 5.03.

SECTION 5.04. *Books and Accounts; Financial Statement*. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City in which complete and correct entries are made of all transactions relating to the Bonds. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Paying Agent and the Owners of not less than 10% in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

SECTION 5.05. *Protection of Security and Rights of Bond Owners*. The City will preserve and protect the security of the Bonds and the rights of the Bond Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any of the Bonds by the City, the City may not contest the authorization, issuance, sale or repayment of the Bonds.

SECTION 5.06. *Tax Treatment of the Bonds*. The City Council hereby determines that it does not intend for the interest on the Bond to be excluded from gross income of the Owners of the Bonds for federal income tax purposes.

SECTION 5.07. *Continuing Disclosure*. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, which a City Representative is hereby authorized and directed to execute and deliver on the Closing Date. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate will not be considered a default by the City hereunder or under the Bonds; however, any Participating Original Purchaser (as such term is defined in the Continuing Disclosure Certificate) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

SECTION 5.08. *Further Assurances*. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Resolution.

ARTICLE VI

THE PAYING AGENT

SECTION 6.01. Appointment of Paying Agent. The Bank of New York Mellon Trust Company, N.A. is hereby appointed to act as Paying Agent for the Bonds. The Paying Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Resolution, and even during the continuance of an event of default with respect to the Bonds, no implied covenants or obligations shall be read into this Resolution against the Paying Agent. The Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing and delivering to the City a certificate to that effect.

The City may remove the Paying Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank or trust company doing business and having an office in the State of California, having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, under law or under the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Paying Agent may at any time resign by giving written notice to the City and the Bond Owners of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Paying Agent by an instrument in writing. Any resignation or removal of the Paying Agent and appointment of a successor Paying Agent becomes effective upon acceptance of appointment by the successor Paying Agent.

SECTION 6.02. *Paying Agent May Hold Bonds*. The Paying Agent may become the Owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Paying Agent.

SECTION 6.03. *Liability of Paying Agent*. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Paying Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Resolution or of the Bonds, nor shall incur any responsibility in respect thereof, other than as set forth in this Resolution. The Paying Agent is not liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

In the absence of bad faith, the Paying Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Paying Agent and conforming to the requirements of this Resolution.

The Paying Agent has no liability for any error of judgment made in good faith by a responsible officer of its corporate trust department in the absence of the negligence of the Paying Agent.

No provision of this Resolution requires the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Paying Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent is not responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

SECTION 6.04. *Notice to Paying Agent.* The Paying Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Paying Agent may consult with counsel, who may be of counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and

complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Resolution the Paying Agent deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Paying Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate will be full warrant to the Paying Agent for any action taken or suffered under the provisions of this Resolution upon the faith thereof, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

SECTION 6.05. Compensation; Indemnification. The City will pay to the Paying Agent from time to time reasonable compensation for all services rendered under this Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Resolution. The City further agrees to indemnify the Paying Agent against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or bad faith.

ARTICLE VII

REMEDIES OF BOND OWNERS

SECTION 7.01. *Remedies of Bond Owners*. Upon the happening and continuation of any default by the City hereunder or under the Bonds, any Bond Owner has the right, for the equal benefit and protection of all Bond Owners similarly situated:

- (a) by mandamus, suit, action or proceeding, to compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Resolution and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it;
- (b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bond Owners' rights; or
- (c) by suit, action or proceeding in any court of competent jurisdiction, to require the City and its members and employees to account as if it and they were the trustees of an express trust.

SECTION 7.02. *Remedies Not Exclusive*. No remedy herein conferred upon the Owners of Bonds is exclusive of any other remedy. Each remedy is cumulative and shall be in

addition to every other remedy given hereunder or thereafter conferred on the Bond Owners.

ARTICLE VIII

AMENDMENT OF THIS RESOLUTION

SECTION 8.01. Amendments Effective Without Consent of the Owners. For any one or more of the following purposes and at any time or from time to time, the City Council may by Supplemental Resolution amend this Resolution in whole or in part, without the consent of any of the Bond Owners:

- (a) to add to the covenants and agreements of the City in this Resolution, other covenants and agreements to be observed by the City which are not contrary to or inconsistent with this Resolution as theretofore in effect;
- (b) to confirm, as further assurance, any pledge under, and to subject to any lien or pledge created or to be created by, this Resolution, of any moneys, securities or funds, or to establish any additional funds or accounts to be held under this Resolution;
- (c) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Resolution, which in any event does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the City; or
- (d) if applicable, to make such additions, deletions or modifications as may be necessary to assure compliance with the applicable provisions of the Tax Code relating to the rebate of excess investment earnings to the United States or otherwise as may be necessary to assure that the interest on the Bonds remains excludable from gross income of the Owners thereof for federal income tax purposes, in the opinion of Bond Counsel filed with the City.

SECTION 8.02. Amendments Effective With Consent to the Owners. Any modification or amendment of this Resolution and of the rights and obligations of the City and of the Owners of the Bonds, in any particular, may be made by a Supplemental Resolution, with the written consent of the Owners of a majority in aggregate principal amount of the Bonds Outstanding at the time such consent is given. Without the consent of the Owners of all affected Bonds, no such modification or amendment may (a) change the maturity of the principal of any Bonds or any interest payable thereon, (b) reduce the principal amount of the Bonds or the rate of interest thereon, (c) reduce the percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, (d) change any of the provisions in Section 7.01 relating to a default by the City hereunder or under the Bonds, (e) reduce the amount of moneys pledged for the repayment of the Bonds. Without the consent of the Paying Agent, no such

modification or amendment may change or modify any of the rights or obligations of the Paying Agent.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Benefits of Resolution Limited to Parties. Nothing in this Resolution, expressed or implied, is intended to give to any person other than the City, the Paying Agent and the Owners of the Bonds, any right, remedy, claim under or by reason of this Resolution. Any covenants, stipulations, promises or agreements in this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners of the Bonds.

SECTION 9.02. Defeasance.

(a) <u>Discharge of Resolution</u>. Bonds may be paid by the City, in whole or in part, in any of the following ways provided that the City also pays or causes to be paid any other sums payable hereunder by the City:

- (i) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (ii) by irrevocably depositing, in trust, at or before maturity, money or securities in the necessary amount to pay such Bonds as provided in Section 9.02(c); or
- (iii) by delivering such Bonds to the Paying Agent for cancellation by it.

If the City pays all Outstanding Bonds and also pays or causes to be paid all other sums payable hereunder by the City, then and in that case, at the election of the City (evidenced by a certificate of a City Representative filed with the Paying Agent, signifying the intention of the City to discharge all such indebtedness and this Resolution), and notwithstanding that any Bonds have not been surrendered for payment, this Resolution, all taxes and other assets pledged under this Resolution and all covenants, agreements and other obligations of the City under this Resolution shall cease, terminate, become void and be completely discharged and satisfied, except only as provided in Section 9.02(b). In such event, upon request of the City, the Paying Agent shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary to evidence such discharge and satisfaction, and the Paying Agent shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Resolution which are not required for the payment of Bonds not theretofore surrendered for such payment.

(b) <u>Discharge of Liability on Bonds</u>. Upon the deposit, in trust, at or before maturity, of money or securities in the necessary amount to pay any Outstanding Bond Bonds as provided in Section 9.02(c), then all liability of the City in respect of such Bond will cease and be completely discharged, except only that thereafter the Owner thereof is entitled only to payment of the principal of and interest on such Bond by the City, and the City remains liable for such payment, but only out of such money or securities deposited with the Paying Agent as aforesaid for such payment, provided further, however, that the provisions of Section 9.02(d) apply in all events.

The City may at any time surrender to the Paying Agent for cancellation by it any Bonds previously issued and delivered, which the City acquires in any manner whatsoever, and such Bonds, upon such surrender and cancellation, will be deemed paid and retired.

(c) <u>Deposit of Money or Securities with Paying Agent</u>. Whenever in this Resolution it is provided or permitted that there be deposited with or held in trust by the Paying Agent money or securities in the necessary amount to pay any Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established under this Resolution and must be:

- lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
- (ii) Federal Securities the principal of and interest on which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid interest to maturity on the Bonds to be paid, as such principal and interest become due.

(d) Payment of Bonds After Discharge of Resolution. Notwithstanding any provisions of this Resolution, any moneys held by the Paying Agent in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable, if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall, upon request of the City, be repaid to the City free from the trusts created by this Resolution, and all liability of the Paying Agent with respect to such moneys shall thereupon cease. Before the repayment of such moneys to the City as aforesaid, the Paying Agent may (at the cost of the City) first mail to the Owners of all Bonds which have not been paid at the addresses shown on the Registration Books a notice in such form as may be deemed appropriate by the Paying Agent, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof.

SECTION 9.03. *Execution of Documents and Proof of Ownership by Bond Owners*. Any request, declaration or other instrument which this Resolution may require or permit to

be executed by Bond Owners may be in one or more instruments of similar tenor, and shall be executed by Bond Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Bond Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same are proved by the Registration Books.

Any request, declaration or other instrument or writing of the Owner of any Bond binds all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Paying Agent in good faith and in accordance therewith.

SECTION 9.04. *Waiver of Personal Liability*. No City Council member, officer, agent or employee of the City has any individual or personal liability for the payment of the principal of or interest on the Bonds. Nothing herein contained relieves any City Council member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.05. Destruction of Canceled Bonds. Whenever in this Resolution provision is made for the surrender to the City of any Bonds which have been paid or canceled under the provisions of this Resolution, a certificate of destruction duly executed by the Paying Agent constitutes the equivalent of the surrender of such canceled Bonds and the City is entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

SECTION 9.06. *Partial Invalidity*. If any section, paragraph, sentence, clause or phrase of this Resolution is for any reason held illegal or unenforceable, such holding will not affect the validity of the remaining portions of this Resolution. The City hereby declares that it would have adopted this Resolution and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Resolution may be held illegal, invalid or unenforceable.

SECTION 9.07. *Execution of Documents*. Each City Representative, and any and all other officers of the City, are each authorized and directed in the name and on behalf of the City to make any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful issuance, sale and delivery of the Bonds,

including an agreement for paying agent services. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

SECTION 9.08. *Effective Date of Resolution*. This Resolution becomes effective upon the date of its passage and adoption.

APPENDIX A

FORM OF BOND

REGISTERED BOND NO. R-____

CITY OF BERKELEY 2020 GENERAL OBLIGATION BOND

(2018 Election Measure O: Affordable Housing) (Federally Taxable)

INTEREST RATE:	MATURITY DATE:	DATED DATE:	CUSIP
% per annum	September 1,	, 2020	[]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: THOUSAND DOLLARS

The CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), for value received, hereby promises to pay to the Registered Owner named above, or registered assigns, the Principal Amount set forth above on the Maturity Date set forth above, together with interest thereon at the Interest Rate set forth above, calculated on a 30/360 day basis, until the Principal Amount hereof is paid or provided for, such interest to be paid on March 1 and September 1 of each year, commencing September 1, 2020 (the "Interest Payment Dates"). This Bond will bear interest from the Interest Payment Date next preceding the date of authentication hereof, unless (a) it is authenticated as of a business day following the 15th day of the month immediately preceding any Interest Payment Date and on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) it is authenticated on or before February 15, 2021, in which event it shall bear interest from the Dated Date set forth above.

Principal, interest and redemption premium (if any) are payable in lawful money of the United States of America to the person in whose name this Bond is registered (the "Registered Owner") on the Bond registration books maintained by the Paying Agent, initially The Bank of New York Mellon Trust Company, N.A., Dallas, Texas. Principal hereof and any redemption premium hereon are payable upon presentation and surrender of this Bond at the principal corporate trust office of the Paying Agent. Interest hereon is payable by check mailed by the Paying Agent on each Interest Payment Date to the Registered Owner of this

\$

Bond by first-class mail at the address appearing on the Bond registration books at the close of business on the 15th day of the calendar month next preceding such Interest Payment Date (the "Record Date"); *provided, however*, that at the written request of the registered owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Paying Agent prior to any Record Date, interest on such Bonds shall be paid on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as shall be specified in such written request.

This Bond is one of a series of \$______ aggregate principal amount of bonds (collectively, the "2020 Bonds") issued for the purpose of raising money to finance the acquisition and improvement of affordable housing, and to pay all necessary legal, financial, engineering and contingent costs in connection therewith. The 2020 Bonds have been issued under authority of and under the laws of the State of California, and the requisite two-thirds vote of the electors of the City cast at an election held on November 6, 2018, upon the question of issuing bonds in the aggregate principal amount of \$135,000,000, and under a resolution of the City Council of the City adopted on February 25, 2020 (the "Bond Resolution"). The 2020 Bonds are payable as to both principal and interest from the proceeds of the levy of ad valorem taxes on all property subject to such taxes in the City, which taxes are unlimited as to rate or amount.

The principal of and interest and redemption premium, if any, on this Bond do not constitute a debt of the County, the State of California, or any of its political subdivisions other than the City, or any of the officers, agents and employees thereof, and neither the County, the State of California, any of its political subdivisions other than the City, nor any of the officers, agents and employees thereof shall be liable hereon. In no event shall the principal of and interest and redemption premium, if any, on this Bond be payable out of any funds or properties of the City other than ad valorem taxes levied upon all taxable property in the City.

The 2020 Bonds are issuable only as fully registered bonds in the denominations of \$5,000 or any integral multiple thereof. This Bond is exchangeable and transferable for bonds of other authorized denominations at the principal corporate trust office of the Paying Agent, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Paying Agent, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Paying Agent, all subject to the terms, limitations and conditions provided in the Bond Resolution. Any tax or governmental charges shall be paid by the transferor. The City and the Paying Agent may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or on account of principal or interest and for all other

purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The 2020 Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The 2020 Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

The 2020 Bonds maturing on September 1, 20__, September 1, 20__ and September 1, 20__ (the "**Term Bonds**") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20__ in the principal amounts as set forth in the following tables:

\$_____ Term Bond Due September 1, 20___

Payment Date	Payment
(September 1)	Amount

\$_____ Term Bond Due September 1, 20___

Payment Date	Payment
(September 1)	Amount

\$_____ Term Bond Due September 1, 20___

Payment Date	Payment
(September 1)	Amount

The Paying Agent shall give notice of the redemption of the 2020 Bonds at the expense of the City. Such notice shall specify: (a) that the 2020 Bonds or a designated portion thereof are to be redeemed, (b) the numbers and CUSIP numbers of the 2020 Bonds to be redeemed, (c) the date of notice and the date of redemption, (d) the place or places where the redemption will be made, and (e) descriptive information regarding the 2020 Bonds including the dated date, interest rate and stated maturity date. Such notice shall further state that on the specified date there shall become due and payable upon each 2020 Bond to be redeemed, the portion of the principal amount of such 2020 Bond to be redeemed, together with interest accrued to said date, the redemption premium, if any, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

Notice of any redemption of 2020 Bonds shall be mailed by first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, to the respective Owners of any 2020 Bonds designated for redemption, at their addresses appearing on the bond registration books maintained by the Paying Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of such 2020 Bonds or the cessation of accrual of interest thereon from and after the redemption date.

The City may provide conditional notices of optional redemption, and the City is entitled to rescind any notice of optional redemption of the 2020 Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

Neither the City nor the Paying Agent will be required: (a) to issue or transfer any Bond during a period beginning with the opening of business on the 15th calendar day next preceding either any Interest Payment Date or any date of selection of any 2020 Bond to be redeemed and ending with the close of business on the Interest Payment Date or a day on which the applicable notice of redemption is given, or (b) to transfer any Bond which has been selected or called for redemption in whole or in part.

Reference is made to the Bond Resolution for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Paying Agent and the Registered Owners, and the terms and conditions upon which the 2020 Bonds are issued and secured. The owner of this Bond assents, by acceptance hereof, to all of the provisions of the Bond Resolution.

It is certified, recited and declared that all acts and conditions required by the Constitution and laws of the State of California to exist, to be performed or to have been met precedent to and in the issuing of the 2020 Bonds in order to make them legal, valid and binding general obligations of the City, have been performed and have been met in regular and due form as required by law; that payment in full for the 2020 Bonds has been received; that no statutory or constitutional limitation on indebtedness or taxation has been exceeded in issuing the 2020 Bonds; and that due provision has been made for levying and collecting ad valorem property taxes on all of the taxable property within the City in an amount sufficient to pay principal and interest when due, and for levying and collecting such taxes the full faith and credit of the City are hereby pledged.

This Bond shall not be valid or obligatory for any purpose and shall not be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication below has been manually signed by the Paying Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or the Paying Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of Berkeley has caused this Bond to be executed by the facsimile signature of its Mayor and attested by the facsimile signature of its City Clerk, all as of the date stated above.

CITY OF BERKELEY

By _____ Mayor

Attest:

City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Bond Resolution referred to herein.

Date of Authentication: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Paying Agent

By _____ Authorized Signatory

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint

_____ attorney, to transfer the same on the registration books of the Bond Registrar, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

APPENDIX B

REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

- 1. Estimated True Interest Cost of the Bonds: 3.60%
- 2. Estimated finance charge of the Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$600,000. Such amount consists of costs of issuing the Bonds in the amount of approximately \$220,000 together with estimated underwriter's compensation in the amount of \$380,000.
- 3. Estimated proceeds of the Bonds expected to be received by the City for deposit to the Project Fund, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest and reserves (if any) from the principal amount of the Bonds: \$38,000,000.
- 4. Estimated Total Payment Amount for the Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$63,000,000.

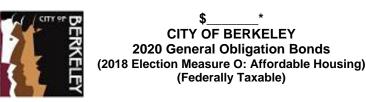
^{*}All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding federally taxable interest rates available in the bond market at the time of pricing the Bonds.

Page 34 of 122 PRELIMINARY OFFICIAL STATEMENT DATED FEBRUARY ___, 2020

NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "___" See "RATING" herein.

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Refunding Bonds 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 interest on the 2020 Measure O Bonds is <u>not</u> excluded from gross income for federal income tax purposes. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences caused by the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "LEGAL MATTERS – Tax Exemption."



\$_____* CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

Dated: Date of Delivery

Due: September 1, as shown on inside cover

Cover Page. This cover page contains information for quick reference only. It is not a summary of all the provisions of the Bonds. Investors must read the entire official statement to obtain information essential to making an informed investment decision.

Authority and Purpose. The captioned 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (the "2020 Measure O Bonds") and the 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Projects (the "Refunding Bonds" and, together with the New Money Bonds, the "Bonds"), are being issued by the City of Berkeley (the "City") pursuant to certain provisions of the California Government Code and resolutions of the City Council of the City adopted on February 25, 2020. The 2020 Measure O Bonds were authorized at an election of the registered voters of the City held on November 6, 2018, which authorized the issuance of general obligation bonds for the purpose of financing the improvement and acquisition of affordable housing. The Refunding Bonds are being issued for the purpose of refunding, on a current basis, certain outstanding general obligation bonds issued by the City. See "THE BONDS – Authority for Issuance" and "THE FINANCING AND REFINANCING PLAN" herein.

Security. The Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by Alameda County (the "County"). The City Council is empowered and is obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates). The City has other outstanding issues of general obligation bonds which are similarly payable from *ad valorem* taxes levied on parcels in the City and will be payable on a pro rata basis with the Bonds. See "SECURITY FOR THE BONDS."

Payments. Interest on the Bonds accrues from the date of delivery and is payable semiannually on March 1 and September 1 of each year, commencing September 1, 2020, by check, draft or wire mailed to the person in whose name the Bond is registered. Payments of principal and interest on the Bonds will be paid by The Bank of New York Mellon Trust Company, N.A., as paying agent for the Bonds (the "Paying Agent"), to DTC for subsequent disbursement to DTC Participants who will remit such payments to the beneficial owners of the Bonds. See "THE BONDS – Description of the Bonds."

Redemption. The Bonds are subject to optional redemption and, at bidder's option, mandatory sinking fund redemption prior to maturity as described herein. See discussion of redemption under the heading "THE BONDS."

Book-Entry Only. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"). Purchasers will not receive physical certificates representing their interests in the Bonds. See APPENDIX E for additional information about the book-entry only system. The following firm, serving as municipal advisor to the City, has structured this issue.

NHA ADVISORS Financial & Policy Strategies. Delivered.

Maturity Schedules (See inside cover)

The Bonds will be sold and awarded pursuant to competitive public bids to be received on ______, 2020, as set forth in two separate Official Notices of Sale with respect to the 2020 Measure O Bonds and the Refunding Bonds, respectively. The Bonds are offered when, as and if issued, subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the City by Jones Hall, A Professional Law Corporation, San Francisco, California, as Disclosure Counsel. It is anticipated that the Bonds in definitive form will be available for delivery to Cede & Co., as nominee of The Depository Trust Company, on or about _____, 2020.

The date of this Official Statement is _____, 2020.

* Preliminary; subject to change.

MATURITY SCHEDULES*

\$

CITY OF BERKELEY 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable)

Maturity Date	Principal				
(September 1)	Amount	Interest Rate	Yield	Price	CUSIP [†]

[continued on next page]

^{*}Preliminary; subject to change. Identification of Term Bonds subject to mandatory sinking fund redemption is at bidder's option. † CUSIP Copyright 2020, CUSIP Global Services, and a registered trademark of American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, which is managed on behalf of American Bankers Association by S&P Capital IQ. Neither the City nor the Purchasers take any responsibility for the accuracy of the CUSIP data.

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[continued from prior page]

\$___

CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

Maturity Date	Principal				
(September 1)	Amount	Interest Rate	Yield	Price	CUSIP [†]

^{*}Preliminary; subject to change. Identification of Term Bonds subject to mandatory sinking fund redemption is at bidder's option. † Copyright 2020, American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by S&P Global Market Intelligence, and are provided for convenience of reference only. Neither the City nor the Purchaser assumes any responsibility for the accuracy of these CUSIP data.

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract between any bond owner and the City or the Purchaser. This Official Statement and the information contained herein are subject to completion or amendment without notice.

No Offering Except by This Official Statement. No dealer, broker, salesperson or other person has been authorized by the City or the Purchaser to give any information or to make any representations relating to the Bonds other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by the City or the Purchaser.

No Unlawful Offers or Solicitations. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Estimates and Projections. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimate," "project," "forecast," "expect," "intend" and similar expressions identify "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

Information in Official Statement. The information set forth in this Official Statement has been furnished by the City and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by the City.

Involvement of Purchaser. The Purchaser (as defined in "UNDERWRITING") has reviewed the information in this Official Statement in accordance with, and as a 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.

Document Summaries. All summaries of the Bond Resolution or other documents referred to in this Official Statement are made subject to the provisions of such documents and qualified in their entirety to reference to such documents, and do not purport to be complete statements of any or all of such provisions.

No Securities Laws Registration. The Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exceptions therein for the issuance and sale of municipal securities. The Bonds have not been registered or qualified under the securities laws of any state.

Effective Date. This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the Bonds will, under any circumstances, give rise to any implication that there has been no change in the affairs of the City, or the other parties described in this Official Statement, or the condition of the property within the City since the date of this Official Statement.

Website. The City maintains a website; however, the information presented on the website is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.

CITY OF BERKELEY (ALAMEDA COUNTY, CALIFORNIA)

MEMBERS OF THE CITY COUNCIL

Jesse Arreguín, Mayor Rashi Kesarwani, Councilmember District 1 Cheryl Davila, 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 Lori Droste, Councilmember District 8

CITY OFFICIALS AND STAFF

Dee Williams-Ridley City Manager

David White Deputy City Manager Paul Buddenhagen Deputy City Manager

Farimah Brown City Attorney Jenny Wong City Auditor

Henry Oyekanmi Director of Finance

PROFESSIONAL SERVICES

BOND AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation San Francisco, California

MUNICIPAL ADVISOR

NHA Advisors, LLC San Rafael, California

BOND REGISTRAR, TRANSFER AGENT, AND PAYING AGENT

The Bank of New York Mellon Trust Company, N.A. Los Angeles, California

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 APPENDIX C - PROPOSED FORMS OF OPINION OF BOND COUNSEL
 APPENDIX D - FORM OF CONTINUING DISCLOSURE CERTIFICATE
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OFFICIAL STATEMENT

\$_____* CITY OF BERKELEY 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable) \$_____* CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

INTRODUCTION

This Official Statement, which includes the cover page and appendices hereto, provides information in connection with the sale and delivery of the 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (the "**2020 Measure O Bonds**") and the 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Projects (the "**Refunding Bonds**" and, together with the New Money Bonds, the "**Bonds**").

This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement.

The City

The City. 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 a population of 123,328 as of January 1, 2019, 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 235,000 full and part-time workers.

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 charter was adopted in 1895. For more information regarding the City and its finances, see APPENDIX A and APPENDIX B.

Sources of Payment for the Bonds

The Bonds are general obligations of the City payable solely from ad valorem property taxes levied by the City and collected by the County. The City Council is empowered and obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except with respect to certain personal property that is taxable at limited rates). See "SECURITY FOR THE BONDS" and "PROPERTY TAXATION."

Purposes for Issuance

The net proceeds of the 2020 Measure O Bonds will be used to finance affordable housing projects, as approved by the voters at an election held in the City on November 6, 2018 (the **"Bond Election**") with respect to the bond measure known as Measure O.

The net proceeds of the Refunding Bonds will be used to refund the City of Berkeley General Obligation Bonds, Series 2009 (Measure FF – Neighborhood Branch Library Improvements Project) (the "**Prior Bonds**"), maturing on and after September 1, 2020 (the "**Refunded Bonds**"), which will be redeemed in full on April 10, 2020^{*}.

See "THE FINANCING AND REFINANCING PLAN" herein.

Authority for Issuance

The Bonds are being issued under the provisions of Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53506 (the "**New Money Bond Law**"), and pursuant to and consistent with the Charter of the City and a resolution adopted by the City Council of the City on February 25, 2020 (the "**2020 Measure O Bond Resolution**").

The Refunding Bonds are being issued under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 (the "**Refunding Bond Law**") and pursuant to a resolution adopted by the City Council of the City on February 25, 2020 (the "**Refunding Bond Resolution**" and, together with the 2020 Measure O Bond Resolution, the "**Bond Resolutions**").

See "THE BONDS - Authority for Issuance" herein.

Description of the Bonds

Generally. The Bonds mature in the years and in the amounts as set forth on the inside cover page hereof. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee for DTC. Purchasers will not receive physical certificates representing their interest in the Bonds. See "THE BONDS – Description of the Bonds" and APPENDIX E.

Redemption. The Bonds are subject to redemption prior to maturity as described herein. The Bonds may be subject to mandatory sinking fund redemption at the option of the bidders. See discussion of redemption features under the heading "THE BONDS – Redemption" herein.

Legal Matters

Issuance of the Bonds is subject to the approving opinions of Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel ("**Bond Counsel**"), to be delivered in substantially the respective forms attached hereto as APPENDIX C. Jones Hall, A Professional Law Corporation, San Francisco, California, will also serve as disclosure counsel to the City ("**Disclosure Counsel**").

Tax Matters

In the opinion of Bond Counsel, interest on the Refunding Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax. In the opinion of Bond Counsel, interest on the 2020 Measure O Bonds is <u>not</u> excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes. See "TAX MATTERS" for additional information, and APPENDIX C hereto for the forms of Bond Counsel's opinions to be delivered concurrently with the Bonds.

Offering and Delivery of the Bonds

The Bonds are offered when, as and if issued and received by the purchasers, subject to approval as to the legality by Bond Counsel. It is anticipated that the Bonds will be available for delivery through the facilities of DTC on or about _____, 2020.

Continuing Disclosure

The City has covenanted and agreed that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. The form of the Continuing Disclosure Certificate is included in APPENDIX D hereto. See also "CONTINUING DISCLOSURE" herein.

Other Information

This Official Statement speaks only as of its date, and the information contained herein is subject to change. Copies of documents referred to in this Official Statement and information concerning the Bonds are available from the City of Berkeley City Clerk, 2180 Milvia Street, Berkeley, California 94704, (510) 981-7000. The City may impose a charge for copying, mailing and handling.

This Official Statement is not to be construed as a contract with the purchasers of the Bonds. 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 representations of fact. The summaries and references to documents, statutes and constitutional provisions referred to herein do not purport to be comprehensive or definitive, and are qualified in their entireties by reference to each of such documents, statutes and constitutional provisions.

The information set forth herein has been obtained from official sources which are believed to be reliable but it is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the City. The information and expressions of opinions herein 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 affairs of the City since the date hereof. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose.

END OF INTRODUCTION

THE FINANCING AND REFINANCING PLAN

2020 Measure O Bonds

The proceeds of the 2020 Measure O Bonds will be used to finance projects approved by more than the requisite 2/3 of City voters at the Bond Election. The abbreviated form of the ballot measure for Measure O was:

"Shall the measure to issue \$135 million in bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities; subject to citizen oversight and independent audits, be adopted?"

The 2020 Measure O Bonds will be the first series of bonds issued pursuant to the authority received at the Bond Election.

Refunding Bonds

The Refunding Bonds are being issued to refund, on a current basis, all outstanding maturities of the City of Berkeley General Obligation Bonds, Series 2009 (FF – Neighborhood – Neighborhood Branch Library Improvements Project), which were issued on April 29, 2009, in the aggregate principal amount of \$10,000,000 (the "2009 Bonds").

The 2009 Bonds are subject to redemption at the option of the City, from any source of available funds, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium. The following table identifies the 2009 Bonds being refunded with proceeds of the Refunding bonds (the "**Refunded Bonds**").

Maturities to be Refunded*	CUSIP†	Principal Amount	Redemption Date	Redemption Price
09/01/2020	084113 NJ4	\$240,000	04/23/2020	100.0%
09/01/2021	084113 NK1	250,000	04/23/2020	100.0
09/01/2022	084113 NL9	265,000	04/23/2020	100.0
09/01/2023	084113 NM7	280,000	04/23/2020	100.0
09/01/2024	084113 NN5	295,000	04/23/2020	100.0
09/01/2025	084113 NP0	310,000	04/23/2020	100.0
09/01/2026	084113 NQ8	330,000	04/23/2020	100.0
09/01/2027	084113 NR6	350,000	04/23/2020	100.0
09/01/2028	084113 NS4	365,000	04/23/2020	100.0
09/01/2031 T	084113 NT2	1,225,000	04/23/2020	100.0
09/01/2035 T	084113 NU9	1,975,000	04/23/2020	100.0
09/01/2039 T	084113 NV7	2,445,000	04/23/2020	100.0
Total	-	\$8,330,000	-	-

T: Term Bonds

† CUSIP Copyright American Bankers Association. CUSIP data herein is provided by Standard & Poor's CUSIP Service Bureau, a division of McGraw Hill Companies, Inc. Neither the City nor the Purchasers are responsible for the accuracy of such data.

The net proceeds of the Refunding Bonds will be deposited with The Bank of New York Mellon Trust Company, N.A., as paying agent for the Prior Bonds (the "**Prior Bonds Paying Agent**"), in an account established to pay the redemption price of the Refunded Bonds (the "**Redemption Fund**") under certain Irrevocable Refunding Instructions given by the City to the Prior Bonds Paying Agent (the "**Refunding Instructions**"). As a result of the deposit and investment of amounts with the Prior Bonds Paying Agent, the Refunded Bonds will be discharged and defeased, and will no longer be payable from and secured by property taxes levied for the purpose of paying debt service on the Refunded Bonds.

As a result of the deposit of funds with the Prior Bonds Paying Agent on the date of issuance of the Refunding Bonds, and assuming the accuracy of the Purchaser's and the Verification Agent's computations, the Refunded Bonds will be legally defeased and will be payable solely from amounts held for that purpose under the Refunding Instructions, and will cease to be secured by *ad valorem* property taxes levied in the City.

The amounts held by the Prior Bonds Paying Agent are pledged solely to the payment of the Refunded Bonds. The funds deposited in the Redemption Fund will not be available for the payment of debt service with respect to the Refunding Bonds.

SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Bonds are as follows:

2020 Measure O

Bonds

Refunding Bonds

Sources of Funds Principal Amount of Bonds *Plus*: Net Original Issue Premium

Total Sources

<u>Uses of Funds</u> Deposit to Building Fund Deposit to Redemption Fund Deposit to Debt Service Fund Costs of Issuance* Total Uses

*All estimated costs of issuance including, but not limited to, Purchaser's discount, printing costs, and fees of Bond Counsel, Disclosure Counsel, the Municipal Advisor and the rating agency.

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THE BONDS

Authority for Issuance

The 2020 Measure O Bonds are issued under the New Money Law and other applicable law, and pursuant to the City's powers under and consistent with the Charter of the City. The City authorized the issuance of the Bonds pursuant to the New Money Bond Resolution. The City received authorization at the Bond Election to issue \$135 million of general obligation bonds. The 2020 Measure O Bonds are the first series of Bonds to be sold and issued under the authorization received at the Bond Election.

The Refunding Bonds will be issued pursuant to the authority of the Refunding Bond Law and the Refunding Bond Resolution.

Description of the Bonds

Book-Entry Form. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("**DTC**"). Purchasers of the Bonds (the "**Beneficial Owners**") will not receive physical certificates representing their interest in the Bonds. Payments of principal of and interest on the Bonds will be paid by the Paying Agent to DTC for subsequent disbursement to DTC Participants which will remit such payments to the Beneficial Owners of the Bonds.

As long as DTC's book-entry method is used for the Bonds, the Paying Agent will send any notice of prepayment or other notices to owners only to DTC. Any failure of DTC to advise any DTC Participant, or of any DTC Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity or sufficiency of the proceedings relating to the prepayment of the Bonds called for prepayment or of any other action premised on such notice.

The Paying Agent, the City, and the Purchaser have no responsibility or liability for any aspects of the records relating to or payments made on account of beneficial ownership, or for maintaining, supervising or reviewing any records relating to beneficial ownership, of interests in the Bonds. See APPENDIX E for additional information.

Interest. Interest on the Bonds is payable semiannually on March 1 and September 1 of each year (the "Interest Payment Dates"), commencing September 1, 2020.

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- 1. a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- 2. a Bond is authenticated prior to an Interest Payment Date and after the close of business on the 15th day of the month preceding the Interest Payment Date (each, a "**Record Date**"), in which event it will bear interest from such Interest Payment Date,

- 3. a Bond is authenticated on or before August 15, 2020, in which event it shall bear interest from the Closing Date, or
- 4. at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

Denominations and Maturity. The Bonds shall be issued in the denomination of \$5,000 each or any integral multiple of \$5,000. The Bonds mature on September 1 in the years and amounts set forth on the inside cover page hereof.

See the maturity schedule on the inside cover page hereof and "DEBT SERVICE SCHEDULE" below.

Payment

Interest on the Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the owner thereof at such owner's address as it appears on the Registration Books (as defined below) at the close of business on the preceding Record Date, except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request.

Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the principal office of the Paying Agent.

Redemption^{*}

Optional Redemption. The Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

Mandatory Sinking Fund Redemption. The Term Bonds maturing on September 1, 20__ and September 1, 20__ (the "**Term Bonds**") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20__, in the principal amounts as set forth in the following tables:

\$_____ Term Bond Due September 1, 20___

Payment
Amount

(Maturity)

Term Bond Due September 1, 20____

Payment Date	Payment	
(September 1)	Amount	

(Maturity)

If some but not all of the Term Bonds have been optionally redeemed, the aggregate principal amount of Term Bonds to be subject to Mandatory Sinking Fund Redemption in each year will be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

Redemption Procedure. The Paying Agent will cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books (as defined below) maintained by the Paying Agent. Such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice will not affect the validity of the proceedings for the redemption of such Bonds.

The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption of the Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

A redemption notice will state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, will designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and will require that such Bonds be then surrendered at the principal office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Partial Redemption. Upon surrender of Bonds redeemed in part only, the City will execute and the Paying Agent will authenticate and deliver to the owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

Effect of Redemption. From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under the Bond Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice.

Registration, Transfer and Exchange of Bonds

If the book-entry system as described above and in APPENDIX E is no longer used with respect to the Bonds, the following provisions will govern the registration, transfer, and exchange of the Bonds.

Registration Books. The Paying Agent will keep or cause to be kept sufficient books for the registration and transfer of the Bonds (the "**Registration Books**"), which will at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the Bonds.

Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the principal office of the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

Whenever any Bond or Bonds are surrendered for transfer, the City will execute and the Paying Agent will authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

Exchange. Bonds may be exchanged at the principal office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

Defeasance

The City has the option to pay and discharge the entire indebtedness on all or any portion of the outstanding Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by irrevocably depositing, in trust, at or before maturity:
 - lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
 - (ii) Federal Securities (as defined below), the principal of and interest on, which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid

interest to maturity on the Bonds to be paid, as such principal and interest become due.

(c) by delivering such Bonds to the Paying Agent for cancellation by it.

"Federal Securities" means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations, the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

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DEBT SERVICE SCHEDULES

Debt Service for the 2020 Measure O Bonds. The following table shows the debt service schedules with respect to the 2020 Measure O Bonds, assuming no optional redemptions.

CITY OF BERKELEY 2020 Measure O Bonds Debt Service Schedule

Bond Year Ending September 1	2020 Measure O Bonds Principal	2020 Measure O Bonds Interest	Total Debt Service
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
2044			
2045			
2046			
2047			
2048			
2049			
2050			
Total			

Debt Service for the Refunding Bonds. The following table shows the debt service schedules with respect to the Refunding Bonds, assuming no optional redemptions.

CITY OF BERKELEY Refunding Bonds Debt Service Schedule

Bond Year Ending September 1	Refunding Bonds Principal	Refunding Bonds Interest	Total Debt Service
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
Total			

Combined Debt Service Schedule. In addition to the Bonds described herein, the City has other series of general obligation bonds and refunding bonds outstanding. The following table shows the combined debt service schedule for outstanding general obligation bonds and refunding bonds of the City, assuming no optional redemptions.

				2015					
Year Ending				Refunding			2020 Measure		Total
September 1	2009 Bonds (1)	2010 Bonds	2014 Bonds	Bonds	2016 Bonds	2017 Bonds	O Bonds	Refunding Bonds	Debt Service
2020	683,937.50	955,506.26	904,500.00	3,951,337.50	753,112.50	1,746,556.26			
2021	678,337.50	958,756.26	902,750.00	3,104,587.50	748,362.50	1,748,556.26			
2022	677,087.50	954,956.26	905,250.00	3,106,587.50	748,112.50	1,748,806.26			
2023	674,862.50	955,856.26	901,750.00	3,103,087.50	747,112.50	1,747,306.26			
2024	671,662.50	955,093.76	902,500.00	3,099,087.50	745,362.50	1,749,056.26			
2025	667,487.50	955,093.76	905,350.00	3,104,337.50	747,862.50	1,748,806.26			
2026	673,537.50	959,293.76	902,225.00	3,108,087.50	748,062.50	1,746,556.26			
2027	678,275.00	957,493.76	903,250.00	3,105,287.50	752,662.50	1,746,156.26			
2028	676,825.00	954,893.76	905,450.00	2,140,087.50	756,462.50	1,749,356.26			
2029	679,487.50	956,493.76	901,850.00	1,001,287.50	764,462.50	1,748,956.26			
2030	683,312.50	957,093.76	902,650.00	399,887.50	770,962.50	1,746,906.26			
2031	680,762.50	955,900.00	902,650.00	399,975.00	771,862.50	1,746,906.26			
2032	682,112.50	958,675.00	901,850.00	399,737.50	772,312.50	1,746,006.26			
2033	684,362.50	955,212.50	904,575.00	398,768.76	772,312.50	1,749,206.26			
2034	685,362.50	955,718.76	906,268.76	397,043.76	774,437.50	1,746,356.26			
2035	690,112.50	959,987.50	901,931.26	399,968.76	781,187.50	1,747,606.26			
2036	693,362.50	956,837.50	905,243.76	397,368.76	786,750.00	1,747,806.26			
2037	693,700.00	957,412.50	902,243.76	398,956.26	791,787.50	1,746,956.26			
2038	692,462.50	956,500.00	903,150.00	-	795,562.50	1,748,518.76			
2039	694,650.00	959,100.00	902,743.76	-	798,787.50	1,748,831.26			
2040	-	-	906,025.00	-	806,462.50	1,747,893.76			
2041	-	-	901,825.00	-	813,450.00	1,749,018.76			
2042	-	-	906,275.00	-	819,750.00	1,748,681.26			
2043	-	-	903,925.00	-	828,600.00	1,746,881.26			
2044	-	-	-	-	836,550.00	1,748,618.76			
2045	-	-	-	-	843,600.00	1,748,731.26			
2046	-	-	-	-	849,750.00	1,747,218.76			
2047	-	-	-	-	-	1,747,037.50			
2048	-	-	-	-	-	-			
2049	-	-	-	-	-	-			
2050	-	-	-	-	-	-			
Total	\$13,641,700.00	\$19,135,875.12	\$21,686,231.30	\$32,015,481.30	\$21,125,700.00	48,939,294.02			

(1) Expected to be redeemed in full with proceeds of the Refunding Bonds.

SECURITY FOR THE BONDS

Ad Valorem Taxes

Bonds Payable from Ad Valorem Property Taxes. The Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by the County. The City is empowered and is obligated to annually levy ad valorem taxes for the payment of the Bonds and the interest thereon upon all property within the City subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates).

Levy and Collection. The City will levy and the County will collect such ad valorem taxes in such amounts and at such times as is necessary to ensure the timely payment of debt service. Such taxes, when collected, will be deposited into a debt service fund for the Bonds, which is maintained by the City and which is irrevocably pledged for the payment of principal of and interest on the Bonds when due.

City property taxes are assessed and collected by the County in the same manner, at the same time and in the same installments as other ad valorem taxes on real property and will have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the other ad valorem taxes on real property. As described below, although the County has adopted the Teeter Plan, the City has elected not to participate in the Teeter Plan, meaning that the City receives all of the property taxes that are actually collected, and the City also receives any penalties and interest on delinquent taxes. See "PROPERTY TAXATION – Alternative Method of Tax Apportionment – Teeter Plan."

Annual Tax Rates. The amount of the annual ad valorem tax levied by the City to repay the Bonds will be determined by the relationship between the assessed valuation of taxable property in the City and the amount of debt service due on the Bonds. Fluctuations in the annual debt service on the Bonds and the assessed value of taxable property in the City may cause the annual tax rate to fluctuate.

Economic and other factors beyond the City's control, such as economic recession, deflation of land values, a relocation out of the City or financial difficulty or bankruptcy by one or more major property taxpayers, or the complete or partial destruction of taxable property caused by, among other eventualities, earthquake, flood, fire or other natural disaster, could cause a reduction in the assessed value within the City and necessitate a corresponding increase in the annual tax rate.

Debt Service Funds

Pursuant to the respective Bond Resolutions, The City will establish a debt service fund for the 2020 Measure O Bonds (the "**Measure O Debt Service Fund**") and the Refunding Bonds (the "**Refunding Debt Service Fund**" and, together with the Measure O Debt Service Fund, the "**Debt Service Funds**"), which will be established as separate funds to be maintained distinct from all other funds of the City. All taxes levied by the City pursuant to the Bond Resolutions for the payment of the principal of and interest and premium (if any) on the Bonds will be deposited in the respective Debt Service Funds by the City promptly upon receipt from the County. The Debt Service Funds are each pledged for the payment of the principal of and interest and premium (if any) on the 2020 Measure O Bonds or the Refunding Bonds, respectively, when and as the same become due. The City will transfer amounts in the Debt Service Funds, to the extent necessary, to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent, as required to pay the principal of and interest and premium (if any) on the Bonds.

If, after payment in full of the 2020 Measure O Bonds or the Refunding Bonds, any amounts remain on deposit in the respective Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner that is consistent with the requirements of applicable state and federal tax law.

Limited Obligation

The Bonds are payable solely from the proceeds of an ad valorem tax levied by the City, and collected by the County, for the payment of principal and interest on the Bonds. Although the County is obligated to collect the ad valorem tax for the payment of the Bonds, the Bonds are not a debt of the County.

PROPERTY TAXATION

Property Tax Collection Procedures

In California, property which is subject to ad valorem taxes is classified as "secured" or "unsecured." The "secured roll" is that part of the assessment roll containing state assessed public utilities' property and property, the taxes on which are a lien on real property sufficient, in the opinion of the county assessor, to secure payment of the taxes. A tax levied on unsecured property does not become a lien against such unsecured property, but may become a lien on certain other property owned by the taxpayer. Every tax which becomes a lien on secured property has priority over all other liens arising pursuant to State law on such secured property are entered separately on the assessment roll maintained by the county assessor. The method of collecting delinquent taxes is substantially different for the two classifications of property.

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year. If unpaid, such taxes become delinquent after December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. In addition, property on the secured roll with respect to which taxes are delinquent is declared tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of the delinquent taxes and a delinquency penalty, plus a redemption penalty of 1.5% per month to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

Property taxes are levied for each fiscal year on taxable real and personal property situated in the taxing jurisdiction as of the preceding January 1. A bill enacted in 1983, SB813 (Statutes of 1983, Chapter 498), however, provided for the supplemental assessment and taxation of property as of the occurrence of a change of ownership or completion of new construction. Thus, this legislation eliminated delays in the realization of increased property taxes from new assessments. As amended, SB813 provided increased revenue to taxing jurisdictions to the extent that supplemental assessments of new construction or changes of ownership occur subsequent to the January 1 lien date and result in increased assessed value.

Property taxes on the unsecured roll are due on the January 1 lien date and become delinquent, if unpaid on the following August 31. A 10% penalty is also attached to delinquent taxes in respect of property on the unsecured roll, and further, an additional penalty of 1.5% per month accrues with respect to such taxes beginning the first day of the third month following the delinquency date. 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 certain property of the taxpayer; (3) filing a certificate of delinquency for record in the county recorder's office, in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee. The exclusive means of enforcing the payment of delinquent taxes in respect of property on the secured roll is the sale of the property securing the taxes for the amount of taxes which are delinquent.

Taxation of State-Assessed Utility Property

The State Constitution provides that most classes of property owned or used by regulated utilities are assessed by the State Board of Equalization ("**SBE**") and taxed locally. Property valued by the SBE as an operating unit in a primary function of the utility taxpayer is known as "unitary property," a concept designed to permit assessment of the utility as a going concern rather than assessment of each individual element of real and personal property owned by the utility taxpayer. State-assessed unitary and "operating nonunitary" property (which excludes nonunitary property of regulated railways) is allocated to the counties based on the situs of the various components of the unitary property. Except for unitary property of regulated railways and certain other excepted property, all unitary and operating nonunitary property is taxed at special county-wide rates and tax proceeds are distributed to taxing jurisdictions according to statutory formulae generally based on the distribution of taxes in the prior year.

Assessed Valuation

Assessed Valuation History. The following is a table summarizing the historical assessed valuation of the taxable property in the City.

Table 1CITY OF BERKELEYAssessed Valuations of All Taxable PropertyFiscal Years 2010-11 to 2019-20

	Local				Percent Change
Fiscal Year	Secured ⁽¹⁾	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>	-
2010-11	\$12,147,575,627	\$555,664	\$677,887,524	\$12,826,018,815	
2011-12	12,525,929,662	555,664	667,789,011	13,194,274,337	2.87%
2012-13	12,834,926,300	555,664	673,174,230	13,508,656,194	2.38
2013-14	13,686,258,913	555,664	677,170,723	14,363,985,300	6.33
2014-15	14,116,003,890	630,615	658,143,878	14,774,778,383	2.86
2015-16	15,224,697,461	388,860	702,428,523	15,927,514,844	7.80
2016-17	16,200,483,693	388,860	711,062,469	16,911,935,022	6.18
2017-18	17,376,072,698	443,960	809,921,331	18,186,437,989	7.54
2018-19	18,696,664,672	443,960	731,012,747	19,428,121,379	6.82
2019-20	19,926,615,530	424,880	860,872,387	20,787,912,797	7.00

(1) Amounts are net of homeowners' exemption.

Source: Alameda County Auditor-Controller's Office

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Assessed Valuation by Land Use. The following table shows the land use of parcels in the City, according to assessed valuation. As shown, the majority of land in the City is used for residential purposes.

Table 2 **CITY OF BERKELEY** Assessed Valuation and Parcels by Land Use Fiscal Year 2019-20

	2019-20	% of	No. of	% of
Non-Residential:	Assessed Valuation	(1) Total	Parcels	<u>Total</u>
Commercial/Office	\$2,244,416,146	11.26%	1,574	5.41%
Vacant Commercial	22,118,632	0.11	64	0.22
Industrial	1,091,360,227	5.48	423	1.46
Vacant Industrial	11,621,394	0.06	24	0.08
Recreational	42,628,355	0.21	17	0.06
Government/Social/Institutional	<u>21,563,021</u> 0.11	<u>650 2.24</u>		
Subtotal Non-Residential	\$3,433,707,775	17.23%	2,752	9.47%
Residential:				
Single Family Residence	\$10,467,626,755	52.53%	17,419	59.92%
Condominium/Townhouse	1,011,003,627	5.07	2,857	9.83
Cooperative	28,283,751	0.14	103	0.35
2-4 Residential Units	2,171,251,438	10.90	4,002	13.77
5+ Residential Units/Apartments	2,744,492,960	13.77	1,455	5.00
Miscellaneous Residential	2,698,601	0.01	10	0.03
Vacant Residential 67,550,623	0.34	474 1.63		
Subtotal Residential	\$16,492,907,755	82.77%	26,320	90.53%
Total	\$19,926,615,530	100.00%	29,072	100.00%

(1) Local Secured Assessed Valuation Source: California Municipal Statistics, Inc. Local Secured Assessed Valuation; excluding tax-exempt property.

Assessed Valuation of Single-Family Residential Parcels. The following table shows a breakdown of the assessed valuations of improved single-family residential parcels in the City, according to assessed valuation.

Table 3 CITY OF BERKELEY Per Parcel 2019-20 Assessed Valuation of Single-Family Homes

	No. of		019-20	Average		Median
Single Family Residential	<u>Parcels</u> 17,419		67.626.755	Assessed Valuatio \$600.932		483.640
Single Failing Residential	17,419	φ10,4	67,020,755	\$000,93Z	φ,	403,040
2019-20	No. of	% of	Cumulative	Total	% of	Cumulative
Assessed Valuation	Parcels ⁽¹⁾	<u>Total</u>	% of Total	Valuation	<u>Total</u>	% of Total
\$0 - \$49,999	532	3.054%	3.054%\$	21,785,772 0.2	208%	0.20%
\$50,000 - \$99,999	1,440	8.267	11.321	107,101,874	1.023	1.231
\$100,000 - \$149,999	1,410	8.095	19.416	173,346,541	1.656	2.887
\$150,000 - \$199,999	930	5.339	24.755	161,959,634	1.547	4.435
\$200,000 - \$249,999	822	4.719	29.474	184,637,345	1.764	6.198
\$250,000 - \$299,999	819	4.702	34.175	225,246,372	2.152	8.350
\$300,000 - \$349,999	809	4.644	38.820	262,141,561	2.504	10.855
\$350,000 - \$399,999	771	4.426	43.246	288,941,404	2.760	13.615
\$400,000 - \$449,999	702	4.030	47.276	297,963,257	2.847	16.461
\$450,000 - \$499,999	701	4.024	51.300	333,030,002	3.182	19.643
\$500,000 - \$549,999	659	3.783	55.084	346,697,041	3.312	22.955
\$550,000 - \$599,999	599	3.439	58.522	344,620,912	3.292	26.247
\$600,000 - \$649,999	636	3.651	62.173	397,163,095	3.794	30.042
\$650,000 - \$699,999	553	3.175	65.348	372,930,747	3.563	33.604
\$700,000 - \$749,999	522	2.997	68.345	378,157,534	3.613	37.217
\$750,000 - \$799,999	585	3.358	71.703	453,018,278	4.328	41.545
\$800,000 - \$849,999	520	2.985	74.689	428,800,729	4.096	45.641
\$850,000 - \$899,999	474	2.721	77.410	414,651,882	3.961	49.602
\$900,000 - \$949,999	488	2.802	80.211	450,951,464	4.308	53.910
\$950,000 - \$999,999	394	2.262	82.473	384,432,836	3.673	57.583
\$1,000,000 and greater	3,053 17.527	<u>7</u> 100.000_	4,440,048,475	42.41	<u>7</u> 100.000	
Total	17,419	100.000%	, D	\$10,467,626,755	100.000%	D

(1) Improved single family residential parcels. Excludes condominiums and parcels with multiple family units. Source: California Municipal Statistics, Inc.

Alternative Method of Tax Apportionment - Teeter Plan

The Board of Supervisors of the County has approved the implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the "**Teeter Plan**"), as provided for in Section 4701 *et seq.* of the California Revenue and Taxation Code. Under the Teeter Plan, the County apportions secured property taxes on an accrual basis when due (irrespective of actual collections) to participating political subdivisions, for which the County acts as the tax-levying or tax-collecting agency. In return, the County receives and retains delinquent payments, penalties and interest as collected that would have been due the local agency in the absence of the Teeter Plan. The City has elected <u>not</u> to participate in the Teeter Plan, so the City receives property taxes actually collected, as well as any penalties and interest on delinquent taxes.

The property tax levies and collections for the City for fiscal years 2009-10 through 2018-19 are shown in the following table:

Table 4 CITY OF BERKELEY SECURED TAX CHARGES AND DELINQUENCIES 2009-10 TO 2018-19 (Dollar amounts in thousands)

		Amount Delinquent	% Delinquent
Fiscal Year	Secured Tax Charge ⁽¹⁾	June 30	June 30
2009-10	\$38,834,067.28	\$1,222,174.35	3.15%
2010-11	38,858,160.99	937,557.29	2.41
2011-12	40,085,111.77	814,536.14	2.03
2012-13	40,863,072.01	588,607.19	1.44
2013-14	43,482,172.03	491,490.18	1.13
2014-15	45,452,269.29	477,676.28	1.05
2015-16	48,936,168.63	607,465.93	1.24
2016-17	52,097,423.06	562,295.75	1.08
2017-18	56,317,983.19	488,950.31	0.87
2018-19	59,739,122.88	512,267.28	0.86

(1) 1% General Fund apportionment.

Source: California Municipal Statistics, Inc.

Appeals of Assessed Value

There are two types of appeals of assessed values that could adversely impact property tax revenues within the City.

Appeals may be based on Proposition 8 of November 1978, which requires that for each January 1 lien date, the taxable value of real property must be the least of its base year value, annually adjusted by the inflation factor pursuant to Article XIIIA of the State Constitution, or its full cash value, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a Proposition 8 reduction of their property tax assessment by filing a written application, in form prescribed by the SBE, with the County board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. Proposition 8 reductions may also be unilaterally applied by the County Assessor.

Any reduction in the assessment ultimately granted as a result of such appeal applies to the year for which application is made and during which the written application was filed. These reductions are subject to yearly reappraisals and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIIIA.

A second type of assessment appeal involves a challenge to the base year value of an assessed property. Appeals for reduction in the base year value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of change of

ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

The City cannot predict the changes in assessed values that might result from pending or future appeals by taxpayers. Any reduction in aggregate City assessed valuation due to appeals, as with any reduction in assessed valuation due to other causes, will cause the tax rate levied to repay the Bonds to increase accordingly, so that the fixed debt service on the Bonds (and other outstanding general obligation bonds, if any) may be paid.

Tax Rates

The table below shows historical property tax rates within the City:

Table 5CITY OF BERKELEYTYPICAL TAX RATE PER \$100 ASSESSED VALUATION(TRA 13-000 – 2019-20 Assessed Valuation: \$20,220,876,712)

	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year
	2015-16	2016-17	2017-18	2018-19	2019-20
Countywide Rate	\$1.0000	\$1.0000	\$1.0000	\$1.0000	\$1.0000
Alameda County				.0112	.0108
Berkeley Unified School District Bonds	.1321	.1327	.1218	.1264	.1204
Peralta Community College District	.0337	.0256	.0310	.0269	.0257
Bay Area Rapid Transit	.0026	.0080	.0084	.0070	.0120
East Bay Municipal Utility District	.0067	.0032	.0021		
East Bay Regional Park District	.0034	.0028	.0011	.0057	.0060
City of Berkeley	<u>.0433</u>	<u>.0445</u>	<u>.0492</u>	.0507	.0435
Total	\$1.2218	\$1.2168	\$1.2136	1.2279	1.2184

Source: California Municipal Statistics, Inc.

Major Taxpayers

The following table shows the twenty largest taxpayers in the City as determined by their secured assessed valuations in 2019-20.

Table 6 CITY OF BERKELEY Largest 2019-20 Local Secured Taxpayers

			2019-20	% of
	Property Owner	Primary Land Use	Assessed Valuation	Total (1)
1.	Bayer Healthcare LLC	Industrial	\$ 361,038,220	1.81%
2.	EQR Acton Berkeley LP	Apartments	121,353,681	0.61
3.	Granite Library Gardens LP	Apartments	90,109,014	0.45
4.	Hanumandla R. & Hanumandla J. Reddy, Trustee	s Apartments	82,940,100	0.42
5.	BREIT SH Berkeley LLC	Apartments with Retail	80,372,542	0.40
6.	CVBAF ACQ LLC	Apartments	75,295,445	0.38
7.	RI Berkeley LLC	Apartments	64,048,736	0.32
8.	Parkershattuck Owner LLC	Apartments	60,159,827	0.30
9.	CPF Berkeley Varsity LLC	Apartments	54,036,304	0.27
10.	Berkeley Downtown Hotel Owner LLC	Hotel	53,040,000	0.27
11.	Essex Berkeley 4th Street LP	Condominiums with Retail	52,119,918	0.26
12.	Garr Land & Resource Management Inc.	Industrial	44,427,600	0.22
13.	Dwight Way Residential Property Owner LLC	Apartments	41,509,945	0.21
14.	1950 MLK LLC	Apartments	40,527,414	0.20
15.	John K. Gordon & Janis L. Mitchell, Trustees	Commercial Properties	40,349,321	0.20
16.	Raintree 1122 University LLC	Apartments	40,114,669	0.20
17.	CLPF Hillside Village LP	Apartments	39,933,925	0.20
18.	Stonefire Partners LLC	Apartments	39,074,824	0.20
19.	Jamestown Premier Berkeley Grotto LP	Commercial	38,302,622	0.19
20.	DS Properties 17 LP	Shopping Center	35,901,532	<u>0.18</u>
			\$1,454,655,639	7.30%

(1) 2019-20 Local Secured Assessed Valuation: \$19,926,615,530.

Source: California Municipal Statistics, Inc.

Direct and Overlapping Debt

Set forth below is a direct and overlapping debt report (the "**Debt Report**") prepared by California Municipal Statistics, Inc. The Debt Report is included for general information purposes only. The City has not reviewed the Debt Report for completeness or accuracy and makes no representation in connection therewith.

The Debt Report generally includes long-term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the City in whole or in part. Such long-term obligations generally are not payable from revenues of the City (except as indicated) nor are they necessarily obligations secured by land within the City. In many cases, long-term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency. The contents of the Debt Report are as follows: (1) the first column indicates the public agencies which have outstanding debt as of the date of the Debt Report and whose territory overlaps the City; (2) the second column shows the percentage that the City's assessed valuation represents of the total assessed valuation of each public agency identified in the first column; and the third column is an apportionment of the dollar amount of each public agency's outstanding debt to property in the City, as determined by multiplying the total outstanding debt of each agency by the percentage of the City's assessed valuation represented in the second column.

Table 7 CITY OF BERKELEY STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT

2019-20 Assessed Valuation: \$20,787,912,797

DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT: Alameda County	<u>% Applicable</u>	Debt 1/1/20 \$ 14,601,640
Bay Area Rapid Transit District	2.583	33,133,174
Peralta Community College District	18.686	, ,
Berkeley Unified School District	99.997	, ,
City of Berkeley	100.000	106,610,000
City of Berkeley Community Facilities District No. 1	100.000	1,435,000
East Bay Regional Park District	4.119	6,454,473
City of Berkeley Thousand Oaks Heights AFUU Assessment District	100.000 <u>1</u> ,	005,000
TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT		\$515,764,294
DIRECT AND OVERLAPPING GENERAL FUND DEBT: Alameda County and Coliseum Obligations Alameda-Contra Costa Transit District Certificates of Participation Peralta Community College District Pension Obligation Bonds City of Parkelay Lease Payanus Panda and Cartificates of Participat	7.947 18.686	\$ 56,561,763 926,223 26,234,470
• • •		
TOTAL DIRECT AND OVEREALT ING GENERALT OND DEDT		φ107,007,400
COMBINED TOTAL DEBT		\$623,631,750 ⁽²⁾
Ratios 2019-20 Assessed Valuation:		
Combined Total Debt3.00%		
Peralta Community College District Pension Obligation Bonds City of Berkeley Lease Revenue Bonds and Certificates of Participat TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT COMBINED TOTAL DEBT Ratios 2019-20 Assessed Valuation: Direct Debt (\$106,610,000)	18.686	26,234,470 <u>24,145,000</u> ⁽¹⁾ \$107,867,456

(1) Excludes the Bonds issued for sale hereunder.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS

Principal of and interest on the Bonds are payable from the proceeds of an ad valorem tax levied by the County, as directed by the City, for the payment thereof. See "THE BONDS" and "SECURITY FOR THE BONDS." Articles XIIIA, XIIIB, XIIIC and XIIID of the State Constitution, Propositions 62, 111, and 218 and 1A, and certain other provisions of law discussed below are included in this section to describe the potential effect of these Constitutional and statutory measures on the ability of the County to levy, and the City to spend, tax proceeds for operating and other purposes, and it should not be inferred from the inclusion of such materials that these laws impose any limitation on the ability of the County to levy taxes for payment of the Bonds. The tax levied by the County, as directed by the City, for payment of the Bonds was approved by the City's voters in compliance with Article XIIIA and all applicable laws.

Article XIIIA of the State Constitution

On June 6, 1978, California voters approved Proposition 13, which added Article XIIIA to the State Constitution. Article XIIIA, as amended, limits the amount of any ad valorem tax on real property to one percent of the full cash value thereof, except that additional ad valorem taxes may be levied to pay debt service (i) on indebtedness approved by the voters prior to July 1, 1978, (ii) on bonded indebtedness approved by a two-thirds vote on or after July 1, 1978, for the acquisition or improvement of real property or (iii) bonded indebtedness incurred by a school district, community college district or county office of education for the construction, reconstruction, rehabilitation or replacement of school facilities, including the furnishing and equipping of school facilities or the acquisition of real property for school facilities, approved by 55 percent of the voters voting on the proposition. Article XIIIA defines full cash value to mean "the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This full cash value may be increased at a rate not to exceed two percent per year to account for inflation.

Article XIIIA has subsequently been amended to permit reduction of the "full cash value" base in the event of declining property values caused by damage, destruction or other factors, to provide that there would be no increase in the "full cash value" base in the event of reconstruction of property damaged or destroyed in a disaster, and in other minor or technical ways.

Legislation Implementing Article XIIIA

Legislation has been enacted and amended a number of times since 1978 to implement Article XIIIA. Under current law, local agencies are no longer permitted to levy directly any property tax (except to pay voter-approved indebtedness). The one percent property tax is automatically levied by the County and distributed according to a formula among taxing agencies. The formula apportions the tax roughly in proportion to the relative shares of taxes levied prior to 1989.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the two percent annual adjustment are allocated among the various jurisdictions in the "taxing area" based upon their respective "situs." Any such allocation made to a local agency continues as part of its allocation in future years.

All taxable property is shown at full market value on the tax rolls. Consequently, the tax rate is expressed as \$1 per \$100 of taxable value. All taxable property value included in this Official Statement is shown at 100 percent of market value (unless noted differently) and all tax rates reflect the \$1 per \$100 of taxable value.

Article XIIIB of the State Constitution

In addition to the limits Article XIIIA imposes on property taxes that may be collected by local governments, certain other revenues of the State and most local governments are subject to an annual "appropriations limit" imposed by Article XIIIB which effectively limits the amount of such revenues those entities are permitted to spend. Article XIIIB, 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" excludes 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 XIIIB 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 case of emergency; however, the appropriations limit for the next 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 has its 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. 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 exceeds the aggregate limit, the excess must be returned to the agency's taxpayers through tax rate or fee reductions over the following two years.

The City has never exceeded its appropriations limit.

Articles XIIIC and XIIID of the State Constitution

General. 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 XIIIC and XIIID 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 XIIIA and XIIIC of the State Constitution. The amendments to Article XIIIA 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 XIIIC 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 XIIIC 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.

Property-Related Fees and Charges. Article XIIID 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.

Reduction or Repeal of Taxes, Assessments, Fees and Charges. Article XIIIC 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 Bonds could be adversely affected.

Burden of Proof. Article XIIIC 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 XIIID 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 XIIID.

Judicial Interpretation of Proposition 218. The interpretation and application of Articles XIIIC and XIIID will ultimately be determined by the courts, and it is not possible at this time to predict with certainty the outcome of such determination.

Proposition 62

Proposition 62 was adopted by the voters at the November 4, 1986, general election and (a) requires that any new or higher taxes for general governmental purposes imposed by local governmental entities such as the City be approved by a two-thirds vote of the governmental entity voting in an election on the tax, (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters of the governmental entity be approved by a two-thirds vote of the voters of the governmental entity voting in an election on the tax, (c) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (d) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIIIA, (e) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities, and (f) requires that any tax imposed by a local governmental entity on or after August 1, 1985, be ratified by a majority vote of the voters voting in an election on the tax within two years of the adoption of the initiative or be terminated by November 15, 1988.

California appellate court cases have overturned the provisions of Proposition 62 pertaining to the imposition of taxes for general government purposes. However, the California Supreme Court upheld Proposition 62 in its decision on August 28, 1995, in *Fresno County Transportation Authority v. Guardino.* This decision reaffirmed the constitutionality of Proposition 62. Certain matters regarding Proposition 62 were not addressed in the Supreme Court's decision, such as what remedies exist for taxpayers subject to a tax not in compliance with Proposition 62, and whether the decision applies to charter cities. The City has not experienced any substantive adverse financial impact as a result of the passage of this initiative.

Proposition 1A; Proposition 22

Proposition 1A. Proposition 1A, proposed by the Legislature in connection with the State's Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 22. Proposition 22, entitled "The Local Taxpayer, Public Safety and Transportation Protection Act," was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State's authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Possible Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID and Propositions 62, 111, 218 and 1A were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time other initiative measures could be adopted, further affecting revenues of the City or the City's ability to expend revenues. The nature and impact of these measures cannot be anticipated by the City.

LEGAL MATTERS

Tax Exemption – Refunding Bonds

Federal Tax Status. 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 Refunding Bonds 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 Refunding Bonds 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 Refunding Bonds.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public (excluding bond houses and brokers) at which a Refunding Bond 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 (excluding bond houses and brokers) at which a Bond 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. If **issue premium**" for purposes of federal income taxes and State of California personal income taxes. *De minimis* original issue discount and original issue premium is 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 Bond 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 Refunding Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Refunding Bonds who purchase the Refunding Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Refunding Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such Refunding Bonds is sold to the public.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond'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 Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized bond premium is not deductible for federal income tax purposes. Owners of premium Refunding Bonds, 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 Refunding Bonds.

No Tax Exemption – 2020 Measure O Bonds

Interest on the 2020 Measure O Bonds is <u>not</u> excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax.

California Tax Status. In the further opinion of Bond Counsel, interest on the 2020 Measure O Bonds and the Refunding Bonds is exempt from California personal income taxes.

Forms of Opinion. Copies of the proposed forms of opinion of Bond Counsel are attached hereto as APPENDIX C.

Other Tax Considerations

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds 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 Bonds other than as expressly described above, including any opinion regarding federal tax consequences arising with respect to the ownership, sale or disposition of the Bonds, or the amount, accrual or receipt of interest on the Bonds.

In addition, future legislation, if enacted into law, or clarification of the Tax Code may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Tax Code may also affect the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal tax legislation, as to which Bond Counsel expresses no opinion.

Continuing Disclosure

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City by not later than April 1 after the end of each fiscal year of the City (currently June 30), commencing with the report for the 2019-20 fiscal year (the "**Annual Report**"), and to provide notices of the occurrence of certain enumerated events.

The specific nature of the information to be contained in an Annual Report or the notices of enumerated events is set forth in the form of Continuing Disclosure Certificate attached as APPENDIX D. These covenants will be made in order to assist the Purchaser (as defined below) in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (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 _____ of the City's Comprehensive Annual 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 changes to the credit rating for one series of the City's 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 Bonds.

Neither the County nor any other entity other than the City shall have any obligation or incur any liability whatsoever with respect to the performance of the City's duties regarding continuing disclosure

Absence of Material Litigation

No litigation is pending or threatened concerning the validity of the Bonds, and a certificate to that effect will be furnished to the purchasers at the time of the original delivery of the Bonds. 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 revenues or contesting the City's ability to issue and repay the Bonds.

RATING

Upon issuance of the Bonds, S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("**S&P**"), will assign the Bonds a rating of "____."

The City has furnished to S&P information and material which has not been included in this Official Statement. Generally, rating agencies base their ratings on information and material so furnished and on investigations, studies and assumptions made by the rating agencies. The ratings reflect only the view of such organization and an explanation of the significance of such rating may be obtained from S&P.

There is no assurance that the rating will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agency, if, in the judgment of such rating agency, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

MUNICIPAL ADVISOR

The City has retained NHA Advisors, LLC, San Rafael, California, as its municipal advisor (the "**Municipal Advisor**") in connection with the preparation of this Official Statement and with respect to the issuance of the Bonds. 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 an independent registered 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 Bonds.

UNDERWRITING

Purchase of the 2020 Measure O Bonds. Under the terms of a competitive bid, ______ (the "**Measure O Purchaser**") has agreed to purchase the Bonds at a price of \$______ (which is equal to the aggregate principal amount of the 2020 Measure O Bonds (\$______), plus a net original issue premium of \$______, less a Measure O Purchaser's discount of \$_____). The Measure O Purchaser will purchase all of the 2020 Measure O Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Official Notice of Sale related to the 2020 Measure O Bonds, including the approval of certain legal matters by counsel and certain other conditions.

Purchase of the Refunding Bonds. Under the terms of a competitive bid, ______ (the "**Refunding Purchaser**" and, together with the Measure O Purchaser, the "Purchasers") has agreed to purchase the Refunding Bonds at a price of \$______ (which is equal to the aggregate principal amount of the Refunding Bonds (\$______), plus a net original issue premium of \$______, less a Refunding Purchaser's discount of \$______). The Refunding Purchaser will purchase all of the Refunding Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Official Notice of Sale related to the Refunding Bonds, including the approval of certain legal matters by counsel and certain other conditions.

Offering of the Bonds. The Purchasers intends to offer the Bonds to the public at the offering prices set forth on the inside cover pages of this Official Statement. The Purchasers may offer and sell to certain dealers and others at a price lower than the offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Purchasers, respectively.

EXECUTION

The execution of this Official Statement and its delivery have been approved by the City Council.

CITY OF BERKELEY

By: _____ City Manager

APPENDIX A

FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY

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 123,328, giving it the highest population density of any city in the East Bay. The University of California is a major component of the City's economy, employing more than 235,000 full and part-time workers.

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
2015	119,400	1,613,168	38,952,462
2016	120,012	1,631,088	39,214,803
2017	121,328	1,646,156	39,504,609
2018	122,369	1,656,884	39,740,508
2019	123,328	1,669,301	39,927,315

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.

The City Council members are shown in the below table:

Member	District	Term Expires
Jesse Arreguin	Mayor	11/30/2020
Rashi Kesarwani	1	11/30/2022
Cheryl Davila	2	11/30/2020
Ben Bartlett	3	11/30/2020
Kate Harrison	4	11/30/2022
Sophie Hahn	5	11/30/2020
Susan Wengraf	6	11/30/2020
Rigel Robinson	7	11/30/2022
Lori Droste	8	11/30/2022

CITY FINANCIAL INFORMATION

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 comprehensive annual financial report of the City for fiscal year 2018-19 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 (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)

A00570	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19
ASSETS: Cash and investments in treasury*	\$82,615	82,891	108,058	107,360
Receivables (net of allowance where	Ψ02,010	02,091	100,000	107,300
applicable):				
Accounts	7.072	8.777	6,951	4,980
Interest	534	526	763	778
Taxes	9,421	8,109	8,623	9,953
Subventions/grants			180	450
Due from other funds	2,920	3,752	6,659	6,973
Notes receivable	3,595	4,255	3,755	3,697
Other	353	5	5	320
Prepaid Items		75	142	
Total assets	106,512	108,390	135,136	134,512
LIABILITIES:				
Accounts payable	1,768	4,344	3,610	6,736
Accrued salaries and wages	4,502	5,169	5,473	5,989
Advances from other funds		6,683	6,287	4,059
Deposits held	840	905	974	781
Unearned revenue				
Tax and revenue anticipation notes	24,995	17,000	25,550	14,000
Other liabilities	3,706	2,923	3,755	3,899
Total liabilities	35,811	37,024	45,649	35,463
Deferred Inflows of Resources	5,676	7,707	5,601	5,813
FUND BALANCES				
Reserved for:				
Encumbrances/Assigned to	3,686	3,015	33,373	42,667
Notes receivable/Nonspendable	3,595	4,330	3,898	3,697
Unreserved/Unassigned, report in:				
General fund	57,743	56,313	46,614	46,872
Total fund balances	65,025	63,658	83,885	92,236
Total liabilities and fund balances	\$106,512	\$108,390	\$135,136	135,512

* Cash and investments in treasury includes restricted cash and investments. Source: City of Berkeley, Comprehensive Annual Financial Reports for 2014-15 through 2018-19.

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

	Actual <u>2015-16</u>	Actual <u>2016-17</u>	Actual <u>2017-18</u>	Actual <u>2018-19</u>
REVENUES:				
Taxes	\$133,249	\$137,277	\$161,666	\$173,216
Licenses and Permits	323	556	834	1,405
Subvention and Grants/Intergovernmental	11,208	11,509	1,129	1,868
Service Fees	9,528	9,140	9,862	8,433
Fines and Forfeitures	6,371	6,370	6,933	5,443
Rents	215	160	284	289
Franchises	1,673	2,247	1,990	1,800
Interest	2,784	1,383	2,416	6,915
Other	48	1,750	237	1,722
TOTAL REVENUES	165,400	170,393	185,351	201,090
EXPENDITURES:	00.044	27.074	20 4 4 2	07 440
General Government Public Safety	28,244 89,076	37,871 94,093	30,143 95.503	27,410 103,084
Highways and Streets	1,337	94,093 1,638	95,503 1,900	2,904
Highways and Streets Health and Human Services	7,354	9,676	9,725	13,319
Culture-Recreation	5,848	6,086	5,476	5,943
Community Development	6,057	6,477	7,153	8,264
Economic Development	2,325	2,332	2,576	2,845
Debt Service	372	166	252	270
TOTAL EXPENDITURES	140,613	158,338	152,728	164,040
Excess Revenues Over (Under) Expenditures	24,788	12,055	32,623	37,050
Transfers In(out)/Other	(13,052)	(13,421)	(12,396)	(27,699)
Net Change in Fund Balance	11,735	(1,366)	20,227	9,351
Fund Balance, July 1	53,289	65,025	63,658	83,885
Fund Balance, June 30*	\$65,025	\$63,658	\$83,885	\$93,236

* Totals may not add due to rounding.

Source: City of Berkeley Comprehensive Annual 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 about January to May of each year, the City Council meets in public 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.

General Fund Reserves

On December 13, 2016, the City Council established a General Fund reserve policy (the "**Reserve Policy**") to prepare for the impact of economic cycles and catastrophic events. The Reserve Policy was enacted to ensure that fluctuations in revenue do not impede the City's ability to meet expenditure obligations. When revenues fail to meet the City's operating requirements, or the need for disbursements exceeds receipts, General Fund reserves, upon a majority vote of the City Council, may be used in accordance with the standards set forth in the Policy. The Reserve Policy provides that the General Fund reserve shall be comprised of two elements: a Stability Reserve and a Catastrophic Reserve:

The 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. During fiscal year 2019, \$5,600,000 was contributed to the Stability Reserve, and the balance at June 30, 2019 was \$20,022,922.

A Catastrophic Reserve is maintained to sustain General Fund operations in the event of a natural disaster or other catastrophic event. The Catastrophic Reserve may be used to respond to extreme, one-time events, such as earthquakes, fires, floods, civil unrest, or terrorist attacks. The Catastrophic Reserve may not be accessed to meet operational shortfalls or to fund new programs or projects. During fiscal year 2019, \$4,580,000 was contributed to the Catastrophic Reserve, and the balance at June 30, 2019 was \$16,622,481.

State Budget and its Impact on the City

Fiscal Year 2019-20 State Budget. Information about the fiscal year 2019-20 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 or Underwriter, and the City and Underwriter take 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.

Dissolution of Redevelopment Agencies. State legislation enacted as part of the 2011 Budget Act, and upheld by the California Supreme Court, resulted in the formal dissolution of redevelopment agencies, including the Berkeley Redevelopment Agency (the "Former Redevelopment Agency"), effective as of February 1, 2012. The impact on the City's General Fund of the dissolution of the Former Redevelopment Agency is minimal because the City is in the process of winding down its redevelopment program, and the funding the City received from the Former Redevelopment Agency prior to its dissolution only supported 1.5 full-time employees.

Ad Valorem Property Taxes

Tax Levies and Collections. Property taxes accounted for approximately 54% of the City's general fund revenues for fiscal year 2018-19. 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 taxdefaulted. 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.

See Table 1 of the forepart of this Official Statement for a table summarizing the historical and current assessed valuation of the taxable property in the City.

The City does <u>not</u> participate in the Teeter Plan. See Table 4 of the forepart of this Official Statement for a history of secured tax charges and delinquencies within the City during the past 10 years.

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.

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.

Total taxable sales in the City during fiscal year 2019 were reported to be \$1.814 billion, a slight increase over the total taxable sales of \$1.8 billion reported during fiscal year 2018.

CITY OF BERKELEY TAXABLE TRANSACTIONS (Figures in Thousands)

	2014	2015	2016	2017	2018
Retail and Food Services:					
Apparel Stores	\$59,369	\$57,048	\$55,449	\$52,645	\$52,991
Gen. Merchandise Stores	12,292	15,165	15,610	17,178	20,782
Food Stores	123,572	133,916	145,462	150,894	149,662
Eating and Drinking Places	323,125	347,926	364,417	371,299	374,792
Home Furnishings and Appliances	74,682	74,514	71,927	72,358	69,746
Bldg. Materials, Farm Implements	90,104	98,958	100,899	107,333	109,052
Auto Dealers, Auto Supplies	126,527	125,716	115,808	117,513	119,883
Gas/Service Stations	94,630	83,285	75,720	84,041	93,694
Other Retail Stores	248,626	255,133	251,324	243,881	262,209
Total Retail and Food Services	1,152,938	1,191,661	1,196,618	1,217,142	1,252,813
All Other Outlets	<u>394,169</u>	<u>413,156</u>	<u>431,614</u>	<u>364,736</u>	<u>361,292</u>
TOTAL ALL OUTLETS	<u>\$1,547,107</u>	<u>\$1,604,817</u>	<u>\$1,628,232</u>	<u>\$1,581,878</u>	<u>1,614,105</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.

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. During fiscal year 2018-19, business license taxes increased by 7.4% from fiscal year 2017-18, primarily due to a business license taxes on recreational cannabis, which was a new tax in fiscal year 2018-19.

Property Transfer Tax. The City's transfer tax rate is 1.5% for properties with a consideration up to \$1.5 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 the 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 is treated as one-time revenue to be transferred to the Capital Improvement Fund for capital infrastructure needs; that amount was increased to \$12.5 million in fiscal year 2017-18.

For fiscal year 2018-19, property transfer tax revenue increased by 5.3% from fiscal year 2017-18, due primarily to an increase in the average property sales prices.

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.

For fiscal year 2018, VLF revenue totaled \$11,822,917, which is \$828,465 or 7.54% more than the \$10,994,452 received in fiscal year 2017. Consistent with the 8.87% increase in assessed values for fiscal year 2018. The amount of \$11,822,917 received in fiscal year 2018 was \$1,502,515 more than the adopted budget amount of \$10,320,402.

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; it is paid by the hotel guest. 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 Note 12.A. of APPENDIX B to this Official Statement.

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**"). The required employer contribution rates for fiscal year 2017-18 were 27.90%, 39.90% and 56.60% of annual covered payroll for Miscellaneous Plan, Safety Fire Plan and Safety Police Plan employees, respectively; for fiscal year 2018-19, the rates were 30.50%, 44.00%, and 60.80%, respectively; for fiscal year 2019-20, the rates are 23.054%, 49.474% and 63.479%, respectively. 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 Note 12.B. of APPENDIX B to this Official Statement for detailed information about the actuarial assumptions underlying the contributions.

The City's fiscal year 2015-16 through 2017-18 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	Contributions Employer	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
PERS – Misce	ellaneous Plan						
6/30/2016	\$902,228,876	\$641,339,412	\$20,032,929	\$260,889,464	71.08%	\$85,480,937	305.20%
6/30/2017	983,333,433	696,104,044	21,214,582	287,229,389	70.79	88,645,362	324.02
6/30/2018	1,016,396,249	735,828,894	20,393,310	280,567,355	72.40	94,371,740	297.30
PERS – Publi	c Safety Fire Plan						
6/30/2016	\$246,704,540	\$176,593,232	\$5,967,197	\$70,111,308	71.58%	\$16,185,414	433.18%
6/30/2017	266,986,159	188,899,801	6,328,886	78,086,358	70.75	16,684,346	468.02
6/30/2018	272,593,862	196,923,511	6,983,081	75,670,351	72.24	17,219,137	439.45
PERS – Publi	c Safety Police Pla	an					
6/30/2016	\$372,226,444	\$226,135,306	\$10,777,599	\$146,091,138	60.75%	\$22,289,585	655.42%
6/30/2017	404,585,170	244,812,138	11,858,699	159,773,032	60.51	22,933,002	696.69
6/30/2018	416,996,462	257,917,647	13,095,114	159,078,815	61.85	22,701,037	700.76

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 was 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%@50, Fire 3%@55, and Miscellaneous 2.7%@55 and 3%@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.

Fiscal Year	Discount Rate
2018-19	7.375%
2019-20	7.250
2020-21	7.000

For public agencies like the City, the new discount rate took 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% to 3% of normal cost as a percent of payroll for most miscellaneous retirement plans, and a 2% to 5% increase for most safety plans. Additionally, many PERS employers will see a 30% to 40% 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.

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 five years are shown in the table below, with dollar amounts shown in millions:

	2019-20 Projected	2020-21 Projected	2021-2022 Projected	2022-2023 Projected
Miscellaneous ⁽¹⁾	\$33.67	\$36.55	\$41.83	\$43.30
Police	16.27	17.6	18.58	19.16
Fire	8.78	9.46	9.55	9.90
Total	\$58.72	\$63.61	\$69.96	\$72.36

(1) Miscellaneous includes the 8% employee share paid by the City on behalf of the employees and negotiated employee contributions to the City's rate.

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 2018-19 contribution to the BPRIBP and the funded status of the BPRIBP is set forth below.

Fiscal Year	Total Pension	Plan Fiduciary	Contributions	Plan Net Pension	Plan Fiduciary Net Position as a Percentage of the Total Pension	Covered	Plan Net Pension Liability as a Percentage of Covered Employee
Ended	Liability	Net Position	Employer	Liability	Liability	Payroll	Payroll
6/30/2019	\$73,643,792	\$5,556,948	\$1,854,528	\$68,086,844	7.55%	N/A	N/A

For a more detailed discussion of the BPRIBP, see Note 13.C. of 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, 2019 was \$327,753.

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, 2019, the City's contribution to SMPF was \$525,486.

The funded status of the SMPF as of June 30, 2019, 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
6/30/2019		\$1,862,714	\$1,862,714	%	N/A	N/A

For a more detailed discussion of the SMPF, see Note 12.B. of APPENDIX B of this Official Statement.

Strategy to Reduce Unfunded Liabilities

At its June 26, 2018 meeting, the City Council adopted a Resolution appointing the City Manager as plan administrator, and authorizing the City Manager to take the necessary steps to negotiate and execute the documents to establish a Section 115 Trust Fund (the "**Trust Fund**") to use as a pension rate stabilizing fund.

The City Council authorized the establishment of the Trust Fund in order to prefund pension obligations. During fiscal year 2019, \$4 million was contributed to the Trust Fund from General Fund operations, and an additional \$1.1 million was contributed to the Trust Fund from the discount on prepayment of the required PERS unfunded liability payment for fiscal year 2019. As of June 30, 2019, the balance in the Trust Fund was \$9,191,801.

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 45 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 13 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 July 1, 2018, there were 128 active employees, 43 retirees deferred and 59 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability (
6/30/2016	853,748	98	12,362
6/30/2017	1,991,925	43	17,530,174
6/30/2018	2,163,028	34	17,251,382
6/30/2019	2,326,493	36	19,633,312

The funded status of the FRFH as of June 30, 2019, 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
7/1/2018	\$11,296,053	\$30,929,365	\$19,633,312	36.5%	\$15,667,851	125.31%

The actuarial value of the assets in the FRFH as of June 30, 2019 was equal to their market value.

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, 2018, there were 1,094 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 2018-19 and the three preceding years were as follows:

	Percentage of	
Annual	Annual OPEB	Net OPEB
OPEB Cost	Contributed	Obligation
3,492,010	52.0	9,050,063
4,610,828	72.7	37,900,578
4,729,448	42.3	34,215,614
5,051,655	43.3	37,219,746
	OPEB Cost 3,492,010 4,610,828 4,729,448	Annual Annual OPEB OPEB Cost Contributed 3,492,010 52.0 4,610,828 72.7 4,729,448 42.3

The funded status of the RHPAP as of June 30, 2019, the most recent actuarial report, is set forth below:

			Unfunded			UAAL
	Actuarial		Actuarial			as
Actuarial	Accrued	Actuarial	Accrued			Percentage
Valuation	Liability	Value of	Liability-	Funded	Covered	of covered
Date	(AAL)	Assets	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$65,605,879	\$28,386,133	\$37,219,746	43.3%	\$91,491,386 ⁽¹⁾	40.68%

The actuarial value of the assets in the RHPAP as of June 30, 2019 was equal to their market value.

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 Plan a "Retiree" must meet all of the following criteria:

- I. A person who is vested in the plan, and
- II. Has reached the age of 50, and
- III. Has retired from the City at age 50 or thereafter, and
- IV. 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.

Years of Service	City Percentage
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 retirees 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 July 1, 2018, there were 152 active employees, and 22 retirees, and 6 entitled to but not yet receiving benefit retirees.

For the Retiree Health Premium Assistance Coverage 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability
6/30/2016	5,779,291	8.0	16,449,480
6/30/2017	5,105,429	11.0	45,508,847
6/30/2018	4,929,429	6.0	41,652,588
6/30/2019	5,155,293	6.0	46,252,565

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 in 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 data 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 June 30, 2019, the most recent actuarial valuation date, the plan was 4.2% funded. The actuarial accrued liability for benefit was \$48.7 million, and the actuarial value of assets was \$2.5 million, resulting in an unfunded accrued liability of \$46.2 million. The covered payroll (annual payroll of active employees covered by the plan) was approximately \$18.8 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, 2019, the most recent actuarial valuation date is as follows:

			Unfunded			UAAL
		Actuarial	Actuarial			as
Actuarial	Actuarial	Accrued	Accrued			Percentage
Valuation	Value of	Liability (AAL)-	Liability-	Funded	Covered	of covered
Date	Assets	Unit Credit	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$2,450,155	\$48,702,720	\$46,252,565	5.0%	\$18,760,962	246.5%

Defined Contribution Plans

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

Labor Relations

As of January 28, 2020, the City employed approximately 1,457 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 108 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

	E analana a a	Contract Expiration
Labor Organization	Employees	Date
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	128	06/27/2020
Berkeley Police Association	163	06/30/2020
I. B. E. W. Local 1245	10	06/27/2020
Service Employees International Local 1021	438	06/27/2020
Maintenance and Clerical Chapters		
Service Employees International Local 1021	446	06/27/2020
Community Services and Part-Time Recreation		
Leaders Association Chapters		
Public Employees Local 1	164	06/27/2020
Unrepresented Employees	108	06/27/2020

(1) Terms of contract remain in effect after expiration until new contract becomes effective. *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; earthquakes, environmental risk because of its location and 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.

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 2019-20 TRANs have an outstanding principal amount of \$34,780,000 and mature on July 22, 2020.

General Obligation Bonds. The City issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds are payable solely from ad valorem taxes levied by the City and collected by the County.

Debt service for the City's outstanding general obligation bonds, following issuance of the Bonds, is shown under "DEBT SERVICE SCHEDULES – Combined General Obligation Bonds Debt Service Schedule."

Outstanding 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. In June 2010, The Bank of New York Mellon Trust Company, N.A., executed and delivered certificates of participation on behalf of the City in the aggregate principal amount of \$5,750,000. The City's underlying rental obligation is a general obligation payable from any available funds of the City. The certificates bear interest at rates between 4.00%-5.75%, and the final maturity date is August 1, 2040. As of January 1, 2020, the principal balance outstanding was \$4,890,000.

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Lease Revenue Bonds. In October 2012, the Berkeley Joint Powers Financing Authority (the "**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, 2031. As of January 1, 2020, the principal balance outstanding was \$19,255,000.

Employment

The unemployment rate in the Oakland-Hayward-Berkeley MD was 2.6% in October 2019, up from a revised 2.5% in September 2019, and below the year-ago estimate of 3.0%. This compares with an unadjusted unemployment rate of 3.7% for the State and 3.3% for the nation during the same period. The unemployment rate was 2.6% in the County, and 2.7% in Alameda County.

The table below list employment by industry group for Alameda and Alameda Counties for the years 2014 to 2018.

OAKLAND- HAYWARD-BERKELEY MD (Alameda and Alameda Counties) Annual Averages Civilian Labor Force, Employment and Unemployment, Employment by Industry (March 2018 Benchmark)

_	2014	2015	2016	2017	2018
Civilian Labor Force (1)	1,347,700	1,364,800	1,386,100	1,399,500	1,412,800
Employment	1,267,500	1,298,500	1,325,600	1,347,200	1,369,500
Unemployment	80,300	66,300	60,500	52,300	43,200
Unemployment Rate	6.0%	4.9%	4.4%	3.7%	3.1%
Wage and Salary Employment: (2)					
Agriculture	1,300	1,200	1,300	1,400	1,300
Mining and Logging	400	300	300	200	200
Construction	58,600	62,800	67,900	71,200	75,400
Manufacturing	83,300	88,100	91,000	95,500	100,400
Wholesale Trade	45,600	47,000	48,100	48,700	48,000
Retail Trade	109,200	111,800	113,400	114,400	114,700
Transportation, Warehousing, Utilities	35,100	37,500	39,200	40,500	42,100
Information	23,000	25,000	26,400	26,800	27,400
Finance and Insurance	36,000	37,400	38,800	38,700	37,200
Real Estate and Rental and Leasing	16,800	16,800	16,900	17,400	17,700
Professional and Business Services	175,100	177,500	181,200	184,700	189,500
Educational and Health Services	173,100	178,600	185,900	191,500	194,900
Leisure and Hospitality	102,100	106,600	111,700	114,900	116,600
Other Services	37,500	38,100	39,100	40,200	40,700
Federal Government	13,800	13,800	13,900	13,800	13,600
State Government	39,300	39,900	39,700	39,300	39,500
Local Government	113,400	115,600	119,800	121,500	122,100
Total, All Industries (3)	1,063,300	1,098,000	1,134,600	1,160,600	1,181,200

(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 2019

Employer University of California Berkeley Lawrence Berkeley National Laboratory Sutter East Bay Media Foundation City of Berkeley Bayer Corporation Berkeley Unified School District Siemens Corporation Kaiser Permanente Medical Group	Number of Employees 13,394 3,312 2,242 1,568 1,267 1,225 855 831	% of Total <u>Employment</u> 19.69% 4.87 3.30 2.31 1.86 1.80 1.26 1.22
Siemens Corporation Kaiser Permanente Medical Group Berkeley Bowl Produce Whole Foods Market California Inc.		-

Source: City of Berkeley, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

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COUNTY OF ALAMEDA Major Employers (Listed Alphabetically) December 2019

Employer Name	Location	Industry
Alameda County Law Enforcement	Oakland	Government Offices-County
Alameda County Sheriff's Ofc	Oakland	Government Offices-County
Alta Bates Summit Med Ctr Alta	Berkeley	Hospitals
Alta Bates Summit Med Ctr Lab	Oakland	Laboratories-Medical
BART	Oakland	Transportation
Bayer Health Care	Berkeley	Laboratories-Pharmaceutical (mfrs)
California State Univ East Bay	Hayward	Schools-Universities & Colleges Academic
East Bay Mud	Oakland	Water & Sewage Companies-Utility
Ebmud	Oakland	Utilities
Grifols Diagnostic Solutions	Emeryville	Pharmaceutical Research Laboratories
Highland Hospital	Oakland	Hospitals
Kaiser Permanente Oakland Med	Oakland	Hospitals
Lawerence Berkeley Lab	Berkeley	Laboratories-Research & Development
Lawrence Livermore Natl Lab	Livermore	University-College Dept/Facility/Office
Lifescan Inc	Fremont	Physicians & Surgeons Equip & Supls-Mfrs
Sanfrancisco Bayarea Rapid	Oakland	Transit Lines
Tesla	Fremont	Automobile Dealers-Electric Cars
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	Hospitals
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, 2019 1st 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 2015 through 2019.

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2015	Berkeley	\$3,909,548	\$52,592
	Alameda County	47,744,408	60,575
	California	901,189,699	50,072
	United States	7,357,153,421	45,448
2016	Berkeley	\$4,264,478	\$56,194
	Alameda County	52,448,661	64,030
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2017	Berkeley	\$4,618,113	\$59,958
	Alameda County	56,091,066	67,631
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043
2018	Berkeley	\$5,070,468	\$66,382
	Alameda County	61,987,949	73,633
	California	1,113,648,181	59,646
	United States	8,640,770,229	50,735
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

CITY OF BERKELEY AND COUNTY OF ALAMEDA Effective Buying Income As of January 1, 2015 through 2019

Source: The Nielsen Company (US), Inc for years 2015 through 2018; Claritas, LLC for 2019.

Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2014 through 2018.

CITY OF BERKELEY Total Building Permit Valuations (Valuations in Thousands)

	2014	2015	2016	2017	2018
Permit Valuation					
New Single-family	\$5,453.0	\$2,995.0	\$5,469.1	\$14,776.2	13,808.7
New Multi-family	23,757.6	53,876.1	9,835.5	47,723.2	24,506.9
Res. Alterations/Additions	<u>53,835.6</u>	<u>52,549.5</u>	<u>45,295.9</u>	<u>45,215.9</u>	<u>80,130.0</u>
Total Residential	82,946.2	109,420.6	60,600.5	107,715.3	118,445.6
New Commercial	31,152.1	20,246.9	32,109.7	24,576.3	18,732.1
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	12,156.5	7,770.1	3,315.8	3,636.5	3,236.6
Com. Alterations/Additions	46,571.3	44,962.7	47,485.2	26,597.7	52,522.6
Total Nonresidential	89,779.9	72,979.7	82,910.7	54,810.5	74,491.3
New Dwelling Units					
Single Family	15	6	20	43	63
Multiple Family	<u>249</u>	<u>459</u>	<u>69</u>	<u>402</u>	<u>129</u>
TOTAL	264	465	89	445	192

Source: Construction Industry Research Board, Building

APPENDIX B

COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2019

APPENDIX C

FORMS OF OPINION OF BOND COUNSEL

APPENDIX D

FORM OF CONTINUING DISCLOSURE CERTIFICATE

\$

CITY OF BERKELEY 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable) \$_____*
CITY OF BERKELEY
2020 Refunding General Obligation Bonds, Series A
(2008 Election Measure FF: Neighborhood
Branch Library Improvements Project)

CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City") in connection with the issuance of the bonds captioned above (the "Bonds"). The Bonds are being issued under the Constitution and laws of the State of California, including but not limited to, Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, under a resolution adopted by the City Council of the City on February 25, 2020 (the "Bond Resolution") and pursuant to and consistent with the Charter of the City.

The City hereby covenants and agrees as follows:

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

Section 2. <u>Definitions</u>. In addition to the definitions set forth above and in the Bond Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms have the following meanings:

"Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

"Annual Report Date" means the date not later than April 1 after the end of each fiscal year of the City (currently June 30th).

"*Dissemination Agent*" means the City or any other Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation. As of the date of this Disclosure Certificate, NHA Advisors, LLC is acting as Dissemination Agent.

"Listed Events" means any of the events listed in Section 5(a).

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"*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.

"Official Statement" means the final official statement executed by the City in connection with the issuance of the Bonds.

"Participating Underwriter" means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Rule" means 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. Provision of Annual Reports.

The City shall, or shall cause the Dissemination Agent to, not later than the Annual (a) Report Date, commencing April 1, 2021 with the report for the 2019-20 fiscal year, provide to the MSRB in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(b). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) to the MSRB, in an electronic format, as prescribed by the MSRB.

- (c) With respect to each Annual Report, the Dissemination Agent shall:
- (i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and
- (ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. <u>Content of Annual Reports</u>. The City's Annual Report shall contain or incorporate by reference the following:

(a) The City's audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Unless otherwise provided in the audited financial statements filed on or before the Annual Report Date, financial information and operating data with respect to the City for the preceding fiscal year, substantially similar to that provided in the Official Statement:

- (i) Assessed value of taxable property within the jurisdiction of the City;
- Summary of property tax rates for all taxing entities within the City expressed as a percentage of assessed valuation in the form of Table 5 of the Official Statement;
- (iii) Top ten property tax assessees for current fiscal year, taxable value and percentage of total assessed value in substantially the form of Table 6 of the Official Statement;
- (iv) If and to the extent such information is available from the County, property tax collection delinquencies for the City; and
- (v) Amount of all general obligation debt of the City outstanding, and total scheduled debt service on such general obligation debt.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. <u>Reporting of Significant Events</u>.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults.
- (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 Bonds 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), (a)(14), and (a)(15) of this Section 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices, determinations or other events affecting the tax status of the Bonds. 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 it determines the event's occurrence is material for purposes of U.S. federal securities law. Whenever the City obtains knowledge of the occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(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 5(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 6. <u>Identifying Information for Filings with the MSRB</u>. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. <u>Termination of Reporting Obligation</u>. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. <u>Dissemination Agent</u>. 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 Dissemination Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

Section 9. <u>Amendment; Waiver</u>. 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 Sections 3(a), 4 or 5(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 Bonds, 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 Bonds, 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 Bonds in the manner provided in the Bond Resolution for amendments to the Bond Resolution with the consent of holders, or (ii) does not, in the opinion

of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be filed in the same manner as for a Listed Event under Section 5(b).

Section 10. <u>Additional Information</u>. 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 Annual Report or 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 Annual Report or notice 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 Annual Report or notice of occurrence of a Listed Event.

Section 11. <u>Default</u>. If the City fails to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds 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 Bond 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 12. Duties, Immunities and Liabilities of Dissemination Agent.

(a) 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 they 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 Dissemination Agent shall have no duty or obligation to review any information provided to it by the City hereunder, and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond holders or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. Notices. Any notice or communications to be among any of the parties to this Disclosure Certificate may be given as follows:

To the City:	City of Berkeley
	2180 Milvia Street
	Berkeley, California 94704
	(510) 981-7000

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

Section 14. Beneficiaries. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. <u>Counterparts</u>. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: , 2020

CITY OF BERKELEY

Ву: _____

Director of Finance

APPENDIX E

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 Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds 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 City nor the Paying Agent take any responsibility for the information contained in this Section.

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 Bonds, (b) Bonds representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, 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 (in this Appendix, the "Bonds"). The Bonds 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 Bond will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity 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 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. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("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 Bonds 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 Bonds representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

4. To facilitate subsequent transfers, all Bonds 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 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds 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 Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds 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 the notices be provided directly to them.

6. Redemption notices will be sent to DTC. If less than all of the Bonds 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 the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to City 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 the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and interest payments on the Bonds 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 City or Paying 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 nor its nominee, Paying Agent, or City, 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 City or Paying 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 DTC, and Indirect Participants.

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

10. The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond 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 City believes to be reliable, but City takes no responsibility for the accuracy thereof.

Jones Hall draft 01-23-20

\$_____ CITY OF BERKELEY 2020 GENERAL OBLIGATION BONDS (2018 ELECTION MEASURE O: AFFORDABLE HOUSING) (FEDERALLY TAXABLE)

COSTS OF ISSUANCE CUSTODIAN AGREEMENT

This Costs of Issuance Custodian Agreement, dated _____, 2020 (this "Agreement") has been entered into by and between the City of Berkeley, a charter city and municipal corporation, as issuer (the "City"), and The Bank of New York Mellon Trust Company, N.A. (the "Custodian"). The City has appointed the Custodian to act as costs of issuance custodian for the above-captioned bonds (the "Bonds"). This Agreement sets out the terms and conditions of said appointment.

The City and the Custodian agree as follows:

- 1. The Custodian has established a fund for payment of costs of issuance of the Bonds in the name of the City (the "Custodial Account").
- The Custodian has received on this date the total amount of \$______ from _____, underwriter of the Bonds, representing proceeds of the Bonds to be deposited in the Custodial Account. The Custodian will hold funds uninvested until _____, 2020.
- 3. The Custodian will pay costs of issuance of the Bonds, upon written instructions from the City, as provided in Exhibit A, and the Custodian will receive a written invoice directed by the City from time to time via written instructions from funds on deposit in the Account. This Agreement constitutes the initial written instructions to the Custodian.
- 4. Any balances remaining in the Custodial Account on _____, 2020 shall be transferred to the City for deposit in the debt service fund established for the Bonds, pursuant to Resolution No. _____ of the City Council of the City.
- 5. The City shall pay the Custodian a one-time fee of \$_____ for the duties of Custodian performed hereunder, payable from the deposit set forth in Section 2.
- 6. This Agreement will terminate on _____, 2020, or earlier upon the exhausting of all funds in the account. Prior to termination, the Custodian will notify the City and NHA Advisors, LLC, as municipal advisor, of its intent to close the Custodial Account.
- 7. This Agreement shall be governed under the laws of the state of California.

The liability of the Custodian is limited to the duties as specifically set forth in this Agreement, which shall be deemed purely ministerial in character, and no implied covenants or obligations shall be read into this Agreement against the Custodian. The Custodian will not be liable for any action taken or omitted to be taken by it under this Agreement or in connection herewith except to the extent caused by the Custodian's negligence or willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Custodian has been advised of the likelihood of such loss or damage and regardless of the form of action.

None of the provisions of this Agreement shall require the Custodian to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Custodian may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel. The Custodian may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

The Custodian shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the City shall provide to the Custodian an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Custodian Instructions using Electronic Means and the Custodian in its discretion elects to act upon such Instructions, the Custodian's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Custodian cannot determine the identity of the actual sender of such Instructions and that the Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Custodian have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Custodian and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Custodian and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

"Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Custodian, or another method or system specified by the Custodian as available for use in connection with its services hereunder.

To the extent permitted by law, the City hereby agrees to indemnify and hold harmless the Custodian and its officers, directors, agents, and employees from and against any and all costs, claims, liabilities, losses, or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of this Agreement, except costs, claims, liabilities, losses, or damages resulting from the gross negligence or willful misconduct of the Custodian including the reasonable costs and expenses (including the reasonable fees and expenses of its counsel) of defending itself against any such claim or liability in connection with its exercise or performance of any of its duties hereunder and of enforcing this indemnification provision. The indemnifications set forth herein shall survive the termination of this Agreement and/or the resignation or removal of the Custodian.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers thereunto duly authorized.

CITY OF BERKELEY

Ву: _____

Mayor

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Custodian

Ву: _____

Authorized Officer

EXHIBIT A

COSTS OF ISSUANCE DISBURSEMENTS

\$____

CITY OF BERKELEY 2020 GENERAL OBLIGATION BONDS (2018 ELECTION MEASURE O: AFFORDABLE HOUSING) (FEDERALLY TAXABLE)

Payee	Purpose	Amount

^{*} Not to exceed amount; payment to be made only upon submission of an invoice.

Jones Hall draft 01-23-20

OFFICIAL NOTICE OF SALE

\$____

CITY OF BERKELEY (Alameda County, California) 2020 GENERAL OBLIGATION BONDS (2018 ELECTION MEASURE O: AFFORDABLE HOUSING) (FEDERALLY TAXABLE)

NOTICE IS HEREBY GIVEN by the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of \$______* principal amount of bonds of the City designated the "City of Berkeley 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable)" (the "Bonds"). Bids will be received in electronic form through BiDCOMPTM/Parity® ("Parity") on:

TUESDAY, March 10, 2020

starting at 8:00 a.m. and ending at 8:30 a.m. Pacific Time.

The City reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<u>http://www.tm3.com</u>).

The Bonds will be issued under the provisions of a resolution adopted by the City Council of the City on February 25, 2020 (the "Bond Resolution"), and under the laws of the State of California. The Bonds are more particularly described in the proposed form of the Bond Resolution on file with the City (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

DESCRIPTION OF THE BONDS

PURPOSE: The proceeds of the Bonds will be applied by the City for the purpose of financing the acquisition and improvement of affordable housing, in accordance with the ballot proposition under which the issuance of the Bonds has been authorized.

ISSUE; BOOK-ENTRY FORM: The Bonds will be issued in the aggregate principal amount of \$______* in the form of fully registered Bonds without coupons. The Bonds will be dated as of as of their original delivery, and will be issued in minimum denominations of \$5,000. The Bonds will be issued in a book entry only system with no physical distribution of the Bonds made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Bonds which will be immobilized in its custody. The Bonds will be registered in the name of Cede & Co., as

^{*} Preliminary, subject to change.

nominee for DTC, on behalf of the participants in the DTC system and the subsequent beneficial owners of the Bonds.

MATURITIES: The Bonds will mature, or be subject to mandatory sinking fund redemption, on September 1 in each of the years, and in the amounts, as set forth in the following table. The final principal amount of the Bonds, and the final amount of each maturity of the Bonds, is subject to increase or reduction as described below under the heading "Adjustment of Principal Maturities". Each bidder must specify in its bid whether, for any particular year, the Bonds will mature or, alternately, be subject to mandatory sinking fund redemption in such year.

Maturity Date	Principal	Maturity Date	Principal
(September 1)	<u>Amount</u>	(September 1)	<u>Amount</u>

PAYMENT PROVISIONS: Interest on the Bonds will be payable on March 1, 2021, and on succeeding March 1 and September 1 (the "Interest Payment Dates"), to the registered owners by check or draft of The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent") or, in the case of the owner of Bonds in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer. Principal of and premium (if any) on any Bond will be paid upon presentation and surrender thereof at the office of the Paying Agent. Principal, interest and premium (if any) on the Bonds are payable in lawful money of the United States of America.

OPTIONAL REDEMPTION: The Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

SINKING FUND REDEMPTION: Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. If the bid of the winning bidder specifies that any maturity of Bonds will be term Bonds, such term Bonds will be subject to mandatory sinking

fund redemption on September 1 in each year so designated in the bid, in the respective amounts for such years as set forth above under the heading "MATURITIES", at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

SECURITY: The Bonds are general obligations of the City, and the City will direct the appropriate officials of Alameda County to levy ad valorem taxes for the payment of the Bonds and the interest thereon without limitation as to rate or amount for the payment of the Bonds and the interest thereon.

TAX-EXEMPT STATUS: The City does not intend for the interest on the Bonds to be excluded from gross income for federal income tax purposes. In the opinion of Bond Counsel, such interest is exempt from California personal income taxes.

LEGAL OPINION: The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, approving the validity of the Bonds, will be furnished to the purchaser of the Bonds without cost. A copy of the legal opinion, certified by the official in whose office the original is filed, will be printed on each Bond at the expense of the City.

FURTHER INFORMATION: A copy of the Preliminary Official Statement describing the Bonds, and any other information concerning the proposed financing, will be furnished upon request to the municipal advisor to the City as follows ("Municipal Advisor"): NHA Advisors, LLC, 4040 Civic Center Drive, Suite 200, San Rafael, California 94903, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or <u>Rob@NHAadvisors.com</u>, website: <u>www.NHAadvisors.com</u>. The Official Notice of Sale and Preliminary Official Statement are available from the Municipal Advisor.

TERMS OF SALE

RIGHT TO CANCEL, POSTPONE OR RESCHEDULE SALE: The City reserves the right to cancel, postpone or reschedule the sale of the Bonds upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (www.tm3.com). If the sale is postponed, bids will be received at the above place at such date and hour as set forth in the notice. Failure of any bidder to receive such notice or any other form of notice of canceled, postponed or rescheduled sale will not affect the legality or validity of any sale.

SUBMISSION OF BIDS: Bids will be received electronically as described below, provided that such electronic bid must be received no later than the date and time set for receipt of bids. All bidders, by submitting a bid, acknowledge that they have an established industry reputation for underwriting new issuances of municipal bonds.

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.

FORM OF BID; MINIMUM PURCHASE PRICE: Each proposal must be for not less than all of the Bonds hereby offered for sale. The purchase price to be paid for the Bonds may not be less than the par value thereof **and must include original issue premium of at least \$600,000**. The underwriter's discount shall not exceed 1.50%.

DESIGNATION OF INTEREST RATES: Each bidder must specify the rate or rates of interest which the Bonds will bear. The maximum rate bid on any Bonds may not exceed 8.00% per annum. A bidder will be permitted to bid different rates of interest for each maturity of Bonds, but:

- each interest rate specified must be in a multiple of 1/20% or 1/8%;
- no Bond may bear more than one rate of interest;
- interest on each Bond will be computed from the date of original delivery to its stated maturity at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; and
- all Bonds maturing at any one time will bear the same rate of interest.

DETERMINATION OF BEST BID: The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Bonds from the date of original delivery (which is assumed to be March 24, 2020) to their respective maturity dates or mandatory sinking fund redemption dates, produces an amount equal to the purchase price specified in such bid. For purposes of computing the true interest cost represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Bonds plus any premium specified in such proposal, and the true interest cost shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds. **Each proposal should include at least \$600,000 of original issue premium.** **ADJUSTMENT OF PRINCIPAL MATURITIES:** In order to achieve the financial goals of the City, the City may need to adjust the schedule of principal maturities for the Bonds based on the bids that are received. Therefore, the City reserves the right to increase or decrease the principal amount of any maturity of the Bonds (or, in the case of the term Bonds, the principal amount thereof which is subject to mandatory sinking fund redemption on September 1 in any year). The aggregate principal amount of the Bonds may be reduced as a result of such adjustment, in an amount not exceeding 10% of the amount of Bonds hereby offered for sale. Notice of such increase or decrease shall be given to the winning bidder as soon as practicable following the notification of award, as described below. The City will attempt to maintain total underwriter compensation when adjusting maturities. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

RIGHT OF REJECTION: The City reserves the right, in its discretion, to reject any and all bids and to the extent not prohibited by law to waive any irregularity or informality in any bid.

PROMPT AWARD: An authorized representative of the City will accept the best responsible bid for the purchase of the Bonds by notice to the winning bidder. If two or more bids setting forth identical interest rates and premium, if any, are received, such officer may exercise discretion and judgment in making the award and may award the Bonds on a pro rata basis in such denominations as he or she determines. Such authorized representative of the City may also reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds will be awarded or all bids will be rejected not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the winning bidder; provided, that the award may be made after the expiration of the specified time if the bidder does not notify the City in writing of the withdrawal of its proposal.

PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY: It is expected that the Bonds will be delivered to DTC for the account of the winning bidder on March 24, 2020. The winning bidder has the right, at the winning bidder's option, to cancel the contract of purchase if the Bonds are not tendered for delivery within 60 days from the date of the sale thereof, and in such event the winning bidder shall be entitled to the return of the deposit accompanying its bid.

NO GOOD FAITH DEPOSIT: The City does not require a good faith deposit to be submitted in connection with bids for the Bonds.

PAYMENT OF PURCHASE PRICE: The winning bidder will be required to pay the purchase price of the Bonds in funds that are immediately available to the City. Such payment shall be made on the date of original delivery of the Bonds to DTC.

STATEMENT OF TRUE INTEREST COST: Each bidder is requested, but not required, to state in its proposal the percentage true interest cost represented by its proposal, determined as described above, which will be considered as informative only and not binding on either the bidder or the City.

NO LITIGATION: There is no litigation pending concerning the validity of the Bonds, the corporate existence of the City or the entitlement of the officers thereof to their

respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the delivery of the Bonds.

CUSIP NUMBERS: It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Bonds in accordance with the terms hereof. All expenses in relation to the printing of CUSIP numbers on the Bonds will be paid for by the City, except that the CUSIP Service Bureau charge for the assignment of said numbers will be the responsibility of and shall be paid for by the purchaser.

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES: All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Bonds are the sole responsibility of the purchaser of the Bonds.

OFFICIAL STATEMENT: The City has approved a preliminary Official Statement relating to the Bonds. 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 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 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 are been approved by the City (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Bonds unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. Upon request, the City will furnish to the winning bidder, at no charge, not in excess of 20 printed copies of the Official Statement for use in connection with any resale of the Bonds.

CERTIFICATE REGARDING OFFICIAL STATEMENT: A responsible officer of the City will certify to the original purchaser of the Bonds, as a condition of closing, that based on such officer's participation in the preparation of the Official Statement, nothing has come to his or her attention to lead him or her to believe that the Official Statement (except for certain financial statements, statistical data and other information) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

CONTINUING DISCLOSURE. In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City will execute and deliver a Continuing Disclosure Certificate, under which the City undertakes to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the preliminary Official Statement and will also be set forth in the final Official Statement. Such Continuing Disclosure Certificate will be a document required to be delivered at closing by the City, and the failure by the City to deliver such document in form and substance acceptable to Bond Counsel and the winning bidder will relieve the winning bidder of its obligation to purchase the Bonds.

ACKNOWLEDGEMENT OF NO FIDUCIARY DUTY. The City acknowledges and agrees that (i) the purchase and sale of the Bonds is an arm's-length commercial transaction between the City and the underwriter, (ii) in connection with such transaction, the underwriter 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 underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the City with respect to the offering of the Bonds or the process leading thereto (whether or not the underwriter, or any affiliate of an underwriter, has advised or is currently advising the City on other matters) or any other obligation to the City except as described in this Notice of Sale, (iv) the underwriter 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 Bonds.

GIVEN by order of the City Council of the City of Berkeley by a resolution adopted on February 25, 2020.

Jones Hall draft 01-09-20

Note: Publication governed by Gov. Code §53692:

53692. In addition to any other requirement imposed by law, at least 15 days prior to the sale of any public securities that exceed one million dollars (\$1,000,000) but do not exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale, an issuer shall publish notice of the intention to sell the securities in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the securities. The notice shall include the date, time, and place of the intended sale and the amount of the securities to be sold.

NOTICE OF INTENTION TO SELL BONDS

APPROXIMATELY \$_____

CITY OF BERKELEY (Alameda County, California) 2020 GENERAL OBLIGATION BONDS (2018 ELECTION MEASURE O: AFFORDABLE HOUSING) (FEDERALLY TAXABLE)

NOTICE IS HEREBY GIVEN by the City Council of the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of approximately \$_____ principal amount of bonds of the City designated the "City of Berkeley 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable)" (the "Bonds"). Bids will be received in electronic form on BiDCOMPTM/Parity® ("Parity") on:

Tuesday, March 10, 2020

starting at 8:00 a.m. and ending at 8:30 a.m. Pacific Time. The City reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<u>www.tm3.com</u>). Further information, including copies of the preliminary Official Statement and Official Notice of Sale may be obtained from the City's municipal advisor, NHA Advisors, LLC, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or <u>Rob@NHAadvisors.com</u>.

GIVEN by order of the City Council of the City of Berkeley by a resolution adopted on February 25, 2020.



Office of the City Manager

ACTION CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Refinancing of 2009 and 2010 General Obligation Bonds (Measure FF)

RECOMMENDATION

Adopt two Resolutions authorizing the issuance and sale of general obligation bonds to refund outstanding 2009 and 2010 bonds and authorizing actions related thereto.

FISCAL IMPACTS OF RECOMMENDATION

The refinancing of the two outstanding general obligation bonds will save bond interest which will reduce the calculated tax rate over the term of the outstanding bonds. The refinancing of the 2009 bonds is anticipated to save approximately \$3,000,000 over the next 20 years with a present value of \$2,400,000. The refinancing of the 2010 bonds is anticipated to save approximately \$2,600,000 over the next 20 years with a present value of \$2,100,000.

BACKGROUND

In November 2008, the residents of Berkeley voted for and approved Ballot Measure FF, authorizing \$26,000,000 of general obligation bonds to improve neighborhood libraries. All projects have been funded through the two series of bonds and the refinancing savings will reduce the necessary tax levy (not available for additional improvements).

RATIONALE FOR RECOMMENDATION

The City can take advantage of lower interest rates in order to generate significant savings to the City of Berkeley's property owners by lowering the annual debt service on its outstanding obligations.

PRELIMINARY OFFICIAL STATEMENT

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 proposed bonds. 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 bonds. If the City Council concludes that the

Preliminary Official Statement includes all facts that would be material to an investor in the bonds, 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 bonds, 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 bonds are payable solely from ad valorem property taxes levied by the City and collected by Alameda County, as described in the section of the Preliminary Official Statement captioned "SECURITY FOR THE BONDS."

However, investors in the bonds consider information about the City's financial position to be material, and the City has included that information in Appendix A: "FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY." The City's Comprehensive Annual Financial Report for fiscal year 2018-19 is included in Appendix B to the Preliminary Official Statement.

ENVIRONMENTAL SUSTAINABILITY

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

ALTERNATIVE ACTIONS CONSIDERED None

<u>CONTACT PERSON</u> Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

1: Resolution (Series A) – Resolution of the City Council of the City of Berkeley Authorizing the Issuance and Sale of General Obligation Bonds to Refund Outstanding 2009 Bonds and Authorizing Actions Related Thereto 2: Draft Preliminary Official Statement (2009 Bond Refunding)

- 3: Draft Custodian Agreement (2009 Bond Refunding)
- 4: Draft Official Notice of Sale (2009 Bond Refunding)
- 5: Draft Notice of Intention (2009 Bond Refunding)
- 6: Irrevocable Refunding Instructions (2009 Bond Refunding)

7: Resolution (Series B) – Resolution of the City Council of the City of Berkeley Authorizing the Issuance and Sale of General Obligation Bonds to Refund Outstanding 2010 Bonds and Authorizing Actions Related Thereto

8: Draft Preliminary Official Statement (2010 Bond Refunding)

9: Draft Custodian Agreement (2010 Bond Refunding)

- 10: Draft Official Notice of Sale (2010 Bond Refunding)
- 11: Draft Notice of Intention (2010 Bond Refunding)
- 12. Escrow Deposit and Trust Agreement (2010 Bond Refunding)

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$9,000,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS TO REFUND OUTSTANDING 2009 BONDS, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, at an election held on November 4, 2008, more than two-thirds of the voters of the City Berkeley (the "City") approved a proposition, designated as Measure FF, authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$26,000,000, for the purpose of providing funds to finance renovations, construction, seismic and access improvements, and expansion of program areas at four neighborhood branch libraries in the City; and

WHEREAS, pursuant to such authorization and Resolution No. 64,387-N.S., adopted by the City Council on March 24, 2009 (the "2009 Bond Resolution"), the City previously issued bonds designated the "City of Berkeley General Obligation Bonds, Series 2009 (Measure FF – Neighborhood Branch Library Improvements Project)" in the aggregate principal amount of \$10,000,000 (the "2009 Bonds"); and

WHEREAS, under the 2009 Bond Resolution, the City is authorized to redeem the 2009 Bonds in whole or in part on any date on or after September 1, 2018, at a redemption price equal the outstanding principal amount of the 2009 Bonds, plus interest accrued to the redemption date, without premium; and

WHEREAS, in order to realize debt service savings for the benefit of the taxpayers of the City, the City Council wishes at this time to authorize the issuance and sale of its "City of Berkeley 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "Bonds") for the purpose of refinancing the 2009 Bonds; and

WHEREAS, the City Council is authorized to provide for the issuance and sale of the Bonds under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 of said Code (the "Bond Law"); and

WHEREAS, further, as required by Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix B is the information relating to the Bonds that has been obtained by the City Council and is hereby disclosed and made public; and

WHEREAS, pursuant to Resolution No. 67,871-N.S. (March 24, 2017), this City Council previously approved a Debt Management and Disclosure Policy which complies with Government Code Section 8855, and the delivery of the Bonds will be in compliance with said policy.

NOW THEREFORE, BE IT RESOLVED by the Council as follows:

ARTICLE I

DEFINITIONS; AUTHORITY

SECTION 1.01. *Definitions*. The terms defined in this Section 1.01, as used and capitalized herein, shall, for all purposes of this Resolution, have the meanings given them below, unless the context clearly requires some other meaning.

"<u>Bond Counsel</u>" means (a) Jones Hall, A Professional Law Corporation, and (b) any other attorney or firm of attorneys nationally recognized for expertise in rendering opinions as to the legality and tax exempt status of securities issued by public entities.

"<u>Bond Law</u>" means Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53550 of said Code, as amended from time to time.

"<u>Bond Purchase Agreement</u>" means the Bond Purchase Agreement for the Bonds, which is approved under Section 3.02.

"<u>Bond Sale Documentation</u>" means (a) if the Bonds are sold by competitive bidding in accordance with Section 3.01(a), the Official Notice of Sale and the winning bid of the Original Purchaser, or (b) if the Bonds are sold by negotiation in accordance with Section 3.01(b), the Bond Purchase Agreement between the City and the Original Purchaser.

"<u>Bonds</u>" means the City of Berkeley 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project) authorized to be issued under this Resolution.

"<u>City</u>" means the City of Berkeley, a charter city and municipal corporation organized under the Constitution and laws of the State of California, and any successor thereto.

"<u>City Representative</u>" means the Mayor, the City Manager, the Finance Director and any other officer of the City authorized by resolution of the City Council of the City to act on behalf of the City with respect to this Resolution and the Bonds.

"<u>Closing Date</u>" means the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the Original Purchaser.

"<u>Costs of Issuance</u>" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, issuance, sale and delivery of

the Bonds and the refunding of the 2009 Bonds, including but not limited to the costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Paying Agent and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 2009 Bonds.

"<u>County</u>" means the County of Alameda, a political subdivision of the State of California, duly organized and existing under the Constitution and laws of the State of California.

"<u>Debt Service Fund</u>" means the account established and held by the City under Section 4.03.

"<u>Depository</u>" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.09.

"<u>Depository System Participant</u>" means any participant in the Depository's book-entry system.

"<u>DTC</u>" means The Depository Trust Company, New York, New York, and its successors and assigns.

"<u>Federal Securities</u>" means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

"Interest Payment Date" means September 1, 2020, and the first day of each succeeding March and September, or such other dates determined by a City Representative in connection with the pricing of the Bonds.

"<u>Official Notice of Sale</u>" means the Official Notice of Sale for the Bonds, which is approved under Section 3.01.

"<u>Original Purchaser</u>" means the original purchaser of the Bonds at the public or negotiated sale thereof.

"<u>Outstanding</u>," when used as of any particular time with reference to Bonds, means all Bonds except: (a) Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.02; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Resolution.

"<u>Owner</u>", whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"<u>Paying Agent</u>" means the Paying Agent appointed by the City and acting as paying agent, registrar and authenticating agent for the Bonds, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01.

"<u>Principal Office</u>" means the office or offices of the Paying Agent for the payment of the Bonds and the administration of its duties hereunder, as such office or offices shall be identified in a written notice filed with the City by the Paying Agent.

"Project Fund" means the fund established and held by the City under Section 4.02.

"<u>Record Date</u>" means the 15th day of the month preceding an Interest Payment Date, whether or not such day is a business day.

"<u>Registration Books</u>" means the records maintained by the Paying Agent for the registration of ownership and registration of transfer of the Bonds under Section 2.08.

"<u>Resolution</u>" means this Resolution, as originally adopted by the City Council on February 25, 2020, and including all amendments hereto and supplements hereof which are duly adopted by the City Council from time to time in accordance herewith.

"<u>Securities Depositories</u>" means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate.

"<u>Supplemental Resolution</u>" means any resolution supplemental to or amendatory of this Resolution, adopted by the City in accordance with Article VIII.

"<u>Tax Code</u>" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

"<u>Written Request of the City</u>" means an instrument in writing signed by a City Representative or by any other officer of the City duly authorized to act on behalf of the City under a written certificate of a City Representative.

"2009 Bond Resolution" has the meaning given that term in the recitals.

"2009 Bonds" has the meaning given that term in the recitals.

"2009 Paying Agent" means The Bank of New York Mellon Trust Company, N.A., as paying agent for the 2009 Bonds under the 2009 Bond Resolution.

SECTION 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Resolution; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.03. Authority for this Resolution; Findings. This Resolution is entered into under the provisions of the Bond Law. It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of the Bonds do exist, have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of the Bonds, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California.

ARTICLE II

THE BONDS

SECTION 2.01. Authorization. The City Council hereby authorizes and finds that it is required in the prudent management of the fiscal affairs of the City to provide for the issuance of the Bonds under and subject to the terms of the Bond Law and this Resolution, for the purpose of raising money to refund the 2009 Bonds and to pay the Costs of Issuance incurred in connection therewith. This Resolution constitutes a continuing agreement between the City and the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal of and interest and premium, if any, on all the Bonds which may be Outstanding hereunder, subject to the covenants, agreements, provisions and conditions herein contained.

As provided in Section 53552 of the Bond Law, the Bonds shall not be issued unless the total net interest cost to maturity on the Bonds plus the principal amount of the Bonds is less than the total net interest cost to maturity on the 2009 Bonds to be refunded plus the principal amount of the 2009 Bonds to be refunded. Before issuing the Bonds, the City shall receive confirmation from its municipal advisor that the requirements of Section 53552 of the Bond Law have been satisfied.

Unless otherwise permitted by applicable law, the final maturity of the Bonds shall be not later than the final maturity of the 2009 Bonds that are refunded.

The Bonds are designated the "City of Berkeley 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)."

SECTION 2.02. Terms of Bonds.

(a) <u>Principal Amount of Bonds</u>. The Bonds are authorized to be issued in the aggregate principal amount of not to exceed \$9,000,000.

(b) <u>Form; Numbering</u>. The Bonds will be issued in fully registered form, without coupons, in authorized denominations of \$5,000 each or any integral multiple thereof. The Bonds will be lettered and numbered as the Paying Agent prescribes.

(c) <u>Date of Bonds</u>. The Bonds will be dated as of the Closing Date.

(d) <u>CUSIP Identification Numbers</u>. "CUSIP" identification numbers will be imprinted on the Bonds, but such numbers do not constitute a part of the contract evidenced by the Bonds and no error or omission with respect thereto will constitute cause for refusal of the Original Purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City to use such CUSIP numbers in any notice to Owners of the Bonds will not constitute an event of default or any violation of the City's contract with such Owners and will not impair the effectiveness of any such notice.

(e) <u>Determination of Maturities and Interest Rates</u>. The Bonds shall mature (or, alternatively, be subject to mandatory sinking fund redemption as hereinafter provided) on September 1 in each year commencing September 1, 2020 and continuing to and including September 1, 2039. The exact principal amount of the Bonds maturing on September 1 in each year shall be determined upon the sale of the Bonds, in accordance with the Bond Sale Documentation.

Each Bond will bear interest at the respective rates to be determined upon the sale of the Bonds in accordance with Article III. Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- a Bond is authenticated prior to an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- a Bond is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date, or

• at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(f) <u>Manner of Payment</u>. Interest on the Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request. Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the Principal Office of the Paying Agent.

SECTION 2.03. Redemption.

(a) <u>Optional Redemption</u>. The Bonds shall be subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on the dates and upon payment of a redemption price (equal to the principal amount of Bonds to be redeemed together with a redemption premium, if any) as determined upon the sale of the Bonds in accordance with the Bond Sale Documentation.

(b) <u>Mandatory Sinking Fund Redemption</u>. If and to the extent specified in the Bond Sale Documentation, any maturity of the Bonds will be designated as "Term Bonds" which are subject to mandatory sinking fund redemption on September 1 in each of the years and in the respective principal amounts set forth in such bid, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, in each case without premium, together with interest accrued thereon to the redemption date. If some but not all of the Term Bonds have been redeemed under the preceding subsection (a) of this Section, the aggregate principal amount of Term Bonds to be redeemed in each year under this subsection (b) shall be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

(c) <u>Selection of Bonds for Redemption</u>. Whenever less than all of the Outstanding Bonds of any one maturity are designated for redemption, the Paying Agent shall select the Outstanding Bonds of such maturity to be redeemed by lot in any manner deemed fair by the Paying Agent. For purposes of such selection, each Bond shall be deemed to consist of individual Bonds of \$5,000 denominations which may be separately redeemed.

(d) <u>Redemption Procedure</u>. The Paying Agent shall cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more

than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books. Such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of Bonds. The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption of the Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent shall have no liability to the Owners or any other party related to or arising from such rescission.

Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and shall require that such Bonds be then surrendered at the Principal Office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Upon surrender of Bonds redeemed in part only, the City shall execute and the Paying Agent shall authenticate and deliver to the Owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under this Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice. The Paying Agent shall cancel all Bonds redeemed under this Section 2.03, and shall submit to the City a certificate of cancellation.

SECTION 2.04. *Form of Bonds*. The form of the Bonds, including the form of the Paying Agent's Certificate of Authentication and the form of Assignment to appear thereon, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Resolution, are set forth in Appendix A attached hereto.

SECTION 2.05. *Execution of Bonds*. The Bonds shall be executed on behalf of the City by the facsimile signatures of its Mayor and City Clerk who are in office on the date of adoption of this Resolution or at any time thereafter, and the seal of the City shall be

impressed, imprinted or reproduced by facsimile thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Original Purchaser, such signature will nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Original Purchaser. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond are the proper officers of the City although at the nominal date of such Bond any such person does not serve as such officer of the City.

Only those Bonds bearing a Certificate of Authentication in the form set forth in Appendix A attached hereto, executed and dated by the Paying Agent, will be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such Certificate of Authentication of the Paying Agent constitutes conclusive evidence that the Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Resolution.

SECTION 2.06. *Transfer of Bonds*. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office at the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

Whenever any Bond or Bonds is surrendered for transfer, the City shall execute and the Paying Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

SECTION 2.07. *Exchange of Bonds*. Bonds may be exchanged at the Principal Office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

SECTION 2.08. *Registration Books*. The Paying Agent shall keep or cause to be kept sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein before provided.

SECTION 2.09. *Book-Entry System.* Except as provided below, DTC will be the Owner of all of the Bonds, and the Bonds will be registered in the name of Cede & Co. as nominee for DTC. The Bonds shall be initially executed and delivered in the form of a single fully registered Bond for each maturity date of the Bonds in the full aggregate principal amount of the Bonds maturing on such date. The Paying Agent and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for all purposes of this Resolution, and neither the Paying Agent nor the City shall be affected by any notice to the contrary. The Paying Agent and the City shall not

have any responsibility or obligation to any Depository System Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or a Depository System Participant, or any other person which is 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 Depository System Participant or the payment by DTC or any Depository System Participant or the payment by DTC or any Depository System Participant of any amount in respect of the principal or interest with respect to the Bonds. The City shall cause to be paid all principal and interest with respect to the Bonds only to DTC, 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 Bonds to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Bond. 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 Bonds and delivers a written certificate to DTC and the City to that effect, DTC shall notify the Depository System Participants of the availability through DTC of Bonds. In such event, the City shall issue, transfer and exchange Bonds as requested by DTC and any other owners in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Bonds 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 Bonds 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 Bonds evidencing the Bonds to any Depository System Participant having Bonds credited to its DTC account or (b) arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

Notwithstanding any other provision of this Resolution to the contrary, so long as any Bond 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 Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided as in the representation letter delivered on the date of issuance of the Bonds.

SECTION 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond becomes mutilated the City, at the expense of the Owner of said Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. The Paying Agent shall cancel every mutilated Bond so surrendered to it. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence is satisfactory to the City and the City receives satisfactory indemnity, the City, at the expense of the Owner, shall execute, and the Paying Agent shall thereupon

authenticate and deliver, a new Bond of like maturity and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen.

The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the City and the Paying Agent. Any Bond issued under the provisions of this Section 2.10 in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and such Bond will be equally and proportionately entitled to the benefits of this Resolution with all other Bonds issued under this Resolution.

Notwithstanding any other provision of this Section 2.10, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Paying Agent may make payment of such Bond in accordance with its terms.

ARTICLE III

SALE OF BONDS

SECTION 3.01. Competitive Sale of Bonds

(a) <u>Approval of Official Notice of Sale; Competitive Sale Procedures</u>. The Bonds shall be offered for sale by competitive bid in accordance with the provisions of the Official Notice of Sale in substantially the form on file with the City Clerk together with such additions thereto and changes therein as may be approved by a City Representative. The City Council hereby authorizes and directs a City Representative to accept the best responsible bid for the Bonds, to be determined in accordance with the related Official Notice of Sale. A City Representative, on behalf of the City, may exercise his or her own discretion and judgment in awarding the sale of the Bonds, and may, in his or her discretion, reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds shall be awarded, or all bids shall be rejected, not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the successful bidder.

(b) <u>Publication of Notice of Intention</u>. The City Council hereby approves and authorizes the publication by Bond Counsel of a notice of the City's intention to sell the Bonds, in form and substance acceptable to Bond Counsel, in accordance with applicable law.

(c) <u>Furnishing of Documents</u>. The municipal advisor to the City, NHA Advisors, LLC is hereby authorized and directed by the City to cause to be furnished to prospective bidders a reasonable number of copies of said Official Notice of Sale and a reasonable number of copies of the Preliminary Official Statement relating to the Bonds. SECTION 3.02. Negotiated Sale of Bonds. The Bonds are authorized to be sold by negotiated sale if either (a) no bids are received when the Bonds are offered for public sale under Section 3.01, or (b) bids are received but such bids are not satisfactory as to price or responsibility of the bidders as determined by a City Representative, as a result of which all bids are rejected. In such event, the Bonds are authorized to be sold by negotiation with an underwriter or investment bank which is designated by a City Representative upon consultation with NHA Advisors, LLC as municipal adviser to the City. The Bonds shall be sold to such underwriter or investment bank under the Bond Purchase Agreement in a form deemed advisable by a City Representative, whose execution shall be conclusive evidence of the City Council's approval of such Bond Purchase Agreement. A City Representative is hereby authorized to accept a bid from such underwriter or investment bank to purchase the Bonds, and to execute the Bond Purchase Agreement on behalf of the City; provided that the rate of interest on the Bonds shall not exceed 6.00% and the underwriter's discount shall not exceed 1.50% of the principal amount of the Bonds. If it is determined to sell the Bonds by negotiation, a City Representative shall disclose the identity of the underwriter at the public meeting first occurring after the bond underwriter has been selected, along with the estimated costs associated with the bond issuance and the circumstances that led to the negotiated sale.

SECTION 3.03. Official Statement. The Board hereby approves, and hereby deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule"), the Preliminary Official Statement describing the Bonds in substantially the form on file with the City Clerk. A City Representative is hereby authorized to execute an appropriate certificate stating the City Council's determination that the Preliminary Official Statement has been deemed final within the meaning of such Rule. Distribution of the Preliminary Official Statement in connection with the sale of the Bonds is hereby approved. Each City Representative is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by a City Representative shall be conclusive evidence of the approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official Statement. The final Official Statement shall be executed in the name and on behalf of the City by a City Representative.

SECTION 3.04. *Costs of Issuance Custodian Agreement*. The City shall pay the costs of issuing the Bonds from original issue premium received from the Original Purchaser of the Bonds. The City Council hereby authorizes a City Representative to execute on behalf of the City a Costs of Issuance Custodian Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, amounts provided for payment of the costs of issuing the Bonds shall be deposited thereunder and the payment of costs shall be requisitioned by a City Representative in accordance with said agreement.

SECTION 3.05. *Paying Agency Agreement*. The City Council hereby authorizes a City Representative to execute on behalf of the City a Paying Agency Agreement with The

Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, The Bank of New York Mellon Trust Company, N.A. will act as Paying Agent as described in this Resolution.

Section 3.06. *Professional Services*. The City Council hereby approves and confirms the engagement of NHA Advisors, LLC to act as the City's municipal advisor in connection with the issuance and sale of the Bonds, and the engagement of Jones Hall, A Professional Law Corporation, to act as the City's bond counsel and disclosure counsel in connection with the issuance of the Bonds.

ARTICLE IV

FUNDS AND ACCOUNTS

SECTION 4.01. Application of Proceeds of Sale of Bonds. On the Closing Date, the proceeds of sale of the Bonds shall be paid by the Original Purchaser to the City, and shall be applied on the Closing Date as follows: (a) the Original Purchaser shall transfer an amount required to pay the estimated Costs of Issuance to The Bank of New York Mellon Trust Company, N.A., to be held and administered in accordance with the agreement which is approved under Section 3.04 and (b) the Original Purchaser shall transfer the remainder of such proceeds to the 2009 Paying Agent to be held, invested and applied to refund and discharge the outstanding 2009 Bonds in accordance with the 2009 Bond Resolution.

SECTION 4.02. *Refunding of 2009 Bonds; Approval of Irrevocable Refunding Instructions.* The 2009 Bonds shall be refunded in accordance with irrevocable refunding instructions given to the 2009 Paying Agent by the City. The City Council hereby approves the Irrevocable Refunding Instructions in substantially the form on file with the City Clerk, together with any changes therein or modifications thereof which are approved by a City Representative, and the execution thereof by a City Representative will be conclusive evidence of the approval of any such changes or modifications. A City Representative is directed to authenticate and execute the final form of the Irrevocable Refunding Instructions on behalf of the City, and to deliver the executed Irrevocable Refunding Instructions on the Closing Date. The sufficiency of the amounts deposited with the 2009 Paying Agent to redeem the 2009 Bonds shall be certified by a certified public accountant in the State of California to the extent required by law.

SECTION 4.03. *Debt Service Fund.* The City Council hereby establishes a special fund to be held by the City separate and apart from all other funds of the City, to be known as the Debt Service Fund. All taxes levied by the County, as directed by the City herein, for the payment of the principal of and interest and premium (if any) on the Bonds in accordance with Section 5.03 shall be deposited in the Debt Service Fund by the City promptly upon the receipt thereof from the County. The Debt Service Fund is hereby pledged for the payment of the principal of and interest and premium (if any) on the Bonds when and as the same become due. The City shall transfer amounts in the Debt

Service Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent as required to pay the principal of and interest and premium (if any) on the Bonds. Alternatively, the City may direct the County to transfer such taxes, in whole or in part, directly to the Paying Agent for the purpose of making payments of principal of and interest and premium (if any) on the Bonds.

If, after payment in full of the Bonds, any amounts remain on deposit in the Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner which is consistent with the requirements of applicable state and federal tax law.

SECTION 4.04. *Investments*. The City shall invest all moneys held in any of the funds or accounts established with it hereunder in accordance with the investment policies of the City, as such policies shall exist at the time of investment, and in accordance with Section 53601 of the California Government Code.

ARTICLE V

OTHER COVENANTS OF THE CITY; SECURITY FOR THE BONDS

SECTION 5.01. *Punctual Payment*. The City shall punctually pay, or cause to be paid, the principal of and interest on the Bonds, in strict conformity with the terms of the Bonds and of this Resolution, and shall faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and of the Bonds. Nothing herein contained prevents the City from making advances of its own moneys howsoever derived to any of the uses or purposes permitted by law.

SECTION 5.02. *Extension of Time for Payment*. In order to prevent any accumulation of claims for interest after maturity, the City will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and will not, directly or indirectly, approve any such arrangement by purchasing or funding said claims for interest or in any other manner.

SECTION 5.03. Security for the Bonds. The Bonds are general obligations of the City and the City has the power, is obligated and hereby covenants to levy ad valorem taxes upon all property within the City subject to taxation by the City, without limitation of rate or amount, for the payment of the Bonds and the interest thereon, in accordance with the Bond Law and Section 43632 of the of the Government Code of the State of California. Amounts in the General Fund of the City are not pledged to the payment of the Bonds. However, nothing herein limits the ability of the City to provide for payment of the principal of and interest and premium (if any) on the Bonds from any source of legally available funds of the City. Any amounts so advanced by the City from legally available funds may be reimbursed from ad valorem property taxes subsequently collected under this Section 5.03.

SECTION 5.04. Books and Accounts; Financial Statement. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City in which complete and correct entries are made of all transactions relating to the Bonds. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Paying Agent and the Owners of not less than 10% in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

SECTION 5.05. *Protection of Security and Rights of Bond Owners*. The City will preserve and protect the security of the Bonds and the rights of the Bond Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any of the Bonds by the City, the City may not contest the authorization, issuance, sale or repayment of the Bonds.

SECTION 5.06. *Tax Covenants Relating to the Bonds*. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date. To that end, and without limiting the generality of the foregoing covenant, the City hereby covenants with the Owners of the Bonds as follows:

- (a) <u>Private Activity Bond Limitation</u>. The proceeds of the Bonds may not be so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.
- (b) <u>Federal Guarantee Prohibition</u>. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.
- (c) <u>No Arbitrage</u>. The City may not take, or permit or suffer to be taken by the Paying Agent or otherwise, any action with respect to the Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Tax Code.
- (d) <u>Rebate of Excess Investment Earnings</u>. The City shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The City shall pay or cause to be paid when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from any source of legally

available funds of the City. The City shall keep or cause to be kept, and retain or cause to be retained for a period of 6 years following the retirement of the Bonds, records of the determinations made under this subsection (d).

(e) <u>Maintenance of Tax-Exemption</u>. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

SECTION 5.07. *Continuing Disclosure*. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, which a City Representative is hereby authorized and directed to execute and deliver on the Closing Date. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate will not be considered a default by the City hereunder or under the Bonds; however, any Participating Original Purchaser (as such term is defined in the Continuing Disclosure Certificate) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

SECTION 5.08. *Further Assurances*. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Resolution.

ARTICLE VI

THE PAYING AGENT

SECTION 6.01. Appointment of Paying Agent. The Bank of New York Mellon Trust Company, N.A. is hereby appointed to act as Paying Agent for the Bonds. The Paying Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Resolution, and even during the continuance of an event of default with respect to the Bonds, no implied covenants or obligations shall be read into this Resolution against the Paying Agent. The Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing and delivering to the City a certificate to that effect.

The City may remove the Paying Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank or trust company doing business and having an office in the State of California, having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, under law

or under the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Paying Agent may at any time resign by giving written notice to the City and the Bond Owners of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Paying Agent by an instrument in writing. Any resignation or removal of the Paying Agent and appointment of a successor Paying Agent becomes effective upon acceptance of appointment by the successor Paying Agent.

SECTION 6.02. *Paying Agent May Hold Bonds*. The Paying Agent may become the Owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Paying Agent.

SECTION 6.03. *Liability of Paying Agent*. The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Paying Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Resolution or of the Bonds, nor shall incur any responsibility in respect thereof, other than as set forth in this Resolution. The Paying Agent is not liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

In the absence of bad faith, the Paying Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Paying Agent and conforming to the requirements of this Resolution.

The Paying Agent has no liability for any error of judgment made in good faith by a responsible officer of its corporate trust department in the absence of the negligence of the Paying Agent.

No provision of this Resolution requires the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Paying Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent is not responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder. SECTION 6.04. *Notice to Paying Agent.* The Paying Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Paying Agent may consult with counsel, who may be of counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Resolution the Paying Agent deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Paying Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate will be full warrant to the Paying Agent for any action taken or suffered under the provisions of this Resolution upon the faith thereof, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

SECTION 6.05. *Compensation; Indemnification.* The City will pay to the Paying Agent from time to time reasonable compensation for all services rendered under this Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Resolution. The City further agrees to indemnify the Paying Agent against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or bad faith.

ARTICLE VII

REMEDIES OF BOND OWNERS

SECTION 7.01. *Remedies of Bond Owners*. Upon the happening and continuation of any default by the City hereunder or under the Bonds, any Bond Owner has the right, for the equal benefit and protection of all Bond Owners similarly situated:

- (a) by mandamus, suit, action or proceeding, to compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Resolution and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it;
- (b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bond Owners' rights; or

(c) by suit, action or proceeding in any court of competent jurisdiction, to require the City and its members and employees to account as if it and they were the trustees of an express trust.

SECTION 7.02. *Remedies Not Exclusive*. No remedy herein conferred upon the Owners of Bonds is exclusive of any other remedy. Each remedy is cumulative and shall be in addition to every other remedy given hereunder or thereafter conferred on the Bond Owners.

ARTICLE VIII

AMENDMENT OF THIS RESOLUTION

SECTION 8.01. Amendments Effective Without Consent of the Owners. For any one or more of the following purposes and at any time or from time to time, the City Council may by Supplemental Resolution amend this Resolution in whole or in part, without the consent of any of the Bond Owners:

- (a) to add to the covenants and agreements of the City in this Resolution, other covenants and agreements to be observed by the City which are not contrary to or inconsistent with this Resolution as theretofore in effect;
- (b) to confirm, as further assurance, any pledge under, and to subject to any lien or pledge created or to be created by, this Resolution, of any moneys, securities or funds, or to establish any additional funds or accounts to be held under this Resolution;
- (c) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Resolution, which in any event does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the City; or
- (d) to make such additions, deletions or modifications as may be necessary to assure compliance with the applicable provisions of the Tax Code relating to the rebate of excess investment earnings to the United States or otherwise as may be necessary to assure that the interest on the Bonds remains excludable from gross income of the Owners thereof for federal income tax purposes, in the opinion of Bond Counsel filed with the City.

SECTION 8.02. Amendments Effective With Consent to the Owners. Any modification or amendment of this Resolution and of the rights and obligations of the City and of the Owners of the Bonds, in any particular, may be made by a Supplemental Resolution, with the written consent of the Owners of a majority in aggregate principal amount of the Bonds Outstanding at the time such consent is given. Without the consent of the Owners of all affected Bonds, no such modification or amendment may (a) change the maturity of the principal of any Bonds or any interest payable thereon, (b) reduce the principal amount of the Bonds or the rate of interest thereon, (c) reduce the percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, (d) change any of the provisions in Section 7.01 relating to a default by the City hereunder or under the Bonds, (e) reduce the amount of moneys pledged for the repayment of the Bonds. Without the consent of the Paying Agent, no such modification or amendment may change or modify any of the rights or obligations of the Paying Agent.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Benefits of Resolution Limited to Parties. Nothing in this Resolution, expressed or implied, is intended to give to any person other than the City, the Paying Agent and the Owners of the Bonds, any right, remedy, claim under or by reason of this Resolution. Any covenants, stipulations, promises or agreements in this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners of the Bonds.

SECTION 9.02. Defeasance.

(a) <u>Discharge of Resolution</u>. Bonds may be paid by the City, in whole or in part, in any of the following ways provided that the City also pays or causes to be paid any other sums payable hereunder by the City:

- (i) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (ii) by irrevocably depositing, in trust, at or before maturity, money or securities in the necessary amount to pay such Bonds as provided in Section 9.02(c); or
- (iii) by delivering such Bonds to the Paying Agent for cancellation by it.

If the City pays all Outstanding Bonds and also pays or causes to be paid all other sums payable hereunder by the City, then and in that case, at the election of the City (evidenced by a certificate of a City Representative filed with the Paying Agent, signifying the intention of the City to discharge all such indebtedness and this Resolution), and notwithstanding that any Bonds have not been surrendered for payment, this Resolution, all taxes and other assets pledged under this Resolution shall case, terminate, become void and be completely discharged and satisfied, except only as provided in Section 9.02(b). In such event, upon request of the City, the Paying Agent shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary to evidence such discharge and satisfaction, and the Paying Agent shall pay over, transfer, assign or deliver to the City all moneys or

securities or other property held by it under this Resolution which are not required for the payment of Bonds not theretofore surrendered for such payment.

(b) <u>Discharge of Liability on Bonds</u>. Upon the deposit, in trust, at or before maturity, of money or securities in the necessary amount to pay any Outstanding Bond Bonds as provided in Section 9.02(c), then all liability of the City in respect of such Bond will cease and be completely discharged, except only that thereafter the Owner thereof is entitled only to payment of the principal of and interest on such Bond by the City, and the City remains liable for such payment, but only out of such money or securities deposited with the Paying Agent as aforesaid for such payment, provided further, however, that the provisions of Section 9.02(d) apply in all events.

The City may at any time surrender to the Paying Agent for cancellation by it any Bonds previously issued and delivered, which the City acquires in any manner whatsoever, and such Bonds, upon such surrender and cancellation, will be deemed paid and retired.

(c) <u>Deposit of Money or Securities with Paying Agent</u>. Whenever in this Resolution it is provided or permitted that there be deposited with or held in trust by the Paying Agent money or securities in the necessary amount to pay any Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established under this Resolution and must be:

- lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
- (ii) Federal Securities the principal of and interest on which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid interest to maturity on the Bonds to be paid, as such principal and interest become due.

(d) Payment of Bonds After Discharge of Resolution. Notwithstanding any provisions of this Resolution, any moneys held by the Paying Agent in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable, if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall, upon request of the City, be repaid to the City free from the trusts created by this Resolution, and all liability of the Paying Agent with respect to such moneys shall thereupon cease. Before the repayment of such moneys to the City as aforesaid, the Paying Agent may (at the cost of the City) first mail to the Owners of all Bonds which have not been paid at the addresses shown on the Registration Books a notice in such form as may be deemed appropriate by the Paying Agent, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof.

SECTION 9.03. *Execution of Documents and Proof of Ownership by Bond Owners*. Any request, declaration or other instrument which this Resolution may require or permit to be executed by Bond Owners may be in one or more instruments of similar tenor, and shall be executed by Bond Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Bond Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same are proved by the Registration Books.

Any request, declaration or other instrument or writing of the Owner of any Bond binds all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Paying Agent in good faith and in accordance therewith.

SECTION 9.04. *Waiver of Personal Liability*. No City Council member, officer, agent or employee of the City has any individual or personal liability for the payment of the principal of or interest on the Bonds. Nothing herein contained relieves any City Council member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.05. Destruction of Canceled Bonds. Whenever in this Resolution provision is made for the surrender to the City of any Bonds which have been paid or canceled under the provisions of this Resolution, a certificate of destruction duly executed by the Paying Agent constitutes the equivalent of the surrender of such canceled Bonds and the City is entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

SECTION 9.06. *Partial Invalidity*. If any section, paragraph, sentence, clause or phrase of this Resolution is for any reason held illegal or unenforceable, such holding will not affect the validity of the remaining portions of this Resolution. The City hereby declares that it would have adopted this Resolution and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Resolution may be held illegal, invalid or unenforceable.

SECTION 9.07. *Execution of Documents*. Each City Representative, and any and all other officers of the City, are each authorized and directed in the name and on behalf of

the City to make any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful issuance, sale and delivery of the Bonds, including an agreement for paying agent services. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

SECTION 9.08. *Effective Date of Resolution*. This Resolution becomes effective upon the date of its passage and adoption.

* * * * * * * * * *

The foregoing resolution was adopted by the City Council of Berkeley, California on February 25, 2020 by the following:

AYES:

NOES:

ABSTAIN:

ABSENT:

(SEAL)

ATTEST:

Mayor and President of the Council

City Clerk

\$

APPENDIX A

FORM OF BOND

REGISTERED BOND NO. R-____

CITY OF BERKELEY

2020 REFUNDING GENERAL OBLIGATION BOND, SERIES A

(2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

INTEREST RATE:	MATURITY DATE:	DATED DATE:	CUSIP
% per annum	September 1,	, 2020	[]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: THOUSAND DOLLARS

The CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), for value received, hereby promises to pay to the Registered Owner named above, or registered assigns, the Principal Amount set forth above on the Maturity Date set forth above, together with interest thereon at the Interest Rate set forth above, calculated on a 30/360 day basis, until the Principal Amount hereof is paid or provided for, such interest to be paid on March 1 and September 1 of each year, commencing September 1, 2020 (the "Interest Payment Dates"). This Bond will bear interest from the Interest Payment Date next preceding the date of authentication hereof, unless (a) it is authenticated as of a business day following the 15th day of the month immediately preceding any Interest Payment Date and on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) it is authenticated on or before August 15, 2020, in which event it shall bear interest from the Dated Date set forth above.

Principal, interest and redemption premium (if any) are payable in lawful money of the United States of America to the person in whose name this Bond is registered (the "Registered Owner") on the Bond registration books maintained by the Paying Agent, initially The Bank of New York Mellon Trust Company, N.A., Dallas, Texas. Principal hereof and any redemption premium hereon are payable upon presentation and surrender of this Bond at the principal corporate trust office of the Paying Agent. Interest hereon is payable by check mailed by the Paying Agent on each Interest Payment Date to the Registered Owner of this Bond by first-class mail at the address appearing on the Bond registration books at the close of business on the 15th day of the calendar month next preceding such Interest Payment Date (the "Record Date"); *provided, however*, that at the written request of the registered owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Paying Agent prior to any Record Date, interest on such Bonds shall be paid on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as shall be specified in such written request.

This Bond is one of a series of \$______ aggregate principal amount of bonds (collectively, the "2020 Bonds") issued for the purpose of refunding outstanding bonds of the City, and to pay all necessary legal, financial, engineering and contingent costs in connection therewith. The 2020 Bonds have been issued under authority of and under the laws of the State of California, the requisite two-thirds vote of the electors of the City cast at an election held on November 4, 2008 and a resolution of the City Council of the City adopted on February 25, 2020 (the "Bond Resolution"). The 2020 Bonds are payable as to both principal and interest from the proceeds of the levy of ad valorem taxes on all property subject to such taxes in the City, which taxes are unlimited as to rate or amount.

The principal of and interest and redemption premium, if any, on this Bond do not constitute a debt of the County, the State of California, or any of its political subdivisions other than the City, or any of the officers, agents and employees thereof, and neither the County, the State of California, any of its political subdivisions other than the City, nor any of the officers, agents and employees thereof shall be liable hereon. In no event shall the principal of and interest and redemption premium, if any, on this Bond be payable out of any funds or properties of the City other than ad valorem taxes levied upon all taxable property in the City.

The 2020 Bonds are issuable only as fully registered bonds in the denominations of \$5,000 or any integral multiple thereof. This Bond is exchangeable and transferable for bonds of other authorized denominations at the principal corporate trust office of the Paying Agent, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Paying Agent, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Paying Agent, all subject to the terms, limitations and conditions provided in the Bond Resolution. Any tax or governmental charges shall be paid by the transferor. The City and the Paying Agent may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The 2020 Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The 2020 Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

The 2020 Bonds maturing on September 1, 20__, September 1, 20__ and September 1, 20__ (the "**Term Bonds**") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20__ in the principal amounts as set forth in the following tables:

 \$_______ Term Bond Due September 1, 20_____

 Payment Date
 Payment

 (September 1)
 Amount

 \$_______ Term Bond Due September 1, 20_____

 Payment Date
 Payment

 (September 1)
 Amount

Payment DatePayment(September 1)Amount

The Paying Agent shall give notice of the redemption of the 2020 Bonds at the expense of the City. Such notice shall specify: (a) that the 2020 Bonds or a

designated portion thereof are to be redeemed, (b) the numbers and CUSIP numbers of the 2020 Bonds to be redeemed, (c) the date of notice and the date of redemption, (d) the place or places where the redemption will be made, and (e) descriptive information regarding the 2020 Bonds including the dated date, interest rate and stated maturity date. Such notice shall further state that on the specified date there shall become due and payable upon each 2020 Bond to be redeemed, the portion of the principal amount of such 2020 Bond to be redeemed, together with interest accrued to said date, the redemption premium, if any, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

Notice of any redemption of 2020 Bonds shall be mailed by first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, to the respective Owners of any 2020 Bonds designated for redemption, at their addresses appearing on the bond registration books maintained by the Paying Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of such 2020 Bonds or the cessation of accrual of interest thereon from and after the redemption date.

The City may provide conditional notices of optional redemption, and the City is entitled to rescind any notice of optional redemption of the 2020 Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

Neither the City nor the Paying Agent will be required: (a) to issue or transfer any Bond during a period beginning with the opening of business on the 15th calendar day next preceding either any Interest Payment Date or any date of selection of any 2020 Bond to be redeemed and ending with the close of business on the Interest Payment Date or a day on which the applicable notice of redemption is given, or (b) to transfer any Bond which has been selected or called for redemption in whole or in part.

Reference is made to the Bond Resolution for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Paying Agent and the Registered Owners, and the terms and conditions upon which the 2020 Bonds are issued and secured. The owner of this Bond assents, by acceptance hereof, to all of the provisions of the Bond Resolution.

It is certified, recited and declared that all acts and conditions required by the Constitution and laws of the State of California to exist, to be performed or to have been met precedent to and in the issuing of the 2020 Bonds in order to make them legal, valid and binding general obligations of the City, have been performed and have been met in regular and due form as required by law; that payment in full for the 2020 Bonds has been received; that no statutory or constitutional limitation on indebtedness or taxation has been exceeded in issuing the 2020 Bonds; and that due provision has been made for levying and collecting ad valorem property taxes on all of the taxable property within the City in an amount sufficient to pay principal and interest when due, and for levying and collecting such taxes the full faith and credit of the City are hereby pledged.

This Bond shall not be valid or obligatory for any purpose and shall not be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication below has been manually signed by the Paying Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or the Paying Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of Berkeley has caused this Bond to be executed by the facsimile signature of its Mayor and attested by the facsimile signature of its City Clerk, all as of the date stated above.

CITY OF BERKELEY

By _____ Mayor

Attest:

City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Bond Resolution referred to herein.

Date of Authentication: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Paying Agent

By _____ Authorized Signatory

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint

_____ attorney, to transfer the same on the registration books of the Bond Registrar, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

APPENDIX B

REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

- 1. Estimated True Interest Cost of the Bonds: 2.25%
- 2. Estimated finance charge of the Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$120,000. Such amount consists of costs of issuing the Bonds in the amount of approximately \$65,000 together with estimated underwriter's compensation in the amount of \$55,000.
- 3. Estimated proceeds of the Bonds expected to be received by the City for deposit to the Project Fund, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest and reserves (if any) from the principal amount of the Bonds: \$8,380,000.
- 4. Estimated Total Payment Amount for the Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$10,450,000.

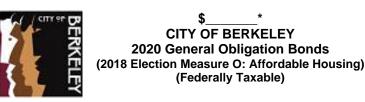
^{*}All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding tax-exempt interest rates available in the bond market at the time of pricing the Bonds.

Page 36 of 269 PRELIMINARY OFFICIAL STATEMENT DATED FEBRUARY ___, 2020

NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "___" See "RATING" herein.

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Refunding Bonds 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 interest on the 2020 Measure O Bonds is <u>not</u> excluded from gross income for federal income tax purposes. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences caused by the ownership or disposition of, or the accrual or receipt of interest on, the Bonds. See "LEGAL MATTERS – Tax Exemption."



\$_____* CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

Dated: Date of Delivery

Due: September 1, as shown on inside cover

Cover Page. This cover page contains information for quick reference only. It is not a summary of all the provisions of the Bonds. Investors must read the entire official statement to obtain information essential to making an informed investment decision.

Authority and Purpose. The captioned 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (the "2020 Measure O Bonds") and the 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Projects (the "Refunding Bonds" and, together with the New Money Bonds, the "Bonds"), are being issued by the City of Berkeley (the "City") pursuant to certain provisions of the California Government Code and resolutions of the City Council of the City adopted on February 25, 2020. The 2020 Measure O Bonds were authorized at an election of the registered voters of the City held on November 6, 2018, which authorized the issuance of general obligation bonds for the purpose of financing the improvement and acquisition of affordable housing. The Refunding Bonds are being issued for the purpose of refunding, on a current basis, certain outstanding general obligation bonds issued by the City. See "THE BONDS – Authority for Issuance" and "THE FINANCING AND REFINANCING PLAN" herein.

Security. The Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by Alameda County (the "County"). The City Council is empowered and is obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates). The City has other outstanding issues of general obligation bonds which are similarly payable from *ad valorem* taxes levied on parcels in the City and will be payable on a pro rata basis with the Bonds. See "SECURITY FOR THE BONDS."

Payments. Interest on the Bonds accrues from the date of delivery and is payable semiannually on March 1 and September 1 of each year, commencing September 1, 2020, by check, draft or wire mailed to the person in whose name the Bond is registered. Payments of principal and interest on the Bonds will be paid by The Bank of New York Mellon Trust Company, N.A., as paying agent for the Bonds (the "Paying Agent"), to DTC for subsequent disbursement to DTC Participants who will remit such payments to the beneficial owners of the Bonds. See "THE BONDS – Description of the Bonds."

Redemption. The Bonds are subject to optional redemption and, at bidder's option, mandatory sinking fund redemption prior to maturity as described herein. See discussion of redemption under the heading "THE BONDS."

Book-Entry Only. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"). Purchasers will not receive physical certificates representing their interests in the Bonds. See APPENDIX E for additional information about the book-entry only system. The following firm, serving as municipal advisor to the City, has structured this issue.



Maturity Schedules (See inside cover)

The Bonds will be sold and awarded pursuant to competitive public bids to be received on ______, 2020, as set forth in two separate Official Notices of Sale with respect to the 2020 Measure O Bonds and the Refunding Bonds, respectively. The Bonds are offered when, as and if issued, subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the City by Jones Hall, A Professional Law Corporation, San Francisco, California, as Disclosure Counsel. It is anticipated that the Bonds in definitive form will be available for delivery to Cede & Co., as nominee of The Depository Trust Company, on or about _____, 2020.

The date of this Official Statement is _____, 2020.

* Preliminary; subject to change.

MATURITY SCHEDULES*

\$

CITY OF BERKELEY 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable)

Maturity Date	Principal				
(September 1)	Amount	Interest Rate	Yield	Price	CUSIP [†]

[continued on next page]

^{*}Preliminary; subject to change. Identification of Term Bonds subject to mandatory sinking fund redemption is at bidder's option. † CUSIP Copyright 2020, CUSIP Global Services, and a registered trademark of American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, which is managed on behalf of American Bankers Association by S&P Capital IQ. Neither the City nor the Purchasers take any responsibility for the accuracy of the CUSIP data.

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[continued from prior page]

\$___

CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

Maturity Date	Principal				
(September 1)	Amount	Interest Rate	Yield	Price	CUSIP [†]

^{*}Preliminary; subject to change. Identification of Term Bonds subject to mandatory sinking fund redemption is at bidder's option. † Copyright 2020, American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by S&P Global Market Intelligence, and are provided for convenience of reference only. Neither the City nor the Purchaser assumes any responsibility for the accuracy of these CUSIP data.

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract between any bond owner and the City or the Purchaser. This Official Statement and the information contained herein are subject to completion or amendment without notice.

No Offering Except by This Official Statement. No dealer, broker, salesperson or other person has been authorized by the City or the Purchaser to give any information or to make any representations relating to the Bonds other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by the City or the Purchaser.

No Unlawful Offers or Solicitations. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Estimates and Projections. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimate," "project," "forecast," "expect," "intend" and similar expressions identify "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

Information in Official Statement. The information set forth in this Official Statement has been furnished by the City and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by the City.

Involvement of Purchaser. The Purchaser (as defined in "UNDERWRITING") has reviewed the information in this Official Statement in accordance with, and as a 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.

Document Summaries. All summaries of the Bond Resolution or other documents referred to in this Official Statement are made subject to the provisions of such documents and qualified in their entirety to reference to such documents, and do not purport to be complete statements of any or all of such provisions.

No Securities Laws Registration. The Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exceptions therein for the issuance and sale of municipal securities. The Bonds have not been registered or qualified under the securities laws of any state.

Effective Date. This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the Bonds will, under any circumstances, give rise to any implication that there has been no change in the affairs of the City, or the other parties described in this Official Statement, or the condition of the property within the City since the date of this Official Statement.

Website. The City maintains a website; however, the information presented on the website is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.

CITY OF BERKELEY (ALAMEDA COUNTY, CALIFORNIA)

MEMBERS OF THE CITY COUNCIL

Jesse Arreguín, Mayor Rashi Kesarwani, Councilmember District 1 Cheryl Davila, 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 Lori Droste, Councilmember District 8

CITY OFFICIALS AND STAFF

Dee Williams-Ridley City Manager

David White Deputy City Manager Paul Buddenhagen Deputy City Manager

Farimah Brown City Attorney

Director of Finance

Jenny Wong City Auditor

Henry Oyekanmi

PROFESSIONAL SERVICES

BOND AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation San Francisco, California

MUNICIPAL ADVISOR

NHA Advisors, LLC San Rafael, California

BOND REGISTRAR, TRANSFER AGENT, AND PAYING AGENT

The Bank of New York Mellon Trust Company, N.A. Los Angeles, California

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 APPENDIX C - PROPOSED FORMS OF OPINION OF BOND COUNSEL
 APPENDIX D - FORM OF CONTINUING DISCLOSURE CERTIFICATE
 APPENDIX E - DTC AND THE BOOK-ENTRY ONLY SYSTEM

OFFICIAL STATEMENT

\$_____* CITY OF BERKELEY 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable) \$_____* CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

INTRODUCTION

This Official Statement, which includes the cover page and appendices hereto, provides information in connection with the sale and delivery of the 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (the "**2020 Measure O Bonds**") and the 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Projects (the "**Refunding Bonds**" and, together with the New Money Bonds, the "**Bonds**").

This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement.

The City

The City. 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 a population of 123,328 as of January 1, 2019, 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 235,000 full and part-time workers.

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 charter was adopted in 1895. For more information regarding the City and its finances, see APPENDIX A and APPENDIX B.

Sources of Payment for the Bonds

The Bonds are general obligations of the City payable solely from ad valorem property taxes levied by the City and collected by the County. The City Council is empowered and obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except with respect to certain personal property that is taxable at limited rates). See "SECURITY FOR THE BONDS" and "PROPERTY TAXATION."

Purposes for Issuance

The net proceeds of the 2020 Measure O Bonds will be used to finance affordable housing projects, as approved by the voters at an election held in the City on November 6, 2018 (the **"Bond Election**") with respect to the bond measure known as Measure O.

The net proceeds of the Refunding Bonds will be used to refund the City of Berkeley General Obligation Bonds, Series 2009 (Measure FF – Neighborhood Branch Library Improvements Project) (the "**Prior Bonds**"), maturing on and after September 1, 2020 (the "**Refunded Bonds**"), which will be redeemed in full on April 10, 2020^{*}.

See "THE FINANCING AND REFINANCING PLAN" herein.

Authority for Issuance

The Bonds are being issued under the provisions of Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53506 (the "**New Money Bond Law**"), and pursuant to and consistent with the Charter of the City and a resolution adopted by the City Council of the City on February 25, 2020 (the "**2020 Measure O Bond Resolution**").

The Refunding Bonds are being issued under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 (the "**Refunding Bond Law**") and pursuant to a resolution adopted by the City Council of the City on February 25, 2020 (the "**Refunding Bond Resolution**" and, together with the 2020 Measure O Bond Resolution, the "**Bond Resolutions**").

See "THE BONDS - Authority for Issuance" herein.

Description of the Bonds

Generally. The Bonds mature in the years and in the amounts as set forth on the inside cover page hereof. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee for DTC. Purchasers will not receive physical certificates representing their interest in the Bonds. See "THE BONDS – Description of the Bonds" and APPENDIX E.

Redemption. The Bonds are subject to redemption prior to maturity as described herein. The Bonds may be subject to mandatory sinking fund redemption at the option of the bidders. See discussion of redemption features under the heading "THE BONDS – Redemption" herein.

Legal Matters

Issuance of the Bonds is subject to the approving opinions of Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel ("**Bond Counsel**"), to be delivered in substantially the respective forms attached hereto as APPENDIX C. Jones Hall, A Professional Law Corporation, San Francisco, California, will also serve as disclosure counsel to the City ("**Disclosure Counsel**").

Tax Matters

In the opinion of Bond Counsel, interest on the Refunding Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax. In the opinion of Bond Counsel, interest on the 2020 Measure O Bonds is <u>not</u> excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax. In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes. See "TAX MATTERS" for additional information, and APPENDIX C hereto for the forms of Bond Counsel's opinions to be delivered concurrently with the Bonds.

Offering and Delivery of the Bonds

The Bonds are offered when, as and if issued and received by the purchasers, subject to approval as to the legality by Bond Counsel. It is anticipated that the Bonds will be available for delivery through the facilities of DTC on or about _____, 2020.

Continuing Disclosure

The City has covenanted and agreed that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. The form of the Continuing Disclosure Certificate is included in APPENDIX D hereto. See also "CONTINUING DISCLOSURE" herein.

Other Information

This Official Statement speaks only as of its date, and the information contained herein is subject to change. Copies of documents referred to in this Official Statement and information concerning the Bonds are available from the City of Berkeley City Clerk, 2180 Milvia Street, Berkeley, California 94704, (510) 981-7000. The City may impose a charge for copying, mailing and handling.

This Official Statement is not to be construed as a contract with the purchasers of the Bonds. 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 representations of fact. The summaries and references to documents, statutes and constitutional provisions referred to herein do not purport to be comprehensive or definitive, and are qualified in their entireties by reference to each of such documents, statutes and constitutional provisions.

The information set forth herein has been obtained from official sources which are believed to be reliable but it is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the City. The information and expressions of opinions herein 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 affairs of the City since the date hereof. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose.

END OF INTRODUCTION

THE FINANCING AND REFINANCING PLAN

2020 Measure O Bonds

The proceeds of the 2020 Measure O Bonds will be used to finance projects approved by more than the requisite 2/3 of City voters at the Bond Election. The abbreviated form of the ballot measure for Measure O was:

"Shall the measure to issue \$135 million in bonds to create and preserve affordable housing for low-income households, working families, and individuals including teachers, seniors, veterans, the homeless, and persons with disabilities; subject to citizen oversight and independent audits, be adopted?"

The 2020 Measure O Bonds will be the first series of bonds issued pursuant to the authority received at the Bond Election.

Refunding Bonds

The Refunding Bonds are being issued to refund, on a current basis, all outstanding maturities of the City of Berkeley General Obligation Bonds, Series 2009 (FF – Neighborhood – Neighborhood Branch Library Improvements Project), which were issued on April 29, 2009, in the aggregate principal amount of \$10,000,000 (the "2009 Bonds").

The 2009 Bonds are subject to redemption at the option of the City, from any source of available funds, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium. The following table identifies the 2009 Bonds being refunded with proceeds of the Refunding bonds (the "**Refunded Bonds**").

Maturities to be Refunded*	CUSIP†	Principal Amount	Redemption Date	Redemption Price
09/01/2020	084113 NJ4	\$240,000	04/23/2020	100.0%
09/01/2021	084113 NK1	250,000	04/23/2020	100.0
09/01/2022	084113 NL9	265,000	04/23/2020	100.0
09/01/2023	084113 NM7	280,000	04/23/2020	100.0
09/01/2024	084113 NN5	295,000	04/23/2020	100.0
09/01/2025	084113 NP0	310,000	04/23/2020	100.0
09/01/2026	084113 NQ8	330,000	04/23/2020	100.0
09/01/2027	084113 NR6	350,000	04/23/2020	100.0
09/01/2028	084113 NS4	365,000	04/23/2020	100.0
09/01/2031 T	084113 NT2	1,225,000	04/23/2020	100.0
09/01/2035 T	084113 NU9	1,975,000	04/23/2020	100.0
09/01/2039 T	084113 NV7	2,445,000	04/23/2020	100.0
Total	-	\$8,330,000	-	-

T: Term Bonds

† CUSIP Copyright American Bankers Association. CUSIP data herein is provided by Standard & Poor's CUSIP Service Bureau, a division of McGraw Hill Companies, Inc. Neither the City nor the Purchasers are responsible for the accuracy of such data.

The net proceeds of the Refunding Bonds will be deposited with The Bank of New York Mellon Trust Company, N.A., as paying agent for the Prior Bonds (the "**Prior Bonds Paying Agent**"), in an account established to pay the redemption price of the Refunded Bonds (the "**Redemption Fund**") under certain Irrevocable Refunding Instructions given by the City to the Prior Bonds Paying Agent (the "**Refunding Instructions**"). As a result of the deposit and investment of amounts with the Prior Bonds Paying Agent, the Refunded Bonds will be discharged and defeased, and will no longer be payable from and secured by property taxes levied for the purpose of paying debt service on the Refunded Bonds.

As a result of the deposit of funds with the Prior Bonds Paying Agent on the date of issuance of the Refunding Bonds, and assuming the accuracy of the Purchaser's and the Verification Agent's computations, the Refunded Bonds will be legally defeased and will be payable solely from amounts held for that purpose under the Refunding Instructions, and will cease to be secured by *ad valorem* property taxes levied in the City.

The amounts held by the Prior Bonds Paying Agent are pledged solely to the payment of the Refunded Bonds. The funds deposited in the Redemption Fund will not be available for the payment of debt service with respect to the Refunding Bonds.

SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Bonds are as follows:

2020 Measure O

Bonds

Refunding Bonds

Sources of Funds Principal Amount of Bonds *Plus*: Net Original Issue Premium

Total Sources

<u>Uses of Funds</u> Deposit to Building Fund Deposit to Redemption Fund Deposit to Debt Service Fund Costs of Issuance* Total Uses

*All estimated costs of issuance including, but not limited to, Purchaser's discount, printing costs, and fees of Bond Counsel, Disclosure Counsel, the Municipal Advisor and the rating agency.

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THE BONDS

Authority for Issuance

The 2020 Measure O Bonds are issued under the New Money Law and other applicable law, and pursuant to the City's powers under and consistent with the Charter of the City. The City authorized the issuance of the Bonds pursuant to the New Money Bond Resolution. The City received authorization at the Bond Election to issue \$135 million of general obligation bonds. The 2020 Measure O Bonds are the first series of Bonds to be sold and issued under the authorization received at the Bond Election.

The Refunding Bonds will be issued pursuant to the authority of the Refunding Bond Law and the Refunding Bond Resolution.

Description of the Bonds

Book-Entry Form. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("**DTC**"). Purchasers of the Bonds (the "**Beneficial Owners**") will not receive physical certificates representing their interest in the Bonds. Payments of principal of and interest on the Bonds will be paid by the Paying Agent to DTC for subsequent disbursement to DTC Participants which will remit such payments to the Beneficial Owners of the Bonds.

As long as DTC's book-entry method is used for the Bonds, the Paying Agent will send any notice of prepayment or other notices to owners only to DTC. Any failure of DTC to advise any DTC Participant, or of any DTC Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity or sufficiency of the proceedings relating to the prepayment of the Bonds called for prepayment or of any other action premised on such notice.

The Paying Agent, the City, and the Purchaser have no responsibility or liability for any aspects of the records relating to or payments made on account of beneficial ownership, or for maintaining, supervising or reviewing any records relating to beneficial ownership, of interests in the Bonds. See APPENDIX E for additional information.

Interest. Interest on the Bonds is payable semiannually on March 1 and September 1 of each year (the "Interest Payment Dates"), commencing September 1, 2020.

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- 1. a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- 2. a Bond is authenticated prior to an Interest Payment Date and after the close of business on the 15th day of the month preceding the Interest Payment Date (each, a "**Record Date**"), in which event it will bear interest from such Interest Payment Date,

- 3. a Bond is authenticated on or before August 15, 2020, in which event it shall bear interest from the Closing Date, or
- 4. at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

Denominations and Maturity. The Bonds shall be issued in the denomination of \$5,000 each or any integral multiple of \$5,000. The Bonds mature on September 1 in the years and amounts set forth on the inside cover page hereof.

See the maturity schedule on the inside cover page hereof and "DEBT SERVICE SCHEDULE" below.

Payment

Interest on the Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the owner thereof at such owner's address as it appears on the Registration Books (as defined below) at the close of business on the preceding Record Date, except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request.

Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the principal office of the Paying Agent.

Redemption^{*}

Optional Redemption. The Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

Mandatory Sinking Fund Redemption. The Term Bonds maturing on September 1, 20__ and September 1, 20__ (the "**Term Bonds**") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20__, in the principal amounts as set forth in the following tables:

\$_____ Term Bond Due September 1, 20___

Payment Date	Payment
(September 1)	Amount
· · · · · ·	

(Maturity)

Term Bond Due September 1, 20____

Payment Date	Payment	
(September 1)	Amount	

(Maturity)

If some but not all of the Term Bonds have been optionally redeemed, the aggregate principal amount of Term Bonds to be subject to Mandatory Sinking Fund Redemption in each year will be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

Redemption Procedure. The Paying Agent will cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books (as defined below) maintained by the Paying Agent. Such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice will not affect the validity of the proceedings for the redemption of such Bonds.

The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption of the Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

A redemption notice will state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, will designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and will require that such Bonds be then surrendered at the principal office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Partial Redemption. Upon surrender of Bonds redeemed in part only, the City will execute and the Paying Agent will authenticate and deliver to the owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

Effect of Redemption. From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under the Bond Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice.

Registration, Transfer and Exchange of Bonds

If the book-entry system as described above and in APPENDIX E is no longer used with respect to the Bonds, the following provisions will govern the registration, transfer, and exchange of the Bonds.

Registration Books. The Paying Agent will keep or cause to be kept sufficient books for the registration and transfer of the Bonds (the "**Registration Books**"), which will at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the Bonds.

Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the principal office of the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

Whenever any Bond or Bonds are surrendered for transfer, the City will execute and the Paying Agent will authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

Exchange. Bonds may be exchanged at the principal office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

Defeasance

The City has the option to pay and discharge the entire indebtedness on all or any portion of the outstanding Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by irrevocably depositing, in trust, at or before maturity:
 - lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
 - (ii) Federal Securities (as defined below), the principal of and interest on, which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid

interest to maturity on the Bonds to be paid, as such principal and interest become due.

(c) by delivering such Bonds to the Paying Agent for cancellation by it.

"Federal Securities" means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations, the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

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DEBT SERVICE SCHEDULES

Debt Service for the 2020 Measure O Bonds. The following table shows the debt service schedules with respect to the 2020 Measure O Bonds, assuming no optional redemptions.

CITY OF BERKELEY 2020 Measure O Bonds Debt Service Schedule

Bond Year Ending September 1	2020 Measure O Bonds Principal	2020 Measure O Bonds Interest	Total Debt Service
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
2044			
2045			
2046			
2047			
2048			
2049			
2050			
Total			

Debt Service for the Refunding Bonds. The following table shows the debt service schedules with respect to the Refunding Bonds, assuming no optional redemptions.

CITY OF BERKELEY Refunding Bonds Debt Service Schedule

Bond Year Ending September 1	Refunding Bonds Principal	Refunding Bonds Interest	Total Debt Service
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
Total			

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Combined Debt Service Schedule. In addition to the Bonds described herein, the City has other series of general obligation bonds and refunding bonds outstanding. The following table shows the combined debt service schedule for outstanding general obligation bonds and refunding bonds of the City, assuming no optional redemptions.

				2015					
Year Ending				Refunding			2020 Measure		Total
September 1	2009 Bonds (1)	2010 Bonds	2014 Bonds	Bonds	2016 Bonds	2017 Bonds	O Bonds	Refunding Bonds	Debt Service
2020	683,937.50	955,506.26	904,500.00	3,951,337.50	753,112.50	1,746,556.26			
2021	678,337.50	958,756.26	902,750.00	3,104,587.50	748,362.50	1,748,556.26			
2022	677,087.50	954,956.26	905,250.00	3,106,587.50	748,112.50	1,748,806.26			
2023	674,862.50	955,856.26	901,750.00	3,103,087.50	747,112.50	1,747,306.26			
2024	671,662.50	955,093.76	902,500.00	3,099,087.50	745,362.50	1,749,056.26			
2025	667,487.50	955,093.76	905,350.00	3,104,337.50	747,862.50	1,748,806.26			
2026	673,537.50	959,293.76	902,225.00	3,108,087.50	748,062.50	1,746,556.26			
2027	678,275.00	957,493.76	903,250.00	3,105,287.50	752,662.50	1,746,156.26			
2028	676,825.00	954,893.76	905,450.00	2,140,087.50	756,462.50	1,749,356.26			
2029	679,487.50	956,493.76	901,850.00	1,001,287.50	764,462.50	1,748,956.26			
2030	683,312.50	957,093.76	902,650.00	399,887.50	770,962.50	1,746,906.26			
2031	680,762.50	955,900.00	902,650.00	399,975.00	771,862.50	1,746,906.26			
2032	682,112.50	958,675.00	901,850.00	399,737.50	772,312.50	1,746,006.26			
2033	684,362.50	955,212.50	904,575.00	398,768.76	772,312.50	1,749,206.26			
2034	685,362.50	955,718.76	906,268.76	397,043.76	774,437.50	1,746,356.26			
2035	690,112.50	959,987.50	901,931.26	399,968.76	781,187.50	1,747,606.26			
2036	693,362.50	956,837.50	905,243.76	397,368.76	786,750.00	1,747,806.26			
2037	693,700.00	957,412.50	902,243.76	398,956.26	791,787.50	1,746,956.26			
2038	692,462.50	956,500.00	903,150.00	-	795,562.50	1,748,518.76			
2039	694,650.00	959,100.00	902,743.76	-	798,787.50	1,748,831.26			
2040	-	-	906,025.00	-	806,462.50	1,747,893.76			
2041	-	-	901,825.00	-	813,450.00	1,749,018.76			
2042	-	-	906,275.00	-	819,750.00	1,748,681.26			
2043	-	-	903,925.00	-	828,600.00	1,746,881.26			
2044	-	-	-	-	836,550.00	1,748,618.76			
2045	-	-	-	-	843,600.00	1,748,731.26			
2046	-	-	-	-	849,750.00	1,747,218.76			
2047	-	-	-	-	-	1,747,037.50			
2048	-	-	-	-	-	-			
2049	-	-	-	-	-	-			
2050		-	-	-	-	-			
Total	\$13,641,700.00	\$19,135,875.12	\$21,686,231.30	\$32,015,481.30	\$21,125,700.00	48,939,294.02			

(1) Expected to be redeemed in full with proceeds of the Refunding Bonds.

SECURITY FOR THE BONDS

Ad Valorem Taxes

Bonds Payable from Ad Valorem Property Taxes. The Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by the County. The City is empowered and is obligated to annually levy ad valorem taxes for the payment of the Bonds and the interest thereon upon all property within the City subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates).

Levy and Collection. The City will levy and the County will collect such ad valorem taxes in such amounts and at such times as is necessary to ensure the timely payment of debt service. Such taxes, when collected, will be deposited into a debt service fund for the Bonds, which is maintained by the City and which is irrevocably pledged for the payment of principal of and interest on the Bonds when due.

City property taxes are assessed and collected by the County in the same manner, at the same time and in the same installments as other ad valorem taxes on real property and will have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the other ad valorem taxes on real property. As described below, although the County has adopted the Teeter Plan, the City has elected not to participate in the Teeter Plan, meaning that the City receives all of the property taxes that are actually collected, and the City also receives any penalties and interest on delinquent taxes. See "PROPERTY TAXATION – Alternative Method of Tax Apportionment – Teeter Plan."

Annual Tax Rates. The amount of the annual ad valorem tax levied by the City to repay the Bonds will be determined by the relationship between the assessed valuation of taxable property in the City and the amount of debt service due on the Bonds. Fluctuations in the annual debt service on the Bonds and the assessed value of taxable property in the City may cause the annual tax rate to fluctuate.

Economic and other factors beyond the City's control, such as economic recession, deflation of land values, a relocation out of the City or financial difficulty or bankruptcy by one or more major property taxpayers, or the complete or partial destruction of taxable property caused by, among other eventualities, earthquake, flood, fire or other natural disaster, could cause a reduction in the assessed value within the City and necessitate a corresponding increase in the annual tax rate.

Debt Service Funds

Pursuant to the respective Bond Resolutions, The City will establish a debt service fund for the 2020 Measure O Bonds (the "**Measure O Debt Service Fund**") and the Refunding Bonds (the "**Refunding Debt Service Fund**" and, together with the Measure O Debt Service Fund, the "**Debt Service Funds**"), which will be established as separate funds to be maintained distinct from all other funds of the City. All taxes levied by the City pursuant to the Bond Resolutions for the payment of the principal of and interest and premium (if any) on the Bonds will be deposited in the respective Debt Service Funds by the City promptly upon receipt from the County. The Debt Service Funds are each pledged for the payment of the principal of and interest and premium (if any) on the 2020 Measure O Bonds or the Refunding Bonds, respectively, when and as the same become due. The City will transfer amounts in the Debt Service Funds, to the extent necessary, to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent, as required to pay the principal of and interest and premium (if any) on the Bonds.

If, after payment in full of the 2020 Measure O Bonds or the Refunding Bonds, any amounts remain on deposit in the respective Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner that is consistent with the requirements of applicable state and federal tax law.

Limited Obligation

The Bonds are payable solely from the proceeds of an ad valorem tax levied by the City, and collected by the County, for the payment of principal and interest on the Bonds. Although the County is obligated to collect the ad valorem tax for the payment of the Bonds, the Bonds are not a debt of the County.

PROPERTY TAXATION

Property Tax Collection Procedures

In California, property which is subject to ad valorem taxes is classified as "secured" or "unsecured." The "secured roll" is that part of the assessment roll containing state assessed public utilities' property and property, the taxes on which are a lien on real property sufficient, in the opinion of the county assessor, to secure payment of the taxes. A tax levied on unsecured property does not become a lien against such unsecured property, but may become a lien on certain other property owned by the taxpayer. Every tax which becomes a lien on secured property has priority over all other liens arising pursuant to State law on such secured property are entered separately on the assessment roll maintained by the county assessor. The method of collecting delinquent taxes is substantially different for the two classifications of property.

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year. If unpaid, such taxes become delinquent after December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. In addition, property on the secured roll with respect to which taxes are delinquent is declared tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of the delinquent taxes and a delinquency penalty, plus a redemption penalty of 1.5% per month to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

Property taxes are levied for each fiscal year on taxable real and personal property situated in the taxing jurisdiction as of the preceding January 1. A bill enacted in 1983, SB813 (Statutes of 1983, Chapter 498), however, provided for the supplemental assessment and taxation of property as of the occurrence of a change of ownership or completion of new construction. Thus, this legislation eliminated delays in the realization of increased property taxes from new assessments. As amended, SB813 provided increased revenue to taxing jurisdictions to the extent that supplemental assessments of new construction or changes of ownership occur subsequent to the January 1 lien date and result in increased assessed value.

Property taxes on the unsecured roll are due on the January 1 lien date and become delinquent, if unpaid on the following August 31. A 10% penalty is also attached to delinquent taxes in respect of property on the unsecured roll, and further, an additional penalty of 1.5% per month accrues with respect to such taxes beginning the first day of the third month following the delinquency date. 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 certain property of the taxpayer; (3) filing a certificate of delinquency for record in the county recorder's office, in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee. The exclusive means of enforcing the payment of delinquent taxes in respect of property on the secured roll is the sale of the property securing the taxes for the amount of taxes which are delinquent.

Taxation of State-Assessed Utility Property

The State Constitution provides that most classes of property owned or used by regulated utilities are assessed by the State Board of Equalization ("**SBE**") and taxed locally. Property valued by the SBE as an operating unit in a primary function of the utility taxpayer is known as "unitary property," a concept designed to permit assessment of the utility as a going concern rather than assessment of each individual element of real and personal property owned by the utility taxpayer. State-assessed unitary and "operating nonunitary" property (which excludes nonunitary property of regulated railways) is allocated to the counties based on the situs of the various components of the unitary property. Except for unitary property of regulated railways and certain other excepted property, all unitary and operating nonunitary property is taxed at special county-wide rates and tax proceeds are distributed to taxing jurisdictions according to statutory formulae generally based on the distribution of taxes in the prior year.

Assessed Valuation

Assessed Valuation History. The following is a table summarizing the historical assessed valuation of the taxable property in the City.

Table 1CITY OF BERKELEYAssessed Valuations of All Taxable PropertyFiscal Years 2010-11 to 2019-20

	Local				Percent Change
Fiscal Year	Secured ⁽¹⁾	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>	-
2010-11	\$12,147,575,627	\$555,664	\$677,887,524	\$12,826,018,815	
2011-12	12,525,929,662	555,664	667,789,011	13,194,274,337	2.87%
2012-13	12,834,926,300	555,664	673,174,230	13,508,656,194	2.38
2013-14	13,686,258,913	555,664	677,170,723	14,363,985,300	6.33
2014-15	14,116,003,890	630,615	658,143,878	14,774,778,383	2.86
2015-16	15,224,697,461	388,860	702,428,523	15,927,514,844	7.80
2016-17	16,200,483,693	388,860	711,062,469	16,911,935,022	6.18
2017-18	17,376,072,698	443,960	809,921,331	18,186,437,989	7.54
2018-19	18,696,664,672	443,960	731,012,747	19,428,121,379	6.82
2019-20	19,926,615,530	424,880	860,872,387	20,787,912,797	7.00

(1) Amounts are net of homeowners' exemption.

Source: Alameda County Auditor-Controller's Office

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Assessed Valuation by Land Use. The following table shows the land use of parcels in the City, according to assessed valuation. As shown, the majority of land in the City is used for residential purposes.

Table 2 **CITY OF BERKELEY** Assessed Valuation and Parcels by Land Use Fiscal Year 2019-20

	2019-20	% of	No. of	% of
Non-Residential:	Assessed Valuation	(1) Total	Parcels	<u>Total</u>
Commercial/Office	\$2,244,416,146	11.26%	1,574	5.41%
Vacant Commercial	22,118,632	0.11	64	0.22
Industrial	1,091,360,227	5.48	423	1.46
Vacant Industrial	11,621,394	0.06	24	0.08
Recreational	42,628,355	0.21	17	0.06
Government/Social/Institutional	<u>21,563,021</u> 0.11	<u>650 2.24</u>		
Subtotal Non-Residential	\$3,433,707,775	17.23%	2,752	9.47%
Residential:				
Single Family Residence	\$10,467,626,755	52.53%	17,419	59.92%
Condominium/Townhouse	1,011,003,627	5.07	2,857	9.83
Cooperative	28,283,751	0.14	103	0.35
2-4 Residential Units	2,171,251,438	10.90	4,002	13.77
5+ Residential Units/Apartments	2,744,492,960	13.77	1,455	5.00
Miscellaneous Residential	2,698,601	0.01	10	0.03
Vacant Residential 67,550,623	0.34	474 1.63		
Subtotal Residential	\$16,492,907,755	82.77%	26,320	90.53%
Total	\$19,926,615,530	100.00%	29,072	100.00%

(1) Local Secured Assessed Valuation Source: California Municipal Statistics, Inc. Local Secured Assessed Valuation; excluding tax-exempt property.

Assessed Valuation of Single-Family Residential Parcels. The following table shows a breakdown of the assessed valuations of improved single-family residential parcels in the City, according to assessed valuation.

Table 3 CITY OF BERKELEY Per Parcel 2019-20 Assessed Valuation of Single-Family Homes

	No. of		019-20	Average		Median
	Parcels			Assessed Valuatio		
Single Family Residential	17,419	\$10,4	67,626,755	\$600,932	\$	483,640
2019-20	No. of	% of	Cumulative	Total	% of	Cumulative
Assessed Valuation	Parcels ⁽¹⁾	Total	% of Total	Valuation	Total	% of Total
\$0 - \$49,999	532	3.054%		21,785,772 0.2		0.20%
\$50,000 - \$99,999	1,440	8.267	11.321	107,101,874	1.023	1.231
\$100,000 - \$149,999	1,410	8.095	19.416	173,346,541	1.656	2.887
\$150,000 - \$199,999	930	5.339	24.755	161,959,634	1.547	4.435
\$200,000 - \$249,999	822	4.719	29.474	184.637.345	1.764	6.198
\$250,000 - \$299,999	819	4.702	34.175	225,246,372	2.152	8.350
\$300,000 - \$349,999	809	4.644	38.820	262,141,561	2.504	10.855
\$350,000 - \$399,999	771	4.426	43.246	288.941.404	2.760	13.615
\$400,000 - \$449,999	702	4.030	47.276	297,963,257	2.847	16.461
\$450,000 - \$499,999	701	4.024	51.300	333,030,002	3.182	19.643
\$500.000 - \$549.999	659	3.783	55.084	346.697.041	3.312	22.955
\$550,000 - \$599,999	599	3.439	58.522	344,620,912	3.292	26.247
\$600.000 - \$649.999	636	3.651	62.173	397,163,095	3.794	30.042
\$650,000 - \$699,999	553	3.175	65.348	372,930,747	3.563	33.604
\$700,000 - \$749,999	522	2.997	68.345	378,157,534	3.613	37.217
\$750,000 - \$799,999	585	3.358	71.703	453,018,278	4.328	41.545
\$800,000 - \$849,999	520	2.985	74.689	428,800,729	4.096	45.641
\$850,000 - \$899,999	474	2.721	77.410	414,651,882	3.961	49.602
\$900,000 - \$949,999	488	2.802	80.211	450,951,464	4.308	53.910
\$950,000 - \$999,999	394	2.262	82.473	384,432,836	3.673	57.583
\$1,000,000 and greater	3,053 17.527	7100.000	4,440,048,475	42.41	7100.000	
Total	17,419	100.000%		\$10,467,626,755	100.000%	

(1) Improved single family residential parcels. Excludes condominiums and parcels with multiple family units. Source: California Municipal Statistics, Inc.

Alternative Method of Tax Apportionment - Teeter Plan

The Board of Supervisors of the County has approved the implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the "**Teeter Plan**"), as provided for in Section 4701 *et seq.* of the California Revenue and Taxation Code. Under the Teeter Plan, the County apportions secured property taxes on an accrual basis when due (irrespective of actual collections) to participating political subdivisions, for which the County acts as the tax-levying or tax-collecting agency. In return, the County receives and retains delinquent payments, penalties and interest as collected that would have been due the local agency in the absence of the Teeter Plan. The City has elected <u>not</u> to participate in the Teeter Plan, so the City receives property taxes actually collected, as well as any penalties and interest on delinquent taxes.

The property tax levies and collections for the City for fiscal years 2009-10 through 2018-19 are shown in the following table:

Table 4 CITY OF BERKELEY SECURED TAX CHARGES AND DELINQUENCIES 2009-10 TO 2018-19 (Dollar amounts in thousands)

		Amount Delinquent	% Delinquent
Fiscal Year	Secured Tax Charge ⁽¹⁾	June 30	June 30
2009-10	\$38,834,067.28	\$1,222,174.35	3.15%
2010-11	38,858,160.99	937,557.29	2.41
2011-12	40,085,111.77	814,536.14	2.03
2012-13	40,863,072.01	588,607.19	1.44
2013-14	43,482,172.03	491,490.18	1.13
2014-15	45,452,269.29	477,676.28	1.05
2015-16	48,936,168.63	607,465.93	1.24
2016-17	52,097,423.06	562,295.75	1.08
2017-18	56,317,983.19	488,950.31	0.87
2018-19	59,739,122.88	512,267.28	0.86

(1) 1% General Fund apportionment.

Source: California Municipal Statistics, Inc.

Appeals of Assessed Value

There are two types of appeals of assessed values that could adversely impact property tax revenues within the City.

Appeals may be based on Proposition 8 of November 1978, which requires that for each January 1 lien date, the taxable value of real property must be the least of its base year value, annually adjusted by the inflation factor pursuant to Article XIIIA of the State Constitution, or its full cash value, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a Proposition 8 reduction of their property tax assessment by filing a written application, in form prescribed by the SBE, with the County board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. Proposition 8 reductions may also be unilaterally applied by the County Assessor.

Any reduction in the assessment ultimately granted as a result of such appeal applies to the year for which application is made and during which the written application was filed. These reductions are subject to yearly reappraisals and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIIIA.

A second type of assessment appeal involves a challenge to the base year value of an assessed property. Appeals for reduction in the base year value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of change of

ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

The City cannot predict the changes in assessed values that might result from pending or future appeals by taxpayers. Any reduction in aggregate City assessed valuation due to appeals, as with any reduction in assessed valuation due to other causes, will cause the tax rate levied to repay the Bonds to increase accordingly, so that the fixed debt service on the Bonds (and other outstanding general obligation bonds, if any) may be paid.

Tax Rates

The table below shows historical property tax rates within the City:

Table 5CITY OF BERKELEYTYPICAL TAX RATE PER \$100 ASSESSED VALUATION(TRA 13-000 – 2019-20 Assessed Valuation: \$20,220,876,712)

	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year
	<u>2015-16</u>	<u>2016-17</u>	<u>2017-18</u>	<u>2018-19</u>	<u>2019-20</u>
Countywide Rate	\$1.0000	\$1.0000	\$1.0000	\$1.0000	\$1.0000
Alameda County				.0112	.0108
Berkeley Unified School District Bonds	.1321	.1327	.1218	.1264	.1204
Peralta Community College District	.0337	.0256	.0310	.0269	.0257
Bay Area Rapid Transit	.0026	.0080	.0084	.0070	.0120
East Bay Municipal Utility District	.0067	.0032	.0021		
East Bay Regional Park District	.0034	.0028	.0011	.0057	.0060
City of Berkeley	<u>.0433</u>	<u>.0445</u>	<u>.0492</u>	.0507	.0435
Total	\$1.2218	\$1.2168	\$1.2136	1.2279	1.2184

Source: California Municipal Statistics, Inc.

Major Taxpayers

The following table shows the twenty largest taxpayers in the City as determined by their secured assessed valuations in 2019-20.

Table 6 CITY OF BERKELEY Largest 2019-20 Local Secured Taxpayers

			2019-20	% of
	Property Owner	Primary Land Use	Assessed Valuation	Total (1)
1.	Bayer Healthcare LLC	Industrial	\$ 361,038,220	1.81%
2.	EQR Acton Berkeley LP	Apartments	121,353,681	0.61
3.	Granite Library Gardens LP	Apartments	90,109,014	0.45
4.	Hanumandla R. & Hanumandla J. Reddy, Trustee	s Apartments	82,940,100	0.42
5.	BREIT SH Berkeley LLC	Apartments with Retail	80,372,542	0.40
6.	CVBAF ACQ LLC	Apartments	75,295,445	0.38
7.	RI Berkeley LLC	Apartments	64,048,736	0.32
8.	Parkershattuck Owner LLC	Apartments	60,159,827	0.30
9.	CPF Berkeley Varsity LLC	Apartments	54,036,304	0.27
10.	Berkeley Downtown Hotel Owner LLC	Hotel	53,040,000	0.27
11.	Essex Berkeley 4 th Street LP	Condominiums with Retail	52,119,918	0.26
12.	Garr Land & Resource Management Inc.	Industrial	44,427,600	0.22
13.	Dwight Way Residential Property Owner LLC	Apartments	41,509,945	0.21
14.	1950 MLK LLC	Apartments	40,527,414	0.20
15.	John K. Gordon & Janis L. Mitchell, Trustees	Commercial Properties	40,349,321	0.20
16.	Raintree 1122 University LLC	Apartments	40,114,669	0.20
17.	CLPF Hillside Village LP	Apartments	39,933,925	0.20
18.	Stonefire Partners LLC	Apartments	39,074,824	0.20
19.	Jamestown Premier Berkeley Grotto LP	Commercial	38,302,622	0.19
20.	DS Properties 17 LP	Shopping Center	35,901,532	<u>0.18</u>
			\$1,454,655,639	7.30%

(1) 2019-20 Local Secured Assessed Valuation: \$19,926,615,530.

Source: California Municipal Statistics, Inc.

Direct and Overlapping Debt

Set forth below is a direct and overlapping debt report (the "**Debt Report**") prepared by California Municipal Statistics, Inc. The Debt Report is included for general information purposes only. The City has not reviewed the Debt Report for completeness or accuracy and makes no representation in connection therewith.

The Debt Report generally includes long-term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the City in whole or in part. Such long-term obligations generally are not payable from revenues of the City (except as indicated) nor are they necessarily obligations secured by land within the City. In many cases, long-term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency. The contents of the Debt Report are as follows: (1) the first column indicates the public agencies which have outstanding debt as of the date of the Debt Report and whose territory overlaps the City; (2) the second column shows the percentage that the City's assessed valuation represents of the total assessed valuation of each public agency identified in the first column; and the third column is an apportionment of the dollar amount of each public agency's outstanding debt to property in the City, as determined by multiplying the total outstanding debt of each agency by the percentage of the City's assessed valuation represented in the second column.

Table 7 CITY OF BERKELEY STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT

2019-20 Assessed Valuation: \$20,787,912,797

DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT: Alameda County	<u>% Applicable</u>	Debt 1/1/20 \$ 14,601,640
Bay Area Rapid Transit District	2.583	33,133,174
Peralta Community College District	18.686	
Berkeley Unified School District	99.997	, ,
City of Berkeley	100.000	106,610,000
City of Berkeley Community Facilities District No. 1	100.000	1,435,000
East Bay Regional Park District	4.119	6,454,473
City of Berkeley Thousand Oaks Heights AFUU Assessment District		005,000
TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT		\$515,764,294
DIRECT AND OVERLAPPING GENERAL FUND DEBT: Alameda County and Coliseum Obligations Alameda-Contra Costa Transit District Certificates of Participation Peralta Community College District Pension Obligation Bonds City of Berkeley Lease Revenue Bonds and Certificates of Participat TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT	7.947 18.686	\$ 56,561,763 926,223 26,234,470 <u>24,145,000⁽¹⁾</u> \$107,867,456
COMBINED TOTAL DEBT		\$623,631,750 ⁽²⁾
Ratios 2019-20 Assessed Valuation:		
Direct Debt (\$106,610,000)0.51%		
Total Direct and Overlapping Tax and Assessment Debt		
Combined Direct Debt (\$137,495,000)0.63% Combined Total Debt3.00%		

(1) Excludes the Bonds issued for sale hereunder.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS

Principal of and interest on the Bonds are payable from the proceeds of an ad valorem tax levied by the County, as directed by the City, for the payment thereof. See "THE BONDS" and "SECURITY FOR THE BONDS." Articles XIIIA, XIIIB, XIIIC and XIIID of the State Constitution, Propositions 62, 111, and 218 and 1A, and certain other provisions of law discussed below are included in this section to describe the potential effect of these Constitutional and statutory measures on the ability of the County to levy, and the City to spend, tax proceeds for operating and other purposes, and it should not be inferred from the inclusion of such materials that these laws impose any limitation on the ability of the County to levy taxes for payment of the Bonds. The tax levied by the County, as directed by the City, for payment of the Bonds was approved by the City's voters in compliance with Article XIIIA and all applicable laws.

Article XIIIA of the State Constitution

On June 6, 1978, California voters approved Proposition 13, which added Article XIIIA to the State Constitution. Article XIIIA, as amended, limits the amount of any ad valorem tax on real property to one percent of the full cash value thereof, except that additional ad valorem taxes may be levied to pay debt service (i) on indebtedness approved by the voters prior to July 1, 1978, (ii) on bonded indebtedness approved by a two-thirds vote on or after July 1, 1978, for the acquisition or improvement of real property or (iii) bonded indebtedness incurred by a school district, community college district or county office of education for the construction, reconstruction, rehabilitation or replacement of school facilities, including the furnishing and equipping of school facilities or the acquisition of real property as shown on the 1975-76 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This full cash value may be increased at a rate not to exceed two percent per year to account for inflation.

Article XIIIA has subsequently been amended to permit reduction of the "full cash value" base in the event of declining property values caused by damage, destruction or other factors, to provide that there would be no increase in the "full cash value" base in the event of reconstruction of property damaged or destroyed in a disaster, and in other minor or technical ways.

Legislation Implementing Article XIIIA

Legislation has been enacted and amended a number of times since 1978 to implement Article XIIIA. Under current law, local agencies are no longer permitted to levy directly any property tax (except to pay voter-approved indebtedness). The one percent property tax is automatically levied by the County and distributed according to a formula among taxing agencies. The formula apportions the tax roughly in proportion to the relative shares of taxes levied prior to 1989.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the two percent annual adjustment are allocated among the various jurisdictions in the "taxing area" based upon their respective "situs." Any such allocation made to a local agency continues as part of its allocation in future years.

All taxable property is shown at full market value on the tax rolls. Consequently, the tax rate is expressed as \$1 per \$100 of taxable value. All taxable property value included in this Official Statement is shown at 100 percent of market value (unless noted differently) and all tax rates reflect the \$1 per \$100 of taxable value.

Article XIIIB of the State Constitution

In addition to the limits Article XIIIA imposes on property taxes that may be collected by local governments, certain other revenues of the State and most local governments are subject to an annual "appropriations limit" imposed by Article XIIIB which effectively limits the amount of such revenues those entities are permitted to spend. Article XIIIB, 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" excludes 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 XIIIB 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 case of emergency; however, the appropriations limit for the next 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 has its 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. 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 exceeds the aggregate limit, the excess must be returned to the agency's taxpayers through tax rate or fee reductions over the following two years.

The City has never exceeded its appropriations limit.

Articles XIIIC and XIIID of the State Constitution

General. 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 XIIIC and XIIID 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 XIIIA and XIIIC of the State Constitution. The amendments to Article XIIIA 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 XIIIC 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 XIIIC 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.

Property-Related Fees and Charges. Article XIIID 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.

Reduction or Repeal of Taxes, Assessments, Fees and Charges. Article XIIIC 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 Bonds could be adversely affected.

Burden of Proof. Article XIIIC 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 XIIID 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 XIIID.

Judicial Interpretation of Proposition 218. The interpretation and application of Articles XIIIC and XIIID will ultimately be determined by the courts, and it is not possible at this time to predict with certainty the outcome of such determination.

Proposition 62

Proposition 62 was adopted by the voters at the November 4, 1986, general election and (a) requires that any new or higher taxes for general governmental purposes imposed by local governmental entities such as the City be approved by a two-thirds vote of the governmental entity voting in an election on the tax, (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters of the governmental entity voting in an election on the tax, (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters of the governmental entity voting in an election on the tax, (c) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (d) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIIIA, (e) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities, and (f) requires that any tax imposed by a local governmental entity on or after August 1, 1985, be ratified by a majority vote of the voters voting in an election on the tax within two years of the adoption of the initiative or be terminated by November 15, 1988.

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California appellate court cases have overturned the provisions of Proposition 62 pertaining to the imposition of taxes for general government purposes. However, the California Supreme Court upheld Proposition 62 in its decision on August 28, 1995, in *Fresno County Transportation Authority v. Guardino*. This decision reaffirmed the constitutionality of Proposition 62. Certain matters regarding Proposition 62 were not addressed in the Supreme Court's decision, such as what remedies exist for taxpayers subject to a tax not in compliance with Proposition 62, and whether the decision applies to charter cities. The City has not experienced any substantive adverse financial impact as a result of the passage of this initiative.

Proposition 1A; Proposition 22

Proposition 1A. Proposition 1A, proposed by the Legislature in connection with the State's Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 22. Proposition 22, entitled "The Local Taxpayer, Public Safety and Transportation Protection Act," was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State's authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Possible Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID and Propositions 62, 111, 218 and 1A were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time other initiative measures could be adopted, further affecting revenues of the City or the City's ability to expend revenues. The nature and impact of these measures cannot be anticipated by the City.

LEGAL MATTERS

Tax Exemption – Refunding Bonds

Federal Tax Status. 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 Refunding Bonds 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 Refunding Bonds 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 Refunding Bonds.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public (excluding bond houses and brokers) at which a Refunding Bond 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 (excluding bond houses and brokers) at which a Bond 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. If **issue premium**" for purposes of federal income taxes and State of California personal income taxes. *De minimis* original issue discount and original issue premium is 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 Bond 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 Refunding Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Refunding Bonds who purchase the Refunding Bonds after the initial offering of a substantial amount of such maturity. Owners of such Refunding Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Refunding Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such Refunding Bonds is sold to the public.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond'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 Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized bond premium is not deductible for federal income tax purposes. Owners of premium Refunding Bonds, 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 Refunding Bonds.

No Tax Exemption – 2020 Measure O Bonds

Interest on the 2020 Measure O Bonds is <u>not</u> excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax.

California Tax Status. In the further opinion of Bond Counsel, interest on the 2020 Measure O Bonds and the Refunding Bonds is exempt from California personal income taxes.

Forms of Opinion. Copies of the proposed forms of opinion of Bond Counsel are attached hereto as APPENDIX C.

Other Tax Considerations

Owners of the Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Bonds 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 Bonds other than as expressly described above, including any opinion regarding federal tax consequences arising with respect to the ownership, sale or disposition of the Bonds, or the amount, accrual or receipt of interest on the Bonds.

In addition, future legislation, if enacted into law, or clarification of the Tax Code may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Tax Code may also affect the market price for, or marketability of, the Bonds. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal tax legislation, as to which Bond Counsel expresses no opinion.

Continuing Disclosure

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City by not later than April 1 after the end of each fiscal year of the City (currently June 30), commencing with the report for the 2019-20 fiscal year (the "**Annual Report**"), and to provide notices of the occurrence of certain enumerated events.

The specific nature of the information to be contained in an Annual Report or the notices of enumerated events is set forth in the form of Continuing Disclosure Certificate attached as APPENDIX D. These covenants will be made in order to assist the Purchaser (as defined below) in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (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 _____ of the City's Comprehensive Annual 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 changes to the credit rating for one series of the City's 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 Bonds.

Neither the County nor any other entity other than the City shall have any obligation or incur any liability whatsoever with respect to the performance of the City's duties regarding continuing disclosure

Absence of Material Litigation

No litigation is pending or threatened concerning the validity of the Bonds, and a certificate to that effect will be furnished to the purchasers at the time of the original delivery of the Bonds. 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 revenues or contesting the City's ability to issue and repay the Bonds.

RATING

Upon issuance of the Bonds, S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("**S&P**"), will assign the Bonds a rating of "____."

The City has furnished to S&P information and material which has not been included in this Official Statement. Generally, rating agencies base their ratings on information and material so furnished and on investigations, studies and assumptions made by the rating agencies. The ratings reflect only the view of such organization and an explanation of the significance of such rating may be obtained from S&P.

There is no assurance that the rating will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agency, if, in the judgment of such rating agency, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

MUNICIPAL ADVISOR

The City has retained NHA Advisors, LLC, San Rafael, California, as its municipal advisor (the "**Municipal Advisor**") in connection with the preparation of this Official Statement and with respect to the issuance of the Bonds. 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 an independent registered 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 Bonds.

UNDERWRITING

Purchase of the 2020 Measure O Bonds. Under the terms of a competitive bid, ______ (the "**Measure O Purchaser**") has agreed to purchase the Bonds at a price of \$______ (which is equal to the aggregate principal amount of the 2020 Measure O Bonds (\$______), plus a net original issue premium of \$______, less a Measure O Purchaser's discount of \$_____). The Measure O Purchaser will purchase all of the 2020 Measure O Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Official Notice of Sale related to the 2020 Measure O Bonds, including the approval of certain legal matters by counsel and certain other conditions.

Purchase of the Refunding Bonds. Under the terms of a competitive bid, ______ (the "**Refunding Purchaser**" and, together with the Measure O Purchaser, the "Purchasers") has agreed to purchase the Refunding Bonds at a price of \$______ (which is equal to the aggregate principal amount of the Refunding Bonds (\$______), plus a net original issue premium of \$______, less a Refunding Purchaser's discount of \$______). The Refunding Purchaser will purchase all of the Refunding Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Official Notice of Sale related to the Refunding Bonds, including the approval of certain legal matters by counsel and certain other conditions.

Offering of the Bonds. The Purchasers intends to offer the Bonds to the public at the offering prices set forth on the inside cover pages of this Official Statement. The Purchasers may offer and sell to certain dealers and others at a price lower than the offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Purchasers, respectively.

EXECUTION

The execution of this Official Statement and its delivery have been approved by the City Council.

CITY OF BERKELEY

By: _____ City Manager

APPENDIX A

FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY

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 123,328, giving it the highest population density of any city in the East Bay. The University of California is a major component of the City's economy, employing more than 235,000 full and part-time workers.

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
2015	119,400	1,613,168	38,952,462
2016	120,012	1,631,088	39,214,803
2017	121,328	1,646,156	39,504,609
2018	122,369	1,656,884	39,740,508
2019	123,328	1,669,301	39,927,315

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.

The City Council members are shown in the below table:

Member	<u>District</u>	Term Expires
Jesse Arreguin	Mayor	11/30/2020
Rashi Kesarwani	1	11/30/2022
Cheryl Davila	2	11/30/2020
Ben Bartlett	3	11/30/2020
Kate Harrison	4	11/30/2022
Sophie Hahn	5	11/30/2020
Susan Wengraf	6	11/30/2020
Rigel Robinson	7	11/30/2022
Lori Droste	8	11/30/2022

CITY FINANCIAL INFORMATION

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 comprehensive annual financial report of the City for fiscal year 2018-19 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 (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)

A00570	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19
ASSETS: Cash and investments in treasury*	\$82,615	82,891	108,058	107,360
Receivables (net of allowance where	φ02,013	02,091	100,000	107,300
applicable):				
Accounts	7.072	8,777	6,951	4,980
Interest	534	526	763	778
Taxes	9,421	8,109	8,623	9,953
Subventions/grants			180	450
Due from other funds	2,920	3,752	6,659	6,973
Notes receivable	3,595	4,255	3,755	3,697
Other	353	5	5	320
Prepaid Items		75	142	
Total assets	106,512	108,390	135,136	134,512
LIABILITIES:				
Accounts payable	1,768	4,344	3,610	6,736
Accrued salaries and wages	4,502	5,169	5,473	5,989
Advances from other funds	0.40	6,683	6,287	4,059
Deposits held Unearned revenue	840	905	974	781
Tax and revenue anticipation notes	 24,995	17,000	 25,550	14,000
•				
Other liabilities	3,706	2,923	3,755	3,899
Total liabilities	35,811	37,024	45,649	35,463
Deferred Inflows of Resources	5,676	7,707	5,601	5,813
FUND BALANCES				
Reserved for:				
Encumbrances/Assigned to	3,686	3,015	33,373	42,667
Notes receivable/Nonspendable	3,595	4,330	3,898	3,697
Unreserved/Unassigned, report in:				
General fund	57,743	56,313	46,614	46,872
Total fund balances	65,025	63,658	83,885	92,236
Total liabilities and fund balances	\$106,512	\$108,390	\$135,136	135,512

* Cash and investments in treasury includes restricted cash and investments. Source: City of Berkeley, Comprehensive Annual Financial Reports for 2014-15 through 2018-19.

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

	Actual <u>2015-16</u>	Actual <u>2016-17</u>	Actual <u>2017-18</u>	Actual <u>2018-19</u>
REVENUES:				
Taxes	\$133,249	\$137,277	\$161,666	\$173,216
Licenses and Permits	323	556	834	1,405
Subvention and Grants/Intergovernmental	11,208	11,509	1,129	1,868
Service Fees	9,528	9,140	9,862	8,433
Fines and Forfeitures	6,371	6,370	6,933	5,443
Rents	215	160	284	289
Franchises	1,673	2,247	1,990	1,800
Interest	2,784	1,383	2,416	6,915
Other	48	1,750	237	1,722
TOTAL REVENUES	165,400	170,393	185,351	201,090
EXPENDITURES:				
General Government	28,244	37,871	30,143	27,410
Public Safety	89,076	94,093	95,503	103,084
Highways and Streets	1,337	1,638	1,900	2,904
Health and Human Services	7,354	9,676	9,725	13,319
Culture-Recreation	5,848	6,086	5,476	5,943
Community Development	6,057	6,477	7,153	8,264
Economic Development	2,325	2,332	2,576	2,845
Debt Service	372	166	252	270
TOTAL EXPENDITURES	140,613	158,338	152,728	164,040
Excess Revenues Over (Under) Expenditures	24,788	12,055	32,623	37,050
Transfers In(out)/Other	(13,052)	(13,421)	(12,396)	(27,699)
Net Change in Fund Balance	11,735	(1,366)	20,227	9,351
Fund Balance, July 1	53,289	65,025	63,658	83,885
Fund Balance, June 30*	\$65,025	\$63,658	\$83,885	\$93,236

* Totals may not add due to rounding.

Source: City of Berkeley Comprehensive Annual 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 about January to May of each year, the City Council meets in public 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.

General Fund Reserves

On December 13, 2016, the City Council established a General Fund reserve policy (the "**Reserve Policy**") to prepare for the impact of economic cycles and catastrophic events. The Reserve Policy was enacted to ensure that fluctuations in revenue do not impede the City's ability to meet expenditure obligations. When revenues fail to meet the City's operating requirements, or the need for disbursements exceeds receipts, General Fund reserves, upon a majority vote of the City Council, may be used in accordance with the standards set forth in the Policy. The Reserve Policy provides that the General Fund reserve shall be comprised of two elements: a Stability Reserve and a Catastrophic Reserve:

The 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. During fiscal year 2019, \$5,600,000 was contributed to the Stability Reserve, and the balance at June 30, 2019 was \$20,022,922.

A Catastrophic Reserve is maintained to sustain General Fund operations in the event of a natural disaster or other catastrophic event. The Catastrophic Reserve may be used to respond to extreme, one-time events, such as earthquakes, fires, floods, civil unrest, or terrorist attacks. The Catastrophic Reserve may not be accessed to meet operational shortfalls or to fund new programs or projects. During fiscal year 2019, \$4,580,000 was contributed to the Catastrophic Reserve, and the balance at June 30, 2019 was \$16,622,481.

State Budget and its Impact on the City

Fiscal Year 2019-20 State Budget. Information about the fiscal year 2019-20 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 or Underwriter, and the City and Underwriter take 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.

Dissolution of Redevelopment Agencies. State legislation enacted as part of the 2011 Budget Act, and upheld by the California Supreme Court, resulted in the formal dissolution of redevelopment agencies, including the Berkeley Redevelopment Agency (the "Former Redevelopment Agency"), effective as of February 1, 2012. The impact on the City's General Fund of the dissolution of the Former Redevelopment Agency is minimal because the City is in the process of winding down its redevelopment program, and the funding the City received from the Former Redevelopment Agency prior to its dissolution only supported 1.5 full-time employees.

Ad Valorem Property Taxes

Tax Levies and Collections. Property taxes accounted for approximately 54% of the City's general fund revenues for fiscal year 2018-19. 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 taxdefaulted. 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.

See Table 1 of the forepart of this Official Statement for a table summarizing the historical and current assessed valuation of the taxable property in the City.

The City does <u>not</u> participate in the Teeter Plan. See Table 4 of the forepart of this Official Statement for a history of secured tax charges and delinquencies within the City during the past 10 years.

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.

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.

Total taxable sales in the City during fiscal year 2019 were reported to be \$1.814 billion, a slight increase over the total taxable sales of \$1.8 billion reported during fiscal year 2018.

CITY OF BERKELEY TAXABLE TRANSACTIONS (Figures in Thousands)

	2014	2015	2016	2017	2018
Retail and Food Services:					
Apparel Stores	\$59,369	\$57,048	\$55,449	\$52,645	\$52,991
Gen. Merchandise Stores	12,292	15,165	15,610	17,178	20,782
Food Stores	123,572	133,916	145,462	150,894	149,662
Eating and Drinking Places	323,125	347,926	364,417	371,299	374,792
Home Furnishings and Appliances	74,682	74,514	71,927	72,358	69,746
Bldg. Materials, Farm Implements	90,104	98,958	100,899	107,333	109,052
Auto Dealers, Auto Supplies	126,527	125,716	115,808	117,513	119,883
Gas/Service Stations	94,630	83,285	75,720	84,041	93,694
Other Retail Stores	248,626	255,133	251,324	243,881	262,209
Total Retail and Food Services	1,152,938	1,191,661	1,196,618	1,217,142	1,252,813
All Other Outlets	<u>394,169</u>	<u>413,156</u>	<u>431,614</u>	<u>364,736</u>	<u>361,292</u>
TOTAL ALL OUTLETS	<u>\$1,547,107</u>	<u>\$1,604,817</u>	<u>\$1,628,232</u>	<u>\$1,581,878</u>	<u>1,614,105</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.

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. During fiscal year 2018-19, business license taxes increased by 7.4% from fiscal year 2017-18, primarily due to a business license taxes on recreational cannabis, which was a new tax in fiscal year 2018-19.

Property Transfer Tax. The City's transfer tax rate is 1.5% for properties with a consideration up to \$1.5 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 the 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 is treated as one-time revenue to be transferred to the Capital Improvement Fund for capital infrastructure needs; that amount was increased to \$12.5 million in fiscal year 2017-18.

For fiscal year 2018-19, property transfer tax revenue increased by 5.3% from fiscal year 2017-18, due primarily to an increase in the average property sales prices.

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.

For fiscal year 2018, VLF revenue totaled \$11,822,917, which is \$828,465 or 7.54% more than the \$10,994,452 received in fiscal year 2017. Consistent with the 8.87% increase in assessed values for fiscal year 2018. The amount of \$11,822,917 received in fiscal year 2018 was \$1,502,515 more than the adopted budget amount of \$10,320,402.

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; it is paid by the hotel guest. 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 Note 12.A. of APPENDIX B to this Official Statement.

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**"). The required employer contribution rates for fiscal year 2017-18 were 27.90%, 39.90% and 56.60% of annual covered payroll for Miscellaneous Plan, Safety Fire Plan and Safety Police Plan employees, respectively; for fiscal year 2018-19, the rates were 30.50%, 44.00%, and 60.80%, respectively; for fiscal year 2019-20, the rates are 23.054%, 49.474% and 63.479%, respectively. 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 Note 12.B. of APPENDIX B to this Official Statement for detailed information about the actuarial assumptions underlying the contributions.

The City's fiscal year 2015-16 through 2017-18 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	Contributions Employer	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
PERS – Misce	ellaneous Plan						
6/30/2016	\$902,228,876	\$641,339,412	\$20,032,929	\$260,889,464	71.08%	\$85,480,937	305.20%
6/30/2017	983,333,433	696,104,044	21,214,582	287,229,389	70.79	88,645,362	324.02
6/30/2018	1,016,396,249	735,828,894	20,393,310	280,567,355	72.40	94,371,740	297.30
PERS – Publi	c Safety Fire Plan						
6/30/2016	\$246,704,540	\$176,593,232	\$5,967,197	\$70,111,308	71.58%	\$16,185,414	433.18%
6/30/2017	266,986,159	188,899,801	6,328,886	78,086,358	70.75	16,684,346	468.02
6/30/2018	272,593,862	196,923,511	6,983,081	75,670,351	72.24	17,219,137	439.45
PERS – Publi	c Safety Police Pla	an					
6/30/2016	\$372,226,444	\$226,135,306	\$10,777,599	\$146,091,138	60.75%	\$22,289,585	655.42%
6/30/2017	404,585,170	244,812,138	11,858,699	159,773,032	60.51	22,933,002	696.69
6/30/2018	416,996,462	257,917,647	13,095,114	159,078,815	61.85	22,701,037	700.76

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 was 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%@50, Fire 3%@55, and Miscellaneous 2.7%@55 and 3%@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.

Fiscal Year	Discount Rate
2018-19	7.375%
2019-20	7.250
2020-21	7.000

For public agencies like the City, the new discount rate took 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% to 3% of normal cost as a percent of payroll for most miscellaneous retirement plans, and a 2% to 5% increase for most safety plans. Additionally, many PERS employers will see a 30% to 40% 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.

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 five years are shown in the table below, with dollar amounts shown in millions:

	2019-20 Projected	2020-21 Projected	2021-2022 Projected	2022-2023 Projected
Miscellaneous ⁽¹⁾	\$33.67	\$36.55	\$41.83	\$43.30
Police	16.27	17.6	18.58	19.16
Fire	8.78	9.46	9.55	9.90
Total	\$58.72	\$63.61	\$69.96	\$72.36

(1) Miscellaneous includes the 8% employee share paid by the City on behalf of the employees and negotiated employee contributions to the City's rate.

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 2018-19 contribution to the BPRIBP and the funded status of the BPRIBP is set forth below.

Fiscal Year	Total Pension	Plan Fiduciary	Contributions	Plan Net Pension	Plan Fiduciary Net Position as a Percentage of the Total Pension	Covered	Plan Net Pension Liability as a Percentage of Covered Employee
Ended	Liability	Net Position	Employer	Liability	Liability	Payroll	Payroll
6/30/2019	\$73,643,792	\$5,556,948	\$1,854,528	\$68,086,844	7.55%	N/A	N/A

For a more detailed discussion of the BPRIBP, see Note 13.C. of 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, 2019 was \$327,753.

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, 2019, the City's contribution to SMPF was \$525,486.

The funded status of the SMPF as of June 30, 2019, 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
6/30/2019		\$1,862,714	\$1,862,714	%	N/A	N/A

For a more detailed discussion of the SMPF, see Note 12.B. of APPENDIX B of this Official Statement.

Strategy to Reduce Unfunded Liabilities

At its June 26, 2018 meeting, the City Council adopted a Resolution appointing the City Manager as plan administrator, and authorizing the City Manager to take the necessary steps to negotiate and execute the documents to establish a Section 115 Trust Fund (the "**Trust Fund**") to use as a pension rate stabilizing fund.

The City Council authorized the establishment of the Trust Fund in order to prefund pension obligations. During fiscal year 2019, \$4 million was contributed to the Trust Fund from General Fund operations, and an additional \$1.1 million was contributed to the Trust Fund from the discount on prepayment of the required PERS unfunded liability payment for fiscal year 2019. As of June 30, 2019, the balance in the Trust Fund was \$9,191,801.

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 45 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 13 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 July 1, 2018, there were 128 active employees, 43 retirees deferred and 59 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability (
6/30/2016	853,748	98	12,362
6/30/2017	1,991,925	43	17,530,174
6/30/2018	2,163,028	34	17,251,382
6/30/2019	2,326,493	36	19,633,312

The funded status of the FRFH as of June 30, 2019, 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
7/1/2018	\$11,296,053	\$30,929,365	\$19,633,312	36.5%	\$15,667,851	125.31%

The actuarial value of the assets in the FRFH as of June 30, 2019 was equal to their market value.

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, 2018, there were 1,094 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 2018-19 and the three preceding years were as follows:

	Percentage of	
Annual	Annual OPEB	Net OPEB
OPEB Cost	Contributed	Obligation
3,492,010	52.0	9,050,063
4,610,828	72.7	37,900,578
4,729,448	42.3	34,215,614
5,051,655	43.3	37,219,746
	OPEB Cost 3,492,010 4,610,828 4,729,448	Annual Annual OPEB OPEB Cost Contributed 3,492,010 52.0 4,610,828 72.7 4,729,448 42.3

The funded status of the RHPAP as of June 30, 2019, the most recent actuarial report, is set forth below:

			Unfunded			UAAL
	Actuarial		Actuarial			as
Actuarial	Accrued	Actuarial	Accrued			Percentage
Valuation	Liability	Value of	Liability-	Funded	Covered	of covered
Date	(AAL)	Assets	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$65,605,879	\$28,386,133	\$37,219,746	43.3%	\$91,491,386 ⁽¹⁾	40.68%

The actuarial value of the assets in the RHPAP as of June 30, 2019 was equal to their market value.

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 Plan a "Retiree" must meet all of the following criteria:

- I. A person who is vested in the plan, and
- II. Has reached the age of 50, and
- III. Has retired from the City at age 50 or thereafter, and
- IV. 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.

Years of Service	City Percentage
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 retirees 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 July 1, 2018, there were 152 active employees, and 22 retirees, and 6 entitled to but not yet receiving benefit retirees.

For the Retiree Health Premium Assistance Coverage 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability
6/30/2016	5,779,291	8.0	16,449,480
6/30/2017	5,105,429	11.0	45,508,847
6/30/2018	4,929,429	6.0	41,652,588
6/30/2019	5,155,293	6.0	46,252,565

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 in 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 data 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 June 30, 2019, the most recent actuarial valuation date, the plan was 4.2% funded. The actuarial accrued liability for benefit was \$48.7 million, and the actuarial value of assets was \$2.5 million, resulting in an unfunded accrued liability of \$46.2 million. The covered payroll (annual payroll of active employees covered by the plan) was approximately \$18.8 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, 2019, the most recent actuarial valuation date is as follows:

			Unfunded			UAAL
		Actuarial	Actuarial			as
Actuarial	Actuarial	Accrued	Accrued			Percentage
Valuation	Value of	Liability (AAL)-	Liability-	Funded	Covered	of covered
Date	Assets	Unit Credit	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$2,450,155	\$48,702,720	\$46,252,565	5.0%	\$18,760,962	246.5%

Defined Contribution Plans

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

Labor Relations

As of January 28, 2020, the City employed approximately 1,457 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 108 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

	E analana a a	Contract Expiration
Labor Organization	Employees	Date
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	128	06/27/2020
Berkeley Police Association	163	06/30/2020
I. B. E. W. Local 1245	10	06/27/2020
Service Employees International Local 1021	438	06/27/2020
Maintenance and Clerical Chapters		
Service Employees International Local 1021	446	06/27/2020
Community Services and Part-Time Recreation		
Leaders Association Chapters		
Public Employees Local 1	164	06/27/2020
Unrepresented Employees	108	06/27/2020

(1) Terms of contract remain in effect after expiration until new contract becomes effective. *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; earthquakes, environmental risk because of its location and 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.

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 2019-20 TRANs have an outstanding principal amount of \$34,780,000 and mature on July 22, 2020.

General Obligation Bonds. The City issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds are payable solely from ad valorem taxes levied by the City and collected by the County.

Debt service for the City's outstanding general obligation bonds, following issuance of the Bonds, is shown under "DEBT SERVICE SCHEDULES – Combined General Obligation Bonds Debt Service Schedule."

Outstanding 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. In June 2010, The Bank of New York Mellon Trust Company, N.A., executed and delivered certificates of participation on behalf of the City in the aggregate principal amount of \$5,750,000. The City's underlying rental obligation is a general obligation payable from any available funds of the City. The certificates bear interest at rates between 4.00%-5.75%, and the final maturity date is August 1, 2040. As of January 1, 2020, the principal balance outstanding was \$4,890,000.

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Lease Revenue Bonds. In October 2012, the Berkeley Joint Powers Financing Authority (the "**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, 2031. As of January 1, 2020, the principal balance outstanding was \$19,255,000.

Employment

The unemployment rate in the Oakland-Hayward-Berkeley MD was 2.6% in October 2019, up from a revised 2.5% in September 2019, and below the year-ago estimate of 3.0%. This compares with an unadjusted unemployment rate of 3.7% for the State and 3.3% for the nation during the same period. The unemployment rate was 2.6% in the County, and 2.7% in Alameda County.

The table below list employment by industry group for Alameda and Alameda Counties for the years 2014 to 2018.

OAKLAND- HAYWARD-BERKELEY MD (Alameda and Alameda Counties) Annual Averages Civilian Labor Force, Employment and Unemployment, Employment by Industry (March 2018 Benchmark)

_	2014	2015	2016	2017	2018
Civilian Labor Force (1)	1,347,700	1,364,800	1,386,100	1,399,500	1,412,800
Employment	1,267,500	1,298,500	1,325,600	1,347,200	1,369,500
Unemployment	80,300	66,300	60,500	52,300	43,200
Unemployment Rate	6.0%	4.9%	4.4%	3.7%	3.1%
Wage and Salary Employment: (2)					
Agriculture	1,300	1,200	1,300	1,400	1,300
Mining and Logging	400	300	300	200	200
Construction	58,600	62,800	67,900	71,200	75,400
Manufacturing	83,300	88,100	91,000	95,500	100,400
Wholesale Trade	45,600	47,000	48,100	48,700	48,000
Retail Trade	109,200	111,800	113,400	114,400	114,700
Transportation, Warehousing, Utilities	35,100	37,500	39,200	40,500	42,100
Information	23,000	25,000	26,400	26,800	27,400
Finance and Insurance	36,000	37,400	38,800	38,700	37,200
Real Estate and Rental and Leasing	16,800	16,800	16,900	17,400	17,700
Professional and Business Services	175,100	177,500	181,200	184,700	189,500
Educational and Health Services	173,100	178,600	185,900	191,500	194,900
Leisure and Hospitality	102,100	106,600	111,700	114,900	116,600
Other Services	37,500	38,100	39,100	40,200	40,700
Federal Government	13,800	13,800	13,900	13,800	13,600
State Government	39,300	39,900	39,700	39,300	39,500
Local Government	113,400	115,600	119,800	121,500	122,100
Total, All Industries (3)	1,063,300	1,098,000	1,134,600	1,160,600	1,181,200

(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 2019

	Number of	% of Total
<u>Employer</u>	Employees	Employment
University of California Berkeley	13,394	19.69%
Lawrence Berkeley National Laboratory	3,312	4.87
Sutter East Bay Media Foundation	2,242	3.30
City of Berkeley	1,568	2.31
Bayer Corporation	1,267	1.86
Berkeley Unified School District	1,225	1.80
Siemens Corporation	855	1.26
Kaiser Permanente Medical Group	831	1.22
Berkeley Bowl Produce	640	0.94
Whole Foods Market California Inc.	389	0.57

Source: City of Berkeley, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

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COUNTY OF ALAMEDA Major Employers (Listed Alphabetically) December 2019

Employer Name	Location	Industry
Alameda County Law Enforcement	Oakland	Government Offices-County
Alameda County Sheriff's Ofc	Oakland	Government Offices-County
Alta Bates Summit Med Ctr Alta	Berkeley	Hospitals
Alta Bates Summit Med Ctr Lab	Oakland	Laboratories-Medical
BART	Oakland	Transportation
Bayer Health Care	Berkeley	Laboratories-Pharmaceutical (mfrs)
California State Univ East Bay	Hayward	Schools-Universities & Colleges Academic
East Bay Mud	Oakland	Water & Sewage Companies-Utility
Ebmud	Oakland	Utilities
Grifols Diagnostic Solutions	Emeryville	Pharmaceutical Research Laboratories
Highland Hospital	Oakland	Hospitals
Kaiser Permanente Oakland Med	Oakland	Hospitals
Lawerence Berkeley Lab	Berkeley	Laboratories-Research & Development
Lawrence Livermore Natl Lab	Livermore	University-College Dept/Facility/Office
Lifescan Inc	Fremont	Physicians & Surgeons Equip & Supls-Mfrs
Sanfrancisco Bayarea Rapid	Oakland	Transit Lines
Tesla	Fremont	Automobile Dealers-Electric Cars
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	Hospitals
Western Digital Corp	Fremont	Computer Storage Devices (mfrs)
	. romont	

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2019 1st 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 2015 through 2019.

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2015	Berkeley	\$3,909,548	\$52,592
	Alameda County	47,744,408	60,575
	California	901,189,699	50,072
	United States	7,357,153,421	45,448
2016	Berkeley	\$4,264,478	\$56,194
	Alameda County	52,448,661	64,030
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2017	Berkeley	\$4,618,113	\$59,958
	Alameda County	56,091,066	67,631
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043
2018	Berkeley	\$5,070,468	\$66,382
	Alameda County	61,987,949	73,633
	California	1,113,648,181	59,646
	United States	8,640,770,229	50,735
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
		-,- ,,	, -

CITY OF BERKELEY AND COUNTY OF ALAMEDA Effective Buying Income As of January 1, 2015 through 2019

Source: The Nielsen Company (US), Inc for years 2015 through 2018; Claritas, LLC for 2019.

Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2014 through 2018.

CITY OF BERKELEY Total Building Permit Valuations (Valuations in Thousands)

	2014	2015	2016	2017	2018
Permit Valuation					
New Single-family	\$5,453.0	\$2,995.0	\$5,469.1	\$14,776.2	13,808.7
New Multi-family	23,757.6	53,876.1	9,835.5	47,723.2	24,506.9
Res. Alterations/Additions	<u>53,835.6</u>	<u>52,549.5</u>	<u>45,295.9</u>	<u>45,215.9</u>	<u>80,130.0</u>
Total Residential	82,946.2	109,420.6	60,600.5	107,715.3	118,445.6
New Commercial	31,152.1	20,246.9	32,109.7	24,576.3	18,732.1
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	12,156.5	7,770.1	3,315.8	3,636.5	3,236.6
Com. Alterations/Additions	46,571.3	44,962.7	47,485.2	26,597.7	52,522.6
Total Nonresidential	89,779.9	72,979.7	82,910.7	54,810.5	74,491.3
New Dwelling Units					
Single Family	15	6	20	43	63
Multiple Family	<u>249</u>	<u>459</u>	<u>69</u>	<u>402</u>	<u>129</u>
TOTAL	264	465	89	445	192

Source: Construction Industry Research Board, Building

APPENDIX B

COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2019

APPENDIX C

FORMS OF OPINION OF BOND COUNSEL

APPENDIX D

FORM OF CONTINUING DISCLOSURE CERTIFICATE

\$

CITY OF BERKELEY 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable) \$_____*
CITY OF BERKELEY
2020 Refunding General Obligation Bonds, Series A
(2008 Election Measure FF: Neighborhood
Branch Library Improvements Project)

CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City") in connection with the issuance of the bonds captioned above (the "Bonds"). The Bonds are being issued under the Constitution and laws of the State of California, including but not limited to, Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, under a resolution adopted by the City Council of the City on February 25, 2020 (the "Bond Resolution") and pursuant to and consistent with the Charter of the City.

The City hereby covenants and agrees as follows:

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

Section 2. <u>Definitions</u>. In addition to the definitions set forth above and in the Bond Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms have the following meanings:

"Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

"Annual Report Date" means the date not later than April 1 after the end of each fiscal year of the City (currently June 30th).

"*Dissemination Agent*" means the City or any other Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation. As of the date of this Disclosure Certificate, NHA Advisors, LLC is acting as Dissemination Agent.

"Listed Events" means any of the events listed in Section 5(a).

"*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.

"Official Statement" means the final official statement executed by the City in connection with the issuance of the Bonds.

"Participating Underwriter" means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Rule" means 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. Provision of Annual Reports.

The City shall, or shall cause the Dissemination Agent to, not later than the Annual (a) Report Date, commencing April 1, 2021 with the report for the 2019-20 fiscal year, provide to the MSRB in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(b). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) to the MSRB, in an electronic format, as prescribed by the MSRB.

- (c) With respect to each Annual Report, the Dissemination Agent shall:
- (i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and
- (ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. <u>Content of Annual Reports</u>. The City's Annual Report shall contain or incorporate by reference the following:

(a) The City's audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Unless otherwise provided in the audited financial statements filed on or before the Annual Report Date, financial information and operating data with respect to the City for the preceding fiscal year, substantially similar to that provided in the Official Statement:

- (i) Assessed value of taxable property within the jurisdiction of the City;
- Summary of property tax rates for all taxing entities within the City expressed as a percentage of assessed valuation in the form of Table 5 of the Official Statement;
- (iii) Top ten property tax assessees for current fiscal year, taxable value and percentage of total assessed value in substantially the form of Table 6 of the Official Statement;
- (iv) If and to the extent such information is available from the County, property tax collection delinquencies for the City; and
- (v) Amount of all general obligation debt of the City outstanding, and total scheduled debt service on such general obligation debt.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. <u>Reporting of Significant Events</u>.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults.
- (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 Bonds 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), (a)(14), and (a)(15) of this Section 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices, determinations or other events affecting the tax status of the Bonds. 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 it determines the event's occurrence is material for purposes of U.S. federal securities law. Whenever the City obtains knowledge of the occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(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 5(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 6. <u>Identifying Information for Filings with the MSRB</u>. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. <u>Termination of Reporting Obligation</u>. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. <u>Dissemination Agent</u>. 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 Dissemination Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

Section 9. <u>Amendment; Waiver</u>. 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 Sections 3(a), 4 or 5(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 Bonds, 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 Bonds, 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 Bonds in the manner provided in the Bond Resolution for amendments to the Bond Resolution with the consent of holders, or (ii) does not, in the opinion

of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be filed in the same manner as for a Listed Event under Section 5(b).

Section 10. <u>Additional Information</u>. 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 Annual Report or 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 Annual Report or notice 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 Annual Report or notice of occurrence of a Listed Event.

Section 11. <u>Default</u>. If the City fails to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds 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 Bond 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 12. Duties, Immunities and Liabilities of Dissemination Agent.

(a) 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 they 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 Dissemination Agent shall have no duty or obligation to review any information provided to it by the City hereunder, and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond holders or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. <u>Notices</u>. Any notice or communications to be among any of the parties to this Disclosure Certificate may be given as follows:

To the City:	City of Berkeley
	2180 Milvia Street
	Berkeley, California 94704
	(510) 981-7000

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

Section 14. <u>Beneficiaries</u>. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. <u>Counterparts</u>. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: _____, 2020

CITY OF BERKELEY

By: _____

Director of Finance

APPENDIX E

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 Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds 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 City nor the Paying Agent take any responsibility for the information contained in this Section.

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 Bonds, (b) Bonds representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, 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 (in this Appendix, the "Bonds"). The Bonds 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 Bond will be issued for each maturity of the Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity 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 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. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("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 Bonds 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 Bonds representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Bonds is discontinued.

4. To facilitate subsequent transfers, all Bonds 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 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds 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 Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Bonds 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 the notices be provided directly to them.

6. Redemption notices will be sent to DTC. If less than all of the Bonds 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 the Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to City 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 the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and interest payments on the Bonds 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 City or Paying 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 nor its nominee, Paying Agent, or City, 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 City or Paying 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 DTC, and Indirect Participants.

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

10. The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond 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 City believes to be reliable, but City takes no responsibility for the accuracy thereof.

Jones Hall draft 01-09-20

\$_____ CITY OF BERKELEY 2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES A (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

COSTS OF ISSUANCE CUSTODIAN AGREEMENT

This Costs of Issuance Custodian Agreement, dated _____, 2020 (this "Agreement") has been entered into by and between the City of Berkeley, a charter city and municipal corporation, as issuer (the "City"), and The Bank of New York Mellon Trust Company, N.A. (the "Custodian"). The City has appointed the Custodian to act as costs of issuance custodian for the above-captioned bonds (the "Bonds"). This Agreement sets out the terms and conditions of said appointment.

The City and the Custodian agree as follows:

- 1. The Custodian has established a fund for payment of costs of issuance of the Bonds in the name of the City (the "Custodial Account").
- The Custodian has received on this date the total amount of \$______ from _____, underwriter of the Bonds, representing proceeds of the Bonds to be deposited in the Custodial Account. The Custodian will hold funds uninvested until _____, 2020.
- 3. The Custodian will pay costs of issuance of the Bonds, upon written instructions from the City, as provided in Exhibit A, and the Custodian will receive a written invoice directed by the City from time to time via written instructions from funds on deposit in the Account. This Agreement constitutes the initial written instructions to the Custodian.
- 4. Any balances remaining in the Custodial Account on _____, 2020 shall be transferred to the City for deposit in the debt service fund established for the Bonds, pursuant to Resolution No. _____ of the City Council of the City.
- 5. The City shall pay the Custodian a one-time fee of \$_____ for the duties of Custodian performed hereunder, payable from the deposit set forth in Section 2.
- 6. This Agreement will terminate on _____, 2020, or earlier upon the exhausting of all funds in the account. Prior to termination, the Custodian will notify the City and NHA Advisors, LLC, as municipal advisor, of its intent to close the Custodial Account.
- 7. This Agreement shall be governed under the laws of the state of California.

The liability of the Custodian is limited to the duties as specifically set forth in this Agreement, which shall be deemed purely ministerial in character, and no implied covenants or obligations shall be read into this Agreement against the Custodian. The Custodian will not be liable for any action taken or omitted to be taken by it under this Agreement or in connection herewith except to the extent caused by the Custodian's negligence or willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Custodian has been advised of the likelihood of such loss or damage and regardless of the form of action.

None of the provisions of this Agreement shall require the Custodian to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Custodian may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel. The Custodian may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

The Custodian shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the City shall provide to the Custodian an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Custodian Instructions using Electronic Means and the Custodian in its discretion elects to act upon such Instructions, the Custodian's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Custodian cannot determine the identity of the actual sender of such Instructions and that the Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Custodian have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Custodian and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Custodian and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

"Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Custodian, or another method or system specified by the Custodian as available for use in connection with its services hereunder.

To the extent permitted by law, the City hereby agrees to indemnify and hold harmless the Custodian and its officers, directors, agents, and employees from and against any and all costs, claims, liabilities, losses, or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of this Agreement, except costs, claims, liabilities, losses, or damages resulting from the gross negligence or willful misconduct of the Custodian including the reasonable costs and expenses (including the reasonable fees and expenses of its counsel) of defending itself against any such claim or liability in connection with its exercise or performance of any of its duties hereunder and of enforcing this indemnification provision. The indemnifications set forth herein shall survive the termination of this Agreement and/or the resignation or removal of the Custodian.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers thereunto duly authorized.

CITY OF BERKELEY

Ву: _____

Mayor

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Custodian

Ву: _____

Authorized Officer

EXHIBIT A

COSTS OF ISSUANCE DISBURSEMENTS

\$__

CITY OF BERKELEY 2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES A (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

Pavee	Purpose	Amount
гауее	Fulpose	Amount

^{*} Not to exceed amount; payment to be made only upon submission of an invoice.

Jones Hall draft 1-10-20

OFFICIAL NOTICE OF SALE

\$____

CITY OF BERKELEY (Alameda County, California) 2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES A (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

NOTICE IS HEREBY GIVEN by the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of \$______* principal amount of bonds of the City designated the "City of Berkeley 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "Bonds"). Bids will be received in electronic form through BiDCOMPTM/Parity® ("Parity") on:

TUESDAY, March 10, 2020

starting at 8:30 a.m. and ending at 9:00 a.m. Pacific Time.

The City reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (http://www.tm3.com).

The Bonds will be issued under the provisions of a resolution adopted by the City Council of the City on February 25, 2020 (the "Bond Resolution"), and under the laws of the State of California. The Bonds are more particularly described in the proposed form of the Bond Resolution on file with the City (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

DESCRIPTION OF THE BONDS

PURPOSE: The proceeds of the Bonds will be applied by the City for the purpose of refunding outstanding general obligation bonds of the City in order to realize debt service savings for the benefit of the taxpayers of the City.

ISSUE; BOOK-ENTRY FORM: The Bonds will be issued in the aggregate principal amount of \$______* in the form of fully registered Bonds without coupons. The Bonds will be dated as of as of their original delivery, and will be issued in minimum denominations of \$5,000. The Bonds will be issued in a book entry only system with no physical distribution of the Bonds made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Bonds which will be immobilized in its custody. The Bonds 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 Bonds.

^{*} Preliminary; subject to change.

MATURITIES: The Bonds will mature, or be subject to mandatory sinking fund redemption, on September 1 in each of the years, and in the amounts, as set forth in the following table. The final principal amount of the Bonds, and the final amount of each maturity of the Bonds, is subject to increase or reduction as described below under the heading "Adjustment of Principal Maturities". Each bidder must specify in its bid whether, for any particular year, the Bonds will mature or, alternately, be subject to mandatory sinking fund redemption in such year.

Maturity Date (September 1) Principal <u>Amount¹</u> Maturity Date (September 1) Principal <u>Amount</u>

PAYMENT PROVISIONS: Interest on the Bonds will be payable on September 1, 2020, and on succeeding March 1 and September 1 (the "Interest Payment Dates"), to the registered owners by check or draft of The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent") or, in the case of the owner of Bonds in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer. Principal of and premium (if any) on any Bond will be paid upon presentation and surrender thereof at the office of the Paying Agent. Principal, interest and premium (if any) on the Bonds are payable in lawful money of the United States of America.

OPTIONAL REDEMPTION: The Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

SINKING FUND REDEMPTION: Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. If the bid of the winning bidder specifies that any maturity of Bonds will be term Bonds, such term Bonds will be subject to mandatory sinking fund redemption on September 1 in each year so designated in the bid, in the respective amounts for such years as set forth

¹ <u>Note to Draft</u>: Principal amounts to be added.

above under the heading "MATURITIES", at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

SECURITY: The Bonds are general obligations of the City, and the City will direct the appropriate officials of Alameda County to levy ad valorem taxes for the payment of the Bonds and the interest thereon without limitation as to rate or amount for the payment of the Bonds and the interest thereon.

TAX-EXEMPT STATUS: In the opinion of Jones Hall, A Professional Law Corporation, bond counsel to the City ("Bond Counsel"), interest on the Bonds 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. Bidders are referred to the Preliminary Official Statement for a description of the proposed opinion of Bond Counsel. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes.

If prior to the delivery of the Bonds either (a) the interest on other obligations of the same type and character shall be declared to be taxable (either at the time of such declaration or at any future date) under any federal income tax laws, either by the terms of such laws or by ruling of a federal income tax authority or official which is followed by the Internal Revenue Service, or by decision of any federal court, or (b) any federal income tax law is adopted which will have a substantial adverse effect upon owners of the Bonds as such, the winning bidder for the Bonds may, at its option, prior to the tender of the Bonds, be relieved of its obligation under the contract to purchase the Bonds, and in such case the deposit accompanying its proposal will be returned.

LEGAL OPINION: The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, approving the validity of the Bonds, will be furnished to the purchaser of the Bonds without cost. A copy of the legal opinion, certified by the official in whose office the original is filed, will be printed on each Bond at the expense of the City.

FURTHER INFORMATION: A copy of the Preliminary Official Statement describing the Bonds, and any other information concerning the proposed financing, will be furnished upon request to the municipal advisor to the City as follows ("Municipal Advisor"): NHA Advisors, LLC, 4040 Civic Center Drive, Suite 200, San Rafael, California 94903, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or Rob@NHAadvisors.com, website: www.NHAadvisors.com. The Official Notice of Sale and Preliminary Official Statement are available from the Municipal Advisor.

TERMS OF SALE

RIGHT TO CANCEL, POSTPONE OR RESCHEDULE SALE: The City reserves the right to cancel, postpone or reschedule the sale of the Bonds upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (www.tm3.com). If the sale is postponed, bids will be received at the above place at such date and hour as set forth in the notice. Failure of any bidder to receive such notice or any other form of notice of canceled, postponed or rescheduled sale will not affect the legality or validity of any sale.

SUBMISSION OF BIDS: Bids will be received electronically as described below, provided that such electronic bid must be received no later than the date and time set for receipt of bids. All bidders, by submitting a bid, acknowledge that they have an established industry reputation

for underwriting new issuances of municipal bonds.

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.

FORM OF BID; PURCHASE PRICE: Each proposal must be for not less than all of the Bonds hereby offered for sale.

The City will accept par, discount or premium bids for the Bonds.

The underwriter's discount shall not exceed 1.50%.

DESIGNATION OF INTEREST RATES: Each bidder must specify the rate or rates of interest which the Bonds will bear. The maximum rate bid on any Bonds may not exceed 6.00% per annum. A bidder will be permitted to bid different rates of interest for each maturity of Bonds, but:

- each interest rate specified must be in a multiple of 1/20% or 1/8%;
- no Bond may bear more than one rate of interest;
- interest on each Bond will be computed from the date of original delivery to its stated maturity at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; and
- all Bonds maturing at any one time will bear the same rate of interest.

DETERMINATION OF BEST BID: The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Bonds from the date of original delivery (which is assumed to be March 24, 2020) to their respective maturity dates or mandatory sinking fund redemption dates,

produces an amount equal to the purchase price specified in such bid. For purposes of computing the true interest cost represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Bonds plus any premium specified in such proposal, and the true interest cost shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds.

ADJUSTMENT OF PRINCIPAL MATURITIES: In order to achieve the financial goals of the City, the City may need to adjust the schedule of principal maturities for the Bonds based on the bids that are received. Therefore, the City reserves the right to increase or decrease the principal amount of any maturity of the Bonds (or, in the case of the term Bonds, the principal amount thereof which is subject to mandatory sinking fund redemption on September 1 in any year). The aggregate principal amount of the Bonds may be reduced as a result of such adjustment, in an amount not exceeding 10% of the amount of Bonds hereby offered for sale. Notice of such increase or decrease shall be given to the winning bidder as soon as practicable following the notification of award, as described below. The City will attempt to maintain total underwriter compensation when adjusting maturities. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

RIGHT OF REJECTION: The City reserves the right, in its discretion, to reject any and all bids and to the extent not prohibited by law to waive any irregularity or informality in any bid.

PROMPT AWARD: An authorized representative of the City will accept the best responsible bid for the purchase of the Bonds by notice to the winning bidder. If two or more bids setting forth identical interest rates and premium, if any, are received, such officer may exercise discretion and judgment in making the award and may award the Bonds on a pro rata basis in such denominations as he or she determines. Such authorized representative of the City may also reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds will be awarded or all bids will be rejected not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the winning bidder; provided, that the award may be made after the expiration of the specified time if the bidder does not notify the City in writing of the withdrawal of its proposal.

PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY: It is expected that the Bonds will be delivered to DTC for the account of the winning bidder on March 24, 2020. The winning bidder has the right, at the winning bidder's option, to cancel the contract of purchase if the Bonds are not tendered for delivery within 60 days from the date of the sale thereof, and in such event the winning bidder shall be entitled to the return of the deposit accompanying its bid.

NO GOOD FAITH DEPOSIT: The City does not require a good faith deposit to be submitted in connection with bids for the Bonds.

PAYMENT OF PURCHASE PRICE: The winning bidder will be required to pay the purchase price of the Bonds in funds that are immediately available to the City. Such payment shall be made on the date of original delivery of the Bonds to DTC.

STATEMENT OF TRUE INTEREST COST: Each bidder is requested, but not required, to state in its proposal the percentage true interest cost represented by its proposal, determined as described above, which will be considered as informative only and not binding on either the bidder or the City.

ESTABLISHMENT OF ISSUE PRICE: (a) The winning bidder shall assist the City in establishing the issue price of the Bonds 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 Bonds, 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 Bonds 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 Bonds) will apply to the initial sale of the Bonds (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 Bonds to the bidder who submits a firm offer to purchase the Bonds 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 Bonds, as specified in the bid. By submitting a bid for the Bonds, 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 each maturity of the bonds set forth in the bid submitted by the winning bidder (the "initial offering price") as the issue price of that maturity (the "hold-the-offering-price rule"). Consequently, each bidder should assume for purposes of making its bid that for each maturity of the Bonds, the City will treat the initial offering prices as of the date that the Bonds are awarded by the City to the successful bidder ("sale date") as the issue price of the Bonds. 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 Bonds, (i) confirm that the underwriters have offered or will offer each maturity of the Bonds 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 any maturity of the Bonds to any person at a price that is higher than the initial

offering price for such maturity 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 that maturity of the Bonds to the public at a price that is no higher than the initial offering price for such maturity.

The winning bidder shall promptly advise the City when the underwriters have sold 10% of that maturity of the Bonds 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.

The City acknowledges that, in making the representation set forth above, the (e) successful bidder will rely on (i) the agreement of each underwriter to comply with the hold-theoffering-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 Bonds 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 Bonds 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 Bonds.

(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 Bonds 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 Bonds of each maturity allotted to it until it is notified by the successful bidder that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity 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 Bonds 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 Bonds 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 Bonds of each maturity 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 Bonds of that maturity or all Bonds of that maturity 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 Bonds 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 Bonds 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 Bonds 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 Bonds to the public),

(3) a purchaser of any of the Bonds 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 other), and

In addition, the City reserves the right to cancel the public sale of the Bonds 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 LITIGATION: There is no litigation pending concerning the validity of the Bonds, the corporate existence of the City or the entitlement of the officers thereof to their respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the delivery of the Bonds.

CUSIP NUMBERS: It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Bonds in accordance with the terms hereof. All expenses in relation to the printing of CUSIP

numbers on the Bonds will be paid for by the City, except that the CUSIP Service Bureau charge for the assignment of said numbers will be the responsibility of and shall be paid for by the purchaser.

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES: All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Bonds are the sole responsibility of the purchaser of the Bonds.

OFFICIAL STATEMENT: The City has approved a preliminary Official Statement relating to the Bonds. 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 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 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 are been approved by the City (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Bonds unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. Upon request, the City will furnish to the winning bidder, at no charge, not in excess of 20 printed copies of the Official Statement for use in connection with any resale of the Bonds.

CERTIFICATE REGARDING OFFICIAL STATEMENT: A responsible officer of the City will certify to the original purchaser of the Bonds, as a condition of closing, that based on such officer's participation in the preparation of the Official Statement, nothing has come to his or her attention to lead him or her to believe that the Official Statement (except for certain financial statements, statistical data and other information) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

CONTINUING DISCLOSURE. In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City will execute and deliver a Continuing Disclosure Certificate, under which the City undertakes to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the preliminary Official Statement and will also be set forth in the final Official Statement. Such Continuing Disclosure Certificate will be a document required to be delivered at closing by the City, and the failure by the City to deliver such document in form and substance acceptable to Bond Counsel and the winning bidder will relieve the winning bidder of its obligation to purchase the Bonds.

ACKNOWLEDGEMENT OF NO FIDUCIARY DUTY. The City acknowledges and agrees that (i) the purchase and sale of the Bonds is an arm's-length commercial transaction between the City and the underwriter, (ii) in connection with such transaction, the underwriter 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 underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the City with respect to the offering of the Bonds or the process leading thereto (whether or not the underwriter, or any affiliate of an underwriter, has advised or is currently advising the City on other matters) or any other obligation to the City except as described in this Notice of Sale, (iv) the underwriter 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 Bonds.

GIVEN by order of the City Council of the City of Berkeley by a resolution adopted on February 25, 2020.

EXHIBIT 1 Issue Price Certificate

\$

CITY OF BERKELEY

2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES A (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

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 "Bonds").

1. Reasonably Expected Initial Offering Price.

(a) As of the Sale Date, the reasonably expected initial offering prices of the Bonds 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 Maturities of the Bonds used by the Underwriter in formulating its bid to purchase the Bonds. Attached as Schedule B is a true and correct copy of the bid provided by Underwriter to purchase the Bonds.

(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

Bonds.

2. Defined Terms.

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

(a) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(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 a Maturity of the Bonds. The Sale Date of the Bonds is March 10, 2020.

(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 Bonds 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 Bonds 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 Bonds 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 Bonds, and by Jones Hall, A Professional Law Corporation in connection with rendering its opinion that the interest on the Bonds 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 Bonds.

[UNDERWRITER]

By:		
Name:		

Dated: [ISSUE DATE]

SCHEDULE A

EXPECTED OFFERING PRICES

Maturity Date	Principal	Interest	Reoffering
(September 1)	<u>Amount</u>	<u>Rate</u>	<u>Price *</u>
	\$	%	%

Stated as a percentage of par.

*

SCHEDULE B

COPY OF UNDERWRITER'S BID

(attached)

Jones Hall draft 1-10-20

Note: Publication governed by Gov. Code

53692. In addition to any other requirement imposed by law, at least 15 days prior to the sale of any public securities that exceed one million dollars (\$1,000,000) but do not exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale, an issuer shall publish notice of the intention to sell the securities in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the securities. The notice shall include the date, time, and place of the intended sale and the amount of the securities to be sold.

53569. Before selling any refunding bonds subject to the provisions of this article, any local agency shall advertise such bonds for sale at public sale and shall invite sealed bids therefor by publication of a notice once at least 10 days before the date of such public sale in a newspaper of general circulation circulated within the boundaries of each local agency to be aided by the public project to be financed by the issuance of such bonds;

NOTICE OF INTENTION TO SELL BONDS

APPROXIMATELY \$____

CITY OF BERKELEY

(Alameda County, California)

2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES A (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

NOTICE IS HEREBY GIVEN by the City Council of the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of approximately \$_____ principal amount of bonds of the City designated the "City of Berkeley 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "Bonds"). Bids will be received in electronic form on BiDCOMPTM/Parity® ("Parity") on:

Tuesday, March 10, 2020

starting at 8:30 a.m. and ending at 9:00 a.m. Pacific Time. The City reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<u>www.tm3.com</u>). Further information, including copies of the preliminary Official Statement and Official Notice of Sale may be obtained from the City's municipal advisor, NHA Advisors, LLC, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or Rob@NHAadvisors.com.

GIVEN by order of the City Council of the City of Berkeley by a resolution adopted on February 25, 2020.

Jones Hall draft 12-20-19

IRREVOCABLE REFUNDING INSTRUCTIONS

These IRREVOCABLE REFUNDING INSTRUCTIONS (these "Instructions") are given by the CITY OF BERKELEY, a municipal corporation and charter city organized and existing under the laws of the State of California (the "City"), to THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, acting as paying agent for the 2009 Bonds (hereinafter referred to as the "2009 Paying Agent");

RECITALS:

1. At an election held on November 4, 2008, more than two-thirds of the voters of the City approved a proposition, designated as Measure FF, authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$26,000,000, for the purpose of providing funds to finance renovations, construction, seismic and access improvements, and expansion of program areas at four neighborhood branch libraries in the City.

2. Pursuant to such authorization and Resolution No. No. 64,387-N.S., adopted by the City Council on March 24, 2009 (the "2009 Bond Resolution"), the City previously issued its bonds designated the "City of Berkeley General Obligation Bonds, Series 2009 (Measure FF – Neighborhood Branch Library Improvements Project)" in the aggregate principal amount of \$10,000,000 (the "2009 Bonds").

3. Under the 2009 Bond Resolution, the City is authorized to redeem the 2009 Bonds in whole or in part on any date on or after September 1, 2018, at a redemption price equal to the outstanding principal amount of the 2009 Bonds, plus interest accrued to the redemption date, without premium.

4. In order to realize debt service savings for the benefit of the taxpayers of the City, the City Council adopted its Resolution No. _____ on February 25, 2020 (the "2020 Bond Resolution") for the purpose of authorizing the issuance and sale of its City of Berkeley 2020 Refunding General Obligation Bonds, Series A (2008 Election Measure FF: Neighborhood Branch Library Improvements Project) (the "Refunding Bonds") for the purpose of refinancing the 2009 Bonds.

5. The 2009 Paying Agent acts as paying agent for the 2009 Bonds and as paying agent for the Refunding Bonds (the "2020 Paying Agent").

6. The City wishes to apply a portion of the proceeds of the Refunding Bonds, together with certain other moneys, to redeem the 2009 Bonds on _____, 2020.

7. The City wishes to give these Instructions to the 2009 Paying Agent for the purpose of providing the terms and conditions relating to the deposit and application of moneys to provide for the redemption of the 2009 Bonds;

NOW, THEREFORE, the City hereby irrevocably instructs the 2009 Paying Agent as follows:

Section 1. Transfer to 2009 Paying Agent; Investment of Amounts. Concurrently with delivery of the Refunding Bonds, the City shall cause to be transferred to the 2009 Paying Agent for deposit into the City's clearing account held with the 2009 Paying Agent (Account No. _____) (the "Clearing Account"), which the City shall treat as having been deposited into the Redemption Account established pursuant to Section ______ of the 2009 Bond Resolution, the amount of \$______ in immediately available funds to be derived from a portion of the proceeds of sale of the Refunding Bonds. The 2009 Paying Agent shall hold all such amounts in the Clearing Account uninvested.

Section 2. Proceedings for Redemption of 2009 Bonds. The City hereby irrevocably elects, and directs the 2009 Paying Agent, to redeem, on _____, 2020, the outstanding 2009 Bonds. Pursuant to written direction by the City, the 2009 Paying Agent previously gave notice of the redemption of the 2009 Bonds in the form of Exhibit A in accordance with the provisions of the 2009 Bond Resolution. On the date hereof, the 2009 Paying Agent shall provide notice of the defeasance of the 2009 Bonds in the form of Exhibit B in accordance with the provisions of the 2009 Bond Resolution and by posting such notice on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access website.

Section 3. Application of Funds to Redeem 2009 Bonds. The 2009 Paying Agent shall apply the amounts deposited into the Clearing Account pursuant to Section 1 and other available moneys held by the 2009 Paying Agent under the 2009 Resolution to redeem the 2009 Bonds on _____, 2020, at a redemption price equal to 100% of the principal amount thereof plus accrued and unpaid interest thereon.

Section 4. Amendment. These Instructions shall be irrevocable by the City. These Instructions may be amended or supplemented by the City, but only if the City shall file with the 2009 Paying Agent (a) an opinion of nationally recognized bond counsel engaged by the City stating that such amendment or supplement will not, of itself, adversely affect the exclusion from gross income of interest on the 2009 Bonds or the Refunding Bonds under federal income tax law, and (b) a certification of an independent accountant or independent financial adviser engaged by the City stating that such amendment or supplement will not affect the sufficiency of funds invested and held hereunder to make the payments required by Section 3.

Section 5. Concerning the 2009 Paying Agent. The 2009 Paying Agent shall not be liable for any loss from any investment made by it in accordance with the terms of these Instructions.

The 2009 Paying Agent shall not be liable for the recitals or representations contained in these Instructions and shall not be responsible for the sufficiency of amounts described in Section 3 to pay the redemption price of the 2009 Bonds on the date specified in Section 3.

The protections, limitations from liability and indemnities provided to the 2009 Paying Agent under the 2009 Bond Resolution shall be afforded to the 2009 Paying Agent in acting pursuant to these Instructions and such provisions of the 2009 Bond Resolution are incorporated by reference herein.

* * * * *

Section 6. Governing Law. These Instructions shall be construed in accordance with and governed by the Constitution and laws of the State of California.

Dated: _____, 2020

CITY OF BERKELEY

By _____ Finance Director

EXHIBIT A

FORM OF CONDITIONAL NOTICE OF FULL REDEMPTION

\$10,000,000 City of Berkeley (California) General Obligation Bonds, Series 2009 (Measure FF – Neighborhood Branch Library Improvements Project)

Original Date of Issue: April 29, 2009

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City"), with respect to the captioned bonds (the "2009 Bonds"), that it has conditionally elected to optionally redeem all of the outstanding 2009 Bonds on _____, 2020 (the "Redemption Date"), at a redemption price equal to the par amount thereof together with accrued interest thereon to the Redemption Date, without premium. Interest on the 2009 Bonds will not accrue after the Redemption Date.

The 2009 Bonds consist of the following:

Maturity Date

Principal Amount

Interest Rate

<u>CUSIP</u>

(T) Term Bond

In the event such funds are not received by the Redemption Date, this notice shall be null and void and of no force and effect. The 2009 Bonds delivered for redemption shall be returned

Redemption of the 2009 Bonds as described in this notice shall be conditioned upon the receipt by The Bank of New York Mellon Trust Company, N.A., as paying agent for the 2009 Bonds ("Paying Agent"), of the proceeds of the sale and delivery of refunding bonds by the City (the "Refunding Bonds") in an amount sufficient for such redemption on or before the Redemption Date.

to the respective owners thereof, and said 2009 Bonds shall remain outstanding as though this notice of conditional redemption had not been given. Notice of a failure to receive funds, and cancellation of this redemption, shall be given by Paying Agent by first class mail, postage prepaid, to the registered owners of the 2009 Bonds.

The 2009 Bonds must be surrendered by the owners thereof at the corporate trust office of the Paying Agent for payment of the redemption price.

The City and the Paying Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2009 Bond; the CUSIP numbers are included solely for the convenience of the owners of the 2009 Bonds.

Dated: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Paying Agent

Agent

EXHIBIT B

FORM OF DEFEASANCE NOTICE

\$10,000,000 City of Berkeley (California) General Obligation Bonds, Series 2009 (Measure FF – Neighborhood Branch Library Improvements Project)

Original Date of Issue: April 29, 2009

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City"), that the captioned bonds (the "2009 Bonds") have been defeased under and within the meaning of Section ______ of Resolution No. No. 64,387-N.S., adopted by the City Council on March 24, 2009 (the "2009 Resolution"). Funds for the payment of the 2009 Bonds have been deposited in the Redemption Fund established under the 2009 Resolution by The Bank of New York Mellon Trust Company, N.A., as paying agent ("Paying Agent").

The City has irrevocably elected to redeem all of the outstanding 2009 Bonds on ______, 2020 ("Redemption Date"), at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, without premium ("Redemption Price"). **[confirm]** The sufficiency of the funds in the Redemption Fund for the purpose of paying the Redemption Price on the Redemption Date has been verified by a certified public accountant that is licensed in the State of California. As a consequence of the foregoing actions and in accordance with the 2009 Resolution, the Redemption Price of the 2009 Bonds is now payable solely from the moneys set aside in the Redemption Fund.

The 2009 Bonds consist of the following:

 Maturity Date
 Principal Amount
 Interest Rate
 CUSIP

The City and the Paying Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2009 Bond; the CUSIP numbers are included solely for the convenience of the owners of the 2009 Bonds.

Dated: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Paying Agent

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$14,000,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS TO REFUND OUTSTANDING 2010 BONDS, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, at an election held on November 4, 2008, more than two-thirds of the voters of the City Berkeley (the "City") approved a proposition, designated as Measure FF, authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$26,000,000, for the purpose of providing funds to finance renovations, construction, seismic and access improvements, and expansion of program areas at four neighborhood branch libraries in the City; and

WHEREAS, pursuant to such authorization and Resolution No. 64,970-N.S., adopted by the City Council on July 6, 2010 2010(the "2010 Bond Resolution"), the City previously issued bonds designated the "City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project)" in the aggregate principal amount of \$16,000,000 (the "2010 Bonds"); and

WHEREAS, under the 2010 Bond Resolution, the City is authorized to redeem the 2010 Bonds in whole or in part on any date on or after September 1, 2020, at a redemption price equal the outstanding principal amount of the 2010 Bonds, plus interest accrued to the redemption date, without premium; and

WHEREAS, in order to realize debt service savings for the benefit of the taxpayers of the City, the City Council wishes at this time to authorize the issuance and sale of its "City of Berkeley 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "Bonds") for the purpose of refinancing the 2010 Bonds; and

WHEREAS, the City Council is authorized to provide for the issuance and sale of the Bonds under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 of said Code (the "Bond Law"); and

WHEREAS, further, as required by Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix B is the information relating to the Bonds that has been obtained by the City Council and is hereby disclosed and made public; and

WHEREAS, pursuant to Resolution No. 67,871-N.S. (March 24, 2017), this City Council previously approved a Debt Management and Disclosure Policy which complies with Government Code Section 8855, and the delivery of the Bonds will be in compliance with said policy.

NOW THEREFORE, BE IT RESOLVED by the Council as follows:

ARTICLE I

DEFINITIONS; AUTHORITY

SECTION 1.01. *Definitions*. The terms defined in this Section 1.01, as used and capitalized herein, shall, for all purposes of this Resolution, have the meanings given them below, unless the context clearly requires some other meaning.

"<u>Bond Counsel</u>" means (a) Jones Hall, A Professional Law Corporation, and (b) any other attorney or firm of attorneys nationally recognized for expertise in rendering opinions as to the legality and tax exempt status of securities issued by public entities.

"Bond Law" means Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53550 of said Code, as amended from time to time.

"<u>Bond Purchase Agreement</u>" means the Bond Purchase Agreement for the Bonds, which is approved under Section 3.02.

"Bond Sale Documentation" means (a) if the Bonds are sold by competitive bidding in accordance with Section 3.01(a), the Official Notice of Sale and the winning bid of the Original Purchaser, or (b) if the Bonds are sold by negotiation in accordance with Section 3.01(b), the Bond Purchase Agreement between the City and the Original Purchaser.

"Bonds" means the City of Berkeley 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project) authorized to be issued under this Resolution.

"<u>City</u>" means the City of Berkeley, a charter city and municipal corporation organized under the Constitution and laws of the State of California, and any successor thereto.

"<u>City Representative</u>" means the Mayor, the City Manager, the Finance Director and any other officer of the City authorized by resolution of the City Council of the City to act on behalf of the City with respect to this Resolution and the Bonds.

"<u>Closing Date</u>" means the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the Original Purchaser.

"<u>Costs of Issuance</u>" means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, issuance, sale and delivery of the Bonds and the refunding of the 2010 Bonds, including but not limited to the costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Paying Agent and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution

and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 2010 Bonds.

"<u>County</u>" means the County of Alameda, a political subdivision of the State of California, duly organized and existing under the Constitution and laws of the State of California.

"<u>Debt Service Fund</u>" means the account established and held by the City under Section 4.03.

"<u>Depository</u>" means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.09.

"<u>Depository System Participant</u>" means any participant in the Depository's book-entry system.

"<u>DTC</u>" means The Depository Trust Company, New York, New York, and its successors and assigns.

"<u>Federal Securities</u>" means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

"Interest Payment Date" means September 1, 2020, and the first day of each succeeding March and September, or such other dates determined by a City Representative in connection with the pricing of the Bonds.

"<u>Official Notice of Sale</u>" means the Official Notice of Sale for the Bonds, which is approved under Section 3.01.

"Original Purchaser" means the original purchaser of the Bonds at the public or negotiated sale thereof.

"Outstanding," when used as of any particular time with reference to Bonds, means all Bonds except: (a) Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.02; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Resolution.

"<u>Owner</u>", whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"<u>Paying Agent</u>" means the Paying Agent appointed by the City and acting as paying agent, registrar and authenticating agent for the Bonds, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01.

"<u>Principal Office</u>" means the office or offices of the Paying Agent for the payment of the Bonds and the administration of its duties hereunder, as such office or offices shall be identified in a written notice filed with the City by the Paying Agent.

"Project Fund" means the fund established and held by the City under Section 4.02.

"<u>Record Date</u>" means the 15th day of the month preceding an Interest Payment Date, whether or not such day is a business day.

"<u>Registration Books</u>" means the records maintained by the Paying Agent for the registration of ownership and registration of transfer of the Bonds under Section 2.08.

"<u>Resolution</u>" means this Resolution, as originally adopted by the City Council on February 25, 2020, and including all amendments hereto and supplements hereof which are duly adopted by the City Council from time to time in accordance herewith.

"<u>Securities Depositories</u>" means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate.

"<u>Supplemental Resolution</u>" means any resolution supplemental to or amendatory of this Resolution, adopted by the City in accordance with Article VIII.

"<u>Tax Code</u>" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

"<u>Written Request of the City</u>" means an instrument in writing signed by a City Representative or by any other officer of the City duly authorized to act on behalf of the City under a written certificate of a City Representative.

"2010 Bond Resolution" has the meaning given that term in the recitals.

"2010 Bonds" has the meaning given that term in the recitals.

"<u>2010 Paying Agent</u>" means The Bank of New York Mellon Trust Company, N.A., as paying agent for the 2010 Bonds under the 2010 Bond Resolution.

SECTION 1.02. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Resolution; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.03. Authority for this Resolution; Findings. This Resolution is entered into under the provisions of the Bond Law. It is hereby certified that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of the Bonds do exist, have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of the Bonds, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California.

ARTICLE II

THE BONDS

SECTION 2.01. Authorization. The City Council hereby authorizes and finds that it is required in the prudent management of the fiscal affairs of the City to provide for the issuance of the Bonds under and subject to the terms of the Bond Law and this Resolution, for the purpose of raising money to refund the 2010 Bonds and to pay the Costs of Issuance incurred in connection therewith. This Resolution constitutes a continuing agreement between the City and the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal of and interest and premium, if any, on the Bonds which may be Outstanding hereunder, subject to the covenants, agreements, provisions and conditions herein contained.

As provided in Section 53552 of the Bond Law, the Bonds shall not be issued unless the total net interest cost to maturity on the Bonds plus the principal amount of the Bonds is less than the total net interest cost to maturity on the 2010 Bonds to be refunded plus the principal amount of the 2010 Bonds to be refunded. Before issuing the Bonds, the City shall receive confirmation from its municipal advisor that the requirements of Section 53552 of the Bond Law have been satisfied.

Unless otherwise permitted by applicable law, the final maturity of the Bonds shall be not later than the final maturity of the 2010 Bonds that are refunded.

The Bonds are designated the "City of Berkeley 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)."

SECTION 2.02. Terms of Bonds.

(a) <u>Principal Amount of Bonds</u>. The Bonds are authorized to be issued in the aggregate principal amount of not to exceed \$14,000,000.

(b) <u>Form; Numbering</u>. The Bonds will be issued in fully registered form, without coupons, in authorized denominations of \$5,000 each or any integral multiple thereof. The Bonds will be lettered and numbered as the Paying Agent prescribes.

(c) <u>Date of Bonds</u>. The Bonds will be dated as of the Closing Date.

(d) <u>CUSIP Identification Numbers</u>. "CUSIP" identification numbers will be imprinted on the Bonds, but such numbers do not constitute a part of the contract evidenced by the Bonds and no error or omission with respect thereto will constitute cause for refusal of the Original

Purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City to use such CUSIP numbers in any notice to Owners of the Bonds will not constitute an event of default or any violation of the City's contract with such Owners and will not impair the effectiveness of any such notice.

(e) <u>Determination of Maturities and Interest Rates</u>. The Bonds shall mature (or, alternatively, be subject to mandatory sinking fund redemption as hereinafter provided) on September 1 in each year commencing September 1, 2020 and continuing to and including September 1, 2039. The exact principal amount of the Bonds maturing on September 1 in each year shall be determined upon the sale of the Bonds, in accordance with the Bond Sale Documentation.

Each Bond will bear interest at the respective rates to be determined upon the sale of the Bonds in accordance with Article III. Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- a Bond is authenticated prior to an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- a Bond is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date, or
- at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(f) <u>Manner of Payment</u>. Interest on the Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the Owner thereof at such Owner's address as it appears on the Registration Books at the close of business on the preceding Record Date; except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request. Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the Principal Office of the Paying Agent.

SECTION 2.03. *Redemption*.

(a) <u>Optional Redemption</u>. The Bonds shall be subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on the dates and upon payment of a redemption price (equal to the principal amount of Bonds to be redeemed together with a redemption premium, if any) as determined upon the sale of the Bonds in accordance with the Bond Sale Documentation.

(b) <u>Mandatory Sinking Fund Redemption</u>. If and to the extent specified in the Bond Sale Documentation, any maturity of the Bonds will be designated as "Term Bonds" which are subject to mandatory sinking fund redemption on September 1 in each of the years and in the respective principal amounts set forth in such bid, at a redemption price equal to 100% of the principal amount of the Bonds to be redeemed, in each case without premium, together with interest accrued thereon to the redemption date. If some but not all of the Term Bonds have been redeemed under the preceding subsection (a) of this Section, the aggregate principal amount of Term Bonds to be redeemed in each year under this subsection (b) shall be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

(c) <u>Selection of Bonds for Redemption</u>. Whenever less than all of the Outstanding Bonds of any one maturity are designated for redemption, the Paying Agent shall select the Outstanding Bonds of such maturity to be redeemed by lot in any manner deemed fair by the Paying Agent. For purposes of such selection, each Bond shall be deemed to consist of individual Bonds of \$5,000 denominations which may be separately redeemed.

(d) <u>Redemption Procedure</u>. The Paying Agent shall cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books. Such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of Bonds. The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent shall have no liability to the Owners or any other party related to or arising from such rescission.

Such notice shall state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, shall designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and shall require that such Bonds be then surrendered at the Principal Office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Upon surrender of Bonds redeemed in part only, the City shall execute and the Paying Agent shall authenticate and deliver to the Owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under this Resolution other than the right to receive payment

of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice. The Paying Agent shall cancel all Bonds redeemed under this Section 2.03, and shall submit to the City a certificate of cancellation.

SECTION 2.04. *Form of Bonds*. The form of the Bonds, including the form of the Paying Agent's Certificate of Authentication and the form of Assignment to appear thereon, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Resolution, are set forth in Appendix A attached hereto.

SECTION 2.05. *Execution of Bonds*. The Bonds shall be executed on behalf of the City by the facsimile signatures of its Mayor and City Clerk who are in office on the date of adoption of this Resolution or at any time thereafter, and the seal of the City shall be impressed, imprinted or reproduced by facsimile thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Original Purchaser, such signature will nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Original Purchaser. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond are the proper officers of the City although at the nominal date of such Bond any such person does not serve as such officer of the City.

Only those Bonds bearing a Certificate of Authentication in the form set forth in Appendix A attached hereto, executed and dated by the Paying Agent, will be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such Certificate of Authentication of the Paying Agent constitutes conclusive evidence that the Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Resolution.

SECTION 2.06. *Transfer of Bonds*. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office at the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

Whenever any Bond or Bonds is surrendered for transfer, the City shall execute and the Paying Agent shall authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

SECTION 2.07. *Exchange of Bonds*. Bonds may be exchanged at the Principal Office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

SECTION 2.08. *Registration Books*. The Paying Agent shall keep or cause to be kept sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein before provided.

SECTION 2.09. *Book-Entry System*. Except as provided below, DTC will be the Owner of all of the Bonds, and the Bonds will be registered in the name of Cede & Co. as nominee for

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DTC. The Bonds shall be initially executed and delivered in the form of a single fully registered Bond for each maturity date of the Bonds in the full aggregate principal amount of the Bonds maturing on such date. The Paying Agent and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for all purposes of this Resolution, and neither the Paying Agent nor the City shall be affected by any notice to the contrary. The Paying Agent and the City shall not have any responsibility or obligation to any Depository System Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or a Depository System Participant, or any other person which is 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 Depository System Participant or the payment by DTC or any Depository System Participant by DTC or any Depository System Participant of any amount in respect of the principal or interest with respect to the Bonds. The City shall cause to be paid all principal and interest with respect to the Bonds only to DTC, 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 Bonds to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Bond. 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 Bonds and delivers a written certificate to DTC and the City to that effect, DTC shall notify the Depository System Participants of the availability through DTC of Bonds. In such event, the City shall issue, transfer and exchange Bonds as requested by DTC and any other owners in appropriate amounts. DTC may determine to discontinue providing its services with respect to the Bonds 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 Bonds 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 Bonds evidencing the Bonds to any Depository System Participant having Bonds credited to its DTC account or (b) arrange for another securities depository to maintain custody of certificates evidencing the Bonds.

Notwithstanding any other provision of this Resolution to the contrary, so long as any Bond 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 Bond and all notices with respect to such Bond shall be made and given, respectively, to DTC as provided as in the representation letter delivered on the date of issuance of the Bonds.

SECTION 2.10. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond becomes mutilated the City, at the expense of the Owner of said Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. The Paying Agent shall cancel every mutilated Bond so surrendered to it. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence is satisfactory to the City and the City receives satisfactory indemnity, the City, at the expense of the Owner, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen.

The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the City and the Paying Agent. Any Bond issued under the provisions of this Section 2.10 in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and such Bond will be equally and proportionately entitled to the benefits of this Resolution with all other Bonds issued under this Resolution.

Notwithstanding any other provision of this Section 2.10, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Paying Agent may make payment of such Bond in accordance with its terms.

ARTICLE III

SALE OF BONDS

SECTION 3.01. Competitive Sale of Bonds

(a) <u>Approval of Official Notice of Sale; Competitive Sale Procedures</u>. The Bonds shall be offered for sale by competitive bid in accordance with the provisions of the Official Notice of Sale in substantially the form on file with the City Clerk together with such additions thereto and changes therein as may be approved by a City Representative. The City Council hereby authorizes and directs a City Representative to accept the best responsible bid for the Bonds, to be determined in accordance with the related Official Notice of Sale. A City Representative, on behalf of the City, may exercise his or her own discretion and judgment in awarding the sale of the Bonds, and may, in his or her discretion, reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds shall be awarded, or all bids shall be rejected, not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the successful bidder.

(b) <u>Publication of Notice of Intention</u>. The City Council hereby approves and authorizes the publication by Bond Counsel of a notice of the City's intention to sell the Bonds, in form and substance acceptable to Bond Counsel, in accordance with applicable law.

(c) <u>Furnishing of Documents</u>. The municipal advisor to the City, NHA Advisors, LLC is hereby authorized and directed by the City to cause to be furnished to prospective bidders a reasonable number of copies of said Official Notice of Sale and a reasonable number of copies of the Preliminary Official Statement relating to the Bonds.

SECTION 3.02. Negotiated Sale of Bonds. The Bonds are authorized to be sold by negotiated sale if either (a) no bids are received when the Bonds are offered for public sale under Section 3.01, or (b) bids are received but such bids are not satisfactory as to price or responsibility of the bidders as determined by a City Representative, as a result of which all bids are rejected. In such event, the Bonds are authorized to be sold by negotiation with an underwriter or investment bank which is designated by a City Representative upon consultation with NHA Advisors, LLC as municipal adviser to the City. The Bonds shall be sold to such underwriter or investment bank under the Bond Purchase Agreement in a form deemed advisable by a City Representative, whose execution shall be conclusive evidence of the City

Council's approval of such Bond Purchase Agreement. A City Representative is hereby authorized to accept a bid from such underwriter or investment bank to purchase the Bonds, and to execute the Bond Purchase Agreement on behalf of the City; provided that the rate of interest on the Bonds shall not exceed 6.00% and the underwriter's discount shall not exceed 1.50% of the principal amount of the Bonds. If it is determined to sell the Bonds by negotiation, a City Representative shall disclose the identity of the underwriter at the public meeting first occurring after the bond underwriter has been selected, along with the estimated costs associated with the bond issuance and the circumstances that led to the negotiated sale.

SECTION 3.03. Official Statement. The Board hereby approves, and hereby deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule"), the Preliminary Official Statement describing the Bonds in substantially the form on file with the City Clerk. A City Representative is hereby authorized to execute an appropriate certificate stating the City Council's determination that the Preliminary Official Statement has been deemed final within the meaning of such Rule. Distribution of the Preliminary Official Statement in connection with the sale of the Bonds is hereby approved. Each City Representative is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by a City Representative shall be conclusive evidence of the approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official Statement. The final Official Statement shall be executed in the name and on behalf of the City by a City Representative.

SECTION 3.04. Costs of Issuance Custodian Agreement. The City shall pay the costs of issuing the Bonds from original issue premium received from the Original Purchaser of the Bonds. The City Council hereby authorizes a City Representative to execute on behalf of the City a Costs of Issuance Custodian Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, amounts provided for payment of the costs of issuing the Bonds shall be deposited thereunder and the payment of costs shall be requisitioned by a City Representative in accordance with said agreement.

SECTION 3.05. *Paying Agency Agreement*. The City Council hereby authorizes a City Representative to execute on behalf of the City a Paying Agency Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, The Bank of New York Mellon Trust Company, N.A. will act as Paying Agent as described in this Resolution.

Section 3.06. *Professional Services*. The City Council hereby approves and confirms the engagement of NHA Advisors, LLC to act as the City's municipal advisor in connection with the issuance and sale of the Bonds, and the engagement of Jones Hall, A Professional Law Corporation, to act as the City's bond counsel and disclosure counsel in connection with the issuance of the Bonds.

ARTICLE IV

FUNDS AND ACCOUNTS

SECTION 4.01. Application of Proceeds of Sale of Bonds. On the Closing Date, the proceeds of sale of the Bonds shall be paid by the Original Purchaser to the City, and shall be

applied on the Closing Date as follows: (a) the Original Purchaser shall transfer an amount required to pay the estimated Costs of Issuance to The Bank of New York Mellon Trust Company, N.A., to be held and administered in accordance with the agreement which is approved under Section 3.04 and (b) the Original Purchaser shall transfer the remainder of such proceeds to the 2010 Paying Agent to be held, invested and applied to refund and discharge the outstanding 2010 Bonds in accordance with the 2010 Bond Resolution.

SECTION 4.02. Refunding of 2010 Bonds; Approval of Irrevocable Refunding Instructions. The 2010 Bonds shall be refunded in accordance with irrevocable refunding instructions given to the 2010 Paying Agent by the City. The City Council hereby approves the Irrevocable Refunding Instructions in substantially the form on file with the City Clerk, together with any changes therein or modifications thereof which are approved by a City Representative, and the execution thereof by a City Representative will be conclusive evidence of the approval of any such changes or modifications. A City Representative is directed to authenticate and execute the final form of the Irrevocable Refunding Instructions on behalf of the City, and to deliver the executed Irrevocable Refunding Instructions on the Closing Date. The sufficiency of the amounts deposited with the 2010 Paying Agent to redeem the 2010 Bonds shall be certified by a certified public accountant in the State of California to the extent required by law.

SECTION 4.03. *Debt Service Fund.* The City Council hereby establishes a special fund to be held by the City separate and apart from all other funds of the City, to be known as the Debt Service Fund. All taxes levied by the County, as directed by the City herein, for the payment of the principal of and interest and premium (if any) on the Bonds in accordance with Section 5.03 shall be deposited in the Debt Service Fund by the City promptly upon the receipt thereof from the County. The Debt Service Fund is hereby pledged for the payment of the principal of and interest and premium (if any) on the Bonds when and as the same become due. The City shall transfer amounts in the Debt Service Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent as required to pay the principal of and interest and premium (if any) on the Bonds.

If, after payment in full of the Bonds, any amounts remain on deposit in the Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner which is consistent with the requirements of applicable state and federal tax law.

SECTION 4.04. *Investments*. The City shall invest all moneys held in any of the funds or accounts established with it hereunder in accordance with the investment policies of the City, as such policies shall exist at the time of investment, and in accordance with Section 53601 of the California Government Code.

ARTICLE V

OTHER COVENANTS OF THE CITY; SECURITY FOR THE BONDS

SECTION 5.01. *Punctual Payment*. The City shall punctually pay, or cause to be paid, the principal of and interest on the Bonds, in strict conformity with the terms of the Bonds and of this Resolution, and shall faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and of the Bonds. Nothing herein contained prevents the City from making advances of its own moneys howsoever derived to any of the uses or purposes permitted by law.

SECTION 5.02. *Extension of Time for Payment*. In order to prevent any accumulation of claims for interest after maturity, the City will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds and will not, directly or indirectly, approve any such arrangement by purchasing or funding said claims for interest or in any other manner.

SECTION 5.03. Security for the Bonds. The Bonds are general obligations of the City and the City has the power, is obligated and hereby covenants to levy ad valorem taxes upon all property within the City subject to taxation by the City, without limitation of rate or amount, for the payment of the Bonds and the interest thereon, in accordance with the Bond Law and Section 43632 of the of the Government Code of the State of California. Amounts in the General Fund of the City are not pledged to the payment of the Bonds. However, nothing herein limits the ability of the City to provide for payment of the principal of and interest and premium (if any) on the Bonds from any source of legally available funds of the City. Any amounts so advanced by the City from legally available funds may be reimbursed from ad valorem property taxes subsequently collected under this Section 5.03.

SECTION 5.04. Books and Accounts; Financial Statement. The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City in which complete and correct entries are made of all transactions relating to the Bonds. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Paying Agent and the Owners of not less than 10% in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

SECTION 5.05. *Protection of Security and Rights of Bond Owners*. The City will preserve and protect the security of the Bonds and the rights of the Bond Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any of the Bonds by the City, the City may not contest the authorization, issuance, sale or repayment of the Bonds.

SECTION 5.06. *Tax Covenants Relating to the Bonds*. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date. To that end, and without limiting the generality of the foregoing covenant, the City hereby covenants with the Owners of the Bonds as follows:

- (a) <u>Private Activity Bond Limitation</u>. The proceeds of the Bonds may not be so used as to cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.
- (b) <u>Federal Guarantee Prohibition</u>. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.
- (c) <u>No Arbitrage</u>. The City may not take, or permit or suffer to be taken by the Paying Agent or otherwise, any action with respect to the Bond proceeds which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Tax Code.
- (d) <u>Rebate of Excess Investment Earnings</u>. The City shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The City shall pay or cause to be paid when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from any source of legally available funds of the City. The City shall keep or cause to be kept, and retain or cause to be retained for a period of 6 years following the retirement of the Bonds, records of the determinations made under this subsection (d).
- (e) <u>Maintenance of Tax-Exemption</u>. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the date of issuance of the Bonds.

SECTION 5.07. Continuing Disclosure. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, which a City Representative is hereby authorized and directed to execute and deliver on the Closing Date. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate will not be considered a default by the City hereunder or under the Bonds; however, any Participating Original Purchaser (as such term is defined in the Continuing Disclosure Certificate) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

SECTION 5.08. *Further Assurances*. The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Resolution.

ARTICLE VI

THE PAYING AGENT

SECTION 6.01. Appointment of Paying Agent. The Bank of New York Mellon Trust Company, N.A. is hereby appointed to act as Paying Agent for the Bonds. The Paying Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Resolution, and even during the continuance of an event of default with respect to the Bonds, no implied covenants or obligations shall be read into this Resolution against the Paying Agent. The Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing and delivering to the City a certificate to that effect.

The City may remove the Paying Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank or trust company doing business and having an office in the State of California, having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, under law or under the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Paying Agent may at any time resign by giving written notice to the City and the Bond Owners of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Paying Agent by an instrument in writing. Any resignation or removal of the Paying Agent and appointment of a successor Paying Agent becomes effective upon acceptance of appointment by the successor Paying Agent.

SECTION 6.02. *Paying Agent May Hold Bonds*. The Paying Agent may become the Owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Paying Agent.

SECTION 6.03. *Liability of Paying Agent.* The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Paying Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Resolution or of the Bonds, nor shall incur any responsibility in respect thereof, other than as set forth in this Resolution. The Paying Agent is not liable in connection with the performance of its duties hereunder, except for its own negligence or willful default.

In the absence of bad faith, the Paying Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Paying Agent and conforming to the requirements of this Resolution.

The Paying Agent has no liability for any error of judgment made in good faith by a responsible officer of its corporate trust department in the absence of the negligence of the Paying Agent.

No provision of this Resolution requires the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Paying Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent is not responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

SECTION 6.04. *Notice to Paying Agent.* The Paying Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Paying Agent may consult with counsel, who may be of counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Resolution the Paying Agent deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Paying Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate will be full warrant to the Paying Agent for any action taken or suffered under the provisions of this Resolution upon the faith thereof, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

SECTION 6.05. Compensation; Indemnification. The City will pay to the Paying Agent from time to time reasonable compensation for all services rendered under this Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the performance of their powers and duties under this Resolution. The City further agrees to indemnify the Paying Agent against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or bad faith.

ARTICLE VII

REMEDIES OF BOND OWNERS

SECTION 7.01. *Remedies of Bond Owners*. Upon the happening and continuation of any default by the City hereunder or under the Bonds, any Bond Owner has the right, for the equal benefit and protection of all Bond Owners similarly situated:

(a) by mandamus, suit, action or proceeding, to compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Resolution and in the Bonds, and

to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it;

- (b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bond Owners' rights; or
- (c) by suit, action or proceeding in any court of competent jurisdiction, to require the City and its members and employees to account as if it and they were the trustees of an express trust.

SECTION 7.02. *Remedies Not Exclusive*. No remedy herein conferred upon the Owners of Bonds is exclusive of any other remedy. Each remedy is cumulative and shall be in addition to every other remedy given hereunder or thereafter conferred on the Bond Owners.

ARTICLE VIII

AMENDMENT OF THIS RESOLUTION

SECTION 8.01. Amendments Effective Without Consent of the Owners. For any one or more of the following purposes and at any time or from time to time, the City Council may by Supplemental Resolution amend this Resolution in whole or in part, without the consent of any of the Bond Owners:

- to add to the covenants and agreements of the City in this Resolution, other covenants and agreements to be observed by the City which are not contrary to or inconsistent with this Resolution as theretofore in effect;
- (b) to confirm, as further assurance, any pledge under, and to subject to any lien or pledge created or to be created by, this Resolution, of any moneys, securities or funds, or to establish any additional funds or accounts to be held under this Resolution;
- (c) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Resolution, which in any event does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the City; or
- (d) to make such additions, deletions or modifications as may be necessary to assure compliance with the applicable provisions of the Tax Code relating to the rebate of excess investment earnings to the United States or otherwise as may be necessary to assure that the interest on the Bonds remains excludable from gross income of the Owners thereof for federal income tax purposes, in the opinion of Bond Counsel filed with the City.

SECTION 8.02. Amendments Effective With Consent to the Owners. Any modification or amendment of this Resolution and of the rights and obligations of the City and of the Owners of the Bonds, in any particular, may be made by a Supplemental Resolution, with the written consent of the Owners of a majority in aggregate principal amount of the Bonds Outstanding at the time such consent is given. Without the consent of the Owners of all affected Bonds, no such modification or amendment may (a) change the maturity of the principal of any Bonds or any interest payable thereon, (b) reduce the principal amount of the Bonds or the rate of interest thereon, (c) reduce the percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, (d) change any of the provisions in Section 7.01 relating to a default by the City hereunder or under the Bonds, (e) reduce the amount of moneys pledged for the repayment of the Bonds. Without the consent of the Paying Agent, no such modification or amendment may change or modify any of the rights or obligations of the Paying Agent.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Benefits of Resolution Limited to Parties. Nothing in this Resolution, expressed or implied, is intended to give to any person other than the City, the Paying Agent and the Owners of the Bonds, any right, remedy, claim under or by reason of this Resolution. Any covenants, stipulations, promises or agreements in this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners of the Bonds.

SECTION 9.02. Defeasance.

(a) <u>Discharge of Resolution</u>. Bonds may be paid by the City, in whole or in part, in any of the following ways provided that the City also pays or causes to be paid any other sums payable hereunder by the City:

- (i) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- by irrevocably depositing, in trust, at or before maturity, money or securities in the necessary amount to pay such Bonds as provided in Section 9.02(c); or
- (iii) by delivering such Bonds to the Paying Agent for cancellation by it.

If the City pays all Outstanding Bonds and also pays or causes to be paid all other sums payable hereunder by the City, then and in that case, at the election of the City (evidenced by a certificate of a City Representative filed with the Paying Agent, signifying the intention of the City to discharge all such indebtedness and this Resolution), and notwithstanding that any Bonds have not been surrendered for payment, this Resolution, all taxes and other assets pledged under this Resolution and all covenants, agreements and other obligations of the City under this Resolution shall cease, terminate, become void and be completely discharged and satisfied, except only as provided in Section 9.02(b). In such event, upon request of the City, the Paying Agent shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary to evidence such discharge and satisfaction, and the Paying Agent shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Resolution which are not required for the payment of Bonds not theretofore surrendered for such payment. (b) <u>Discharge of Liability on Bonds</u>. Upon the deposit, in trust, at or before maturity, of money or securities in the necessary amount to pay any Outstanding Bond Bonds as provided in Section 9.02(c), then all liability of the City in respect of such Bond will cease and be completely discharged, except only that thereafter the Owner thereof is entitled only to payment of the principal of and interest on such Bond by the City, and the City remains liable for such payment, but only out of such money or securities deposited with the Paying Agent as aforesaid for such payment, provided further, however, that the provisions of Section 9.02(d) apply in all events.

The City may at any time surrender to the Paying Agent for cancellation by it any Bonds previously issued and delivered, which the City acquires in any manner whatsoever, and such Bonds, upon such surrender and cancellation, will be deemed paid and retired.

(c) <u>Deposit of Money or Securities with Paying Agent</u>. Whenever in this Resolution it is provided or permitted that there be deposited with or held in trust by the Paying Agent money or securities in the necessary amount to pay any Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established under this Resolution and must be:

- lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
- (ii) Federal Securities the principal of and interest on which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid interest to maturity on the Bonds to be paid, as such principal and interest become due.

(d) Payment of Bonds After Discharge of Resolution. Notwithstanding any provisions of this Resolution, any moneys held by the Paying Agent in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable, if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall, upon request of the City, be repaid to the City free from the trusts created by this Resolution, and all liability of the Paying Agent with respect to such moneys shall thereupon cease. Before the repayment of such moneys to the City as aforesaid, the Paying Agent may (at the cost of the City) first mail to the Owners of all Bonds which have not been paid at the addresses shown on the Registration Books a notice in such form as may be deemed appropriate by the Paying Agent, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof.

SECTION 9.03. *Execution of Documents and Proof of Ownership by Bond Owners*. Any request, declaration or other instrument which this Resolution may require or permit to be executed by Bond Owners may be in one or more instruments of similar tenor, and shall be executed by Bond Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Bond Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same are proved by the Registration Books.

Any request, declaration or other instrument or writing of the Owner of any Bond binds all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Paying Agent in good faith and in accordance therewith.

SECTION 9.04. *Waiver of Personal Liability*. No City Council member, officer, agent or employee of the City has any individual or personal liability for the payment of the principal of or interest on the Bonds. Nothing herein contained relieves any City Council member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.05. Destruction of Canceled Bonds. Whenever in this Resolution provision is made for the surrender to the City of any Bonds which have been paid or canceled under the provisions of this Resolution, a certificate of destruction duly executed by the Paying Agent constitutes the equivalent of the surrender of such canceled Bonds and the City is entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

SECTION 9.06. *Partial Invalidity*. If any section, paragraph, sentence, clause or phrase of this Resolution is for any reason held illegal or unenforceable, such holding will not affect the validity of the remaining portions of this Resolution. The City hereby declares that it would have adopted this Resolution and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Resolution may be held illegal, invalid or unenforceable.

SECTION 9.07. *Execution of Documents.* Each City Representative, and any and all other officers of the City, are each authorized and directed in the name and on behalf of the City to make any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful issuance, sale and delivery of the Bonds, including an agreement for paying agent services. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

SECTION 9.08. *Effective Date of Resolution*. This Resolution becomes effective upon the date of its passage and adoption.

* * * * * * * * * * *

APPENDIX A

FORM OF BOND

REGISTERED BOND NO. R-____

\$

CITY OF BERKELEY

2020 REFUNDING GENERAL OBLIGATION BOND, SERIES B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

INTEREST RATE:	MATURITY DATE:	DATED DATE:	CUSIP	
% per annum	September 1,	, 2020	[]	
REGISTERED OWNE	R: CEDE & CO.			

PRINCIPAL AMOUNT: THOUSAND DOLLARS

The CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), for value received, hereby promises to pay to the Registered Owner named above, or registered assigns, the Principal Amount set forth above on the Maturity Date set forth above, together with interest thereon at the Interest Rate set forth above, calculated on a 30/360 day basis, until the Principal Amount hereof is paid or provided for, such interest to be paid on March 1 and September 1 of each year, commencing September 1, 2020 (the "Interest Payment Dates"). This Bond will bear interest from the Interest Payment Date next preceding the date of authentication hereof, unless (a) it is authenticated as of a business day following the 15th day of the month immediately preceding any Interest from such Interest Payment Date, or (b) it is authenticated on or before August 15, 2020, in which event it shall bear interest from the Date Set forth above.

Principal, interest and redemption premium (if any) are payable in lawful money of the United States of America to the person in whose name this Bond is registered (the "Registered Owner") on the Bond registration books maintained by the Paying Agent, initially The Bank of New York Mellon Trust Company, N.A., Dallas, Texas. Principal hereof and any redemption premium hereon are payable upon presentation and surrender of this Bond at the principal corporate trust office of the Paying Agent. Interest hereon is payable by check mailed by the Paying Agent on each Interest Payment Date to the Registered Owner of this Bond by first-class mail at the address appearing on the Bond registration books at the close of business on the 15th day of the calendar month next preceding such Interest Payment Date (the "Record Date"); *provided, however*, that at the written request of the registered owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Paying Agent prior to any Record Date, interest on such Bonds shall be paid on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as shall be specified in such written request.

This Bond is one of a series of \$______ aggregate principal amount of bonds (collectively, the "2020 Bonds") issued for the purpose of refunding outstanding bonds of the City, and to pay all necessary legal, financial, engineering and contingent costs in connection therewith. The 2020 Bonds have been issued under authority of and under the laws of the State of California, the requisite two-thirds vote of the electors of the City cast at an election held on November 4, 2008 and a resolution of the City Council of the City adopted on February 25, 2020 (the "Bond Resolution"). The 2020 Bonds are payable as to both principal and interest from the proceeds of the levy of ad valorem taxes on all property subject to such taxes in the City, which taxes are unlimited as to rate or amount.

The principal of and interest and redemption premium, if any, on this Bond do not constitute a debt of the County, the State of California, or any of its political subdivisions other than the City, or any of the officers, agents and employees thereof, and neither the County, the State of California, any of its political subdivisions other than the City, nor any of the officers, agents and employees thereof shall be liable hereon. In no event shall the principal of and interest and redemption premium, if any, on this Bond be payable out of any funds or properties of the City other than ad valorem taxes levied upon all taxable property in the City.

The 2020 Bonds are issuable only as fully registered bonds in the denominations of \$5,000 or any integral multiple thereof. This Bond is exchangeable and transferable for bonds of other authorized denominations at the principal corporate trust office of the Paying Agent, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Paying Agent, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Paying Agent, all subject to the terms, limitations and conditions provided in the Bond Resolution. Any tax or governmental charges shall be paid by the transferor. The City and the Paying Agent may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or on account of principal or interest and for all other purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The 2020 Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The 2020 Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

The 2020 Bonds maturing on September 1, 20__, September 1, 20__ and September 1, 20__ (the "**Term Bonds**") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20__ in the principal amounts as set forth in the following tables:

Term Bond Due September 1, 20____

Payment Date	Payment
(September 1)	Amount

\$_____ Term Bond Due September 1, 20__

Payment Date	Payment
(September 1)	Amount

\$_____ Term Bond Due September 1, 20___

Payment Date	Payment
(September 1)	Amount

The Paying Agent shall give notice of the redemption of the 2020 Bonds at the expense of the City. Such notice shall specify: (a) that the 2020 Bonds or a designated portion thereof are to be redeemed, (b) the numbers and CUSIP numbers of the 2020 Bonds to be redeemed, (c) the date of notice and the date of redemption, (d) the place or places where the redemption will be made, and (e) descriptive information regarding the 2020 Bonds including the dated date, interest rate and stated maturity date. Such notice shall further state that on the specified date there shall become due and payable upon each 2020 Bond to be redeemed, the portion of the principal amount of such 2020 Bond to be redeemed, together with interest accrued to said date, the redemption premium, if any, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

Notice of any redemption of 2020 Bonds shall be mailed by first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, to the respective Owners of any 2020 Bonds designated for redemption, at their addresses appearing on the bond registration books maintained by the Paying Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of such 2020 Bonds or the cessation of accrual of interest thereon from and after the redemption date.

The City may provide conditional notices of optional redemption, and the City is entitled to rescind any notice of optional redemption of the 2020 Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

Neither the City nor the Paying Agent will be required: (a) to issue or transfer any Bond during a period beginning with the opening of business on the 15th calendar day next preceding either any Interest Payment Date or any date of selection of any 2020 Bond to be redeemed and ending with the close of business on the Interest Payment Date or a day on which the applicable notice of redemption is given, or (b) to transfer any Bond which has been selected or called for redemption in whole or in part.

Reference is made to the Bond Resolution for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Paying Agent and the Registered Owners, and the terms and conditions upon which the 2020 Bonds are issued and secured. The owner of this Bond assents, by acceptance hereof, to all of the provisions of the Bond Resolution.

It is certified, recited and declared that all acts and conditions required by the Constitution and laws of the State of California to exist, to be performed or to have been met precedent to and in the issuing of the 2020 Bonds in order to make them legal, valid and binding general obligations of the City, have been performed and have been met in regular and due form as required by law; that payment in full for the 2020 Bonds has been received; that no statutory or constitutional limitation on indebtedness or taxation has been exceeded in issuing the 2020 Bonds; and that due provision has been made for levying and collecting ad valorem property taxes on all of the taxable property within the City in an amount sufficient to pay principal and interest when due, and for levying and collecting such taxes the full faith and credit of the City are hereby pledged.

This Bond shall not be valid or obligatory for any purpose and shall not be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication below has been manually signed by the Paying Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or the Paying Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of Berkeley has caused this Bond to be executed by the facsimile signature of its Mayor and attested by the facsimile signature of its City Clerk, all as of the date stated above.

CITY OF BERKELEY

Ву _____

Attest:

Mayor

City Clerk

CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the Bond Resolution referred to herein.

Date of Authentication: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Paying Agent

By _____ Authorized Signatory

ASSIGNMENT

For value received, the undersigned do(es) hereby sell, assign and transfer unto

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint

_____ attorney, to transfer the same on the registration books of the Bond Registrar, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

APPENDIX B

REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

- 1. Estimated True Interest Cost of the Bonds: 2.25%
- 2. Estimated finance charge of the Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$185,000. Such amount consists of costs of issuing the Bonds in the amount of approximately \$100,000 together with estimated underwriter's compensation in the amount of \$85,000.
- 3. Estimated proceeds of the Bonds expected to be received by the City for deposit to the Project Fund, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest and reserves (if any) from the principal amount of the Bonds: \$13,070,000.
- 4. Estimated Total Payment Amount for the Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$16,215,000.

^{*}All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding tax-exempt interest rates available in the bond market at the time of pricing the Bonds.

Page 167 of 269 PRELIMINARY OFFICIAL STATEMENT DATED FEBRUARY __, 2020

NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "___" See "RATING" herein.

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Refunding Bonds 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 Refunding Bonds is exempt from California personal income taxes. Bond Counsel expresses no opinion regarding any other tax consequences caused by the ownership or disposition of, or the accrual or receipt of interest on, the Refunding Bonds. See "LEGAL MATTERS – Tax Exemption."



\$_____* CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

Dated: Date of Delivery

Due: September 1, as shown on inside cover

Cover Page. This cover page contains information for quick reference only. It is not a summary of all the provisions of the Refunding Bonds. Investors must read the entire official statement to obtain information essential to making an informed investment decision.

Authority and Purpose. The captioned 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Projects (the "Refunding Bonds"), are being issued by the City of Berkeley (the "City") pursuant to certain provisions of the California Government Code and a resolution of the City Council of the City adopted on February 25, 2020. The Refunding Bonds are being issued for the purpose of refunding, on a current basis, a certain outstanding general obligation bonds issued by the City. See "THE REFUNDING BONDS – Authority for Issuance" and "THE REFINANCING PLAN" herein.

Security. The Refunding Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by Alameda County (the "County"). The City Council is empowered and is obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Refunding Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates). The City has other outstanding issues of general obligation bonds which are similarly payable from *ad valorem* taxes levied on parcels in the City and will be payable on a pro rata basis with the Refunding Bonds. See "SECURITY FOR THE REFUNDING BONDS."

Payments. Interest on the Refunding Bonds accrues from the date of delivery and is payable semiannually on March 1 and September 1 of each year, commencing September 1, 2020, by check, draft or wire mailed to the person in whose name the Refunding Bond is registered. Payments of principal and interest on the Refunding Bonds will be paid by The Bank of New York Mellon Trust Company, N.A., as paying agent for the Refunding Bonds (the "Paying Agent"), to DTC for subsequent disbursement to DTC Participants who will remit such payments to the beneficial owners of the Refunding Bonds. See "THE REFUNDING BONDS – Description of the Refunding Bonds."

Redemption. The Refunding Bonds are subject to optional redemption and, at bidder's option, mandatory sinking fund redemption prior to maturity as described herein. See discussion of redemption under the heading "THE REFUNDING BONDS."

Book-Entry Only. The Refunding Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company ("DTC"). Purchasers will not receive physical certificates representing their interests in the Refunding Bonds. See APPENDIX E for additional information about the book-entry only system.

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



Maturity Schedules (See inside cover)

The Refunding Bonds will be sold and awarded pursuant to competitive public bids to be received on ______, 2020, as set forth in the Official Notice of Sale. The Refunding Bonds are offered when, as and if issued, subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the City by Jones Hall, A Professional Law Corporational Law Corporation, San Francisco, California, as Disclosure Counsel. It is anticipated that the Refunding Bonds in definitive form will be available for delivery to Cede & Co., as nominee of The Depository Trust Company, on or about ______, 2020.

The date of this Official Statement is _____, 2020.

MATURITY SCHEDULE*

\$_____

*

CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

Maturity Date	Principal				
(September 1)	Amount	Interest Rate	Yield	Price	CUSIP [†]

^{*}Preliminary; subject to change. Identification of Term Bonds subject to mandatory sinking fund redemption is at bidder's option. † Copyright 2020, American Bankers Association. CUSIP data herein are provided by CUSIP Global Services, managed by S&P Global Market Intelligence, and are provided for convenience of reference only. Neither the City nor the Purchaser assumes any responsibility for the accuracy of these CUSIP data.

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Refunding Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract between any bond owner and the City or the Purchaser. This Official Statement and the information contained herein are subject to completion or amendment without notice.

No Offering Except by This Official Statement. No dealer, broker, salesperson or other person has been authorized by the City or the Purchaser to give any information or to make any representations relating to the Refunding Bonds other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by the City or the Purchaser.

No Unlawful Offers or Solicitations. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sale of the Refunding Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Estimates and Projections. When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases "will likely result," "are expected to," "will continue," "is anticipated," "estimate," "project," "forecast," "expect," "intend" and similar expressions identify "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

Information in Official Statement. The information set forth in this Official Statement has been furnished by the City and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by the City.

Involvement of Purchaser. The Purchaser (as defined in "UNDERWRITING") has reviewed the information in this Official Statement in accordance with, and as a 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.

Document Summaries. All summaries of the Refunding Bond Resolution or other documents referred to in this Official Statement are made subject to the provisions of such documents and qualified in their entirety to reference to such documents, and do not purport to be complete statements of any or all of such provisions.

No Securities Laws Registration. The Refunding Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exceptions therein for the issuance and sale of municipal securities. The Refunding Bonds have not been registered or qualified under the securities laws of any state.

Effective Date. This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the Refunding Bonds will, under any circumstances, give rise to any implication that there has been no change in the affairs of the City, or the other parties described in this Official Statement, or the condition of the property within the City since the date of this Official Statement.

Website. The City maintains a website; however, the information presented on the website is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Refunding Bonds.

CITY OF BERKELEY (ALAMEDA COUNTY, CALIFORNIA)

MEMBERS OF THE CITY COUNCIL

Jesse Arreguín, Mayor Rashi Kesarwani, Councilmember District 1 Cheryl Davila, 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 Lori Droste, Councilmember District 8

CITY OFFICIALS AND STAFF

Dee Williams-Ridley City Manager

David White Deputy City Manager Paul Buddenhagen Deputy City Manager

Farimah Brown City Attorney Jenny Wong City Auditor

Henry Oyekanmi Director of Finance

PROFESSIONAL SERVICES

BOND AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation San Francisco, California

MUNICIPAL ADVISOR

NHA Advisors, LLC San Rafael, California

BOND REGISTRAR, TRANSFER AGENT, AND PAYING AGENT

The Bank of New York Mellon Trust Company, N.A. Los Angeles, California

VERIFICATION AGENT

Robert Thomas CPA, LLC Minneapolis, Minnesota

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OFFICIAL STATEMENT

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CITY OF BERKELEY 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)

INTRODUCTION

This Official Statement, which includes the cover page and appendices hereto, provides information in connection with the sale and delivery of the 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Projects (the "**Refunding Bonds**").

This Introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement, including the cover page and appendices hereto, and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Refunding Bonds to potential investors is made only by means of the entire Official Statement.

The City

The City. 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 a population of 123,328 as of January 1, 2019, 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 235,000 full and part-time workers.

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 charter was adopted in 1895. For more information regarding the City and its finances, see APPENDIX A and APPENDIX B.

Sources of Payment for the Refunding Bonds

The Refunding Bonds are general obligations of the City payable solely from ad valorem property taxes levied by the City and collected by the County. The City Council is empowered and obligated to annually levy ad valorem taxes for the payment of interest on, and principal of, the Refunding Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except with respect to certain personal property that is taxable at limited rates). See "SECURITY FOR THE REFUNDING BONDS" and "PROPERTY TAXATION."

Purposes for Issuance

The net proceeds of the Refunding Bonds will be used to refund the City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project) (the "**Prior Bonds**"), maturing on and after September 1, 2021 (the "**Refunded Bonds**"), which will be redeemed in full on September 1, 2020*.

See "THE REFINANCING PLAN" herein.

Authority for Issuance

The Refunding Bonds are being issued under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the California Government Code, commencing with Section 53550 (the "**Refunding Bond Law**") and pursuant to a resolution adopted by the City Council of the City on February 25, 2020 (the "**Refunding Bond Resolution**).

See "THE REFUNDING BONDS - Authority for Issuance" herein.

Description of the Refunding Bonds

Generally. The Refunding Bonds mature in the years and in the amounts as set forth on the inside cover page hereof. The Refunding Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee for DTC. Purchasers will not receive physical certificates representing their interest in the Refunding Bonds. See "THE REFUNDING BONDS – Description of the Refunding Bonds" and APPENDIX E.

Redemption. The Refunding Bonds are subject to redemption prior to maturity as described herein. The Refunding Bonds may be subject to mandatory sinking fund redemption at the option of the bidders. See discussion of redemption features under the heading "THE REFUNDING BONDS – Redemption" herein.

Legal Matters

Issuance of the Refunding Bonds is subject to the approving opinions of Jones Hall, A Professional Law Corporation, San Francisco, California, as bond counsel ("**Bond Counsel**"), to be delivered in substantially the form attached hereto as APPENDIX C. Jones Hall, A Professional Law Corporation, San Francisco, California, will also serve as disclosure counsel to the City ("**Disclosure Counsel**").

Tax Matters

In the opinion of Bond Counsel, interest on the Refunding Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual alternative minimum tax. In the further opinion of Bond Counsel, interest on the Refunding Bonds is exempt from California personal income taxes. See "TAX MATTERS" for additional information, and APPENDIX C hereto for the form of Bond Counsel's opinion to be delivered concurrently with the Refunding Bonds.

^{*} Preliminary; subject to change.

Offering and Delivery of the Refunding Bonds

The Refunding Bonds are offered when, as and if issued and received by the purchasers, subject to approval as to the legality by Bond Counsel. It is anticipated that the Refunding Bonds will be available for delivery through the facilities of DTC on or about _____, 2020.

Continuing Disclosure

The City has covenanted and agreed that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate. The form of the Continuing Disclosure Certificate is included in APPENDIX D hereto. See also "CONTINUING DISCLOSURE" herein.

Other Information

This Official Statement speaks only as of its date, and the information contained herein is subject to change. Copies of documents referred to in this Official Statement and information concerning the Refunding Bonds are available from the City of Berkeley City Clerk, 2180 Milvia Street, Berkeley, California 94704, (510) 981-7000. The City may impose a charge for copying, mailing and handling.

This Official Statement is not to be construed as a contract with the purchasers of the Refunding Bonds. 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 representations of fact. The summaries and references to documents, statutes and constitutional provisions referred to herein do not purport to be comprehensive or definitive, and are qualified in their entireties by reference to each of such documents, statutes and constitutional provisions.

The information set forth herein has been obtained from official sources which are believed to be reliable but it is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by the City. The information and expressions of opinions herein 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 affairs of the City since the date hereof. This Official Statement is submitted in connection with the sale of the Refunding Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose.

END OF INTRODUCTION

THE REFINANCING PLAN

The Refunding Bonds are being issued to refund, on a current basis, all outstanding maturities of the City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project), which were issued on August 3, 2010, in the aggregate principal amount of \$16,000,000 (the "**2010 Bonds**").

The 2010 Bonds are subject to redemption at the option of the City, from any source of available funds, at a redemption price equal to 100% of the principal amount thereof to be redeemed together with accrued interest thereon to the redemption date, without premium. The following table identifies the 2010 Bonds being refunded with proceeds of the Refunding bonds (the "**Refunded Bonds**").

Maturities to be Refunded*	CUSIP†	Principal Amount	Redemption Date	Redemption Price
09/01/2021	084113 PJ2	\$460,000	09/01/2020	100.0%
09/01/2022	084113 PK9	470,000	09/01/2020	100.0
09/01/2023	084113 PL7	485,000	09/01/2020	100.0
09/01/2024	084113 PM5	500,000	09/01/2020	100.0
09/01/2025	084113 PN3	520,000	09/01/2020	100.0
09/01/2026	084113 PP8	545,000	09/01/2020	100.0
09/01/2027	084113 PQ6	565,000	09/01/2020	100.0
09/01/2028	084113 PR4	585,000	09/01/2020	100.0
09/01/2029	084113 PS2	610,000	09/01/2020	100.0
09/01/2034 T	084113 PT0	3,445,000	09/01/2020	100.0
09/01/2039 T	084113 PU7	4,235,000	09/01/2020	100.0
Total	-	\$12,420,000	-	-

T: Term Bonds

† CUSIP Copyright American Bankers Association. CUSIP data herein is provided by Standard & Poor's CUSIP Service Bureau, a division of McGraw Hill Companies, Inc. Neither the City nor the Purchasers are responsible for the accuracy of such data.

The net proceeds of the Refunding Bonds will be deposited with The Bank of New York Mellon Trust Company, N.A., as paying agent for the Prior Bonds (the "**Prior Bonds Paying Agent**"), in an account established to pay the redemption price of the Refunded Bonds (the "**Redemption Fund**") under certain Irrevocable Refunding Instructions given by the City to the Prior Bonds Paying Agent (the "**Refunding Instructions**"). As a result of the deposit and investment of amounts with the Prior Bonds Paying Agent, the Refunded Bonds will be discharged and defeased, and will no longer be payable from and secured by property taxes levied for the purpose of paying debt service on the Refunded Bonds.

The sufficiency of the deposits with the Prior Bonds Paying Agent will be verified by Robert Thomas CPA, LLC, Minneapolis, Minnesota, certified public accountants (the "**Verification Agent**"). See "VERIFICATION OF MATHEMATICAL ACCURACY" herein. As a result of the deposit of funds with the Prior Bonds Paying Agent on the date of issuance of the Refunding Bonds, and assuming the accuracy of the Purchaser's and the Verification Agent's computations, the Refunded Bonds will be legally defeased and will be payable solely from amounts held for that purpose under the Refunding Instructions, and will cease to be secured by *ad valorem* property taxes levied in the City.

The amounts held by the Prior Bonds Paying Agent are pledged solely to the payment of the Refunded Bonds. The funds deposited in the Redemption Fund will not be available for the payment of debt service with respect to the Refunding Bonds.

SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Refunding Bonds are as follows:

Sources of Funds

Refunding Bonds

Principal Amount of Bonds Plus: Net Original Issue Premium Total Sources

Deposit to Redemption Fund Costs of Issuance* Total Uses

*All estimated costs of issuance including, but not limited to, Purchaser's discount, printing costs, and fees of Bond Counsel, Disclosure Counsel, the Municipal Advisor and the rating agency.

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THE REFUNDING BONDS

Authority for Issuance

The Refunding Bonds will be issued pursuant to the authority of the Refunding Bond Law and the Refunding Bond Resolution.

Description of the Refunding Bonds

Book-Entry Form. The Refunding Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York ("**DTC**"). Purchasers of the Refunding Bonds (the "**Beneficial Owners**") will not receive physical certificates representing their interest in the Refunding Bonds. Payments of principal of and interest on the Refunding Bonds will be paid by the Paying Agent to DTC for subsequent disbursement to DTC Participants which will remit such payments to the Beneficial Owners of the Refunding Bonds.

As long as DTC's book-entry method is used for the Refunding Bonds, the Paying Agent will send any notice of prepayment or other notices to owners only to DTC. Any failure of DTC to advise any DTC Participant, or of any DTC Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity or sufficiency of the proceedings relating to the prepayment of the Refunding Bonds called for prepayment or of any other action premised on such notice.

The Paying Agent, the City, and the Purchaser have no responsibility or liability for any aspects of the records relating to or payments made on account of beneficial ownership, or for maintaining, supervising or reviewing any records relating to beneficial ownership, of interests in the Refunding Bonds. See APPENDIX E for additional information.

Interest. Interest on the Refunding Bonds is payable semiannually on March 1 and September 1 of each year (the "Interest Payment Dates"), commencing September 1, 2020.

Interest on the Refunding Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- 1. a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- 2. a Bond is authenticated prior to an Interest Payment Date and after the close of business on the 15th day of the month preceding the Interest Payment Date (each, a "**Record Date**"), in which event it will bear interest from such Interest Payment Date,
- 3. a Bond is authenticated on or before August 15, 2020, in which event it shall bear interest from the Closing Date, or
- 4. at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Refunding Bonds will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

Denominations and Maturity. The Refunding Bonds shall be issued in the denomination of \$5,000 each or any integral multiple of \$5,000. The Refunding Bonds mature on September 1 in the years and amounts set forth on the inside cover page hereof.

See the maturity schedule on the inside cover page hereof and "DEBT SERVICE SCHEDULE" below.

Payment

Interest on the Refunding Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the owner thereof at such owner's address as it appears on the Registration Books (as defined below) at the close of business on the preceding Record Date, except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Refunding Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request.

Principal of and premium (if any) on the Refunding Bonds is payable in lawful money of the United States of America upon presentation and surrender at the principal office of the Paying Agent.

Redemption^{*}

Optional Redemption. The Refunding Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their stated maturities. The Refunding Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

Mandatory Sinking Fund Redemption. The Term Bonds maturing on September 1, 20__ and September 1, 20__ (the "**Term Bonds**") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20__, in the principal amounts as set forth in the following tables:

Term Bond Due September 1, 20____

Payment Date	Payment
(September 1)	Amount

(Maturity)

^{*} Preliminary; subject to change.

\$_____ Term Bond Due September 1, 20___

Payment Date	Payment	
(September 1)	Amount	

(Maturity)

If some but not all of the Term Bonds have been optionally redeemed, the aggregate principal amount of Term Bonds to be subject to Mandatory Sinking Fund Redemption in each year will be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

Redemption Procedure. The Paying Agent will cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books (as defined below) maintained by the Paying Agent. Such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice will not affect the validity of the proceedings for the redemption of such Bonds.

The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption of the Refunding Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

A redemption notice will state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, will designate the serial numbers of the Refunding Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Refunding Bonds of one or more maturities have been called for redemption, and will require that such Bonds be then surrendered at the principal office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

Partial Redemption. Upon surrender of Bonds redeemed in part only, the City will execute and the Paying Agent will authenticate and deliver to the owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Refunding Bond or Bonds.

Effect of Redemption. From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Refunding Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under the Refunding Bond Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice.

Registration, Transfer and Exchange of Bonds

If the book-entry system as described above and in APPENDIX E is no longer used with respect to the Refunding Bonds, the following provisions will govern the registration, transfer, and exchange of the Refunding Bonds.

Registration Books. The Paying Agent will keep or cause to be kept sufficient books for the registration and transfer of the Refunding Bonds (the "**Registration Books**"), which will at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the Refunding Bonds.

Transfer. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the principal office of the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

Whenever any Bond or Bonds are surrendered for transfer, the City will execute and the Paying Agent will authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

Exchange. Bonds may be exchanged at the principal office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

Defeasance

The City has the option to pay and discharge the entire indebtedness on all or any portion of the outstanding Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by irrevocably depositing, in trust, at or before maturity:
 - (i) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
 - (ii) Federal Securities (as defined below), the principal of and interest on, which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid interest to maturity on the Refunding Bonds to be paid, as such principal and interest become due.
- (c) by delivering such Bonds to the Paying Agent for cancellation by it.

"Federal Securities" means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations, the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

DEBT SERVICE SCHEDULES

Debt Service for the Refunding Bonds. The following table shows the debt service schedules with respect to the Refunding Bonds, assuming no optional redemptions.

CITY OF BERKELEY Bonds Debt Service Schedule

Bond Year Ending September 1	Refunding Bonds Principal	Refunding Bonds Interest	Total Debt Service
2020			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
2044			
2045			
2046			
2047			
2048			
2049			
2050			
Total			

Combined Debt Service Schedule. In addition to the Refunding Bonds described herein, the City has other series of general obligation bonds and refunding bonds outstanding. The following table shows the combined debt service schedule for outstanding general obligation bonds and refunding bonds of the City, assuming no optional redemptions.

			2015						
Year Ending			Refunding			2020	2020 Refunding		Total
September 1	2010 Bonds [*]	2014 Bonds	Bonds	2016 Bonds	2017 Bonds	Bonds	Bonds, Series A	Refunding Bonds	Debt Service
2020	\$955,506.26	\$904,500.00	\$3,951,337.50	\$753,112.50	\$1,746,556.26				
2021	958,756.26	902,750.00	3,104,587.50	748,362.50	1,748,556.26				
2022	954,956.26	905,250.00	3,106,587.50	748,112.50	1,748,806.26				
2023	955,856.26	901,750.00	3,103,087.50	747,112.50	1,747,306.26				
2024	955,093.76	902,500.00	3,099,087.50	745,362.50	1,749,056.26				
2025	955,093.76	905,350.00	3,104,337.50	747,862.50	1,748,806.26				
2026	959,293.76	902,225.00	3,108,087.50	748,062.50	1,746,556.26				
2027	957,493.76	903,250.00	3,105,287.50	752,662.50	1,746,156.26				
2028	954,893.76	905,450.00	2,140,087.50	756,462.50	1,749,356.26				
2029	956,493.76	901,850.00	1,001,287.50	764,462.50	1,748,956.26				
2030	957,093.76	902,650.00	399,887.50	770,962.50	1,746,906.26				
2031	955,900.00	902,650.00	399,975.00	771,862.50	1,746,906.26				
2032	958,675.00	901,850.00	399,737.50	772,312.50	1,746,006.26				
2033	955,212.50	904,575.00	398,768.76	772,312.50	1,749,206.26				
2034	955,718.76	906,268.76	397,043.76	774,437.50	1,746,356.26				
2035	959,987.50	901,931.26	399,968.76	781,187.50	1,747,606.26				
2036	956,837.50	905,243.76	397,368.76	786,750.00	1,747,806.26				
2037	957,412.50	902,243.76	398,956.26	791,787.50	1,746,956.26				
2038	956,500.00	903,150.00	-	795,562.50	1,748,518.76				
2039	959,100.00	902,743.76	-	798,787.50	1,748,831.26				
2040	-	906,025.00	-	806,462.50	1,747,893.76				
2041	-	901,825.00	-	813,450.00	1,749,018.76				
2042	-	906,275.00	-	819,750.00	1,748,681.26				
2043	-	903,925.00	-	828,600.00	1,746,881.26				
2044	-	-	-	836,550.00	1,748,618.76				
2045	-	-	-	843,600.00	1,748,731.26				
2046	-	-	-	849,750.00	1,747,218.76				
2047	-	-	-	-	1,747,037.50				
2048	-	-	-	-	-				
2049	-	-	-	-	-				
2050	-	-	-	-	-				
Total	\$19,135,875.12	\$21,686,231.30	\$32,015,481.30	\$21,125,700.00	48,939,294.02				

^{*} Expected to be redeemed in full with proceeds of the Refunding Bonds.

SECURITY FOR THE REFUNDING BONDS

Ad Valorem Taxes

Bonds Payable from Ad Valorem Property Taxes. The Refunding Bonds are general obligations of the City, payable solely from ad valorem property taxes levied by the City and collected by the County. The City is empowered and is obligated to annually levy ad valorem taxes for the payment of the Refunding Bonds and the interest thereon upon all property within the City subject to taxation by the City, without limitation of rate or amount (except certain personal property that is taxable at limited rates).

Levy and Collection. The City will levy and the County will collect such ad valorem taxes in such amounts and at such times as is necessary to ensure the timely payment of debt service. Such taxes, when collected, will be deposited into a debt service fund for the Refunding Bonds, which is maintained by the City and which is irrevocably pledged for the payment of principal of and interest on the Refunding Bonds when due.

City property taxes are assessed and collected by the County in the same manner, at the same time and in the same installments as other ad valorem taxes on real property and will have the same priority, become delinquent at the same times and in the same proportionate amounts and bear the same proportionate penalties and interest after delinquency as do the other ad valorem taxes on real property. As described below, although the County has adopted the Teeter Plan, the City has elected not to participate in the Teeter Plan, meaning that the City receives all of the property taxes that are actually collected, and the City also receives any penalties and interest on delinquent taxes. See "PROPERTY TAXATION – Alternative Method of Tax Apportionment – Teeter Plan."

Annual Tax Rates. The amount of the annual ad valorem tax levied by the City to repay the Refunding Bonds will be determined by the relationship between the assessed valuation of taxable property in the City and the amount of debt service due on the Refunding Bonds. Fluctuations in the annual debt service on the Refunding Bonds and the assessed value of taxable property in the City may cause the annual tax rate to fluctuate.

Economic and other factors beyond the City's control, such as economic recession, deflation of land values, a relocation out of the City or financial difficulty or bankruptcy by one or more major property taxpayers, or the complete or partial destruction of taxable property caused by, among other eventualities, earthquake, flood, fire or other natural disaster, could cause a reduction in the assessed value within the City and necessitate a corresponding increase in the annual tax rate.

Debt Service Funds

Pursuant to the Bond Resolution, The City will establish a debt service fund for the Refunding Bonds (the "**Debt Service Fund**," which will be established as a separate fund to be maintained distinct from all other funds of the City. All taxes levied by the City pursuant to the Bond Resolution for the payment of the principal of and interest and premium (if any) on the Refunding Bonds will be deposited in the Debt Service Fund by the City promptly upon receipt from the County. The Debt Service Fund is pledged for the payment of the principal of and interest and premium (if any) on the Refunding Bonds, when and as the same become due. The City will transfer amounts in the Debt Service Fund, to the extent necessary, to pay the principal of and interest on the Refunding Bonds as the same become due and payable, to the Paying Agent, as required to pay the principal of and interest and premium (if any) on the Refunding Bonds.

If, after payment in full of the Refunding Bonds, any amounts remain on deposit in the respective Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner that is consistent with the requirements of applicable state and federal tax law.

Limited Obligation

The Refunding Bonds are payable solely from the proceeds of an ad valorem tax levied by the City, and collected by the County, for the payment of principal and interest on the Refunding Bonds. Although the County is obligated to collect the ad valorem tax for the payment of the Refunding Bonds, the Refunding Bonds are not a debt of the County.

PROPERTY TAXATION

Property Tax Collection Procedures

In California, property which is subject to ad valorem taxes is classified as "secured" or "unsecured." The "secured roll" is that part of the assessment roll containing state assessed public utilities' property and property, the taxes on which are a lien on real property sufficient, in the opinion of the county assessor, to secure payment of the taxes. A tax levied on unsecured property does not become a lien against such unsecured property, but may become a lien on certain other property owned by the taxpayer. Every tax which becomes a lien on secured property has priority over all other liens arising pursuant to State law on such secured property, regardless of the time of the creation of the other liens. Secured and unsecured property are entered separately on the assessment roll maintained by the county assessor. The method of collecting delinquent taxes is substantially different for the two classifications of property.

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year. If unpaid, such taxes become delinquent after December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. In addition, property on the secured roll with respect to which taxes are delinquent is declared tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of the delinquent taxes and a delinquency penalty, plus a redemption penalty of 1.5% per month to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

Property taxes are levied for each fiscal year on taxable real and personal property situated in the taxing jurisdiction as of the preceding January 1. A bill enacted in 1983, SB813 (Statutes of 1983, Chapter 498), however, provided for the supplemental assessment and taxation of property as of the occurrence of a change of ownership or completion of new construction. Thus, this legislation eliminated delays in the realization of increased property taxes from new assessments. As amended, SB813 provided increased revenue to taxing jurisdictions to the extent that supplemental assessments of new construction or changes of ownership occur subsequent to the January 1 lien date and result in increased assessed value.

Property taxes on the unsecured roll are due on the January 1 lien date and become delinquent, if unpaid on the following August 31. A 10% penalty is also attached to delinquent taxes in respect of property on the unsecured roll, and further, an additional penalty of 1.5% per month accrues with respect to such taxes beginning the first day of the third month following the

delinquency date. 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 certain property of the taxpayer; (3) filing a certificate of delinquency for record in the county recorder's office, in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee. The exclusive means of enforcing the payment of delinquent taxes in respect of property on the secured roll is the sale of the property securing the taxes for the amount of taxes which are delinquent.

Taxation of State-Assessed Utility Property

The State Constitution provides that most classes of property owned or used by regulated utilities are assessed by the State Board of Equalization ("**SBE**") and taxed locally. Property valued by the SBE as an operating unit in a primary function of the utility taxpayer is known as "unitary property," a concept designed to permit assessment of the utility as a going concern rather than assessment of each individual element of real and personal property owned by the utility taxpayer. State-assessed unitary and "operating nonunitary" property (which excludes nonunitary property of regulated railways) is allocated to the counties based on the situs of the various components of the unitary property. Except for unitary property of regulated railways and certain other excepted property, all unitary and operating nonunitary property is taxed at special county-wide rates and tax proceeds are distributed to taxing jurisdictions according to statutory formulae generally based on the distribution of taxes in the prior year.

Assessed Valuation

Assessed Valuation History. The following is a table summarizing the historical assessed valuation of the taxable property in the City.

Table 1CITY OF BERKELEYAssessed Valuations of All Taxable PropertyFiscal Years 2010-11 to 2019-20

	Local				Percent Change
Fiscal Year	Secured ⁽¹⁾	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>	
2010-11	\$12,147,575,627	\$555,664	\$677,887,524	\$12,826,018,815	
2011-12	12,525,929,662	555,664	667,789,011	13,194,274,337	2.87%
2012-13	12,834,926,300	555,664	673,174,230	13,508,656,194	2.38
2013-14	13,686,258,913	555,664	677,170,723	14,363,985,300	6.33
2014-15	14,116,003,890	630,615	658,143,878	14,774,778,383	2.86
2015-16	15,224,697,461	388,860	702,428,523	15,927,514,844	7.80
2016-17	16,200,483,693	388,860	711,062,469	16,911,935,022	6.18
2017-18	17,376,072,698	443,960	809,921,331	18,186,437,989	7.54
2018-19	18,696,664,672	443,960	731,012,747	19,428,121,379	6.82
2019-20	19,926,615,530	424,880	860,872,387	20,787,912,797	7.00

(1) Amounts are net of homeowners' exemption. Source: Alameda County Auditor-Controller's Office

Assessed Valuation by Land Use. The following table shows the land use of parcels in the City, according to assessed valuation. As shown, the majority of land in the City is used for residential purposes.

Table 2 **CITY OF BERKELEY** Assessed Valuation and Parcels by Land Use Fiscal Year 2019-20

	2019-20	% of	No. of	% of
Non-Residential:	Assessed Valuation	1) Total	Parcels	<u>Total</u>
Commercial/Office	\$2,244,416,146	11.26%	1,574	5.41%
Vacant Commercial	22,118,632	0.11	64	0.22
Industrial	1,091,360,227	5.48	423	1.46
Vacant Industrial	11,621,394	0.06	24	0.08
Recreational	42,628,355	0.21	17	0.06
Government/Social/Institutional	<u>21,563,021</u> 0.11	<u>6502.24</u>		
Subtotal Non-Residential	\$3,433,707,775	17.23%	2,752	9.47%
Residential:				
Single Family Residence	\$10,467,626,755	52.53%	17,419	59.92%
Condominium/Townhouse	1,011,003,627	5.07	2,857	9.83
Cooperative	28,283,751	0.14	103	0.35
2-4 Residential Units	2,171,251,438	10.90	4,002	13.77
5+ Residential Units/Apartments	2,744,492,960	13.77	1,455	5.00
Miscellaneous Residential	2,698,601	0.01	10	0.03
Vacant Residential 67,550,623	0.34	<u>474 1.63</u>		
Subtotal Residential	\$16,492,907,755	82.77%	26,320	90.53%
Total	\$19,926,615,530	100.00%	29,072	100.00%

(1) Local Secured Assessed Valuation Source: California Municipal Statistics, Inc. Local Secured Assessed Valuation; excluding tax-exempt property.

Assessed Valuation of Single-Family Residential Parcels. The following table shows a breakdown of the assessed valuations of improved single-family residential parcels in the City, according to assessed valuation.

Table 3 CITY OF BERKELEY Per Parcel 2019-20 Assessed Valuation of Single-Family Homes

	No. of Parcels		2019-20	Average Assessed Valuatio		Median
Single Family Residential	17,419		67,626,755	\$600,932		483.640
	,	φιο, ι	101,020,100	\$000,00 <u>2</u>	Ŷ	100,010
2019-20	No. of	% of	Cumulative	Total	% of	Cumulative
Assessed Valuation	Parcels ⁽¹⁾	<u>Total</u>	% of Total	Valuation	<u>Total</u>	% of Total
\$0 - \$49,999	532	3.054%	3.054% \$	21,785,772 0.2	208%	0.20%
\$50,000 - \$99,999	1,440	8.267	11.321	107,101,874	1.023	1.231
\$100,000 - \$149,999	1,410	8.095	19.416	173,346,541	1.656	2.887
\$150,000 - \$199,999	930	5.339	24.755	161,959,634	1.547	4.435
\$200,000 - \$249,999	822	4.719	29.474	184,637,345	1.764	6.198
\$250,000 - \$299,999	819	4.702	34.175	225,246,372	2.152	8.350
\$300,000 - \$349,999	809	4.644	38.820	262,141,561	2.504	10.855
\$350,000 - \$399,999	771	4.426	43.246	288,941,404	2.760	13.615
\$400,000 - \$449,999	702	4.030	47.276	297,963,257	2.847	16.461
\$450,000 - \$499,999	701	4.024	51.300	333,030,002	3.182	19.643
\$500,000 - \$549,999	659	3.783	55.084	346,697,041	3.312	22.955
\$550,000 - \$599,999	599	3.439	58.522	344,620,912	3.292	26.247
\$600,000 - \$649,999	636	3.651	62.173	397,163,095	3.794	30.042
\$650,000 - \$699,999	553	3.175	65.348	372,930,747	3.563	33.604
\$700,000 - \$749,999	522	2.997	68.345	378,157,534	3.613	37.217
\$750,000 - \$799,999	585	3.358	71.703	453,018,278	4.328	41.545
\$800,000 - \$849,999	520	2.985	74.689	428,800,729	4.096	45.641
\$850,000 - \$899,999	474	2.721	77.410	414,651,882	3.961	49.602
\$900,000 - \$949,999	488	2.802	80.211	450,951,464	4.308	53.910
\$950,000 - \$999,999	394	2.262	82.473	384,432,836	3.673	57.583
\$1,000,000 and greater	3,053 17.527	7100.000	4,440,048,475	42.41	7100.000	
Total	17,419	100.000%		\$10,467,626,755	100.000%	

(1) Improved single family residential parcels. Excludes condominiums and parcels with multiple family units. Source: California Municipal Statistics, Inc.

Alternative Method of Tax Apportionment - Teeter Plan

The Board of Supervisors of the County has approved the implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the "**Teeter Plan**"), as provided for in Section 4701 *et seq.* of the California Revenue and Taxation Code. Under the Teeter Plan, the County apportions secured property taxes on an accrual basis when due (irrespective of actual collections) to participating political subdivisions, for which the County acts as the tax-levying or tax-collecting agency. In return, the County receives and retains delinquent payments, penalties and interest as collected that would have been due the local agency in the absence of the Teeter Plan. The City has elected <u>not</u> to participate in the Teeter Plan, so the City receives property taxes actually collected, as well as any penalties and interest on delinquent taxes.

The property tax levies and collections for the City for fiscal years 2009-10 through 2018-19 are shown in the following table:

Table 4 CITY OF BERKELEY SECURED TAX CHARGES AND DELINQUENCIES 2009-10 TO 2018-19 (Dollar amounts in thousands)

		Amount Delinquent	% Delinquent
Fiscal Year	Secured Tax Charge ⁽¹⁾	June 30	June 30
2009-10	\$38,834,067.28	\$1,222,174.35	3.15%
2010-11	38,858,160.99	937,557.29	2.41
2011-12	40,085,111.77	814,536.14	2.03
2012-13	40,863,072.01	588,607.19	1.44
2013-14	43,482,172.03	491,490.18	1.13
2014-15	45,452,269.29	477,676.28	1.05
2015-16	48,936,168.63	607,465.93	1.24
2016-17	52,097,423.06	562,295.75	1.08
2017-18	56,317,983.19	488,950.31	0.87
2018-19	59,739,122.88	512,267.28	0.86

(1) 1% General Fund apportionment.

Source: California Municipal Statistics, Inc.

Appeals of Assessed Value

There are two types of appeals of assessed values that could adversely impact property tax revenues within the City.

Appeals may be based on Proposition 8 of November 1978, which requires that for each January 1 lien date, the taxable value of real property must be the least of its base year value, annually adjusted by the inflation factor pursuant to Article XIIIA of the State Constitution, or its full cash value, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a Proposition 8 reduction of their property tax assessment by filing a written application, in form prescribed by the SBE, with the County board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. Proposition 8 reductions may also be unilaterally applied by the County Assessor.

Any reduction in the assessment ultimately granted as a result of such appeal applies to the year for which application is made and during which the written application was filed. These reductions are subject to yearly reappraisals and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIIIA.

A second type of assessment appeal involves a challenge to the base year value of an assessed property. Appeals for reduction in the base year value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of change of

ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

The City cannot predict the changes in assessed values that might result from pending or future appeals by taxpayers. Any reduction in aggregate City assessed valuation due to appeals, as with any reduction in assessed valuation due to other causes, will cause the tax rate levied to repay the Refunding Bonds to increase accordingly, so that the fixed debt service on the Refunding Bonds (and other outstanding general obligation bonds, if any) may be paid.

Tax Rates

The table below shows historical property tax rates within the City:

Table 5CITY OF BERKELEYTYPICAL TAX RATE PER \$100 ASSESSED VALUATION(TRA 13-000 – 2019-20 Assessed Valuation: \$20,220,876,712)

	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year	Fiscal Year
	2015-16	2016-17	2017-18	2018-19	2019-20
Countywide Rate	\$1.0000	\$1.0000	\$1.0000	\$1.0000	\$1.0000
Alameda County				.0112	.0108
Berkeley Unified School District Bonds	.1321	.1327	.1218	.1264	.1204
Peralta Community College District	.0337	.0256	.0310	.0269	.0257
Bay Area Rapid Transit	.0026	.0080	.0084	.0070	.0120
East Bay Municipal Utility District	.0067	.0032	.0021		
East Bay Regional Park District	.0034	.0028	.0011	.0057	.0060
City of Berkeley	<u>.0433</u>	<u>.0445</u>	<u>.0492</u>	.0507	.0435
Total	\$1.2218	\$1.2168	\$1.2136	1.2279	1.2184

Source: California Municipal Statistics, Inc.

Major Taxpayers

The following table shows the twenty largest taxpayers in the City as determined by their secured assessed valuations in 2019-20.

Table 6 CITY OF BERKELEY Largest 2019-20 Local Secured Taxpayers

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			2019-20	% of
	Property Owner	Primary Land Use	Assessed Valuation	Total (1)
1.	Bayer Healthcare LLC	Industrial	\$ 361,038,220	1.81%
2.		Apartments	121,353,681	0.61
3.	Granite Library Gardens LP	Apartments	90,109,014	0.45
4.	Hanumandla R. & Hanumandla J. Reddy, Trustees	s Apartments	82,940,100	0.42
5.	BREIT SH Berkeley LLC	Apartments with Retail	80,372,542	0.40
6.	CVBAF ACQ LLC	Apartments	75,295,445	0.38
7.	RI Berkeley LLC	Apartments	64,048,736	0.32
8.	Parkershattuck Owner LLC	Apartments	60,159,827	0.30
9.	CPF Berkeley Varsity LLC	Apartments	54,036,304	0.27
10.	Berkeley Downtown Hotel Owner LLC	Hotel	53,040,000	0.27
11.	Essex Berkeley 4 th Street LP	Condominiums with Retail	52,119,918	0.26
12.	Garr Land & Resource Management Inc.	Industrial	44,427,600	0.22
13.	Dwight Way Residential Property Owner LLC	Apartments	41,509,945	0.21
14.	1950 MLK LLC	Apartments	40,527,414	0.20
15.	John K. Gordon & Janis L. Mitchell, Trustees	Commercial Properties	40,349,321	0.20
16.	Raintree 1122 University LLC	Apartments	40,114,669	0.20
17.	CLPF Hillside Village LP	Apartments	39,933,925	0.20
18.	Stonefire Partners LLC	Apartments	39,074,824	0.20
19.	Jamestown Premier Berkeley Grotto LP	Commercial	38,302,622	0.19
20.	DS Properties 17 LP	Shopping Center	35,901,532	<u>0.18</u>
			\$1,454,655,639	7.30%

(1) 2019-20 Local Secured Assessed Valuation: \$19,926,615,530. Source: California Municipal Statistics, Inc.

Direct and Overlapping Debt

Set forth below is a direct and overlapping debt report (the "**Debt Report**") prepared by California Municipal Statistics, Inc. The Debt Report is included for general information purposes only. The City has not reviewed the Debt Report for completeness or accuracy and makes no representation in connection therewith.

The Debt Report generally includes long-term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the City in whole or in part. Such long-term obligations generally are not payable from revenues of the City (except as indicated) nor are they necessarily obligations secured by land within the City. In many cases, long-term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency. The contents of the Debt Report are as follows: (1) the first column indicates the public agencies which have outstanding debt as of the date of the Debt Report and whose territory overlaps the City; (2) the second column shows the percentage that the City's assessed valuation represents of the total assessed valuation of each public agency identified in the first column; and the third column is an apportionment of the dollar amount of each public agency's outstanding debt to property in the City, as determined by multiplying the total outstanding debt of each agency by the percentage of the City's assessed valuation represented in the second column.

Table 7 CITY OF BERKELEY STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT

2019-20 Assessed Valuation: \$20,787,912,797

DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:	<u>% Applicable</u>	<u>Debt 1/1/20</u>
Alameda County	6.698%	\$ 14,601,640
Bay Area Rapid Transit District	2.583	33,133,174
Peralta Community College District	18.686	65,733,611
Berkeley Unified School District	99.997	286,791,396
City of Berkeley	100.000	106,610,000
City of Berkeley Community Facilities District No. 1	100.000	1,435,000
East Bay Regional Park District	4.119	6,454,473
City of Berkeley Thousand Oaks Heights AFUU Assessment District	100.0001	,005,000
TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT		\$515,764,294
DIRECT AND OVERLAPPING GENERAL FUND DEBT: Alameda County and Coliseum Obligations Alameda-Contra Costa Transit District Certificates of Participation Peralta Community College District Pension Obligation Bonds City of Berkeley Lease Revenue Bonds and Certificates of Participat TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT COMBINED TOTAL DEBT	6.698% 7.947 18.686 ion100.	\$ 56,561,763 926,223 26,234,470 <u>24,145,000⁽¹⁾</u> \$107,867,456 \$623,631,750 ⁽²⁾
Ratios 2019-20 Assessed Valuation:Direct Debt (\$106,610,000)0.51%Total Direct and Overlapping Tax and Assessment Debt2.48%Combined Direct Debt (\$137,495,000)0.63%Combined Total Debt3.00%		

(1) Excludes the Refunding Bonds issued for sale hereunder.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS

Principal of and interest on the Refunding Bonds are payable from the proceeds of an ad valorem tax levied by the County, as directed by the City, for the payment thereof. See "THE REFUNDING BONDS" and "SECURITY FOR THE REFUNDING BONDS." Articles XIIIA, XIIIB, XIIIC and XIIID of the State Constitution, Propositions 62, 111, and 218 and 1A, and certain other provisions of law discussed below are included in this section to describe the potential effect of these Constitutional and statutory measures on the ability of the County to levy, and the City to spend, tax proceeds for operating and other purposes, and it should not be inferred from the inclusion of such materials that these laws impose any limitation on the ability of the County to levy taxes for payment of the Refunding Bonds. The tax levied by the County, as directed by the City, for payment of the Refunding Bonds was approved by the City's voters in compliance with Article XIIIA and all applicable laws.

Article XIIIA of the State Constitution

On June 6, 1978, California voters approved Proposition 13, which added Article XIIIA to the State Constitution. Article XIIIA, as amended, limits the amount of any ad valorem tax on real property to one percent of the full cash value thereof, except that additional ad valorem taxes may be levied to pay debt service (i) on indebtedness approved by the voters prior to July 1, 1978, (ii) on bonded indebtedness approved by a two-thirds vote on or after July 1, 1978, for the acquisition or improvement of real property or (iii) bonded indebtedness incurred by a school district, community college district or county office of education for the construction, reconstruction, rehabilitation or replacement of school facilities, including the furnishing and equipping of school facilities or the acquisition of real property for school facilities, approved by 55 percent of the voters voting on the proposition. Article XIIIA defines full cash value to mean "the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This full cash value may be increased at a rate not to exceed two percent per year to account for inflation.

Article XIIIA has subsequently been amended to permit reduction of the "full cash value" base in the event of declining property values caused by damage, destruction or other factors, to provide that there would be no increase in the "full cash value" base in the event of reconstruction of property damaged or destroyed in a disaster, and in other minor or technical ways.

Legislation Implementing Article XIIIA

Legislation has been enacted and amended a number of times since 1978 to implement Article XIIIA. Under current law, local agencies are no longer permitted to levy directly any property tax (except to pay voter-approved indebtedness). The one percent property tax is automatically levied by the County and distributed according to a formula among taxing agencies. The formula apportions the tax roughly in proportion to the relative shares of taxes levied prior to 1989.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the two percent annual adjustment are allocated among the various jurisdictions in the "taxing area" based upon their respective "situs." Any such allocation made to a local agency continues as part of its allocation in future years.

All taxable property is shown at full market value on the tax rolls. Consequently, the tax rate is expressed as \$1 per \$100 of taxable value. All taxable property value included in this Official Statement is shown at 100 percent of market value (unless noted differently) and all tax rates reflect the \$1 per \$100 of taxable value.

Article XIIIB of the State Constitution

In addition to the limits Article XIIIA imposes on property taxes that may be collected by local governments, certain other revenues of the State and most local governments are subject to an annual "appropriations limit" imposed by Article XIIIB which effectively limits the amount of such revenues those entities are permitted to spend. Article XIIIB, 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" excludes 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 XIIIB 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 case of emergency; however, the appropriations limit for the next 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 has its 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. 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 exceeds the aggregate limit, the excess must be returned to the agency's taxpayers through tax rate or fee reductions over the following two years.

The City has never exceeded its appropriations limit.

Articles XIIIC and XIIID of the State Constitution

General. 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 XIIIC and XIIID 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 XIIIA and XIIIC of the State Constitution. The amendments to Article XIIIA 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 XIIIC 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 XIIIC 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.

Property-Related Fees and Charges. Article XIIID 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.

Reduction or Repeal of Taxes, Assessments, Fees and Charges. Article XIIIC 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 Refunding Bonds could be adversely affected.

Burden of Proof. Article XIIIC 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 XIIID 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 XIIID.

Judicial Interpretation of Proposition 218. The interpretation and application of Articles XIIIC and XIIID will ultimately be determined by the courts, and it is not possible at this time to predict with certainty the outcome of such determination.

Proposition 62

Proposition 62 was adopted by the voters at the November 4, 1986, general election and (a) requires that any new or higher taxes for general governmental purposes imposed by local governmental entities such as the City be approved by a two-thirds vote of the governmental entity voting in an election on the tax, (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters of the governmental entity be approved by a two-thirds vote of the voters of the governmental entity voting in an election on the tax, (c) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (d) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIIIA, (e) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities, and (f) requires that any tax imposed by a local governmental entity on or after August 1, 1985, be ratified by a majority vote of the voters voting in an election on the tax within two years of the adoption of the initiative or be terminated by November 15, 1988.

California appellate court cases have overturned the provisions of Proposition 62 pertaining to the imposition of taxes for general government purposes. However, the California Supreme Court upheld Proposition 62 in its decision on August 28, 1995, in *Fresno County Transportation Authority v. Guardino*. This decision reaffirmed the constitutionality of Proposition 62. Certain matters regarding Proposition 62 were not addressed in the Supreme Court's decision, such as what remedies exist for taxpayers subject to a tax not in compliance with Proposition 62, and whether the decision applies to charter cities. The City has not experienced any substantive adverse financial impact as a result of the passage of this initiative.

Proposition 1A; Proposition 22

Proposition 1A. Proposition 1A, proposed by the Legislature in connection with the State's Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 22. Proposition 22, entitled "The Local Taxpayer, Public Safety and Transportation Protection Act," was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State's authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Possible Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID and Propositions 62, 111, 218 and 1A were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time other initiative measures could be adopted, further affecting revenues of the City or the City's ability to expend revenues. The nature and impact of these measures cannot be anticipated by the City.

VERIFICATION OF MATHEMATICAL ACCURACY

The Verification Agent, upon delivery of the Refunding Bonds, will deliver a report of the mathematical accuracy of certain computations, contained in schedules provided to them on behalf of the City, relating to (a) the sufficiency of the anticipated amount of proceeds of the Refunding Bonds and other funds available to pay, when due, the principal of and interest on the Refunded Bonds and (b) the "yields" on the amount of proceeds held and invested prior to redemption of the Refunded Bonds and on the Refunding Bonds considered by Bond Counsel in connection with the opinion rendered by Bond Counsel that the Refunding Bonds are not "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended (the "**Tax Code**").

The report of the Verification Agent will include the statement that the scope of their engagement is limited to verifying mathematical accuracy, of the computations contained in such schedules provided to them, and that they have no obligation to update their report because of events occurring, or data or information coming to their attention, subsequent to the date of their report.

LEGAL MATTERS

Tax Exemption – Refunding Bonds

Federal Tax Status. 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 Refunding Bonds 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 Refunding Bonds 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 Refunding Bonds.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public (excluding bond houses and brokers) at which a Refunding Bond 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 (excluding bond houses and brokers) at which a Bond 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 is 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 Refunding Bond 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 Refunding Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Refunding Bonds who purchase the Refunding Bonds after the initial offering of a substantial amount of such maturity. Owners of such Refunding Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Refunding Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such Refunding Bonds is sold to the public.

Under the Tax Code, original issue premium is amortized on an annual basis over the term of the Refunding Bond (said term being the shorter of the Refunding Bond'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 Refunding Bond for purposes of determining taxable gain or loss upon disposition. The amount of original issue premium on a Bond is amortized each year over the term to maturity of the Refunding Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized bond premium is not deductible for federal income tax purposes. Owners of premium Refunding Bonds, 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 Refunding Bonds.

California Tax Status. In the further opinion of Bond Counsel, interest on the Refunding Bonds is exempt from California personal income taxes.

Forms of Opinion. Copies of the proposed forms of opinion of Bond Counsel are attached hereto as APPENDIX C.

Other Tax Considerations

Owners of the Refunding Bonds should also be aware that the ownership or disposition of, or the accrual or receipt of interest on, the Refunding Bonds 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 Refunding Bonds other than as expressly described above, including any opinion regarding federal tax consequences arising with respect to the ownership, sale or disposition of the Refunding Bonds, or the amount, accrual or receipt of interest on the Refunding Bonds.

In addition, future legislation, if enacted into law, or clarification of the Tax Code may cause interest on the Refunding Bonds to be subject, directly or indirectly, to federal income taxation, or otherwise prevent owners of the Refunding Bonds from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such future legislation or clarification of the Tax Code may also affect the market price for, or marketability of, the Refunding Bonds. Prospective purchasers of the Refunding Bonds should consult their own tax advisors regarding any pending or proposed federal tax legislation, as to which Bond Counsel expresses no opinion.

Continuing Disclosure

The City will covenant for the benefit of owners of the Refunding Bonds to provide certain financial information and operating data relating to the City by not later than April 1 after the end of each fiscal year of the City (currently June 30), commencing with the report for the 2019-20 fiscal year (the "**Annual Report**"), and to provide notices of the occurrence of certain enumerated events.

The specific nature of the information to be contained in an Annual Report or the notices of enumerated events is set forth in the form of Continuing Disclosure Certificate attached as APPENDIX D. These covenants will be made in order to assist the Purchaser (as defined below) in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (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 _____ of the City's Comprehensive Annual 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 changes to the credit rating for one series of the City's 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 Refunding Bonds.

Neither the County nor any other entity other than the City shall have any obligation or incur any liability whatsoever with respect to the performance of the City's duties regarding continuing disclosure

Absence of Material Litigation

No litigation is pending or threatened concerning the validity of the Refunding Bonds, and a certificate to that effect will be furnished to the purchasers at the time of the original delivery of the Refunding Bonds. 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 revenues or contesting the City's ability to issue and repay the Refunding Bonds.

RATING

Upon issuance of the Refunding Bonds, S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC ("**S&P**"), will assign the Refunding Bonds a rating of "____."

The City has furnished to S&P information and material which has not been included in this Official Statement. Generally, rating agencies base their ratings on information and material so furnished and on investigations, studies and assumptions made by the rating agencies. The ratings reflect only the view of such organization and an explanation of the significance of such rating may be obtained from S&P.

There is no assurance that the rating will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agency, if, in the judgment of such rating agency, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Refunding Bonds.

MUNICIPAL ADVISOR

The City has retained NHA Advisors, LLC, San Rafael, California, as its municipal advisor (the "**Municipal Advisor**") in connection with the preparation of this Official Statement and with respect to the issuance of the Refunding Bonds. 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 an independent registered 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 Refunding Bonds.

UNDERWRITING

Purchase of the Refunding Bonds. Under the terms of a competitive bid, ______ (the "**Purchaser**") has agreed to purchase the Refunding Bonds at a price of \$______ (which is equal to the aggregate principal amount of the Refunding Bonds (\$______), plus a net original issue premium of \$______, less a Purchaser's discount of \$______). The Purchaser will purchase all of the Refunding Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the "Official Notice of Sale," including the approval of certain legal matters by counsel and certain other conditions.

Offering of the Refunding Bonds. The Purchaser intends to offer the Refunding Bonds to the public at the offering prices set forth on the inside cover page of this Official Statement. The Purchaser may offer and sell to certain dealers and others at a price lower than the offering prices stated on the inside cover page hereof. The offering prices may be changed from time to time by the Purchaser.

EXECUTION

The execution of this Official Statement and its delivery have been approved by the City Council.

CITY OF BERKELEY

By: _____ City Manager

APPENDIX A

FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY

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 123,328, giving it the highest population density of any city in the East Bay. The University of California is a major component of the City's economy, employing more than 235,000 full and part-time workers.

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
2015	119,400	1,613,168	38,952,462
2016	120,012	1,631,088	39,214,803
2017	121,328	1,646,156	39,504,609
2018	122,369	1,656,884	39,740,508
2019	123,328	1,669,301	39,927,315

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.

The City Council members are shown in the below table:

Member	District	Term Expires
Jesse Arreguin	Mayor	11/30/2020
Rashi Kesarwani	1	11/30/2022
Cheryl Davila	2	11/30/2020
Ben Bartlett	3	11/30/2020
Kate Harrison	4	11/30/2022
Sophie Hahn	5	11/30/2020
Susan Wengraf	6	11/30/2020
Rigel Robinson	7	11/30/2022
Lori Droste	8	11/30/2022

CITY FINANCIAL INFORMATION

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 comprehensive annual financial report of the City for fiscal year 2018-19 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 (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)

A00570	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19
ASSETS: Cash and investments in treasury*	\$82,615	82,891	108,058	107,360
Receivables (net of allowance where	Ψ02,010	02,091	100,000	107,300
applicable):				
Accounts	7.072	8.777	6,951	4,980
Interest	534	526	763	778
Taxes	9,421	8,109	8,623	9,953
Subventions/grants			180	450
Due from other funds	2,920	3,752	6,659	6,973
Notes receivable	3,595	4,255	3,755	3,697
Other	353	5	5	320
Prepaid Items		75	142	
Total assets	106,512	108,390	135,136	134,512
LIABILITIES:				
Accounts payable	1,768	4,344	3,610	6,736
Accrued salaries and wages	4,502	5,169	5,473	5,989
Advances from other funds		6,683	6,287	4,059
Deposits held	840	905	974	781
Unearned revenue				
Tax and revenue anticipation notes	24,995	17,000	25,550	14,000
Other liabilities	3,706	2,923	3,755	3,899
Total liabilities	35,811	37,024	45,649	35,463
Deferred Inflows of Resources	5,676	7,707	5,601	5,813
FUND BALANCES				
Reserved for:				
Encumbrances/Assigned to	3,686	3,015	33,373	42,667
Notes receivable/Nonspendable	3,595	4,330	3,898	3,697
Unreserved/Unassigned, report in:				
General fund	57,743	56,313	46,614	46,872
Total fund balances	65,025	63,658	83,885	92,236
Total liabilities and fund balances	\$106,512	\$108,390	\$135,136	135,512

* Cash and investments in treasury includes restricted cash and investments. Source: City of Berkeley, Comprehensive Annual Financial Reports for 2014-15 through 2018-19.

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

	Actual 2015-16	Actual 2016-17	Actual 2017-18	Actual 2018-19
REVENUES:				
Taxes	\$133,249	\$137,277	\$161,666	\$173,216
Licenses and Permits	323	556	834	1,405
Subvention and Grants/Intergovernmental	11,208	11,509	1,129	1,868
Service Fees	9,528	9,140	9,862	8,433
Fines and Forfeitures	6,371	6,370	6,933	5,443
Rents	215	160	284	289
Franchises	1,673	2,247	1,990	1,800
Interest	2,784	1,383	2,416	6,915
Other	48	1,750	237	1,722
TOTAL REVENUES	165,400	170,393	185,351	201,090
EXPENDITURES:				
General Government	28,244	37,871	30,143	27,410
Public Safety	89,076	94,093	95,503	103,084
Highways and Streets	1,337	1,638	1,900	2,904
Health and Human Services	7,354	9,676	9,725	13,319
Culture-Recreation	5,848	6,086	5,476	5,943
Community Development	6,057	6,477	7,153	8,264
Economic Development	2,325	2,332	2,576	2,845
Debt Service	372	166	252	270
TOTAL EXPENDITURES	140,613	158,338	152,728	164,040
Excess Revenues Over (Under) Expenditures	24,788	12,055	32,623	37,050
Transfers In(out)/Other	(13,052)	(13,421)	(12,396)	(27,699)
Net Change in Fund Balance	11,735	(1,366)	20,227	9,351
Fund Balance, July 1	53,289	65,025	63,658	83,885
Fund Balance, June 30*	\$65,025	\$63,658	\$83,885	\$93,236

* Totals may not add due to rounding.

Source: City of Berkeley Comprehensive Annual 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 about January to May of each year, the City Council meets in public 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.

General Fund Reserves

On December 13, 2016, the City Council established a General Fund reserve policy (the "**Reserve Policy**") to prepare for the impact of economic cycles and catastrophic events. The Reserve Policy was enacted to ensure that fluctuations in revenue do not impede the City's ability to meet expenditure obligations. When revenues fail to meet the City's operating requirements, or the need for disbursements exceeds receipts, General Fund reserves, upon a majority vote of the City Council, may be used in accordance with the standards set forth in the Policy. The Reserve Policy provides that the General Fund reserve shall be comprised of two elements: a Stability Reserve and a Catastrophic Reserve:

The 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. During fiscal year 2019, \$5,600,000 was contributed to the Stability Reserve, and the balance at June 30, 2019 was \$20,022,922.

A Catastrophic Reserve is maintained to sustain General Fund operations in the event of a natural disaster or other catastrophic event. The Catastrophic Reserve may be used to respond to extreme, one-time events, such as earthquakes, fires, floods, civil unrest, or terrorist attacks. The Catastrophic Reserve may not be accessed to meet operational shortfalls or to fund new programs or projects. During fiscal year 2019, \$4,580,000 was contributed to the Catastrophic Reserve, and the balance at June 30, 2019 was \$16,622,481.

State Budget and its Impact on the City

Fiscal Year 2019-20 State Budget. Information about the fiscal year 2019-20 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 or Underwriter, and the City and Underwriter take 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.

Dissolution of Redevelopment Agencies. State legislation enacted as part of the 2011 Budget Act, and upheld by the California Supreme Court, resulted in the formal dissolution of redevelopment agencies, including the Berkeley Redevelopment Agency (the "Former Redevelopment Agency"), effective as of February 1, 2012. The impact on the City's General Fund of the dissolution of the Former Redevelopment Agency is minimal because the City is in the process of winding down its redevelopment program, and the funding the City received from the Former Redevelopment Agency prior to its dissolution only supported 1.5 full-time employees.

Ad Valorem Property Taxes

Tax Levies and Collections. Property taxes accounted for approximately 54% of the City's general fund revenues for fiscal year 2018-19. 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 taxdefaulted. 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.

See Table 1 of the forepart of this Official Statement for a table summarizing the historical and current assessed valuation of the taxable property in the City.

The City does <u>not</u> participate in the Teeter Plan. See Table 4 of the forepart of this Official Statement for a history of secured tax charges and delinquencies within the City during the past 10 years.

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.

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.

Total taxable sales in the City during fiscal year 2019 were reported to be \$1.814 billion, a slight increase over the total taxable sales of \$1.8 billion reported during fiscal year 2018.

CITY OF BERKELEY TAXABLE TRANSACTIONS (Figures in Thousands)

	2014	2015	2016	2017	2018
Retail and Food Services:					
Apparel Stores	\$59,369	\$57,048	\$55,449	\$52,645	\$52,991
Gen. Merchandise Stores	12,292	15,165	15,610	17,178	20,782
Food Stores	123,572	133,916	145,462	150,894	149,662
Eating and Drinking Places	323,125	347,926	364,417	371,299	374,792
Home Furnishings and Appliances	74,682	74,514	71,927	72,358	69,746
Bldg. Materials, Farm Implements	90,104	98,958	100,899	107,333	109,052
Auto Dealers, Auto Supplies	126,527	125,716	115,808	117,513	119,883
Gas/Service Stations	94,630	83,285	75,720	84,041	93,694
Other Retail Stores	248,626	255,133	251,324	243,881	262,209
Total Retail and Food Services	1,152,938	1,191,661	1,196,618	1,217,142	1,252,813
All Other Outlets	<u>394,169</u>	<u>413,156</u>	<u>431,614</u>	<u>364,736</u>	<u>361,292</u>
TOTAL ALL OUTLETS	<u>\$1,547,107</u>	<u>\$1,604,817</u>	<u>\$1,628,232</u>	<u>\$1,581,878</u>	<u>1,614,105</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.

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. During fiscal year 2018-19, business license taxes increased by 7.4% from fiscal year 2017-18, primarily due to a business license taxes on recreational cannabis, which was a new tax in fiscal year 2018-19.

Property Transfer Tax. The City's transfer tax rate is 1.5% for properties with a consideration up to \$1.5 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 the 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 is treated as one-time revenue to be transferred to the Capital Improvement Fund for capital infrastructure needs; that amount was increased to \$12.5 million in fiscal year 2017-18.

For fiscal year 2018-19, property transfer tax revenue increased by 5.3% from fiscal year 2017-18, due primarily to an increase in the average property sales prices.

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.

For fiscal year 2018, VLF revenue totaled \$11,822,917, which is \$828,465 or 7.54% more than the \$10,994,452 received in fiscal year 2017. Consistent with the 8.87% increase in assessed values for fiscal year 2018. The amount of \$11,822,917 received in fiscal year 2018 was \$1,502,515 more than the adopted budget amount of \$10,320,402.

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; it is paid by the hotel guest. 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 Note 12.A. of APPENDIX B to this Official Statement.

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**"). The required employer contribution rates for fiscal year 2017-18 were 27.90%, 39.90% and 56.60% of annual covered payroll for Miscellaneous Plan, Safety Fire Plan and Safety Police Plan employees, respectively; for fiscal year 2018-19, the rates were 30.50%, 44.00%, and 60.80%, respectively; for fiscal year 2019-20, the rates are 23.054%, 49.474% and 63.479%, respectively. 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 Note 12.B. of APPENDIX B to this Official Statement for detailed information about the actuarial assumptions underlying the contributions.

The City's fiscal year 2015-16 through 2017-18 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	Contributions Employer	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
PERS – Misce	ellaneous Plan						
6/30/2016	\$902,228,876	\$641,339,412	\$20,032,929	\$260,889,464	71.08%	\$85,480,937	305.20%
6/30/2017	983,333,433	696,104,044	21,214,582	287,229,389	70.79	88,645,362	324.02
6/30/2018	1,016,396,249	735,828,894	20,393,310	280,567,355	72.40	94,371,740	297.30
PERS – Publi	c Safety Fire Plan						
6/30/2016	\$246,704,540	\$176,593,232	\$5,967,197	\$70,111,308	71.58%	\$16,185,414	433.18%
6/30/2017	266,986,159	188,899,801	6,328,886	78,086,358	70.75	16,684,346	468.02
6/30/2018	272,593,862	196,923,511	6,983,081	75,670,351	72.24	17,219,137	439.45
PERS – Public Safety Police Plan							
6/30/2016	\$372,226,444	\$226,135,306	\$10,777,599	\$146,091,138	60.75%	\$22,289,585	655.42%
6/30/2017	404,585,170	244,812,138	11,858,699	159,773,032	60.51	22,933,002	696.69
6/30/2018	416,996,462	257,917,647	13,095,114	159,078,815	61.85	22,701,037	700.76

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 was 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%@50, Fire 3%@55, and Miscellaneous 2.7%@55 and 3%@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.

Fiscal Year	Discount Rate
2018-19	7.375%
2019-20	7.250
2020-21	7.000

For public agencies like the City, the new discount rate took 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% to 3% of normal cost as a percent of payroll for most miscellaneous retirement plans, and a 2% to 5% increase for most safety plans. Additionally, many PERS employers will see a 30% to 40% 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.

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 five years are shown in the table below, with dollar amounts shown in millions:

	2019-20 Projected	2020-21 Projected	2021-2022 Projected	2022-2023 Projected
Miscellaneous ⁽¹⁾	\$33.67	\$36.55	\$41.83	\$43.30
Police	16.27	17.6	18.58	19.16
Fire	8.78	9.46	9.55	9.90
Total	\$58.72	\$63.61	\$69.96	\$72.36

(1) Miscellaneous includes the 8% employee share paid by the City on behalf of the employees and negotiated employee contributions to the City's rate.

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 2018-19 contribution to the BPRIBP and the funded status of the BPRIBP is set forth below.

Fiscal Year	Total Pension	Plan Fiduciary	Contributions	Plan Net Pension	Plan Fiduciary Net Position as a Percentage of the Total Pension	Covered	Plan Net Pension Liability as a Percentage of Covered Employee
Ended	Liability	Net Position	Employer	Liability	Liability	Payroll	Payroll
6/30/2019	\$73,643,792	\$5,556,948	\$1,854,528	\$68,086,844	7.55%	N/A	N/A

For a more detailed discussion of the BPRIBP, see Note 13.C. of 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, 2019 was \$327,753.

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, 2019, the City's contribution to SMPF was \$525,486.

The funded status of the SMPF as of June 30, 2019, 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
6/30/2019		\$1,862,714	\$1,862,714	%	N/A	N/A

For a more detailed discussion of the SMPF, see Note 12.B. of APPENDIX B of this Official Statement.

Strategy to Reduce Unfunded Liabilities

At its June 26, 2018 meeting, the City Council adopted a Resolution appointing the City Manager as plan administrator, and authorizing the City Manager to take the necessary steps to negotiate and execute the documents to establish a Section 115 Trust Fund (the "**Trust Fund**") to use as a pension rate stabilizing fund.

The City Council authorized the establishment of the Trust Fund in order to prefund pension obligations. During fiscal year 2019, \$4 million was contributed to the Trust Fund from General Fund operations, and an additional \$1.1 million was contributed to the Trust Fund from the discount on prepayment of the required PERS unfunded liability payment for fiscal year 2019. As of June 30, 2019, the balance in the Trust Fund was \$9,191,801.

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 45 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 13 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 July 1, 2018, there were 128 active employees, 43 retirees deferred and 59 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability (
6/30/2016	853,748	98	12,362
6/30/2017	1,991,925	43	17,530,174
6/30/2018	2,163,028	34	17,251,382
6/30/2019	2,326,493	36	19,633,312

The funded status of the FRFH as of June 30, 2019, 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
7/1/2018	\$11,296,053	\$30,929,365	\$19,633,312	36.5%	\$15,667,851	125.31%

The actuarial value of the assets in the FRFH as of June 30, 2019 was equal to their market value.

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, 2018, there were 1,094 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 2018-19 and the three preceding years were as follows:

		Percentage of	
Fiscal Year	Annual	Annual OPEB	Net OPEB
Ended	OPEB Cost	Contributed	Obligation
6/30/2016	3,492,010	52.0	9,050,063
6/30/2017	4,610,828	72.7	37,900,578
6/30/2018	4,729,448	42.3	34,215,614
6/30/2019	5,051,655	43.3	37,219,746

The funded status of the RHPAP as of June 30, 2019, the most recent actuarial report, is set forth below:

			Unfunded			UAAL
	Actuarial		Actuarial			as
Actuarial	Accrued	Actuarial	Accrued			Percentage
Valuation	Liability	Value of	Liability-	Funded	Covered	of covered
Date	(AAL)	Assets	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$65,605,879	\$28,386,133	\$37,219,746	43.3%	\$91,491,386 ⁽¹⁾	40.68%

The actuarial value of the assets in the RHPAP as of June 30, 2019 was equal to their market value.

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 Plan a "Retiree" must meet all of the following criteria:

- I. A person who is vested in the plan, and
- II. Has reached the age of 50, and
- III. Has retired from the City at age 50 or thereafter, and
- IV. 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.

Years of Service	City Percentage
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 retirees 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 July 1, 2018, there were 152 active employees, and 22 retirees, and 6 entitled to but not yet receiving benefit retirees.

For the Retiree Health Premium Assistance Coverage 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability
6/30/2016	5,779,291	8.0	16,449,480
6/30/2017	5,105,429	11.0	45,508,847
6/30/2018	4,929,429	6.0	41,652,588
6/30/2019	5,155,293	6.0	46,252,565

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 in 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 data 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 June 30, 2019, the most recent actuarial valuation date, the plan was 4.2% funded. The actuarial accrued liability for benefit was \$48.7 million, and the actuarial value of assets was \$2.5 million, resulting in an unfunded accrued liability of \$46.2 million. The covered payroll (annual payroll of active employees covered by the plan) was approximately \$18.8 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, 2019, the most recent actuarial valuation date is as follows:

			Unfunded			UAAL
		Actuarial	Actuarial			as
Actuarial	Actuarial	Accrued	Accrued			Percentage
Valuation	Value of	Liability (AAL)-	Liability-	Funded	Covered	of covered
Date	Assets	Unit Credit	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$2,450,155	\$48,702,720	\$46,252,565	5.0%	\$18,760,962	246.5%

Defined Contribution Plans

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

Labor Relations

As of January 28, 2020, the City employed approximately 1,457 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 108 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

	E analana a a	Contract Expiration
Labor Organization	Employees	Date
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	128	06/27/2020
Berkeley Police Association	163	06/30/2020
I. B. E. W. Local 1245	10	06/27/2020
Service Employees International Local 1021	438	06/27/2020
Maintenance and Clerical Chapters		
Service Employees International Local 1021	446	06/27/2020
Community Services and Part-Time Recreation		
Leaders Association Chapters		
Public Employees Local 1	164	06/27/2020
Unrepresented Employees	108	06/27/2020

(1) Terms of contract remain in effect after expiration until new contract becomes effective. *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; earthquakes, environmental risk because of its location and 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.

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 2019-20 TRANs have an outstanding principal amount of \$34,780,000 and mature on July 22, 2020.

General Obligation Bonds. The City issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds are payable solely from ad valorem taxes levied by the City and collected by the County.

Debt service for the City's outstanding general obligation bonds, following issuance of the Bonds, is shown under "DEBT SERVICE SCHEDULES – Combined General Obligation Bonds Debt Service Schedule."

Outstanding 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. In June 2010, The Bank of New York Mellon Trust Company, N.A., executed and delivered certificates of participation on behalf of the City in the aggregate principal amount of \$5,750,000. The City's underlying rental obligation is a general obligation payable from any available funds of the City. The certificates bear interest at rates between 4.00%-5.75%, and the final maturity date is August 1, 2040. As of January 1, 2020, the principal balance outstanding was \$4,890,000.

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Lease Revenue Bonds. In October 2012, the Berkeley Joint Powers Financing Authority (the "**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, 2031. As of January 1, 2020, the principal balance outstanding was \$19,255,000.

Employment

The unemployment rate in the Oakland-Hayward-Berkeley MD was 2.6% in October 2019, up from a revised 2.5% in September 2019, and below the year-ago estimate of 3.0%. This compares with an unadjusted unemployment rate of 3.7% for the State and 3.3% for the nation during the same period. The unemployment rate was 2.6% in the County, and 2.7% in Alameda County.

The table below list employment by industry group for Alameda and Alameda Counties for the years 2014 to 2018.

OAKLAND- HAYWARD-BERKELEY MD (Alameda and Alameda Counties) Annual Averages Civilian Labor Force, Employment and Unemployment, Employment by Industry (March 2018 Benchmark)

_	2014	2015	2016	2017	2018
Civilian Labor Force (1)	1,347,700	1,364,800	1,386,100	1,399,500	1,412,800
Employment	1,267,500	1,298,500	1,325,600	1,347,200	1,369,500
Unemployment	80,300	66,300	60,500	52,300	43,200
Unemployment Rate	6.0%	4.9%	4.4%	3.7%	3.1%
Wage and Salary Employment: (2)					
Agriculture	1,300	1,200	1,300	1,400	1,300
Mining and Logging	400	300	300	200	200
Construction	58,600	62,800	67,900	71,200	75,400
Manufacturing	83,300	88,100	91,000	95,500	100,400
Wholesale Trade	45,600	47,000	48,100	48,700	48,000
Retail Trade	109,200	111,800	113,400	114,400	114,700
Transportation, Warehousing, Utilities	35,100	37,500	39,200	40,500	42,100
Information	23,000	25,000	26,400	26,800	27,400
Finance and Insurance	36,000	37,400	38,800	38,700	37,200
Real Estate and Rental and Leasing	16,800	16,800	16,900	17,400	17,700
Professional and Business Services	175,100	177,500	181,200	184,700	189,500
Educational and Health Services	173,100	178,600	185,900	191,500	194,900
Leisure and Hospitality	102,100	106,600	111,700	114,900	116,600
Other Services	37,500	38,100	39,100	40,200	40,700
Federal Government	13,800	13,800	13,900	13,800	13,600
State Government	39,300	39,900	39,700	39,300	39,500
Local Government	113,400	115,600	119,800	121,500	122,100
Total, All Industries (3)	1,063,300	1,098,000	1,134,600	1,160,600	1,181,200

(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 2019

Employer University of California Berkeley Lawrence Berkeley National Laboratory Sutter East Bay Media Foundation City of Berkeley Bayer Corporation Berkeley Unified School District Siemens Corporation Kaiser Permanente Medical Group	Number of Employees 13,394 3,312 2,242 1,568 1,267 1,225 855 831	% of Total <u>Employment</u> 19.69% 4.87 3.30 2.31 1.86 1.80 1.26 1.22
		-

Source: City of Berkeley, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

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COUNTY OF ALAMEDA Major Employers (Listed Alphabetically) December 2019

Employer Name	Location	Industry
Alameda County Law Enforcement	Oakland	Government Offices-County
Alameda County Sheriff's Ofc	Oakland	Government Offices-County
Alta Bates Summit Med Ctr Alta	Berkeley	Hospitals
Alta Bates Summit Med Ctr Lab	Oakland	Laboratories-Medical
BART	Oakland	Transportation
Bayer Health Care	Berkeley	Laboratories-Pharmaceutical (mfrs)
California State Univ East Bay	Hayward	Schools-Universities & Colleges Academic
East Bay Mud	Oakland	Water & Sewage Companies-Utility
Ebmud	Oakland	Utilities
Grifols Diagnostic Solutions	Emeryville	Pharmaceutical Research Laboratories
Highland Hospital	Oakland	Hospitals
Kaiser Permanente Oakland Med	Oakland	Hospitals
Lawerence Berkeley Lab	Berkeley	Laboratories-Research & Development
Lawrence Livermore Natl Lab	Livermore	University-College Dept/Facility/Office
Lifescan Inc	Fremont	Physicians & Surgeons Equip & Supls-Mfrs
Sanfrancisco Bayarea Rapid	Oakland	Transit Lines
Tesla	Fremont	Automobile Dealers-Electric Cars
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	Hospitals
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, 2019 1st 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 2015 through 2019.

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2015	Berkeley	\$3,909,548	\$52,592
	Alameda County	47,744,408	60,575
	California	901,189,699	50,072
	United States	7,357,153,421	45,448
2016	Berkeley	\$4,264,478	\$56,194
	Alameda County	52,448,661	64,030
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2017	Berkeley	\$4,618,113	\$59,958
	Alameda County	56,091,066	67,631
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043
2018	Berkeley	\$5,070,468	\$66,382
	Alameda County	61,987,949	73,633
	California	1,113,648,181	59,646
	United States	8,640,770,229	50,735
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

CITY OF BERKELEY AND COUNTY OF ALAMEDA Effective Buying Income As of January 1, 2015 through 2019

Source: The Nielsen Company (US), Inc for years 2015 through 2018; Claritas, LLC for 2019.

Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2014 through 2018.

CITY OF BERKELEY Total Building Permit Valuations (Valuations in Thousands)

	2014	2015	2016	2017	2018
Permit Valuation					
New Single-family	\$5,453.0	\$2,995.0	\$5,469.1	\$14,776.2	13,808.7
New Multi-family	23,757.6	53,876.1	9,835.5	47,723.2	24,506.9
Res. Alterations/Additions	<u>53,835.6</u>	<u>52,549.5</u>	<u>45,295.9</u>	<u>45,215.9</u>	<u>80,130.0</u>
Total Residential	82,946.2	109,420.6	60,600.5	107,715.3	118,445.6
New Commercial	31,152.1	20,246.9	32,109.7	24,576.3	18,732.1
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	12,156.5	7,770.1	3,315.8	3,636.5	3,236.6
Com. Alterations/Additions	<u>46,571.3</u>	44,962.7	<u>47,485.2</u>	<u>26,597.7</u>	<u>52,522.6</u>
Total Nonresidential	89,779.9	72,979.7	82,910.7	54,810.5	74,491.3
New Dwelling Units					
Single Family	15	6	20	43	63
Multiple Family	249	459	<u>69</u>	402	<u>129</u>
TOTAL	<u>243</u> 264	<u>465</u>	<u>89</u>	<u>445</u>	192
101/1E	204	100	00	140	102

Source: Construction Industry Research Board, Building

APPENDIX B

COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2019

APPENDIX C

FORMS OF OPINION OF BOND COUNSEL

APPENDIX D

FORM OF CONTINUING DISCLOSURE CERTIFICATE

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CITY OF BERKELEY (Alameda County, California) General Obligation Bonds 2016 Election, Series B \$_____* CITY OF BERKELEY (Alameda County, California) 2020 Refunding General Obligation Bonds

CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City") in connection with the issuance of the Refunding Bonds captioned above (the "Bonds"). The Refunding Bonds are being issued under the Constitution and laws of the State of California, including but not limited to, Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, under a resolution adopted by the City Council of the City on February 25, 2020 (the "Bond Resolution") and pursuant to and consistent with the Charter of the City.

The City hereby covenants and agrees as follows:

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

Section 2. <u>Definitions</u>. In addition to the definitions set forth above and in the Refunding Bond Resolution, which apply to any capitalized term used in this Disclosure Certificate unless otherwise defined in this Section 2, the following capitalized terms have the following meanings:

"Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

"Annual Report Date" means the date not later than April 1 after the end of each fiscal year of the City (currently June 30th).

"*Dissemination Agent*" means the City or any other Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation. As of the date of this Disclosure Certificate, NHA Advisors, LLC is acting as Dissemination Agent.

"Listed Events" means any of the events listed in Section 5(a).

"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.

"Official Statement" means the final official statement executed by the City in connection with the issuance of the Refunding Bonds.

"Participating Underwriter" means any of the original underwriters of the Refunding Bonds required to comply with the Rule in connection with offering of the Refunding Bonds.

"*Rule*" means 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. Provision of Annual Reports.

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing April 1, 2021 with the report for the 2019-20 fiscal year, provide to the MSRB in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's fiscal year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(b). The City shall provide a written certification with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) to the MSRB, in an electronic format, as prescribed by the MSRB.

- (c) With respect to each Annual Report, the Dissemination Agent shall:
- (i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and
- (ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. <u>Content of Annual Reports</u>. The City's Annual Report shall contain or incorporate by reference the following:

(a) The City's audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Unless otherwise provided in the audited financial statements filed on or before the Annual Report Date, financial information and operating data with respect to the City for the preceding fiscal year, substantially similar to that provided in the Official Statement:

- (i) Assessed value of taxable property within the jurisdiction of the City;
- Summary of property tax rates for all taxing entities within the City expressed as a percentage of assessed valuation in the form of Table 5 of the Official Statement;
- (iii) Top ten property tax assessees for current fiscal year, taxable value and percentage of total assessed value in substantially the form of Table 6 of the Official Statement;
- (iv) If and to the extent such information is available from the County, property tax collection delinquencies for the City; and
- (v) Amount of all general obligation debt of the City outstanding, and total scheduled debt service on such general obligation debt.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

Section 5. <u>Reporting of Significant Events</u>.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds, if material:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults.
- (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 Bonds 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), (a)(14), and (a)(15) of this Section 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices, determinations or other events affecting the tax status of the Bonds. 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 it determines the event's occurrence is material for purposes of U.S. federal securities law. Whenever the City obtains knowledge of the occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(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 5(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 6. <u>Identifying Information for Filings with the MSRB</u>. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. <u>Termination of Reporting Obligation</u>. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Refunding Bonds. If such termination occurs prior to the final maturity of the Refunding Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. <u>Dissemination Agent</u>. 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 Dissemination Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

Section 9. <u>Amendment; Waiver</u>. 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 Sections 3(a), 4 or 5(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 Refunding Bonds, 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 Refunding Bonds, 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 Refunding Bonds in the manner provided in the Refunding Bond Resolution for amendments to the Refunding Bond Resolution with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Refunding Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be filed in the same manner as for a Listed Event under Section 5(b).

Section 10. <u>Additional Information</u>. 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 Annual Report or 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 Annual Report or notice 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 Annual Report or notice of occurrence of a Listed Event.

Section 11. <u>Default</u>. If the City fails to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Refunding Bonds 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 Refunding Bond 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 12. Duties, Immunities and Liabilities of Dissemination Agent.

(a) 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 they 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 Dissemination Agent shall have no duty or obligation to review any information provided to it by the City hereunder, and shall not be deemed to be acting in any fiduciary capacity for the City, the Refunding Bond holders or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Refunding Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. <u>Notices</u>. Any notice or communications to be among any of the parties to this Disclosure Certificate may be given as follows:

To the City:

City of Berkeley 2180 Milvia Street Berkeley, California 94704 (510) 981-7000

Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

Section 14. <u>Beneficiaries</u>. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Refunding Bonds, and shall create no rights in any other person or entity.

Section 15. <u>Counterparts</u>. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: _____, 2020

CITY OF BERKELEY

Ву: _____

Director of Finance

APPENDIX E

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 Refunding Bonds, payment of principal, interest and other payments on the Refunding Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Refunding Bonds 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 City nor the Paying Agent take any responsibility for the information contained in this Section.

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 Refunding Bonds, (b) Bonds representing ownership interest in or other confirmation or ownership interest in the Refunding Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Refunding Bonds, 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 (in this Appendix, the "Bonds"). The Refunding Bonds 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 Bond will be issued for each maturity of the Refunding Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC. If, however, the aggregate principal amount of any maturity 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 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. *The information contained on this Internet site is not incorporated herein by reference.*

3. Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Refunding Bonds on DTC's records. The ownership interest of each actual purchaser of each Bond ("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 Refunding Bonds 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 Bonds representing their ownership interests in Bonds, except in the event that use of the book-entry system for the Refunding Bonds is discontinued.

4. To facilitate subsequent transfers, all Bonds 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 Bonds with DTC and their registration in the name of Cede & Co. or such other nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Refunding Bonds; DTC's records reflect only the identity of the Direct Participants to whose accounts such Bonds 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 Bonds may wish to take certain steps to augment transmission to them of notices of significant events with respect to the Refunding Bonds, such as redemptions, tenders, defaults, and proposed amendments to the Refunding Bond documents. For example, Beneficial Owners of Bonds may wish to ascertain that the nominee holding the Refunding Bonds 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 the notices be provided directly to them.

6. Redemption notices will be sent to DTC. If less than all of the Refunding Bonds 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 the Refunding Bonds unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to City 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 the Refunding Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

8. Redemption proceeds, distributions, and interest payments on the Refunding Bonds 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 City or Paying 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 nor its nominee, Paying Agent, or City, 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 City or Paying 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 Refunding Bonds at any time by giving reasonable notice to City or Paying Agent. Under such circumstances, in the event that a successor securities depository is not obtained, Bonds are required to be printed and delivered.

10. The City may decide to discontinue use of the system of book-entry-only transfers through DTC (or a successor securities depository). In that event, Bond 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 City believes to be reliable, but City takes no responsibility for the accuracy thereof.

Jones Hall draft 01-23-20

\$_____ CITY OF BERKELEY 2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES B (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

COSTS OF ISSUANCE CUSTODIAN AGREEMENT

This Costs of Issuance Custodian Agreement, dated _____, 2020 (this "Agreement") has been entered into by and between the City of Berkeley, a charter city and municipal corporation, as issuer (the "City"), and The Bank of New York Mellon Trust Company, N.A. (the "Custodian"). The City has appointed the Custodian to act as costs of issuance custodian for the above-captioned bonds (the "Bonds"). This Agreement sets out the terms and conditions of said appointment.

The City and the Custodian agree as follows:

- 1. The Custodian has established a fund for payment of costs of issuance of the Bonds in the name of the City (the "Custodial Account").
- The Custodian has received on this date the total amount of \$______ from _____, underwriter of the Bonds, representing proceeds of the Bonds to be deposited in the Custodial Account. The Custodian will hold funds uninvested until _____, 2020.
- 3. The Custodian will pay costs of issuance of the Bonds, upon written instructions from the City, as provided in Exhibit A, and the Custodian will receive a written invoice directed by the City from time to time via written instructions from funds on deposit in the Account. This Agreement constitutes the initial written instructions to the Custodian.
- 4. Any balances remaining in the Custodial Account on _____, 2020 shall be transferred to the City for deposit in the debt service fund established for the Bonds, pursuant to Resolution No. _____ of the City Council of the City.
- 5. The City shall pay the Custodian a one-time fee of \$_____ for the duties of Custodian performed hereunder, payable from the deposit set forth in Section 2.
- 6. This Agreement will terminate on _____, 2020, or earlier upon the exhausting of all funds in the account. Prior to termination, the Custodian will notify the City and NHA Advisors, LLC, as municipal advisor, of its intent to close the Custodial Account.
- 7. This Agreement shall be governed under the laws of the state of California.

The liability of the Custodian is limited to the duties as specifically set forth in this Agreement, which shall be deemed purely ministerial in character, and no implied covenants or obligations shall be read into this Agreement against the Custodian. The Custodian will not be liable for any action taken or omitted to be taken by it under this Agreement or in connection herewith except to the extent caused by the Custodian's negligence or willful misconduct. Anything in this Agreement to the contrary notwithstanding, in no event shall the Custodian be liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Custodian has been advised of the likelihood of such loss or damage and regardless of the form of action.

None of the provisions of this Agreement shall require the Custodian to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Custodian may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, approval or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties. The Custodian may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or opinion of counsel. The Custodian may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed.

The Custodian shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means; provided, however, that the City shall provide to the Custodian an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Custodian Instructions using Electronic Means and the Custodian in its discretion elects to act upon such Instructions, the Custodian's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Custodian cannot determine the identity of the actual sender of such Instructions and that the Custodian shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Custodian have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Custodian and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Custodian shall not be liable for any losses, costs or expenses arising directly or indirectly from the Custodian's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Custodian, including without limitation the risk of the Custodian acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Custodian and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Custodian immediately upon learning of any compromise or unauthorized use of the security procedures.

"Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Custodian, or another method or system specified by the Custodian as available for use in connection with its services hereunder.

To the extent permitted by law, the City hereby agrees to indemnify and hold harmless the Custodian and its officers, directors, agents, and employees from and against any and all costs, claims, liabilities, losses, or damages whatsoever (including reasonable costs and fees of counsel, auditors or other experts), asserted or arising out of or in connection with the acceptance or administration of this Agreement, except costs, claims, liabilities, losses, or damages resulting from the gross negligence or willful misconduct of the Custodian including the reasonable costs and expenses (including the reasonable fees and expenses of its counsel) of defending itself against any such claim or liability in connection with its exercise or performance of any of its duties hereunder and of enforcing this indemnification provision. The indemnifications set forth herein shall survive the termination of this Agreement and/or the resignation or removal of the Custodian.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective authorized officers thereunto duly authorized.

CITY OF BERKELEY

Ву: _____

Mayor

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Custodian

Ву: _____

Authorized Officer

EXHIBIT A

COSTS OF ISSUANCE DISBURSEMENTS

\$__

CITY OF BERKELEY 2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES B (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

Pavee	Purpose	Amount
rayee	ruipose	Amount

^{*} Not to exceed amount; payment to be made only upon submission of an invoice.

Jones Hall draft 01-09-20

OFFICIAL NOTICE OF SALE

\$___

CITY OF BERKELEY (Alameda County, California) 2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES B (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

NOTICE IS HEREBY GIVEN by the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of \$______* principal amount of bonds of the City designated the "City of Berkeley 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "Bonds"). Bids will be received in electronic form through BiDCOMPTM/Parity® ("Parity") on:

TUESDAY, May 5, 2020

starting at 8:30 a.m. and ending at 9:00 a.m. Pacific Time.

The City reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (http://www.tm3.com).

The Bonds will be issued under the provisions of a resolution adopted by the City Council of the City on February 25, 2020 (the "Bond Resolution"), and under the laws of the State of California. The Bonds are more particularly described in the proposed form of the Bond Resolution on file with the City (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

DESCRIPTION OF THE BONDS

PURPOSE: The proceeds of the Bonds will be applied by the City for the purpose of refunding outstanding general obligation bonds of the City in order to realize debt service savings for the benefit of the taxpayers of the City.

ISSUE; BOOK-ENTRY FORM: The Bonds will be issued in the aggregate principal amount of \$______* in the form of fully registered Bonds without coupons. The Bonds will be dated as of as of their original delivery, and will be issued in minimum denominations of \$5,000. The Bonds will be issued in a book entry only system with no physical distribution of the Bonds made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Bonds which will be immobilized in its custody. The Bonds 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 Bonds.

^{*} Preliminary, subject to change.

MATURITIES: The Bonds will mature, or be subject to mandatory sinking fund redemption, on September 1 in each of the years, and in the amounts, as set forth in the following table. The final principal amount of the Bonds, and the final amount of each maturity of the Bonds, is subject to increase or reduction as described below under the heading "Adjustment of Principal Maturities". Each bidder must specify in its bid whether, for any particular year, the Bonds will mature or, alternately, be subject to mandatory sinking fund redemption in such year.

Maturity Date (September 1) Principal <u>Amount¹</u> Maturity Date (September 1) Principal <u>Amount</u>

PAYMENT PROVISIONS: Interest on the Bonds will be payable on September 1, 2020, and on succeeding March 1 and September 1 (the "Interest Payment Dates"), to the registered owners by check or draft of The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent") or, in the case of the owner of Bonds in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer. Principal of and premium (if any) on any Bond will be paid upon presentation and surrender thereof at the office of the Paying Agent. Principal, interest and premium (if any) on the Bonds are payable in lawful money of the United States of America.

OPTIONAL REDEMPTION: The Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

SINKING FUND REDEMPTION: Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. If the bid of the winning bidder specifies that any maturity of Bonds will be term Bonds, such term Bonds will be subject to mandatory sinking fund redemption on September 1 in each year so designated in the bid, in the respective amounts for such years as set forth

¹ <u>Note to Draft</u>: Principal amounts to be added.

above under the heading "MATURITIES", at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

SECURITY: The Bonds are general obligations of the City, and the City will direct the appropriate officials of Alameda County to levy ad valorem taxes for the payment of the Bonds and the interest thereon without limitation as to rate or amount for the payment of the Bonds and the interest thereon.

TAX-EXEMPT STATUS: In the opinion of Jones Hall, A Professional Law Corporation, bond counsel to the City ("Bond Counsel"), interest on the Bonds 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. Bidders are referred to the Preliminary Official Statement for a description of the proposed opinion of Bond Counsel. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes.

If prior to the delivery of the Bonds either (a) the interest on other obligations of the same type and character shall be declared to be taxable (either at the time of such declaration or at any future date) under any federal income tax laws, either by the terms of such laws or by ruling of a federal income tax authority or official which is followed by the Internal Revenue Service, or by decision of any federal court, or (b) any federal income tax law is adopted which will have a substantial adverse effect upon owners of the Bonds as such, the winning bidder for the Bonds may, at its option, prior to the tender of the Bonds, be relieved of its obligation under the contract to purchase the Bonds, and in such case the deposit accompanying its proposal will be returned.

LEGAL OPINION: The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, approving the validity of the Bonds, will be furnished to the purchaser of the Bonds without cost. A copy of the legal opinion, certified by the official in whose office the original is filed, will be printed on each Bond at the expense of the City.

FURTHER INFORMATION: A copy of the Preliminary Official Statement describing the Bonds, and any other information concerning the proposed financing, will be furnished upon request to the municipal advisor to the City as follows ("Municipal Advisor"): NHA Advisors, LLC, 4040 Civic Center Drive, Suite 200, San Rafael, California 94903, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or Rob@NHAadvisors.com, website: www.NHAadvisors.com. The Official Notice of Sale and Preliminary Official Statement are available from the Municipal Advisor.

TERMS OF SALE

RIGHT TO CANCEL, POSTPONE OR RESCHEDULE SALE: The City reserves the right to cancel, postpone or reschedule the sale of the Bonds upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (www.tm3.com). If the sale is postponed, bids will be received at the above place at such date and hour as set forth in the notice. Failure of any bidder to receive such notice or any other form of notice of canceled, postponed or rescheduled sale will not affect the legality or validity of any sale.

SUBMISSION OF BIDS: Bids will be received electronically as described below, provided that such electronic bid must be received no later than the date and time set for receipt of bids. All bidders, by submitting a bid, acknowledge that they have an established industry reputation

for underwriting new issuances of municipal bonds.

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.

FORM OF BID; PURCHASE PRICE: Each proposal must be for not less than all of the Bonds hereby offered for sale.

The City will accept par, discount or premium bids for the Bonds.

The underwriter's discount shall not exceed 1.50%.

DESIGNATION OF INTEREST RATES: Each bidder must specify the rate or rates of interest which the Bonds will bear. The maximum rate bid on any Bonds may not exceed 6.00% per annum. A bidder will be permitted to bid different rates of interest for each maturity of Bonds, but:

- each interest rate specified must be in a multiple of 1/20% or 1/8%;
- no Bond may bear more than one rate of interest;
- interest on each Bond will be computed from the date of original delivery to its stated maturity at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; and
- all Bonds maturing at any one time will bear the same rate of interest.

DETERMINATION OF BEST BID: The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Bonds from the date of original delivery (which is assumed to be March 24, 2020) to their respective maturity dates or mandatory sinking fund redemption dates,

produces an amount equal to the purchase price specified in such bid. For purposes of computing the true interest cost represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Bonds plus any premium specified in such proposal, and the true interest cost shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds.

ADJUSTMENT OF PRINCIPAL MATURITIES: In order to achieve the financial goals of the City, the City may need to adjust the schedule of principal maturities for the Bonds based on the bids that are received. Therefore, the City reserves the right to increase or decrease the principal amount of any maturity of the Bonds (or, in the case of the term Bonds, the principal amount thereof which is subject to mandatory sinking fund redemption on September 1 in any year). The aggregate principal amount of the Bonds may be reduced as a result of such adjustment, in an amount not exceeding 10% of the amount of Bonds hereby offered for sale. Notice of such increase or decrease shall be given to the winning bidder as soon as practicable following the notification of award, as described below. The City will attempt to maintain total underwriter compensation when adjusting maturities. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

RIGHT OF REJECTION: The City reserves the right, in its discretion, to reject any and all bids and to the extent not prohibited by law to waive any irregularity or informality in any bid.

PROMPT AWARD: An authorized representative of the City will accept the best responsible bid for the purchase of the Bonds by notice to the winning bidder. If two or more bids setting forth identical interest rates and premium, if any, are received, such officer may exercise discretion and judgment in making the award and may award the Bonds on a pro rata basis in such denominations as he or she determines. Such authorized representative of the City may also reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds will be awarded or all bids will be rejected not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the winning bidder; provided, that the award may be made after the expiration of the specified time if the bidder does not notify the City in writing of the withdrawal of its proposal.

PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY: It is expected that the Bonds will be delivered to DTC for the account of the winning bidder on March 24, 2020. The winning bidder has the right, at the winning bidder's option, to cancel the contract of purchase if the Bonds are not tendered for delivery within 60 days from the date of the sale thereof, and in such event the winning bidder shall be entitled to the return of the deposit accompanying its bid.

NO GOOD FAITH DEPOSIT: The City does not require a good faith deposit to be submitted in connection with bids for the Bonds.

PAYMENT OF PURCHASE PRICE: The winning bidder will be required to pay the purchase price of the Bonds in funds that are immediately available to the City. Such payment shall be made on the date of original delivery of the Bonds to DTC.

STATEMENT OF TRUE INTEREST COST: Each bidder is requested, but not required, to state in its proposal the percentage true interest cost represented by its proposal, determined as described above, which will be considered as informative only and not binding on either the bidder or the City.

ESTABLISHMENT OF ISSUE PRICE: (a) The winning bidder shall assist the City in establishing the issue price of the Bonds 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 Bonds, 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 Bonds 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 Bonds) will apply to the initial sale of the Bonds (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 Bonds to the bidder who submits a firm offer to purchase the Bonds 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 Bonds, as specified in the bid. By submitting a bid for the Bonds, 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 each maturity of the bonds set forth in the bid submitted by the winning bidder (the "initial offering price") as the issue price of that maturity (the "hold-the-offering-price rule"). Consequently, each bidder should assume for purposes of making its bid that for each maturity of the Bonds, the City will treat the initial offering prices as of the date that the Bonds are awarded by the City to the successful bidder ("sale date") as the issue price of the Bonds. 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 Bonds, (i) confirm that the underwriters have offered or will offer each maturity of the Bonds 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 any maturity of the Bonds to any person at a price that is higher than the initial

offering price for such maturity 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 that maturity of the Bonds to the public at a price that is no higher than the initial offering price for such maturity.

The winning bidder shall promptly advise the City when the underwriters have sold 10% of that maturity of the Bonds 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.

The City acknowledges that, in making the representation set forth above, the (e) successful bidder will rely on (i) the agreement of each underwriter to comply with the hold-theoffering-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 Bonds 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 Bonds 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 Bonds.

(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 Bonds 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 Bonds of each maturity allotted to it until it is notified by the successful bidder that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity 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 Bonds 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 Bonds 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 Bonds of each maturity 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 Bonds of that maturity or all Bonds of that maturity 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 Bonds 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 Bonds 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 Bonds 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 Bonds to the public),

(3) a purchaser of any of the Bonds 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 other), and

In addition, the City reserves the right to cancel the public sale of the Bonds 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 LITIGATION: There is no litigation pending concerning the validity of the Bonds, the corporate existence of the City or the entitlement of the officers thereof to their respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the delivery of the Bonds.

CUSIP NUMBERS: It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Bonds in accordance with the terms hereof. All expenses in relation to the printing of CUSIP

numbers on the Bonds will be paid for by the City, except that the CUSIP Service Bureau charge for the assignment of said numbers will be the responsibility of and shall be paid for by the purchaser.

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES: All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Bonds are the sole responsibility of the purchaser of the Bonds.

OFFICIAL STATEMENT: The City has approved a preliminary Official Statement relating to the Bonds. 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 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 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 are been approved by the City (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Bonds unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. Upon request, the City will furnish to the winning bidder, at no charge, not in excess of 20 printed copies of the Official Statement for use in connection with any resale of the Bonds.

CERTIFICATE REGARDING OFFICIAL STATEMENT: A responsible officer of the City will certify to the original purchaser of the Bonds, as a condition of closing, that based on such officer's participation in the preparation of the Official Statement, nothing has come to his or her attention to lead him or her to believe that the Official Statement (except for certain financial statements, statistical data and other information) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

CONTINUING DISCLOSURE. In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City will execute and deliver a Continuing Disclosure Certificate, under which the City undertakes to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the preliminary Official Statement and will also be set forth in the final Official Statement. Such Continuing Disclosure Certificate will be a document required to be delivered at closing by the City, and the failure by the City to deliver such document in form and substance acceptable to Bond Counsel and the winning bidder will relieve the winning bidder of its obligation to purchase the Bonds.

ACKNOWLEDGEMENT OF NO FIDUCIARY DUTY. The City acknowledges and agrees that (i) the purchase and sale of the Bonds is an arm's-length commercial transaction between the City and the underwriter, (ii) in connection with such transaction, the underwriter 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 underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the City with respect to the offering of the Bonds or the process leading thereto (whether or not the underwriter, or any affiliate of an underwriter, has advised or is currently advising the City on other matters) or any other obligation to the City except as described in this Notice of Sale, (iv) the underwriter 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 Bonds.

GIVEN by order of the City Council of the City of Berkeley by a resolution adopted on February 25, 2020.

EXHIBIT 1 Issue Price Certificate

S_____

2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES B (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

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 "Bonds").

1. Reasonably Expected Initial Offering Price.

(a) As of the Sale Date, the reasonably expected initial offering prices of the Bonds 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 Maturities of the Bonds used by the Underwriter in formulating its bid to purchase the Bonds. Attached as Schedule B is a true and correct copy of the bid provided by Underwriter to purchase the Bonds.

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

Bonds.

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

2. **Defined Terms**.

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

(a) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(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 a Maturity of the Bonds. The Sale Date of the Bonds is May 5, 2020.

(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 Bonds 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 Bonds 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 Bonds 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 Bonds, and by Jones Hall, A Professional Law Corporation in connection with rendering its opinion that the interest on the Bonds 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 Bonds.

[UNDERWRITER]

By:		
Name:		

Dated: [ISSUE DATE]

SCHEDULE A

EXPECTED OFFERING PRICES

Maturity Date	Principal	Interest	Reoffering	
(September 1)	<u>Amount</u>	<u>Rate</u>	<u>Price_*</u>	
	\$	%	%	

Stated as a percentage of par.

*

SCHEDULE B

COPY OF UNDERWRITER'S BID

(attached)

Jones Hall draft 01-09-20

Note: Publication governed by Gov. Code

53692. In addition to any other requirement imposed by law, at least 15 days prior to the sale of any public securities that exceed one million dollars (\$1,000,000) but do not exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale, an issuer shall publish notice of the intention to sell the securities in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the securities. The notice shall include the date, time, and place of the intended sale and the amount of the securities to be sold.

53569. Before selling any refunding bonds subject to the provisions of this article, any local agency shall advertise such bonds for sale at public sale and shall invite sealed bids therefor by publication of a notice once at least 10 days before the date of such public sale in a newspaper of general circulation circulated within the boundaries of each local agency to be aided by the public project to be financed by the issuance of such bonds;

NOTICE OF INTENTION TO SELL BONDS

APPROXIMATELY \$____

CITY OF BERKELEY

(Alameda County, California)

2020 REFUNDING GENERAL OBLIGATION BONDS, SERIES B (2008 ELECTION MEASURE FF: NEIGHBORHOOD BRANCH LIBRARY IMPROVEMENTS PROJECT)

NOTICE IS HEREBY GIVEN by the City Council of the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of approximately \$_____ principal amount of bonds of the City designated the "City of Berkeley 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "Bonds"). Bids will be received in electronic form on BiDCOMPTM/Parity® ("Parity") on:

Tuesday, May 5, 2020

starting at 8:30 a.m. and ending at 9:00 a.m. Pacific Time. The City reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<u>www.tm3.com</u>). Further information, including copies of the preliminary Official Statement and Official Notice of Sale may be obtained from the City's municipal advisor, NHA Advisors, LLC, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or Rob@NHAadvisors.com.

GIVEN by order of the City Council of the City of Berkeley by a resolution adopted on February 25, 2020.

Jones Hall draft 01-09-20

ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$16,000,000 City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project)

This ESCROW DEPOSIT AND TRUST AGREEMENT (this "Agreement"), dated _____, 2020, is between the CITY OF BERKELEY, a charter city and municipal corporation organized and existing under the Constitution of the State of California (the "City"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, acting as escrow agent for the 2010 Bonds described below (the "Escrow Agent").

BACKGROUND:

1. At an election held on November 4, 2008, more than two-thirds of the voters of the City Berkeley (the "City") approved a proposition, designated as Measure FF, authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$26,000,000, for the purpose of providing funds to finance renovations, construction, seismic and access improvements, and expansion of program areas at four neighborhood branch libraries in the City.

2. Pursuant to such authorization and Resolution No. 64,970-N.S., adopted by the City Council on July 6, 2010 (the "2010 Bond Resolution"), the City previously issued bonds designated the "City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project)" in the aggregate principal amount of \$16,000,000 (the "2010 Bonds").

3 Under the 2010 Bond Resolution, the City is authorized to redeem the 2010 Bonds in whole or in part on any date on or after September 1, 2020, at a redemption price equal the outstanding principal amount of the 2010 Bonds, plus interest accrued to the redemption date, without premium.

4. In order to realize debt service savings for the benefit of the taxpayers of the City, the City Council has authorized the issuance and sale of its "City of Berkeley 2020 Refunding General Obligation Bonds, Series B (2008 Election Measure FF: Neighborhood Branch Library Improvements Project)" (the "2020 Bonds") for the purpose of refinancing the 2010 Bonds pursuant to a resolution adopted on February 25, 2020 (the "2020 Resolution").

5. The City Council is authorized to provide for the issuance and sale of the 2020 Bonds under the provisions of Articles 9 and 11 of Chapter 3 of Part 1 of Division 2

of Title 5 of the California Government Code, commencing with Section 53550 of said Code (the "Bond Law").

6. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the payment in full of the principal, interest and redemption premium on the outstanding 2010 Bonds.

7. As a result of the deposit and investment of funds in accordance with this Agreement, the 2010 Bonds will be discharged and defeased in accordance with the provisions of Section _____ of the 2010 Bond Resolution.

AGREEMENT:

In consideration of the premises and the material covenants contained herein, the City and the Escrow Agent hereby agree as follows:

SECTION 1. Appointment of Escrow Agent; Establishment of Escrow Fund. The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to redeem and defease the 2010 Bonds in accordance with the 2010 Bond Resolution. The Escrow Agent is directed to establish an escrow fund (the "Escrow Fund") to be held by the Escrow Agent in trust as an irrevocable escrow securing the payment of the 2010 Bonds as hereinafter set forth. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium on the 2010 Bonds in accordance with the 2010 Bond Resolution.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the 2010 Bonds, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. Deposit and Investment of Amounts in Escrow Fund. On the date hereof (the "Closing Date"), the City shall cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the 2020 Bonds received by the Escrow Agent on the Closing Date. **[identify other available sources of funds]**

On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit A. The Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

If the Escrow Agent learns that the Department of the Treasury or the Bureau of Public Debt will not, for any reason, accept a subscription of state and local government series securities ("SLGS") that is to be submitted pursuant to this Agreement, the Escrow Agent shall promptly request alternative written investment instructions from the City with respect to funds which were to be invested in SLGS. The Escrow Agent shall follow such instructions and, upon the maturity of any such alternative investment, the Escrow Agent shall hold such funds uninvested and without liability for interest until receipt of further written instructions from the City. In the absence of investment instructions from the City, the Escrow Agent shall hold such funds uninvested. The Escrow Agent may conclusively rely upon the City's selection of an alternative investment as a determination of the alternative investment's legality and suitability and shall not be liable for any losses related to the alternative investments or for compliance with any yield restriction applicable thereto.

SECTION 3. Application of Amounts in Escrow Fund. The Escrow Agent is hereby instructed to withdraw from the Escrow Fund and transfer to the Paying Agent an amount required to pay the principal of and interest and redemption premium on the 2010 Bonds, in accordance with the schedule attached as <u>Exhibit B</u> hereto.

Following the payment and redemption of the 2010 Bonds in full, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to The Bank of New. York Mellon Trust Company, N.A., in its capacity as paying agent for the 2020 Bonds, for deposit into the Debt Service Fund established under the 2020 Resolution, to be applied to pay interest next coming due and payable on the 2020 Bonds.

SECTION 4. Irrevocable Election to Redeem 2010 Bonds; Defeasance Notices. The City has irrevocably elected to pay and redeem all of the outstanding 2010 Bonds on the dates set forth in Exhibit B, in accordance with the provisions of the 2010 Bond Resolution. In addition, the Escrow Agent, in its capacity as paying agent for the 2010 Bonds, is hereby directed to provide notice of redemption in the form attached as Exhibit C to the 2010 Bond owners, in accordance with 2010 Bond Resolution, not less than 30 or more than 60 days prior to the redemption date.

The City further hereby directs the Escrow Agent to file on the Closing Date the notice attached as <u>Exhibit D</u> on the Municipal Securities Rulemaking Board's EMMA system.

SECTION 5. Compensation to Escrow Agent. The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, redemption expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

SECTION 6. *Immunities and Liability of Escrow Agent*. The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal, interest and redemption premium with respect to the 2010 Bonds.

Whenever in the administration of this Agreement the Escrow Agent deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care.

The Escrow Agent may at any time resign by giving 30 days' written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The City shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent by reason of its participation in the transactions contemplated hereby except to the extent caused by the Escrow Agent's negligence or willful misconduct. The provisions of the foregoing

sentence shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

The Escrow Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Agreement and delivered using Electronic Means ("Electronic Means" means mean the following communications methods: S.W.I.F.T., e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Escrow Agent, or another method or system specified by the Escrow Agent as available for use in connection with its services hereunder); provided, however, that the City shall provide to the Escrow Agent an incumbency certificate listing officers with the City to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the City whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent Instructions using Electronic Means and the Escrow Agent in its discretion elects to act upon such Instructions, the Escrow Agent's understanding of such Instructions shall be deemed controlling. The City understands and agrees that the Escrow Agent cannot determine the identity of the actual sender of such Instructions and that the Escrow Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Escrow Agent have been sent by such Authorized Officer. The City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Escrow Agent and that the City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the City. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The City agrees: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Escrow Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Escrow Agent immediately upon learning of any compromise or unauthorized use of the security procedures.

SECTION 7. *Termination of Agreement*. Upon payment in full of the principal of and interest and redemption premium on the 2010 Bonds and all fees, expense and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 8. *Execution in Counterparts*. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. *Applicable Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF BERKELEY

By: ______ Mayor

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Escrow Agent

By: ______Authorized Officer

EXHIBIT A

ESCROW SECURITIES

Type of		Purchase	Maturity	Par			Interest
Security	<u>CUSIP</u>	Date	Date	<u>Amount</u>	Rate	Price	<u>Class</u>

EXHIBIT B

ESCROW REQUIREMENTS

Payment Date	Interest	Maturing	Redeemed	Redemption	Total
	<u>Payment</u>	<u>Principal</u>	<u>Principal</u>	<u>Premium</u>	<u>Payment</u>
9/1/20				\$0.00	

EXHIBIT C

FORM OF NOTICE OF REDEMPTION

\$16,000,000 City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project)

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City") that the captioned bonds (the "2010 Bonds") have been called for redemption on September 1, 2020 (the "Redemption Date") at a redemption price equal to the par amount thereof together with accrued interest thereon to the redemption date, without premium (the "Redemption Price"). Interest on the 2010 Bonds will not accrue after the redemption date.

The 2010 Bonds consist of the following:

 Maturity Date
 Principal Amount
 Interest Rate
 CUSIP

(T) Term Bond

Funds for the payment of the 2010 Bonds have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2010 Bonds has been verified by ______, certified public accountants.

The 2010 Bonds must be surrendered by the owners thereof at the corporate trust office of the Paying Agent for payment of the redemption price.

The City and the Paying Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2010 Bond; the CUSIP numbers are included solely for the convenience of the owners of the 2010 Bonds.

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Dated: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Paying Agent

EXHIBIT D

FORM OF NOTICE OF DEFEASANCE

\$16,000,000 City of Berkeley General Obligation Bonds, Series 2010 (Measure FF – Neighborhood Branch Library Improvements Project)

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City") that the captioned bonds (the "2010 Bonds") has been defeased and discharged under and within the meaning of Resolution 64,970-N.S. of the City Council of the City authorizing the issuance of the 2010 Bonds (the "2010 Resolution"). Funds for the payment of the 2010 Bonds have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2010 Bonds has been verified by______, certified public accountants. As a consequence of the foregoing actions and in accordance with the 2010 Resolution, the 2010 Bonds are no longer secured by a pledge of revenues under the 2010 Resolution, and the 2010 Bonds are now payable solely from the moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The 2010 Bonds consist of the following:

Maturity Date

Principal Amount

Interest Rate

<u>CUSIP</u>

(T) Term Bond

The City has irrevocably elected to redeem all of the outstanding 2010 Bonds on September 1, 2020, at a redemption price equal to the par amount thereof together with accrued interest thereon to the redemption date, without premium. The City and the Paying Agent shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2010 Bond; the CUSIP numbers are included solely for the convenience of the owners of the 2010 Bonds.

Dated: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Escrow Agent



Office of the City Manager

ACTION CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Refinancing of 2010 Certificates of Participation Originally Issued to Finance Animal Shelter Project

RECOMMENDATION

Adopt a Resolution authorizing the issuance and sale of lease revenue bonds to refinance outstanding 2010 certificates of participation and approving related documents and official actions.

FISCAL IMPACTS OF RECOMMENDATION

The refinancing of the City's 2010 certificates of participation ("2010 COP") is anticipated to save approximately \$1,800,000 in interest savings over the next 20 years for the General Fund. The net present value of the cash flow savings is \$1,250,000.

CURRENT SITUATION AND ITS EFFECTS

The 2010 COP has an average interest rate of 5.71% and a final maturity of August 1, 2040. Annual payments are approximately \$405,000 (paid from the General Fund). A refinancing of the 2010 COP can generate an all-in cost of funds around 2.75%. The interest savings is anticipated to be captured over the next 8 fiscal years and be deposited into the City's Section 115 Pension Trust Fund as was done in the past.

BACKGROUND

The City issued the 2010 COP to partially fund the Animal Shelter project. This project was originally supported by the \$7,200,000 Measure I (2002) but required additional funds at the time of construction due to relocation and changes to the facility. The 2010 COP was a 30-year financing.

RATIONALE FOR RECOMMENDATION

The City can take advantage of lower interest rates in order to generate significant savings to the general fund by lowering the annual debt service on its outstanding obligations.

PRELIMINARY OFFICIAL STATEMENT

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

Refinancing Originally Issued to Finance Animal Shelter Project of 2010 Certificates of Participation

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 proposed bonds. 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 bonds. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the bonds, 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 bonds, 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 proposed lease revenue bonds are payable from lease payments made by the City from any available funds, primarily the City's general fund. "SECURITY FOR THE BONDS." The City has included financial information and operating data related to the City's ability to pay the lease payments in Appendix A to the Preliminary Official Statement: "FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY." The City's Comprehensive Annual Financial Report for fiscal year 2018-19 is included in Appendix B to the Preliminary Official Statement.

In addition, the City includes information about material risks to purchasers of the bonds in "BOND OWNERS' RISKS," and information about relevant constitutional and statutory limitations on the City's ability to collect revenues and pay the lease payments in the section of the Preliminary Official Statement captioned "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

ENVIRONMENTAL SUSTAINABILITY

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

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ALTERNATIVE ACTIONS CONSIDERED None

<u>CONTACT PERSON</u> Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

1: Resolution – Resolution of the City Council of the City of Berkeley Approving Documents and Actions Relating to the Refinancing of the 2010 Certificates of Participation

- 2: Draft Preliminary Official Statement
- 3: Draft Indenture of Trust
- 4: Draft Lease Agreement
- 5: Draft Site Lease
- 6: Draft Assignment Agreement
- 7: Draft Escrow Deposit and Trust Agreement
- 8: Draft Official Notice of Sale
- 9: Draft Notice of Intention

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RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY APPROVING DOCUMENTS AND ACTIONS RELATING TO THE REFINANCING OF 2010 CERTIFICATES OF PARTICIPATION

WHEREAS, the City of Berkeley (the "City") previously entered into a Trust Agreement dated as of June 1, 2010, with the Berkeley Joint Powers Financing Authority (the "Authority") and The Bank of New York Mellon Trust Company, N.A., as trustee, under \$5,750,000 aggregate principal amount of 2010 Certificates of Participation (Animal Shelter Financing) (the "2010 Certificates") were executed and delivered for the purpose of financing the acquisition and construction of an animal shelter; and

WHEREAS, the 2010 Certificates maturing on or after August 1, 2021 are subject to prepayment on August 1, 2020, or on any date thereafter, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, without premium, and in order to take advantage of prevailing bond market conditions, the City Council wishes to authorize the refinancing of the 2010 Certificates; and

WHEREAS, to that end, the City has proposed to lease to the Authority certain real property and improvements (the "Leased Property") under a Site Lease (the "Site Lease"), in consideration of the payment by the Authority of an upfront rental payment (the "Site Lease Payment") that is sufficient to provide funds for the prepayment of the 2010 Certificates; and

WHEREAS, in order to raise funds for such purpose, the Authority proposes to issue and sell its Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) (the "Refunding Bonds") under Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code (the "Bond Law"); and

WHEREAS, in order to secure the payments of principal of and interest on the Refunding Bonds, the Authority proposes to lease the Leased Property back to the City under a Lease Agreement (the "Lease Agreement"), under which the City is obligated to pay semiannual lease payments as rental for the Leased Property, and the Authority will assign substantially all of its rights under the Lease Agreement to The Bank of New York Mellon Trust Company, N.A., as trustee for the Refunding Bonds; and

WHEREAS, the City Council wishes at this time to approve all proceedings to which it is a party relating to the issuance and sale of the Refunding Bonds and the refinancing of the 2010 Certificates; and

WHEREAS, further, as required by Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix A is the information relating to the Refunding Bonds that has been obtained by the City Council and is hereby disclosed and made public; and

WHEREAS, pursuant to Resolution No. 67,871-N.S. (March 24, 2017), this City Council previously approved a Debt Management and Disclosure Policy which complies with Government Code Section 8855, and the delivery of the Refunding Bonds will be in compliance with said policy.

NOW THEREFORE, BE IT RESOLVED by the Council as follows:

SECTION 1. <u>Issuance of Refunding Bonds</u>. The City Council hereby approves the issuance of the Refunding Bonds by the Authority under the Bond Law in the maximum principal amount of \$5,500,000, for the purpose of providing funds to refinance the 2010 Certificates.

SECTION 2. <u>Approval of Related Financing Agreements</u>. The City Council hereby approves each of the following agreements required for the issuance and sale of the Refunding Bonds and the refinancing of the 2010 Certificates, in substantially the respective forms on file with the City Clerk together with any changes therein or additions thereto deemed advisable by the Mayor, the City Manager, the Assistant City Manager, or the Finance Director (each, an "Authorized Officer"), subject to approval as to form by the City Attorney; execution of the agreements by an Authorized Officer shall be conclusive evidence of the approval of any such changes or additions. An Authorized Officer is hereby authorized and directed for and on behalf of the City to execute, and the City Clerk is hereby authorized and directed to attest, the final form of each such agreement, as follows:

- <u>Site Lease</u>, between the City as lessor and the Authority as lessee, under which the City leases the Leased Property to the Authority in consideration of the payment of an amount which will be applied by the City to refinance the 2010 Certificates.
- <u>Lease Agreement</u>, between the Authority as lessor and the City as lessee, under which the Authority leases the Leased Property back to the City and the City agrees to pay semiannual lease payments which are sufficient to provide revenues with which to pay principal of and interest on the Refunding Bonds when due.
- <u>Escrow Deposit and Trust Agreement</u>, between the City and the trustee for the 2010 Certificates, providing for the deposit, investment and application of funds to refinance the 2010 Certificates.
- <u>Continuing Disclosure Certificate</u>, to be executed by the City for the purpose of providing continuing disclosure to owners of the Refunding Bonds.

SECTION 3. <u>Competitive Sale of Refunding Bonds</u>. The City Council hereby approves the competitive public sale of the Refunding Bonds by the Authority. The Refunding

Bonds shall be sold in accordance with the Notice of Sale in substantially the form approved by the Authority and in accordance with the resolution adopted by the Board of Directors of the Authority with respect to the issuance and sale of the Refunding Bonds. The Refunding Bonds shall be sold at such price and shall bear interest at such rates as shall produce a minimum net present value savings to the City of at least 3% of the principal amount of the outstanding 2010 Certificates, as such savings shall be verified and conclusively determined by the City's municipal advisor (the "Minimum Savings Requirement").

SECTION 4. Official Statement. The City Council hereby approves the preliminary Official Statement describing the Refunding Bonds in substantially the form on file with the City Clerk. An Authorized Officer is hereby authorized and directed to approve any changes in or additions to the preliminary Official Statement and to execute an appropriate certificate stating the Authorized Officer's determination that the preliminary Official Statement (together with any changes therein or additions thereto) has been deemed nearly final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934. Distribution of the preliminary Official Statement by the Underwriter is hereby approved. An Authorized Officer is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by the Authorized Officer shall be conclusive evidence of approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official Statement by the Underwriter. The final Official Statement shall be executed on behalf of the City by an Authorized Officer.

SECTION 5. Official Actions. The Mayor, the City Manager, the Assistant City Manager, the Finance Director, the City Attorney, the City Clerk and all other officers of the City are each authorized and directed on behalf of the City to make any and all leases, assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance or termination, warrants and other documents, which they or any of them deem necessary or appropriate in order to consummate any of the transactions contemplated by the agreements and documents approved under this Resolution, including any agreements required to purchase a debt service reserve fund insurance policy or a municipal bond insurance policy, and any amendments of the documents related to the 2010 Certificates that are necessary to accomplish the proposed refinancing. An Authorized Officer may revise the identity of the Leased Property as necessary in order to accomplish the purposes of this Resolution. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer is absent or unavailable.

SECTION 6. <u>Approval of Professional Services</u>. The City Council hereby appoints the firm of NHA Advisors, LLC as municipal advisor to the City in connection with the issuance of the Refunding Bonds and an Authorized Officer is authorized to execute an agreement with said firm in substantially the form of the agreement on file with the City Clerk. The City Council hereby appoints the firm of Jones Hall, A Professional Law Corporation, as

bond counsel and disclosure counsel to the City in connection with the issuance of the Refunding Bonds, and an Authorized Officer is authorized to execute an agreement with said firm in substantially the form of the agreement on file with the City Clerk.

SECTION 7. <u>Effective Date</u>. This Resolution shall take effect immediately upon its passage and adoption.

APPENDIX A

REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

- 1. Estimated True Interest Cost of the Refunding Bonds: 2.75%
- 2. Estimated finance charge of the Refunding Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$205,000. Such amount consists of costs of issuing the Refunding Bonds in the amount of approximately \$175,000 together with estimated underwriter's compensation in the amount of \$30,000.
- 3. Estimated proceeds of the Refunding Bonds expected to be received by or on behalf of the City for deposit to the Refunding Fund, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest and reserves (if any) from the principal amount of the Refunding Bonds: \$5,015,000.
- 4. Estimated Total Payment Amount for the Refunding Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$6,600,000.

^{*}All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding tax-exempt interest rates available in the bond market at the time of pricing the Bonds.

PRELIMINARY OFFICIAL STATEMENT DATED

NEW ISSUE - FULL BOOK-ENTRY

. 2020

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 herein, under existing law, the interest on the Bonds 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, such interest is exempt from California personal income taxes. See "TAX MATTERS."



\$ BERKELEY JOINT POWERS FINANCING AUTHORITY **LEASE REVENUE BONDS. SERIES 2020** (2010 Animal Shelter Financing)

*

Dated: Date of Delivery

Due: October 1, as shown on inside cover

Authority for Issuance. The bonds captioned above (the "Bonds") are being issued by the Berkeley Joint Powers Financing Authority (the "Authority") under a resolution adopted by the Board of Directors of the Authority on February 25, 2020, and an Indenture of Trust dated as of May 1, 2020 (the "Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A. as trustee (the "Trustee"). See "THE BONDS - Authority for Issuance."

Purpose. The Bonds are being issued primarily to refinance on a current basis the outstanding certificates of participation of the City of Berkeley (the "City") captioned "\$5,750,000 City of Berkeley 2010 Certificates of Participation (Animal Shelter Financing)" and the City's related lease payment obligation. In addition, the proceeds of the Bonds will be used to pay the costs of issuing the Bonds. See "FINANCING PLAN."

Security. Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on "Revenues" (as defined in this Official Statement) received by the Authority under the Lease Agreement, dated as of May 1, 2020, by and between the Authority, as lessor, and the City, as lessee (the "Lease"), consisting primarily of lease payments (the "Lease Payments") made by the City under the Lease with respect to the lease of certain real property, as further described in this Official Statement. The Bonds are also secured by certain funds on deposit under the Indenture. Neither the Authority nor the City is establishing a reserve fund for the Bonds. See "SECURITY FOR THE BONDS."

Book-Entry Only. The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds are issuable as fully registered securities in denominations of \$5,000 or any integral multiple of \$5,000. Purchasers of the Bonds (the "Beneficial Owners") will not receive physical certificates representing their interest in the Bonds. See "THE BONDS" and "APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM."

Payments. Interest on the Bonds accrues from the date of delivery and is payable semiannually on April 1 and October 1 of each year, commencing October 1, 2020. Payments of principal and interest on the Bonds will be paid by the Trustee to DTC for subsequent disbursement to DTC Participants, which will remit such payments to the Beneficial Owners of the Bonds. See "THE BONDS - General Provisions."

Redemption. The Bonds are subject to optional redemption, mandatory sinking fund payment redemption and special mandatory redemption from insurance or condemnation proceeds prior to maturity. See "THE BONDS - Redemption."

NONE OF THE BONDS, THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, OR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OF CALIFORNIA OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

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

NHA **ADVISORS** Financial & Policy Strategies.

Delivered.

MATURITY SCHEDULE (see inside cover)

Cover Page. This cover page contains certain information for general reference only. It is not a summary of all the provisions of the Bonds. Prospective investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds will be sold and awarded pursuant to a competitive bidding process to be held on [April 7], 2020, as set forth in the Official Notice of Sale. The Bonds are offered when, as and if issued and received by the Purchaser, and subject to the approval as to their legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will also be passed upon for the Authority and the City by Jones Hall, A Professional Law Corporation, as Disclosure Counsel. Certain legal matters will be passed upon for the City by the City Attorney. It is anticipated that the Bonds will be delivered in book-entry form through the facilities of DTC on or about [May 5], 2020.

The date of this Official Statement is: _____, 2020

^{*} Preliminary; subject to change.

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BERKELEY JOINT PUBLIC FINANCING AUTHORITY Lease Revenue Bonds, Series 2020 (2010 Animal Shelter Financing)

MATURITY SCHEDULE* (Base CUSIP:† 084145)

\$_____ Serial Bonds

Maturity Date (October 1) Principal <u>Amount</u> Interest <u>Rate</u> <u>Yield</u>

<u>CUSIP</u>†

Price

\$______% Term Bond Due October 1, 20__, Yield ___%, Price: ____, CUSIP: _____

* Preliminary; subject to change.

[†] CUSIP Copyright 2020, CUSIP Global Services, and a registered trademark of American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, which is managed on behalf of American Bankers Association by S&P Capital IQ. Neither the City nor the Purchaser takes any responsibility for the accuracy of the CUSIP data.

BERKELEY JOINT PUBLIC FINANCING AUTHORITY CITY OF BERKELEY (ALAMEDA COUNTY, CALIFORNIA)

BOARD OF DIRECTORS OF THE AUTHORITY AND MEMBERS OF THE CITY COUNCIL

Jesse Arreguín, Mayor Rashi Kesarwani, Councilmember District 1 Cheryl Davila, 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 Lori Droste, Councilmember District 8

CITY OFFICIALS AND STAFF

Dee Williams-Ridley City Manager

David White Deputy City Manager

> Farimah Brown City Attorney

Paul Buddenhagen Deputy City Manager

> Jenny Wong City Auditor

Henry Oyekanmi Director of Finance

PROFESSIONAL SERVICES

BOND AND DISCLOSURE COUNSEL

Jones Hall, A Professional Law Corporation San Francisco, California

MUNICIPAL ADVISOR

NHA Advisors, LLC San Rafael, California

Verification Agent

Robert Thomas CPA, LLC Minneapolis, Minnesota

Trustee

The Bank of New York Mellon Trust Company, N.A. San Francisco, California

GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

Use of Official Statement. This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract between any bond owner and the Authority or the Purchaser.

No Offering Except by This Official Statement. No dealer, broker, salesperson or other person has been authorized by the Authority or the Purchaser to give any information or to make any representations other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by the Authority or the Purchaser.

No Unlawful Offers or Solicitations. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

Information in Official Statement. The information set forth in this Official Statement has been furnished by the Authority and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness.

Estimates and Forecasts. When used in this Official Statement and in any continuing disclosure by the Authority in any press release and in any oral statement made with the approval of an authorized officer of the City or the Authority or any other entity described or referenced herein, the words or phrases "will likely result," "are expected to", "will continue", "is anticipated", "estimate", "project", "forecast", "expect", "intend" and similar expressions identify "forward looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, give rise to any implication that there has been no change in the affairs of the City, Authority or any other entity described or referenced herein since the date hereof.

Involvement of Purchaser. The following statement has been included in this Official Statement on behalf of the Purchaser of the Bonds: The Purchaser has reviewed the information in this Official Statement in accordance with, and as a 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.

Stabilization of and Changes to Offering Prices. The Purchaser may overallot or take other steps that stabilize or maintain the market prices of the Bonds at levels above that which might otherwise prevail in the open market. If commenced, the Purchaser may discontinue such market stabilization at any time. The Purchaser may offer and sell the Bonds to certain securities dealers, dealer banks and banks acting as agent at prices lower than the public offering prices stated on the inside cover page of this Official Statement, and those public offering prices may be changed from time to time by the Purchaser.

Document Summaries. All summaries of the Indenture or other documents referred to in this Official Statement are made subject to the provisions of such documents and qualified in their entirety to reference to such documents, and do not purport to be complete statements of any or all of such provisions.

No Securities Laws Registration. The Bonds have not been registered under the Securities Act of 1933, as amended, in reliance upon exceptions therein for the issuance and sale of municipal securities. The Bonds have not been registered or qualified under the securities laws of any state.

Effective Date. This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the Bonds will, under any circumstances, give rise to any implication that there has been no change in the affairs of the City, the Authority, the other parties described in this Official Statement, or the condition of the property within the City since the date of this Official Statement.

Website. The City maintains a website. However, the information presented on the website is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.

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OFFICIAL STATEMENT

\$_____* BERKELEY JOINT PUBLIC FINANCING AUTHORITY Lease Revenue Bonds, Series 2020 (2010 Animal Shelter Financing)

The purpose of this Official Statement, which includes the cover page, inside cover page and attached appendices, is to set forth certain information concerning the sale and delivery of the bonds captioned above (the "**Bonds**") by the Berkeley Joint Powers Financing Authority (the "**Authority**"). All capitalized terms used in this Official Statement, unless noted otherwise, have the meanings set forth in the Indenture (as defined below).

INTRODUCTION

This introduction is not a summary of this Official Statement. It is only a brief description of and guide to, and is qualified by, more complete and detailed information contained in the entire Official Statement and the documents summarized or described herein. A full review should be made of the entire Official Statement. The offering of the Bonds to potential investors is made only by means of the entire Official Statement.

Authority for Issuance. The Authority is issuing the Bonds under the following:

(a) Article 4 of Chapter 5, Division 7, Title 1 of the California Government Code, as amended, commencing with Section 6584 (the "**Law**");

(b) resolutions adopted by the Board of Directors (the "**Board**") of the Authority on February 25, 2020 (the "**Authority Resolution**"), and by the City Council (the "**City Council**") of the City of Berkeley (the "**City**") on February 25, 2020 (the "**City Resolution**"); and

(c) an Indenture of Trust (the "**Indenture**") dated as of May 1, 2020, by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**Trustee**").

The City. 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 a population of 123,328 as of January 1, 2019, 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 235,000 full and part-time workers.

^{*} Preliminary; subject to change.

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 charter was adopted in 1895. For more information regarding the City and its finances, see APPENDIX A and APPENDIX B. For additional general, financial and demographic information regarding the City, see "APPENDIX A – FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY." See also "THE CITY."

The Authority. The Authority was established on January 11, 1994, to provide for the financing of public capital improvements to public entities, including the City. See "THE AUTHORITY."

Purpose of the Bonds. The Bonds are being issued to:

• Refinance on a current basis outstanding certificates of participation of the City captioned "\$5,750,000 City of Berkeley 2010 Certificates of Participation (Animal Shelter Financing)" (the "**2010 Certificates**") and the City's related lease payment obligation; and

• Pay the costs of issuing the Bonds.

See "FINANCING PLAN."

Security for the Bonds and Pledge of Revenues. Under the Indenture, the Bonds are payable from and secured by a first pledge of and lien on "**Revenues**" (as defined in this Official Statement) received by the Authority under the Lease Agreement dated as of May 1, 2020, between the Authority, as lessor, and the City, as lessee (the "**Lease**"), consisting primarily of lease payments (the "**Lease Payments**") made by the City under the Lease. The Bonds are also secured by certain funds on deposit under the Indenture. See "SECURITY FOR THE BONDS."

The City and the Authority will enter into a Site Lease dated as of May 1, 2020 (the "**Site Lease**"). Under the Site Lease, the City will lease certain real property to the Authority, consisting of an animal shelter (as described herein, the "**Leased Property**"). Concurrently, the City and the Authority will enter into the Lease, under which the Authority will lease the Leased Property back to the City for the purpose of refinancing 2010 Certificates. See "THE LEASED PROPERTY."

Form of Bonds; Book-Entry Only. The Bonds will be issued in fully registered form, registered in the name of The Depository Trust Company, New York, New York ("**DTC**"), or its nominee, which will act as securities depository for the Bonds. Purchasers of the Bonds will not receive certificates representing the Bonds that are purchased. See "THE BONDS – Book-Entry Only System" and "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM."

Redemption. The Bonds are subject to optional redemption, mandatory redemption from sinking fund payments, and special mandatory redemption from the proceeds of insurance or condemnation proceeds prior to their stated maturity dates. See "THE BONDS – Redemption."

Abatement. The Lease Payments are subject to complete or partial abatement in the event and to the extent that there is substantial interference with the City's use and possession of the Leased Property or any portion thereof. If the Lease Payments are abated under the Lease, the Bond Owners would receive less than the full amount of principal of and interest on the Bonds. To the extent proceeds of rental interruption insurance are available (as described below), Lease

Payments (or a portion thereof) may be made from those proceeds during periods of abatement. See "SECURITY FOR THE BONDS – Abatement" and "BOND OWNERS' RISKS."

Legal Opinion. Upon delivery of the Bonds, Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel ("**Bond Counsel**"), will release its final approving legal opinion with respect to the Bonds, regarding the validity and tax-exempt status of the Bonds, in the form attached hereto as APPENDIX D.

Risks of Investment. Debt service on the Bonds is payable only from Lease Payments and other amounts payable by the City to the Authority under the Lease. For a discussion of some of the risks associated with the purchase of the Bonds, see "BOND OWNERS' RISKS."

NONE OF THE BONDS, THE OBLIGATION OF THE AUTHORITY TO PAY PRINCIPAL OF OR INTEREST THEREON, OR THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS CONSTITUTE A DEBT OR A LIABILITY OF THE AUTHORITY, THE CITY, THE STATE OR ANY OF ITS POLITICAL SUBDIVISIONS WITHIN THE MEANING OF ANY CONSTITUTIONAL LIMITATION ON INDEBTEDNESS, OR A PLEDGE OF THE FULL FAITH AND CREDIT OF THE CITY. THE BONDS ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE BONDS ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

REFINANCING PLAN

Refinancing of 2010 Certificates

Authority and Purpose of 2010 Certificates. The City executed and delivered the 2010 Certificates on June 2, 2010, in the original aggregate principal amount of \$5,750,000. The 2010 Certificates are currently outstanding in the aggregate principal amount of \$4,890,000. The 2010 Certificates were executed and delivered primarily for the purpose of providing funds to the City to finance a portion of the acquisition and construction of the Leased Property.

The refinancing plan calls for the outstanding 2010 Certificates maturing on and after August 1, 2021, to be prepaid in full on August 1, 2020 (the "**Prepayment Date**"), at a prepayment price equal to the principal amount thereof, together with interest coming due and payable on the Prepayment Date.

Irrevocable Escrow Fund Deposit. In order to accomplish the refinancing plan, a portion of the proceeds of the Bonds will be transferred to the Trustee for deposit into a refunding fund held by the Trustee under the Indenture. The Trustee will immediately disburse amounts in the refunding fund to The Bank of New York Mellon Trust Company, N.A., acting as the trustee for the 2010 Certificates (the "2010 Trustee"), for deposit into an escrow fund (the "Escrow Fund") to be established under an Escrow Deposit and Trust Agreement (the "Escrow Agreement") between the City and the 2010 Trustee. The 2010 Trustee will hold the amounts on deposit in the Escrow Fund as cash or invested by the Escrow Agent in U.S. Treasury securities. These funds will be sufficient to defease the outstanding 2010 Certificates as of the date of issuance of the Bonds and prepay the 2010 Certificates in full on the Prepayment Date.

Sufficiency of the deposit in the Escrow Fund to prepay the 2010 Certificates on the Redemption Date will be verified by Robert Thomas CPA, LLC, Minneapolis, Minnesota (the "**Verification Agent**"). See "VERIFICATION OF MATHEMATICAL ACCURACY" below. *The moneys held by the 2010 Trustee in the Escrow Fund are pledged to the payment and prepayment of the 2010 Certificates and will not be available for payment of the Bonds.*

Estimated Sources and Uses of Funds

The estimated sources and uses of funds relating to the Bonds are as follows:

Sources of Funds:	
Principal Amount of Bonds	\$
Plus: Net Original Issue Premium	
Plus: Funds Available with Respect to 2010 Certificates	
TOTAL SOURCES	\$
Uses of Funds:	
Deposit to Escrow Fund ⁽¹⁾	\$
Deposit to Costs of Issuance Fund ⁽²⁾	
Purchaser's Discount	
TOTAL USES	\$

 Represents funds to be used to defease and prepay the 2010 Certificates. See "- Refinancing of 2010 Certificates" above.

(2) Represents funds to be used to pay Costs of Issuance, which include legal fees, printing costs, rating agency fees and other costs of issuing the Bonds.

THE LEASED PROPERTY

Description and Location

Lease Payments will be made by the City under the Lease for the use and occupancy of the Leased Property, which consists of an animal shelter located at 1 Bolivar Drive in the City. The Leased Property consists of an approximately 11,700 square-foot, two-story facility sitting on an approximately 19,400 square-foot site. The facility contains dog kennels, get-acquainted rooms, cat rooms, an exotic animal room, kitchens for animal food preparation, a laundry, training facilities, outdoor exercise areas, a reception area, an animal control area, a volunteer room with kitchen and lockers, restrooms for staff and the public, a staff lounge with kitchen, locker rooms with showers, and private offices. The facility was designed to be ecologically sound and energy efficient and has LEED Silver certification.

Modification of Leased Property

Under the Lease, the City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of the Lease.

Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this provision of the Lease, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this provision of the Lease; except that if any such lien is established and the City first notifies or causes to be notified the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and will provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

Substitution

Under the Lease, the City has the option at any time and from time to time, to substitute other real property (the "**Substitute Property**") for the Leased Property or any portion thereof (the "**Former Property**"), upon satisfaction of all of the requirements set forth in the Lease, which includes (among others) the following:

- The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the County Recorder, sufficient memorialization of an amendment of the Lease, the Site Lease and the Assignment Agreement that adds the legal description of the Substitute Property and deletes therefrom the legal description of the Former Property, and has filed and caused to be recorded corresponding amendments to the Site Lease and Assignment Agreement.
- The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate under the Lease in the Substitute Property, subject only to Permitted Encumbrances (as defined in the Lease), in an amount at least equal to the estimated value thereof.
- The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- The City has filed with the Authority and the Trustee a written certificate of the City or other written evidencing stating that the useful life of the Substitute Property at least extends to the final maturity date of the Bonds, that the estimated value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the Leased Property, after substitute Property and release of the Former Property, is at least equal to the Leased Property, after substitution of the Substitute Property and release of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the Lease Payments thereafter coming due and payable under the Lease.

See "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

Upon the satisfaction of all such conditions precedent, the Term of the Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property.

The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this provision of the Lease.

Release of Leased Property

Under the Lease, the City has the option at any time and from time to time to release any portion of the Leased Property from the Lease (the "**Released Property**") provided that the City has satisfied all of the requirements under the Lease that are conditions precedent to such release, which include (among others) the following:

- The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the County Recorder sufficient memorialization of an amendment of the Lease, the Site Lease and the Assignment Agreement which removes the Released Property from the Lease, the Site Lease and the Assignment Agreement.
- The City has certified in writing to the Authority and the Trustee that the value of the property which remains subject to the Lease following such release is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the property which remains subject to the Lease following such release is at least equal to the Lease Payments thereafter coming due and payable thereunder.

See "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

THE BONDS

This section provides summaries of the Bonds and certain provisions of the Indenture. See APPENDIX B for a more complete summary of the Indenture. Capitalized terms used but not defined in this section have the meanings given in APPENDIX B.

Authority for Issuance

The Bonds are being issued under the Law, the Authority Resolution, City Resolution and Indenture. Under the Authority Resolution and City Resolution, the Bonds may be issued in a principal amount not to exceed \$5,500,000.

General Provisions

Bond Terms. The Bonds will be dated their date of delivery and issued in fully registered form without coupons in integral multiples of \$5,000, so long as no Bond has more than one maturity date.

Interest on the Bonds will be payable on April 1 and October 1 in each year, commencing October 1, 2020 (each an "Interest Payment Date"). The Bonds will mature in the amounts and on the dates, and bear interest at the annual rates, set forth on the inside cover page of this Official Statement.

Calculation of Interest. Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

(a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date;

(b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date; or

(c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest with respect to the Bonds will be computed on the basis of a 360-day year composed of 12 months of 30 days each.

Record Date. Under the Indenture, "Record Date" means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

Payments of Principal and Interest. Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which will remain in effect until rescinded in writing by the Owner.

The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee upon presentation and surrender thereof at the Office of the Trustee.

While the Bonds are subject to the book-entry system, the principal, interest and any redemption premium with respect to the Bonds will be paid by the Trustee to DTC for subsequent disbursement to beneficial owners of the Bonds. See "– Book-Entry Only System" below.

Redemption*

Optional Redemption. The Bonds maturing on or before October 1, 2029, are not subject to optional redemption prior to their stated maturity. The Bonds maturing on or after October 1, 2030, are subject to redemption, as a whole or in part at the election of the Authority among

^{*} Preliminary; subject to change.

maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on October 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in the Indenture, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

Mandatory Sinking Fund Redemption. The Term Bonds are subject to mandatory redemption in part by lot, at a redemption price equal to 100% of the principal amount thereof to be redeemed, without premium, in the aggregate respective principal amounts and on October 1 in the respective years as set forth in the following tables; *provided, however,* that if some but not all of the Term Bonds have been redeemed through an optional redemption or special mandatory redemption from insurance or condemnation proceeds, the total amount of all future sinking fund payments will be reduced by the aggregate principal amount of the Term Bonds so redeemed, to be allocated among such sinking fund payments on a pro rata basis in integral multiples of \$5,000 (as set forth in a schedule provided by the Authority to the Trustee).

Mandatory Sinking Fund Redemption of Term Bonds Maturing October 1, 20____

Sinking Fund Redemption Date (October 1)

Principal Amount To Be Redeemed

Mandatory Sinking Fund Redemption of Term Bonds Maturing October 1, 20____

Sinking Fund Redemption Date (October 1)

Principal Amount To Be Redeemed

Selection of Bonds for Redemption. Whenever provision is made in the Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee will select the Bonds of that maturity to be redeemed from all Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

Notice of Redemption. The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date,

to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Municipal Securities Rulemaking Board as provided in the Continuing Disclosure Certificate.

Neither the failure to receive any notice nor any defect therein will affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date.

Rescission of Redemption. The Authority has the right to rescind any notice of optional redemption of the Bonds by written notice to the Trustee on or prior to the date fixed for redemption.

Any notice of redemption will be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation will not constitute an Event of Default under the Indenture.

The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee will mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under the Indenture.

Effect of Redemption. If notice of redemption has been duly given as provided in the Indenture, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption will become due and payable, interest on the Bonds so called for redemption will cease to accrue, said Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture, and the Owners of said Bonds will have no rights in respect thereof except to receive payment of the redemption price thereof.

Book-Entry Only System

The Bonds will be issued as fully registered bonds in book-entry only form, registered in the name of Cede & Co. as nominee of DTC, and will be available to ultimate purchasers in the denomination of \$5,000 or any integral multiple of \$5,000, under the book-entry system maintained by DTC. While the Bonds are subject to the book-entry system, the principal, interest and any redemption premium with respect to a Bond will be paid by the Trustee to DTC, which in turn is obligated to remit such payment to its DTC Participants for subsequent disbursement to Beneficial Owners of the Bonds. Purchasers of the Bonds will not receive certificates representing their interests therein, which will be held at DTC.

See "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM" for further information regarding DTC and the book-entry system.

Transfer, Registration and Exchange

The following provisions regarding the exchange and transfer of the Bonds apply only during any period in which the Bonds are not subject to DTC's book-entry system. While the Bonds are subject to DTC's book-entry system, their exchange and transfer will be effected

through DTC and the Participants and will be subject to the procedures, rules and requirements established by DTC. See "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM."

Bond Register. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as provided in the Indenture.

Transfer of Bonds. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee will require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Whenever any Bond or Bonds are surrendered for transfer, the Authority will execute and the Trustee will authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority will pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

Exchange of Bonds. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee will require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Authority will pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

Limitations on Transfer and Exchange. The Trustee may refuse to transfer or exchange, under these provisions of the Indenture, any Bonds selected by the Trustee for redemption under the Indenture, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

DEBT SERVICE SCHEDULE

The table below shows annual debt service payments on the Bonds.

Year Ending October 1	Principal	Interest	Total Debt Service
2020	Ппсра	Interest	Debt Service
2020			
2022			
2022			
2023			
2024			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
Total:			

SECURITY FOR THE BONDS

The principal of and interest on the Bonds are not a debt of the Authority or the City, nor a legal or equitable pledge, charge, lien or encumbrance, upon any of their respective property, or upon any of their income, receipts, or revenues except the Revenues and other amounts pledged under the Indenture.

This section provides summaries of the security for the Bonds and certain provisions of the Indenture, the Lease and the Site Lease. See "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" for a more complete summary of the Indenture, the Lease and the Site Lease. Capitalized terms used but not defined in this section have the meanings given in APPENDIX B.

Revenues; Pledge of Revenues

Pledge of Revenues and Other Amounts. Subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under the Indenture are pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of the Indenture. Said pledge constitutes a lien on and security interest in the Revenues and such amounts and will attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

"Revenues" are defined in the Indenture to mean:

(a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), <u>but excluding</u> (i) any amounts described in the provisions of the Lease relating to permitted amendments that provide for additional rental to be pledged or assigned for the payment of bonds issued to finance or refinance projects for which the City is authorized to expend its funds, and (ii) any Additional Rental Payments (consisting of certain administrative costs due to the Authority and the Trustee under the Lease), and

(b) all interest, profits or other income derived from the investment of amounts in any fund or account established under the Indenture.

Assignment to Trustee. Under the Assignment Agreement, the Authority has transferred to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under the provisions of the Lease regarding Additional Rental Payments, advances, release and indemnification covenants, and agreement to pay attorneys' fees).

The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority will be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and will forthwith be paid by the Authority to the Trustee.

The Trustee is also entitled to and required to, subject to the provisions of the Indenture regarding rights of the Trustee, take all steps, actions and proceedings which the Trustee

determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

Allocation of Revenues by Trustee; Application of Funds

Deposit of Revenues in Bond Fund. All Revenues will be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund," which the Trustee will establish, maintain and hold in trust; except that all moneys received by the Trustee and required under the Indenture or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund will be promptly deposited in such funds.

All Revenues deposited with the Trustee will be held, disbursed, allocated and applied by the Trustee only as provided in the Indenture. Any surplus remaining in the Bond Fund, after payment in full of the principal of and interest on the Bonds or provision therefore under Indenture, and any applicable fees and expenses to the Trustee, will be withdrawn by the Trustee and remitted to the City.

Allocation of Revenues. On or before each Interest Payment Date, the Trustee will transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee will establish and maintain within the Bond Fund), the following amounts in the following order of priority:

(a) <u>Deposit to Interest Account</u>. The Trustee will deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding.

(b) <u>Deposit to Principal Account</u>. The Trustee will deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date, including principal of any Term Bonds payable as a result of mandatory sinking fund redemption.

Lease Payments; Covenant to Appropriate

Obligation to Pay. Under the Lease, subject to the provisions of Lease regarding abatement and prepayment, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in the Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in the Lease, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in the Lease.

Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under the Lease, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid under the Lease. The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee.

The Lease Payments payable in any Rental Period are for the use of the Leased Property during that Rental Period.

Fair Rental Value. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period.

The City and the Authority have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

Source of Payments; Covenant to Budget and Appropriate. Under the Lease, the Lease Payments are payable from any source of available funds of the City, subject to the provisions of the Lease regarding abatement. See " – Abatement" below.

The City covenants in the Lease to take all actions required to include the Lease Payments in each of its budgets during the Term of the Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. This covenant of the City constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements agreed to be carried out and performed by the City under the Lease.

Limited Obligation

THE OBLIGATION OF THE CITY TO MAKE THE LEASE PAYMENTS DOES NOT CONSTITUTE A DEBT OF THE CITY, THE AUTHORITY OR THE STATE OR OF ANY POLITICAL SUBDIVISION THEREOF WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY DEBT LIMIT OR RESTRICTION, AND DOES NOT CONSTITUTE AN OBLIGATION FOR WHICH THE CITY IS OBLIGATED TO LEVY OR PLEDGE ANY FORM OF TAXATION OR FOR WHICH THE CITY HAS LEVIED OR PLEDGED ANY FORM OF TAXATION.

Abatement

Termination or Abatement Due to Eminent Domain. Under the Lease, if the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of the Lease thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

(a) the Lease will continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and (b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

Abatement Due to Damage or Destruction. Under the Lease, the Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain as described above) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof.

The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction.

In the event of any such damage or destruction, this Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

No Reserve Fund

No debt service reserve fund has been established with respect to the Bonds. See "BOND OWNERS' RISKS – No Debt Service Reserve Fund."

Property Insurance

Liability and Property Damage Insurance. Under the Lease, the City is required to maintain or cause to be maintained throughout the Term of the Lease, but only if and to the extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property.

Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of the Lease, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance.

The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

Casualty Insurance. Under the Lease, the City is required to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds.

Such insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and must include earthquake insurance if available at reasonable cost from reputable insurers in the judgment of the City.

Such insurance may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance must be applied as provided in the Lease and described below.

Rental Interruption Insurance. Under the Lease, the City is required to procure and maintain, or cause to be procured and maintained, throughout the Term of the Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the casualty insurance described above, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years.

Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance.

The Net Proceeds of such insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

Application of Net Proceeds. The Trustee, as assignee of the Authority under the Assignment Agreement, has the right to receive all Net Proceeds. As provided in the Indenture, the Trustee will deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied to the redemption of Bonds as set forth in the Indenture.

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THE AUTHORITY

The Authority was originally established as a joint exercise of powers authority organized and existing under and pursuant to a Joint Exercise of Powers Agreement dated January 11, 1994, by and between the City and the Berkeley Redevelopment Agency (the "**Original Agreement**"). Following the dissolution of redevelopment agencies pursuant to the 2011 California Budget Act, the City subsequently revised the Original Agreement pursuant to an Amended and Restated Joint Exercise of Powers Agreement dated as of October 2, 2012, by and among the City, the Berkeley Redevelopment Successor Agency, as successor agency to the Berkeley Redevelopment Agency, and the California Municipal Finance Authority, a joint exercise of powers authority. The Authority is authorized pursuant to Article 4 (commencing with Section 6584) of the Act to borrow money for the purpose of financing the acquisition of bonds, notes and other obligations of, or for the purpose of making loans to, public entities, including the City and to provide financing for public capital improvements for lease to public entities, including the City. The members of the City Council of the City also sit as the Board of Directors of the Authority.

CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS

The constitutional and statutory provisions discussed in this section have the potential to affect the ability of the City to levy taxes and spend tax proceeds for operating and other purposes.

Article XIIIA of the State Constitution

On June 6, 1978, California voters approved Proposition 13, which added Article XIIIA to the State Constitution. Article XIIIA, as amended, limits the amount of any *ad valorem* tax on real property to one percent of the full cash value thereof, except that additional *ad valorem* taxes may be levied to pay debt service (i) on indebtedness approved by the voters prior to July 1, 1978, (ii) on bonded indebtedness approved by a two-thirds vote on or after July 1, 1978, for the acquisition or improvement of real property or (iii) bonded indebtedness incurred by a school district, community college district or county office of education for the construction, reconstruction, rehabilitation or replacement of school facilities, including the furnishing and equipping of school facilities or the acquisition of real property for school facilities, approved by 55 percent of the voters voting on the proposition. Article XIIIA defines full cash value to mean "the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value," or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This full cash value may be increased at a rate not to exceed two percent per year to account for inflation.

Article XIIIA has subsequently been amended to permit reduction of the "full cash value" base in the event of declining property values caused by damage, destruction or other factors, to provide that there would be no increase in the "full cash value" base in the event of reconstruction of property damaged or destroyed in a disaster, and in other minor or technical ways.

Legislation Implementing Article XIIIA

Legislation has been enacted and amended a number of times since 1978 to implement Article XIIIA. Under current law, local agencies are no longer permitted to levy directly any property tax (except to pay voter-approved indebtedness). The one percent property tax is automatically levied by the County and distributed according to a formula among taxing agencies. The formula apportions the tax roughly in proportion to the relative shares of taxes levied prior to 1989.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the two percent annual adjustment are allocated among the various jurisdictions in the "taxing area" based upon their respective "situs." Any such allocation made to a local agency continues as part of its allocation in future years.

All taxable property is shown at full market value on the tax rolls. Consequently, the tax rate is expressed as \$1 per \$100 of taxable value. All taxable property value included in this Official Statement is shown at 100 percent of market value (unless noted differently) and all tax rates reflect the \$1 per \$100 of taxable value.

Article XIIIB of the State Constitution

In addition to the limits Article XIIIA imposes on property taxes that may be collected by local governments, certain other revenues of the State and most local governments are subject to an annual "appropriations limit" imposed by Article XIIIB which effectively limits the amount of such revenues those entities are permitted to spend. Article XIIIB, 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" excludes 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 XIIIB 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 case of emergency; however, the appropriations limit for the next 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 its 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. 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 exceeds the aggregate limit, the excess must be returned to the agency's taxpayers through tax rate or fee reductions over the following two years.

Articles XIIIC and XIIID of the State Constitution

General. 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 XIIIC and XIIID 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 XIIIA and XIIIC of the State Constitution. The amendments to Article XIIIA 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 XIIIC 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 XIIIC 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.

Property-Related Fees and Charges. Article XIIID 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.

Reduction or Repeal of Taxes, Assessments, Fees and Charges. Article XIIIC 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 Bonds could be adversely affected.

Burden of Proof. Article XIIIC 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 XIIID 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 XIIID.

Judicial Interpretation of Proposition 218. The interpretation and application of Articles XIIIC and XIIID will ultimately be determined by the courts, and it is not possible at this time to predict with certainty the outcome of such determination.

Impact on City's General Fund. The City does not believe that any material source of General Fund revenue is subject to challenge under Proposition 218 or Proposition 26.

The approval requirements of Articles XIIIC and XIIID 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 it may need to meet increased expenditure needs.

Proposition 62

Proposition 62 was adopted by the voters at the November 4, 1986, general election and (a) requires that any new or higher taxes for general governmental purposes imposed by local governmental entities such as the City be approved by a two-thirds vote of the governmental entity's legislative body and by a majority vote of the voters of the governmental entity voting in an election on the tax, (b) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters of the governmental entity voting in an election on the tax, (c) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (d) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIIIA, (e) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities, and (f) requires that any tax imposed by a local governmental entity on or after August 1, 1985, be

ratified by a majority vote of the voters voting in an election on the tax within two years of the adoption of the initiative or be terminated by November 15, 1988.

California appellate court cases have overturned the provisions of Proposition 62 pertaining to the imposition of taxes for general government purposes. However, the California Supreme Court upheld Proposition 62 in its decision on August 28, 1995, in *Fresno County Transportation Authority v. Guardino*. This decision reaffirmed the constitutionality of Proposition 62. Certain matters regarding Proposition 62 were not addressed in the Supreme Court's decision, such as what remedies exist for taxpayers subject to a tax not in compliance with Proposition 62, and whether the decision applies to charter cities. The City has not experienced any substantive adverse financial impact as a result of the passage of this initiative.

Proposition 1A; Proposition 22

Proposition 1A. Proposition 1A, proposed by the Legislature in connection with the State's Fiscal Year 2004-05 Budget, approved by the voters in November 2004 and generally effective in Fiscal Year 2006-07, provided that the State may not reduce any local sales tax rate, limit existing local government authority to levy a sales tax rate or change the allocation of local sales tax revenues, subject to certain exceptions. Proposition 1A generally prohibited the State from shifting to schools or community colleges any share of property tax revenues allocated to local governments for any Fiscal Year, as set forth under the laws in effect as of November 3, 2004. Any change in the allocation of property tax revenues among local governments within a county had to be approved by two-thirds of both houses of the Legislature.

Proposition 22. Proposition 22, entitled "The Local Taxpayer, Public Safety and Transportation Protection Act," was approved by the voters of the State in November 2010. Proposition 22 eliminates or reduces the State's authority to (i) temporarily shift property taxes from cities, counties and special districts to schools, (ii) use vehicle license fee revenues to reimburse local governments for State-mandated costs (the State will have to use other revenues to reimburse local governments), (iii) redirect property tax increment from redevelopment agencies to any other local government, (iv) use State fuel tax revenues to pay debt service on State transportation bonds, or (v) borrow or change the distribution of State fuel tax revenues.

Possible Future Initiatives

Articles XIIIA, XIIIB, XIIIC and XIIID and Propositions 62, 1A and 22 were each adopted as measures that qualified for the ballot pursuant to the State's initiative process. From time to time other initiative measures could be adopted, further affecting revenues of the City or the City's ability to expend revenues. The nature and impact of these measures cannot be anticipated by the City.

BOND OWNERS' RISKS

The following describes certain special considerations and risk factors affecting the payment of and security for the Bonds. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Bonds and does not necessarily reflect the relative importance of the various risks. Potential investors in the Bonds are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Bonds. There can be no assurance that other considerations will not materialize in the future.

No Pledge of Taxes

The obligation of the City to pay the Lease Payments and Additional Rental does not constitute an obligation of the City for which the City is obligated to levy or pledge any form of taxation or for which the City has levied or pledged any form of taxation. The obligation of the City to pay Lease Payments and Additional Rental does not constitute a debt or indebtedness of the Authority, the City, the State of California or any of its political subdivisions within the meaning of any constitutional or statutory debt limitation or restriction.

The City is currently liable on other obligations payable from general revenues, which are described above under "APPENDIX A – FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY – Long-Term General Fund Obligations."

Limitations on Taxes and Fees

Limitations on Taxes and Fees. Certain taxes, assessments, fees and charges presently imposed by the City could be subject to the voter approval requirements of Article XIIIC and Article XIIID of the State Constitution. Based upon the outcome of an election by the voters, such fees, charges, assessments and taxes might no longer be permitted to be imposed, or may be reduced or eliminated and new taxes, assessments fees and charges may not be approved. The City has assessed the potential impact on its financial condition of the provisions of Article XIIIC and Article XIIID of the State Constitution respecting the imposition and increase of taxes, fees, charges and assessments and does not believe that an election by the voters to reduce or eliminate the imposition of certain existing fees, charges, assessments and taxes would substantially affect its financial condition. However, the City believes that if the initiative power was exercised so that all local taxes, assessments, fees and charges that may be subject to Article XIIIC and Article XIIID of the State Constitution are eliminated or substantially reduced, the financial condition of the City, including its General Fund, could be materially adversely affected.

Although the City does not currently anticipate that the provisions of Article XIIIC and Article XIIID of the State Constitution would adversely affect its ability to pay Lease Payments and its other obligations payable from the General Fund, no assurance can be given regarding the ultimate interpretation or effect of Article XIIIC and Article XIIID of the State Constitution on the City's finances. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

Additional Obligations of the City

The City has existing obligations payable from its General Fund. See "APPENDIX A – FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY – Long-Term General Fund Obligations." The City is

permitted to enter into other obligations which constitute additional charges against its revenues without the consent of Owners of the Bonds. To the extent that additional obligations are incurred by the City, the funds available to pay Lease Payments may be decreased.

The Lease Payments and other payments due under the Lease (including payment of costs of repair and maintenance of the Leased Property, taxes and other governmental charges levied against the Leased Property) are payable from funds lawfully available to the City. If the amounts that the City is obligated to pay in a fiscal year exceed the City's revenues for such year, the City may choose to make some payments rather than making other payments, including Lease Payments and Additional Rental, based on the perceived needs of the City. The same result could occur if, because of California Constitutional limits on expenditures, the City is not permitted to appropriate and spend all of its available revenues or is required to expend available revenues to preserve the public health, safety and welfare.

Default

Whenever any event of default referred to in the Lease happens and continues, the Authority is authorized under the terms of the Lease to exercise any and all remedies available under law or granted under the Lease. See "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS" for a detailed description of available remedies in the case of a default under the Lease.

If a default occurs, there is no remedy of acceleration of the total Lease Payments due over the term of the Lease. The Trustee is not empowered to sell the Leased Property and use the proceeds of such sale to prepay the Bonds or pay debt service on the Bonds.

The City will be liable only for Lease Payments on an annual basis and, in the event of a default, the Trustee would be required to seek a separate judgment each year for that year's defaulted Lease Payments. Any such suit for money damages would be subject to limitations on legal remedies against municipalities in the State, including a limitation on enforcement of judgments against funds of a fiscal year other than the fiscal year in which the Lease Payments were due and against funds needed to serve the public welfare and interest.

Abatement

Under certain circumstances related to damage, destruction, condemnation or title defects which cause a substantial interference with the use and possession of the Leased Property, the City's obligation to make Lease Payments will be subject to full or partial abatement and could result in the Trustee having inadequate funds to pay the principal and interest on the Bonds as and when due. See "SECURITY FOR THE BONDS – Abatement" and "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

Although the City is required under the Lease to maintain property and liability insurance with respect to the Leased Property, the required insurance coverage is subject to certain conditions and restrictions. See "SECURITY FOR THE BONDS – Property Insurance."

In addition, the Authority is required to use the proceeds of rental interruption insurance maintained under the Lease to make debt service payments on the Bonds during any period of abatement. See "SECURITY FOR THE BONDS – Property Insurance." However, there is no assurance that the Authority will receive proceeds of rental interruption insurance in time to make debt service payments on the Bonds when due.

No Debt Service Reserve Fund

The Authority will not fund a debt service reserve fund for the Bonds. If Revenues are insufficient for the Authority to pay debt service on the Bonds when due, no debt service reserve will be available under the Indenture for the Authority to make such payments.

Property Taxes

Levy and Collection. The City does not have any independent power to levy and collect property taxes. Any reduction in the tax rate or the implementation of any constitutional or legislative property tax decrease could reduce the City's property tax revenues, and accordingly, could have an adverse impact on the ability of the City to make Lease Payments. Likewise, delinquencies in the payment of property taxes could have an adverse effect on the City's ability to pay principal of and interest on the Bonds when due.

Reduction in Inflationary Rate. Article XIIIA of the California Constitution provides that the full cash value base of real property used in determining assessed value may be adjusted from year to year to reflect the inflationary rate, not to exceed a 2% increase for any given year, or may be reduced to reflect a reduction in the consumer price index or comparable local data. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS." Such measure is computed on a calendar year basis. Because Article XIIIA limits inflationary assessed value adjustments to the lesser of the actual inflationary rate or 2%, there have been years in which the assessed values were adjusted by actual inflationary rates, which were less than 2%. Since Article XIIIA was approved, the annual adjustment for inflation has fallen below the 2% limitation a limited number of times.

The City is unable to predict if any adjustments to the full cash value base of real property within the City, whether an increase or a reduction, will be realized in the future.

Appeals of Assessed Values. There are two types of appeals of assessed values that could adversely impact property tax revenues:

Proposition 8 Appeals. Most of the appeals that might be filed in the City would be based on Section 51 of the Revenue and Taxation Code, which requires that for each lien date the value of real property must be the lesser of its base year value annually adjusted by the inflation factor pursuant to Article XIIIA of the State Constitution or its full cash value, taking into account reductions in value due to damage, destruction, depreciation, obsolescence, removal of property or other factors causing a decline in value.

Under California law, property owners may apply for a reduction of their property tax assessment by filing a written application, in form prescribed by the State Board of Equalization, with the appropriate county board of equalization or assessment appeals board. In most cases, the appeal is filed because the applicant believes that present market conditions (such as residential home prices) cause the property to be worth less than its current assessed value. These market-driven appeals are known as Proposition 8 appeals.

Any reduction in the assessment ultimately granted as a Proposition 8 appeal applies to the year for which application is made and during which the written application was filed. These reductions are often temporary and are adjusted back to their original values when market conditions improve. Once the property has regained its prior value, adjusted for inflation, it once again is subject to the annual inflationary factor growth rate allowed under Article XIIIA.

Base Year Appeals. A second type of assessment appeal is called a base year appeal, where the property owners challenge the original (basis) value of their property. Appeals for reduction in the "base year" value of an assessment, if successful, reduce the assessment for the year in which the appeal is taken and prospectively thereafter. The base year is determined by the completion date of new construction or the date of change of ownership. Any base year appeal must be made within four years of the change of ownership or new construction date.

No assurance can be given that property tax appeals in the future will not significantly reduce the City's property tax revenues.

Limitations on Remedies Available to Bond Owners

The ability of the City to comply with its covenants under the Lease may be adversely affected by actions and events outside of the control of the City, and may be adversely affected by actions taken (or not taken) by voters, property owners, taxpayers or payers of assessments, fees and charges. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS" above. Furthermore, any remedies available to the owners of the Bonds upon the occurrence of an event of default under the Lease or the Indenture are in many respects dependent upon judicial actions, which are often subject to discretion and delay and could prove both expensive and time consuming to obtain.

In addition to the limitations on Bondowner remedies contained in the Lease and the Indenture, the rights and obligations under the Bonds, the Lease and the Indenture may be subject to the following: the United States Bankruptcy Code and applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or affecting the enforcement of creditors' rights generally, now or hereafter in effect; usual 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 Federal Constitution; and the reasonable and necessary exercise, in certain exceptional situations, of the police power 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 Bonds 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.

The opinion to be delivered by Bond Counsel, concurrently with the issuance of the Bonds, will include a qualification that the rights of the owners of the Bonds and the enforceability of the Bonds and the Indenture, the Lease and the Site Lease may be subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights heretofore or hereafter enacted and may also be subject to the exercise of judicial discretion in accordance with principles of equity or otherwise in appropriate cases. See "APPENDIX D – PROPOSED FORM OF OPINION OF BOND COUNSEL."

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 2016, the City has reduced its greenhouse gas emissions by 15% despite a population increase of approximately 18% in that same period. 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.

Loss of Tax-Exemption

As discussed under the caption "TAX MATTERS," interest on the Bonds could become includable in gross income for purposes of federal income taxation retroactive to the date the Bonds were issued, as a result of future acts or omissions of the Authority or the City in violation of their respective covenants in the Lease and the Indenture. Should such an event of taxability occur, the Bonds are not subject to special redemption and will remain Outstanding until maturity or until redeemed under other provisions set forth in the Indenture.

Secondary Market for Bonds

There can be no guarantee that there will be a secondary market for the Bonds or, if a secondary market exists, that any Bonds can be sold for any particular price. Occasionally, because of general market conditions or because of adverse history or economic prospects connected with a particular issue, secondary marketing practices in connection with a particular issue are suspended or terminated. Additionally, prices of issues for which a market is being made will depend upon then-prevailing circumstances. Such prices could be substantially different from the original purchase price.

TAX MATTERS

Federal Tax Status. 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 Bonds 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 Authority 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 Bonds in order that the interest thereon be, and continue to be, excludable from gross income for federal income tax purposes. The Authority 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 Bonds.

Tax Treatment of Original Issue Discount and Premium. If the initial offering price to the public at which a Bond 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 Bond is sold is greater than the amount payable at maturity thereof, then such difference constitutes "bond premium" for purposes of federal income taxes and State of California personal income taxes.

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 Bond 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 Bonds to determine taxable gain upon disposition (including sale, redemption, or payment on maturity) of such Bond. The Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering to the public at the first price at which a substantial amount of such Bonds is sold to the public.

Under the Tax Code, bond premium is amortized on an annual basis over the term of the Bond (said term being the shorter of the Bond's maturity date or its call date). The amount of bond premium amortized each year reduces the adjusted basis of the owner of the Bond for purposes of determining taxable gain or loss upon disposition. The amount of bond premium on a Bond is amortized each year over the term to maturity of the Bond on the basis of a constant interest rate compounded on each interest or principal payment date (with straight-line interpolations between compounding dates). Amortized Bond premium is not deductible for federal income tax purposes. Owners of premium Bonds, 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 Bonds.

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

Other Tax Considerations. Current and future legislative proposals, if enacted into law, clarification of the Tax Code or court decisions may cause interest on the Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. The introduction or enactment of any such legislative proposals, clarification of the Tax Code or court decisions may also affect the market price for, or marketability of, the Bonds. It cannot be predicted whether or in what form any such proposal might be enacted or whether, if enacted, such legislation would apply to bonds issued prior to enactment.

The opinions expressed by Bond Counsel are based upon existing legislation and regulations as interpreted by relevant judicial and regulatory authorities as of the date of such opinion, and Bond Counsel has expressed no opinion with respect to any proposed legislation or as to the tax treatment of interest on the Bonds, or as to the consequences of owning or receiving interest on the Bonds, as of any future date. Prospective purchasers of the Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, as to which Bond Counsel expresses no opinion.

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

CERTAIN LEGAL MATTERS

Jones Hall, A Professional Law Corporation, Bond Counsel, will render an opinion with respect to the validity of the Bonds, the form of which is set forth in APPENDIX D. Certain legal matters will also be passed upon for the City and the Authority by Jones Hall, as Disclosure Counsel. Certain legal matters will be passed upon for the City and the Authority by the City Attorney.

LITIGATION

To the best knowledge of the City, there is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending and notice of which has been served on and received by the City or, to the knowledge of the City, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Lease, the Site Lease or the Indenture, or upon the financial condition, assets, properties or operations of the City, which default might have consequences that would materially adversely affect the consummation of the transactions of the Site Lease or the Indenture, or operations of the City and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially adversely affect the consummation of the transactions, assets, properties or operations of the City, including but not limited to the payment and performance of the City's obligations under the Lease.

RATING

S&P Global Ratings ("**S&P**") has assigned its municipal bond rating of "____" to the Bonds.

This rating reflects only the views of S&P, and an explanation of the significance of this rating, and any outlook assigned to or associated with this rating, should be obtained from S&P.

Generally, a rating agency bases its rating on the information and materials furnished to it and on investigations, studies and assumptions of its own. There is no assurance that this rating will continue for any given period of time or that this rating will not be revised downward or withdrawn entirely by the rating agency, if in the judgment of the rating agency, circumstances so warrant. Any such downward revision or withdrawal of any rating on the Bonds may have an adverse effect on the market price or marketability of the Bonds.

CONTINUING DISCLOSURE

The City (on behalf of the Authority and itself) will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City (the "**Annual Report**"), by not later than nine months after the end of the City's fiscal year (presently June 30) and commencing April 1, 2021, with the report for the fiscal year ending June 30, 2020, and to provide notices of the occurrence of certain listed events.

These covenants have been made in order to assist the purchaser of the Bonds in complying with Securities Exchange Commission Rule 15c2-12(b)(5), as amended (the "**Rule**"). The specific nature of the information to be contained in the Annual Report or the notices of listed events is set forth in "APPENDIX E — FORM OF CONTINUING DISCLOSURE CERTIFICATE."

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 "APPENDIX C – COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2019," Notes to Basic Financial Statements, Note 3"). In order to meet its continuing disclosure obligations, the City retained NHA Advisors, LLC as dissemination agent.

In the previous five years, the City failed to timely file a material event notice in connection with changes to the credit rating for one series of the City's 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 engaged NHA Advisors, LLC to review this information annually to ensure compliance with its continuing disclosure undertakings.

Neither the County nor any other entity other than the City shall have any obligation or incur any liability whatsoever with respect to the performance of the City's duties regarding continuing disclosure.

MUNICIPAL ADVISOR

The Authority and the City have 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 Bonds. 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 Bonds.

COMPETITIVE SALE OF BONDS

The Bonds will be sold pursuant to a competitive bidding process held on [April 7], 2020 pursuant to the terms set forth in the Official Notice of Sale for the Bonds (the "Official Notice of Sale").

The Bonds were awarded to ______ (the "**Purchaser**"), whose proposal represented the lowest trust interest cost for the Bonds as determined in accordance with the Official Notice of Sale. The Purchaser has agreed to purchase the Bonds at a purchase price of \$______ (which is equal to the par amount of the Bonds, less a Purchaser's discount of \$______, and plus a net original issue premium of \$______).

The Purchaser intends to offer the Bonds to the public at the offering prices set forth on the cover page of this Official Statement. The Purchaser may offer and sell to certain dealers and others at a price lower than the offering prices stated on the cover page hereof. The offering price may be changed from time to time by the Purchaser.

PROFESSIONAL SERVICES

In connection with the issuance of the Bonds, fees payable to the following professionals involved in the offering are contingent upon the issuance and delivery of the Bonds: Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel; the Municipal Advisor; and the Trustee.

VERIFICATION OF MATHEMATICAL ACCURACY

The Verification Agent will deliver a report on the mathematical accuracy of certain computations, contained in schedules provided to the Verification Agent on behalf of the Authority, relating to the sufficiency of the maturing principal of and interest earned on the Federal Securities purchased with the amounts deposited into the Escrow Fund, together with cash to be held therein, to pay on the Redemption Date the prepayment and redemption price and accrued interest on the 2010 Certificates to such date.

See "REFINANCING PLAN."

EXECUTION

The execution of this Official Statement and its delivery have been authorized by the Board of the Authority and the City Council of the City.

BERKELEY JOINT PUBLIC FINANCING AUTHORITY

By:_____

Chair

CITY OF BERKELEY

By:_____Citv Ma

City Manager

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APPENDIX A

FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY

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 123,328, giving it the highest population density of any city in the East Bay. The University of California is a major component of the City's economy, employing more than 235,000 full and part-time workers.

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
2015	119,400	1,613,168	38,952,462
2016	120,012	1,631,088	39,214,803
2017	121,328	1,646,156	39,504,609
2018	122,369	1,656,884	39,740,508
2019	123,328	1,669,301	39,927,315

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.

The City Council members are shown in the below table:

Member	District	Term Expires
Jesse Arreguin	Mayor	11/30/2020
Rashi Kesarwani	1	11/30/2022
Cheryl Davila	2	11/30/2020
Ben Bartlett	3	11/30/2020
Kate Harrison	4	11/30/2022
Sophie Hahn	5	11/30/2020
Susan Wengraf	6	11/30/2020
Rigel Robinson	7	11/30/2022
Lori Droste	8	11/30/2022

CITY FINANCIAL INFORMATION

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 comprehensive annual financial report of the City for fiscal year 2018-19 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 (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)

	Actual <u>2015-16</u>	Actual <u>2016-17</u>	Actual <u>2017-18</u>	Actual 2018-19
ASSETS:	¢00.615	02 001	109 059	107 260
Cash and investments in treasury* Receivables (net of allowance where	\$82,615	82,891	108,058	107,360
applicable):				
Accounts	7,072	8,777	6,951	4,980
Interest	534	526	763	778
Taxes	9,421	8,109	8,623	9,953
Subventions/grants			180	450
Due from other funds	2,920	3,752	6,659	6,973
Notes receivable	3,595	4,255	3,755	3,697
Other	353	5	5	320
Prepaid Items		75	142	
Total assets	106,512	108,390	135,136	134,512
LIABILITIES:	4 700	4 0 4 4	2 040	0.700
Accounts payable	1,768	4,344	3,610	6,736
Accrued salaries and wages Advances from other funds	4,502	5,169 6,683	5,473 6,287	5,989 4,059
Deposits held	840	905	974	4,039
Unearned revenue				
Tax and revenue anticipation notes	24,995	17,000	25,550	14,000
Other liabilities	3,706	2,923	3,755	3,899
Total liabilities	35,811	37,024	45,649	35,463
i otal nabinites	00,011	07,024	40,040	00,400
Deferred Inflows of Resources	5,676	7,707	5,601	5,813
FUND BALANCES				
Reserved for:				
Encumbrances/Assigned to	3,686	3,015	33,373	42,667
Notes receivable/Nonspendable	3,595	4,330	3,898	3,697
Unreserved/Unassigned, report in:				
General fund	57,743	56,313	46,614	46,872
Total fund balances	65,025	63,658	83,885	92,236
—		\$ 400.005	* • • = • • • •	
Total liabilities and fund balances	\$106,512	\$108,390	\$135,136	135,512

* Cash and investments in treasury includes restricted cash and investments. Source: City of Berkeley, Comprehensive Annual Financial Reports for 2014-15 through 2018-19.

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

	Actual <u>2015-16</u>	Actual <u>2016-17</u>	Actual 2017-18	Actual <u>2018-19</u>
REVENUES:				
Taxes	\$133,249	\$137,277	\$161,666	\$173,216
Licenses and Permits	323	556	834	1,405
Subvention and Grants/Intergovernmental	11,208	11,509	1,129	1,868
Service Fees	9,528	9,140	9,862	8,433
Fines and Forfeitures	6,371	6,370	6,933	5,443
Rents	215	160	284	289
Franchises	1,673	2,247	1,990	1,800
Interest	2,784	1,383	2,416	6,915
Other	48	1,750	237	1,722
TOTAL REVENUES	165,400	170,393	185,351	201,090
EXPENDITURES:				
General Government	28,244	37,871	30,143	27,410
Public Safety	89,076	94,093	95,503	103,084
Highways and Streets	1,337	1,638	1,900	2,904
Health and Human Services	7,354	9,676	9,725	13,319
Culture-Recreation	5,848	6,086	5,476	5,943
Community Development	6,057	6,477	7,153	8,264
Economic Development	2,325	2,332	2,576	2,845
Debt Service	372	166	252	270
TOTAL EXPENDITURES	140,613	158,338	152,728	164,040
Excess Revenues Over (Under) Expenditures	24,788	12,055	32,623	37,050
Transfers In(out)/Other	(13,052)	(13,421)	(12,396)	(27,699)
Net Change in Fund Balance	11,735	(1,366)	20,227	9,351
Fund Balance, July 1	53,289	65,025	63,658	83,885
Fund Balance, June 30*	\$65,025	\$63,658	\$83,885	\$93,236

* Totals may not add due to rounding.

Source: City of Berkeley Comprehensive Annual 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 about January to May of each year, the City Council meets in public 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.

General Fund Reserves

On December 13, 2016, the City Council established a General Fund reserve policy (the "**Reserve Policy**") to prepare for the impact of economic cycles and catastrophic events. The Reserve Policy was enacted to ensure that fluctuations in revenue do not impede the City's ability to meet expenditure obligations. When revenues fail to meet the City's operating requirements, or the need for disbursements exceeds receipts, General Fund reserves, upon a majority vote of the City Council, may be used in accordance with the standards set forth in the Policy. The Reserve Policy provides that the General Fund reserve shall be comprised of two elements: a Stability Reserve and a Catastrophic Reserve:

The 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. During fiscal year 2019, \$5,600,000 was contributed to the Stability Reserve, and the balance at June 30, 2019 was \$20,022,922.

A Catastrophic Reserve is maintained to sustain General Fund operations in the event of a natural disaster or other catastrophic event. The Catastrophic Reserve may be used to respond to extreme, one-time events, such as earthquakes, fires, floods, civil unrest, or terrorist attacks. The Catastrophic Reserve may not be accessed to meet operational shortfalls or to fund new programs or projects. During fiscal year 2019, \$4,580,000 was contributed to the Catastrophic Reserve, and the balance at June 30, 2019 was \$16,622,481.

State Budget and its Impact on the City

Fiscal Year 2019-20 State Budget. Information about the fiscal year 2019-20 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 or Underwriter, and the City and Underwriter take 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.

Dissolution of Redevelopment Agencies. State legislation enacted as part of the 2011 Budget Act, and upheld by the California Supreme Court, resulted in the formal dissolution of redevelopment agencies, including the Berkeley Redevelopment Agency (the "Former Redevelopment Agency"), effective as of February 1, 2012. The impact on the City's General Fund of the dissolution of the Former Redevelopment Agency is minimal because the City is in the process of winding down its redevelopment program, and the funding the City received from the Former Redevelopment Agency prior to its dissolution only supported 1.5 full-time employees.

Ad Valorem Property Taxes

Tax Levies and Collections. Property taxes accounted for approximately 54% of the City's general fund revenues for fiscal year 2018-19. 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 taxdefaulted. 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.

See Table 1 of the forepart of this Official Statement for a table summarizing the historical and current assessed valuation of the taxable property in the City.

The City does <u>not</u> participate in the Teeter Plan. See Table 4 of the forepart of this Official Statement for a history of secured tax charges and delinquencies within the City during the past 10 years.

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.

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.

Total taxable sales in the City during fiscal year 2019 were reported to be \$1.814 billion, a slight increase over the total taxable sales of \$1.8 billion reported during fiscal year 2018.

CITY OF BERKELEY TAXABLE TRANSACTIONS (Figures in Thousands)

	2014	2015	2016	2017	2018
Retail and Food Services:					
Apparel Stores	\$59,369	\$57,048	\$55,449	\$52,645	\$52,991
Gen. Merchandise Stores	12,292	15,165	15,610	17,178	20,782
Food Stores	123,572	133,916	145,462	150,894	149,662
Eating and Drinking Places	323,125	347,926	364,417	371,299	374,792
Home Furnishings and Appliances	74,682	74,514	71,927	72,358	69,746
Bldg. Materials, Farm Implements	90,104	98,958	100,899	107,333	109,052
Auto Dealers, Auto Supplies	126,527	125,716	115,808	117,513	119,883
Gas/Service Stations	94,630	83,285	75,720	84,041	93,694
Other Retail Stores	248,626	255,133	251,324	243,881	262,209
Total Retail and Food Services	1,152,938	1,191,661	1,196,618	1,217,142	1,252,813
All Other Outlets	<u>394,169</u>	<u>413,156</u>	<u>431,614</u>	<u>364,736</u>	<u>361,292</u>
TOTAL ALL OUTLETS	<u>\$1,547,107</u>	<u>\$1,604,817</u>	<u>\$1,628,232</u>	<u>\$1,581,878</u>	<u>1,614,105</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.

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. During fiscal year 2018-19, business license taxes increased by 7.4% from fiscal year 2017-18, primarily due to a business license taxes on recreational cannabis, which was a new tax in fiscal year 2018-19.

Property Transfer Tax. The City's transfer tax rate is 1.5% for properties with a consideration up to \$1.5 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 the 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 is treated as one-time revenue to be transferred to the Capital Improvement Fund for capital infrastructure needs; that amount was increased to \$12.5 million in fiscal year 2017-18.

For fiscal year 2018-19, property transfer tax revenue increased by 5.3% from fiscal year 2017-18, due primarily to an increase in the average property sales prices.

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.

For fiscal year 2018, VLF revenue totaled \$11,822,917, which is \$828,465 or 7.54% more than the \$10,994,452 received in fiscal year 2017. Consistent with the 8.87% increase in assessed values for fiscal year 2018. The amount of \$11,822,917 received in fiscal year 2018 was \$1,502,515 more than the adopted budget amount of \$10,320,402.

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; it is paid by the hotel guest. 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 Note 12.A. of APPENDIX B to this Official Statement.

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**"). The required employer contribution rates for fiscal year 2017-18 were 27.90%, 39.90% and 56.60% of annual covered payroll for Miscellaneous Plan, Safety Fire Plan and Safety Police Plan employees, respectively; for fiscal year 2018-19, the rates were 30.50%, 44.00%, and 60.80%, respectively; for fiscal year 2019-20, the rates are 23.054%, 49.474% and 63.479%, respectively. 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 Note 12.B. of APPENDIX B to this Official Statement for detailed information about the actuarial assumptions underlying the contributions.

The City's fiscal year 2015-16 through 2017-18 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	Contributions Employer	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
PERS – Misce	ellaneous Plan						
6/30/2016	\$902,228,876	\$641,339,412	\$20,032,929	\$260,889,464	71.08%	\$85,480,937	305.20%
6/30/2017	983,333,433	696,104,044	21,214,582	287,229,389	70.79	88,645,362	324.02
6/30/2018	1,016,396,249	735,828,894	20,393,310	280,567,355	72.40	94,371,740	297.30
PERS – Publi	c Safety Fire Plan						
6/30/2016	\$246,704,540	\$176,593,232	\$5,967,197	\$70,111,308	71.58%	\$16,185,414	433.18%
6/30/2017	266,986,159	188,899,801	6,328,886	78,086,358	70.75	16,684,346	468.02
6/30/2018	272,593,862	196,923,511	6,983,081	75,670,351	72.24	17,219,137	439.45
PERS – Publi	c Safety Police Pla	an					
6/30/2016	\$372,226,444	\$226,135,306	\$10,777,599	\$146,091,138	60.75%	\$22,289,585	655.42%
6/30/2017	404,585,170	244,812,138	11,858,699	159,773,032	60.51	22,933,002	696.69
6/30/2018	416,996,462	257,917,647	13,095,114	159,078,815	61.85	22,701,037	700.76

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 was 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%@50, Fire 3%@55, and Miscellaneous 2.7%@55 and 3%@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.

Fiscal Year	Discount Rate
2018-19	7.375%
2019-20	7.250
2020-21	7.000

For public agencies like the City, the new discount rate took 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% to 3% of normal cost as a percent of payroll for most miscellaneous retirement plans, and a 2% to 5% increase for most safety plans. Additionally, many PERS employers will see a 30% to 40% 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.

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 five years are shown in the table below, with dollar amounts shown in millions:

	2019-20 Projected	2020-21 Projected	2021-2022 Projected	2022-2023 Projected
Miscellaneous ⁽¹⁾	\$33.67	\$36.55	\$41.83	\$43.30
Police	16.27	17.6	18.58	19.16
Fire	8.78	9.46	9.55	9.90
Total	\$58.72	\$63.61	\$69.96	\$72.36

(1) Miscellaneous includes the 8% employee share paid by the City on behalf of the employees and negotiated employee contributions to the City's rate.

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 2018-19 contribution to the BPRIBP and the funded status of the BPRIBP is set forth below.

Fiscal Year	Total Pension	Plan Fiduciary	Contributions	Plan Net Pension	Plan Fiduciary Net Position as a Percentage of the Total Pension	Covered	Plan Net Pension Liability as a Percentage of Covered Employee
Ended	Liability	Net Position	Employer	Liability	Liability	Payroll	Payroll
6/30/2019	\$73,643,792	\$5,556,948	\$1,854,528	\$68,086,844	7.55%	N/A	N/A

For a more detailed discussion of the BPRIBP, see Note 13.C. of 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, 2019 was \$327,753.

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, 2019, the City's contribution to SMPF was \$525,486.

The funded status of the SMPF as of June 30, 2019, 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
6/30/2019		\$1,862,714	\$1,862,714	%	N/A	N/A

For a more detailed discussion of the SMPF, see Note 12.B. of APPENDIX B of this Official Statement.

Strategy to Reduce Unfunded Liabilities

At its June 26, 2018 meeting, the City Council adopted a Resolution appointing the City Manager as plan administrator, and authorizing the City Manager to take the necessary steps to negotiate and execute the documents to establish a Section 115 Trust Fund (the "**Trust Fund**") to use as a pension rate stabilizing fund.

The City Council authorized the establishment of the Trust Fund in order to prefund pension obligations. During fiscal year 2019, \$4 million was contributed to the Trust Fund from General Fund operations, and an additional \$1.1 million was contributed to the Trust Fund from the discount on prepayment of the required PERS unfunded liability payment for fiscal year 2019. As of June 30, 2019, the balance in the Trust Fund was \$9,191,801.

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 45 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 13 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 July 1, 2018, there were 128 active employees, 43 retirees deferred and 59 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability (
6/30/2016	853,748	98	12,362
6/30/2017	1,991,925	43	17,530,174
6/30/2018	2,163,028	34	17,251,382
6/30/2019	2,326,493	36	19,633,312

The funded status of the FRFH as of June 30, 2019, 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
7/1/2018	\$11,296,053	\$30,929,365	\$19,633,312	36.5%	\$15,667,851	125.31%

The actuarial value of the assets in the FRFH as of June 30, 2019 was equal to their market value.

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, 2018, there were 1,094 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 2018-19 and the three preceding years were as follows:

		Percentage of	
Fiscal Year	Annual	Annual OPEB	Net OPEB
Ended	OPEB Cost	Contributed	Obligation
6/30/2016	3,492,010	52.0	9,050,063
6/30/2017	4,610,828	72.7	37,900,578
6/30/2018	4,729,448	42.3	34,215,614
6/30/2019	5,051,655	43.3	37,219,746

The funded status of the RHPAP as of June 30, 2019, the most recent actuarial report, is set forth below:

			Unfunded			UAAL
	Actuarial		Actuarial			as
Actuarial	Accrued	Actuarial	Accrued			Percentage
Valuation	Liability	Value of	Liability-	Funded	Covered	of covered
Date	(AAL)	Assets	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$65,605,879	\$28,386,133	\$37,219,746	43.3%	\$91,491,386 ⁽¹⁾	40.68%

The actuarial value of the assets in the RHPAP as of June 30, 2019 was equal to their market value.

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 Plan a "Retiree" must meet all of the following criteria:

- I. A person who is vested in the plan, and
- II. Has reached the age of 50, and
- III. Has retired from the City at age 50 or thereafter, and
- IV. 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.

Years of Service	City Percentage
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 retirees 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 July 1, 2018, there were 152 active employees, and 22 retirees, and 6 entitled to but not yet receiving benefit retirees.

For the Retiree Health Premium Assistance Coverage 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 2018-19 and the three preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Contributed	Net OPEB Liability
6/30/2016	5,779,291	8.0	16,449,480
6/30/2017	5,105,429	11.0	45,508,847
6/30/2018	4,929,429	6.0	41,652,588
6/30/2019	5,155,293	6.0	46,252,565

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 in 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 data 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 June 30, 2019, the most recent actuarial valuation date, the plan was 4.2% funded. The actuarial accrued liability for benefit was \$48.7 million, and the actuarial value of assets was \$2.5 million, resulting in an unfunded accrued liability of \$46.2 million. The covered payroll (annual payroll of active employees covered by the plan) was approximately \$18.8 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, 2019, the most recent actuarial valuation date is as follows:

			Unfunded			UAAL
		Actuarial	Actuarial			as
Actuarial	Actuarial	Accrued	Accrued			Percentage
Valuation	Value of	Liability (AAL)-	Liability-	Funded	Covered	of covered
Date	Assets	Unit Credit	UAAL	Ratio	Payroll	Payroll
7/1/2018	\$2,450,155	\$48,702,720	\$46,252,565	5.0%	\$18,760,962	246.5%

Defined Contribution Plans

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

Labor Relations

As of January 28, 2020, the City employed approximately 1,457 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 108 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

	E analana a a	Contract Expiration
Labor Organization	Employees	Date
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	128	06/27/2020
Berkeley Police Association	163	06/30/2020
I. B. E. W. Local 1245	10	06/27/2020
Service Employees International Local 1021	438	06/27/2020
Maintenance and Clerical Chapters		
Service Employees International Local 1021	446	06/27/2020
Community Services and Part-Time Recreation		
Leaders Association Chapters		
Public Employees Local 1	164	06/27/2020
Unrepresented Employees	108	06/27/2020

(1) Terms of contract remain in effect after expiration until new contract becomes effective. *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; earthquakes, environmental risk because of its location and 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.

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 2019-20 TRANs have an outstanding principal amount of \$34,780,000 and mature on July 22, 2020.

General Obligation Bonds. The City issues general obligation bonds to provide funds for the acquisition and construction of major capital facilities. General obligation bonds are payable solely from ad valorem taxes levied by the City and collected by the County.

Debt service for the City's outstanding general obligation bonds, following issuance of the Bonds, is shown under "DEBT SERVICE SCHEDULES – Combined General Obligation Bonds Debt Service Schedule."

Outstanding 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. In June 2010, The Bank of New York Mellon Trust Company, N.A., executed and delivered certificates of participation on behalf of the City in the aggregate principal amount of \$5,750,000. The City's underlying rental obligation is a general obligation payable from any available funds of the City. The certificates bear interest at rates between 4.00%-5.75%, and the final maturity date is August 1, 2040. As of January 1, 2020, the principal balance outstanding was \$4,890,000.

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Lease Revenue Bonds. In October 2012, the Berkeley Joint Powers Financing Authority (the "**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, 2031. As of January 1, 2020, the principal balance outstanding was \$19,255,000.

Employment

The unemployment rate in the Oakland-Hayward-Berkeley MD was 2.6% in October 2019, up from a revised 2.5% in September 2019, and below the year-ago estimate of 3.0%. This compares with an unadjusted unemployment rate of 3.7% for the State and 3.3% for the nation during the same period. The unemployment rate was 2.6% in the County, and 2.7% in Alameda County.

The table below list employment by industry group for Alameda and Alameda Counties for the years 2014 to 2018.

OAKLAND- HAYWARD-BERKELEY MD (Alameda and Alameda Counties) Annual Averages Civilian Labor Force, Employment and Unemployment, Employment by Industry (March 2018 Benchmark)

_	2014	2015	2016	2017	2018
Civilian Labor Force (1)	1,347,700	1,364,800	1,386,100	1,399,500	1,412,800
Employment	1,267,500	1,298,500	1,325,600	1,347,200	1,369,500
Unemployment	80,300	66,300	60,500	52,300	43,200
Unemployment Rate	6.0%	4.9%	4.4%	3.7%	3.1%
Wage and Salary Employment: (2)					
Agriculture	1,300	1,200	1,300	1,400	1,300
Mining and Logging	400	300	300	200	200
Construction	58,600	62,800	67,900	71,200	75,400
Manufacturing	83,300	88,100	91,000	95,500	100,400
Wholesale Trade	45,600	47,000	48,100	48,700	48,000
Retail Trade	109,200	111,800	113,400	114,400	114,700
Transportation, Warehousing, Utilities	35,100	37,500	39,200	40,500	42,100
Information	23,000	25,000	26,400	26,800	27,400
Finance and Insurance	36,000	37,400	38,800	38,700	37,200
Real Estate and Rental and Leasing	16,800	16,800	16,900	17,400	17,700
Professional and Business Services	175,100	177,500	181,200	184,700	189,500
Educational and Health Services	173,100	178,600	185,900	191,500	194,900
Leisure and Hospitality	102,100	106,600	111,700	114,900	116,600
Other Services	37,500	38,100	39,100	40,200	40,700
Federal Government	13,800	13,800	13,900	13,800	13,600
State Government	39,300	39,900	39,700	39,300	39,500
Local Government	113,400	115,600	119,800	121,500	122,100
Total, All Industries (3)	1,063,300	1,098,000	1,134,600	1,160,600	1,181,200

(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 2019

	Number of	% of Total
<u>Employer</u>	Employees	Employment
University of California Berkeley	13,394	19.69%
Lawrence Berkeley National Laboratory	3,312	4.87
Sutter East Bay Media Foundation	2,242	3.30
City of Berkeley	1,568	2.31
Bayer Corporation	1,267	1.86
Berkeley Unified School District	1,225	1.80
Siemens Corporation	855	1.26
Kaiser Permanente Medical Group	831	1.22
Berkeley Bowl Produce	640	0.94
Whole Foods Market California Inc.	389	0.57

Source: City of Berkeley, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2019.

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COUNTY OF ALAMEDA Major Employers (Listed Alphabetically) December 2019

Employer Name	Location	Industry
Alameda County Law Enforcement	Oakland	Government Offices-County
Alameda County Sheriff's Ofc	Oakland	Government Offices-County
Alta Bates Summit Med Ctr Alta	Berkeley	Hospitals
Alta Bates Summit Med Ctr Lab	Oakland	Laboratories-Medical
BART	Oakland	Transportation
Bayer Health Care	Berkeley	Laboratories-Pharmaceutical (mfrs)
California State Univ East Bay	Hayward	Schools-Universities & Colleges Academic
East Bay Mud	Oakland	Water & Sewage Companies-Utility
Ebmud	Oakland	Utilities
Grifols Diagnostic Solutions	Emeryville	Pharmaceutical Research Laboratories
Highland Hospital	Oakland	Hospitals
Kaiser Permanente Oakland Med	Oakland	Hospitals
Lawerence Berkeley Lab	Berkeley	Laboratories-Research & Development
Lawrence Livermore Natl Lab	Livermore	University-College Dept/Facility/Office
Lifescan Inc	Fremont	Physicians & Surgeons Equip & Supls-Mfrs
Sanfrancisco Bayarea Rapid	Oakland	Transit Lines
Tesla	Fremont	Automobile Dealers-Electric Cars
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	Hospitals
Western Digital Corp	Fremont	Computer Storage Devices (mfrs)
	. romone	

Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2019 1st 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 2015 through 2019.

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2015	Berkeley	\$3,909,548	\$52,592
	Alameda County	47,744,408	60,575
	California	901,189,699	50,072
	United States	7,357,153,421	45,448
2016	Berkeley	\$4,264,478	\$56,194
	Alameda County	52,448,661	64,030
	California	981,231,666	53,589
	United States	7,757,960,399	46,738
2017	Berkeley	\$4,618,113	\$59,958
	Alameda County	56,091,066	67,631
	California	1,036,142,723	55,681
	United States	8,132,748,136	48,043
2018	Berkeley	\$5,070,468	\$66,382
	Alameda County	61,987,949	73,633
	California	1,113,648,181	59,646
	United States	8,640,770,229	50,735
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
		-,- ,,	, -

CITY OF BERKELEY AND COUNTY OF ALAMEDA Effective Buying Income As of January 1, 2015 through 2019

Source: The Nielsen Company (US), Inc for years 2015 through 2018; Claritas, LLC for 2019.

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Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2014 through 2018.

CITY OF BERKELEY Total Building Permit Valuations (Valuations in Thousands)

	2014	2015	2016	2017	2018
Permit Valuation					
New Single-family	\$5,453.0	\$2,995.0	\$5,469.1	\$14,776.2	13,808.7
New Multi-family	23,757.6	53,876.1	9,835.5	47,723.2	24,506.9
Res. Alterations/Additions	53,835.6	52,549.5	45,295.9	45,215.9	80,130.0
Total Residential	82,946.2	109,420.6	60,600.5	107,715.3	118,445.6
New Commercial	31,152.1	20,246.9	32,109.7	24,576.3	18,732.1
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	12,156.5	7,770.1	3,315.8	3,636.5	3,236.6
Com. Alterations/Additions	46,571.3	44,962.7	47,485.2	26,597.7	52,522.6
Total Nonresidential	89,779.9	72,979.7	82,910.7	54,810.5	74,491.3
New Dwelling Units	4 -	•		10	
Single Family	15	6	20	43	63
Multiple Family	<u>249</u>	<u>459</u>	<u>69</u>	<u>402</u>	<u>129</u>
TOTAL	264	465	89	445	192

Source: Construction Industry Research Board, Building

APPENDIX B

SUMMARY OF PRINCIPAL LEGAL DOCUMENTS

APPENDIX C

COMPREHENSIVE ANNUAL FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2019

APPENDIX D

PROPOSED FORM OF OPINION OF BOND COUNSEL

APPENDIX E

FORM OF CONTINUING DISCLOSURE CERTIFICATE

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BERKELEY JOINT PUBLIC FINANCING AUTHORITY Lease Revenue Bonds, Series 2020 (2010 Animal Shelter Financing)

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City"), on behalf of the Berkeley Joint Powers Financing Authority (the "Authority") and itself, in connection with the issuance by the Authority of the bonds captioned above (the "Bonds"). The Bonds are being issued under an Indenture of Trust dated as of May 1, 2020 (the "Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). The City hereby covenants and agrees as follows:

Section 1. <u>Purpose of the Disclosure Certificate</u>. This Disclosure Certificate is being executed and delivered by the City on behalf of itself and the Authority for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. <u>Definitions</u>. In addition to the definitions set forth above and in the Indenture, 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:

"Annual Report" means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4 of this Disclosure Certificate.

"*Annual Report Date*" means nine months after the end of the City's fiscal year (currently April 1, based on the City's fiscal year-end of June 30).

"*Dissemination Agent*" means the City, 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" means any of the events listed in Section 5(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, or any other repository of disclosure information that may be designated by the Securities and Exchange Commission as such for purposes of the Rule in the future.

"Official Statement" means the final official statement dated ______, 2020, executed by the City and the Authority in connection with the issuance of the Bonds.

"Participating Underwriter" means ______, the original purchaser of the Bonds required to comply with the Rule in connection with offering of the Bonds.

"Rule" means 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. Provision of Annual Reports.

The City shall, or shall cause the Dissemination Agent to, not later than the Annual (a) Report Date, commencing April 1, 2021 (the "Initial Reporting Date"), with the report for the 2019-20 Fiscal Year, provide to the MSRB, in an electronic format as prescribed by the MSRB, an Annual Report that is consistent with the requirements of Section 4 of this Disclosure Certificate. Not later than 15 Business Days prior to the Annual Report Date, the City shall provide the Annual Report to the Dissemination Agent (if other than the City). If by 15 Business Days prior to the Annual Report Date the Dissemination Agent (if other than the City) has not received a copy of the Annual Report, the Dissemination Agent shall contact the City to determine if the City is in compliance with the previous sentence. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may include by reference other information as provided in Section 4 of this Disclosure Certificate; provided that the audited financial statements of the City may be submitted separately from the balance of the Annual Report, and later than the Annual Report Date, if not available by that date. If the City's Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(c). The City shall provide a written general fund with each Annual Report furnished to the Dissemination Agent to the effect that such Annual Report constitutes the Annual Report required to be furnished by the City hereunder.

(b) If the City does not provide (or cause the Dissemination Agent to provide) an Annual Report by the Annual Report Date, the City shall provide (or cause the Dissemination Agent to provide) to the MSRB, in an electronic format as prescribed by the MSRB, a notice in substantially the form attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

(i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and

(ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

Section 4. <u>Content of Annual Reports</u>. The City's Annual Report shall contain or incorporate by reference the following:

(a) *Financial Statements*. Audited financial statements of the City for the preceding fiscal year, prepared in accordance generally accepted accounting principles. If the City's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Other Annual Information. To the extent not included in the audited final statements of the City, the Annual Report shall also include financial and operating data with respect to the City for preceding fiscal year, substantially similar to that provided in the corresponding tables and charts in the Official Statement, as follows:

- summary of investments held in the City's investment portfolio for the most recently-completed fiscal year, including market value, book value and a description of any investments that do not comply with the City's investment policies;
- (ii) general fund budget for the fiscal year during which the annual report is filed;
- (iii) general fund balance sheet for the most recently-completed fiscal year;
- (iv) general fund summary of revenues and expenditures for the most recentlycompleted fiscal year;
- (v) general fund tax revenues by source for the most recently-completed fiscal year;
- (vi) assessed valuation of property in the City for the most recently-completed fiscal year and, to the extent the City is no longer on the Teeter Plan (or its equivalent) and such information is available from the County, information about property tax levies and collections for the most recently completed fiscal year;
- (vii) taxable transactions in the City for the most recently-completed fiscal year; and
- (viii) description of the City's outstanding general fund debt and lease obligations as of the end of the most recently-completed fiscal year, including long-term general fund obligations.

(c) *Cross References.* Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public through the MSRB. The City shall clearly identify each such other document so included by reference. If the document included by reference is a final official statement, it must be available from the MSRB.

Section 5. <u>Reporting of Significant Events</u>.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Bonds:

- (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 Bonds under the Indenture.

(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 5 contain the qualifier "if material" and that subparagraph (a)(6) also contains the qualifier "material" with respect to certain notices, determinations or other events affecting the tax status of the Bonds. 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 it determines the event's occurrence is material for purposes of U.S. federal securities law. Whenever the City obtains knowledge of the occurrence of any of these Listed Events, the City will as soon as possible determine if such event would be material under applicable federal securities law. If such event is determined to be material, the City will cause a notice to be filed as set forth in paragraph (b) above.

(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 6. <u>Identifying Information for Filings with the MSRB</u>. All documents provided to the MSRB under the Disclosure Certificate shall be accompanied by identifying information as prescribed by the MSRB.

Section 7. <u>Termination of Reporting Obligation</u>. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. <u>Dissemination Agent</u>. 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 will be the NHA Advisors, LLC. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

Section 9. <u>Amendment; Waiver</u>. 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 Sections 3(a), 4 or 5(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 Bonds, 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 Bonds, 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 Bonds in the manner provided in the Indenture for amendments to the Indenture with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative.

A notice of any amendment made pursuant to this Section 9 shall be filed in the same manner as for a Listed Event under Section 5(b).

Section 10. <u>Additional Information</u>. 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 Annual Report or 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 Annual Report or notice 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 Annual Report or notice of occurrence of a Listed Event.

Section 11. <u>Default</u>. In the event of a failure of the City to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds 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 Indenture, 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 12. Duties, Immunities and Liabilities of Dissemination Agent.

(a) 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 Dissemination Agent shall have no duty or obligation to review any information provided to it hereunder and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond owners or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

Section 13. <u>Beneficiaries</u>. This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 14. <u>Counterparts</u>. This Disclosure Certificate may be executed in several counterparts, each of which shall be regarded as an original, and all of which shall constitute one and the same instrument.

Date: _____, 2020

CITY OF BERKELEY

Ву:_____

Finance Director

EXHIBIT A

NOTICE OF FAILURE TO FILE ANNUAL REPORT

Name of Issuer:	Berkeley Joint Powers Financing Authority (the "Authority")
Name of Bond Issue:	Berkeley Joint Powers Financing Authority Lease Revenue Bonds, Series 2020 (2010 Animal Shelter Financing)

Date of Issuance: _____, 2020

NOTICE IS HEREBY GIVEN that the City of Berkeley, on behalf of itself and the Authority, has not provided an Annual Report with respect to the above-named Bonds as required by the Indenture of Trust dated as of May 1, 2020, between the Authority and The Bank of New York Mellon Trust Company, N.A. The City anticipates that the Annual Report will be filed by

Dated:_____

CITY OF BERKELEY

By: ______ Its: _____

APPENDIX F

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 Bonds, payment of principal, interest and other payments on the Bonds to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Bonds 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 City (the "Issuer") nor the Trustee (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 Bonds, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Bonds, 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 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 and www.dtc.org. *The information contained on this Internet site is not incorporated herein by reference.*

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 any 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 dividend 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 DTC, and Indirect Participants.

9. A Beneficial Owner shall give notice to elect to have its Securities purchased or tendered, through its Participant, to the Agent, and shall effect delivery of such Securities by causing the Direct Participant to transfer the Participant's interest in the Securities, on DTC's records, to the Agent. The requirement for physical delivery of Securities in connection with an optional tender or a mandatory purchase will be deemed satisfied when the ownership rights in the Securities are transferred by Direct Participants on DTC's records and followed by a bookentry credit of tendered Securities to the Agent's DTC account.

10. DTC may discontinue providing its services as 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.

11. 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.

12. 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.

Jones Hall draft 1-10-20

INDENTURE OF TRUST

Dated as of May 1, 2020

between

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

and the

BERKELEY JOINT POWERS FINANCING AUTHORITY

Authorizing the Issuance of

\$_

Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing)

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APPENDIX A DEFINITIONS APPENDIX B FORM OF BOND

INDENTURE OF TRUST

This INDENTURE OF TRUST (this "**Indenture**"), dated for convenience as of May 1, 2020, is between the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "**Authority**"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, with a corporate trust office in San Francisco, California, being qualified to accept and administer the trusts hereby created (the "**Trustee**").

BACKGROUND:

1. The City of Berkeley (the "**City**") previously caused execution and delivery of its 2010 Certificates of Participation (Animal Shelter Financing) in the aggregate initial principal amount of \$5,750,000 (the "**2010 Certificates**"), pursuant to a Trust Agreement, dated as of June 1, 2010 (the "**2010 Trust Agreement**"), by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**2010 Trustee**"), for the purpose of (i) financing construction of a new animal shelter, (ii) funding a reserve fund for the 2010 Certificates and (iii) paying the costs of executing and delivering the 2010 Certificates.

2. The 2010 Certificates maturing on or after August 1, 2021 are subject to prepayment on August 1, 2020, or on any date thereafter, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, without premium. The City wishes to refinance the outstanding 2010 Certificates.

3. To that end, the City has proposed to lease to the Authority certain real property and improvements, initially consisting of the animal shelter, including land an improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property"), under a Site Lease, dated as of the date hereof, by and between the City and the Authority (the "Site Lease") in consideration of the payment by the Authority of an upfront rental payment (the "Site Lease Payment") which is sufficient to provide funds for the prepayment of the 2010 Certificates.

4. The Authority wishes to issue its Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) in the aggregate principal amount of \$_____ (the "**Bonds**") under this Indenture for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has leased the Leased Property back to the City under a Lease Agreement dated the date hereof (the "Lease"), under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement, dated the date hereof, between the Authority as assignor and the Trustee as assignee.

7. In order to provide for the authentication and delivery of the Bonds, to establish and declare the terms and conditions upon which the Bonds are to be issued and to secure the payment of the principal thereof, premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

8. The Authority has found and determined, and hereby affirms, that all acts and proceedings required by law necessary to make the Bonds, when executed by the Authority, authenticated and delivered by the Trustee and duly issued, the valid, binding and legal special obligations of the Authority, and to constitute this Indenture a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Indenture have been in all respects duly authorized.

AGREEMENT:

In order to secure the payment of the principal of and the interest and redemption premium (if any) on all the Outstanding Bonds under this Indenture according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the mutual covenants herein contained and of the purchase and acceptance of the Bonds by the Owners thereof, and for other valuable considerations, the receipt of which is hereby acknowledged, the Authority and the Trustee do hereby covenant and agree with one another, for the benefit of the respective Owners from time to time of the Bonds, as follows:

ARTICLE I

DEFINITIONS; RULES OF CONSTRUCTION

SECTION 1.01. *Definitions*. Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms defined in Appendix A attached to this Indenture have the respective meanings specified in that Appendix when used in this Indenture.

SECTION 1.02. *Authorization*. Each of the parties hereby represents and warrants that it has full legal authority and is duly empowered to enter into this Indenture, and has taken all actions necessary to authorize the execution hereof by the officers and persons signing it.

SECTION 1.03. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender

is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Indenture; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

THE BONDS

SECTION 2.01. Authorization of Bonds. The Authority has reviewed all proceedings heretofore taken and has found, as a result of such review, and hereby finds and determines that all things, conditions and acts required by law to exist, happen or be performed precedent to and in connection with the issuance of the Bonds do exist, have happened and have been performed in due time, form and manner as required by law, and the Authority is now duly empowered, under each and every requirement of law, to issue the Bonds in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of Bonds in the aggregate principal amount of \$______ under the Bond Law for the purposes of providing funds to pay the Site Lease Payment to the City and thereby provide funds to prepay the 2010 Certificates. The Bonds are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law. The Bonds are designated the "Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing)."

SECTION 2.02. Terms of the Bonds.

(a) <u>Payment Provisions</u>. The Bonds shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Bond has more than one maturity date. The Bonds shall mature on October 1 in each of the years and in the amounts, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rates, as follows:

Maturity DatePrincipalInterest(October 1)AmountRate

Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Bond is authenticated on or before an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- (b) a Bond is authenticated on or before the first Record Date, in which event interest thereon will be payable from the Closing Date, or
- (c) interest on any Bond is in default as of the date of authentication thereof, in which event interest thereon will be payable from the date to which interest has been paid in full, payable on each Interest Payment Date.

Interest is payable on each Interest Payment Date to the persons in whose names the ownership of the Bonds is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Bond which is not punctually paid or duly provided for on any Interest Payment Date is payable to the person in whose name the ownership of such Bond is registered on the Registration Books at the close of business on a special record date for the payment of such defaulted interest to be fixed by the Trustee, notice of which is given to such Owner by first-class mail not less than 10 days prior to such special record date.

The Trustee will pay interest on the Bonds by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Bonds at their respective addresses shown on the Registration Books as of the close of business on the preceding Record Date. At the written request of the Owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Trustee as of any Record Date, the Trustee will pay interest on such Bonds on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as specified in such written request, which written request will remain in effect until rescinded in writing by the Owner. The Trustee will pay principal of the Bonds in lawful money of the United States of America by check of the Trustee or by wire upon presentation and surrender thereof at the Office of the Trustee.

SECTION 2.03. Transfer and Exchange of Bonds.

(a) <u>Transfer</u>. Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by a duly authorized attorney of such person, upon surrender of such Bond to the Trustee at its Office for cancellation, accompanied by delivery of a written instrument of transfer in a form acceptable to the Trustee, duly executed. The Trustee shall require the Owner requesting such transfer to pay any tax or other governmental charge required to be paid with respect to such transfer. Whenever any Bond or Bonds shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Bond or Bonds of like series, interest rate, maturity and aggregate principal amount. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any transfer of Bonds.

(b) <u>Exchange</u>. The Bonds may be exchanged at the Office of the Trustee for a like aggregate principal amount of Bonds of other authorized denominations and of the same series, interest rate and maturity. The Trustee shall require the Owner requesting such exchange to pay any tax or other governmental charge required to be paid with respect to such exchange. The Authority shall pay the cost of printing Bonds and any services rendered or expenses incurred by the Trustee in connection with any exchange of Bonds.

(c) <u>Limitations</u>. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.03, any Bonds selected by the Trustee for redemption under Article IV, or any Bonds during the period established by the Trustee for the selection of Bonds for redemption.

SECTION 2.04. Book-Entry System.

(a) <u>Original Delivery</u>. The Bonds will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Bonds. Upon initial delivery, the Trustee shall register the ownership of each Bond on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Bonds shall be registered in the name of the Nominee on the Registration Books.

With respect to Bonds the ownership of which shall be registered in the name of the Nominee, the Authority and the Trustee has no responsibility or obligation to any Depository System Participant or to any person on behalf of which the Nominee holds an interest in the Bonds. Without limiting the generality of the immediately preceding sentence, the Authority and the Trustee has no responsibility or obligation with respect to (i) the accuracy of the records of the Depository, the Nominee or any Depository System Participant or any ownership interest in the Bonds, (ii) the delivery to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any notice with respect to the Bonds, including any notice of redeemed if the Authority elects to redeem the Bonds in part, (iv) the payment to any Depository System Participant or any other person, other than a Bond Owner as shown in the Registration Books, of any amount with respect to principal, premium, if any, or interest on the Bonds or (v) any consent given or other action taken by the Depository as Owner of the Bonds. The Authority and the Trustee may treat and consider the person in whose

name each Bond is registered as the absolute owner of such Bond for the purpose of payment of principal of and premium, if any, and interest on such Bond, for the purpose of giving notices of redemption and other matters with respect to such Bond, for the purpose of registering transfers of ownership of such Bond, and for all other purposes whatsoever. The Trustee shall pay the principal of and the interest and premium, if any, on the Bonds only to the respective Owners or their respective attorneys duly authorized in writing, and all such payments shall be valid and effective to fully satisfy and discharge all obligations with respect to payment of principal of and interest and premium, if any, on the Bonds to the extent of the sum or sums so paid. No person other than a Bond Owner shall receive a Bond evidencing the obligation of the Authority to make payments of principal, interest and premium, if any, under this Indenture. Upon delivery by the Depository to the Authority of written notice to the effect that the Depository has determined to substitute a new Nominee in its place, and subject to the provisions herein with respect to Record Dates, such new nominee shall become the Nominee hereunder for all purposes: and upon receipt of such a notice the Authority shall promptly deliver a copy of the same to the Trustee.

(b) <u>Representation Letter</u>. In order to qualify the Bonds for the Depository's book-entry system, the Authority shall execute and deliver to such Depository a letter in which the Authority will agree to the Depository's operational arrangements. To the extent required to do so by the Depository, the Trustee shall also execute such representation letter and agree to the Depository's operational arrangements. The execution and delivery of such letter shall not in any way limit the provisions of subsection (a) above or in any other way impose upon the Authority or the Trustee any obligation whatsoever with respect to persons having interests in the Bonds other than the Bond Owners. In addition to the execution and delivery of such letter, the Authority may take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

(c) Transfers Outside Book-Entry System. If either (i) the Depository determines not to continue to act as Depository for the Bonds, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the bookentry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Bonds by providing the Trustee with a list showing the interests of the Depository System Participants in the Bonds, and by surrendering the Bonds, registered in the name of the Nominee, to the Trustee on or before the date such replacement Bonds are to be issued. The Depository, by accepting delivery of the Bonds, agrees to be bound by the provisions of this subsection (c). If, prior to the termination of the Depository acting as such, the Authority fails to identify another Securities Depository to replace the Depository, then the Bonds shall no longer be required to be registered in the Registration Books in the name of the Nominee, and, upon transfer or exchange, shall be registered in whatever name or names the Owners transferring or exchanging Bonds shall designate, in accordance with the provisions hereof.

If the Authority determines that it is in the best interests of the beneficial owners of the Bonds that they be able to obtain certificated Bonds, the Authority may notify the Depository System Participants of the availability of such certificated Bonds through the Depository. In such event, the Trustee will issue, transfer and exchange Bonds as required by the Depository and others in appropriate amounts; and whenever the Depository requests, the Trustee and the Authority shall cooperate with the Depository in taking appropriate action (y) to make available one or more separate certificates evidencing the Bonds to any Depository System Participant having Bonds credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Bonds, all at the Authority's expense.

(d) <u>Payments to the Nominee</u>. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of and interest and premium, if any, on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the letter described in subsection (b) of this Section or as otherwise instructed by the Depository.

SECTION 2.05. *Registration Books*. The Trustee will keep or cause to be kept, at the Office of the Trustee, sufficient records for the registration and transfer of ownership of the Bonds, which shall upon reasonable notice as agreed to by the Trustee, be open to inspection during regular business hours by the Authority; and, upon presentation for such purpose, the Trustee shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on such records, the ownership of the Bonds as hereinbefore provided.

SECTION 2.06. Form and Execution of Bonds. The Bonds, the form of Trustee's certificate of authentication, and the form of assignment to appear thereon, are set forth in Appendix B attached hereto and by this reference incorporated herein, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Indenture.

The Chair of the Authority shall execute, and the Secretary of the Authority shall attest each Bond. Either or both of such signatures may be made manually or may be affixed by facsimile thereof. If any officer whose signature appears on any Bond ceases to be such officer before the Closing Date, such signature will nevertheless be as effective as if the officer had remained in office until the Closing Date. Any Bond may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Bond are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Bond any such person was not an officer of the Authority.

Only those Bonds bearing a certificate of authentication in the form set forth in Appendix B, manually executed and dated by the Trustee, are valid or obligatory for any purpose or entitled to the benefits of this Indenture, and such certificate of the Trustee is conclusive evidence that such Bonds have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.07. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond is mutilated, the Authority, at the expense of the Owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. The Trustee shall cancel every mutilated Bond surrendered to it and deliver such mutilated Bond to, or upon the order of, the Authority. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence is satisfactory and if indemnity satisfactory to the Trustee and the Authority is given, the Authority, at the expense of the Owner, shall execute, and

the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in lieu of and in substitution for the Bond so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Bond issued under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Bond 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 Indenture with all other Bonds issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Bond for which principal has become due for a Bond which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Bond in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

ARTICLE III

ISSUANCE OF BONDS; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of the Bonds*. At any time after the execution of this Indenture, the Authority may execute and the Trustee shall authenticate and, upon the Written Request of the Authority, deliver the Bonds to the Original Purchaser.

SECTION 3.02. Application of Proceeds of Sale of Bonds; Transfer of Prior Funds. On the Closing Date, the Original Purchaser will pay a purchase price for the Bonds in the amount of \$_____, which is equal to the original principal amount of the Bonds (\$_____), plus a net original issue premium/less an original issue discount of \$_____, less an underwriter's discount of \$_____. The Trustee shall apply such purchase price on the Closing Date in the following manner:

(a) the Trustee will deposit \$_____ into the Refunding Fund, and

(b) the Trustee will deposit the remaining amount, equal to \$_____, into the Costs of Issuance Fund.

The Trustee may establish a temporary fund or account in its records to facilitate such deposits or transfers. The deposits described in paragraphs (a) and (b) represent the full amount of the Site Lease Payments under Section 3 of the Site Lease.

SECTION 3.03. Establishment and Application of Costs of Issuance Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Costs of Issuance Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(b). The Trustee shall disburse amounts in the Costs of Issuance Fund from time to time to pay the Costs of Issuance upon submission of a Written Requisition of the Authority stating the person to whom payment is to be made, the amount to be paid, the purpose for which the obligation was incurred and that such payment is a proper charge against said fund. Each such Written Requisition of the Authority stating the accuracy of such facts. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon. On September 1, 2020, or upon the earlier Written Request of the Authority, the Trustee shall transfer all amounts remaining in the Costs of Issuance Fund to the Interest Account and shall thereupon close the Costs of Issuance Fund.

SECTION 3.04. Establishment and Application of Refunding Fund. The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Refunding Fund" into which the Trustee shall deposit a portion of the proceeds of sale of the Bonds under Section 3.02(a). The Trustee shall immediately disburse amounts in the Refunding Fund to the 2010 Trustee for deposit in the Escrow Fund established under the Escrow Agreement. Following such transfer, the Trustee shall close the Refunding Fund.

SECTION 3.05. Validity of Bonds. The recital contained in the Bonds that the same are issued under the Constitution and laws of the State of California shall be conclusive evidence of their validity and of compliance with the provisions of law in their issuance.

ARTICLE IV

REDEMPTION OF BONDS

SECTION 4.01. Terms of Redemption.

(a) <u>Optional Redemption</u>. The Bonds maturing on or before October 1, 2029, are not subject to optional redemption prior to their stated maturity. The Bonds maturing on or after October 1, 2030, are subject to redemption, as a whole or in part at the election of the Authority among maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on October 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

The Authority must give the Trustee at least 10 days' written notice of its intention to redeem Bonds under this subsection (a), and the manner of selecting such Bonds for redemption from among the maturities thereof, in sufficient time for the Trustee to give notice of such redemption in accordance with Section 4.03.

(b) <u>Special Mandatory Redemption From Insurance or Condemnation Proceeds</u>. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in Section 5.07, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

SECTION 4.02. Selection of Bonds for Redemption. Whenever provision is made in this Indenture for the redemption of less than all of the Bonds of a single maturity, the Trustee shall select the Bonds of that maturity to be redeemed by lot in any manner which the Trustee in its sole discretion deems appropriate. For purposes of such selection, the Trustee shall treat each Bond as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Bond.

SECTION 4.03. Notice of Redemption; Rescission. The Trustee shall mail notice of redemption of the Bonds by first class mail, postage prepaid, not less than 20 nor more than 60 days before any redemption date, to the respective Owners of any Bonds designated for redemption at their addresses appearing on the Registration Books and to one or more Securities Depositories and to the Municipal Securities Rulemaking Board. Each notice of redemption shall state the date of the notice, the redemption date, the place or places of redemption, whether less than all of the Bonds (or all Bonds of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Bonds within a maturity are called for redemption) Bond numbers of the Bonds to be redeemed and the maturity or maturities of the Bonds to be redeemed, and in the case of Bonds to be redeemed in part only, the respective portions of the principal amount thereof to be redeemed. Each such notice shall also state that on the redemption date there will become due and payable on each of said Bonds the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Bonds be then surrendered to the Trustee. Neither the failure to receive any notice nor any defect therein shall affect the sufficiency of the proceedings for such redemption or the cessation of accrual of interest from and after the redemption date. Notice of redemption of Bonds shall be given by the Trustee, at the expense of the Authority, for and on behalf of the Authority.

Redemption notices may be conditional. The Authority has the right to rescind any notice of the redemption of Bonds under Section 4.01(a) by written notice to the Trustee on or prior to the dated fixed for redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption for the payment in full of the Bonds then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Bond Owners or any other party related to or arising from such rescission of redemption. The Trustee shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this Section.

SECTION 4.04. *Partial Redemption of Bonds*. Upon surrender of any Bonds redeemed in part only, the Authority shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the Authority, a new Bond or Bonds of authorized denominations equal in aggregate principal amount to the unredeemed portion of the Bonds surrendered.

SECTION 4.05. *Effect of Redemption*. Notice of redemption having been duly given as aforesaid, and moneys for payment of the redemption price of, together with interest accrued to the date fixed for redemption on, including any applicable premium, the Bonds (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Bonds (or portions thereof) so called for redemption shall become due and payable, interest on the Bonds so called for redemption shall cease to accrue, said Bonds (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Bonds shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Bonds redeemed under the provisions of this Article shall be canceled by the Trustee upon surrender thereof and destroyed in accordance with the retention policy of the Trustee then in effect.

ARTICLE V

REVENUES; FUNDS AND ACCOUNTS; PAYMENT OF PRINCIPAL AND INTEREST

SECTION 5.01. Security for the Bonds; Bond Fund.

(a) <u>Pledge of Revenues and Other Amounts</u>. Subject only to the provisions of this Indenture permitting the application thereof for the purposes and on the terms and conditions set forth herein, all of the Revenues and all amounts (including proceeds of the sale of the Bonds) held in any fund or account established under this Indenture are hereby pledged to secure the payment of the principal of and interest and premium (if any) on the Bonds in accordance with their terms and the provisions of this Indenture. Said pledge constitutes a lien on and security interest in the Revenues and such amounts and shall attach, be perfected and be valid and binding from and after the Closing Date, without the need for any physical delivery thereof or further act.

(b) <u>Assignment to Trustee</u>. Under the Assignment Agreement, the Authority has transferred to the Trustee all of the rights of the Authority in the Lease (other than the rights of the Authority under Sections 4.5, 5.10, 7.3 and 8.4 thereof and its rights to give approvals and consents thereunder). The Trustee is entitled to collect and receive all of the Revenues, and any Revenues collected or received by the Authority shall be deemed to be held, and to have been collected or received, by the Authority as the agent of the Trustee and shall forthwith be paid by the Authority to the Trustee. The Trustee is also entitled to and may, subject to the provisions of Article VIII, take all steps, actions and proceedings which the Trustee determines to be reasonably necessary in its judgment to enforce, either jointly with the Authority or separately, all of the rights of the Authority and all of the obligations of the City under the Lease.

(c) <u>Deposit of Revenues in Bond Fund</u>. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Bond Fund" which the Trustee shall establish, maintain and hold in trust; except that all moneys received by the Trustee and required hereunder or under the Lease to be deposited in the Redemption Fund or the Insurance and Condemnation Fund shall be promptly deposited in such funds. All Revenues deposited with the Trustee shall be held, disbursed, allocated and applied by the Trustee only as provided in this Indenture. Any surplus remaining in the Bond Fund, after payment in full of (i) the principal of and interest on the Bonds or provision therefore under Article X, and (ii) any applicable fees and expenses to the Trustee, shall be withdrawn by the Trustee and remitted to the City.

SECTION 5.02. *Allocation of Revenues*. On or before each Interest Payment Date, the Trustee shall transfer from the Bond Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Bond Fund), the following amounts in the following order of priority:

(a) <u>Deposit to Interest Account</u>. The Trustee shall deposit in the Interest Account an amount required to cause the aggregate amount on deposit in the Interest Account to be at least equal to the amount of interest becoming due and payable on such Interest Payment Date on all Bonds then Outstanding. (b) <u>Deposit to Principal Account</u>. The Trustee shall deposit in the Principal Account an amount required to cause the aggregate amount on deposit in the Principal Account to equal the principal amount of the Bonds coming due and payable on such Interest Payment Date.

SECTION 5.03. Application of Interest Account. All amounts in the Interest Account shall be used and withdrawn by the Trustee solely for the purpose of paying interest on the Bonds as it comes due and payable (including accrued interest on any Bonds purchased or redeemed prior to maturity).

SECTION 5.04. *Application of Principal Account.* All amounts in the Principal Account shall be used and withdrawn by the Trustee solely to pay the principal amount of the Bonds at their respective maturity dates.

SECTION 5.05. Reserved.

SECTION 5.06. Application of Redemption Fund. The Trustee shall establish and maintain the Redemption Fund, into which the Trustee shall deposit a portion of the Revenues received, in accordance with a Written Request of the Authority, amounts in which shall be used and withdrawn by the Trustee solely for the purpose of paying the principal and premium (if any) of the Bonds to be redeemed under Section 4.01; *provided, however*, that at any time prior to the selection of Bonds for redemption, the Trustee may apply such amounts to the purchase of Bonds at public or private sale, when and at such prices (including brokerage and other charges, but excluding accrued interest, which is payable from the Interest Account) as shall be directed under a Written Request of the Authority, except that the purchase price (exclusive of accrued interest) may not exceed the redemption price then applicable to the Bonds. The Trustee shall be entitled to conclusively rely on any Written Request of the Authority received under this Section 5.06, and shall be fully protected in relying thereon.

SECTION 5.07. Insurance and Condemnation Fund.

(a) <u>Establishment of Fund</u>. Upon the receipt of proceeds of insurance or eminent domain with respect to the Leased Property, the Trustee shall establish and maintain an Insurance and Condemnation Fund, to be held and applied as hereinafter set forth in this Section 5.07.

(b) <u>Application of Insurance Proceeds</u>. Any Net Proceeds of insurance against accident to or destruction of the Leased Property collected by the City or the Authority in the event of any such accident or destruction shall be paid to the Trustee under Section 6.3 of the Lease and deposited by the Trustee promptly upon receipt thereof in the Insurance and Condemnation Fund. If the City fails to determine and notify the Trustee in writing of its determination, within 90 days following the date of such deposit, to replace, repair, restore, modify or improve the Leased Property which has been damaged or destroyed, then such Net Proceeds shall be promptly transferred by the Trustee to the Redemption Fund and applied to the redemption of Bonds under Section 4.01(b). Notwithstanding the foregoing sentence, however, if the Leased Property is damaged or destroyed in full, the Net Proceeds of such insurance shall be used by the City to rebuild or replace the Leased Property if such proceeds are not sufficient to redeem Outstanding Bonds equal in aggregate principal amount to the unpaid Lease Payments allocable to the Leased

Property. All proceeds deposited in the Insurance and Condemnation Fund and not so transferred to the Redemption Fund shall be applied to the prompt replacement, repair, restoration, modification or improvement of the damaged or destroyed portions of the Leased Property by the City, upon receipt of a Written Request of the City which: (i) states with respect to each payment to be made (A) the requisition number, (B) the name and address of the person to whom payment is due, (C) the amount to be paid and (D) that each obligation mentioned therein has been properly incurred, is a proper charge against the Insurance and Condemnation Fund and has not been the basis of any previous withdrawal; and (ii) specifies in reasonable detail the nature of the obligation. Any balance of the proceeds remaining after such work has been completed as certified by the City under a Written Certificate to the Trustee shall be paid to the City. The Trustee shall be entitled to conclusively rely on any Written Request or Written Certificate received under this subsection (b) of this Section 5.07 and in each case, shall be fully protected in relying thereon.

(c) <u>Application of Eminent Domain Proceeds</u>. If all or any part of the Leased Property is taken by eminent domain proceedings (or sold to a government threatening to exercise the power of eminent domain) the Authority shall deposit or cause to be deposited with the Trustee the Net Proceeds therefrom, which the Trustee shall deposit in the Insurance and Condemnation Fund under Section 6.2(b) of the Lease and which shall be applied and disbursed by the Trustee as follows:

- (i) If the City has not given written notice to the Trustee, within 90 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for the replacement of the Leased Property or such portion thereof, the Trustee shall transfer such Net Proceeds to the Redemption Fund to be applied towards the redemption of the Bonds under Section 4.01(b).
- (ii) If the City has given written notice to the Trustee, within 90 days following the date on which such Net Proceeds are deposited with the Trustee, of its determination that such Net Proceeds are needed for replacement of the Leased Property or such portion thereof, the Trustee shall pay to the City, or to its order, from said proceeds such amounts as the City may expend for such replacement, upon the filing of Written Requisitions of the City as agent for the Authority.

In each case, the Trustee may conclusively rely upon any notice received under this subsection (c)(ii) of this Section and is protected in relying thereon.

(d) <u>Reliance on Independent Advice</u>. In making any such determination whether to repair, replace or rehabilitate the Leased Property under this Section 5.07, the City may obtain, but is not required to obtain, at its expense, the report of an independent engineer or other independent professional consultant, a copy of which must be filed with the Trustee. The Trustee shall have no duty to review or examine such report. Any such determination by the City is final.

SECTION 5.08. *Investments*. All moneys in any of the funds or accounts established with the Trustee under this Indenture shall be invested by the Trustee solely

in Permitted Investments. Such investments shall be directed by the Authority in a Written Request of the Authority filed with the Trustee at least 2 Business Days in advance of the making of such investments. In the absence of any such directions from the Authority, the Trustee shall invest any such moneys in Permitted Investments which constitute money market funds; provided, however, that any such investment shall be made by the Trustee only if, prior to the date on which such investment is to be made, the Trustee shall have received a Written Request of the Authority specifying a specific money market fund and, if no such Written Request of the Authority is so received, the Trustee shall hold such moneys uninvested. Permitted Investments purchased as an investment of moneys in any fund shall be deemed to be part of such fund or account. To the extent Permitted Investments are registrable, such Permitted Investments must be registered in the name of the Trustee.

All interest or gain derived from the investment of amounts in any of the funds or accounts established hereunder shall be deposited in the Bond Fund. For purposes of acquiring any investments hereunder, the Trustee may commingle funds held by it hereunder. The Trustee or any of its affiliates may act as principal or agent in the acquisition or disposition of any investment and may impose its customary charges therefor. The Trustee shall incur no liability for losses arising from any investments made under this Section 5.08.

Subject to applicable law, the Trustee may make any investments hereunder through its own bond or investment department or trust investment department, or those of its parent or any affiliate. The Trustee or any of its affiliates may act as sponsor, advisor or manager to the investment provider in connection with any investments made by the Trustee hereunder. The Trustee is hereby authorized, in making or disposing of any investment permitted by this Section, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or such affiliate is acting as an agent of the Trustee or for any third person or is dealing as a principal for its own account. The Trustee may, from time to time, provide the City and the Authority with a list of investments that are available on the Trustee's investment platform, but the Trustee will not give investment advice to the City or the Authority, and the City or the Authority may direct the Trustee. The Trustee shall be entitled to rely conclusively on the Authority's investment direction as to the suitability and legality of the directed investments.

The Trustee shall furnish the Authority periodic cash transaction statements which include detail for all investment transactions effected by the Trustee or brokers selected by the Authority. Upon the Authority's election, such statements will be delivered via the Trustee's Online Trust and Custody service and upon electing such service, paper statements will be provided only upon request. The Authority waives the right to receive brokerage confirmations of security transactions effected by the Trustee as they occur, to the extent permitted by law. The Authority further understands that trade confirmations for securities transactions effected by the Trustee will be available upon request and at no additional cost and other trade confirmations may be obtained from the applicable broker.

SECTION 5.09. Valuation and Disposition of Investments.

(a) Except as otherwise provided in subsection (b) of this Section, the Authority covenants that all investments of amounts deposited in any fund or account created by or under this Indenture, or otherwise containing gross proceeds of the Bonds (within the

meaning of Section 148 of the Tax Code) shall be acquired, disposed of and valued at the Fair Market Value thereof as such term is defined in subsection (d) below. The Trustee shall have no duty in connection with the determination of Fair Market Value other than to follow the investment directions of the Authority in any Written Request of the Authority.

(b) The investments in certain funds or accounts (or portions thereof) may be subject to a yield restriction under applicable provisions of the Tax Code; the Authority shall inform the Trustee in writing which funds are subject to a yield restriction.

(c) For the purpose of determining the amount in any fund or account established hereunder, the value of Permitted Investments credited to such fund shall be valued by the Trustee at least annually on or before July 15. The Trustee may sell or present for redemption, any Permitted Investment so purchased by the Trustee whenever it is necessary in order to provide moneys to meet any required payment, transfer, withdrawal or disbursement from the fund to which such Permitted Investment is credited, and the Trustee shall not be liable or responsible for any loss resulting from any such Permitted Investment.

(d) For purposes of this Section 5.09, the term "Fair Market Value" means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Tax Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Tax Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Tax Code, or (iii) the investment is a United States Treasury Security -- State and Local Government Series which is acquired in accordance with applicable regulations of the United States Bureau of Public Debt.

(e) To the extent of any valuations made by the Trustee hereunder, the Trustee may utilize and rely upon computerized or generally recognized securities pricing services that may be available to it, including those available through its regular accounting system (including brokers and dealers).

ARTICLE VI

COVENANTS OF THE AUTHORITY

SECTION 6.01. *Punctual Payment*. The Authority shall punctually pay or cause to be paid the principal of and interest and premium (if any) on all the Bonds in strict conformity with the terms of the Bonds and of this Indenture, according to the true intent and meaning thereof, but only out of the Revenues and other amounts pledged for such payment as provided in this Indenture.

SECTION 6.02. *Extension of Payment of Bonds*. The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Bonds or the time of payment of any claims for interest by the purchase of such Bonds or by any other arrangement, and in case the maturity of any of the Bonds or the time of payment of any such claims for interest shall be extended, such Bonds or claims for interest shall not be entitled, in case of any default hereunder, to the benefits of this Indenture, except subject to the prior payment in full of the principal of all of the Bonds then Outstanding and of all claims for interest thereon which have not been so extended. Nothing in this Section 6.02 limits the right of the Authority to issue Bonds for the purpose of refunding any Outstanding Bonds, and such issuance does not constitute an extension of maturity of the Bonds.

SECTION 6.03. Against Encumbrances. The Authority shall not create, or permit the creation of, any pledge, lien, charge or other encumbrance upon the Revenues and other assets pledged or assigned under this Indenture while any of the Bonds are Outstanding, except the pledge and assignment created by this Indenture. Subject to this limitation, the Authority expressly reserves the right to enter into one or more other indentures for any of its corporate purposes, and reserves the right to issue other obligations for such purposes.

SECTION 6.04. Power to Issue Bonds and Make Pledge and Assignment. The Authority is duly authorized under law to issue the Bonds and to enter into this Indenture and to pledge and assign the Revenues and other amounts purported to be pledged and assigned, respectively, under this Indenture and under the Assignment Agreement in the manner and to the extent provided in this Indenture and the Assignment Agreement. The Bonds and the provisions of this Indenture are and will be the legal, valid and binding special obligations of the Authority in accordance with their terms, and the Authority and the Trustee shall at all times, subject to the provisions of Article VIII and to the extent permitted by law, defend, preserve and protect said pledge and assignment of Revenues and other assets and all the rights of the Bond Owners under this Indenture against all claims and demands of all persons whomsoever.

SECTION 6.05. Accounting Records. The Trustee shall at all times keep, or cause to be kept, proper books of record and account, prepared in accordance with corporate industry standards, in which complete and accurate entries shall be made of all transactions made by it relating to the proceeds of Bonds and all funds and accounts established under this Indenture. The Trustee shall make such books of record and account available for inspection by the Authority and the City, during business hours, upon reasonable notice, and under reasonable circumstances. SECTION 6.06. *Limitation on Additional Obligations*. The Authority covenants that no additional bonds, notes or other indebtedness shall be issued or incurred which are payable out of the Revenues in whole or in part.

SECTION 6.07. Tax Covenants.

(a) <u>Private Business Use Limitation</u>. The Authority shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) <u>Federal Guarantee Prohibition</u>. The Authority may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(c) <u>No Arbitrage</u>. The Authority may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(d) <u>Maintenance of Tax Exemption</u>. The Authority shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) <u>Rebate of Excess Investment Earnings to United States</u>. The Authority shall calculate or cause to be calculated all amounts of excess investment earnings with respect to the Bonds which are required to be rebated to the United States of America under Section 148(f) of the Tax Code, at the times and in the manner required under the Tax Code. The Authority shall pay when due an amount equal to excess investment earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code, such payments to be made from amounts paid by the City for that purpose under Section 4.5(d) of the Lease. The Authority shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e).

SECTION 6.08. *Enforcement of Lease*. The Trustee shall promptly collect all amounts (to the extent any such amounts are available for collection) due from the City under the Lease. Subject to the provisions of Article VIII, the Trustee may enforce, and take all steps, actions and proceedings which are determined to be reasonably necessary for the enforcement of all of its rights thereunder as assignee of the Authority and for the enforcement of all of the obligations of the City under the Lease.

SECTION 6.09. *Waiver of Laws*. The Authority shall not at any time insist upon or plead in any manner whatsoever, or claim or take the benefit or advantage of, any stay or extension law now or at any time hereafter in force that may affect the covenants and agreements contained in this Indenture or in the Bonds, and all benefit or advantage of any such law or laws is hereby expressly waived by the Authority to the extent permitted by law.

SECTION 6.10. *Further Assurances*. The Authority will make, execute and deliver any and all such further indentures, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Indenture and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Indenture.

ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

SECTION 7.01. *Events of Default*. The following events constitute Events of Default hereunder:

- (a) Failure to pay any installment of the principal of any Bonds when due, whether at maturity as therein expressed, by proceedings for redemption, by acceleration, or otherwise.
- (b) Failure to pay any installment of interest on the Bonds when due.
- (c) Failure by the Authority to observe and perform any of the other covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, if such failure has continued for a period of 30 days after written notice thereof, specifying such failure and requiring the same to be remedied, has been given to the Authority by the Trustee; provided, however, if in the reasonable opinion of the Authority the failure stated in the notice can be corrected, but not within such 30-day period, such failure shall not constitute an Event of Default if the Authority institutes corrective action within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time, which period shall end 180 days after the delivery of such default notice.
- (d) The commencement by the Authority of a voluntary case under Title 11 of the United States Code or any substitute or successor statute.
- (e) The occurrence and continuation of an event of default under and as defined in the Lease.

SECTION 7.02. Remedies Upon Event of Default. If any Event of Default occurs, then, and in each and every such case during the continuance of such Event of Default, the Trustee may, and at the written direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding shall, in each case, upon receipt of indemnification satisfactory to Trustee against the costs, expenses and liabilities to be incurred in connection with such action, upon notice in writing to the Authority, declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Bonds contained to the contrary notwithstanding.

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Any such declaration is subject to the condition that if, at any time after such declaration and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the Authority deposits with the Trustee a sum sufficient to pay all the principal of and installments of interest on the Bonds payment of which is overdue, with interest on such overdue principal at the rate borne by the respective Bonds to the extent permitted by law, and the reasonable fees, charges and expenses (including those of its legal counsel, including the allocated costs of internal attorneys) of the Trustee, and any and all other Events of Default actually known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) have been made good or cured to the satisfaction of the Trustee or provision deemed by the Trustee to be adequate has been made therefor, then, and in every such case, the Owners of a majority in aggregate principal amount of the Bonds then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Bonds, rescind and annul such declaration and its consequences and waive such Event of Default; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, or shall impair or exhaust any right or power consequent thereon.

Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Bonds or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Bondholder in any such proceeding without the approval of the Bondholders so affected.

SECTION 7.03. Application of Revenues and Other Funds After Default. If an Event of Default occurs and is continuing, all Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of this Indenture shall be applied by the Trustee in the following order of priority:

- (a) To the payment of reasonable fees, charges and expenses of the Trustee (including reasonable fees and disbursements of its legal counsel including outside counsel and the allocated costs of internal attorneys) incurred in and about the performance of its powers and duties under this Indenture;
- (b) To the payment of the principal of and interest then due on the Bonds (upon presentation of the Bonds to be paid, and stamping or otherwise noting thereon of the payment if only partially paid, or surrender thereof if fully paid) in accordance with the provisions of this Indenture, as follows:
 - *First*: To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon, to the persons entitled thereto, without any discrimination or preference;

Second: To the payment to the persons entitled thereto of the unpaid principal of any Bonds which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal at the rate borne by the respective Bonds (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Bonds, together with such interest, then to the payment thereof ratably, according to the amounts of principal due on such date to the persons entitled thereto, without any discrimination or preference; and

SECTION 7.04. *Trustee to Represent Bond Owners*. The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) as trustee and true and lawful attorney-in-fact of the Owners of the Bonds for the purpose of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Bonds may be prosecuted and enforced by the Trustee without the possession of any of the Bonds or the production thereof in any proceeding relating thereto, and any such suit, action or proceeding instituted by the Trustee shall be brought in the name of the Trustee for the benefit and protection of all the Owners of such Bonds, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Bond Owners' Right to Sue*. Notwithstanding any other provision hereof, no Owner of any Bonds has the right to institute any suit, action or proceeding at law or in equity, for the protection or enforcement of any right or remedy under this Indenture, the Lease or any other applicable law with respect to such Bonds, unless (a) such Owner has given to the Trustee written notice of the occurrence of an Event of Default; (b) the Owners of a majority in aggregate principal amount of the Bonds then Outstanding have requested the Trustee in writing to exercise the powers hereinbefore granted or to institute such suit, action or proceeding in its own name; (c) such Owner or Owners have tendered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request; (d) the Trustee has failed to comply with such request for a period of 60 days after such written request has been received by, and said tender of indemnity has been made to, the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Bonds to the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding.

Such notification, request, tender of indemnity and refusal or omission are hereby declared, in every case, to be conditions precedent to the exercise by any Owner of Bonds of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the security of this Indenture or the rights of any other Owners of Bonds, or to enforce any right under the Bonds, this Indenture, the Lease or other applicable law with respect to the Bonds, except in the manner herein provided, and that all proceedings at law or in equity to enforce any such right shall be instituted, had and maintained in the manner herein provided and for the benefit and protection of all Owners of the Outstanding Bonds, subject to the provisions of this Indenture.

SECTION 7.06. Absolute Obligation of Authority. Nothing herein or in the Bonds contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal of and interest and premium (if any) on the Bonds to the respective Owners of the Bonds at their respective dates of maturity, or upon acceleration or call for redemption, as herein provided, but only out of the Revenues and other assets herein pledged therefor, or affect or impair the right of such Owners, which is also absolute and unconditional, to enforce such payment by virtue of the contract embodied in the Bonds.

SECTION 7.07. *Termination of Proceedings*. In case any proceedings taken by the Trustee or by any one or more Bond Owners on account of any Event of Default have been discontinued or abandoned for any reason or have been determined adversely to the Trustee or the Bond Owners, then in every such case the Authority, the Trustee and the Bond Owners, subject to any determination in such proceedings, shall be restored to their former positions and rights hereunder, severally and respectively, and all rights, remedies, powers and duties of the Authority, the Trustee and the Bond Owners shall continue as though no such proceedings had been taken.

SECTION 7.08. *Remedies Not Exclusive*. No remedy herein conferred upon or reserved to the Trustee, to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

SECTION 7.09. *No Waiver of Default*. No delay or omission of the Trustee or any Owner of the Bonds to exercise any right or power arising upon the occurrence of any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or an acquiescence therein; and every power and remedy given by this Indenture to the Trustee or to the Owners of the Bonds may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Bond Owners.

SECTION 7.10. Notice to Bond Owners of Default. Immediately upon becoming aware of the occurrence of an Event of Default, but in no event later than five Business Days following becoming aware of such occurrence, the Trustee shall promptly give written notice thereof by first class mail, postage prepaid, to the Owner of each Outstanding Bond, unless such Event of Default has been cured before the giving of such notice; *provided, however* that except in the case of an Event of Default described in Sections 7.01(a) or 7.01(b), the Trustee may elect not to give such notice to the Bond Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Bond Owners not to give such notice.

ARTICLE VIII

THE TRUSTEE

SECTION 8.01. Appointment of Trustee. The Bank of New York Mellon Trust Company, N.A. is hereby appointed Trustee by the Authority for the purpose of receiving all moneys required to be deposited with the Trustee hereunder and to allocate, use and apply the same as provided in this Indenture. The Authority will maintain a Trustee which is qualified under the provisions of the foregoing provisions of this Article VIII, so long as any Bonds are Outstanding.

SECTION 8.02. Acceptance of Trusts; Removal and Resignation of Trustee. The Trustee hereby accepts the express trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions:

- (a) The Trustee shall, prior to an Event of Default, and after the curing or waiver of all Events of Default which may have occurred, perform such duties and only such duties as are expressly and specifically set forth in this Indenture and no implied duties or covenants shall be read into this Indenture against the Trustee. If an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by hereunder, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.
- (b) The Authority may remove the Trustee upon 30 days' prior notice, unless an Event of Default has occurred and is then continuing, and shall remove the Trustee (a) if at any time requested to do so by the Owners of a majority in aggregate principal amount of the Bonds then Outstanding (or their attorneys duly authorized in writing) or (b) if at any time the Trustee ceases to be eligible in accordance with Section 8.02, or becomes incapable of acting, or is adjudged a bankrupt or insolvent, or a receiver of the Trustee or its property is appointed, or any public officer takes control or charge of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation.
- (c) The Trustee may at any time resign by giving written notice of such resignation to the Authority and the City, and by giving the Bond Owners notice of such resignation by mail at the addresses shown on the Registration Books.
- (d) Any removal or resignation of the Trustee and appointment of a successor Trustee shall become effective upon acceptance of appointment by the successor Trustee. In the event of the removal or resignation of the Trustee under subsections (b) or (c), respectively, the Authority shall promptly appoint a successor Trustee.

If no successor Trustee has been appointed and accepted appointment within 45 days of giving notice of removal or notice of resignation as aforesaid, the retiring Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee, and such court may thereupon, after such notice (if any) as it may deem proper, appoint such successor Trustee. Any successor Trustee appointed under this Indenture, must signify its acceptance of such appointment by executing and delivering to the Authority, to its predecessor Trustee a written acceptance thereof, and after payment by the Authority of all unpaid fees and expenses of the predecessor Trustee, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become vested with all the moneys, estates, properties, rights, powers, trusts, duties and obligations of such predecessor Trustee, with like effect as if originally named Trustee herein; but, nevertheless at the Written Request of the Authority or the request of the successor Trustee, such predecessor Trustee shall execute and deliver any and all instruments of conveyance or further assurance and do such other things as may reasonably be required for more fully and certainly vesting in and confirming to such successor Trustee all the right, title and interest of such predecessor Trustee in and to the Leased Property held by such predecessor Trustee under this Indenture and shall pay over, transfer, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Upon request of the successor Trustee, the Authority shall execute and deliver any and all instruments as may be reasonably required for more fully and certainly vesting in and confirming to such successor Trustee all such moneys, estates, properties, rights, powers, trusts, duties and obligations. Upon acceptance of appointment by a successor Trustee as provided in this subsection, the Authority shall promptly mail or cause the successor trustee to mail a notice of the succession of such Trustee to the trusts hereunder to each rating agency which is then rating the Bonds and to the Bond Owners at the addresses shown on the Registration Books. If the Authority fails to mail such notice within 15 days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Authority.

(e) Any Trustee appointed under this Indenture shall be a corporation or association organized and doing business under the laws of any state or the United States of America or the District of Columbia, shall be authorized under such laws to exercise corporate trust powers, shall have (or, in the case of a corporation or association that is a member of a bank holding company system, the related bank holding company has) a combined capital and surplus of at least \$50,000,000, and shall be subject to supervision or examination by a federal or state agency, so long as any Bonds are Outstanding. If such corporation or association publishes a report of condition at least annually under law or to the requirements of any supervising or examining agency above referred to, then for the purpose of this subsection (e), the combined capital and surplus of such corporation or association shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If the Trustee at any time ceases to be eligible in accordance with the provisions of this subsection (e), the Trustee shall resign immediately in the manner and with the effect specified in this Section.

SECTION 8.03. *Merger or Consolidation*. Any bank, national banking association, federal savings association, or trust company into which the Trustee may be merged or converted or with which it may be consolidated or any bank, national banking association, federal savings association, or trust company resulting from any merger, conversion or consolidation to which it shall be a party or any bank, national banking association, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, national banking association, federal savings association, or trust company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such bank, national banking association, federal savings association, or trust company shall be eligible under subsection (e) of Section 8.02 shall be the successor to such Trustee, without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

SECTION 8.04. Liability of Trustee.

The recitals of facts herein and in the Bonds contained shall be taken as (a) statements of the Authority, and the Trustee shall not assume responsibility for the correctness of the same, or make any representations as to the validity or sufficiency of this Indenture, the Bonds or the Lease (including any right to receive moneys thereunder or the value of or title to the premises upon which the Leased Property is located), nor shall the Trustee incur any responsibility in respect thereof, other than as expressly stated herein in connection with the respective duties or obligations of Trustee herein or in the Bonds assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Bonds. The Trustee shall not be liable in connection with the performance of its duties hereunder, except for its own negligence or willful misconduct. The Trustee may become the Owner of Bonds with the same rights it would have if it were not Trustee, and, to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bond Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Bonds then Outstanding.

(b) The Trustee is not liable for any error of judgment made by a responsible officer, unless it is proved that the Trustee was negligent in ascertaining the pertinent facts.

(c) The Trustee is not liable with respect to any action taken or omitted to be taken by it in accordance with the direction of the Owners of a majority in aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Indenture or assigned to it under the Assignment Agreement.

(d) The Trustee is not liable for any action taken by it and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

The Trustee shall not be deemed to have knowledge of any Event of Default (e) hereunder, or any other event which, with the passage of time, the giving of notice, or both, would constitute an Event of Default hereunder unless and until it shall have actual knowledge thereof, or a corporate trust officer shall have received written notice thereof at its Office from the City, the Authority or the Owners of at least 25% in aggregate principal amount of the Outstanding Bonds. Except as otherwise expressly provided herein, the Trustee shall not be bound to ascertain or inquire as to the performance or observance by the Authority or the City of any of the terms, conditions, covenants or agreements herein, under the Lease or the Bonds or of any of the documents executed in connection with the Bonds, or as to the existence of a default or an Event of Default or an event which would, with the giving of notice, the passage of time, or both, constitute an Event of Default. The Trustee is not responsible for the validity, effectiveness or priority of any collateral given to or held by it. Without limiting the generality of the foregoing, the Trustee shall not be required to ascertain or inquire as to the performance or observance by the City or the Authority of the terms, conditions, covenants or agreements set forth in the Lease, other than the covenants of the City to make Lease Payments to the Trustee when due and to file with the Trustee when due, such reports and certifications as the City is required to file with the Trustee thereunder.

(f) No provision of this Indenture requires the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

(g) The Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or through agents, receivers or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver or attorney appointed with due care by it hereunder.

(h) The Trustee has no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of the Bond Owners under this Indenture, unless such Owners have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities (including but not limited to fees and expenses of its attorneys), including, without limitations, any liability arising under federal, state or local environmental laws which might be incurred by it in compliance with such request or direction. No permissive power, right or remedy conferred upon the Trustee hereunder shall be construed to impose a duty to exercise such power, right or remedy.

(i) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of Section 8.02(a), this Section 8.04 and Section 8.05, and shall be applicable to the assignment of any rights under the Lease to the Trustee under the Assignment Agreement.

(j) The Trustee is not accountable to anyone for the subsequent use or application of any moneys (including the proceeds of the Bonds) which are released or withdrawn in accordance with the provisions hereof.

(k) The Trustee makes no representation or warranty, expressed or implied as to the title, value, design, compliance with specifications or legal requirements, quality, durability, operation, condition, merchantability or fitness for any particular purpose for the

use contemplated by the Authority or the City of the Leased Property. In no event shall the Trustee be liable for incidental, indirect, special or consequential damages in connection with or arising from the Lease or this Indenture for the existence, furnishing or use of the Leased Property.

(I) The Trustee has no responsibility with respect to any information, statement, or recital in any official statement, offering memorandum or any other disclosure material prepared or distributed with respect to the Bonds.

(m) The Trustee is authorized and directed to execute the Assignment Agreement in its capacity as Trustee hereunder.

The Trustee shall have the right to accept and act upon instructions, including (n) funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means ("Electronic Means" shall mean the following communications e-mail, facsimile transmission, secure electronic transmission containing methods: applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder); provided, however, that the Authority and/or City shall provide to the Trustee an incumbency certificate listing officers with the authority to provide such Instructions ("Authorized Officers") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Authority and/or the City whenever a person is to be added or deleted from the listing. If the Authority and/or City elects to give the Trustee Instructions using Electronic Means and the Trustee in its discretion elects to act upon such Instructions, the Trustee's reasonable understanding of such Instructions shall be deemed controlling. The Authority and City understand and agree that the Trustee cannot determine the identity of the actual sender of such Instructions and that the Trustee shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Trustee have been sent by such Authorized Officer. The Authority and City shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Trustee and that the Authority, City and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Authority and/or City. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Authority and City agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Trustee and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Authority and City; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Trustee immediately upon learning of any compromise or unauthorized use of the security procedures.

(o) In acting or omitting to act pursuant to the Assignment Agreement, the Lease or the Site Lease, the Trustee shall be entitled to all of the rights, immunities and indemnities accorded to it under this Indenture, including, but not limited to, this Article VIII. Notwithstanding the effective date of this Indenture or anything to the contrary in this Indenture, the Trustee shall have no liability or responsibility for any act or event relating to this Indenture which occurs prior to the date the Trustee formally executes this Indenture and commences acting as Trustee hereunder.

(p) The Trustee shall not be liable to the parties hereto or deemed in breach or default hereunder if and to the extent its performance hereunder is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the Trustee and could not have been avoided by exercising due care. Force majeure shall include, but not be limited to, acts of God, terrorism, war, riots, strikes, fire, floods, earthquakes, epidemics or other similar occurrences.

SECTION 8.05. *Right to Rely on Documents.* The Trustee shall be protected and shall incur no liability in acting or refraining from acting in reliance upon any notice, resolution, request, consent, order, certificate, report, opinion, bonds or other paper or document believed by them to be genuine and to have been signed or presented by the proper party or parties. The Trustee is under no duty to make any investigation or inquiry as to any statements contained or matter referred to in any paper or document but may accept and conclusively rely upon the same as conclusive evidence of the truth and accuracy of any such statement or matter and shall be fully protected in relying thereon. The Trustee may consult with counsel, who may be counsel of or to the Authority, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

The Trustee may treat the Owners of the Bonds appearing in the Registration Books as the absolute owners of the Bonds for all purposes and the Trustee shall not be affected by any notice to the contrary.

Whenever in the administration of the trusts imposed upon it by this Indenture the Trustee deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a Written Certificate, Written Request or Written Requisition of the Authority or the City, and such Written Certificate, Written Request or Written Requisition shall be full warrant to the Trustee for any action taken or suffered under the provisions of this Indenture in reliance upon such Written Certificate, Written Request or Written Requisition, and the Trustee shall be fully protected in relying thereon, but in its discretion the Trustee may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may deem reasonable.

SECTION 8.06. Preservation and Inspection of Documents. All documents received by the Trustee under the provisions of this Indenture shall be retained in its respective possession and in accordance with its retention policy then in effect and shall, upon reasonable notice to Trustee, be subject to the inspection of the Authority, the City and any Bond Owner, and their agents and representatives duly authorized in writing, during business hours and under reasonable conditions as agreed to by the Trustee.

SECTION 8.07. *Compensation and Indemnification*. The Authority shall pay to the Trustee from time to time, on demand, the compensation for all services rendered under this Indenture and also all reasonable expenses, advances (including any interest on

advances), charges, legal (including outside counsel and the allocated costs of internal attorneys) and consulting fees and other disbursements, incurred in and about the performance of its powers and duties under this Indenture.

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, loss, liability, suit, claim, damages, judgment or expense whatsoever (including but not limited to fees and expenses of its attorneys) incurred without negligence or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this trust and this Indenture, the Assignment Agreement, the Site Lease and the Lease, including costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers hereunder or under the Assignment Agreement or the Lease. As security for the performance of the obligations of the Authority under this Section 8.07 and the obligation of the Authority to make Additional Rental Payments to the Trustee, the Trustee shall have a lien prior to the lien of the Bonds upon all property and funds held or collected by the Trustee as such. The rights of the Trustee and the obligations of the Authority under this Section 8.07 shall survive the resignation or removal of the Trustee or the discharge of the Bonds and this Indenture and the Lease. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

ARTICLE IX

MODIFICATION OR AMENDMENT HEREOF

SECTION 9.01. Amendments Permitted.

Amendments With Bond Owner Consent. This Indenture and the rights and (a) obligations of the Authority and of the Owners of the Bonds and of the Trustee may be modified or amended from time to time and at any time by Supplemental Indenture, which the Authority and the Trustee may enter into when the written consents of the Owners of a majority in aggregate principal amount of all Bonds then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the Owner of each Bond so affected, or (ii) reduce the aforesaid percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Revenues and other assets pledged under this Indenture prior to or on a parity with the lien created by this Indenture except as permitted herein, or deprive the Owners of the Bonds of the lien created by this Indenture on such Revenues and other assets (except as expressly provided in this Indenture), without the consent of the Owners of all of the Bonds then Outstanding. It is not necessary for the consent of the Bond Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) <u>Amendments Without Owner Consent</u>. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Bonds may also be modified or amended from time to time and at any time by a Supplemental Indenture, which the Authority and the Trustee may enter into without the consent of any Bond Owners, if the Trustee has been furnished an opinion of counsel that the provisions of such Supplemental Indenture shall not materially adversely affect the interests of the Owners of the Bonds, including, without limitation, for any one or more of the following purposes:

- to add to the covenants and agreements of the Authority in this Indenture contained, other covenants and agreements thereafter to be observed, to pledge or assign additional security for the Bonds (or any portion thereof), or to surrender any right or power herein reserved to or conferred upon the Authority;
- (ii) to cure any ambiguity, inconsistency or omission, or to cure or correct any defective provision, contained in this Indenture, or in regard to matters or questions arising under this Indenture, as the Authority deems necessary or desirable, provided that such modification or amendment does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the Trustee;
- (iii) to modify, amend or supplement this Indenture in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statute;
- (iv) to modify, amend or supplement this Indenture in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code; or
- (v) to facilitate the issuance of additional obligations of the City under the Lease Agreement as provided in Section 7.5(b)(5) thereof.

(c) <u>Limitation</u>. The Trustee is not obligated to enter into any Supplemental Indenture authorized by subsections (a) or (b) of this Section 9.01 which materially adversely affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

(d) <u>Bond Counsel Opinion Requirement</u>. Prior to the Trustee entering into any Supplemental Indenture hereunder, the Authority shall deliver to the Trustee an opinion of Bond Counsel stating, in substance, that such Supplemental Indenture has been adopted in compliance with the requirements of this Indenture and that the adoption of such Supplemental Indenture will not, in and of itself, adversely affect the exclusion from gross income for purposes of federal income taxes of interest on the Bonds.

(e) <u>Notice of Amendments</u>. The Authority shall deliver or cause to be delivered a draft of any Supplemental Indenture to each rating agency which then maintains a rating on the Bonds, at least 10 days prior to the effective date of such Supplemental Indenture under this Section 9.01. SECTION 9.02. Effect of Supplemental Indenture. Upon the execution of any Supplemental Indenture under this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Authority, the Trustee and all Owners of Bonds Outstanding shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 9.03. Endorsement of Bonds; Preparation of New Bonds. Bonds delivered after the execution of any Supplemental Indenture under this Article may, and if the Authority so determines shall, bear a notation by endorsement or otherwise in form approved by the Authority as to any modification or amendment provided for in such Supplemental Indenture, and, in that case, upon demand on the Owner of any Bonds Outstanding at the time of such execution and presentation of his Bonds for the purpose at the Office of the Trustee or at such additional offices as the Trustee may select and designate for that purpose, a suitable notation shall be made on such Bonds. If the Supplemental Indenture shall so provide, new Bonds so modified as to conform, in the opinion of the Authority, to any modification or amendment contained in such Supplemental Indenture, shall be prepared and executed by the Authority and authenticated by the Trustee, and upon demand on the Owners of any Bonds then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Bond Owner, for Bonds then Outstanding, upon surrender for cancellation of such Bonds, in equal aggregate principal amount of the same maturity.

SECTION 9.04. Amendment of Particular Bonds. The provisions of this Article IX do not prevent any Bond Owner from accepting any amendment as to the particular Bonds held by such Owner.

ARTICLE X

DEFEASANCE

SECTION 10.01. *Discharge of Indenture*. Any or all of the Outstanding Bonds may be paid by the Authority in any of the following ways, provided that the Authority also pays or causes to be paid any other sums payable hereunder by the Authority:

- (a) by paying or causing to be paid the principal of and interest and premium (if any) on such Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, in trust, at or before maturity, money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem such Bonds; or
- (c) by delivering all of such Bonds to the Trustee for cancellation.

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If the Authority also pays or causes to be paid all other sums payable hereunder by the Authority, then and in that case, at the election of the Authority (evidenced by a Written Certificate of the Authority, filed with the Trustee, signifying the intention of the Authority to discharge all such indebtedness and this Indenture), and notwithstanding that any of such Bonds shall not have been surrendered for payment, this Indenture and the pledge of Revenues and other assets made under this Indenture with respect to such Bonds and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Bonds shall cease, terminate, become void and be completely discharged and satisfied, subject to Section 10.02, and except for Section 8.07 hereof, which shall survive. In such event, upon the Written Request of the Authority, the Trustee shall execute and deliver to the Authority all such instruments as may be necessary or desirable to evidence such discharge and satisfaction, and the Trustee shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Indenture which are not required for the payment or redemption of any of such Bonds not theretofore surrendered for such payment or redemption. The Trustee is entitled to conclusively rely on any such Written Certificate or Written Request and, in each case, is fully protected in relying thereon.

SECTION 10.02. Discharge of Liability on Bonds. Upon the deposit with the Trustee, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 10.03) to pay or redeem any Outstanding Bonds (whether upon or prior to the maturity or the redemption date of such Bonds), provided that, if such Bonds are to be redeemed prior to maturity, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the Authority in respect of such Bonds shall cease, terminate and be completely discharged, and the Owners thereof shall thereafter be entitled only to payment out of such money or securities deposited with the Trustee as aforesaid for their payment, subject, however, to the provisions of Section 10.04.

The Authority may at any time surrender to the Trustee, for cancellation by the Trustee, any Bonds previously issued and delivered, which the Authority may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

SECTION 10.03. Deposit of Money or Securities with Trustee. Whenever in this Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established under this Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount of such Bonds, premium, if any, and all unpaid interest thereon to the redemption date; or (b) non-callable Federal Securities, the principal of and interest on which when due will, in the written opinion of an Independent Accountant filed with the City, the Authority and the Trustee, provide money sufficient to pay the principal of and interest and premium (if any) on the Bonds to be paid or redeemed, as such principal, interest and premium become due, provided that in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as provided in Article IV or provision satisfactory to the Trustee has been made for the giving of such notice;

provided, in each case, that (i) the Trustee shall have been irrevocably instructed (by the terms of this Indenture or by Written Request of the Authority) to apply such money to the payment of such principal, interest and premium (if any) with respect to such Bonds, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Bonds have been discharged in accordance with this Indenture (which opinion may rely upon and assume the accuracy of the Independent Accountant's opinion referred to above). The Trustee shall be entitled to conclusively rely on such Written Request or opinion and shall be fully protected, in each case, in relying thereon.

SECTION 10.04. Unclaimed Funds. Notwithstanding any provisions of this Indenture, any moneys held by the Trustee in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for 2 years after the principal of all of the Bonds has become due and payable (whether at maturity or upon call for redemption or by acceleration as provided in this Indenture), if such moneys were so held at such date. or 2 years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall be repaid (without liability for interest) to the Authority free from the trusts created by this Indenture, and all liability of the Trustee with respect to such moneys shall thereupon cease; provided, however, that before the repayment of such moneys to the Authority as aforesaid, the Trustee shall (at the cost of the Authority) first mail to the Owners of Bonds which have not yet been paid, at the addresses shown on the Registration Books, a notice, in such form as may be deemed appropriate by the Trustee with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the Authority of the moneys held for the payment thereof.

ARTICLE XI

MISCELLANEOUS

SECTION 11.01. Liability of Authority Limited to Revenues. Notwithstanding anything in this Indenture or in the Bonds contained, the Authority is not required to advance any moneys derived from any source other than the Revenues, the Additional Rental Payments and other assets pledged under this Indenture for any of the purposes in this Indenture mentioned, whether for the payment of the principal of or interest on the Bonds or for any other purpose of this Indenture. Nevertheless, the Authority may, but is not required to, advance for any of the purposes hereof any funds of the Authority which may be made available to it for such purposes.

SECTION 11.02. Limitation of Rights to Parties and Bond Owners. Nothing in this Indenture or in the Bonds expressed or implied is intended or shall be construed to give to any person other than the Authority, the Trustee, the City and the Owners of the Bonds, any legal or equitable right, remedy or claim under or in respect of this Indenture or any covenant, condition or provision therein or herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Authority, the Trustee, the City and the Owners of the Bonds.

SECTION 11.03. *Funds and Accounts.* Any fund or account required by this Indenture to be established and maintained by the Trustee may be established and maintained in the accounting records of the Trustee, either as a fund or an account, and may, for the purposes of such records, any audits thereof and any reports or statements with respect thereto, be treated either as a fund or as an account; but all such records with respect to all such funds and accounts shall at all times be maintained in accordance with corporate industry standards to the extent practicable, and with due regard for the requirements of Section 6.05 and for the protection of the security of the Bonds and the rights of every Owner thereof. The Trustee may establish such funds and accounts as it deems necessary or appropriate to perform its obligations under this Indenture.

SECTION 11.04. *Waiver of Notice; Requirement of Mailed Notice*. Whenever in this Indenture the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver. Whenever in this Indenture any notice is required to be given by mail, such requirement may be satisfied by the deposit of such notice in the United States mail, postage prepaid, by first class mail.

SECTION 11.05. *Destruction of Bonds*. Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Bonds, the Trustee shall destroy such Bonds as may be allowed by law and, upon the Authority's request, deliver a certificate of such destruction to the Authority.

SECTION 11.06. Severability of Invalid Provisions. If any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Authority hereby declares that it would have entered into this Indenture and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the issuance of the Bonds pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

SECTION 11.07. *Notices.* All notices or communications to be given under this Indenture shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or at such address as the party may provide to the other party in writing from time to time. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, confirmed by telephone, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

<i>If to the City</i> or the Authority:	City of Berkeley 2180 Milvia St. Berkeley, CA 94704 Attention: Director of Finance Fax: (510) 981-6901
If to the Trustee:	The Bank of New York Mellon Trust Company, N.A. 100 Pine Street, Suite 3150 San Francisco, CA 94111 Attention: Corporate Trust Department Fax: (415) 399-1647

SECTION 11.08. *Evidence of Rights of Bond Owners*. Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Bond Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Bond Owners in person or by an agent or agents duly appointed in writing. Proof of the execution of any such request, consent or other instrument or of a writing appointing any such agent, or of the holding by any person of Bonds transferable by delivery, shall be sufficient for any purpose of this Indenture and shall be conclusive in favor of the Trustee and the Authority if made in the manner provided in this Section 11.08.

The fact and date of the execution by any person of any such request, consent or other instrument or writing may be proved by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the person signing such request, consent or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution duly sworn to before such notary public or other officer.

The ownership of Bonds shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Bond shall bind every future Owner of the same Bond and the Owner of every Bond issued in exchange therefor or in lieu thereof, in respect of anything done or suffered to be done by the Trustee or the Authority in accordance therewith or reliance thereon.

SECTION 11.09. *Disqualified Bonds*. In determining whether the Owners of the requisite aggregate principal amount of Bonds have concurred in any demand, request, direction, consent or waiver under this Indenture, Bonds which are actually known by the Trustee to be owned or held by or for the account of the Authority or the City, or by any other obligor on the Bonds, or by any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination unless all Bonds are so owned or held, in which case such Bonds shall be considered Outstanding for the purpose of such determination...

for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Bonds and that the pledgee is not a person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the Authority or the City or any other obligor on the Bonds. In case of a dispute as to such right, the Trustee shall be entitled to rely upon the advice of counsel in any decision by Trustee and shall be fully protected in relying thereon.

Upon request, the Authority shall certify to the Trustee those Bonds disqualified under this Section 11.09, and the Trustee may conclusively rely on such certifications.

SECTION 11.10. *Money Held for Particular Bonds*. The money held by the Trustee for the payment of the interest, premium, if any, or principal due on any date with respect to particular Bonds (or portions of Bonds in the case of Bonds redeemed in part only) shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of the Bonds entitled thereto, *subject, however*, to the provisions of Section 10.04 but without any liability for interest thereon.

SECTION 11.11. *Waiver of Personal Liability*. No member, officer, agent or employee of the Authority shall be individually or personally liable for the payment of the principal of or interest or premium (if any) on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof; but nothing herein contained shall relieve any such member, officer, agent or employee from the performance of any official duty provided by law or by this Indenture.

SECTION 11.12. Successor Is Deemed Included in All References to Predecessor. Whenever in this Indenture either the Authority, the City or the Trustee is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Indenture contained by or on behalf of the Authority, the City or the Trustee shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

SECTION 11.13. *Execution in Several Counterparts*. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Authority and the Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

SECTION 11.14. *Payment on Non-Business Day*. In the event any payment is required to be made hereunder on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and with the same effect as if made on such preceding non-Business Day.

SECTION 11.15. *Governing Law*. This Indenture shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the BERKELEY JOINT POWERS FINANCING AUTHORITY has caused this Indenture to be signed in its name by its Chair and attested to by its Secretary, and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., in token of its acceptance of the trusts created hereunder, has caused this Indenture to be signed in its corporate name by its officer thereunto duly authorized, all as of the day and year first above written.

BERKELEY JOINT POWERS FINANCING AUTHORITY

Ву _____

Chair

Attest:

Secretary

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By _____ Authorized Officer

APPENDIX A

DEFINITIONS

"<u>Additional Rental Payments</u>" means the amounts of additional rental which are payable by the City under Section 4.5 of the Lease or which are otherwise identified as Additional Rental Payments under the Lease.

"<u>Assignment Agreement</u>" means the Assignment Agreement dated as of May 1, 2020, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended.

"<u>Authority</u>" means the Berkeley Joint Powers Financing Authority, a joint exercise of powers authority duly organized and existing under the laws of the State of California.

"<u>Authorized Representative</u>" means: (a) with respect to the Authority, its Chief Administrative Officer, Treasurer/Auditor or any other person designated as an Authorized Representative of the Authority by a Written Certificate of the Authority signed by its Chief Administrative Officer and filed with the City and the Trustee; and (b) with respect to the City, its City Manager, Deputy City Manager, Director of Finance or any other person designated as an Authorized Representative of the City by a Written Certificate of the City signed by its City Manager and filed with the Authority and the Trustee.

"Bond Counsel" means (a) Jones Hall, A Professional Law Corporation, or (b) any other attorney or firm of attorneys appointed by or acceptable to the Authority of nationally-recognized experience in the issuance of obligations the interest on which is excludable from gross income for federal income tax purposes under the Tax Code.

"<u>Bond Fund</u>" means the fund by that name established and held by the Trustee under Section 5.01.

"<u>Bond Law</u>" means Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code.

"Bond Year" means each twelve-month period extending from October 2 in one calendar year to October 1 of the succeeding calendar year, both dates inclusive; except that the first Bond Year commences on the Closing Date and extends to and including October 1, 2020.

"<u>Bonds</u>" means the <u>\$</u>______ aggregate principal amount of Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) authorized by and at any time Outstanding under this Indenture.

"<u>Business Day</u>" means a day (other than a Saturday or a Sunday) on which banks are not required or authorized to remain closed in the City in which the Office of the Trustee is located.

"<u>City</u>" means the City of Berkeley, a general law city and municipal corporation organized and existing under the Constitution and laws of the State of California.

"<u>Closing Date</u>" means May ___, 2020, the date of delivery of the Bonds to the Original Purchaser.

"<u>Costs of Issuance</u>" means all items of expense directly or indirectly payable by or reimbursable to the City relating to the authorization, issuance, sale and delivery of the Bonds and the refunding of the 2010 Certificates, including but not limited to: printing expenses; rating agency fees; filing and recording fees; initial fees, expenses and charges of the Trustee and their respective counsel, including the Trustee's first annual administrative fee; fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Bonds; and any other cost, charge or fee in connection with the original issuance of the Bonds and the refunding of the 2010 Certificates.

"<u>Costs of Issuance Fund</u>" means the fund by that name established and held by the Trustee under Section 3.03.

"<u>Depository</u>" means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

"<u>Depository System Participant</u>" means any participant in the Depository's bookentry system.

"<u>DTC</u>" means The Depository Trust Company, New York, New York, and its successors and assigns.

"<u>Escrow Agreement</u>" means the Escrow Deposit and Trust Agreement dated as of the Closing Date, between the City and the 2010 Trustee, relating to the payment and prepayment of the 2010 Certificates and the discharge of the City's obligations relating thereto.

"Event of Default" means any of the events specified in Section 7.01.

"<u>Excess Investment Earnings</u>" means an amount required to be rebated to the United States of America under Section 148(f) of the Tax Code due to investment of gross proceeds of the Bonds at a yield in excess of the yield on the Bonds.

"Federal Securities" means: (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged; (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.

"<u>Fiscal Year</u>" means any twelve-month period extending from July 1 in one calendar year to June 30 of the succeeding calendar year, both dates inclusive, or any other twelve-month period selected and designated by the Authority as its official fiscal year period.

"<u>Indenture</u>" means this Indenture of Trust, as originally executed or as it may from time to time be supplemented, modified or amended by any Supplemental Indenture under the provisions hereof.

"Independent Accountant" means any certified public accountant or firm of certified public accountants appointed and paid by the Authority or the City, and who, or each of whom (a) is in fact independent and not under domination of the Authority or the City; (b) does not have any substantial interest, direct or indirect, in the Authority or the City; and (c) is not connected with the Authority or the City as an officer or employee of the Authority or the City but who may be regularly retained to make annual or other audits of the books of or reports to the Authority or the City.

"Insurance and Condemnation Fund" means the fund by that name established and held by the Trustee under Section 5.07.

"<u>Interest Account</u>" means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

"<u>Interest Payment Date</u>" means each April 1 and October 1, commencing October 1, 2020, so long as any Bonds remain unpaid.

"<u>Lease</u>" means the Lease Agreement dated as of May 1, 2020, between the Authority as lessor and the City as lessee of the Leased Property, as originally executed and as it may from time to time be supplemented, modified or amended in accordance with the terms thereof and of this Indenture.

"<u>Lease Payment Date</u>" means, with respect to any Interest Payment Date, the Business Day immediately preceding such Interest Payment Date.

"<u>Lease Payments</u>" means the amounts payable by the City under Section 4.3(a) of the Lease, including any prepayment thereof and including any amounts payable upon a delinquency in the payment thereof.

"<u>Leased Property</u>" means the real property described in Appendix A to the Lease, together with all improvements and facilities at any time situated thereon.

"<u>Net Proceeds</u>" means amounts derived from any policy of casualty insurance or title insurance with respect to the Leased Property, or the proceeds of any taking of the Leased Property or any portion thereof in eminent domain proceedings (including sale under threat of such proceedings), to the extent remaining after payment therefrom of all expenses incurred in the collection and administration thereof.

"<u>Nominee</u>" means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

"<u>Office</u>" means the corporate trust office of the Trustee in San Francisco, California, or such other or additional offices as the Trustee may designate in writing to the Authority from time to time as the corporate trust office for purposes of the Indenture; except that with respect to presentation of Bonds for payment or for registration of transfer and exchange such term means the office or agency of the Trustee at which, at any particular time, its corporate trust agency business is conducted. "<u>Original Purchaser</u>" means _____, as original purchaser of the Bonds upon their delivery by the Trustee on the Closing Date.

"Outstanding", when used as of any particular time with reference to Bonds, means all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Bonds theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Bonds with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Bonds (or portions thereof) described in Section 11.09; and (c) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee under this Indenture.

"<u>Owner</u>", whenever used herein with respect to a Bond, means the person in whose name the ownership of such Bond is registered on the Registration Books.

"<u>Permitted Encumbrances</u>" means, as of any time: (a) liens for general ad valorem taxes and assessments, if any, not then delinquent, or which the City may permit to remain unpaid under Article V of the Lease; (b) the Site Lease, the Lease and the Assignment Agreement; (c) any right or claim of any mechanic, laborer, material man, supplier or vendor not filed or perfected in the manner prescribed by law; (d) the exceptions disclosed in the title insurance policy with respect to the Leased Property issued as of the Closing Date by Stewart Title Guaranty Company; and (e) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record and which the City certifies in writing will not materially impair the use of the Leased Property for its intended purposes.

"Permitted Investments" means any of the following:

- (a) any direct general obligations of the United States of America (including obligations issued or held in book entry form on the books of the Department of the Treasury of the United States of America), for which the full faith and credit of the United States of America are pledged.
- (b) obligations of any agency, department or instrumentality of the United States of America, the timely payment of principal and interest on which are directly or indirectly secured or guaranteed by the full faith and credit of the United States of America.
- (c) Any direct or indirect obligations of an agency or department of the United States of America whose obligations represent the full faith and credit of the United States of America, or which are rated A or better by S&P.
- (d) Interest-bearing deposit accounts (including certificates of deposit placed by a third party pursuant to a separate agreement between the Authority and the Trustee), time deposits, bank deposit products, trust funds, trust accounts, interest bearing deposits, overnight bank deposits or interest bearing money market accounts in federal or State chartered savings and loan associations or in federal or State

of California banks (including the Trustee or any of its affiliates), provided that: (i) the unsecured obligations of such commercial bank or savings and loan association are rated A or better by S&P; or (ii) such deposits are fully insured by the Federal Deposit Insurance Corporation or secured at all times by collateral described in (a) or (b) above.

- (e) Commercial paper rated "A-1+" or better by S&P.
- (f) Federal funds or bankers acceptances with a maximum term of one year of any bank which an unsecured, uninsured and unguaranteed obligation rating of "A-1+" or better by S&P.
- (g) Money market mutual funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of at least AAAm-G, AAAm or AAm, which funds may include funds for which the Trustee, its affiliates, parent or subsidiaries provide investment advisory, custodial, transfer agency or other management services, and for which they receive and retain a fee for such services. Money market funds permitted under this paragraph shall not include funds with a floating net asset value.
- (h) Obligations the interest on which is excludable from gross income pursuant to Section 103 of the Tax Code and which are either (a) rated A or better by S&P, or (b) fully secured as to the payment of principal and interest by Permitted Investments described in clauses (a) or (b).
- (i) Obligations issued by any corporation organized and operating within the United States of America having assets in excess of \$500,000,000, which obligations are rated A or better by S&P.
- (j) Bonds or notes issued by any state or municipality which are rated A or better by S&P.
- (k) Any investment agreement with, or guaranteed by, a financial institution the long-term unsecured obligations or the claims paying ability of which are rated A or better by S&P at the time of initial investment, by the terms of which all amounts invested thereunder are required to be withdrawn and paid to the Trustee in the event either of such ratings at any time falls below A.
- (I) The Local Agency Investment Fund of the State of California, created pursuant to Section 16429.1 of the California Government Code, to the extent the Trustee is authorized to register such investment in its name.

"<u>Principal Account</u>" means the account by that name established and held by the Trustee in the Bond Fund under Section 5.02.

"<u>Record Date</u>" means, with respect to any Interest Payment Date, the 15th calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

"<u>Redemption Fund</u>" means the fund by that name established and held by the Trustee under Section 5.06.

"<u>Refunding Fund</u>" means the fund by that name established and held by the Trustee under Section 3.04.

"<u>Registration Books</u>" means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Bonds.

"Revenues" means: (a) all amounts received by the Authority or the Trustee under or with respect to the Lease, including, without limiting the generality of the foregoing, all of the Lease Payments (including both timely and delinquent payments, any late charges, and whether paid from any source), but excluding (i) any amounts described in Section 7.5(b)(v) of the Lease, and (ii) any Additional Rental Payments; and (b) all interest, profits or other income derived from the investment of amounts in any fund or account established under this Indenture.

"<u>Securities Depositories</u>" means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the Authority designates in written notice filed with the Trustee.

"<u>Site Lease</u>" means the Site Lease dated as of May 1, 2020, between the City as lessor and the Authority as lessee, as amended from time to time in accordance with its terms.

"<u>Site Lease Payment</u>" means the amount of <u>\$</u>_____ which is payable by the Authority to the City on the Closing Date under Section 3 of the Site Lease.

"<u>S&P</u>" means S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC business, its successors and assigns.

"<u>Supplemental Indenture</u>" means any indenture hereafter duly authorized and entered into between the Authority and the Trustee, supplementing, modifying or amending this Indenture; but only if and to the extent that such Supplemental Indenture is specifically authorized hereunder.

"<u>Tax Code</u>" means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

"<u>Term</u>" means, with reference to the Lease, the time during which the Lease is in effect, as provided in Section 4.2 thereof.

"<u>Trustee</u>" means The Bank of New York Mellon Trust Company, N.A., a national banking association organized and existing under the laws of United States of America, or its successor or successors, as Trustee hereunder as provided in Article VIII.

"<u>Written Certificate</u>," "<u>Written Request</u>" and "<u>Written Requisition</u>" of the Authority or the City mean, respectively, a written certificate, request or requisition signed in the name of the Authority or the City by its Authorized Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

"<u>2010 Certificates</u>" means the outstanding 2010 Certificates of Participation (Animal Shelter Financing) originally executed and delivered in the aggregate principal amount of \$5,750,000.

"<u>2010 Trustee</u>" means The Bank of New York Mellon Trust Company, N.A., its successors and assigns, as successor trustee for the 2010 Certificates.

APPENDIX B

BOND FORM

NO. R		***\$	***
	UNITED STATES OF STATE OF CALL		
BERKELEY J			ΓY
2020 REFUNDING LEASE REVENUE BONDS (2010 ANIMAL SHELTER COP REFINANCING)			
	MATURITY DATE:	ORIGINAL ISSUE DATE:	CUSIP:
% REGISTERED OWNER:	October 1, CEDE & CO.	May 2020	

PRINCIPAL AMOUNT: ***

The BERKELEY JOINT POWERS FINANCING AUTHORITY, a public body corporate and politic duly organized and existing under the laws of the State of California (the "Authority"), for value received, hereby promises to pay to the Registered Owner specified above or registered assigns (the "Registered Owner"), on the Maturity Date specified above (subject to any right of prior redemption hereinafter provided for), the Principal Amount specified above, in lawful money of the United States of America, and to pay interest thereon in like lawful money from the Interest Payment Date (as hereinafter defined) next preceding the date of authentication of this Bond unless (i) this Bond is authenticated on or before an Interest Payment Date and after the close of business on the 15th day of the month preceding such interest payment date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Bond is authenticated on or before September 15, 2020, in which event it shall bear interest from the Original Issue Date specified above; provided, however, that if at the time of authentication of this Bond, interest is in default on this Bond, this Bond shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Bond, at the Interest Rate per annum specified above, payable semiannually on April 1 and October 1 in each year, commencing October 1, 2020 (the "Interest Payment Dates"), calculated on the basis of a 360-day year composed of twelve 30-day months.

Principal hereof and premium, if any, upon early redemption hereof are payable upon presentation and surrender hereof at the designated corporate trust office of The Bank of New York Mellon Trust Company, N.A. (the "Trust Office"), as trustee (the "Trustee"). Interest hereon is payable by check of the Trustee mailed to the Registered Owner hereof at the Registered Owner's address as it appears on the registration books of the Trustee as of the close of business on the fifteenth day of the month preceding each Interest Payment Date (a "Record Date"), or, upon written request filed with the Trustee as of such Record Date by a registered owner of at least \$1,000,000 in aggregate principal amount of Bonds, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Bond is not a debt of the City of Berkeley (the "City"), the County of Alameda, the State of California, or any of its political subdivisions, and neither the City, said County, said State, nor any of its political subdivisions, is liable hereon nor in any event shall this Bond be payable out of any funds or properties of the Authority other than the Revenues.

This Bond is one of a duly authorized issue of bonds of the Authority designated as the "Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing)" (the "Bonds"), in an aggregate principal amount of \$, all of like tenor and date (except for such variation, if any, as may be required to designate varying numbers, maturities, interest rates or redemption provisions) and all issued under the provisions of Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, commencing with Section 6584 of said Code, and under an Indenture of Trust dated as of May 1, 2020, between the Authority and the Trustee (the "Indenture") and a resolution of the Authority adopted on 2020, authorizing the issuance of the Bonds. Reference is hereby made to the Indenture (copies of which are on file at the office of the Authority) and all supplements thereto for a description of the terms on which the Bonds are issued, the provisions with regard to the nature and extent of the Revenues, and the rights thereunder of the owners of the Bonds and the rights, duties and immunities of the Trustee and the rights and obligations of the Authority thereunder, to all of the provisions of which the Registered Owner of this Bond, by acceptance hereof, assents and agrees.

The Bonds have been issued by the Authority to refinance certain outstanding certificates of participation of the City. This Bond and the interest and premium, if any, hereon are special obligations of the Authority, payable from the Revenues, and secured by a charge and lien on the Revenues as defined in the Indenture, consisting principally of lease payments made by the City under a Lease Agreement dated as of May 1, 2020, between the Authority as lessor and the City as lessee (the "Lease"). As and to the extent set forth in the Indenture, all of the Revenues are exclusively and irrevocably pledged in accordance with the terms hereof and the provisions of the Indenture, to the payment of the principal of and interest and premium (if any) on the Bonds.

The rights and obligations of the Authority and the owners of the Bonds may be modified or amended at any time in the manner, to the extent and upon the terms provided in the Indenture, but no such modification or amendment shall extend the fixed maturity of any Bonds, or reduce the amount of principal thereof or premium (if any) thereon, or extend the time of payment, or change the method of computing the rate of interest thereon, or extend the time of payment of interest thereon, without the consent of the owner of each Bond so affected.

The Bonds maturing on or before October 1, 2029, are not subject to optional redemption prior to their stated maturity. The Bonds maturing on or after October 1, 2030, are subject to redemption, as a whole or in part at the election of the Authority among

maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on October 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

The Bonds are subject to redemption as a whole, or in part by lot, on any date, to the extent of any net proceeds of hazard or title insurance with respect to the property which has been leased under the Lease (the "Leased Property") or any portion thereof which are not used to repair or replace the Leased Property pursuant to the Lease, or to the extent of any net proceeds arising from the disposition of the Leased Property or any portion thereof in eminent domain proceedings which the City elects to be used for such purpose pursuant to the Lease, at a redemption price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

As provided in the Indenture, notice of redemption will be mailed by the Trustee by first class mail not less than 20 nor more than 60 days prior to the redemption date to the respective owners of any Bonds designated for redemption at their addresses appearing on the registration books of the Trustee, but neither failure to receive such notice nor any defect in the notice so mailed shall affect the sufficiency of the proceedings for redemption or the cessation of accrual of interest thereon from and after the date fixed for redemption. Notice of any optional redemption of the Bonds may be rescinded under the circumstances set forth in the Indenture, upon notice to the owners of such Bonds.

If this Bond is called for redemption and payment is duly provided therefor as specified in the Indenture, interest shall cease to accrue hereon from and after the date fixed for redemption.

This Bond is transferable by the Registered Owner hereof, in person or by his attorney duly authorized in writing, at the Trust Office, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon registration of such transfer, a new Bond or Bonds, 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. This Bond may be exchanged at the Trust Office for Bonds of the same tenor, aggregate principal amount, interest rate and maturity, of other authorized denominations.

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

Unless this Bond is presented by an authorized representative of The Depository Trust Company to the Authority or the Trustee for registration of transfer, exchange or payment, and any Bond 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.

It is hereby certified by the Authority that all of the things, conditions and acts required to exist, to have happened or to have been performed precedent to and in the issuance of this Bond do exist, have happened or have been performed in due and regular

time, form and manner as required by the Ordinance and the laws of the State of California and that the amount of this Bond, together with all other indebtedness of the Authority, does not exceed any limit prescribed by the Ordinance or any laws of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture.

This Bond shall not be entitled to any benefit under the Indenture or become valid or obligatory for any purpose until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF, the Berkeley Joint Powers Financing Authority has caused this Bond to be executed in its name and on its behalf with the facsimile signature of its Chair and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

BERKELEY JOINT POWERS FINANCING AUTHORITY

	Ву	
• · · · ·	Chair	
Attest:		
	Secretary	
	SPE N	

CERTIFICATE OF AUTHENTICATION

This is one of the Bonds described in the within-mentioned Indenture.

Dated:

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,

as Trustee

By _____ Authorized Signatory

ASSIGNMENT

For value received the undersigned hereby sells, assigns and transfers unto whose address and social security or other tax identifying number is ______, the within-mentioned Bond and hereby irrevocably constitute(s) and appoint(s) _______ attorney, to transfer the same on the registration books of the Trustee with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

Note: Signature(s) must be guaranteed by an eligible guarantor institution.

Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

Jones Hall draft 1-10-20

LEASE AGREEMENT

Dated as of May 1, 2020

between the

BERKELEY JOINT POWERS FINANCING AUTHORITY,

as lessor

and the

CITY OF BERKELEY, as lessee

Relating to

\$ Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing)

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APPENDIX A	DESCRIPTION OF THE LEASED PROPERTY
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LEASE AGREEMENT

This LEASE AGREEMENT (this "Lease"), dated for convenience as of May 1, 2020, is between the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessor (the "Authority"), and the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, as lessee (the "City").

BACKGROUND:

1. The City previously caused execution and delivery of its 2010 Certificates of Participation (Animal Shelter Financing) in the aggregate initial principal amount of \$5,750,000 (the "**2010 Certificates**"), pursuant to a Trust Agreement, dated as of June 1, 2010 (the "**2010 Trust Agreement**"), by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**2010 Trustee**"), for the purpose of (i) financing acquisition and construction of a new animal shelter(ii) funding a reserve fund for the 2010 Certificates and (iii) paying the costs of executing and delivering the 2010 Certificates.

2. The 2010 Certificates maturing on or after August 1, 2021 are subject to prepayment on August 1, 2020, or on any date thereafter, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, without premium. The City wishes to refinance its outstanding 2010 Certificates.

3. To that end, the City has proposed to lease to the Authority certain real property and improvements, initially consisting of the animal shelter, including land and improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property"), under a Site Lease, dated the date hereof (the "Site Lease") in consideration of the payment by the Authority of an upfront rental payment (the "Site Lease Payment") which is sufficient to provide funds for the prepayment of the 2010 Certificates. The Site Lease is being recorded concurrently with a memorandum of this Lease.

4. The Authority has authorized the issuance of its Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) in the aggregate principal amount of \$______ (the "**Bonds**") under an Indenture of Trust dated as of May 1, 2020 (the "**Indenture**"), between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**Trustee**"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with this Site Lease.

5. In order to provide revenues that are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under this Lease under which the City agrees to pay semiannual Lease Payments as the rental for the Leased Property.

6. The lease payments made by the City under this Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of the date hereof, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

7. The City and the Authority have found and determined that all acts and proceedings required by law necessary to make this Lease, when executed by the City and the Authority, the valid, binding and legal obligations of the City and the Authority, and to constitute this Lease a valid and binding agreement for the uses and purposes herein set forth in accordance with its terms, have been done and taken, and the execution and delivery of this Lease have been in all respects duly authorized.

AGREEMENT:

In consideration of the material covenants contained in this Lease, the parties hereto hereby formally covenant, agree and bind themselves as follows:

ARTICLE I

DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. *Definitions.* Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Lease have the respective meanings given them in the Indenture.

SECTION 1.2. Interpretation.

(a) Unless the context otherwise indicates, words expressed in the singular includes the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and includes the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and do not affect the meaning, construction or effect hereof.

(c) All references herein to "Articles," "Sections" and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Lease; the words "herein," "hereof," "hereby," "hereunder" and other words of similar import refer to this Lease as a whole and not to any particular Article, Section or subdivision hereof.

ARTICLE II

COVENANTS, REPRESENTATIONS AND WARRANTIES

SECTION 2.1. Covenants, Representations and Warranties of the City. The City makes the following covenants, representations and warranties to the Authority, the Trustee as of the date of the execution and delivery of this Lease:

- (a) <u>Due Organization and Existence</u>. The City is a charter city and municipal corporation duly organized and validly existing under the Constitution and laws of the State of California, has full legal right, power and authority under the laws of the State of California to enter into the Site Lease and this Lease and to carry out and consummate all transactions contemplated hereby, and by proper action the City has duly authorized the execution and delivery of the Site Lease and this Lease.
- (b) <u>Due Execution</u>. The representatives of the City executing the Site Lease and this Lease have been fully authorized to execute the same under a resolution duly adopted by the City Council of the City.
- (c) <u>Valid, Binding and Enforceable Obligations</u>. The Site Lease and this Lease have been duly authorized, executed and delivered by the City and constitute the legal, valid and binding obligations of the City enforceable against the City in accordance with their respective terms.
- (d) No Conflicts. The execution and delivery of the Site Lease and this Lease, the consummation of the transactions therein and herein contemplated and the fulfillment of or compliance with the terms and conditions thereof and hereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease or the financial condition, assets, properties or operations of the City.
- (e) <u>Consents and Approvals</u>. No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of the Site Lease and this Lease, or the consummation of any transaction therein and herein

contemplated, except as have been obtained or made and as are in full force and effect.

(f) No Litigation. There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the City after reasonable investigation, threatened against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Site Lease and this Lease, or upon the financial condition, assets, properties or operations of the City, and the City is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Site Lease and this Lease or the financial conditions, assets, properties or operations of the City.

SECTION 2.2. Covenants, Representations and Warranties of the Authority. The Authority makes the following covenants, representations and warranties to the City, the Trustee as of the date of the execution and delivery of this Lease:

- (a) <u>Due Organization and Existence</u>. The Authority is a joint exercise of powers authority duly organized and existing under a joint powers agreement and the laws of the State of California; has power to enter into this Lease, the Site Lease, the Assignment Agreement and the Indenture; is possessed of full power to own and hold, improve and equip real and personal property, and to lease the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with their respective terms.
- (b) <u>Due Execution</u>. The representatives of the Authority executing this Lease, the Site Lease, the Assignment Agreement and the Indenture are fully authorized to execute the same pursuant to official action taken by the governing body of the Authority.
- (c) <u>Valid, Binding and Enforceable Obligations</u>. This Lease, the Site Lease, the Assignment Agreement and the Indenture have been duly authorized, executed and delivered by the Authority and constitute the legal, valid and binding agreements of the Authority, enforceable against the Authority in accordance with their respective terms.
- (d) <u>No Conflicts</u>. The execution and delivery of this Lease, the Site Lease, the Assignment Agreement and the Indenture, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof, do not and will not conflict with or constitute a violation or

breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Assignment Agreement and the Indenture or the financial condition, assets, properties or operations of the Authority.

- (e) <u>Consents and Approvals</u>. No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Lease, the Site Lease, the Assignment Agreement or the Indenture, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect.
- There is no action, suit, proceeding, inquiry or (f) No Litigation. investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of this Lease, the Site Lease, the Assignment Agreement or the Indenture, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Lease, the Site Lease, the Assignment Agreement or the Indenture or the financial conditions, assets, properties or operations of the Authority.

ARTICLE III

DEPOSIT AND APPLICATION OF FUNDS; SUBSTITUTION AND RELEASE OF PROPERTY

SECTION 3.1. *Deposit of Moneys.* On the Closing Date, the Authority will cause the proceeds of sale of the Bonds to be deposited with the Trustee. The Trustee shall deposit such proceeds in accordance with Section 3.02 of the Indenture.

SECTION 3.2. Substitution of Property. The City has the option at any time and from time to time, to substitute other real property (the "**Substitute Property**") for the Leased Property or any portion thereof (the "**Former Property**"), upon satisfaction of all of the following requirements which are hereby declared to be conditions precedent to such substitution:

- (a) No Event of Default has occurred and is continuing, as certified in writing by the City.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of an amendment hereof that adds the legal description of the Substitute Property to Appendix A and deletes therefrom the legal description of the Former Property, and has filed and caused to be recorded corresponding amendments to the Site Lease and Assignment Agreement.
- (c) The City has obtained a CLTA policy of title insurance insuring the City's leasehold estate hereunder in the Substitute Property, subject only to Permitted Encumbrances, in an amount at least equal to the estimated value thereof.
- (d) The City has certified in writing to the Authority and the Trustee that the Substitute Property serves the municipal purposes of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and has been determined to be essential to the proper, efficient and economic operation of the City and to serve an essential governmental function of the City.
- (e) The Substitute Property does not cause the City to violate any of its covenants, representations and warranties made herein, as certified in writing by the City.
- (g) The City has filed with the Authority and the Trustee a written certificate of the City or other written evidence stating that the useful life of the Substitute Property at least extends to October 1, 2038, that the estimated value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the Leased Property, after substitution of the Substitute Property and release of the Former Property, is at least

equal to the Lease Payments thereafter coming due and payable hereunder.

(h) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Former Property and commence as to the Substitute Property, and all references to the Former Property will apply with full force and effect to the Substitute Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of any substitution of property under this Section. The Authority and the City will execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Former Property and to cause the Substitute Property to become subject to all of the terms and conditions of the Site Lease, this Lease and the Assignment Agreement.

SECTION 3.3. *Release of Property.* The City has the option at any time and from time to time to release any portion of the Leased Property from this Lease (the "**Released Property**") provided that the City has satisfied all of the following requirements which are hereby declared to be conditions precedent to such release:

- (a) No Event of Default has occurred and is continuing, as certified in writing by the City.
- (b) The City has filed with the Authority and the Trustee, and caused to be recorded in the office of the Alameda County Recorder sufficient memorialization of an amendment hereof, the Site Lease and the Assignment Agreement which removes the Released Property from the Site Lease, the Assignment Agreement and this Lease.
- (c) The City has certified in writing to the Authority and the Trustee that the value of the property which remains subject to this Lease following such release is at least equal to the aggregate Outstanding principal amount of the Bonds, and the fair rental value of the property which remains subject to this Lease following such release is at least equal to the Lease Payments thereafter coming due and payable hereunder.
- (d) The City has mailed written notice of such release to each rating agency which then maintains a rating on the Bonds.

Upon the satisfaction of all such conditions precedent, the Term of this Lease will thereupon end as to the Released Property. The City is not entitled to any reduction, diminution, extension or other modification of the Lease Payments whatsoever as a result of such release. The Authority and the City shall execute, deliver and cause to be recorded all documents required to discharge the Site Lease, this Lease and the Assignment Agreement of record against the Released Property.

ARTICLE IV

LEASE OF LEASED PROPERTY; TERM OF THIS LEASE; LEASE PAYMENTS

SECTION 4.1. *Lease of Leased Property.* The Authority hereby leases the Leased Property to the City and the City hereby leases the Leased Property from the Authority, upon the terms and conditions set forth in this Lease.

SECTION 4.2. *Term.* The Term of this Lease commences on the Closing Date and ends on the date on which the Indenture is discharged in accordance with Section 10.03 thereof, but under any circumstances not later than October 1, 2050. The provisions of this Section are subject to the provisions of Sections 6.2 and 6.3 relating to the taking in eminent domain, damage and destruction of the Leased Property in whole or in part.

SECTION 4.3. Lease Payments.

Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the (a) provisions of Article IX, the City agrees to pay to the Authority, its successors and assigns, the Lease Payments in the respective amounts specified in Appendix B attached to this Lease, to be due and payable in immediately available funds on the Interest Payment Dates immediately following each of the respective Lease Payment Dates specified in Appendix B, and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B. Any amount held in the Bond Fund, the Interest Account and the Principal Account on any Lease Payment Date (other than amounts resulting from the prepayment of the Lease Payments in part but not in whole under Article IX, and amounts required for payment of past due principal or interest on any Bonds not presented for payment) will be credited towards the Lease Payment then required to be paid hereunder. The City is not required to deposit any Lease Payment with the Trustee on any Lease Payment Date if the amounts then held in the Bond Fund, the Interest Account and the Principal Account are at least equal to the Lease Payment then required to be deposited with the Trustee. The Lease Payments payable in any Rental Period are for the use of the Leased Property during that Rental Period.

(b) Effect of Prepayment. If the City prepays all Lease Payments in full under Sections 9.2 or 9.3, the City's obligations under this Section will thereupon cease and terminate. If the City prepays the Lease Payments in part but not in whole under Sections 9.2 or 9.3, the principal components of the remaining Lease Payments will be reduced in integral multiples of \$5,000 among Lease Payment Dates on a basis which corresponds to the principal maturities of the Bonds which are redeemed thereby; and the interest component of each remaining Lease Payment will be reduced by the aggregate corresponding amount of interest which would otherwise be payable with respect to the Bonds thereby redeemed under Section 4.01 of the Indenture.

(c) <u>Rate on Overdue Payments</u>. If the City fails to make any of the payments required in this Section, the payment in default will continue as an obligation of the City until the amount in default has been fully paid, and the City agrees to pay the same with interest thereon, from the date of default to the date of payment at the highest rate of interest on any Outstanding Bond.

(d) <u>Fair Rental Value</u>. The aggregate amount of the Lease Payments and Additional Rental Payments coming due and payable during each Rental Period constitute the total rental for the Leased Property for such Rental Period, and are payable by the City in each Rental Period for and in consideration of the right of the use and occupancy of, and the continued quiet use and enjoyment of the Leased Property during each Rental Period. The parties hereto have agreed and determined that the total Lease Payments represent the fair rental value of the Leased Property. In making that determination, consideration has been given to the estimated value of the Leased Property, other obligations of the City and the Authority under this Lease, the uses and purposes which may be served by the Leased Property and the benefits therefrom which will accrue to the City and the general public.

(e) <u>Assignment</u>. The City understands and agrees that all Lease Payments have been assigned by the Authority to the Trustee in trust, under the Assignment Agreement, for the benefit of the Owners of the Bonds, and the City hereby assents to such assignment. The Authority hereby directs the City, and the City hereby agrees to pay to the Trustee at its Office, all payments payable by the City under this Section and all amounts payable by the City under Article IX.

SECTION 4.4. Source of Payments; Covenant to Budget and Appropriate. The Lease Payments are payable from any source of available funds of the City, subject to the provisions of Section 6.3. The City covenants to take all actions required to include the Lease Payments in each of its budgets during the Term of this Lease and to make the necessary appropriations for all Lease Payments and Additional Rental Payments. The foregoing covenant of the City contained constitutes a duty imposed by law and each and every public official of the City is required to take all actions required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Lease agreed to be carried out and performed by the City.

SECTION 4.5. Additional Rental Payments. In addition to the Lease Payments, the City shall pay when due the following amounts of Additional Rental Payments in consideration of the lease of the Leased Property by the City from the Authority hereunder:

- (a) all fees and expenses incurred by the Authority in connection with or by reason of its leasehold estate in the Leased Property, when due,
- (b) all reasonable compensation to the Trustee for all services rendered under the Indenture and for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties under the Indenture,
- (c) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease or the Indenture,
- (d) amounts coming due and payable as Excess Investment Earnings in accordance with Section 7.6(e), and

(e) the reasonable out-of-pocket expenses of the Authority in connection with the execution and delivery of this Lease or the Indenture, or in connection with the issuance of the Bonds, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Bonds, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease, the Bonds, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of this Lease.

SECTION 4.6. *Quiet Enjoyment.* Throughout the Term of this Lease, the Authority shall provide the City with quiet use and enjoyment of the Leased Property and the City will peaceably and quietly have and hold and enjoy the Leased Property, without suit, trouble or hindrance from the Authority, except as expressly set forth in this Lease. The Authority will, at the request of the City and at the City's cost, join in any legal action in which the City asserts its right to such possession and enjoyment to the extent the Authority may lawfully do so. Notwithstanding the foregoing, the Authority has the right to inspect the Leased Property as provided in Section 7.2.

SECTION 4.7. *Title.* Upon the termination of this Lease (other than under Section 8.2(b) hereof), all right, title and interest of the Authority in and to the Leased Property transfers to and vests in the City. The Authority shall take any and all steps and execute and record any and all documents reasonably required by the City to consummate any such transfer of title.

ARTICLE V

MAINTENANCE; TAXES; INSURANCE; AND OTHER MATTERS

SECTION 5.1. *Maintenance, Utilities, Taxes and Assessments.* Throughout the Term of this Lease, as part of the consideration for the rental of the Leased Property, all improvement, repair and maintenance of the Leased Property are the responsibility of the City, and the City will pay for or otherwise arrange for the payment of all utility services supplied to the Leased Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, water and all other utility services, and will pay for or otherwise arrange for the payment of the cost of the repair and replacement of the Leased Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Lease Payments herein provided, the Authority agrees to provide only the Leased Property. The City waives the benefits of subsections 1 and 2 of Section 1932, Section 1933(4) and Sections 1941 and 1942 of the California Civil Code, but such waiver does not limit any of the rights of the City under the terms of this Lease.

The City shall also pay or cause to be paid all taxes and assessments of any type or nature, if any, charged to the Authority or the City affecting the Leased Property or the respective interests or estates therein; provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall pay only such installments as are required to be paid during the Term of this Lease as and when the same become due. The City may, at its expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority notifies the City that, in its reasonable opinion, by nonpayment of any such items the interest of the Authority in the Leased Property will be materially endangered or the Leased Property or any part thereof will be subject to loss or forfeiture, in which event the City shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority and the Trustee.

SECTION 5.2. Modification of Leased Property. The City has the right, at its own expense, to make additions, modifications and improvements to the Leased Property or any portion thereof. All additions, modifications and improvements to the Leased Property will thereafter comprise part of the Leased Property and become subject to the provisions of this Lease. Such additions, modifications and improvements may not in any way damage the Leased Property, or cause the Leased Property to be used for purposes other than those authorized under the provisions of state and federal law; and the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section: except that if any such lien is established and the City first notifies or causes to be notified the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Leased Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

SECTION 5.3. Liability and Property Damage Insurance. The City shall maintain or cause to be maintained throughout the Term of this Lease, but only if and to the extent available from reputable insurers at reasonable cost in the reasonable opinion of the City, a standard commercial general liability insurance policy or policies in protection of the Authority, the City, and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Leased Property. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of self-insurance by the City, subject to the provisions of Section 5.7, or in the form of the participation by the City in a joint powers agency or other program providing pooled insurance. The proceeds of such liability insurance must be applied toward extinguishment or satisfaction of the liability with respect to which paid.

SECTION 5.4. *Casualty Insurance*. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, casualty insurance against loss or damage to all buildings situated on the Leased Property, in an amount at least equal to the lesser of (a) 100% of the replacement value of the insured buildings, or (b) 100% of the aggregate principal amount of the Outstanding Bonds. Such insurance must, as nearly as practicable, cover loss or damage by explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, and must include earthquake insurance if available at reasonable cost from reputable insurers in the judgment of the City. Such insurance may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance must be applied as provided in Section 6.1.

SECTION 5.5. *Rental Interruption Insurance*. The City shall procure and maintain, or cause to be procured and maintained, throughout the Term of this Lease, rental interruption or use and occupancy insurance to cover loss, total or partial, of the use of any portion of the Leased Property constituting buildings or other improvements as a result of any of the hazards covered in the insurance required by Section 5.4, in an amount at least equal to the maximum such Lease Payments coming due and payable during any consecutive two Fiscal Years. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers agency or other program providing pooled insurance; provided that such insurance may not be maintained by the City in the form of self-insurance. The Net Proceeds of such insurance, if any, must be paid to the Trustee and deposited in the Bond Fund, to be applied as a credit towards the payment of the Lease Payments allocable to the insured improvements as the same become due and payable.

SECTION 5.6. *Recordation Hereof; Title Insurance.* On or before the Closing Date the City shall, at its expense, (a) cause the Site Lease, the Assignment Agreement and this Lease, or a memorandum hereof or thereof in form and substance approved by Bond Counsel, to be recorded in the office of the Alameda County Recorder, and (b) obtain a CLTA title insurance policy insuring the City's leasehold estate hereunder in the Leased Property, subject only to Permitted Encumbrances, in an amount at least equal to the aggregate principal amount of the Bonds. All Net Proceeds received under any such title insurance policy must be deposited with the Trustee in the Bond Fund to be credited towards the prepayment of the remaining Lease Payments under Section 9.3.

SECTION 5.7. Insurance Net Proceeds; Form of Policies. Each policy of insurance maintained under Sections 5.4, 5.5 and 5.6 must name the Trustee as loss payee so as to provide that all proceeds thereunder are payable to the Trustee. The City shall pay or cause to be paid when due the premiums for all insurance policies required by this Lease. All such policies shall provide that the Trustee is given 30 days' notice of each expiration, any intended cancellation thereof or reduction of the coverage provided thereby. The City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a certificate of the City stating that all policies of insurance required hereunder are then in full force and effect. The Trustee has no responsibility for the sufficiency, adequacy or amount of any insurance or self-insurance herein required and is fully protected in

accepting payment on account of such insurance or any adjustment, compromise or settlement of any loss.

If any insurance maintained under Section 5.3 is provided in the form of self-insurance, the City must file with the Trustee annually, within 90 days following the close of each Fiscal Year, a statement of the risk manager of the City or an independent insurance adviser engaged by the City identifying the extent of such self-insurance and stating the determination that the City maintains sufficient reserves with respect thereto. If any such insurance is provided in the form of self-insurance by the City, the City has no obligation to make any payment with respect to any insured event except from those reserves.

SECTION 5.8. Installation of City's Personal Property. The City may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed other items of equipment or other personal property in or upon the Leased Property. All such items shall remain the sole property of the City, in which neither the Authority nor the Trustee has any interest, and may be modified or removed by the City at any time, provided that the City must repair all damage to the Leased Property resulting from the installation, modification or removal of any such items. Nothing in this Lease prevents the City from purchasing or leasing items to be installed under this Section under a lease or conditional sale agreement, or subject to a vendor's lien or security agreement, as security for the unpaid portion of the purchase price thereof, so long as no such lien or security interest attaches to any part of the Leased Property.

SECTION 5.9. *Liens*. The City may not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than as herein contemplated and except for such encumbrances as the City certifies in writing to the Trustee do not materially and adversely affect the leasehold estate of the City in the Leased Property hereunder. If any such mortgage, pledge, lien, charge, encumbrance or claim does materially and adversely affect the leasehold estate of the City in the Leased Property hereunder, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, for which it is responsible; provided that the City is not required to do so prior to the time when such mortgage, pledge, lien, charge, encumbrance or claim actually causes such material adverse effect. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

SECTION 5.10. Advances. If the City fails to perform any of its obligations under this Article V, the Authority may (but is not required to) take such action as it deems necessary to cure such failure, including the advancement of money, and the City shall repay all such advances as Additional Rental Payments hereunder, with interest at the rate set forth in Section 4.3(c).

ARTICLE VI

DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* The Trustee, as assignee of the Authority under the Assignment Agreement, has the right to receive all Net Proceeds. As provided in the Indenture, the Trustee will deposit all Net Proceeds in the Insurance and Condemnation Fund to be applied as set forth in Section 5.07 of the Indenture.

SECTION 6.2. Termination or Abatement Due to Eminent Domain. If the Leased Property is taken permanently under the power of eminent domain or sold to a government threatening to exercise the power of eminent domain, the Term of this Lease thereupon ceases as of the day possession is taken. If less than all of the Leased Property is taken permanently, or if the Leased Property is taken temporarily, under the power of eminent domain, then:

- (a) this Lease shall continue in full force and effect with respect thereto and does not terminate by virtue of such taking, and the parties waive the benefit of any law to the contrary; and
- (b) the Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property.

SECTION 6.3. Abatement Due to Damage or Destruction. The Lease Payments are subject to abatement during any period in which by reason of damage or destruction (other than by eminent domain which is hereinbefore provided for) there is substantial interference with the use and occupancy by the City of the Leased Property or any portion thereof. The Lease Payments are subject to abatement in an amount determined by the City such that the resulting Lease Payments represent fair consideration for the use and occupancy of the remaining usable portions of the Leased Property not damaged or destroyed. Such abatement will continue for the period commencing with such damage or destruction and ending with the substantial completion of the work of repair or reconstruction. In the event of any such damage or destruction, this Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any such damage and destruction.

ARTICLE VII

OTHER COVENANTS OF THE CITY

SECTION 7.1. Disclaimer of Warranties. THE AUTHORITY AND THE TRUSTEE MAKE NO AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR FITNESS FOR THE USE CONTEMPLATED BY THE CITY OF THE LEASED PROPERTY OR ANY PORTION THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PORTION THEREOF. THE CITY ACKNOWLEDGES THAT THE AUTHORITY IS NOT A MANUFACTURER OF ANY PORTION OF THE LEASED PROPERTY OR A DEALER THEREIN, THAT THE CITY LEASES THE LEASED PROPERTY AS-IS, IT BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE CITY. The Authority has no liability for incidental, indirect, special or consequential damages, in connection with or arising out of this Lease for the existence, furnishing, functioning or use of the Leased Property by the City.

SECTION 7.2. Access to the Leased Property. The City agrees that the Authority and any Authorized Representative of the Authority, and the Authority's successors or assigns, have the right at all reasonable times to enter upon and to examine and inspect the Leased Property or any part thereof. The City further agrees that the Authority, any Authority Representative and the Authority's successors or assigns may have such rights of access to the Leased Property or any component thereof as reasonably necessary to cause the proper maintenance of the Leased Property if the City fails to perform its obligations hereunder; *provided, however*, that neither the Authority nor any of its assigns has any obligation to cause such proper maintenance.

SECTION 7.3. *Release and Indemnification Covenants.* The City agrees to indemnify the Authority, the Trustee and their respective officers, agents, successors and assigns, against all claims, losses and damages, including legal fees and expenses, arising out of any of the following:

- (a) the use, maintenance, condition or management of, or from any work or thing done on the Leased Property by the City,
- (b) any breach or default on the part of the City in the performance of any of its obligations under this Lease,
- (c) any negligence or willful misconduct of the City or of any of its agents, contractors, servants, employees or licensees with respect to the Leased Property,
- (d) any intentional misconduct or negligence of any sublessee of the City with respect to the Leased Property,

- (e) the acquisition, construction, improvement and equipping of the Leased Property, or the authorization of payment of the costs thereof, or
- (f) the acceptance and performance of the duties of the Trustee under the Indenture, the Assignment Agreement and under this Lease.

No indemnification is made under this Section or elsewhere in this Lease for willful misconduct or negligence under this Lease by the Authority, the Trustee or their respective officers, agents, employees, successors or assigns.

SECTION 7.4. Assignment and Subleasing by the City. The City may sublease the Leased Property, or any portion thereof, subject to all of the following conditions:

- this Lease and the obligation of the City to make Lease Payments hereunder must remain obligations of the City, as certified in writing by the City;
- (b) the City must, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority and the Trustee a true and complete copy of such sublease;
- (c) no such sublease by the City may cause the Leased Property to be used for a purpose which is not authorized under the provisions of the laws of the State of California, as certified in writing by the City; and
- (d) the City must furnish to the Authority and the Trustee a written opinion of Bond Counsel stating that such sublease does not cause the interest on the Bonds to become included in gross income for purposes of federal income taxation or to become subject to personal income taxation by the State of California.

SECTION 7.5. Amendment Hereof. The Authority and the City may at any time amend or modify any of the provisions of this Lease, but only: (a) with the prior written consents of the Owners of a majority in aggregate principal amount of the Outstanding Bonds; or (b) without the consent of the Trustee or any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- to add to the covenants and agreements of the City contained in this Lease, other covenants and agreements thereafter to be observed, or to limit or surrender any rights or power herein reserved to or conferred upon the City;
- to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision contained herein, to conform to the original intention of the City and the Authority;

- to modify, amend or supplement this Lease in such manner as to assure that the interest on the Bonds remains excluded from gross income under the Tax Code;
- (iv) to amend the description of the Leased Property to reflect accurately the property originally intended to be included therein, or in connection with any substitution or release of property under Sections 3.2 or 3.3;
- (v) to obligate the City to pay additional amounts of rental for the use and occupancy of the Leased Property, but only if (A) such additional amounts of rental are pledged or assigned for the payment of any bonds, notes, leases or other obligations the proceeds of which are applied to finance or refinance the acquisition or construction of any real or personal property for which the City is authorized to expend funds subject to its control, (B) the City has obtained and filed with the Trustee an appraisal showing that the appraised value of the Leased Property is at least equal to the aggregate principal amount of the Outstanding Bonds and all such other bonds, notes, leases or other obligations, and (C) the City has filed with the Trustee written evidence that the amendments made under this clause (v) will not of themselves cause a reduction or withdrawal of any rating then assigned to the Bonds; or
- (vi) in any other respect whatsoever as the Authority and the City deem necessary or desirable, if in the opinion of Bond Counsel such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds.

No such modification or amendment may (a) extend or have the effect of extending any Lease Payment Date or reducing any Lease Payment or any premium payable upon the prepayment thereof, without the express consent of the Owners of the affected Bonds, or (b) modify any of the rights or obligations of the Trustee without its written assent thereto. If the Trustee's consent to such modification or amendment is required, the Trustee shall be entitled to the same documents as it would be entitled to under Article IX of the Indenture for such type of modification or amendment.

SECTION 7.6. Tax Covenants.

(a) <u>Private Business Use Limitation</u>. The City shall assure that the proceeds of the Bonds are not used in a manner which would cause the Bonds to satisfy the private business tests of Section 141(b) of the Tax Code or the private loan financing test of Section 141(c) of the Tax Code.

(b) <u>Federal Guarantee Prohibition</u>. The City may not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Tax Code.

(c) <u>No Arbitrage</u>. The City may not take, or permit or suffer to be taken by the Trustee or otherwise, any action with respect to the proceeds of the Bonds or of any other obligations which, if such action had been reasonably expected to have been taken, or

had been deliberately and intentionally taken, on the Closing Date, would have caused the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Tax Code.

(d) <u>Maintenance of Tax Exemption</u>. The City shall take all actions necessary to assure the exclusion of interest on the Bonds from the gross income of the Owners of the Bonds to the same extent as such interest is permitted to be excluded from gross income under the Tax Code as in effect on the Closing Date.

(e) <u>Rebate of Excess Investment Earnings to United States</u>. The City shall calculate or cause to be calculated the Excess Investment Earnings in all respects at the times and in the manner required under the Tax Code. The City shall pay the full amount of Excess Investment Earnings to the United States of America in such amounts, at such times and in such manner as may be required under the Tax Code. Such payments shall be made by the City from any source of legally available funds of the City, and shall constitute Additional Rental Payments hereunder.

The City shall keep or cause to be kept, and retain or cause to be retained for a period of six years following the retirement of the Bonds, records of the determinations made under this subsection (e). In order to provide for the administration of this subsection (e), the City may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the City may deem appropriate. The Trustee has no duty or obligation to monitor or enforce compliance by the City of any of the requirements under this subsection (e).

SECTION 7.7. Continuing Disclosure. The City shall comply with and carry out all of the provisions of the Continuing Disclosure Certificate executed by the City as of the Closing Date, as originally executed and as it may be amended from time to time in accordance with its terms. Notwithstanding any other provision of this Lease, failure of the City to comply with such Continuing Disclosure Certificate will not constitute an Event of Default, although any Participating Underwriter (as that term is defined in such Continuing Disclosure Certificate) or any Owner or beneficial owner of the Bonds may take such actions as may be necessary and appropriate to compel performance by the City of its obligations under this Section, including seeking mandate or specific performance by court order.

ARTICLE VIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 8.1. *Events of Default Defined.* Any one or more of the following events constitute an Event of Default hereunder:

- (a) Failure by the City to pay any Lease Payment or other payment required to be paid hereunder at the time specified herein.
- (b) Failure by the City to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in the preceding subsection (a), for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Authority or the Trustee. If in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 30-day period, the failure will not constitute an Event of Default if the City commences to cure the failure within such 30-day period and thereafter diligently and in good faith cures the failure in a reasonable period of time, such period of time not to be longer than 180 days after the delivery of such default notice.
- (c) The filing by the City of a voluntary petition in bankruptcy, or failure by the City promptly to lift any execution, garnishment or attachment, or adjudication of the City as a bankrupt, or assignment by the City for the benefit of creditors, or the entry by the City into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the City in any proceedings instituted under the provisions of the Federal Bankruptcy Code, as amended, or under any similar acts which may hereafter be enacted.

SECTION 8.2. *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the Authority may exercise any and all remedies available under law or granted under this Lease. Notwithstanding anything herein or in the Indenture to the contrary, neither the Authority nor the Trustee may accelerate the Lease Payments or otherwise declare any Lease Payments not then in default to be immediately due and payable. Each covenant hereof to be kept and performed by the City is expressly made a condition and upon the breach thereof the Authority may exercise any and all rights granted hereunder; except that no termination of this Lease may be effected either by operation of law or acts of the parties hereto, except only in the manner herein expressly provided. Upon the occurrence and during the continuance of any Event of Default, the Authority may exercise each and every one of the following remedies, subject in all respects to the limitations set forth in Section 8.3.

(a) Enforcement of Payments Without Termination. If the Authority does not elect to terminate this Lease in the manner hereinafter provided for in subparagraph (b) hereof, the City agrees to and shall remain liable for the payment of all Lease Payments and the performance of all conditions herein contained and shall reimburse the Authority for any deficiency arising out of the re-leasing of the Leased Property, or, if the Authority is unable to re-lease the Leased Property, then for the full amount of all Lease Payments to the end of the Term of this Lease, but said Lease Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Leased Property or the exercise of any other remedy by the Authority. The City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to enter upon and re-lease the Leased Property upon the occurrence and continuation of an Event of Default and to remove all personal property whatsoever situated upon the Leased Property, to place the Leased Property in storage or other suitable place in the County of Alameda for the account of and at the expense of the City, and the City hereby exempts and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and re-leasing of the Leased Property and the removal and storage of the Leased Property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Lease constitute full and sufficient notice of the right of the Authority to re-lease the Leased Property in the event of such re-entry without effecting a surrender of this Lease, and further agrees that no acts of the Authority in effecting such re-leasing shall constitute a surrender or termination of this Lease irrespective of the term for which such releasing is made or the terms and conditions of such re-leasing, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Lease shall vest in the Authority to be effected in the sole and exclusive manner hereinafter provided for in subparagraph (b) hereof. The City agrees to surrender and quit possession of the Leased Property upon demand of the Authority for the purpose of enabling the Leased Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Authority in excess of the Lease Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Leased Property.

(b) <u>Termination of Lease</u>. If an Event of Default occurs and is continuing hereunder, the Authority at its option may terminate this Lease and re-lease all or any portion of the Leased Property. If the Authority terminates this Lease at its option and in the manner hereinafter provided on account of default by the City (and notwithstanding any re-entry upon the Leased Property by the Authority in any manner whatsoever or the re-leasing of the Leased Property), the City nevertheless agrees to pay to the Authority all costs, loss or damages howsoever arising or occurring payable at the same time and in the same manner as is herein provided in the case of payment of Lease Payments and Additional Rental Payments. Any surplus received by the Authority from such re-leasing shall be deposited in the Bond Fund. Neither notice to pay rent or to deliver up possession of the premises given under law nor any proceeding in unlawful detainer taken by the Authority shall of itself operate to terminate this Lease, and no termination of this Lease on account of default by the City shall be or become effective by operation of law, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Lease. The City covenants and agrees that no surrender of the Leased Property, or of the remainder of the Term hereof or any termination of this Lease shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Authority by such written notice.

(c) <u>Proceedings at Law or In Equity</u>. If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

SECTION 8.3. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive and every such remedy is cumulative and in addition to every other remedy given under this Lease or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default impairs any such right or power or operates as a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority to exercise any remedy reserved to it in this Article VIII it is not necessary to give any notice, other than as expressly required in this Article VIII or by law.

SECTION 8.4. Agreement to Pay Attorneys' Fees and Expenses. If the Authority or the City defaults under any of the provisions of this Lease and the nondefaulting party employs attorneys or incurs other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the defaulting party will on demand therefor pay to the nondefaulting party the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party; *provided, however*, that the Trustee shall not be required to expend its own funds for any payment described in this Section.

SECTION 8.5. *No Additional Waiver Implied by One Waiver.* If the Authority or the City breaches any agreement in this Lease and thereafter the other party waives the breach, such waiver is limited to the particular breach so waived and does not operate to waive any other breach hereunder.

SECTION 8.6. *Application of Proceeds*. All net proceeds received from the re-lease of the Leased Property under this Article VIII, and all other amounts derived by the Authority or the Trustee as a result of the occurrence of an Event of Default, must be paid to and applied by the Trustee in accordance with Section 7.03 of the Indenture.

SECTION 8.7. *Trustee and Bond Owners to Exercise Rights.* Such rights and remedies as are given to the Authority under this Article VIII have been assigned by the Authority to the Trustee under the Assignment Agreement for the benefit of the Bond Owners, to which assignment the City hereby consents. The Trustee and the Bond Owners shall exercise such rights and remedies in accordance with the Indenture.

ARTICLE IX

PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. Security Deposit. Notwithstanding any other provision of this Lease, the City may on any date secure the payment of the Lease Payments allocable to the Leased Property in whole or in part by depositing with the Trustee an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Indenture, is either:

- (a) sufficient to pay such Lease Payments, including the principal and interest components thereof, in accordance with the Lease Payment schedule set forth in Appendix B, or
- (b) invested in whole or in part in non-callable Federal Securities in such amount as will, in the opinion of an independent certified public accountant, (which opinion must be addressed and delivered to the Trustee), together with interest to accrue thereon and together with any cash which is so deposited, be fully sufficient to pay such Lease Payments when due under Section 4.3(a), as the City instructs at the time of said deposit.

If the City makes a security deposit under this Section with respect to all unpaid Lease Payments, and notwithstanding the provisions of Section 4.2, (a) the Term of this Lease will continue, (b) all obligations of the City under this Lease, and all security provided by this Lease for said Lease Payments, will thereupon cease and terminate, excepting only the obligation of the City to make, or cause to be made all of said Lease Payments from such security deposit, and (c) under Section 4.7, title to the Leased Property will vest in the City on the date of said deposit automatically and without further action by the City or the Authority. Said security deposit constitutes a special fund for the payment of Lease Payments in accordance with the provisions of this Lease.

SECTION 9.2. Optional Prepayment. The City has the option to prepay the principal components of the Lease Payments in whole, or in part in any integral multiple of \$5,000, from any source of legally available funds, on any date on or after October 1, 2029, at a prepayment price equal to the aggregate principal components of the Lease Payments to be prepaid, together with the interest component of the Lease Payment required to be paid on such Interest Payment Date, and together with a prepayment premium equal to the premium (if any) required to be paid on the resulting redemption of Bonds under Section 4.01(a) of the Indenture. Such prepayment price shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Bonds under Section 4.01(a) of the Indenture. The City shall give 10 days' written notice to the Trustee of its intention to prepay the Lease Payments under this Section.

SECTION 9.3. Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain. The City shall prepay the principal components of the Lease Payments allocable to the Leased Property in whole or in part on any date, from and to the extent of any Net Proceeds of insurance award or eminent domain award with respect to the Leased

Property theretofore deposited in the Redemption Fund for that purpose under Article VI hereof and Section 5.07 of the Indenture. Such Net Proceeds, to the extent remaining after payment of any delinquent Lease Payments, will be credited towards the City's obligations under this Section and applied to the corresponding redemption of Bonds under Section 4.01(b) of the Indenture.

SECTION 9.4. Credit for Amounts on Deposit. If the principal components of the Lease Payments are prepaid in full under this Article IX, such that the Indenture is discharged by its terms as a result of such prepayment, at the written election of the City filed with the Trustee any or all amounts then on deposit in the Bond Fund (and the accounts therein) will be credited towards the amounts then required to be so prepaid.

ARTICLE X

MISCELLANEOUS

SECTION 10.1. *Notices.* Any notice, request, complaint, demand or other communication under this Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by facsimile transmission or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by facsimile transmission or other form of telecommunication, (b) 48 hours after deposit in the United States of America first class mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The Authority, the City or the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

<i>If to the City</i> or the Authority:	City of Berkeley 2180 Milvia St. Berkeley, CA 94704 Attention: Director of Finance Fax: (510) 981-6901
If to the Trustee:	The Bank of New York Mellon Trust Company, N.A. 100 Pine Street, Suite 3150 San Francisco, CA 94111 Attention: Corporate Trust Department Fax: (415) 399-1647

SECTION 10.2. *Binding Effect.* This Lease inures to the benefit of and binds the Authority, the City and their respective successors and assigns.

SECTION 10.3. Severability. If any provision of this Lease is held invalid or unenforceable by any court of competent jurisdiction, such holding will not invalidate or render unenforceable any other provision hereof.

SECTION 10.4. *Net-net-net Lease*. This Lease is deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Lease Payments are an absolute net return to the Authority, free and clear of any expenses, charges or set-offs whatsoever.

SECTION 10.5. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.6. Further Assurances and Corrective Instruments. The Authority and the City shall, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be or for carrying out the expressed intention of this Lease.

SECTION 10.7. *Execution in Counterparts.* This Lease may be executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

SECTION 10.8. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.9. Authority and City Representatives. Whenever under the provisions of this Lease the approval of the Authority or the City is required, or the Authority or the City is required to take some action at the request of the other, such approval or such request shall be given for the Authority and for the City by an Authorized Representative thereof, and any party hereto may conclusively rely upon any such approval or request.

SECTION 10.10. *Captions*. The captions or headings in this Lease are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Lease.

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

BERKELEY JOINT POWERS FINANCING AUTHORITY, as lessor

Ву _____

Chair

Attest:

City Clerk

CITY OF BERKELEY, as lessee

By _____ Mayor

Attest:

Secretary

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The property constituting the Leased Property consists of the land located in the City of Berkeley, County of Alameda, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon:

The land referred to herein is situated in the State of California, County of Alameda, City of Berkeley, and described as follows:

Parcel One:

A Portion Of Lot 31 In Section 4, Township 1 South, Range 4 West, Mount Diablo Base And Meridian, As Said Lot Is Shown On The Map Entitled "Map Number 4, Of Salt Marsh And Tide Lands Situated In The County Of Alameda, State Of California", Certified Copies Of Which Are On File With The Surveyor General Of The State Of California And With The County Recorder Of The City And County Of San Francisco; Said Portion Being More Particularly Described As Follows:

Commencing At A Point On The Southerly Line Of The Aforesaid Lot 31 Distant Thereon South 88 Degrees 51 Minutes 33 Seconds East, 115.45 Feet From The Southwestern Corner Of Parcel 1 Of The Parcels Of Land Conveyed To The State Of California By Deed Recorded June 30, 1939 In Volume 3735 At Page 482 In Official Records Of Alameda County; Thence North 1 Degree 00 Minutes 00 Seconds East, 185.27 Feet; Thence From A Tangent Which Bears North 30 Degrees 07 Minutes 28 Seconds East Along A Curve To The Right With A Radius Of 150.00 Feet, Through An Angle Of 22 Degrees 59 Minutes 32 Seconds An Arc Length Of 60.19 Feet To The Property Line Common To The Lands Now Or Formerly Of O.T. Offutt, Et Ux And Of The State Of California; Thence Along Last Said Line South 17 Degrees 25 Minutes 13 Seconds East 81.59 Feet And North 75 Degrees 47 Minutes 41 Seconds East, 6.30 Feet To The Easterly Line Of Said Lot 31; Thence Along Said Easterly Line And Said Southerly Line Of Said Lot 31, South 19 Degrees 06 Minutes 26 Seconds East, 89.27 Feet, South 27 Degrees 51 Minutes 19 Seconds East 81.44 Feet And North 88 Degrees 51 Minutes 33 Seconds West 140.85 Feet To The Point Of Commencement.

Parcel Two:

A Non-Exclusive Easement And Right Of Way For Vehicular And Pedestrian Traffic Granted By The City Of Berkeley, A Municipal Corporation Of The State Of California And Recorded July 31, 1961, Reel 511, Image 806, Over And across That Certain Property Situated In The City Of Berkeley, Alameda County Records, Described As Follows:

A Strip Of Land 25 Feet In Width Described As Follows:

Commencing At The Intersection Of The Westerly Line Of Second Street And The Southerly Line Of Addison Street As Said Streets Are Shown On That Certain Map Entitled "Map Of Tract 'B' Of The Berkeley L.T.I. Association", Filed In The Office Of The County Recorder Of Alameda County On February 4, 1876 In Book 19 Of Maps At Page 79; Thence South 76 Degrees 47 Minutes 41 Seconds West 82.21 Feet, More Or Less, Along The Southerly Line Of Addison Street To Allardts Line Of Ordinary High Tide Verified By Court Order Decision City Of Berkeley Vs. E.M. Haug, Et Al, Case Number 142591, February 21, 1939, Last Said Point Being The True Point Of Beginning For The Parcel Herein Described; Thence South 76 Degrees 47 Minutes 41 Seconds West 25.19 Feet; Thence North 22 Degrees 44 Minutes 23.8 Seconds West 8.76 Feet; Thence North 28 Degrees 59 Minutes 04.8 Seconds West 197.31 Feet; Thence South 88 Degrees 51 Minutes 33

Seconds East 28.90 Feet; Thence South 28 Degrees 59 Minutes 04.8 Seconds East 182.74 Feet; Thence South 22 Degrees 44 Minutes 23.8 Seconds East 15.71 Feet To The True Point Of Beginning.

Assessor Parcel No. 060-2521-002-01

(End of Legal Description)

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APPENDIX B SCHEDULE OF LEASE PAYMENTS

Lease	Principal	Interest	Aggregate
Payment Date*	Component	Component	Lease Payment

^{*} Lease Payment Dates are the Business Day immediately preceding each date listed in the schedule

Jones Hall draft 12-22-19

TO BE RECORDED AND WHEN RECORDED RETURN TO:

Jones Hall A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, CA 94111 Attention: Christopher K. Lynch, Esg.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

MEMORANDUM OF LEASE AGREEMENT

This Memorandum of Lease Agreement (this "Memorandum of Lease") is entered into as of May 1, 2020, by and between the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers agency organized and existing under the laws of the State of California (the "Authority"), and the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), who agree as follows:

1. <u>The Site Lease</u>. The City has leased to the Authority and the Authority has leased from the City the Leased Property, as hereinafter defined, pursuant to the terms of a Site Lease dated as of May 1, 2020, and recorded concurrently herewith.

2. <u>The Lease</u>. The City hereby subleases from the Authority and the Authority subleases to the City certain land and improvements which are located in the County of Alameda, State of California, and are more particularly described in Exhibit A, attached hereto incorporated herein by reference (the "Leased Property") upon the terms and conditions, more fully set forth in the Lease Agreement dated as of May 1, 2020, by and between the Authority as sublessor and the City as sublessee (the "Lease Agreement"), all of the provisions of which are hereby incorporated into this Memorandum of Lease Agreement by reference.

3. <u>Term of the Lease</u>. The Lease Agreement is for a term commencing as of the date of recording hereof and ending on October 1, 2040, or such earlier or later date on which the Lease Payments (as defined in the Lease Agreement) are paid in full or provision has been made for such payment in accordance with the Lease Agreement.

4. <u>Assignment of Rights</u>. The Authority has assigned certain of its rights under the Lease Agreement to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") pursuant to an Assignment Agreement dated as of May 1, 2020, by and between the Authority and the Trustee, which is being recorded concurrently herewith.

5. <u>Provisions Binding on Successors and Assigns</u>. Subject to the provisions of the Lease Agreement relating to assignment and subletting, the Lease Agreement shall inure to the benefit of and shall be binding upon the Authority and the City and their respective successors and assigns.

6. <u>Purpose of Memorandum</u>. This Memorandum of Lease Agreement is prepared for the purpose of recordation, and it in no way modifies the provisions of the Lease Agreement.

7. <u>Execution</u>. This Memorandum of Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Authority and the City have caused this Memorandum of Lease Agreement to be executed in their respective names by their duly authorized officers, as of the date first above written.

BERKELEY JOINT POWERS FINANCING AUTHORITY, as sublessor

Ву _____

Chair

CITY OF BERKELEY, as sublessee

Ву _____

Mayor

[notary forms]

EXHIBIT A

LEGAL DESCRIPTION

The property constituting the Leased Property consists of the land located in the City of Berkeley, County of Alameda, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon:

The land referred to herein is situated in the State of California, County of Alameda, City of Berkeley, and described as follows:

Parcel One:

A Portion Of Lot 31 In Section 4, Township 1 South, Range 4 West, Mount Diablo Base And Meridian, As Said Lot Is Shown On The Map Entitled "Map Number 4, Of Salt Marsh And Tide Lands Situated In The County Of Alameda, State Of California", Certified Copies Of Which Are On File With The Surveyor General Of The State Of California And With The County Recorder Of The City And County Of San Francisco; Said Portion Being More Particularly Described As Follows:

Commencing At A Point On The Southerly Line Of The Aforesaid Lot 31 Distant Thereon South 88 Degrees 51 Minutes 33 Seconds East, 115.45 Feet From The Southwestern Corner Of Parcel 1 Of The Parcels Of Land Conveyed To The State Of California By Deed Recorded June 30, 1939 In Volume 3735 At Page 482 In Official Records Of Alameda County; Thence North 1 Degree 00 Minutes 00 Seconds East, 185.27 Feet; Thence From A Tangent Which Bears North 30 Degrees 07 Minutes 28 Seconds East Along A Curve To The Right With A Radius Of 150.00 Feet, Through An Angle Of 22 Degrees 59 Minutes 32 Seconds An Arc Length Of 60.19 Feet To The Property Line Common To The Lands Now Or Formerly Of O.T. Offutt, Et Ux And Of The State Of California; Thence Along Last Said Line South 17 Degrees 25 Minutes 13 Seconds East 81.59 Feet And North 75 Degrees 47 Minutes 41 Seconds East, 6.30 Feet To The Easterly Line Of Said Lot 31; Thence Along Said Easterly Line And Said Southerly Line Of Said Lot 31, South 19 Degrees 06 Minutes 26 Seconds East, 89.27 Feet, South 27 Degrees 51 Minutes 19 Seconds East 81.44 Feet And North 88 Degrees 51 Minutes 33 Seconds West 140.85 Feet To The Point Of Commencement.

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A Non-Exclusive Easement And Right Of Way For Vehicular And Pedestrian Traffic Granted By The City Of Berkeley, A Municipal Corporation Of The State Of California And Recorded July 31, 1961, Reel 511, Image 806, Over And across That Certain Property Situated In The City Of Berkeley, Alameda County Records, Described As Follows:

A Strip Of Land 25 Feet In Width Described As Follows:

Commencing At The Intersection Of The Westerly Line Of Second Street And The Southerly Line Of Addison Street As Said Streets Are Shown On That Certain Map Entitled "Map Of Tract 'B' Of The Berkeley L.T.I. Association", Filed In The Office Of The County Recorder Of Alameda County On February 4, 1876 In Book 19 Of Maps At Page 79; Thence South 76 Degrees 47 Minutes 41 Seconds West 82.21 Feet, More Or Less, Along The Southerly Line Of Addison Street To Allardts Line Of Ordinary High Tide Verified By Court Order Decision City Of Berkeley Vs. E.M. Haug, Et Al, Case Number 142591, February 21, 1939, Last Said Point Being The True Point Of Beginning For The Parcel Herein Described; Thence South 76 Degrees 47 Minutes 41 Seconds West 25.19 Feet; Thence North 22 Degrees 44 Minutes 23.8 Seconds West 8.76 Feet; Thence North 28 Degrees 59 Minutes 04.8 Seconds West 197.31 Feet; Thence South 88 Degrees 51 Minutes 33 Seconds East 28.90 Feet; Thence South 28 Degrees 59

Minutes 04.8 Seconds East 182.74 Feet; Thence South 22 Degrees 44 Minutes 23.8 Seconds East 15.71 Feet To The True Point Of Beginning.

Assessor Parcel No. 060-2521-002-01

(End of Legal Description)

Jones Hall draft 12-22-19

TO BE RECORDED AND WHEN RECORDED RETURN TO:

Jones Hall A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: Christopher K. Lynch, Esq.

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SITE LEASE

This SITE LEASE (this "Site Lease"), dated for convenience as of May 1, 2020, is between the CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California, as lessor (the "City"), and the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California, as lessee (the "Authority").

BACKGROUND:

1. The City previously caused execution and delivery of its 2010 Certificates of Participation (Animal Shelter Financing) in the aggregate initial principal amount of \$5,750,000 (the "**2010 Certificates**"), pursuant to a Trust Agreement, dated as of June 1, 2010 (the "2010 Trust Agreement"), by and among the City, the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**2010 Trustee**"), for the purpose of (i) financing the acquisition and construction of a new animal shelter (ii) funding a reserve fund for the 2010 Certificates and (iii) paying the costs of executing and delivering the 2010 Certificates.

2. The 2010 Certificates maturing on or after August 1, 2021 are subject to prepayment on August 1, 2020, or on any date thereafter, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, without premium. The City wishes to refinance its outstanding 2010 Certificates.

3. To that end, the City has proposed to lease to the Authority certain real property and improvements, initially consisting of the animal shelter, including land and improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "**Leased Property**"), under this Site Lease, in consideration of the payment by the Authority of an upfront rental payment (the "**Site**

Lease Payment") which is sufficient to provide funds for the prepayment of the 2010 Certificates.

4. The Authority has authorized the issuance of its Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) in the aggregate principal amount of \$_____ (the "Bonds") under an Indenture of Trust dated as of May 1, 2020 (the "Indenture"), between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with this Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of May 1, 2020 (the "Lease"), a memorandum of which has been recorded concurrently herewith, under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Bonds under an Assignment Agreement dated as of May 1, 2020, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith.

AGREEMENT:

In consideration of the above premises and of the mutual promises and covenants herein contained and for other valuable consideration, the parties hereto do hereby agree as follows:

SECTION 1. Lease of Property to Authority. The City hereby leases the Leased Property to the Authority and the Authority hereby leases the Leased Property from the City, on the terms and conditions hereinafter set forth.

SECTION 2. *Term; Possession.* The term of this Site Lease commences on the date of recordation of this Site Lease and ends on the date on which the Indenture is discharged in accordance with Section 10.03 thereof, but under any circumstances not later than October 1, 2050. The provisions of this Section 2 are subject in all respects to any other provisions of this Site Lease relating to the termination hereof.

SECTION 3. *Rental.* The Authority shall pay to the City as and for rental of the Leased Property hereunder, the sum of \$______ (the "**Site Lease Payment**"). The Site Lease Payment is due and payable upon the issuance of the Bonds and the execution and delivery hereof, and will be paid from the proceeds of the Bonds. The Authority and the City hereby find and determine that the total amount of the Site Lease Payment does not exceed the fair market value of the leasehold interest in the Leased Property which is conveyed hereunder by the City to the Authority. No other amount of rental is due and payable by the Authority for the use and occupancy of the Leased Property under this Site Lease.

As provided in the Indenture, a portion of the proceeds of the Bonds will be applied to make the Site Lease Payment by depositing the full amount thereof with the 2010 Trustee to be held, invested and administered in accordance with the Escrow Agreement for the purpose of discharging the City's obligations with respect to the 2010 Certificates.

SECTION 4. *Leaseback to City*. The Authority shall lease the Leased Property back to the City under the Lease.

SECTION 5. Assignments and Subleases. Unless the City is in default under the Lease, the Authority may not assign its rights under this Site Lease or sublet all or any portion of the Leased Property, except as provided in the Assignment Agreement and in the Lease, without the prior written consent of the City.

SECTION 6. Substitution or Release of Property. If the City exercises its option under Section 3.2 of the Lease to substitute property for the Leased Property in whole or in part, such substitution shall also operate to substitute property for the Leased Property which is leased hereunder. If the City exercises its option under Section 3.3 of the Lease to release a portion of the Leased Property from the Lease, such substitution shall also operate to release such portion of the Leased Property hereunder. The description of the Leased Property which is leased under the Lease shall conform at all times to the description of the Leased Property which is leased hereunder.

SECTION 7. *Right of Entry*. The City reserves the right for any of its duly authorized representatives to enter upon the Leased Property, or any portion thereof, at any reasonable time to inspect the same or to make any repairs, improvements or changes necessary for the preservation thereof.

SECTION 8. *Termination*. The Authority agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property in the same good order and condition as the Leased Property was in at the time of commencement of the term hereof, reasonable wear and tear excepted, and agrees that all buildings, improvements and structures then existing upon the Leased Property shall remain thereon and title thereto shall vest thereupon in the City for no additional consideration.

SECTION 9. *Default*. If the Authority defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for 30 days following notice and demand for correction thereof to the Authority, the City may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease shall be deemed to occur as a result thereof and no such remedy may include termination hereof; *provided, however*, that so long as the Lease remains in effect, the Lease Payments payable by the City under the Lease shall continue to be paid to the Trustee.

SECTION 10. *Quiet Enjoyment*. The Authority at all times during the term of this Site Lease shall peaceably and quietly have, hold and enjoy all of the Leased Property, subject to the provisions of the Lease and subject only to Permitted Encumbrances (as that term is defined in the Lease).

SECTION 11. *Waiver of Personal Liability*. All liabilities under this Site Lease on the part of the Authority are solely corporate liabilities of the Authority as a public entity, and the City hereby releases each and every member and officer of the Authority of and

from any personal or individual liability under this Site Lease. No member or officer of the Authority or its governing board shall at any time or under any circumstances be individually or personally liable under this Site Lease for anything done or omitted to be done by the Authority hereunder.

SECTION 12. *Taxes.* The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Leased Property and any improvements thereon.

SECTION 13. *Eminent Domain.* If the whole or any part of the Leased Property or any improvements thereon is taken by eminent domain proceedings, the interest of the Authority shall be recognized and is hereby determined to be the amount of the then unpaid Lease Payments payable under the Lease and the balance of the award, if any, shall be paid to the City.

SECTION 14. Partial Invalidity. If any one or more of the terms, provisions, covenants or conditions of this Site Lease shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provisions, covenants and conditions of this Site Lease shall be affected thereby, and each provision of this Site Lease shall be valid and enforceable to the fullest extent permitted by law.

SECTION 15. *Notices*. Any notice, request, complaint, demand or other communication under this Site Lease shall be given by first class mail or personal delivery to the party entitled thereto at its address set forth below, or by telecopy, telex or other form of telecommunication, at its number set forth below. Notice shall be effective either (a) upon transmission by telecopy, telex or other form of telecommunication, (b) 48 hours after deposit in the United States mail, postage prepaid, or (c) in the case of personal delivery to any person, upon actual receipt. The City, the Authority and the Trustee may, by written notice to the other parties, from time to time modify the address or number to which communications are to be given hereunder.

<i>If to the City</i> or the Authority:	City of Berkeley 2180 Milvia St. Berkeley, CA 94704 Attention: Director of Finance Fax: (510) 981-6901
If to the Trustee:	The Bank of New York Mellon Trust Company, N.A. 100 Pine Street, Suite 3150 San Francisco, CA 94111 Attention: Corporate Trust Department Fax: (415) 399-1647

SECTION 16. Amendment of this Site Lease. The Authority and the City may at any time amend or modify any of the provisions of this Site Lease, but only (a) with the prior written consent of the Owners of a majority in aggregate principal amount of the

Outstanding Bonds; or (b) without the consent of any of the Bond Owners, but only if such amendment or modification is for any one or more of the following purposes:

- to make cure any ambiguity, or to cure, correct or supplement any defective provision contained herein, or in any other respect whatsoever as the Authority and the City may deem necessary or desirable, provided that, in the opinion of Bond Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Bonds;
- to amend any provision hereof relating to the Tax Code, to any extent whatsoever but only if and to the extent such amendment will not adversely affect the exclusion from gross income of interest on the Bonds under the Tax Code, in the opinion of Bond Counsel;
- (iii) to conform to any amendment of the Indenture which is made thereto in accordance with Section 9.01 of the Indenture; or
- (iv) for the purpose of effectuating any substitution or release of property under Section 6.

SECTION 17. *Governing Law*. This Site Lease shall be construed in accordance with and governed by the Constitution and laws of the State of California.

SECTION 18. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary under this Site Lease with all rights of a third party beneficiary.

SECTION 19. *Binding Effect.* This Site Lease inures to the benefit of and is binding upon the Authority, the City and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 20. Section Headings. All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Site Lease.

SECTION 21. *Execution in Counterparts*. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original but all together shall constitute but one and the same lease. It is also agreed that separate counterparts of this Site Lease may be separately executed by the Authority and the City, all with the same force and effect as though the same counterpart had been executed by both the Authority and the City.

SECTION 22. *Defined Terms*. All capitalized terms used herein and not otherwise defined have the respective meanings given those terms in the Indenture.

IN WITNESS WHEREOF, the City and the Authority have caused this Site Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first above written.

CITY OF BERKELEY, as lessor

By _____ Mayor

Attest:

City Clerk

BERKELEY JOINT POWERS FINANCING AUTHORITY, as lessee

Ву _____

Chair

Attest:

Secretary

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The property constituting the Leased Property consists of the land located in the City of Berkeley, County of Alameda, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon:

The land referred to herein is situated in the State of California, County of Alameda, City of Berkeley, and described as follows:

Parcel One:

A Portion Of Lot 31 In Section 4, Township 1 South, Range 4 West, Mount Diablo Base And Meridian, As Said Lot Is Shown On The Map Entitled "Map Number 4, Of Salt Marsh And Tide Lands Situated In The County Of Alameda, State Of California", Certified Copies Of Which Are On File With The Surveyor General Of The State Of California And With The County Recorder Of The City And County Of San Francisco; Said Portion Being More Particularly Described As Follows:

Commencing At A Point On The Southerly Line Of The Aforesaid Lot 31 Distant Thereon South 88 Degrees 51 Minutes 33 Seconds East, 115.45 Feet From The Southwestern Corner Of Parcel 1 Of The Parcels Of Land Conveyed To The State Of California By Deed Recorded June 30, 1939 In Volume 3735 At Page 482 In Official Records Of Alameda County; Thence North 1 Degree 00 Minutes 00 Seconds East, 185.27 Feet; Thence From A Tangent Which Bears North 30 Degrees 07 Minutes 28 Seconds East Along A Curve To The Right With A Radius Of 150.00 Feet, Through An Angle Of 22 Degrees 59 Minutes 32 Seconds An Arc Length Of 60.19 Feet To The Property Line Common To The Lands Now Or Formerly Of O.T. Offutt, Et Ux And Of The State Of California; Thence Along Last Said Line South 17 Degrees 25 Minutes 13 Seconds East 81.59 Feet And North 75 Degrees 47 Minutes 41 Seconds East, 6.30 Feet To The Easterly Line Of Said Lot 31; Thence Along Said Easterly Line And Said Southerly Line Of Said Lot 31, South 19 Degrees 06 Minutes 26 Seconds East, 89.27 Feet, South 27 Degrees 51 Minutes 19 Seconds East 81.44 Feet And North 88 Degrees 51 Minutes 33 Seconds West 140.85 Feet To The Point Of Commencement.

Parcel Two:

A Non-Exclusive Easement And Right Of Way For Vehicular And Pedestrian Traffic Granted By The City Of Berkeley, A Municipal Corporation Of The State Of California And Recorded July 31, 1961, Reel 511, Image 806, Over And across That Certain Property Situated In The City Of Berkeley, Alameda County Records, Described As Follows:

A Strip Of Land 25 Feet In Width Described As Follows:

Commencing At The Intersection Of The Westerly Line Of Second Street And The Southerly Line Of Addison Street As Said Streets Are Shown On That Certain Map Entitled "Map Of Tract 'B' Of The Berkeley L.T.I. Association", Filed In The Office Of The County Recorder Of Alameda County On February 4, 1876 In Book 19 Of Maps At Page 79; Thence South 76 Degrees 47 Minutes 41 Seconds West 82.21 Feet, More Or Less, Along The Southerly Line Of Addison Street To Allardts Line Of Ordinary High Tide Verified By Court Order Decision City Of Berkeley Vs. E.M. Haug, Et Al, Case Number 142591, February 21, 1939, Last Said Point Being The True Point Of Beginning For The Parcel Herein Described; Thence South 76 Degrees 47 Minutes 41 Seconds West 25.19 Feet; Thence North 22 Degrees 44 Minutes 23.8 Seconds West 8.76 Feet; Thence North 28 Degrees 59 Minutes 04.8 Seconds West 197.31 Feet; Thence South 88 Degrees 51 Minutes 33

Seconds East 28.90 Feet; Thence South 28 Degrees 59 Minutes 04.8 Seconds East 182.74 Feet; Thence South 22 Degrees 44 Minutes 23.8 Seconds East 15.71 Feet To The True Point Of Beginning.

Assessor Parcel No. 060-2521-002-01

(End of Legal Description)

Jones Hall draft 12-22-19

TO BE RECORDED AND WHEN RECORDED RETURN TO: Jones Hall, A Professional Law Corporation 475 Sansome Street, Suite 1700 San Francisco, California 94111 Attention: Christopher K. Lynch

THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this "**Agreement**"), dated for convenience as of May 1, 2020, is between the BERKELEY JOINT POWERS FINANCING AUTHORITY, a joint powers authority duly organized and existing under the laws of the State of California (the "**Authority**"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, as trustee (the "**Trustee**").

BACKGROUND:

1. The City of Berkeley (the "**City**") previously caused execution and delivery of its 2010 Certificates of Participation (Animal Shelter Financing) in the aggregate initial principal amount of \$5,750,000 (the "**2010 Certificates**"), pursuant to a Trust Agreement, dated as of June 1, 2010 (the "**2010 Trust Agreement**"), by and among the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "**2010 Trustee**"), for the purpose of (i) financing the acquisition and construction of an animal shelter, (ii) funding a reserve fund for the 2010 Certificates and (iii) paying the costs of executing and delivering the 2010 Certificates.

2. The 2010 Certificates maturing on or after August 1, 2021 are subject to prepayment on August 1, 2020, or on any date thereafter, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, without premium. The City wishes to refinance its outstanding 2010 Certificates.

3. To that end, the City has proposed to lease to the Authority certain real property and improvements, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the "Leased Property"), under a Site Lease, dated as of the date hereof, between the City and the Authority (the "Site Lease") in consideration of the payment by the Authority of an upfront rental payment (the "Site

Lease Payment") which is sufficient to provide funds for the prepayment of the 2010 Certificates. The Site Lease is being recorded concurrently herewith.

4. The Authority has authorized the issuance of its Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) in the aggregate principal amount of \$______ (the "**Bonds**") under an Indenture of Trust dated as of the date hereof (the "**Indenture**"), between the Authority and the Trustee, for the purpose of providing the funds to enable the Authority to pay the Site Lease Payment to the City in accordance with the Site Lease.

5. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Bonds, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of the date hereof (the "Lease"), a memorandum of which has been recorded concurrently herewith, under which the City has agreed to pay semiannual Lease Payments as the rental for the Leased Property thereunder.

6. The Authority has requested the Trustee to enter into this Agreement for the purpose of assigning certain of its rights under the Lease to the Trustee for the benefit of the Bond owners.

AGREEMENT:

In consideration of the material covenants contained in this Agreement, the parties hereto hereby formally covenant, agree and bind themselves as follows:

SECTION 1. *Defined Terms*. All capitalized terms not otherwise defined herein have the respective meanings given those terms in the Indenture.

SECTION 2. Assignment. The Authority hereby assigns to the Trustee, for the benefit of the Owners of all Bonds which are issued and Outstanding under the Indenture, all of the Authority's rights under the Lease (excepting only the Authority's rights under Sections 4.5, 5.10, 7.3 and 8.4 of the Lease and its rights to give consents and approvals under the Lease), including but not limited to:

- (a) the right to receive and collect all of the Lease Payments from the City under the Lease;
- (b) the right to receive and collect any proceeds of any insurance maintained thereunder with respect to the Leased Property, or any eminent domain award (or proceeds of sale under threat of eminent domain) paid with respect to the Leased Property; and
- (c) the right to exercise such rights and remedies conferred on the Authority under the Lease as may be necessary or convenient (i) to enforce payment of the Lease Payments and any amounts required to be deposited in the Insurance and Condemnation Fund established under Section 5.07 of the Indenture, or (ii) otherwise to protect the interests of the Bond Owners in the event of a default by the City under the Lease.

The Trustee shall administer all of the rights assigned to it by the Authority under this Agreement in accordance with the provisions of the Indenture, for the benefit of the Owners of Bonds. The assignment made under this Section 2 is absolute and irrevocable, and without recourse to the Authority.

SECTION 3. Acceptance. The Trustee hereby accepts the assignments made herein for the purpose of securing the payments due under the Lease and Indenture to, and the rights under the Lease and Indenture of, the Owners of the Bonds, all subject to the provisions of the Indenture. The recitals contained herein are those of the Authority and not of the Trustee, and the Trustee assumes no responsibility for the correctness thereof.

SECTION 4. *Conditions.* This Agreement confers no rights and imposes no duties upon the Trustee beyond those expressly provided in the Indenture. The assignment hereunder to the Trustee is solely in its capacity as Trustee under the Indenture, and the Trustee shall have the same rights, protections, immunities and indemnities hereunder as afforded to it under the Indenture.

SECTION 5. *Execution in Counterparts*. This Agreement may be executed in any number of counterparts, each of which is an original and all together constitute one and the same agreement. Separate counterparts of this Agreement may be separately executed by the Trustee and the Authority, both with the same force and effect as though the same counterpart had been executed by the Trustee and the Authority.

SECTION 6. *Binding Effect.* This Agreement inures to the benefit of and binds the Authority and the Trustee, and their respective successors and assigns, subject, however, to the limitations contained herein.

SECTION 7. *Governing Law*. This Agreement is governed by the Constitution and laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officers as of the day and year first written above.

BERKELEY JOINT POWERS FINANCING AUTHORITY

By _____ Chair

Attest:

Secretary

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Trustee

By _____ Authorized Representative

APPENDIX A

DESCRIPTION OF THE LEASED PROPERTY

The property constituting the Leased Property consists of the land located in the City of Berkeley, County of Alameda, State of California, which is described as follows, including all buildings, improvements and facilities at any time situated thereon:

The land referred to herein is situated in the State of California, County of Alameda, City of Berkeley, and described as follows:

Parcel One:

A Portion Of Lot 31 In Section 4, Township 1 South, Range 4 West, Mount Diablo Base And Meridian, As Said Lot Is Shown On The Map Entitled "Map Number 4, Of Salt Marsh And Tide Lands Situated In The County Of Alameda, State Of California", Certified Copies Of Which Are On File With The Surveyor General Of The State Of California And With The County Recorder Of The City And County Of San Francisco; Said Portion Being More Particularly Described As Follows:

Commencing At A Point On The Southerly Line Of The Aforesaid Lot 31 Distant Thereon South 88 Degrees 51 Minutes 33 Seconds East, 115.45 Feet From The Southwestern Corner Of Parcel 1 Of The Parcels Of Land Conveyed To The State Of California By Deed Recorded June 30, 1939 In Volume 3735 At Page 482 In Official Records Of Alameda County; Thence North 1 Degree 00 Minutes 00 Seconds East, 185.27 Feet; Thence From A Tangent Which Bears North 30 Degrees 07 Minutes 28 Seconds East Along A Curve To The Right With A Radius Of 150.00 Feet, Through An Angle Of 22 Degrees 59 Minutes 32 Seconds An Arc Length Of 60.19 Feet To The Property Line Common To The Lands Now Or Formerly Of O.T. Offutt, Et Ux And Of The State Of California; Thence Along Last Said Line South 17 Degrees 25 Minutes 13 Seconds East 81.59 Feet And North 75 Degrees 47 Minutes 41 Seconds East, 6.30 Feet To The Easterly Line Of Said Lot 31; Thence Along Said Easterly Line And Said Southerly Line Of Said Lot 31, South 19 Degrees 06 Minutes 26 Seconds East, 89.27 Feet, South 27 Degrees 51 Minutes 19 Seconds East 81.44 Feet And North 88 Degrees 51 Minutes 33 Seconds West 140.85 Feet To The Point Of Commencement.

Parcel Two:

A Non-Exclusive Easement And Right Of Way For Vehicular And Pedestrian Traffic Granted By The City Of Berkeley, A Municipal Corporation Of The State Of California And Recorded July 31, 1961, Reel 511, Image 806, Over And across That Certain Property Situated In The City Of Berkeley, Alameda County Records, Described As Follows:

A Strip Of Land 25 Feet In Width Described As Follows:

Commencing At The Intersection Of The Westerly Line Of Second Street And The Southerly Line Of Addison Street As Said Streets Are Shown On That Certain Map Entitled "Map Of Tract 'B' Of The Berkeley L.T.I. Association", Filed In The Office Of The County Recorder Of Alameda County On February 4, 1876 In Book 19 Of Maps At Page 79; Thence South 76 Degrees 47 Minutes 41 Seconds West 82.21 Feet, More Or Less, Along The Southerly Line Of Addison Street To Allardts Line Of Ordinary High Tide Verified By Court Order Decision City Of Berkeley Vs. E.M. Haug, Et Al, Case Number 142591, February 21, 1939, Last Said Point Being The True Point Of Beginning For The Parcel Herein Described; Thence South 76 Degrees 47 Minutes 41 Seconds West 8.76 Feet; Thence North 28

Degrees 59 Minutes 04.8 Seconds West 197.31 Feet; Thence South 88 Degrees 51 Minutes 33 Seconds East 28.90 Feet; Thence South 28 Degrees 59 Minutes 04.8 Seconds East 182.74 Feet; Thence South 22 Degrees 44 Minutes 23.8 Seconds East 15.71 Feet To The True Point Of Beginning.

Assessor Parcel No. 060-2521-002-01

(End of Legal Description)

Jones Hall draft 1-10-20

ESCROW DEPOSIT AND TRUST AGREEMENT

Relating to

\$5,750,000 City of Berkeley 2010 Certificates of Participation (Animal Shelter Financing)

This ESCROW DEPOSIT AND TRUST AGREEMENT (this "**Agreement**"), dated as of May 1, 2020, is between the CITY OF BERKELEY, a charter law city and municipal corporation organized and existing under the Constitution and laws of the State of California (the "**City**"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association organized and existing under the laws of the United States of America, acting as escrow agent for the Prior Certificates described below (the "**Escrow Agent**") and as trustee (the "**Prior Trustee**") for the Prior Certificates.

BACKGROUND:

1. The City previously entered into a Trust Agreement dated as of June 1, 2010 (the "**Prior Trust Agreement**"), with the Berkeley Joint Powers Financing Authority (the "**Authority**") and the Prior Trustee, under which \$5,750,000 aggregate principal amount of 2010 Certificates of Participation (Animal Shelter Financing) (the "**Prior Certificates**") were executed and delivered for the purpose of financing the acquisition and construction of an animal shelter.

2. The Prior Certificates maturing on or after August 1, 2021 are subject to prepayment on August 1, 2020, or on any date thereafter, at a prepayment price equal to the principal amount to be prepaid, plus accrued interest to the prepayment date, without premium. In order to take advantage of prevailing bond market conditions, the City wishes to refinance the Prior Certificates.

3. To that end, the City has proposed to lease certain real property to the Authority in consideration of the payment by the Authority of an upfront rental payment that is sufficient to provide funds to refinance the Prior Certificates.

4. In order to raise funds for such purpose, and pursuant to an Indenture of Trust, dated as of May 1, 2020 (the "**Refunding Bonds Indenture**"), by and between the Authority and The Bank of York Mellon Trust Company, N.A., as trustee (the "**2020 Trustee**"), the Authority proposes to issue and sell its Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing) in the aggregate principal amount of \$_____ (the "**Refunding Bonds**").

5. The City wishes to appoint the Escrow Agent for the purpose of establishing an irrevocable escrow fund to be funded, invested, held and administered for the purpose of providing for the payment and prepayment in full of the principal and interest and premium (if any) with respect to the outstanding Prior Certificates, and to provide certain directions to the Prior Trustee with respect to the Prior Certificates.

6. As a result of the deposit and investment of funds in accordance with this Agreement, the Prior Certificates will be discharged and defeased in accordance with the provisions of Section 13.01 of the Prior Trust Agreement and prepaid in accordance with the provisions of Section 3.01(a) of the Prior Trust Agreement.

AGREEMENT:

In consideration of the premises and the material covenants contained herein, the City and The Bank of New York Mellon Trust Company, N.A., as Escrow Agent and Prior Trustee, hereby agree as follows:

SECTION 1. Appointment of Escrow Agent; Establishment of Escrow Fund. The City hereby appoints the Escrow Agent to act as escrow agent for purposes of administering the funds required to defease and prepay the Prior Certificates in accordance with the Prior Trust Agreement. The Escrow Agent is directed to establish an escrow fund (the "**Escrow Fund**") to be held by the Escrow Agent in trust as an irrevocable escrow securing the payment of the Prior Certificates as set forth below. All cash and securities in the Escrow Fund are hereby irrevocably pledged as a special fund for the payment of the principal of and interest and premium (if any) with respect to the Prior Certificates in accordance with the Prior Trust Agreement.

If at any time the Escrow Agent receives actual knowledge that the cash and securities in the Escrow Fund will not be sufficient to make any payment required by Section 4 in respect of the Prior Certificates, the Escrow Agent shall notify the City of such fact and the City shall immediately cure such deficiency from any source of legally available funds. The Escrow Agent has no liability for any such insufficiency.

SECTION 2. Deposit and Investment of Amounts in Escrow Fund. On _____, 2020 (the "**Closing Date**"), the Authority, pursuant to the Refunding Bonds Indenture, will cause to be transferred to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____ in immediately available funds, to be derived from the proceeds of the Refunding Bonds.

In addition, the City hereby directs the Prior Trustee to transfer to the Escrow Agent for deposit into the Escrow Fund the amount of \$_____, to be derived from moneys related to the Prior Certificates that are available as a result of the defeasance of the Prior Certificates. As a result, the total amount to be deposited in the Escrow Fund is \$_____.

On the Closing Date, the Escrow Agent shall invest \$_____ of the amounts deposited in the Escrow Fund in the federal securities listed on Exhibit D. The Escrow Agent shall hold the remaining \$_____ in cash, uninvested.

If the Escrow Agent learns that the Department of the Treasury or the Bureau of Public Debt will not, for any reason, accept a subscription of state and local government series securities ("SLGS") that is to be submitted pursuant to this Agreement, the Escrow Agent shall promptly request alternative written investment instructions from the City with respect to funds which were to be invested in SLGS. The Escrow Agent shall follow such instructions and, upon the maturity of any such alternative investment, the Escrow Agent shall hold such funds uninvested and without liability for interest until receipt of further written instructions from the City. In the absence of investment instructions from the City, the Escrow Agent shall hold such funds uninvested. The Escrow Agent may conclusively rely upon the City's selection of an alternative investment as a determination of the alternative investment's legality and suitability and shall not be liable for any losses related to the alternative investments or for compliance with any yield restriction applicable thereto.

SECTION 3. Application of Amounts in Escrow Fund. The Escrow Agent is hereby instructed to withdraw from the Escrow Fund and transfer to the Prior Trustee an amount required to pay the principal of and interest and prepayment premium (if any) on the Prior Certificates, in accordance with the schedule attached as Exhibit A hereto.

Following the payment and prepayment of the Prior Certificates in full, the Escrow Agent shall transfer any amounts remaining on deposit in the Escrow Fund to The Bank of New York Mellon Trust Company, N.A., as trustee for the Refunding Bonds, for deposit in the Bond Fund established under the Refunding Bonds Indenture, to be applied to pay interest next coming due and payable on the Refunding Bonds.

SECTION 4. Irrevocable Election to Redeem Prior Certificates. The City has irrevocably elected to pay and prepay all of the outstanding Prior Certificates on the date set forth in Exhibit A, in accordance with the provisions of the Prior Trust Agreement. The City previously directed the Prior Trustee to give notice of the prepayment of the Prior Certificates in accordance with the requirements of the Prior Trust Agreement, at the expense of the City, using the form set forth in Exhibit B.

The City hereby directs the Prior Trustee to give notice of the discharge of the Trust Agreement and defeasance of the Prior Certificates in accordance with the provisions of the prior Trust Agreement and by filing a notice with the Municipal Securities Rulemaking Board's EMMA website, using the form set forth in <u>Exhibit C</u>.

SECTION 5. Compensation to Escrow Agent. The City shall pay the Escrow Agent full compensation for its services under this Agreement, including out-of-pocket costs such as publication costs, prepayment expenses, legal fees and other costs and expenses relating hereto and, in addition, all fees, costs and expenses relating to the purchase, substitution or withdrawal of any securities after the date hereof. Under no circumstances shall amounts deposited in or credited to the Escrow Fund be deemed to be available for said purposes. The Escrow Agent has no lien upon or right of set off against the cash and securities at any time on deposit in the Escrow Fund.

SECTION 6. *Immunities and Liability of Escrow Agent*. The Escrow Agent undertakes to perform only such duties as are expressly set forth in this Agreement and no implied duties, covenants or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not have any liability hereunder except to the extent of its negligence or willful misconduct. In no event shall the Escrow Agent be liable for any special, indirect or consequential damages. The Escrow Agent shall not be liable for any loss from any investment made by it in accordance with the terms of this Agreement. The Escrow Agent may consult with legal counsel of its own choice and the Escrow Agent shall not be liable for any action taken or not taken by it in good faith in reliance upon the opinion or advice of such counsel. The Escrow Agent shall not be liable for the recitals or representations contained in this Agreement and shall not be responsible for the validity of this Agreement, the sufficiency of the Escrow Fund or the moneys and securities to pay the principal, interest and prepayment premium with respect to the Prior Certificates.

Whenever in the administration of this Agreement the Escrow Agent deems it necessary or desirable that a matter be proved or established prior to taking or not taking any action, such matter may be deemed to be conclusively proved and established by a certificate of an authorized representative of the City and shall be full protection for any action taken or not taken by the Escrow Agent in good faith reliance thereon.

The Escrow Agent may conclusively rely as to the truth and accuracy of the statements and correctness of any opinions or calculations provided to it in connection with this Agreement and shall be protected in acting, or refraining from acting, upon any notice, instruction, request, certificate, document, opinion or other writing furnished to the Escrow Agent in connection with this Agreement and believed by the Escrow Agent to be signed by the proper party, and it need not investigate any fact or matter stated therein.

None of the provisions of this Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise to incur any liability, financial or otherwise, in the performance of any of its duties hereunder. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care.

The Escrow Agent may at any time resign by giving 30 days written notice of resignation to the City. Upon receiving such notice of resignation, the City shall promptly appoint a successor and, upon the acceptance by the successor of such appointment, release the resigning Escrow Agent from its obligations hereunder by written instrument, a copy of which instrument shall be delivered to the resigning Escrow Agent and the successor. If no successor shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor.

Any bank, corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any bank, corporation or association resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any bank, corporation or association succeeding to all or substantially all of the corporate trust business of the Escrow Agent shall be the successor of the Escrow Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except on the part of any of the parties hereto where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

The City shall indemnify, defend and hold harmless the Escrow Agent and its officers, directors, employees, representatives and agents, from and against and reimburse the Escrow Agent for any and all claims, obligations, liabilities, losses, damages, actions, suits, judgments, reasonable costs and expenses (including reasonable attorneys' and agents' fees and expenses) of whatever kind or nature regardless of their merit, demanded, asserted or claimed against the Escrow Agent directly or indirectly relating to, or arising from, claims against the Escrow Agent by reason

of its participation in the transactions contemplated hereby except to the extent caused by the Escrow Agent's negligence or willful misconduct. The provisions of the foregoing sentence shall survive the termination of this Agreement or the earlier resignation or removal of the Escrow Agent.

The Escrow Agent agrees to accept and act upon instructions or directions pursuant to this Agreement sent by unsecured e-mail (provided, that for purposes of this Agreement, an e-mail does not constitute a notice, request or other communication hereunder but rather the portable document format or similar attachment attached to such e-mail shall constitute a notice, request or other communication hereunder), facsimile transmission or other similar unsecured electronic methods, provided, however, that, the Escrow Agent shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the City elects to give the Escrow Agent e-mail or facsimile instructions (or instructions by a similar electronic method) and the Escrow Agent in its discretion elects to act upon such instructions, the Escrow Agent's reasonable understanding of such instructions shall be deemed controlling. The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The City agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including without limitation the risk of the Escrow Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties.

SECTION 7. *Termination of Agreement*. Upon payment in full of the principal of and interest and prepayment premium on the Prior Certificates and all fees, expense and charges of the Escrow Agent as described above, this Agreement shall terminate and the Escrow Agent shall be discharged from any further obligation or responsibility hereunder.

SECTION 8. *Execution in Counterparts.* This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

SECTION 9. *Applicable Law*. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

CITY OF BERKELEY

By: _____ Finance Director

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Escrow Agent and as Prior Trustee

By ______ Authorized Officer

EXHIBIT A

ESCROW REQUIREMENTS

Payment <u>Date</u>

Interest Payment Principal <u>Prepayment</u> Prepayment <u>Premium</u> Total <u>Payment</u>

EXHIBIT B

FORM OF NOTICE OF PREPAYMENT

\$5,750,000 City of Berkeley 2010 Certificates of Participation (Animal Shelter Financing)

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City") that all of the captioned certificates of participation (the "2010 Certificates") maturing on or after August 1, 2021 have been called for prepayment under and within the meaning of the Trust Agreement, dated as of June 1, 2010 (the "2010 Trust Agreement"), on _____,2020 (the "Prepayment Date"), at a prepayment price equal to 100% of the par amount of the 2010 Certificates to be redeemed together with accrued interest thereon to the Prepayment Date, without premium (the "Prepayment Price").

The 2010 Certificates consist of the following:

 Maturity Date
 Principal Amount
 Interest Rate
 CUSIP

T Term Certificate.

Interest on the principal amount designated to be prepaid shall cease to accrue on and after the Redemption Date.

IMPORTANT NOTICE

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), 28% of the Redemption Price will be withheld if tax identification number is <u>not</u> properly certified.

Payment of the Prepayment Price of the 2010 Certificates called for prepayment will become due and payable on the Prepayment Date upon presentation and surrender thereof in the following manner:

The City and the 2010 Trustee shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2010 Certificates; the CUSIP numbers are included solely for the convenience of the owners of the 2010 Certificates.

Dated: ____, 2020

EXHIBIT C

FORM OF NOTICE OF DEFEASANCE

\$5,750,000 City of Berkeley 2010 Certificates of Participation (Animal Shelter Financing)

NOTICE IS HEREBY GIVEN, by the City of Berkeley (the "City") that the captioned certificates of participation (the "2010 Certificates") have been defeased and discharged under and within the meaning of the Trust Agreement, dated as of June 1, 2010 (the "2010 Trust Agreement"). Funds for the prepayment of the 2010 Bonds on _____, 2020 (the "Prepayment Date") have been deposited with The Bank of New York Mellon Trust Company, N.A., as escrow agent, and the sufficiency of the funds and investments for the purpose of paying the principal of and interest on the 2010 Bonds has been verified by______, certified public accountants. As a consequence of the foregoing actions and in accordance with the 2010 Trust Agreement, the 2010 Certificates are no longer secured by a pledge of revenues under the 2010 Trust Agreement, and the 2010 Certificates are now payable solely from the moneys set aside in escrow as described above and, if necessary, from other legally available funds of the City.

The 2010 Certificates consist of the following:

Maturity Date Principal Amount Interest Rate CUSIP

(T) Term Bond

The City has irrevocably elected to redeem all of the outstanding 2010 Certificates on the Prepayment Date, at a prepayment price equal to the par amount thereof together with accrued interest thereon to the redemption date, without premium.

The City and the trustee for the 2010 Certificates shall not be responsible for the selection or use of the CUSIP numbers listed above, nor is any representation made as to the accuracy of the CUSIP numbers listed above or as printed on any 2010 Certificates;

the CUSIP numbers are included solely for the convenience of the owners of the 2010 Certificates.

Dated: _____, 2020

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Escrow Agent

EXHIBIT D

ESCROW SECURITIES

Type of		Purchase	Maturity	Par			Interest
Security	<u>CUSIP</u>	Date	Date	<u>Amount</u>	Rate	Price	<u>Class</u>

Jones Hall draft 1-10-20

OFFICIAL NOTICE OF SALE

\$

BERKELEY JOINT POWERS FINANCING AUTHORITY 2020 REFUNDING LEASE REVENUE BONDS (2010 ANIMAL SHELTER COP REFINANCING)

NOTICE IS HEREBY GIVEN by the Berkeley Joint Powers Financing Authority (the "Authority"), that bids will be received by a representative of the Authority for the purchase of \$______* principal amount of bonds of the Authority designated the "Berkeley Joint Powers Financing Authority 2020 Refunding Lease Revenue Bonds (2010 Animal Shelter COP Refinancing)" (the "Bonds"). Bids will be received in electronic form through BiDCOMP™/Parity® ("Parity") on:

TUESDAY, April 7, 2020

starting at 8:30 a.m. and ending at 9:00 a.m. Pacific Time.

The Authority reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<u>http://www.tm3.com</u>).

The Bonds will be issued under the provisions of a resolution adopted by the Authority Commission of the Authority on February 25, 2020 (the "Bond Resolution"), and under the laws of the State of California. The Bonds are more particularly described in the proposed Indenture of Trust, dated as of May 1, 2020 (the "Indenture") on file with the Authority (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

DESCRIPTION OF THE BONDS

PURPOSE: The proceeds of the Bonds will be applied by the Authority for the purpose of refunding outstanding certificates of participation of the City of Berkeley (the "City") in order to realize debt service savings for the benefit of the taxpayers of City.

ISSUE; BOOK-ENTRY FORM: The Bonds will be issued in the aggregate principal amount of \$______* in the form of fully registered Bonds without coupons. The Bonds will be dated as of as of their original delivery, and will be issued in minimum denominations of \$5,000. The Bonds will be issued in a book entry only system with no physical distribution of the Bonds made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Bonds which will be immobilized in its custody. The Bonds 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 Bonds.

MATURITIES: The Bonds will mature, or be subject to mandatory sinking fund redemption, on October 1 in each of the years, and in the amounts, as set forth in the following table. The final principal amount of the Bonds, and the final amount of each maturity of the Bonds, is subject

to increase or reduction as described below under the heading "Adjustment of Principal Maturities". Each bidder must specify in its bid whether, for any particular year, the Bonds will mature or, alternately, be subject to mandatory sinking fund redemption in such year.

Maturity Date (October 1) Principal <u>Amount</u> Maturity Date (October 1) Principal <u>Amount</u>

PAYMENT PROVISIONS: Interest on the Bonds will be payable on October 1, 2020, and on succeeding April 1 and October 1 (the "Interest Payment Dates"), to the registered owners by check or draft of The Bank of New York Mellon Trust Company, N.A., as paying agent (the "Paying Agent") or, in the case of the owner of Bonds in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer. Principal of and premium (if any) on any Bond will be paid upon presentation and surrender thereof at the office of the Paying Agent. Principal, interest and premium (if any) on the Bonds are payable in lawful money of the United States of America.

OPTIONAL REDEMPTION: The Bonds maturing on or before October 1, 2029, are not subject to optional redemption prior to their stated maturity. The Bonds maturing on or after October 1, 2030, are subject to redemption, as a whole or in part at the election of the Authority among maturities on such basis as designated by the Authority and by lot within a maturity, at the option of the Authority, on October 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed, together with accrued interest thereon to the date fixed for redemption, without premium.

SPECIAL MANDATORY REDEMPTION FROM INSURANCE OR CONDEMNATION PROCEEDS. The Bonds are subject to redemption as a whole, or in part on a pro rata basis among maturities, on any date, from any Net Proceeds required to be used for such purpose as provided in the Indenture, at a redemption price equal to 100% of the principal amount thereof plus interest accrued thereon to the date fixed for redemption, without premium.

SINKING FUND REDEMPTION: Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. If the bid of the winning bidder specifies that any maturity of Bonds will be term Bonds, such term Bonds will be subject to mandatory sinking fund redemption on October 1 in each year so designated in the bid, in the respective amounts for such years as set forth above

under the heading "MATURITIES", at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

SECURITY: The Bonds are secured by a pledge of Revenues (as defined in the Indenture), which primarily consist of lease payments made by the City to the Authority as compensation for the City' use and occupancy of certain real property and improvements under a Lease Agreement by and between the City and the Authority. The Authority is not required to advance any moneys derived from any source other than the Revenues and other assets pledged under the Indenture.

TAX-EXEMPT STATUS: In the opinion of Jones Hall, A Professional Law Corporation, bond counsel to the Authority ("Bond Counsel"), interest on the Bonds 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. Bidders are referred to the Preliminary Official Statement for a description of the proposed opinion of Bond Counsel. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes.

If prior to the delivery of the Bonds either (a) the interest on other obligations of the same type and character shall be declared to be taxable (either at the time of such declaration or at any future date) under any federal income tax laws, either by the terms of such laws or by ruling of a federal income tax authority or official which is followed by the Internal Revenue Service, or by decision of any federal court, or (b) any federal income tax law is adopted which will have a substantial adverse effect upon owners of the Bonds as such, the winning bidder for the Bonds may, at its option, prior to the tender of the Bonds, be relieved of its obligation under the contract to purchase the Bonds, and in such case the deposit accompanying its proposal will be returned.

LEGAL OPINION: The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, approving the validity of the Bonds, will be furnished to the purchaser of the Bonds without cost. A copy of the legal opinion, certified by the official in whose office the original is filed, will be printed on each Bond at the expense of the Authority.

FURTHER INFORMATION: A copy of the Preliminary Official Statement describing the Bonds, and any other information concerning the proposed financing, will be furnished upon request to the municipal advisor to the Authority as follows ("Municipal Advisor"): NHA Advisors, LLC, 4040 Civic Center Drive, Suite 200, San Rafael, California 94903, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or <u>Rob@NHAadvisors.com</u>, website: <u>www.NHAadvisors.com</u>. The Official Notice of Sale and Preliminary Official Statement are available from the Municipal Advisor.

TERMS OF SALE

RIGHT TO CANCEL, POSTPONE OR RESCHEDULE SALE: The Authority reserves the right to cancel, postpone or reschedule the sale of the Bonds upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (www.tm3.com). If the sale is postponed, bids will be received at the above place at such date and hour as set forth in the notice. Failure of any bidder to receive such notice or any other form of notice of canceled, postponed or rescheduled sale will not affect the legality or validity of any sale.

SUBMISSION OF BIDS: Bids will be received electronically as described below, provided that such electronic bid must be received no later than the date and time set for receipt of bids.

All bidders, by submitting a bid, acknowledge that they have an established industry reputation for underwriting new issuances of municipal bonds.

ELECTRONIC BIDS: Solely as an accommodation to bidders, the Authority 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 Authority does not encourage the use of Ipreo, and that Ipreo is not acting as an agent of the Authority. Instructions for submitting electronic bids must be obtained from Ipreo, and the Authority does not assume any responsibility for ensuring or verifying bidder compliance with Ipreo procedures. Ipreo has advised the Authority that bidders must subscribe to Ipreo if such bidders intend to use Ipreo to submit bids. The Authority shall be entitled to assume that any bid received via Ipreo has been made by a duly authorized agent of the bidder.

Neither the Authority, 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 Authority at the place of bid opening, and the Authority will not be required to accept the time kept by Parity as the official time. The Authority assumes no responsibility for informing any bidder prior to the deadline for receiving bids that its bid is incomplete, or not received.

FORM OF BID; PURCHASE PRICE: Each proposal must be for not less than all of the Bonds hereby offered for sale.

The Authority will accept par, discount or premium bids for the Bonds.

DESIGNATION OF INTEREST RATES: Each bidder must specify the rate or rates of interest which the Bonds will bear. The maximum rate bid on any Bonds may not exceed 6.00% per annum. A bidder will be permitted to bid different rates of interest for each maturity of Bonds, but:

- each interest rate specified must be in a multiple of 1/20% or 1/8%;
- no Bond may bear more than one rate of interest;
- interest on each Bond will be computed from the date of original delivery to its stated maturity at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; and
- all Bonds maturing at any one time will bear the same rate of interest.

DETERMINATION OF BEST BID: The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Bonds from the date of original delivery (which is assumed to be May 5, 2020) to their respective maturity dates or mandatory sinking fund redemption dates, produces an amount equal to the purchase price specified in such bid. For purposes of computing

the true interest cost represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Bonds plus any premium specified in such proposal, and the true interest cost shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds.

ADJUSTMENT OF PRINCIPAL MATURITIES: In order to achieve the financial goals of the Authority, the Authority may need to adjust the schedule of principal maturities for the Bonds based on the bids that are received. Therefore, the Authority reserves the right to increase or decrease the principal amount of any maturity of the Bonds (or, in the case of the term Bonds, the principal amount thereof which is subject to mandatory sinking fund redemption on October 1 in any year). The aggregate principal amount of the Bonds may be reduced as a result of such adjustment, in an amount not exceeding 10% of the amount of Bonds hereby offered for sale. Notice of such increase or decrease shall be given to the winning bidder as soon as practicable following the notification of award, as described below. The Authority will attempt to maintain total underwriter compensation when adjusting maturities. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

RIGHT OF REJECTION: The Authority reserves the right, in its discretion, to reject any and all bids and to the extent not prohibited by law to waive any irregularity or informality in any bid.

PROMPT AWARD: An authorized representative of the Authority will accept the best responsible bid for the purchase of the Bonds by notice to the winning bidder. If two or more bids setting forth identical interest rates and premium, if any, are received, such officer may exercise discretion and judgment in making the award and may award the Bonds on a pro rata basis in such denominations as he or she determines. Such authorized representative of the Authority may also reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds will be awarded or all bids will be rejected not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the winning bidder; provided, that the award may be made after the expiration of the specified time if the bidder does not notify the Authority in writing of the withdrawal of its proposal.

PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY: It is expected that the Bonds will be delivered to DTC for the account of the winning bidder on May 5, 2020. The winning bidder has the right, at the winning bidder's option, to cancel the contract of purchase if the Bonds are not tendered for delivery within 60 days from the date of the sale thereof, and in such event the winning bidder shall be entitled to the return of the deposit accompanying its bid.

NO GOOD FAITH DEPOSIT: The Authority does not require a good faith deposit to be submitted in connection with bids for the Bonds.

PAYMENT OF PURCHASE PRICE: The winning bidder will be required to pay the purchase price of the Bonds in funds that are immediately available to the Authority. Such payment shall be made on the date of original delivery of the Bonds to DTC.

STATEMENT OF TRUE INTEREST COST: Each bidder is requested, but not required, to state in its proposal the percentage true interest cost represented by its proposal, determined as described above, which will be considered as informative only and not binding on either the bidder or the Authority.

ESTABLISHMENT OF ISSUE PRICE: (a) The winning bidder shall assist the Authority in establishing the issue price of the Bonds and shall execute and deliver to the Authority at closing

an "issue price" or similar certificate setting forth the reasonably expected initial offering price to the public of the Bonds, 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 Authority and Bond Counsel. All actions to be taken by the Authority under this Notice of Sale to establish the issue price of the Bonds may be taken on behalf of the Authority by the Authority's municipal advisor identified herein and any notice or report to be provided to the Authority may be provided to the Authority's municipal advisor.

(b) The Authority 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 Bonds) will apply to the initial sale of the Bonds (the "competitive sale requirements") because:

(1) the Authority 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 Authority 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 Authority anticipates awarding the sale of the Bonds to the bidder who submits a firm offer to purchase the Bonds 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 Bonds, as specified in the bid. By submitting a bid for the Bonds, each bidder certifies that it has an established industry reputation for underwriting new issuances of municipal bonds. The Authority will not accept bids from firms without an established industry reputation for underwriting new issuances of municipal bonds.

(c) In the event the Authority receives less than three bids that conform to the parameters contained herein such that the competitive sale requirements are not satisfied, the Authority intends to treat the initial offering price of each maturity of the bonds set forth in the bid submitted by the winning bidder (the "initial offering price") as the issue price of that maturity (the "hold-the-offering-price rule"). Consequently, each bidder should assume for purposes of making its bid that for each maturity of the Bonds, the Authority will treat the initial offering prices as of the date that the Bonds are awarded by the Authority to the successful bidder ("sale date") as the issue price of the Bonds. The Authority 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 Authority.

(d) By submitting a bid, the successful bidder shall, on behalf of the underwriters participating in the purchase of the Bonds, (i) confirm that the underwriters have offered or will offer each maturity of the Bonds 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 any maturity of the Bonds to any person at a price that is higher than the initial

offering price for such maturity 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 that maturity of the Bonds to the public at a price that is no higher than the initial offering price for such maturity.

The winning bidder shall promptly advise the Authority when the underwriters have sold 10% of that maturity of the Bonds 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.

The Authority acknowledges that, in making the representation set forth above, the (e) successful bidder will rely on (i) the agreement of each underwriter to comply with the hold-theoffering-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 Bonds 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 Bonds 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 Authority 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 Bonds.

(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 Bonds 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 Bonds of each maturity allotted to it until it is notified by the successful bidder that either the 10% test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity 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 Bonds 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 Bonds 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 Bonds of each maturity 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 Bonds of that maturity or all Bonds of that maturity 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 Bonds 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 Authority (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Bonds 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 Bonds 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 Bonds to the public,

(3) a purchaser of any of the Bonds 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 other), and

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

NO LITIGATION: There is no litigation pending concerning the validity of the Bonds, the corporate existence of the Authority or the entitlement of the officers thereof to their respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the delivery of the Bonds.

CUSIP NUMBERS: It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Bonds in accordance with the terms hereof. All expenses in relation to the printing of CUSIP

numbers on the Bonds will be paid for by the Authority, except that the CUSIP Service Bureau charge for the assignment of said numbers will be the responsibility of and shall be paid for by the purchaser.

CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES: All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Bonds are the sole responsibility of the purchaser of the Bonds.

OFFICIAL STATEMENT: The Authority has approved a preliminary Official Statement relating to the Bonds. 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 Authority for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). Within seven business days from the sale date, the Authority will deliver to the purchaser copies of the final Official Statement, executed by an authorized representative of the Authority and the Authority 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 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 are been approved by the Authority (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Bonds unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. Upon request, the Authority will furnish to the winning bidder, at no charge, not in excess of 20 printed copies of the Official Statement for use in connection with any resale of the Bonds.

CERTIFICATE REGARDING OFFICIAL STATEMENT: A responsible officer of the Authority will certify to the original purchaser of the Bonds, as a condition of closing, that based on such officer's participation in the preparation of the Official Statement, nothing has come to his or her attention to lead him or her to believe that the Official Statement (except for certain financial statements, statistical data and other information) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

CONTINUING DISCLOSURE. In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City will execute and deliver a Continuing Disclosure Certificate, under which the City undertakes to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the preliminary Official Statement and will also be set forth in the final Official Statement. Such Continuing Disclosure Certificate will be a document required to be delivered at closing by the City, and the failure by the City to deliver such document in form and substance acceptable to Bond Counsel and the winning bidder will relieve the winning bidder of its obligation to purchase the Bonds.

ACKNOWLEDGEMENT OF NO FIDUCIARY DUTY. The Authority acknowledges and agrees that (i) the purchase and sale of the Bonds is an arm's-length commercial transaction between the Authority and the underwriter, (ii) in connection with such transaction, the underwriter 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 Authority, (iii) the underwriter has not assumed (individually or collectively) a fiduciary responsibility in favor of the Authority with respect to the offering of the Bonds or the process leading thereto (whether or not the underwriter, or any affiliate of an underwriter, has advised or is currently advising the Authority on other matters) or any other obligation to the Authority except as described in this Notice of Sale, (iv) the underwriter has

financial and other interests that differ from those of the Authority and (v) the Authority has consulted with its own legal and municipal advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

GIVEN by order of the Authority Commission of the Authority by a resolution adopted on February 25, 2020.

EXHIBIT 1 Issue Price Certificate

\$

BERKELEY JOINT POWERS FINANCING AUTHORITY 2020 REFUNDING LEASE REVENUE BONDS (2010 ANIMAL SHELTER COP REFINANCING)

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 "Bonds").

1. Reasonably Expected Initial Offering Price.

(a) As of the Sale Date, the reasonably expected initial offering prices of the Bonds 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 Maturities of the Bonds used by the Underwriter in formulating its bid to purchase the Bonds. Attached as Schedule B is a true and correct copy of the bid provided by Underwriter to purchase the Bonds.

(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 Bonds.

2. **Defined Terms**.

(a) *Issuer* means Berkeley Joint Powers Financing Authority.

(a) *Maturity* means Bonds with the same credit and payment terms. Bonds with different maturity dates, or Bonds with the same maturity date but different stated interest rates, are treated as separate Maturities.

(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 a Maturity of the Bonds. The Sale Date of the Bonds is April 7, 2020.

(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 Bonds 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 Bonds 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 Bonds 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 Bonds, and by Jones Hall, A Professional Law Corporation in connection with rendering its opinion that the interest on the Bonds 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 Bonds.

[UNDERWRITER]

By:		
Name:		

Dated: [ISSUE DATE]

SCHEDULE A

EXPECTED OFFERING PRICES

Maturity Date	Principal	Interest	Reoffering
(October 1)	<u>Amount</u>	<u>Rate</u>	<u>Price</u> *
	\$	%	%

Stated as a percentage of par.

*

SCHEDULE B

COPY OF UNDERWRITER'S BID

(attached)

1-10-20 Jones Hall Draft

NOTICE OF INTENTION TO SELL NOT TO EXCEED

\$

BERKELEY JOINT POWERS FINANCING AUTHORITY 2020 REFUNDING LEASE REVENUE BONDS (2010 ANIMAL SHELTER COP REFINANCING)

NOTICE IS HEREBY GIVEN by the Berkeley Joint Powers Financing Authority (the "Authority"), that bids will be received by a representative of the Authority for the purchase of the captioned bonds (the "Bonds"). Bids will be received in electronic form on BiDCOMP[™]/Parity[®] ("Parity") on:

Tuesday, April 7, 2020

at 8:30 a.m. Pacific Time. The Authority reserves the right to postpone or change the time or sale date upon 20 hours' notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<u>www.tm3.com</u>). Further information, including copies of the preliminary Official Statement and Official Notice of Sale may be obtained from the Authority's municipal advisor, NHA Advisors, LLC, telephone: (415) 785-2025 ext. 2006 (Rob Schmidt) or Rob@NHAadvisors.com.

GIVEN by order of the Authority Commission by a resolution adopted on February 25, 2020.



Office of the City Manager

PUBLIC HEARING February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning & Development Department

Subject: Appeals of Landmarks Preservation Commission and Zoning Adjustments Board Actions -- Conversion of the Hillside School to Residential Use at 1581 Le Roy Avenue

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt a Resolution to affirm the Landmarks Preservation Commission (LPC) decision to approve Structural Alteration Permit #LMSAP2019-0004 and the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP20190061, to rehabilitate and convert the Hillside School to residential use, and dismiss the appeals.

FISCAL IMPACTS OF RECOMMENDATION

The recommendation to uphold the approval of these entitlements would have no impact on the City's adopted budget.

CURRENT SITUATION AND ITS EFFECTS

On December 3, 2019, Michael Scott, a representative of the Hillside Path and Playground Preservation Association (HPPPA), submitted an appeal of the LPC and the ZAB approvals for the rehabilitation and conversion of the Hillside School to residential use. The Hillside School is a City of Berkeley Landmark; the LPC approved the SAP for exterior building and site alterations for the project on August 1, 2019 [Vote: 5-3-0-0 (Yes: Abranches Da Silva, Allen, Chagnon, Crandall, Olson; No: Finacom, O'Malley, Schwartz; Abstain: none; Absent: none; one vacancy)]. The ZAB approved the conversion of the site to residential use and the introduction of certain building features on October 24, 2019 [Vote: 8-0-1-0 (Yes: Clarke, Ching, Matthews, O'Keefe, Selawsky, Sharenko, Simon-Weisberg, Tregub; No: none; Abstain: Kim; Absent: none)]. The City issued the requisite LPC Notice of Decision (NOD) for the SAP approval on November 18, 2019, and the ZAB NOD for the Use Permit approval on November 19, 2019. Rebecca Davis, attorney at Lozeau Drury LLC, submitted comment letters during the ZAB proceedings on behalf of the HPPPA, which form the basis for the appeals. The City Council must conduct a hearing to resolve these appeals.

BACKGROUND

On April 1, 2019, the applicant, historical architect Jerri Holan, on behalf of property owner Samuli Seppala, submitted Use Permit application #ZP2019-0061 and Structural Alteration Permit application #LMSAP2019-0004, to rehabilitate the Hillside School and to convert the building and site to residential use.

The project site is approximately 2.5 acres in total area and contains an approximately 50,000-sq. ft. main building constructed between 1934 and 1938 as an elementary school. The building was designed by renowned Berkeley architect Walter H. Ratcliff Jr. This property appears on the National Register of Historic Places and was designated as a City Landmark in 1982. The main building occupies the eastern portion of the site, and the remainder of the site features the former school playground. There is an existing parking and service vehicle area on the southern end of the site. The public school closed in 1982 and the property has since been in private ownership and in use as a variety of educational and community activities.

The scope of the SAP application included installation of a vehicle door, new windows, a rooftop swimming pool and a hot tub on the main building as well as establishing a new surface parking lot, constructing five storage sheds, and completing landscape improvements in a portion of the former playground and parking areas.

The scope of the Use Permit application included establishing the approximately 50,000-sq. ft. main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; installing an unenclosed swimming pool and hot tub within a new roof deck; constructing an approximately 36-sq. ft. elevator penthouse above the second story, but below the third story roof ridge; converting a former multi-purpose room to a garage; creating a new, surface parking lot and locating as many as five new storage sheds, which will not be habitable or conditioned, so as to be suitable only for storage, within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and completing landscape improvements along the public interface.

LPC Hearing and SAP Approval

After holding a public hearing on August 1, 2019, the LPC approved the Structural Alteration Permit (SAP) by a vote of 5-3-0-0 with one vacancy. The approval included findings of compliance with the Landmarks Preservation Ordinance (Berkeley Municipal Code Chapter 3.24) and the Secretary of the Interior (SOI) Standards for the Treatment of Historic Properties. The findings are itemized in the Notice of Decision, included with this report as Attachment 1, Exhibit A. The approved plans are in Exhibit B. Because the project complies with the SOI Standards, it is categorically exempt from environmental review pursuant to CEQA, as provided for in CEQA Guidelines section 15331 for *Historical Resource Restoration/Rehabilitation*.

The majority of the public comments regarding the project were inquiries about the nature and scale of the property owner's private art practice and the activities intended for the site, which would support the practice and invite others to participate by invitation to the site. Some speakers were opposed to the project citing the property owner's ability to preclude public access to the playground and a pathway within the site that extends from Buena Vista Way on the north side of the property to Le Roy Avenue on the south. The path represents a pedestrian shortcut that many neighbors have used while the school was not in session. These neighbors requested that the property owner grant a public easement for their continued use of that pathway and, when the owner did not agree, they requested that the LPC make an easement a condition of SAP approval. In response to the neighbors, the applicant confirmed that the property owner is willing to maintain the pathway in its current condition with no barriers to public access but reserves the right to re-consider this arrangement in the future should the circumstances prove untenable.

The LPC did not impose a condition of approval requiring an access easement; the majority of the Commission recognized that such an easement would be a private matter and not within the Commission's purview or authority.

ZAB Hearing and Use Permit Approval

After holding a public hearing on October 24, 2019, the ZAB approved the Use Permit to convert the school to residential use by a vote of 8-0-1-0. The approval included findings of compliance with the Zoning Ordinance (BMC Title 23) as well as the provisions for environmental review and exemption pursuant to CEQA Guidelines section 15301 for *Existing Facilities*, section 15303 for *New Construction or Conversion of Small Structures*, and section 15331 for *Historical Resource Restoration / Rehabilitation*.

Similar to the prior SAP hearing, the public's comments were inquiries about the nature and scale of the property owner's private art practice and the activities intended for the site, which would support the practice and invite others to participate by invitation to the site. Unlike the SAP hearing, the majority of the speakers were in favor of the proposal and in support of the site's conversion to an active use. A few members of the public, including the appellant representative Michael Scott, raised the matter of their preference for a pedestrian access easement, this time stating that the easement was necessary to ensure public safety and that the project would not adhere to the requirements of the BMC and CEQA. They submitted letters prepared by attorney Rebecca Davis of Lozeau Drury LLP and asked that ZAB include a pedestrian access easement along the path as a condition of Use Permit approval.

ZAB did not require the easement as a condition of approval, explaining that the easement was a private matter and finding that the project was, in fact, categorically exempt from CEQA and consistent the BMC. By reference, the ZAB also adopted the LPC's findings of compliance with the SOI Standards for the Treatment of Historic

Properties. The itemized findings and conditions are included as Attachment 1, Exhibit C. The approved plans are in Exhibit D.

Appeal

On December 3, 2019, Michael Scott, a representative of the Hillside Path and Playground Preservation Association, filed appeals of both the LPC SAP approval and the ZAB Use Permit approval, submitting a copy of the letter of objection previously submitted for the ZAB hearing. As a result, the points of both appeals are identical to each other and reassert the matters that ZAB considered at the hearing on October 24, 2019. The appeal includes signatures of no less than 50 persons identifying themselves as Berkeley residents; these signatures are required for LPC appeals in accordance with BMC Section 3.24.300.A.1 (*Appeals*).

ENVIRONMENTAL SUSTAINABILITY

Landmark designation provides opportunities for the adaptive re-use and rehabilitation of historic resources within the City. The rehabilitation of these resources, rather than their removal, achieves construction and demolition waste diversion, and promotes investment in existing urban centers. The creation of dwelling units within a former school site that is currently underutilized due to vacancy, represents an urban in-fill housing project that aligns with regional practices for sustainable development.

RATIONALE FOR RECOMMENDATION

The issues raised in the ZAB and LPC appeals, as well as additional information provided by staff for both sets of appeal points are combined below. For the sake of brevity, the appeal points are not re-stated in their entirety; please refer to the appeal documents for full text

(Attachments 2).

Appeal Point 1 – Not a Historic Resource Rehabilitation Project

"The Historical Resource Restoration/Rehabilitation exemption does not apply on its face" because the approved project does not represent a restoration or rehabilitation project. Appeal document Pages 12 and 44

The appellant asserts that the CEQA categorical exemption for historical resource restoration and rehabilitation projects, CEQA Guidelines Section 153331, does not apply to the approved Use Permit or Structural Alteration Permit applications for rehabilitation of the Hillside School because the project does not represent a restoration or rehabilitation project.

Response 1: On August 1, 2019, the Landmarks Preservation Commission found that the applicant's proposed improvements to the Hillside School building and site represented a rehabilitation project as defined by the Secretary of the Interior and

the Standards for the Treatment of Historic Properties, and pursuant to CEQA Guidelines for historic resources and environmental practices. In accordance with the SOI Standards, CEQA and the Landmarks Preservation Ordinance (LPO), the LPC approved the proposed project and made all requisite findings accordingly; see Attachment 1, Exhibit A.

The terms *rehabilitation* and *restoration* are used in the CEQA Guidelines, and are specifically referenced in the CEQA Guidelines which promulgate categorical exemptions for historical resource: section 15331. In its publication "*The SOI Standards for the Treatment of Historic Properties: Guidelines for Preserving, Rehabilitation, Restoring and Reconstructing Historic Buildings,*" published in 1995 and again 2017, the SOI defines the term *rehabilitation* as:

...the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values.

In this case, the LPC found that the proposed scope of work represented the rehabilitation and adaptive re-use of the historic site. This finding is consistent with SOI's definition and use of the term rehabilitation. The approved rehabilitation activities extend beyond simple repairs, which generally are non-discretionary actions, to include additions to the property, such as the introduction of a swimming pool and overflow parking within a portion the asphalt-covered area of the former playground. The expanded scope represents alterations and additions, per the SOI, and were subject to discretionary SAP approval. Such activities are consistent with adaptive re-use of this site for residential purposes.

On October 24, 2019, the ZAB adopted the LPC's findings by reference when it approved the Use Permit.

LPC's and ZAB's findings support the determination that the project is a historic restoration and rehabilitation project.

Appeal Point 2 – Public Safety Impairment

"The City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety." Appeal document Pages 14 and 46

The appellant believes the approved project will expose people and structures to a significant risk of loss, injury or death involving wildfires by reducing access and egress and by eliminating a potential safety zone and safety personnel deployment zone. Response 2: The approved project will not reduce or eliminate access or egress to a potential safety zone (emergency staging and retreat area) because the site is not used for such purposes now, because it is no longer a public property, and the approved project will not change this condition. The appellant's claim is based on a statement provided by Noah Brownlow, from the Richmond Fire Department. As discussed below, Mr. Browlow's opinion was reviewed and rejected by City of Berkeley Fire Chief David Brannigan; see Attachment 6.

The Hillside School is not a publicly-owned property, and its walkway, which extends from Buena Vista Way on the north to Le Roy Avenue on the south, is not a City pathway. In spite of the neighbors' regular use of the pathway and playground, it has never served as a public right-of-way. The subject property is currently owned by a private individual who purchased it from another private entity in 2018. Prior owners have included a series of K-12 schools and organizations, none of which were public entities or agents of the City of Berkeley.

Moreover, the City does not rely on the property for life safety purposes. As Chief Brannigan explained to ZAB in his October 24, 2019 memorandum, the City's evacuation plans and exercises focus on existing transportation networks only, and do not rely on private properties. Chief Brannigan specifically noted that: *"1581 Le Roy is not public property nor does it contain a public right of way and therefore [life safety personnel] do not consider it an official option for evacuation routes or temporary area of refuge..."*

The approved project will not change this status nor impair public safety as a result. For this reason, staff recommends that City Council uphold the LPC and ZAB approval of this project as it pertains to this appeal point.

Appeal Point 3 – Unusual Circumstances

"The Project involves an unusual circumstance, precluding reliance on a CEQA exemption." Appeal Document Pages 16 and 48

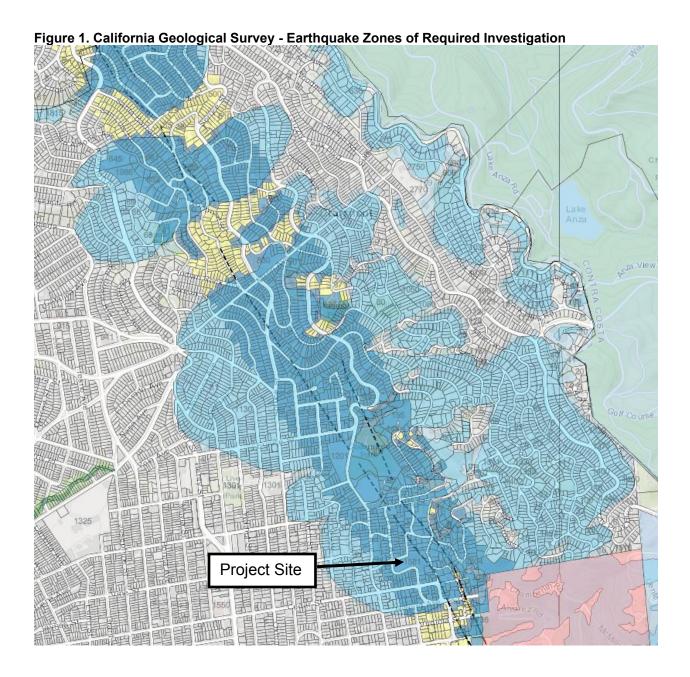
The appellant contends that two unusual circumstances apply to the approved project that do not apply to other projects or sites in the area, rendering the project non-exempt under CEQA: 1) location in a fire zone within the Alquist-Priolo Earthquake Fault Zoning; and 2) preclusion of use of a public path and open space that would be vital to public safety in the event of a fire or earthquake.

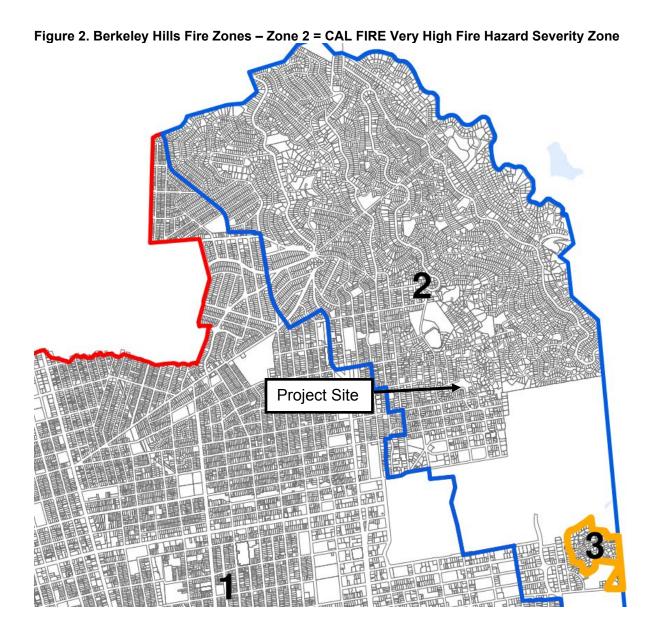
Response 3: The second part of this appeal point is addressed in response to appeal point #2, above.

The appellant's other primary assertion that earthquake and landslide hazards would constitute unusual circumstances precluding the project from a categorical exemption is inaccurate. In *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, the California Supreme Court observed that an unusual circumstance exists when a project "has some feature that distinguishes it from others in the exempt class, such as its size or location." (*Id.* at p. 1105.)

The projects location in a fire and earthquake fault zone is not an unusual circumstance under this standard. The Alquist-Priolo (A-P) Earthquake Fault Zone affects a large portion of the Berkeley Hills and applies to several hundred properties in the area, as do the fire hazard zones. The map in Figure 1, below, highlights landslide areas in light blue and fault zones in yellow and dark blue. Figure 2 illustrates the extent of the Very High Fire Hazard Severity Zone established by the State and adopted by the City for local fire code amendments, in which special construction techniques and other measures are required. The project site is not unique or unusual in this context.

For these reasons, staff recommends that Council uphold the determinations of the ZAB and LPC regarding the CEQA exemptions.





Appeal Point 4 – Adverse Impact on Historical Resources "CEQA exemption is not allowed because the Project may have an adverse impact on a historic resource." Appeal document Pages 17 and 49

The appellant asserts that the proposed project is not exempt under CEQA because the approved scope of work extends beyond rehabilitation to include alteration of portions of the playground and, therefore, will adversely affect and materially impair the Hillside School, the pathway and the playground, which collectively represent a historic resource.

Response 4: Under *Berkley Hillside, supra*, the appellant can prevail on this argument only if he establishes that the project *will* have a significant impact on a historical resource. (60 Cal.4th at p. 1105.) As summarized previously in the response to appeal point #1, the LPC found that the approved project is a rehabilitation project that is consistent with the SOI Standards for the Treatment of Historic Properties and, therefore, is exempt from environmental review pursuant to the provisions of CEQA.

LPC's finding support the conclusion that the approved project would not materially impair the historical significance of Hillside School owing to its compliance with the SOI Standards, according to CEQA Guidelines section 15064.5(b)(3). Thus, the appellant has not shown that the project will have a significant impact on a historical resources.

Appeal Point 5 – Conditions of Approval are Not Allowed as CEQA Mitigations "CEQA does not allow mitigated categorical exemptions." Appeal document Pages 17 and 49

The appellant asserts that LPC and ZAB adopted Conditions of Approval for the approved project that represent CEQA mitigations and, therefore a categorical exemption for this project is prohibited.

Response 5: The adoption of Conditions of Approval for discretionary projects is the City's long-standing, standard practice and must not be confused with mitigations for significant environmental impacts pursuant to CEQA. SAP Conditions of Approval often mirror the City's standard conditions for Design Review approval.

For the rehabilitation project at 1581 Le Roy Avenue, LPC adopted Conditions of Approval that deferred certain regulatory actions until building permit review for practical purposes. These actions include, for example, obtaining Use Permit approval and making the final selection of building finishes and colors. The Conditions of Approval for this project are not intended to mitigate environmental impacts, but to more efficiently process the requisite entitlement applications. None of the conditions of approval constitutes a mitigation measure under CEQA.

Appeal Point 6 – Project Does Not Comply with Berkeley Municipal Code Provisions for Residentially-zoned Properties with Respect to the Creation of Art

"The project violates the Berkeley Municipal Code (BMC)." Appeal document Pages 20 and 52

The appellant asserts that BMC Sections 23F.04 (Definitions) permits private residents to use *only* a detached accessory building for private art space.

Response 6: Through a combination of section codes, the zoning ordinance (BMC Title 23) regulates the creation of works of art or crafts when the activities are:

- Located in a manufacturing and commercial district; or
- Conducted in a detached accessory building occupied by private individuals on a residentially-zoned property.

When these activities occur elsewhere on a permitted residential property, they are not regulated.

Neither of the regulated circumstances summarized above applied to the Use Permit proposal to convert the Hillside School to residential use, because the site is residentially zoned and proposes the legal creation of a dwelling unit. The art activities would be associated with the main building and open yard area, and would not occur within any accessory buildings. Although the approved project site plan does include accessory storage structures, those structures would not be suitable for any use or activity other than storage, so they are not subject to any art use regulation.

Therefore, the proposed art activities do not require a separate discretionary permit in order to occur within a legal residential use, because the dwelling use and/or construction of a main building itself is subject to Use Permit approval in an R-district.

The BMC explicitly requires Administrative Use Permit (AUP) approval to establish art activities within detached accessory buildings on a residentially zoned property in BMC Section 23D.04.08.005.A.1 and Section 23F.04, and the BMC is silent on these activities when they occur within main buildings containing dwelling units. The appellant has interpreted this silence to be a prohibition on artistic activities on a residential-zoned property. However, the exclusion of a discretionary permit requirement simply means that the use is not regulated, but this does not mean that use is prohibited.

BMC 23D.04.08.005.A.1 requires prior AUP approval of the art creation activities within detached accessory buildings because these structures might otherwise be created ministerially with no opportunity for neighbors to weigh their concerns about possible effects. This is not the case for properties containing dwelling units because the establishment of these uses requires discretionary approval, which ensures a public review process. The approved Use Permit project at the Hillside School was subject to a Use Permit for the creation of a dwelling unit and was not subject to further permit review for the private art activities to occur as part of the residential use.

The appellant further argues that the approved project is an "art/crafts studio" as defined in BMC Section 23F.04, which is permitted only in commercial and certain manufacturing zones and is prohibited in residential zones. In the October 24, 2019 report to ZAB, staff attempted to demonstrate the difference between a private individual's art practice within their residence and an enterprise where art is practiced, because the latter is subject to zoning and business license (BMC Section 9.04) regulation and the former is not. In response, the appellant argues that the approved project is akin to a regulated enterprise activity because the property owner proposes to invite other artists to practice along with the residential occupants of the converted Hillside School property on a regular basis. Staff disagrees with this generalization because, in this particular case, no fees will be charged or collected in order for invited guests to visit the residence and share in their art activities and, therefore, the project is not an "art/craft studio" use defined in BMC Section 23F.04.

Staff concludes that the proposed conversion of Hillside School to residential use where occupants will practice art and invite others to join them free-of-charge is permissible under the BMC, and staff recommends that the City Council dismiss this appeal point.

Appeal Point 7 – The Project Does Not Meet the BMC Finding for General Nondetriment.

"ZAB cannot make the findings required for approval of a use permit... [because]... the ability of the Project owner to cut off the public's access to the Path and Playground would [sic] be detrimental to the safety of neighbors and their properties...also...the Project owner's plans to throw monthly parties...combined with a roof deck and hot tub...additional traffic and noise..." Appeal document pages 22-23 and 54-58

Response 7: The appellant's contentions about potential public safety impairment and access to the pathway have been addressed in the previous responses to appeal points 2 and 3, above.

Residential property owners and occupants are entitled, generally, to host events on their private property. After considering the applicant's estimate of monthly events and the relatively large size of the property and its built features, ZAB found that the site conditions would sufficiently accommodate the proposed frequency and scale of events.

Although residential zoning districts do not impose additional parking standards for these events, the approved project at Hillside School includes the provision of up to 30 off-street parking spaces where only one space is otherwise required. The conversion of the school site to low-density residential use is expected to

result in a reduction, and not an increase, in the frequency and number of vehicle trips to the site compared to when it was a school.

All properties are subject to the City-wide Community Noise Ordinance, BMC Section 13.40, which controls for audible noise levels and disturbances, and is enforced by the Division of Public Health, the Berkeley Police and the Office of the City Manager.

The proposed new roof deck and swimming pool are permitted by-right, while the proposed enclosed hot tub is permissible subject to performance standards that have been imposed through the ZAB-adopted Conditions of Approval, in accordance with BMC Section 23D.08.060.C (Fences and Other Accessory Structures); see Attachment 1, Exhibit C, Conditions of Approval 42-44.

Under these circumstances, ZAB found all of these aspects of the proposal to be permissible and generally non-detrimental.

Appeal Point 8 – The Project Does Not Meet Several General Plan Land Use Policies "The Project is inconsistent with Berkeley General Plan and Municipal Code." Appeal document pages 23 and 55

The appellant states that the approved project is contrary to General Plan Policies LU-7 through 9, and 11.

Response 8: ZAB found that the project would be consistent with the General Plan (GP), specifically Policies LU-7, H-33 and UD-6. The appellant asserts that the project would be inconsistent with other GP Policies and, in support of this argument, cites GP policies that are not directly applicable for this project.

<u>GP LU-7, Action A: Neighborhood Quality of Life</u>. Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area

Response: The LPC and ZAB found compliance with prevailing historic preservation practices and the avoidance of significant alteration through the use of limited alterations to the built environment.

<u>GP LU-8: Home Occupation</u>. Monitor and evaluate the present and future effects of home occupations, home offices, and other similar developments on residential areas.

Response: This policy is not applicable because the approved project is not a commercial enterprise as explained in response 6, above, and is not a home occupation use as defined under BMC Section 23F.04

<u>GP LU-9: Non-Residential Traffic</u>. Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.

Response: This policy is not applicable because the project, as proposed, would not be entitled as a commercial or institutional use; see response 6, above. The site has been an institutional use (e.g. a school) and the approved conversion to a low-density residential use is not expected to increase vehicle trips to the site, as explained previously in response 7.

<u>GP LU-11: Pedestrian and Bicycle Friendly Neighborhoods</u>. Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.

<u>GP LU-11, Action A</u>: Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals.

Response: As explained in previous response 2, the Hillside School property is not a City-owned pathway or dedicated easement. Therefore, this policy is not applicable.

Appeal Point 9 – The project is not Categorically Exempt from CEQA because the project will expand the use of the property.

"The key consideration is whether the project involves the negligible or no expansion of use...[in order to exempt]." Appeal document Pages 24-25 and 56-57

The appellant states that the approved project does not qualify as a Class 1 CEQA exemption for "Existing Facilities" because it will result in an expansion of the use of the project site.

Response 9: Contrary to this assertion, the approved project is not an expansion of the K-12 school use of this site but, instead, is a change of use and a reduction in the land use intensity.

The Hillside School site was entitled as a K-12 school where up to 85 students along with facility and staff members occupied the site Monday through Friday, and hosted evening and weekend events on occasions where extended family

and community were invited to attend (Use Permit #A1565 and A1702, issued 1994). By comparison, the proposed project includes two dwelling units (a main dwelling unit and an accessory dwelling unit) along with an active art practice and periodic events where as many as 100 people might be invited but fewer would likely attend. In the approved condition, the site would host fewer people and feature less activity on a regular, daily basis. The proposed use represents a reduction, not an expansion, of the use of the site.

When ZAB approved the conversion of the site to residential use, it noted that the proposed low-density residential land use and the associated art activities represented a less intense use of the property with far few occupants and less frequent gatherings than the previous school use. For this reason, the Use Permit was approved with a Categorical Exemption under Class 1 because the project was not an expansion of the former school use, as permitted under CEQA Guidelines Section 15301 for Existing Facilities.

ALTERNATIVE ACTIONS CONSIDERED

In accordance with BMC Sections 3.24.300.E and 23B.32.060.D, the City Council may take action to continue the hearing on these matters, reverse or affirm or modify the LPC and/or ZAB decisions in whole or in part, or remand the matter to LPC or ZAB to re-consider the application(s). If Council remands either decision, then Council must also specify which issues shall be re-considered.

ACTION DEADLINE

Pursuant to BMC Section 3.24.300.F and Section 23B.32.060.G, if the disposition of the Appeals have not been determined within 30 days from the date the public hearing was closed by City Council (not including Council recess), then the decisions of LPC and ZAB are deemed affirmed and the appeals shall be deemed denied.

CONTACT PERSONS

Timothy Burroughs, Director, Planning & Development Department, 510-981-7437 Fatema Crane, Senior Planner, Planning & Development Department, 510-981-7413

Attachments:

- 1: Draft Council Resolution
 - Exhibit A: LPC Findings for SAP Approval
 - Exhibit B: Approved SAP Project Plans
 - Exhibit C: ZAB Findings for Use Permit Approval
 - Exhibit D: Approved ZAB Project Plans
- 2: Appeals of ZAB and LPC Actions, received December 3, 2019

- 3: LPC staff report, dated August 1, 2019
- 4: ZAB staff report, dated October 24, 2019
- 5: Memorandum from Chief Brannigan to ZAB, dated October 23, 2019
- 6: Index of Administrative Record
- 7: Administrative Record
- 8: Public Hearing Notice

ATTACHMENT 1

RESOLUTION NO. ##,###-N.S.

UPHOLDING LANDMARKS PRESERVATION COMMISSION APPROVAL OF STRUCTURAL ALTERATION PERMIT #LMSAP2019-0004 AND ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2019-0061 TO REHABILITATE THE HILLSIDE SCHOOL AT 1581 LE ROY AVENUE AND TO CONVERT IT TO RESIDENTIAL USE

WHEREAS, on April 1, 2019, Jerri Holan AIA, submitted a Structural Alteration Permit application #LMSAP2019-0004 and a Use Permit application #ZP2019-00061 to rehabilitate the Hillside School and to convert it to residential use; and

WHEREAS on July 19, 2019, the City deemed the application for #LMSAP2019-0004 complete; and

WHEREAS on July 22, 2019, the City duly noticed the Landmarks Preservation Commission (LPC) hearing on this matter in accordance with Berkeley Municipal Code (BMC) Section 3.24.230; and

WHEREAS on August 1, 2019, LPC held a public hearing and, upon close of the hearing, approved #LMSAP2019-0004 with a vote of 5-3-0-0; and

WHEREAS on September 19, 2019, staff deemed the application for #ZP2019-0061 complete; and

WHEREAS on October 9, 2019, the City duly noticed the Zoning Adjustments Board (ZAB) hearing on this matter in accordance with BMC Section 23B.32.020; and

WHEREAS on October 24, 2019, ZAB held a public hearing and, upon close of the hearing, approved #ZP2019-0061 with a vote of 8-0-1-0; and

WHEREAS on November 18, 2019, the City issued a Notice of Decision for #LMSAP2019-0004, and on November 19, 2019, issued the Notice of Decision for #ZP2019-0061; and

WHEREAS on December 3, 2019, Michael Scott, representing the Hillside Path and Playground Preservation Association, submitted an appeal of the LPC decision to approve #LMSAP2019-0004 and an appeal of the ZAB decision to approve #ZP2019-0061; and

WHERAS on February 11, 2020, City staff posted notices of the public hearing for this appeal at the site; and

WHEREAS on February 25, 2020, the City Council held a public hearing to consider the LPC decision and the ZAB decision, and in the opinion of this Council, the points and evidence of the appeals for both decisions and the facts stated in or ascertainable from the public record, including comments made at the public hearing, warrant approving the project; and

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Berkeley that the Council hereby denies and dismisses the appeal of #LMSAP2019-0004 and the appeal of #ZP2019-0061, and affirms the LPC and ZAB decisions to approve both entitlements, respectively, and hereby adopts the findings for approval made by LPC and by ZAB contained in Exhibits A and C.

Exhibits A: LPC Findings for SAP Approval B: Approved SAP Project Plans C: ZAB Findings for Use Permit Approval D: Approved Use Permit Project Plans

ATTACH MENT 1, EXHIBITA

FINDINGS AND CONDITIONS

1581 Le Roy Avenue – The Hillside School

Structural Alteration Permit #LMSAP2019-0004

To make exterior alterations to a City Landmark school building and site in order to convert them to residential use; changes include installation of a vehicle door, new windows, a rooftop swimming pool and hot tub, a surface parking lot, five storage sheds, perimeter fences and landscape improvements.

CEQA FINDINGS

1. The project <u>is</u> categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 153331 of the CEQA Guidelines ("Historic Resource Restoration/Rehabilitation"). Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project will not affect any historical resource.

SECRETARY OF THE INTERIOR'S STANDARDS FINDINGS

Regarding the Secretary of the Interior's Standards for Rehabilitation, the Landmarks Preservation Commission of the City of Berkeley makes the following findings:

- 1. The property and subject portion of the building be given a new residential use and proposed exterior changes will result in limited alterations to the historic building and overall site.
- 2. Because the proposed exterior changes to this site are limited and expected to have a limited overall effect on the character of the site, as described above, this property will retain its historic character as perceived through its building and site design.
- 3. The Hillside School will continue to be recognized as a physical record of Berkeley's primary school and neighborhood development, where this site is the focal point of the immediate area. The building will retain its appearance, Tudor Revival style, location and relation to its surroundings.
- 4. No changes to a property that have acquired historic significance in their own right are the subject of this request.

- 5. The distinctive materials and features of this Tudor Revival building such as its halftimber details and decorative architectural details – will not be affected by this request for exterior alterations and, therefore, will be preserved.
- 6. As conditioned herein, all repair and replacement work related to character-defining features of this building and site shall be designed to match the historic style, color, texture and, where possible, materials.
- 7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials are prohibited by the Conditions herein.
- 8. Because limited excavation will be required for the proposed alterations of this building and site, any existing archeological resources at this site will be unaffected by this proposal. Subsequent Use Permit approval of this project would include the City's standards conditions upon the discovery of any subsurface resources.
- 9. The proposed project is not expected to result in the destruction of historic fabric, materials, features or spatial relationships at this Landmark site. Certain new work such as installation of a roof deck, swimming pool and hot tub would occur on a portion of the building that is not historically significant, in and of itself. All other new work is limited in size and scale and, the thereby, will be compatible with the current conditions of this Landmark site.
- 10. The work proposed with this project will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment will be unimpaired.

LANDMARK PRESERVATION ORDINANCE FINDINGS

- 1. As required by Section 3.24.260 of the Landmarks Preservation Ordinance, the Commission finds that proposed work is appropriate for and consistent with the purposes of the Ordinance, and will preserve and enhance the characteristics and features specified in the designation for this property. Specifically:
 - The proposed building alterations are designed to either restore character-defining features, such as windows and doors, or replicate and compliment these details with new windows and doors, including a new garage door on the rear of the building. The Art Park and parking lot will be effectively screened by the existing chain link fence as well as with new, organic vegetative plantings to ensure continuity with the residential surroundings and the maintenance of the open character of the former school playground.
 - The proposal to legalize installation of the existing chain link fence is reasonable because the approximate height of 10 feet is effective for securing the site, and the design and materials maintain a visually open interface with the public-of-way. As conditioned herein, new plantings will screen the fence as well as the proposed parking lot and Art Park activities.
 - The new elevator penthouse will be located at the rear of the building, not readily visible from the right-of-way, and could be removed without significant impact to the historic

building and its character-defining features.

- The new, sloped driveway will be located on the rear of the building, the historic service area, and will not be readily visible from the public right-of-way.
- The new swimming pool and hot tub will be installed on the roof of the 1963 building addition, thereby avoiding impacts to the historically significant portions of the building.
- The proposed storage sheds will be limited by Condition #14 herein to a total of five and, therefore, will not result in the proliferations of accessory structures of inferior quality and design in the front yard area.

STANDARD CONDITIONS

The following conditions, as well as all other applicable provisions of the Landmarks Preservation Ordinance, apply to this Permit:

1. Conditions Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Permit, under the title 'Structural Alteration Permit Conditions'. *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Plans and Representations Become Conditions

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

3. Subject to All Applicable Laws and Regulations

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

4. Exercise and Lapse of Permits (Section 23B.56.100)

- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- A. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

5. Indemnification Agreement

The applicant shall hold the City of Berkeley and its officers harmless in the event of any legal action related to the granting of this Permit, shall cooperate with the City in defense of such action, and shall indemnify the City for any award of damages or attorneys fees that may result.

ADDITIONAL CONDITIONS

The following additional conditions are attached to this Permit:

- **6. Use Permit approval.** This Structural Alteration Permit is contingent upon Use Permit approval for this project.
- 7. Repair and replacement of character-defining features. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- 8. **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.
- **9. Roof equipment.** Any above ground or roof equipment, such as transformer(s), utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the <u>architectural</u> drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
- **10. Clear glass.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass shall be indicated on all drawings, and shall be reviewed for approval by historic preservation staff, prior to approval of any building permit for this project.
- **11. Exterior Lighting**. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- 12. Landscape Plan. Prior to approval of any building permit for this project, the proposed landscape improvements shall be revised to include new plantings to screen or to supplement existing plantings on both the north *and* south sides of the former playground area. Further, the landscape plan may be modified as needed to ensure compliance with zoning criterion for open space pavement.
- **13. Irrigated, water efficient landscape.** New areas of landscape shall provide irrigation. This shall be called out on Landscape building permit drawings. The property owner shall maintain automatic irrigation and drainage facilities adequate to assure healthy growing conditions for all required planting and landscape. The landscape shall be drought-tolerant and achieve maximum water efficiency.
- 14. Storage sheds within the front yard area. The storage sheds shall be limited to not more than five total and to their proposed height, floor area and locations. Prior to issuance of any building permit for this project, the Commission shall appoint a Subcommittee to approval the final design of the storage sheds.
- **15. Curb cuts.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

- **16. Woodland maintenance.** The property owner shall establish and maintain a plan for maintenance and enhancement of the rustic woodland, which shall include a dripline protection zone wherein no structures has been place or items shall be stored.
- **17.** New surface parking lot. Prior to issuance of any building permit for this project, the applicant shall re-design new parking area to further reduce visual impact to the playground area.
- **18. Woodland maintenance.** The property owner shall establish and maintain a plan for maintenance and enhancement of the rustic woodland, which shall include a dripline protection zone wherein no structures has been place or items shall be stored.
- **19.** At all times, the property owner shall preserve the existing pathways.









PARCEL CONDITIONS:

- 1) Building is on the National Register of Historic Places and is a City Landmark;
- 2) Building is in the Fault Zone;
- 3) Building is in the Landslide Zone;
- 4) Building is not in a Creek Zone.

SCOPE OF ALTERATION WORK (NO SQUARE FOOTAGE BEING ADDED):

- 1) CHANGE OF OCCUPANCY FROM EDUCATIONAL TO SINGLE-FAMILY RESIDENTIAL WITH ADU;
- REPLACE & RESTORE MISCELLANEOUS DOORS, WINDOWS & SIDELIGHTS;
- **RESTORE DAMAGED 3-STORY SOUTH WALL & REPLACE FOUNDATION;**
- RESTORE SOUTH TERRACE, ADD WING WALLS AND BRICK STAIRS SIMILAR TO ORIGINAL TERRACE. 4) CONVERT KITCHEN TO GARAGE AND ADD NEW CONCRETE DRIVEWAYAND RETAINING WALLS;
- ADD ELEVATOR: 6)
- ADD BATHROOMS TO SECOND FLOOR; 7)
- REMODEL THIRD FLOOR AND ADD REAR DECK WITH STUCCO GUARD RAILS, POOL AND HOT TUB; 8) REPLACE ELECTRICAL AND MECHANICAL SYSTEMS; 9)
- 10) ADD SOLAR PANELS;
- 11) ADD NEW FENCING;
- ADD NEW PARKING AREA 2.

SECRETARY OF THE INTERIOR STANDARDS FOR REHABILITATING HISTORIC BUILDINGS:

As a property on the National Register of Historic Properties, the following Standards shall be followed:

Standard 1 - A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships

Standard 2 - The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 3 - Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties will not be undertaken.

Standard 4 - Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Standard 5 - Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Standard 6 - Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Standard 7 - Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

Standard 8 - Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Standard 9 - New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion and massing to protect the integrity of the property and its environment.

Standard 10 - New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2016 CALIFORNIA HISTORICAL BUILDING CODE (CHBC) NOTES:

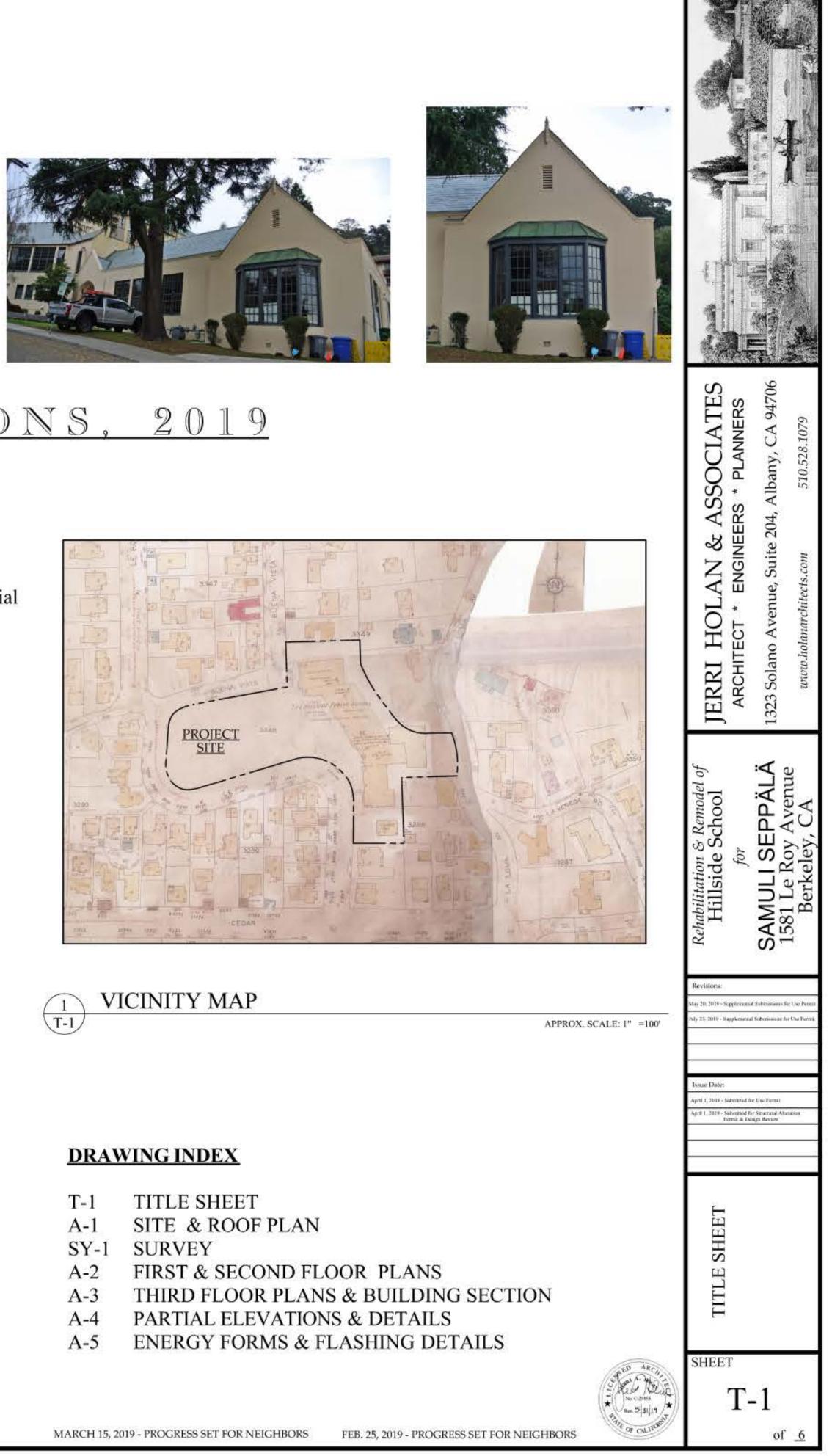
As a qualified historic building, the application of the following provisions of the CHBC apply:

SECTION 8-102.1.6 - Qualified buildings shall not be subject to additional work required by the regular code beyond that required to complete the work undertaken.

SECTION 8-901.5 - Qualified buildings are exempted from compliance with energy conservation standards.







ELEVATIONS, 2019 EXISTING WEST

PLANNING, ZONING, & BUILDING INFORMATION:

Three-story, Type VB Construction, Fully Sprinklered

APN: 058-2245-009-03

Lot Size: 117,546 sf

Fire Zone 2

Footprint Size: 25,695 sf

R-1H Zoning:

Existing Educational Building Occupancy (E) is converting to Single-family Residential Occupancy (R-3)

TOTAL SIZE 50,302 SF

First Floor Size: 25,695 sf

Second Floor Size: 21,562 sf

Third Floor Size: <u>3,045 sf</u>

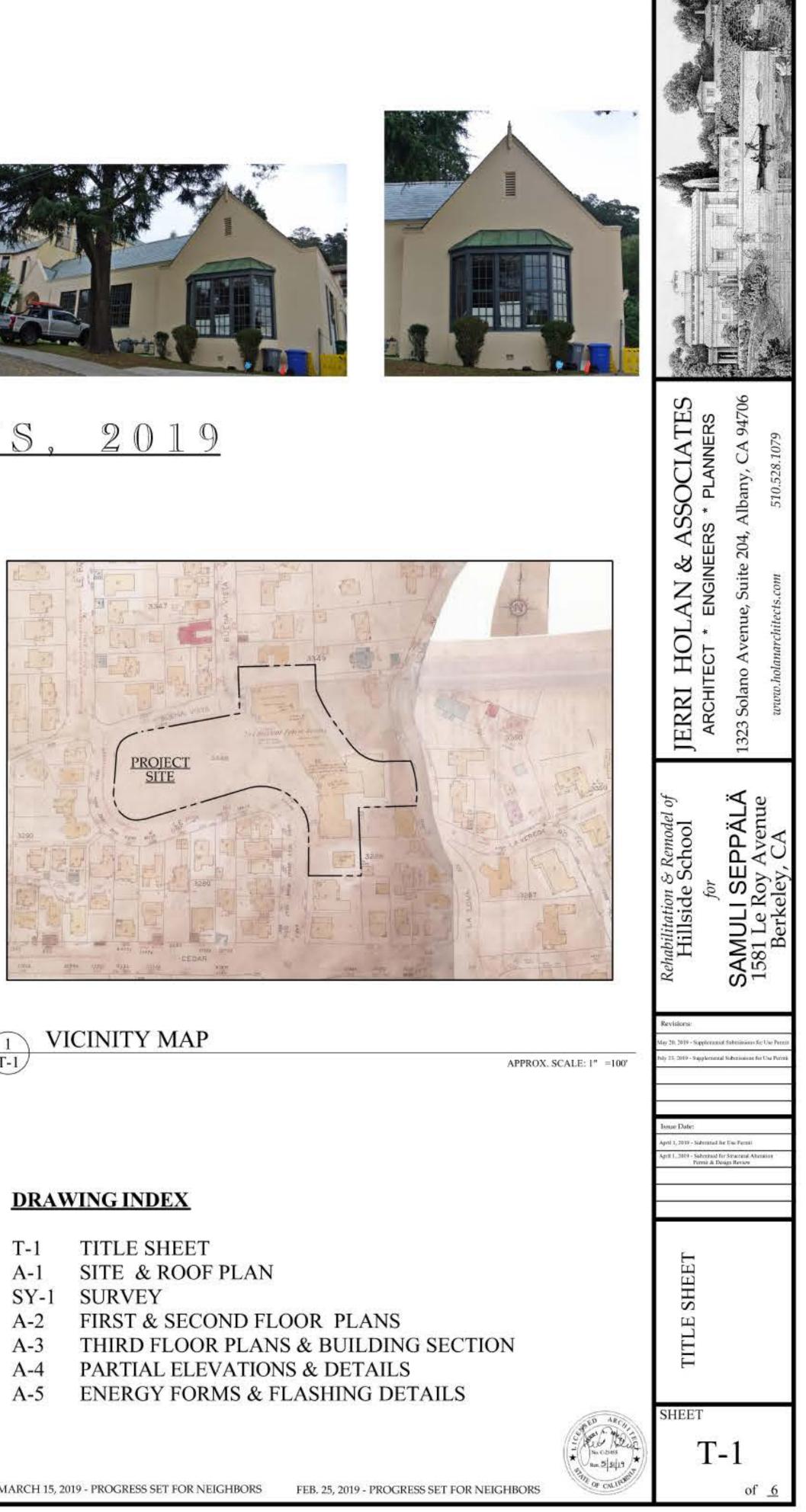


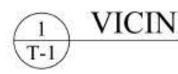
TABULATION FORM

Land Use Planning, 1947 Center Street, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420 Email: <u>Plannings:CityolBerkeley.inf</u>e

PLANNING & DEVELOPMENT

Applicant's Name: _Jer	ri Holan & Associ	ates		
Zoning District R-1H				
Please print in ink the follow	ving numerical info	rmation for your A	dministrative Use Po	ermit, Use Pe
Variance application:		Existing	Proposed	Permitte Require
Units, Parking Spaces Number of Dwelling Un		0	2	2
Number of Parking Spa	ces (#)	9	27	1
Number of Bedrooms (#) (R-1, R-1A, R-2, R-2A, and R-3 only)		0	5	0
Yards and Height Front Yard Setback Side Yard Setbacks. (facing property)	(Feet)	10-20	10-20	2
	Left: (Feet)	25	25	4
1 11 11 11	Right: (Feet)	25	25	3
Rear Yard Setback	(Feet)	15-40	15-40	2
Building Height*	(# Stories)	3	3	3
Average*	(Feet)	35	35	3
Maximum*	(Feet)	50	50	3
Areas Lot Area	(Square-Feet)	117,546	117,546	5,0
Gross Floor Area" Total Area Covered by	(Square-Feet) All Floors	50,302	50,302	N/
Building Footprint* Total of All Structures	(Square-Feet)	25,695	25,695	N/
Lot Coverage* (Footprint/Lot Area)	(%)	22	22	4
Useable Open Space*	(Square-Feet)	91,851	91,851	80
Floor Area Ratio* Non-Residential only	(Except ES-R)	12428224		





DRA	W	TN	IC
DKA	VY	11	10

T-1	TITI
A-1	SITE
SY-1	SUR
A-2	FIRS
A-3	THI
A-4	PAR
A-5	ENE

ghlanduselforms & instructions land use planning forms word files/forms_all/tabulation_form_05-15.doc

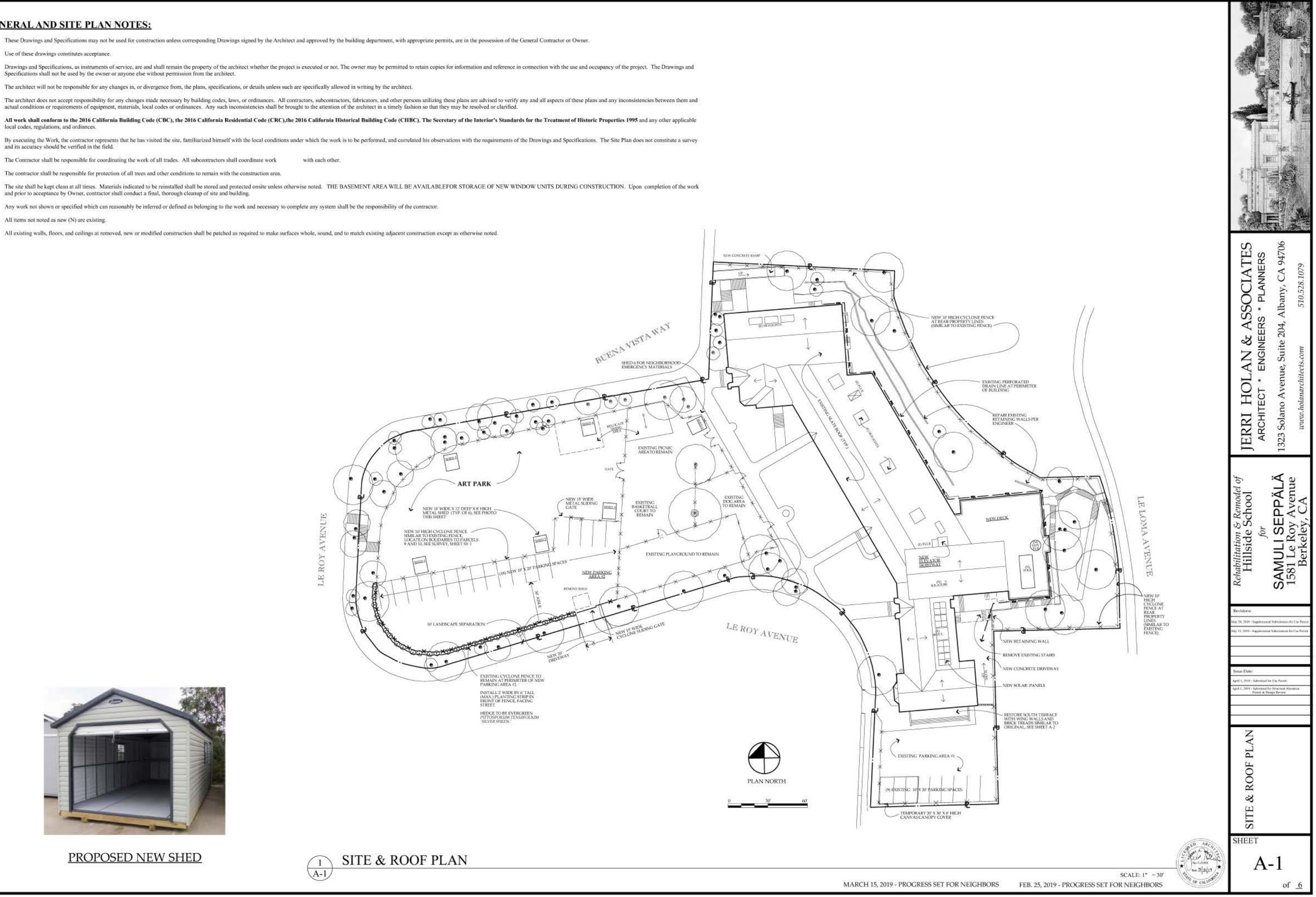
ATTACHMENT 1, Exhibit B from LPC 08-01-19 Page 1 of 5

GENERAL AND SITE PLAN NOTES:

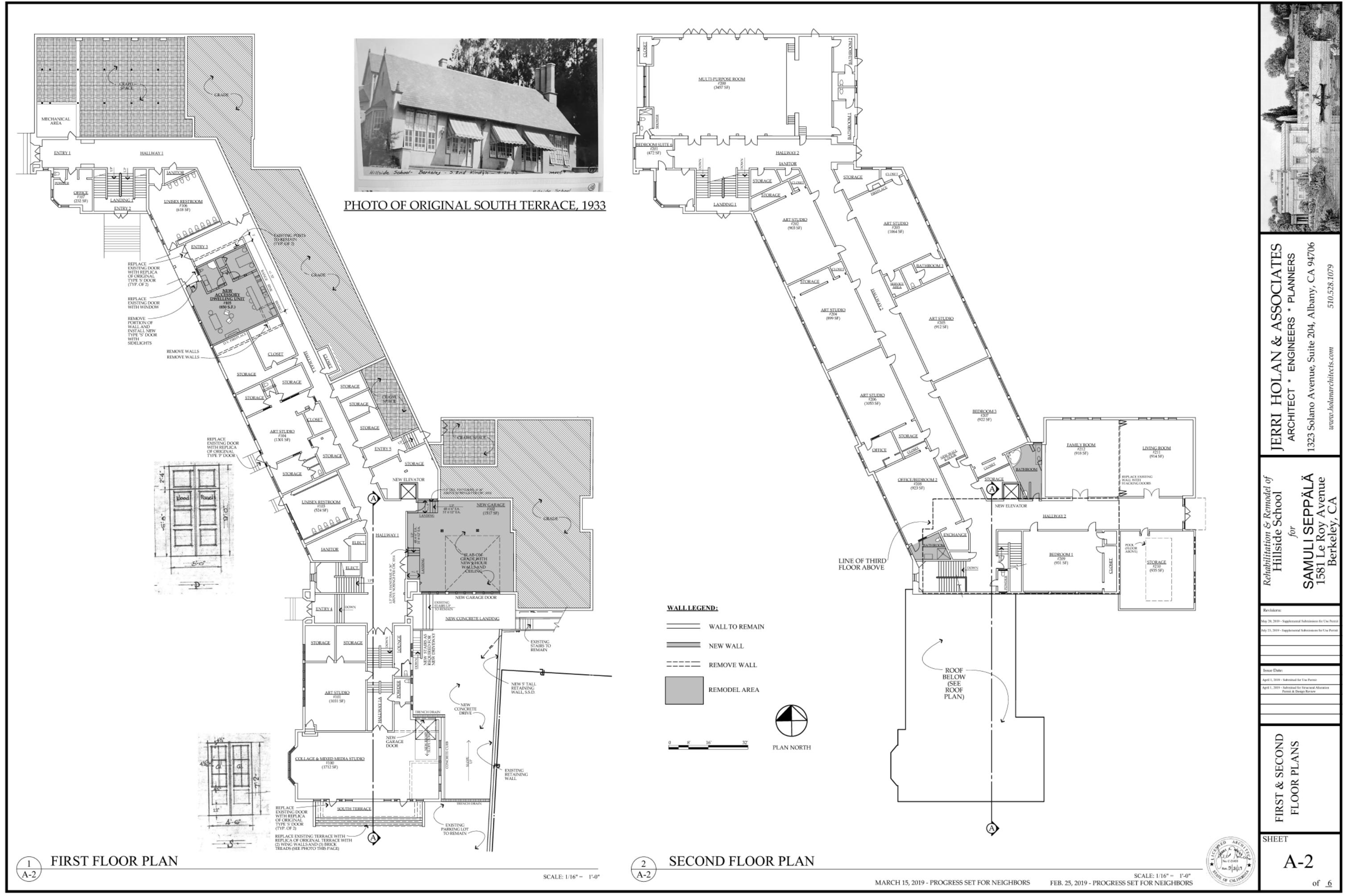
- 1. These Drawings and Specifications may not be used for construction unless corresponding Drawings signed by the Architect and approved by the building department, with appropriate permits, are in the possession of the General Contractor or Owner.
- 2. Use of these drawings constitutes acceptance.
- Drawings and Specifications, as instruments of service, are and shall remain the property of the architect whether the project is executed or not. The owner may be permitted to retain copies for information and reference in connection with the use and occupancy of the project. The Drawings and Specifications shall not be used by the owner or anyone else without permission from the architect.
- The architect will not be responsible for any changes in, or divergence from, the plans, specifications, or details unless such are specifically allowed in writing by the architect.
- The architect does not accept responsibility for any changes made necessary by building codes, laws, or ordinances. All contractors, fabricators, fabricators, and other persons utilizing these plans are advised to verify any and all aspects of these plans and any inconsistencies between them and actual conditions or requirements of equipment, materials, local codes or ordinances. Any such inconsistencies shall be brought to the attention of the architect in a timely fashion so that they may be resolved or clarified.
- All work shall conform to the 2016 California Building Code (CBC), the 2016 California Residential Code (CRC), the 2016 California Historical Building Code (CHBC). The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 and any other applicable 6 local codes, regulations, and ordinnces.
- By executing the Work, the contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Drawings and Specifications. The Site Plan does not constitute a survey 7. and its accuracy should be verified in the field.
- The Contractor shall be responsible for coordinating the work of all trades. All subcontractors shall coordinate work with each other. 8.
- The contractor shall be responsible for protection of all trees and other conditions to remain with the construction area. 9.
- 10. and prior to acceptance by Owner, contractor shall conduct a final, thorough cleanup of site and building.
- 11. Any work not shown or specified which can reasonably be inferred or defined as belonging to the work and necessary to complete any system shall be the responsibility of the contractor.
- All items not noted as new (N) are existing.
- 13. All existing walls, floors, and ceilings at removed, new or modified construction shall be patched as required to make surfaces whole, sound, and to match existing adjacent construction except as otherwise noted.



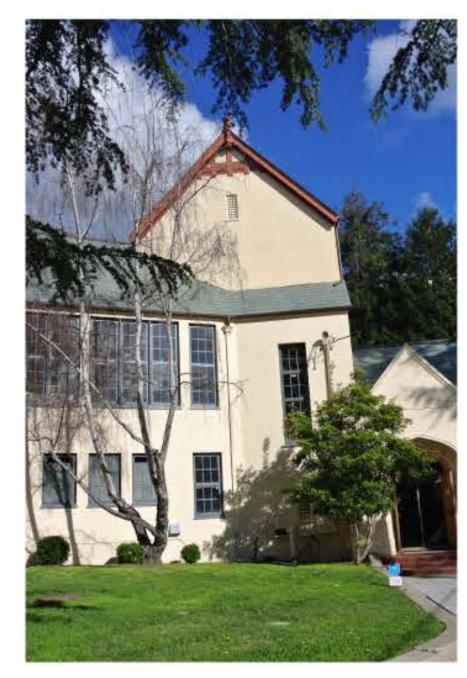
PROPOSED NEW SHED



ITEM 5.C, ATTACHMENT 2 LPC 08-01-19 Page 2 of 5



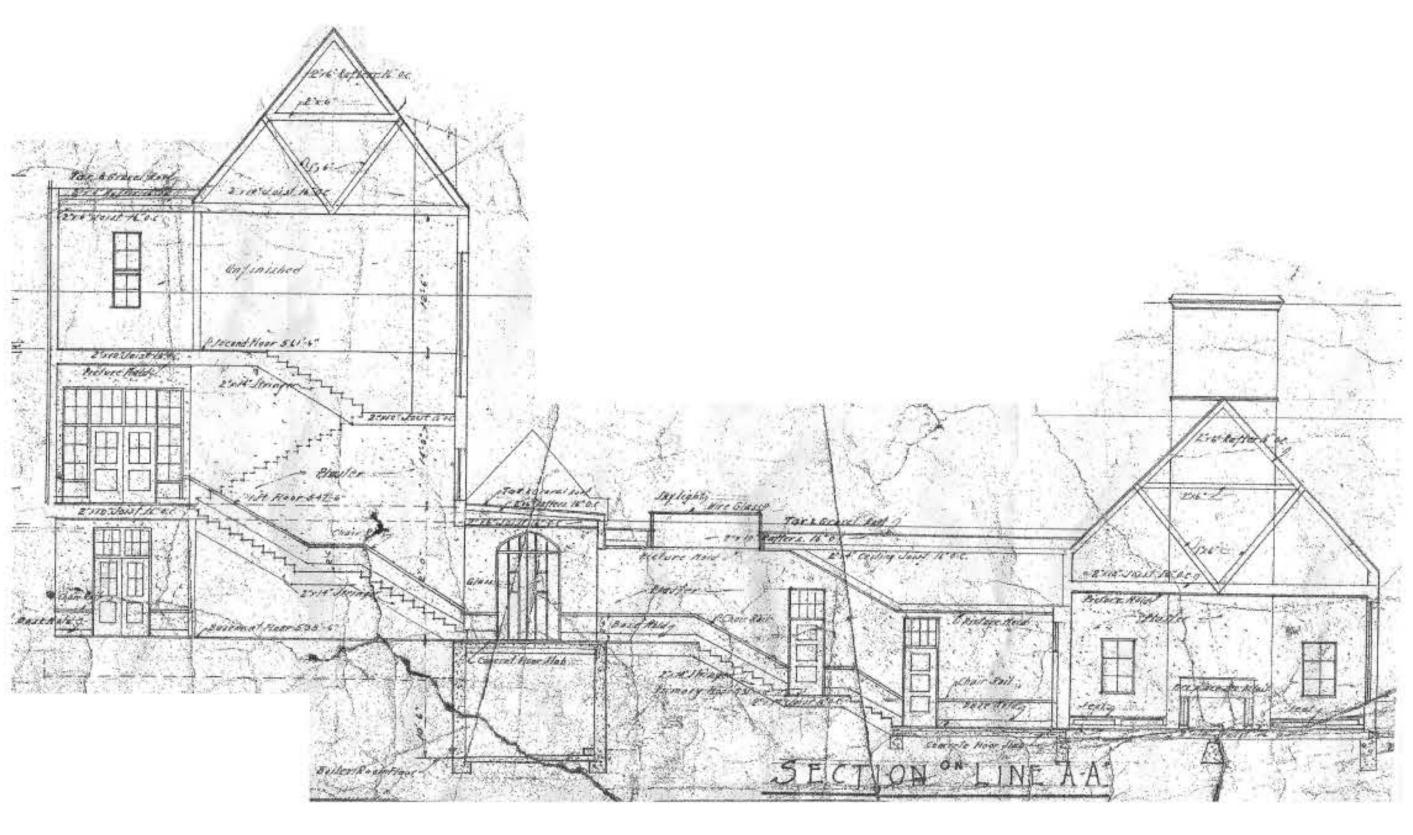
ITEM 5.C, ATTACHMENT 2 LPC 08-01-19 Page 3 of 5



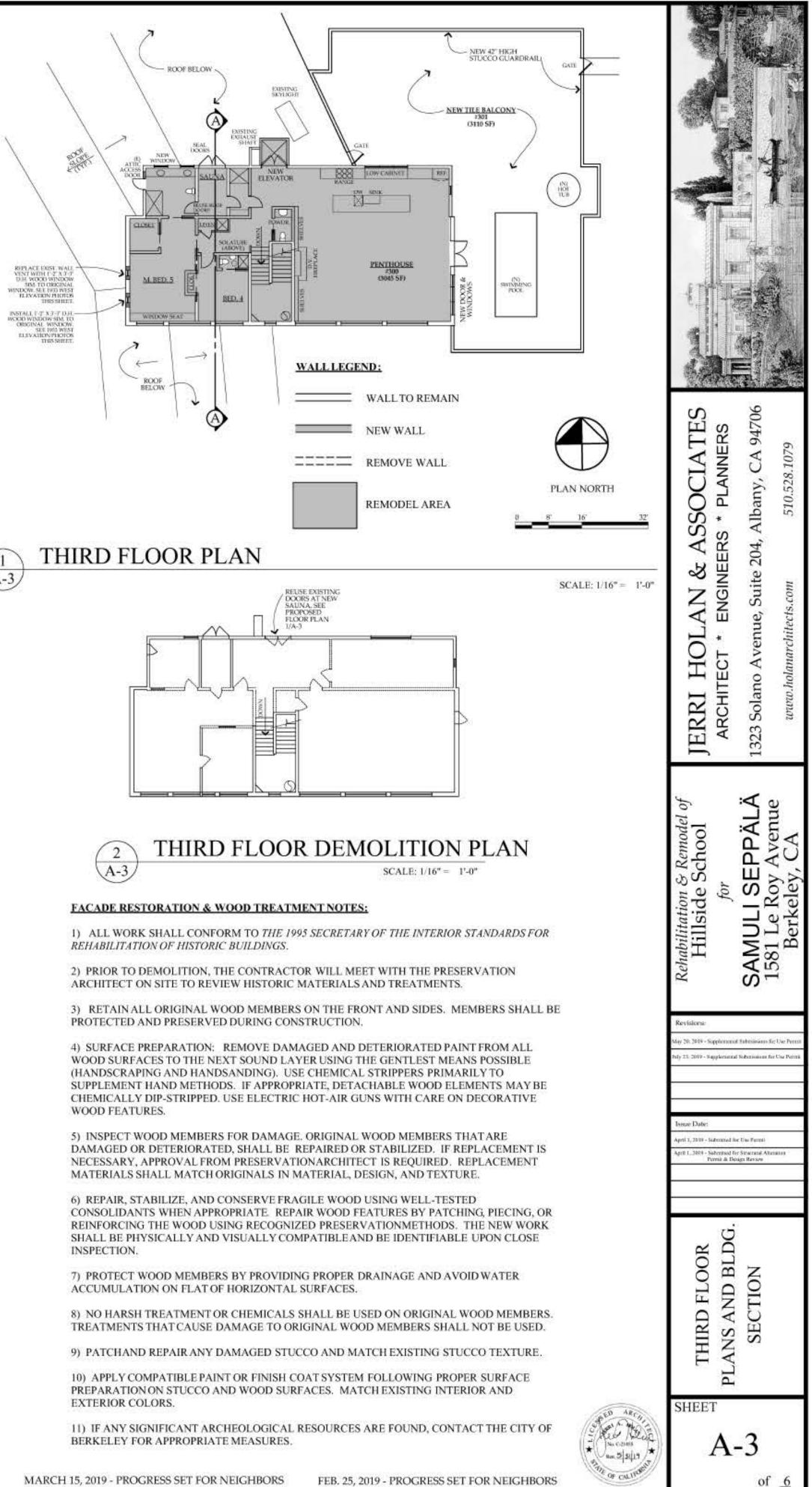


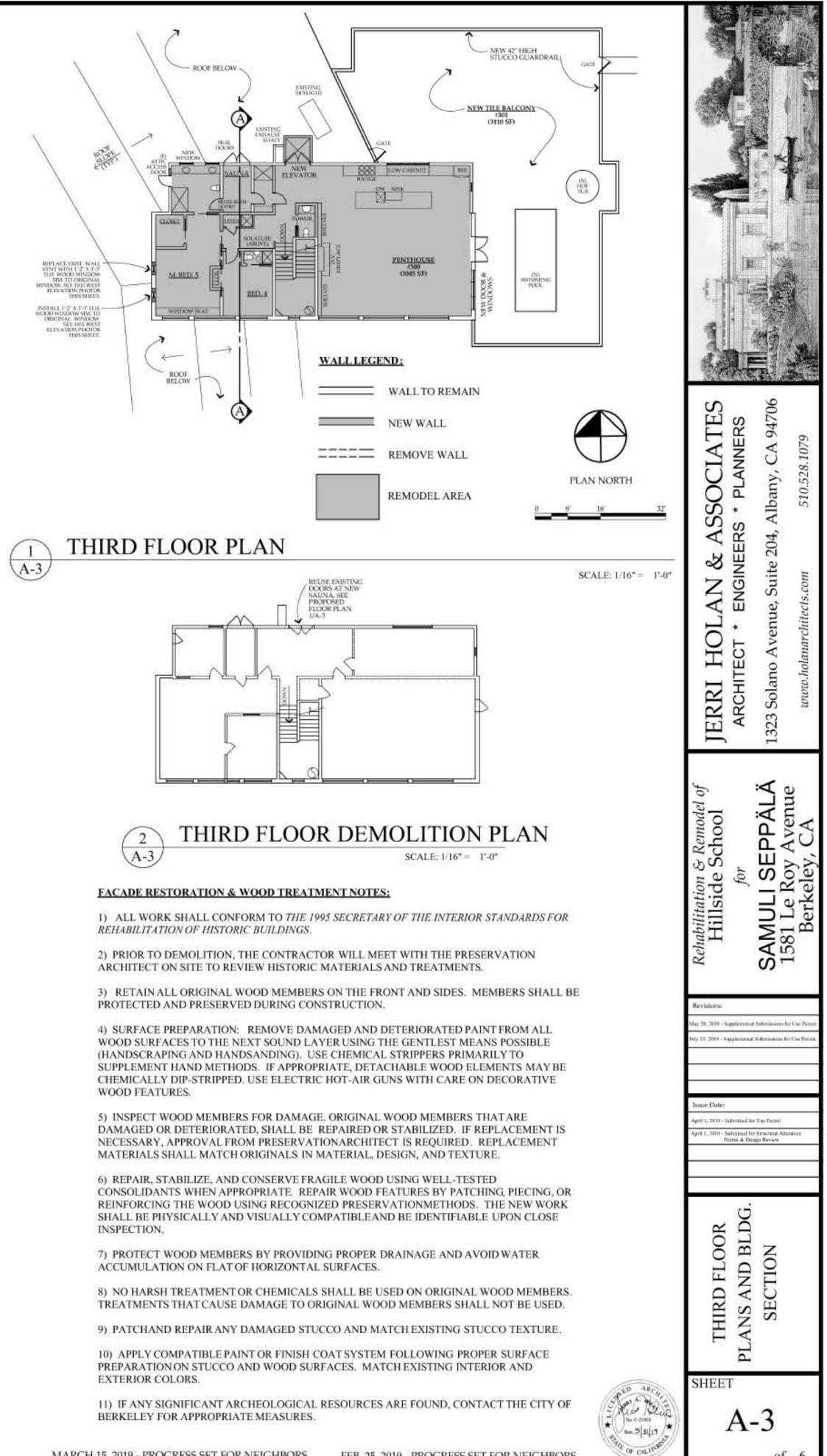
1933 WEST ELEVATIONS

2019 WEST ELEVATION









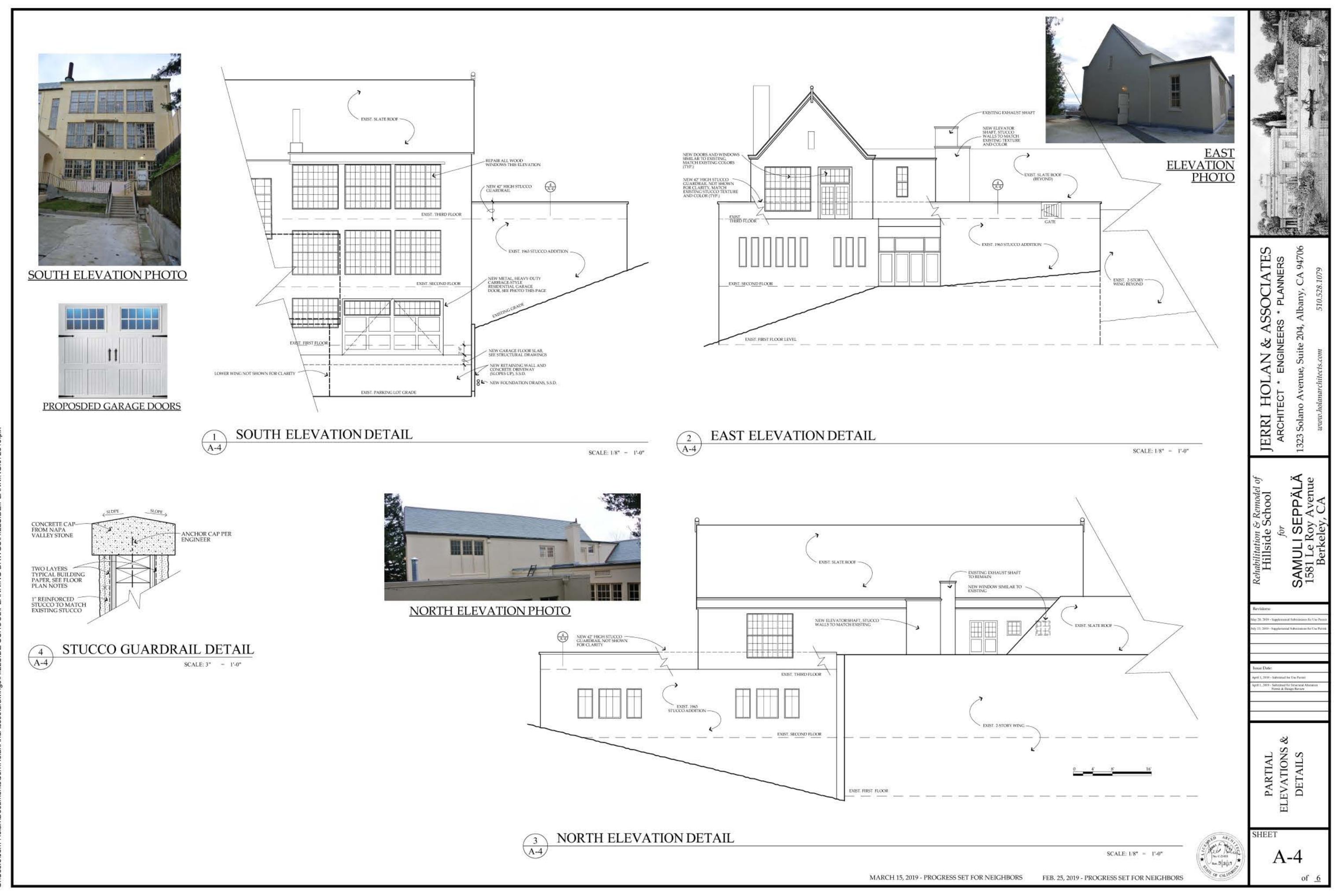




NORTH/SOUTH BUILDING SECTION A-A LOOKING EAST, 1925

SCALE: 1/8" = 1'-0"

ITEM 5.C, ATTACHMENT 2 LPC 08-01-19 Page 4 of 5



ITEM 5.C, ATTACHMENT 2 LPC 08-01-19 Page 5 of 5

$\begin{array}{r} {}^{\textbf{Page 30 of 141}}\\ \textbf{ATTACHMENT1, EXHIBITC} \end{array}$

FINDINGS AND CONDITIONS OCTOBER 24, 2019

1581 Le Roy Avenue

Use Permit #ZP2019-0061 convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

PERMITS REQUIRED

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.

I. CEQA FINDINGS

- The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to CEQA Guidelines Section 15301 ("Existing Facilities"), Section 15303 (New Construction or Conversion of Small Structures), and Section 15331 (Historical Resources Restoration/Restoration).
- 2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) will not cause a substantial adverse change in the significance of a historical resources as evident in the August 1, 2019 Landmarks Preservation Commission findings of compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties.

II. ZONING ORDINANCE FINDINGS FOR APPROVAL

1. As required by Section 23B.32.040.A of the BMC, the project, under the circumstances of this particular case existing at the time at which the application is granted, would not be detrimental

to the health, safety, peace, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood, or to the general welfare of the City because:

- A. The proposal to convert and re-purpose the existing, vacant school site to residential use is consistent with the Purposes of the R-1 district (BMC Section 23D.16.020) related to maintaining and protecting the area's existing, low-density development pattern, making housing available to persons who desire relatively large amounts of open space, and protecting adjacent properties from potential sunlight or building mass impacts typically associated with new development.
- B. The proposal to establish dwelling uses that incorporate a private art practice is consistent with the residential use and character of an R-district, where residents are expected to engage in such private activities and to host visitors. The site conditions are found to sufficiently accommodate the anticipated number of guests and frequency of activities because: (1) the subject site and main building are especially large at approximately 50,000 sq. ft. where residences in the area average 2,700 sq. ft.; and (2) the proposal includes the provision of surplus, off-street parking.
- C. The proposed art practice and related activities are exclusive to the residential occupants of this property and their invited guest. The proposed art studios and art outdoor "art park" space are permitted for, and shall be limited to, the creation of original works of art and craft products. These spaces and activities are not commercial enterprises. Given these circumstances, the Board finds that the proposed activities are consistent with the private residential use of the subject property.
- D. The outdoor art practice activities will limited to the hours between sunrise and sunset, yearround, and will be subject to the Community Noise ordinance (BMC Section 13.42), in order to minimize potential impacts to adjacent residences and the neighborhood, and to ensure compliance with the City's applicable peace and welfare provisions.
- 2. In accordance with BMC Section 23D.16.070.B and F (*Development Standards*) and 23D.16.080.A (Parking), the Board finds that the proposal to create two new dwelling units at the subject property is permissible because proposed property conditions will adhere to the R-1 district standards for maximum residential density and will surpass the standards for minimum usable open space and off-street parking.
- 3. In accordance with BMC Section 23D.16.070.C (*Development Standards* main building height) and 23D.16.090.B (*Findings*), the Board finds that the proposal to construct an elevator penthouse to a height of 28 ft. above grade is permissible because the new construction is not expected to result in view or sunlight impacts for adjacent residences owing to its proposed location below the existing roof ridge and within the building's existing profile.
- 4. In accordance with BMC Section 23D.12.170 (Site, Location and Screening of Uncovered Parking Spaces), the Board finds that the proposal to locate parking spaces within the required 20-ft. front yard setback at the subject property is permissible because the new spaces will be effectively screened by the existing and newly proposed vegetation and plantings, thereby minimizing the potential for parked vehicles to create significant visual impacts.
- **5.** In accordance with BMC Section 23D.08.020.B (Height Limits for Accessory Buildings or Structures), the proposal to locate as many as five storage sheds of not more than 10 ft. in average height within the front depth of this property is found to be permissible because these

structures will not result in detrimental impacts to light, air (or building-to-building separation), privacy or views of the adjacent properties. The structure are of minimal height, thereby avoiding light and view impacts. They will not include windows or create sightlines, thereby avoiding privacy impacts. They will not be located with protected view corridors, as defined in BMC Section 23C.04 (*Definitions, views*), thereby avoiding view impacts.

6. In accordance with BMC Section 23D.08.060.C (Fences and Other Accessory Structures), Board finds that the proposal to install a new, unenclosed hot tub on the roof of the subject building is permissible because, as conditioned herein, any pump shall be mounted and/or enclosed so that it is not audible beyond the nearest, shared property.

III. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions and Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

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8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs shall include, without limitation, any attorney's fees, expert witness and consultant fees, court costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

IV. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. <u>Project Liaison</u>. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below:

Project Liaison _

Name

Phone #

11. <u>Landmarks Preservation Commission - Structural Alteration Permit compliance</u>. Prior to submittal of any building permit for this project, the applicant shall demonstrate compliance with the Structural Alteration Permit for this project. Notwithstanding the requirement for new plantings, all plantings shall be limited and maintained in accordance with Public Safety standards and current practices.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

- **12.** <u>Construction and Demolition</u>. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
- **13.** <u>Toxics</u>. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
 - <u>http://www.cityofberkeley.info/uploadedFiles/IT/Level 3 General/ema.pdf</u>
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
 - B. Soil and Groundwater Management Plan:
 - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
 - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
 - C. Building Materials Survey:
 - 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project.

Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.

- D. Hazardous Materials Business Plan:
 - 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at http://cers.calepa.ca.gov/ within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at http://ci.berkeley.ca.us/hmr/

Prior to Issuance of Any Building (Construction) Permit

- **14.** <u>Recycling and Organics Collection</u>. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
- **15.** <u>Public Works</u>. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.

During Construction:

- **16.** <u>Construction Hours</u>. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- **17.** <u>Transportation Construction Plan</u>. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
 - Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. <u>A current copy of this Plan shall be available at all times at the construction site for review by City Staff.</u>

- **18.** <u>Halt Work/Unanticipated Discovery of Tribal Cultural Resources</u>. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- **19.** <u>Archaeological Resources (Ongoing throughout demolition, grading, and/or construction)</u>.</u> Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
 - A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- **20.** <u>Human Remains (Ongoing throughout demolition, grading, and/or construction)</u>. In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- **21.** <u>Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).</u> In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by

a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

- **22.** <u>Stormwater Requirements.</u> The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
 - A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All private or public projects that create and/or replace 10,000 square feet or more of impervious surface must comply with Provision C.3 of the Alameda County NPDES permit and must incorporate stormwater controls to enhance water quality. Permit submittals shall include a Stormwater Requirement Checklist and detailed information showing how the proposed project will meet Provision C.3 stormwater requirements, including a) Site design measures to reduce impervious surfaces, promote infiltration, and reduce water quality impacts; b) Source Control Measures to keep pollutants out of stormwater runoff; c) Stormwater treatment measures that are hydraulically sized to remove pollutants from stormwater; d) an O & M (Operations and Maintenance) agreement for all stormwater treatment devices and installations; and e) Engineering calculations for all stormwater devices (both mechanical and biological).

- H. All on-site storm drain inlets must be labeled "No Dumping Drains to Bay" or equivalent using methods approved by the City.
- Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- **23.** <u>Public Works Construction</u>. Construction must comply with the State-wide general permit requiring owner to (1) notify the State; (2) prepare and implement a Stormwater Pollution Prevention Plan (SWPPP); and (3) monitor the effectiveness of the plan. Additional information may be found online at <u>http://www.swrcb.ca.gov</u>. As part of the permit submittal, the Public Works Department will need a) a copy of the "Notice of Intent" filed with the State Water Resources Control Board (SWRCB)/Division of Water Quality; b) the Waste Discharger Identification (WDID) number issued by the SWRCB for the project; c) a copy of the SWWPP prepared for each phase of the project; and d) the name of the individual who will be responsible for monitoring the site for compliance to the approved SWPPP.
- 24. <u>Public Works Implement BAAQMD-Recommended Measures during Construction</u>. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- **25.** <u>Public Works</u>. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.

- **26.** <u>Public Works</u>. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- **27.** <u>Public Works</u>. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- **28.** <u>Public Works</u>. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- **29.** <u>Public Works</u>. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.
- **30.** <u>Public Works</u>. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

- **31.** <u>Compliance with Conditions.</u> The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
- **32.** <u>Compliance with Approved Plan</u>. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated October 10, 2019, except as modified by conditions of approval.
- **33.** <u>Construction and Demolition Diversion</u>. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.

At All Times:

- **34.** <u>Exterior Lighting</u>. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- **35.** <u>Rooftop Projections.</u> No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.

- **36.** <u>Drainage Patterns</u>. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 37. <u>Electrical Meter.</u> Only one electrical meter fixture may be installed per dwelling unit.
- **38.** <u>Limited hours of outdoor art activities.</u> The outdoor activities related to the private, residential art practice shall be limited to the hours between sunrise and sunset, year-round.
- **39.** <u>Subject to Review</u>. This permit is subject to review, imposition of additional conditions, or revocation if factual complaint is received by the Zoning Officer that the private, residential art practice has violated any of these or other required conditions or is detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the neighborhood or is detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the City.
- **40.** <u>Limitation on Use of Property</u>. The subject property shall be maintained exclusively as a singlefamily residence and accessory dwelling unit. Any changes or additions to the use of this property shall be fully subject to the provisions and requirements of the Berkeley Municipal Code.
- 41. Public Safety review required prior to improvements for the pathway between Buena Vista Avenue and Le Roy Avenue. Prior to installation of any improvements or features that will affect access to the pedestrian pathway connecting Buena Vista Avenue and Le Roy Avenue, the property owner shall confer with and obtain sign-off from Public Safety staff.
- **42.** The pump for the unenclosed hot tub shall be mounted, enclosed and maintained to prevent noise from disturbing the occupants of neighboring properties.
- **43.** The unenclosed hot tub shall be equipped with safety features in accordance with the California Building Code.
- **44.** Mechanical operation and use of the unenclosed hot tub must adhere to the exterior noise standards of BMC Section 13.40.050.







PARCEL CONDITIONS:

- 1) Building is on the National Register of Historic Places and is a City Landmark;
- 2) Building is in the Fault Zone;
- 3) Building is in the Landslide Zone;
- 4) Building is not in a Creek Zone.

SCOPE OF ALTERATION WORK (NO SQUARE FOOTAGE BEING ADDED):

CHANGE OF OCCUPANCY FROM EDUCATIONAL TO SINGLE-FAMILY RESIDENTIAL WITH ADU;

REPLACE & RESTORE MISCELLANEOUS DOORS, WINDOWS & SIDELIGHTS; 2) **RESTORE DAMAGED 3-STORY SOUTH WALL & REPLACE FOUNDATION;** RESTORE SOUTH TERRACE, ADD WING WALLS AND BRICK STAIRS SIMILAR TO ORIGINAL TERRACE CONVERT KITCHEN TO GARAGE AND ADD NEW CONCRETE DRIVEWAYAND RETAINING WALLS: 5) ADD ELEVATOR; 6) ADD BATHROOMS TO SECOND FLOOR 7) REMODEL THIRD FLOOR AND ADD REAR DECK WITH STUCCO GUARD RAILS, POOL AND HOT TUB; -8) REPLACE ELECTRICAL AND MECHANICAL SYSTEMS; 9) 10) ADD SOLAR PANELS; 11) ADD NEW FENCING WITH HEDGE SCREENS: 12) ADD NEW PARKING AREA 2; 13) REPAVEART PARK AREA WITH INTEGRAL COLOR ASPHALT

SECRETARY OF THE INTERIOR STANDARDS FOR REHABILITATING HISTORIC BUILDINGS:

As a property on the National Register of Historic Properties, the following Standards shall be followed:

Standard 1 - A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

<u>Standard 2</u> - The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

Standard 3 - Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties will not be undertaken.

Standard 4 - Changes to a property that have acquired historic significance in their own right will be retained and preserved.

<u>Standard 5</u> - Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

<u>Standard 6</u> - Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Standard 7 - Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

Standard 8 - Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Standard 9 - New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale, and proportion and massing to protect the integrity of the property and its environment.

Standard 10 - New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

2016 CALIFORNIA HISTORICAL BUILDING CODE (CHBC) NOTES:

As a qualified historic building, the application of the following provisions of the CHBC apply:

<u>SECTION 8-102.1.6</u> - Qualified buildings shall not be subject to additional work required by the regular code beyond that required to complete the work undertaken.

<u>SECTION 8-901.5</u> - Qualified buildings are exempted from compliance with energy conservation standards.

SIGNATURE

PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shannon Alu

* Findings and Conditions Attached

October 24, 2019

DATE





EXISTING WEST ELEVATIONS, 2019

PLANNING, ZONING, & BUILDING INFORMATION:

APN: 058-2245-009-03

Fire Zone 2

R-1H Zoning:

Existing Educational Building Occupancy (E) is converting to Single-family Residential Occupancy (R-3)

Three-story, Type VB Construction, Fully Sprinklered

Lot Size: 117,546 sf Footprint Size: 25,695 sf

First Floor Size: 25,695 sf Second Floor Size: 21,562 sf Third Floor Size: <u>3,045 sf</u>

TOTAL SIZE 50,302 SF



PLANNING & DEVEL?PMENT

Land Use Planning, 1947 Center Street, Berkeley, CA 94704 Tel: 510.981.7410 TDD: 510.981.6903 Fax: 510.981.7420 Email: Planning@CityofBerkeley.info **TABULATION FORM** Date: Feb. 20, 2019 Project Address: 1581 Le Roy Avenue Applicant's Name: Jerri Holan & Associates Zoning District R-1H Please print in ink the following numerical information for your Administrative Use Permit, Use Permit, or Variance application Existing Proposed Required Units, Parking Spaces & Bedrooms 0 Number of Dwelling Units Number of Parking Spaces 27 Number of Bedrooms 5 0 (R-1, R-1A, R-2, R-2A, and R-3 only) Yards and Height Front Yard Setback 10-20 10-20 20 (Feet) Side Yard Setbacks: 25 4 Left: (Feet) (facing property) Right: (Feet) 25 25 4 Rear Yard Setback (Feet) 15-40 15-40 20 Building Height* (# Stories) 3 3 Average* (Feet) 35 35 Maximum (Feet) 50 35 Areas 117,546 117,546 5,000 Lot Area (Square-Feet) Gross Floor Area* (Square-Feet) 50,302 50,302 N/A Total Area Covered by All Floors Building Footprint* (Square-Feet) 25,695 25,695 N/A Total of All Structures Lot Coverage* (%) 22 22 40 (Footprint/Lot Area) Useable Open Space* (Square-Feet) 91.851 800 91,851 Floor Area Ratio Non-Residential only (Except ES-R) *See Definitions – Zoning Ordinance Title 23F. Revised: 05/15





DRAWING INDEX

T - 1	TITLE SH
T - 2	SUPPLEN
A-1	SITE & F
SY-1	LEGAL D
SY-2	SURVEY
A-2	FIRST &
A-3	THIRD FI
A-4	PARTIAL

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MARCH 15, 2019 - PROGRESS SET FOR NEIGHBORS

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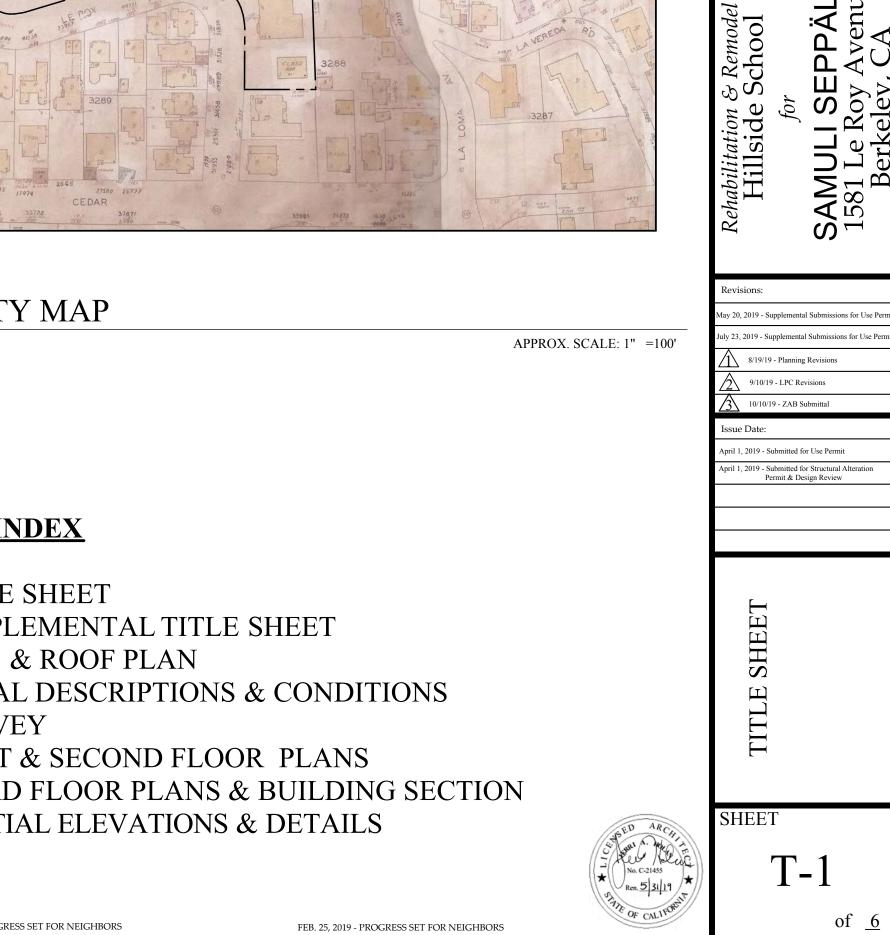
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PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

A Shannan Allen

DATE

Findings and Conditions Attached

SMALL P. SILVER SHEEN HEDGE









PROPOSED NEW SHED





GENERAL AND SITE PLAN NOTES:

- These Drawings and Specifications may not be used for construction unless corresponding Drawings signed by the Architect and approved by the building department, with appropriate permits, are in the possession of the General Contractor or Owner. 1.
- October 24, 2019
- Use of these drawings constitutes acceptance. 3.
- Specifications shall not be used by the owner or anyone else without permission from the architect.
- The architect will not be responsible for any changes in, or divergence from, the plans, specifications, or details unless such are specifically allowed in writing by the architect. 4.
- actual conditions or requirements of equipment, materials, local codes or ordinances. Any such inconsistencies shall be brought to the attention of the architect in a timely fashion so that they may be resolved or clarified. All work shall conform to the 2016 California Building Code (CBC), the 2016 California Residential Code (CRC), the 2016 California Historical Building Code (CHBC), The Secretary of the Interior's Standards for the Treatment of Historic Properties 1995 and any other applicable
- By executing the Work, the contractor represents that he has visited the site, familiarized himself with the local conditions under which the work is to be performed, and correlated his observations with the requirements of the Drawings and Specifications. The Site Plan does not constitute a survey and its accuracy should be verified in the field.
- The Contractor shall be responsible for coordinating the work of all trades. All subcontractors shall coordinate work with each other.
- The contractor shall be responsible for protection of all trees and other conditions to remain with the construction area. 9.
- The site shall be kept clean at all times. Materials indicated to be reinstalled shall be stored and protected onsite unless otherwise noted. THE BASEMENT AREA WILL BE AVAILABLEFOR STORAGE OF NEW WINDOW UNITS DURING CONSTRUCTION. Upon completion of the work 10. and prior to acceptance by Owner, contractor shall conduct a final, thorough cleanup of site and building.
- 11. Any work not shown or specified which can reasonably be inferred or defined as belonging to the work and necessary to complete any system shall be the responsibility of the contractor.
- 12. All items not noted as new (N) are existing.

local codes, regulations, and ordinnces.

13. All existing walls, floors, and ceilings at removed, new or modified construction shall be patched as required to make surfaces whole, sound, and to match existing adjacent construction except as otherwise noted.

Drawings and Specifications, as instruments of service, are and shall remain the property of the architect whether the project is executed or not. The owner may be permitted to retain copies for information and reference in connection with the use and occupancy of the project. The Drawings and

The architect does not accept responsibility for any changes made necessary by building codes, laws, or ordinances. All contractors, fabricators, and other persons utilizing these plans are advised to verify any and all aspects of these plans and any inconsistencies between them and

LEGAL DESCRIPTION

THE LAND REFERRED TO IS SITUATED IN THE COUNTY OF ALAMEDA, CITY OF BERKELEY, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF HILLSIDE WAY WITH THE WESTERN LINE OF LOT NO. 6, IN BLOCK NO. 5, AS SAID WAY, LOT AND BLOCK ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO; RUNNING THENCE EASTERLY ALONG SAID LINE OF SAID WAY, 9.78 FEET TO THE WESTERN LINE OF LOT NO. 9, IN SAID BLOCK NO. 5, AS SHOWN ON SAID MAP; THENCE SOUTHERLY ALONG SAID LINE OF SAID LOT NO. 9, 1.66 FEET TO THE SOUTHWESTERN CORNER THEREOF; THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LOT 9, 40.35 FEET TO THE NORTHEASTERN CORNER OF SAID LOT 6; THENCE SOUTHERLY ALONG THE EASTERN LINE OF SAID LOT 6, 60 FEET; THENCE AT RIGHT ANGLES WESTERLY, 50 FEET, MORE OR LESS, TO THE WESTERN LINE OF SAID LOT 6; THENCE NORTHERLY ALONG SAID LAST MENTIONED LINE, 60 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 6 IN BLOCK 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED. "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT. BERKELEY. ALAMEDA CO., CALIFORNIA", FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 2:

BEGINNING AT A POINT ON THE EASTERN LINE OF LE ROY AVENUE FORMERLY LOOKOUT PLACE, DISTANT THEREON SOUTHERLY ONE HUNDRED AND TEN AND 12/100 (100.12) FEET FROM THE NORTHWESTERN CORNER OF LOT NO. 13, AS SAID STREET AND LOT ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG SAID EASTERN LINE OF LE ROY AVENUE FIFTY AND 12/100 (50.12) FEET TO THE SOUTHWESTERN CORNER OF THE LOT OF LAND HERETOFORE CONVEYED BY GEORGE P.W. JENSEN AND HATTIE L. JENSEN, HIS WIFE, TO ROSA A. COREN, SINGLE, BY DEED DATED DECEMBER 26, 1906 AND RECORDED JANUARY 17, 1907, IN LIBER 1268 OF DEEDS, PAGE 336; RUNNING THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LAND SO CONVEYED TO ROSA A. COREN, NINETY-THREE (93) FEET, MORE OR LESS, TO THE EASTERN LINE OF LOT NO. 13, AS PER SAID MAP, AND DISTANT THEREON SIXTY (60) FEET SOUTHERLY FROM THE NORTHEASTERN CORNER OF SAID LOT NO. 13, THENCE SOUTHERLY ALONG SAID EASTERN LINE OF SAID LOT NO. 13, FIFTY (50) FEET; THENCE WESTERLY IN A STRAIGHT LINE TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO. 13, AS SAID LOT IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "LA LOMA PARK, BERKELEY, ALAMEDA COUNTY, CALIFORNIA, C.L. ENGGINS, TOWN ENGINEER OCTOBER 1900", FILED NOVEMBER 12, 1900, IN LIBER 16 OF MAPS, PAGE 13 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA.

PARCEL 3:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF LOT NO. 2. HEREINAFTER REFERRED TO, WITH THE EASTERN LINE OF LE ROY AVENUE, AS SAID LOT AND AVENUE ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO: RUNNING THENCE NORTHERLY ALONG SAID LINE OF LE ROY AVENUE, 50 FEET; THENCE NORTH 71' 50' EAST 110 FEET; THENCE SOUTHERLY PARALLEL WITH THE SAID LINE OF LEROY AVENUE, 50 FEET TO THE SAID SOUTHERN LINE OF LOT NO. 2: THENCE SOUTH 71' 50' WEST ALONG SAID LAST NAMED LINE 110 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO. 2, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED. "AMENDED MAP OF A PORTION LA LOMA PARK AND THE WHEELER TRACT," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 4:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF HILLSIDE WAY WHERE THE SAME IS INTERSECTED BY THE EASTERN LINE OF LOT NOS. 2 AND 3, IN BLOCK NO. 5, AS SAID WAY AND LOTS AND BLOCK ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO; RUNNING THENCE SOUTHERLY ALONG SAID EASTERN BOUNDARY LINE 110 FEET; THENCE SOUTH 71. 50' WEST ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT NO. 2, 40 FEET; THENCE NORTHERLY PARALLEL WITH SAID EASTERN BOUNDARY LINE OF SAID LOT NO. 21.50 FEET; THENCE SOUTH 71 50' WEST ALONG THE SOUTHERN BOUNDARY LINE OF SAID LOT NO. 3, 10 FEET; THENCE NORTHERLY PARALLEL WITH SAID EASTERN BOUNDARY LINE OF SAID LOT NO. 3, 60 FEET; MORE OR LESS, TO SAID LINE OF HILLSIDE WAY; THENCE EASTERLY ALONG SAID LINE OF HILLSIDE WAY, 50 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING THE EASTERN 40 FEET OF LOT NO. 2, AND THE EASTERN 50 FEET OF LOT NO. 3, IN BLOCK NO. 5, A SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT", FILED OCTOBER 15, 1902, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 5:

BEING LOT NO. 9, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED ON A CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK, AND THE WHEELER TRACT, "FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA.

PARCEL 6:

LOT NO. 8 IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED. "AMENDED MAP OF A PORTION OF LA LOMA PARK, AND THE WHEELER TRACT, BERKELEY. ALAMEDA COUNTY, CALIFORNIA, FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF THE SAID COUNTY OF ALAMEDA.

PARCEL 7:

BEGINNING AT THE INTERSECTION OF THE NORTHERN LINE OF LE ROY AVENUE, WITH THE EASTERN LINE OF LOT NO. 6, HEREINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG SAID LINE OF LOT NO. 6, 61.70 FEET: THENCE AT RIGHT ANGLE WESTERLY 50 FEET. MORE OR LESS TO THE WESTERN LINE OF SAID LOT 6; THENCE SOUTHERLY ALONG SAID LINE OF LOT NO. 6, 27.40 FEET, MORE OR LESS, TO A POINT DISTANT THEREON NORTHERLY, 71.81 FEET FROM THE POINT NORTHERN LINE OF SAID LE ROY AVENUE; THENCE AT RIGHT ANGLES EASTERLY 3 FEET; THENCE SOUTHERLY PARALLEL WITH SAID WESTERN LINE OF SAID LOT NO. 6, 71 FEET, MORE OR LESS, TO THE NORTHERN LINE OF SAID LE ROY AVENUE; THENCE EASTERLY ALONG SAID LAST MENTIONED LINE, 50 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO. 6, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA", FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 8:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF BUENA VISTA WAY, FORMERLY HILLSIDE WAY, AT THE INTERSECTION THEREOF WITH THE WESTERN LINE OF LOT NO. 4, IN BLOCK NO. 6, AS SHOWN ON THE MAP HEREINAFTER REFERRED TO: RUNNING THENCE SOUTHERLY ALONG SAID LAST NAMED LINE, 85 FEET; THENCE AT RIGHT ANGLES EASTERLY, 50 FEET, MORE OR LESS, TO THE EASTERN LINE OF SAID LOT NO. 4: THENCE NORTHERLY ALONG SAID LAST NAMED LINE TO THE SAID LINE OF BUENA VISTA WAY; THENCE WESTERLY ALONG SAID LINE OF BUENA VISTA WAY TO THE POINT OF BEGINNING.

PARCEL 8 CONTINUED:

RECORDER OF ALAMEDA COUNTY.

PARCEL 9:

PARCEL 10:

RECORDER OF ALAMEDA COUNTY.

PARCEL 11:

PLACE OF BEGINNING.

PARCEL 12:

BEGINNING.

BEING PORTION OF LOTS NOS. 5 AND 6 IN BLOCK NO. 5, AS SAID LOTS AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 13:

BEGINNING AT A POINT ON THE SOUTHERN LINE OF BUENA VISTA WAY, FORMERLY HILLSIDE WAY, DISTANT THEREON 50 FEET WESTERLY FROM THE POINT OF INTERSECTION THEREOF WITH THE LINE DIVIDING LOTS NOS. 3 & 4 IN BLOCK NO. 6, AS SAID WAY, LOTS AND BLOCK ARE SHOWN ON THE MAP HEREINAFTER REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID LINE OF BUENA VISTA WAY, 64.23 FEET; THENCE CONTINUING ALONG SAID SOUTHERN LINE OF BUENA VISTA WAY AND THE EASTERN LINE OF LE ROY AVENUE, AS SHOWN ON SAID MAP ON THE ARC OF A CIRCLE TO THE LEFT OF THE RADIUS OF WHICH IS 45 FEET, A DISTANT OF 60.45 FEET; THENCE CONTINUING ALONG SAID EASTERN LINE OF LE ROY AVENUE, SOUTHERLY 24.23 FEET; THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LOT NO. 3, 100 FEET; THENCE NORTHERLY PARALLEL WITH THE AFORESAID LINE DIVIDING LOTS NOS. 3 AND 4 IN BLOCK NO. 5, 60 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT NO.3, IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED. "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA," FILED OCTOBER 15 1902, IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 14:

LOT 10 IN BLOCK 5, AS SAID LOT AND BLOCK ARE SHOWN ON MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA," FILED OCTOBER 15, 1902 IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL 15:

PARCEL16:

BEGINNING AT THE INTERSECTION OF THE WESTERN LINE OF LA LOMA AVENUE WITH A LINE DRAWN PARALLEL WITH THE NORTHERN LINE OF LOT 12 AND DISTANT THEREFROM SOUTHERLY 40 FEET. AS SAID AVENUE AND LOT ARE SHOWN ON MAP HEREINAFTER REFERRED TO; RUNNING THENCE WESTERLY ALONG SAID PARALLEL LINE SO DRAWN 146.46 FEET MORE OR LESS TO THE WESTERN LINE OF SAID LOT 12; THENCE SOUTHERLY ALONG SAID LINE OF SAID LOT 12, 275 FEET TO THE SOUTHERN LINE OF SAID LOT 12; THENCE EASTERLY ALONG THE SOUTHERN LINE OF SAID LOT 12, 108.55 FEET: THENCE AT RIGHT ANGLES NORTHERLY 20 FEET: THENCE EASTERLY PARALLEL WITH SAID SOUTHERN LINE OF SAID LOT 12, 103.03 FEET. MORE OR LESS TO SAID WESTERN LINE OF SAID LA LOMA AVENUE; THENCE NORTHERLY ALONG SAID LINE OF LA LOMA AVENUE TO THE POINT OF BEGINNING.

EXCEPT THE FOLLOWING DESCRIBED PROPERTY:

BEGINNING AT A POINT ON THE WESTERN LINE OF LOT 12. AS SAID LOT IS

BEGINNING AT A POINT ON THE NORTHERN LINE OF LE ROY AVENUE, THE SAID POINT OF BEGINNING BEING THE SOUTHWESTERN CORNER OF LOT 4 IN BLOCK 5, AS PER MAP HEREINAFTER REFERRED TO; RUNNING THENCE NORTHERLY ALONG THE WESTERN LINE OF SAID LOT 4, 87.46 FEET; THENCE AT A RIGHT ANGLES EASTERLY TO THE EASTERN LINE OF SAID LOT 4; THENCE SOUTHERLY ALONG THE SAID EASTERN LINE OF LOT 4, TO THE SAID NORTHERN LINE OF LE ROY AVENUE; THENCE WESTERLY ALONG SAID LAST NAMED LINE, 53.21 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF LOT 4, IN BLOCK 5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED. "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY," ETC., FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

LOT NO. 1 IN BLOCK NO. 5, AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA CO., CALIFORNIA", FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 46, IN THE OFFICE OF THE COUNTY

BEGINNING AT A POINT ON THE SOUTHERN LINE OF BUENA VISTA WAY, FORMERLY HILLSIDE WAY, SAID POINT BEING THE NORTHWESTERN CORNER OF LOT NO.5, BLOCK 5, AS SAID WAY, LOT AND BLOCK ARE SHOWN ON THE MAP HEREINAFTER DESCRIBED; RUNNING THENCE SOUTHERLY ALONG THE WESTERN LINE OF SAID LOT NO. 5, SEVENTY-FIVE AND 83/100 (75.83) FEET; THENCE AT RIGHT ANGLES EASTERLY FIFTY (50) FEET MORE OR LESS TO THE EASTERN LINE OF SAID LOT NO. 5; THENCE NORTHERLY ALONG SAID LINE OF LAST MENTIONED LINE EIGHTY-SEVEN AND 40/100 (87.40) FEET MORE OR LESS TO THE SAID LINE OF BUENA VISTA WAY; THENCE WESTERLY ALONG SAID LINE FIFTY-ONE AND 32/100 (51.32) FEET TO THE

BEING THE NORTHERLY PORTION OF LOT NO. 5, IN BLOCK NO.5, AS SAID LOT AND BLOCK ARE DELINEATED AND SO DESIGNATED ON A CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT, BERKELEY ALAMEDA COUNTY, CALIFORNIA." FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF ALAMEDA.

BEGINNING AT A POINT ON THE LINE DIVIDING LOTS NOS. 4 AND 5 IN BLOCK NO. 5. AS PER MAP HEREINAFTER REFERRED TO: WHERE THE SAME IS INTERSECTED BY THE NORTHERN LINE OF LE ROY AVENUE, RUNNING THENCE NORTHERLY ALONG SAID DIVIDING LINE, 90 FEET; THENCE AT RIGHT ANGLES EASTERLY, 55 FEET; THENCE SOUTHERLY PARALLEL WITH THE LINE DIVIDING LOTS NOS.5 AND 6 AS PER SAID MAP, 71 FEET, MORE OR LESS, TO THE NORTHERN LINE OF LE ROY AVENUE; AND THENCE WESTERLY ALONG SAID LAST NAMED LINE 56.21 FEET, MORE OR LESS, TO THE POINT OF

ALL OF LOT NUMBERED 7 IN BLOCK NUMBERED 6, AS SAID LOT AND BLOCK ARE LAID DOWN AND DESIGNATED UPON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF LA LOMA PARK AND THE WHEELER TRACT," FILED OCTOBER 15, 1902, IN LIBER 19 OF MAPS, PAGE 45, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

SHOWN ON MAP HEREINAFTER REFERRED TO, DISTANT THEREON FORTY (40) FEET SOUTHERLY FROM THE NORTHWESTERN CORNER OF SAID LOT AND RUNNING THENCE NO. 80° 39' EAST. PARALLEL WITH THE NORTHERLY LINE OF SAID LOT, ONE HUNDRED FORTY-SIX AND 46/100 (146.46) FEET TO THE WESTERN LINE OF LA LOMA AVENUE: THENCE SOUTHERLY ALONG THE WESTERN LINE OF LA LOMA AVENUE ONE HUNDRED FORTY-FIVE AND 36/100 (145.36) FEET; THENCE SOUTH 80'39' WEST FIFTY-ONE AND 0/100 (51.0) FEET; THENCE NORTHWESTERLY CURVING TO THE RIGHT ON AN ARC WITH A RADIUS OF TWO HUNDRED AND TWENTY-FIVE (225) FEET AND ALONG CHORD WHICH BEARS NORTH 46. 53' WEST ONE HUNDRED EIGHTY AND 55/100 (180.55) FEET TO THE POINT OF BEGINNING.

PARCEL 16 CONTINUED:

BEING A PORTION OF LOT 12, AS SAID LOT IS DELINEATED AND SO DESIGNATED UPON THAT CERTAIN MAP ENTITLED "LA LOMA PARK, ALAMEDA COUNTY, CALIFORNIA, "FILED NOVEMBER 12, 1900 IN LIBER 16 OF MAPS, PAGE 13, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

EXCEPTING THEREFROM, ALL THAT PORTION OF LAND DESCRIBED IN THE DEED TO THE CITY OF BERKELEY, A MUNICIPAL CORPORATION, RECORDED APRIL 24, 1962, REEL 610, IMAGE 300, ALAMEDA COUNTY RECORDS.

PARCEL 17:

THAT PORTION OF LE ROY AVENUE COMMENCING AT THE SOUTHEAST CORNER OF LOT 8, BLOCK 5, AS SAID LOT AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED, "AMENDED MAP OF A PORTION OF A LA LOMA PARK AND THE WHEELER TRACT, BERKELEY, ALAMEDA COUNTY, CALIFORNIA, "FILED IN THE OFFICE OF THE RECORDER OF ALAMEDA COUNTY, OCTOBER 15, 1902, AND RUNNING THENCE SOUTHWESTERLY ALONG THE NORTHERN LINE OF LE ROY AVENUE ONE HUNDRED TWENTY-SIX AND FORTY-ONE HUNDREDTHS (126.41) FEET; THENCE LEAVING SAID NORTH LINE AND RUNNING NORTHEASTERLY AND SOUTHERLY ON THE ARC OF A CURVE TO THE RIGHT TANGENT TO THE LAST SAID COURSE, THE RADIUS OF WHICH ARC IS EIGHTY-NINE AND TWELVE HUNDREDTHS (89.12) FEET, A DISTANCE ON SAID ARC OF ONE HUNDRED SEVENTY AND FIFTY-TWO HUNDREDTHS (170.52) FEET TO THE EASTERN LINE OF LE ROY AVENUE; THENCE NORTHERLY TANGENT TO THE LAST SAID COURSE ALONG SAID EASTERN LINE OF LE ROY AVENUE ONE HUNDRED TWENTY-SIX AND FORTY-ONE HUNDREDTHS (126.41) FEET TO THE POINT OF BEGINNING.

PARCEL 18:

BEGINNING AT A POINT ON THE EASTERN LINE OF LE ROY AVENUE DISTANT THEREON ONE HUNDRED SEVENTY SIX AND 24/100 (176.24) FEET NORTHERLY FROM THE NORTHERN LINE OF CEDAR STREET AND RUNNING THENCE NORTHERLY ALONG THE EASTERN LINE OF LE ROY AVENUE SIXTY (60) FEET; THENCE EASTERLY PARALLEL WITH THE NORTHERN LINE OF CEDAR STREET EIGHT-EIGHT AND 55/100 (88.55) FEET; THENCE AT A RIGHT ANGLES SOUTHERLY FIFTY NINE AND 85/100 (59.85) FEET; THENCE WESTERLY PARALLEL WITH THE NORTHERN LINE OF CEDAR STREET NINETY TWO AND 740/100 (92.74) FEET TO THE POINT OF BEGINNING.

BEING THE NORTHERN FIFTY NINE AND 85/100 (59.85) FEET OF LOT THIRTEEN AS SAID LOT IS SHOWN ON THE MAP ENTITLED "LA LOMA PARK" FILED IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, CALIFORNIA, NOVEMBER 12, 1900 IN LIBER 16 OF MAPS, AT PAGE 13.

TITLE REPORT

PRELIMINARY REPORT ORDER No. 1117019517-JS, DATED JULY 26, 2018, ISSUED BY OLD REPUBLIC TITLE COMPANY: 555 12TH STREET, SUITE 2000

OAKLAND, CALIF. 94607 TEL (510) 272-1121 CONTACT: JENNIFER SENHAJI

NO EASEMENTS WERE DISCLOSED BY SAID PRELIMINARY REPORT.

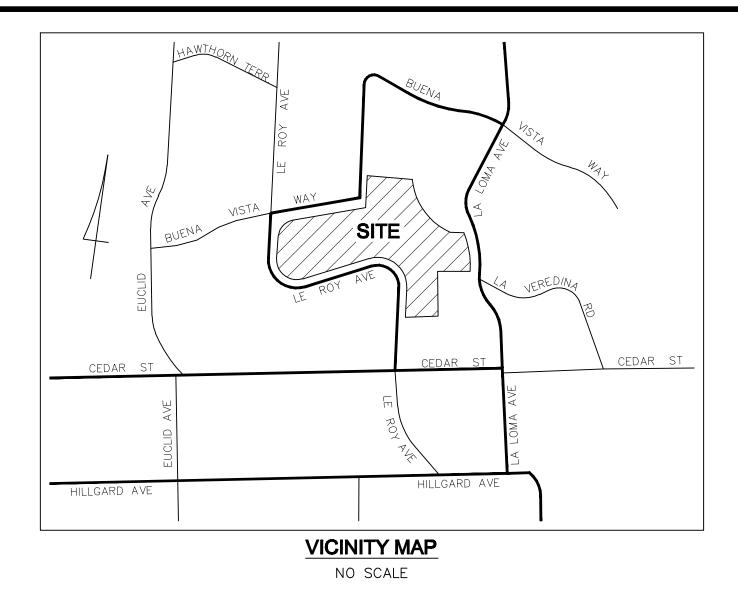
PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

SIGNATURE

October 24, 2019

DATE

* Findings and Conditions Attached



GENERAL NOTES

1. DISTANCES SHOWN ARE IN FEET AND DECIMALS THEREOF

2. GROUND CONDITIONS SHOWN HEREON REFLECT CONDITIONS ON THE DATE OF THE SURVEY.

- 3. FIELD SURVEY PERFORMED IN OCTOBER 2018.
- 4. NO RESPONSIBILITY OF CONTENT, COMPLETENESS OR ACCURACY OF THE CLIENT PROVIDED TITLE REPORT IS ASSUMED BY THIS PLAT OR THE SURVEYOR; ONLY SURVEY RELATED ITEMS ARE SHOWN HEREON.
- 5. DETAILS DRAWN NEAR PROPERTY LINE(S) ARE NOT NECESSARILY TO SCALE.
- 6. ENCROACHMENTS AND OR CLEARANCES ARE SHOWN AT OR NEAR GROUND LEVEL UNLESS OTHERWISE NOTED.
- 7. ENCROACHMENTS UPON AND BY THE ADJOINING PROPERTIES ARE HEREBY NOTED AND IT SHALL BE THE RESPONSIBILITY SOLELY OF THE PROPERTY OWNERS INVOLVED TO RESOLVE ANY ISSUE WHICH MAY ARISE THEREFROM.
- 8. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO HAVE ALL THE UTILITIES MARKED BY THE RESPECTIVE UTILITY COMPANY PRIOR TO CONSTRUCTION.
- 9. PRIOR TO ANY DIGGING, CALL U.S.A. (1-800-642-2444) AT LEAST 48 HOURS IN ADVANCE TO HAVE EXISTING UNDERGROUND UTILITIES MARKED
- 10. ONLY ACCESSIBLE SURFACE UTILITIES VISIBLE ON THE DATE OF THIS SURVEY WERE LOCATED AND ARE SHOWN.
- 11. THE LOCATIONS OF UNDERGROUND UTILITIES, WHERE SHOWN, ARE NOT DEFINITIVE NOR COMPLETE, AND ARE PER RECORD DRAWINGS PROVIDED BY THE CITY, AND NO RESPONSIBILITY OF CONTENT, COMPLETENESS OR ACCURACY OF THE UNDERGROUND UTILITIES IS ASSUMED BY THIS PLAT OR THE SURVEYOR. ALL USERS ARE ADVISED TO CONTRACT SEPARATELY WITH AN UNDERGROUND UTILITY LOCATION COMPANY AND TO REVIEW PUBLIC, QUASI-PUBLIC AND GIS UTILITY DATA SOURCES IF THEY WANT MORE INFORMATION.

ASSESSOR PARCEL NUMBER: 073-232-32

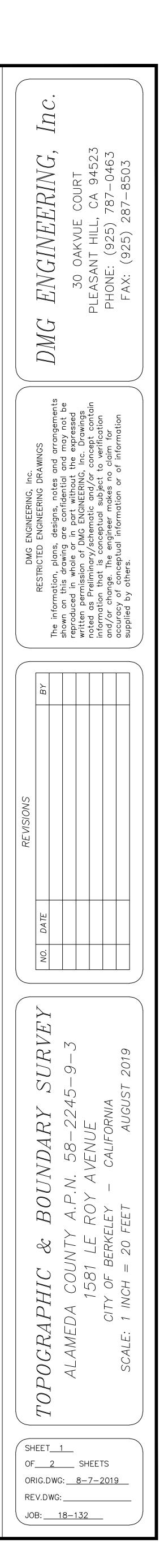
LOT AREA: $2.64 \pm ACRES$

SURVEYOR'S STATEMENT THIS MAP CORRECTLY REPRESENTS A TOPOGRAPHIC AND BOUNDARY SURVEY MADE BY ME OR UNDER MY DIRECTION AT THE REQUEST OF: SAMULI SEPPALA IN: OCTOBER 2018 I HEREBY STATE THAT THE TOPOGRAPHY AND BOUNDARIES SHOWN ON THIS MAP IS BASED UPON A FIELD SURVEY MADE BY ME, DYLAN M. GONSALVES, PLS 8475 DURING THE MONTH OF OCTOBER, 2018

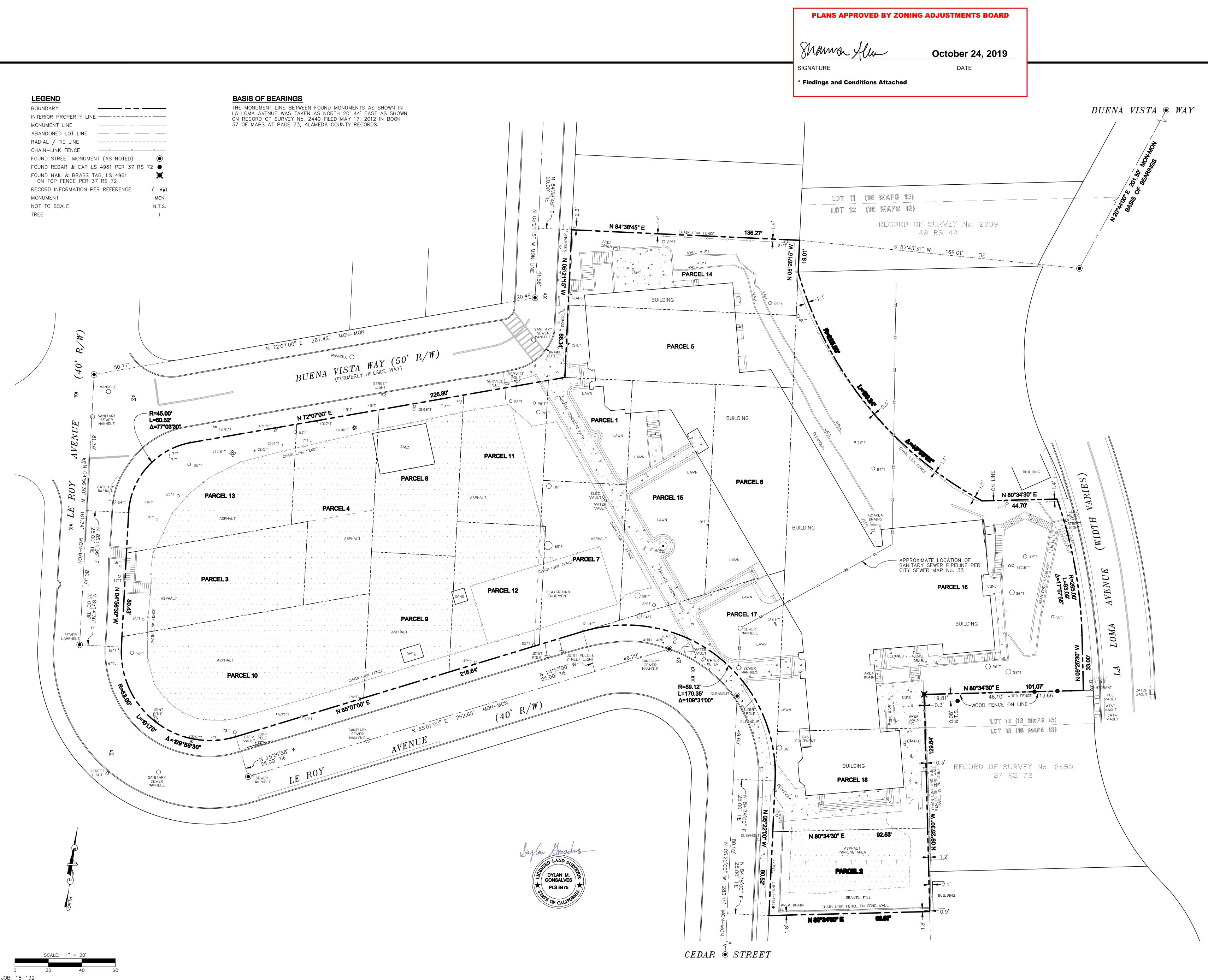
I FURTHER STATE THAT TO THE BEST OF MY KNOWLEDGE ALL PROVISIONS OF APPLICABLE LOCAL ORDINANCES HAVE BEEN COMPLIED WITH.

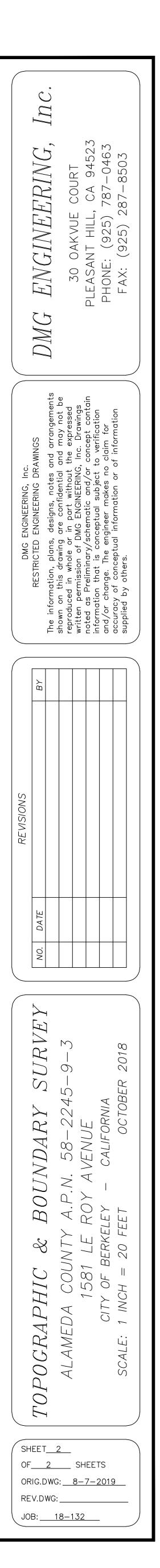
DYLAN M. GONSALVES DATE P.L.S. 8475





ATTACHMENT 2 ZAB 10-24-2019 Page 3 of 7



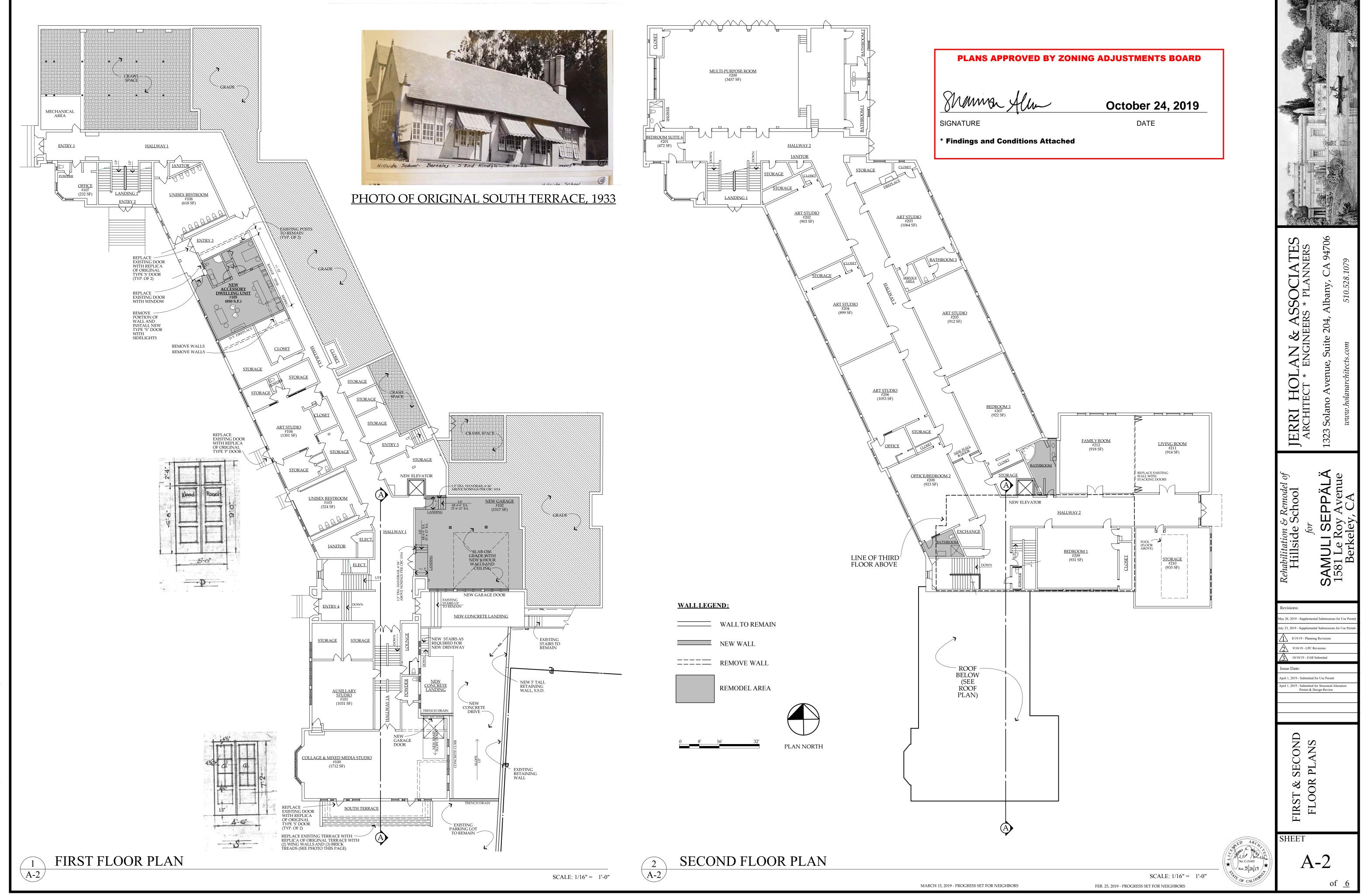


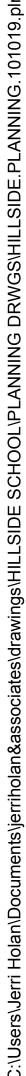
ATTACHMENT 2

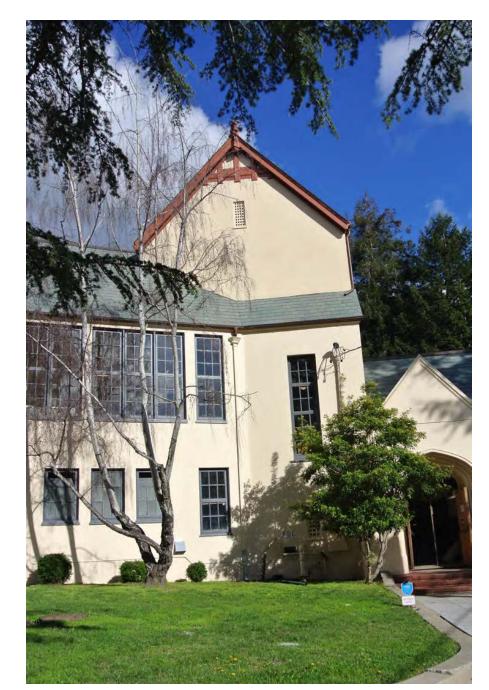
ZAB 10-24-2019

Page 4 of 7

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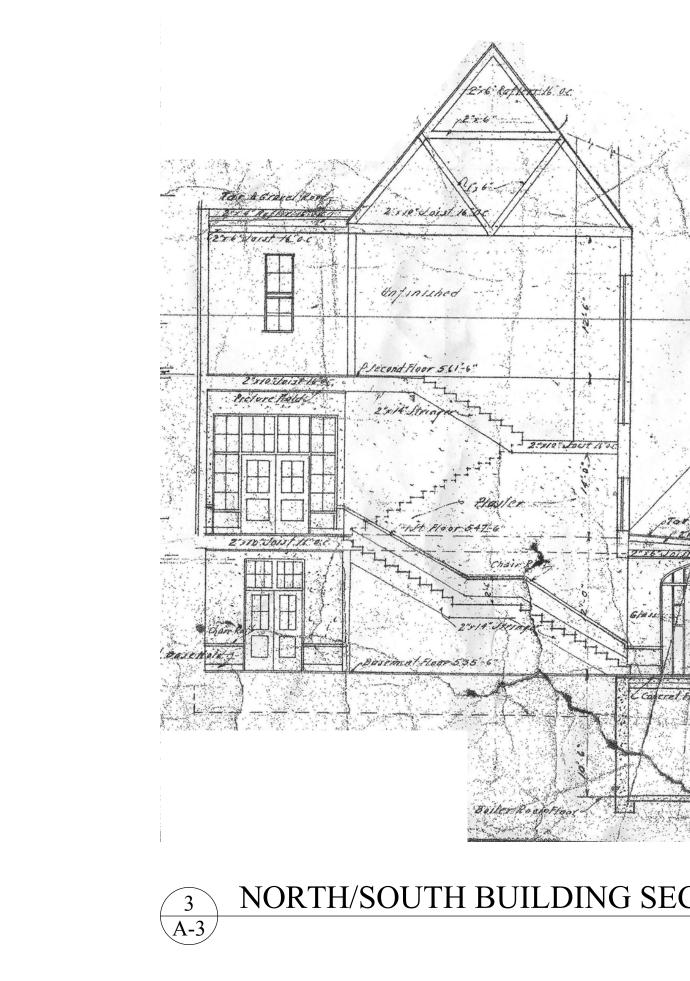






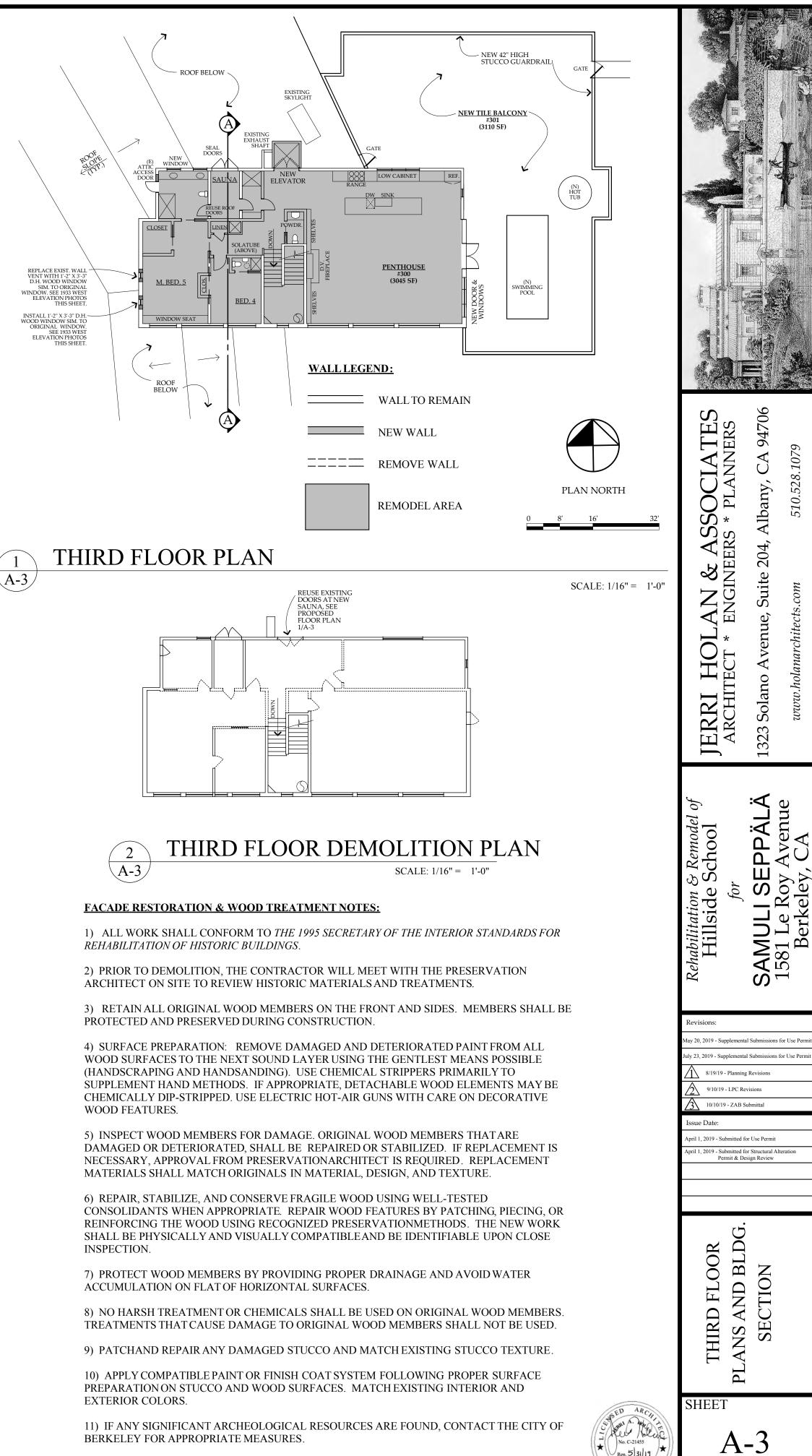
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PLANS APPROVED BY ZONING ADJUSTMENTS BOARD

Shannon Alu SIGNATURE

* Findings and Conditions Attached

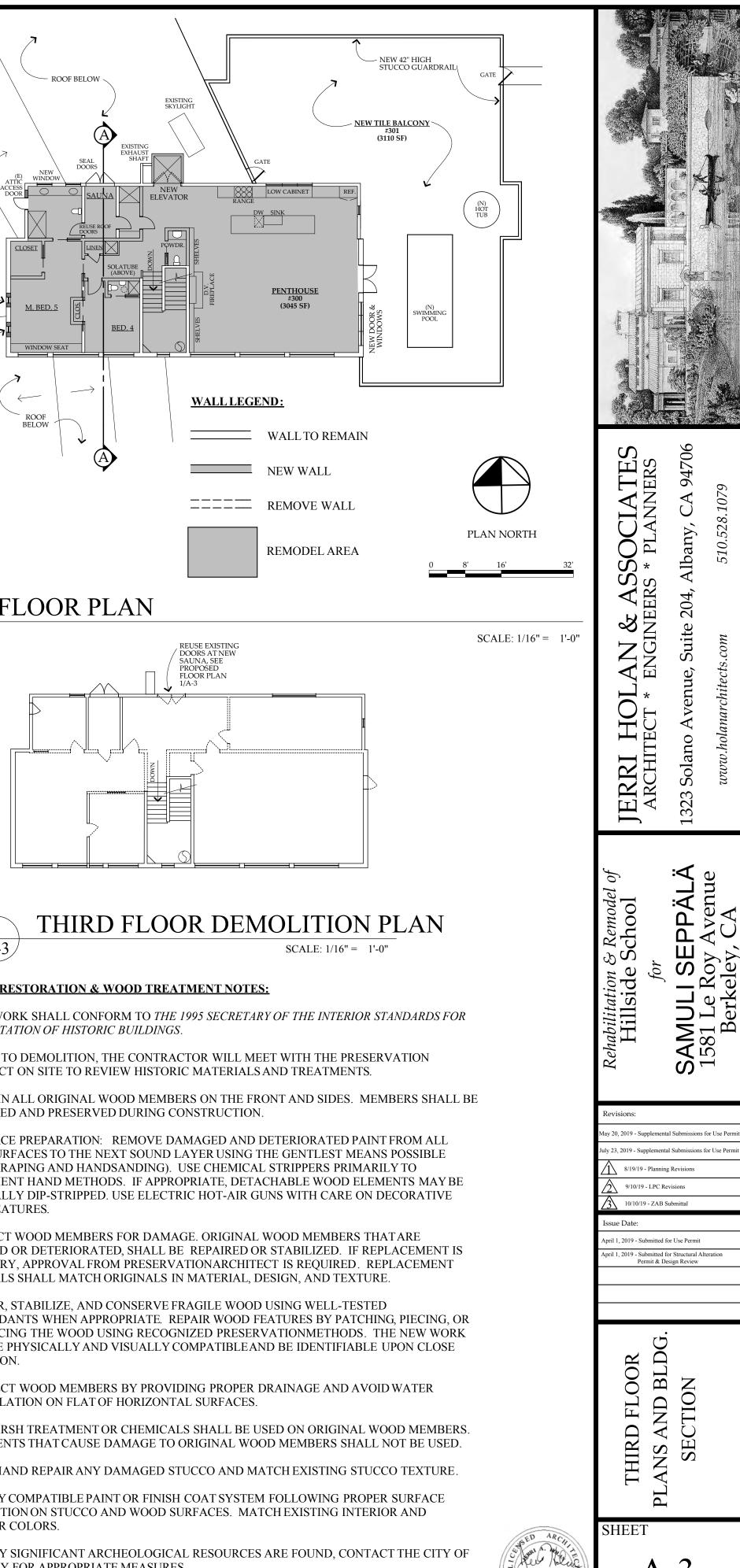
October 24, 2019 DATE

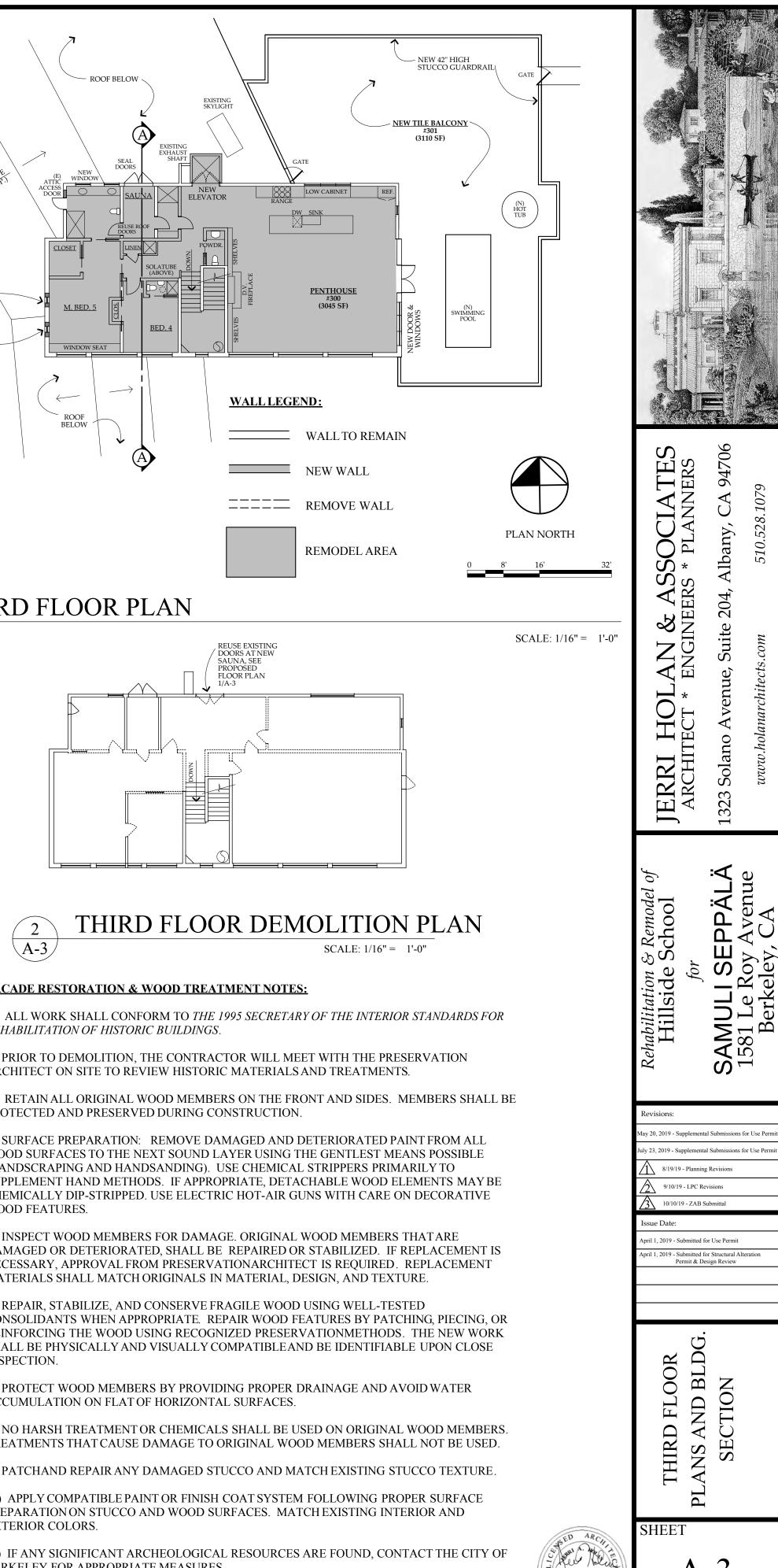
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NORTH/SOUTH BUILDING SECTION A-A LOOKING EAST, 1925

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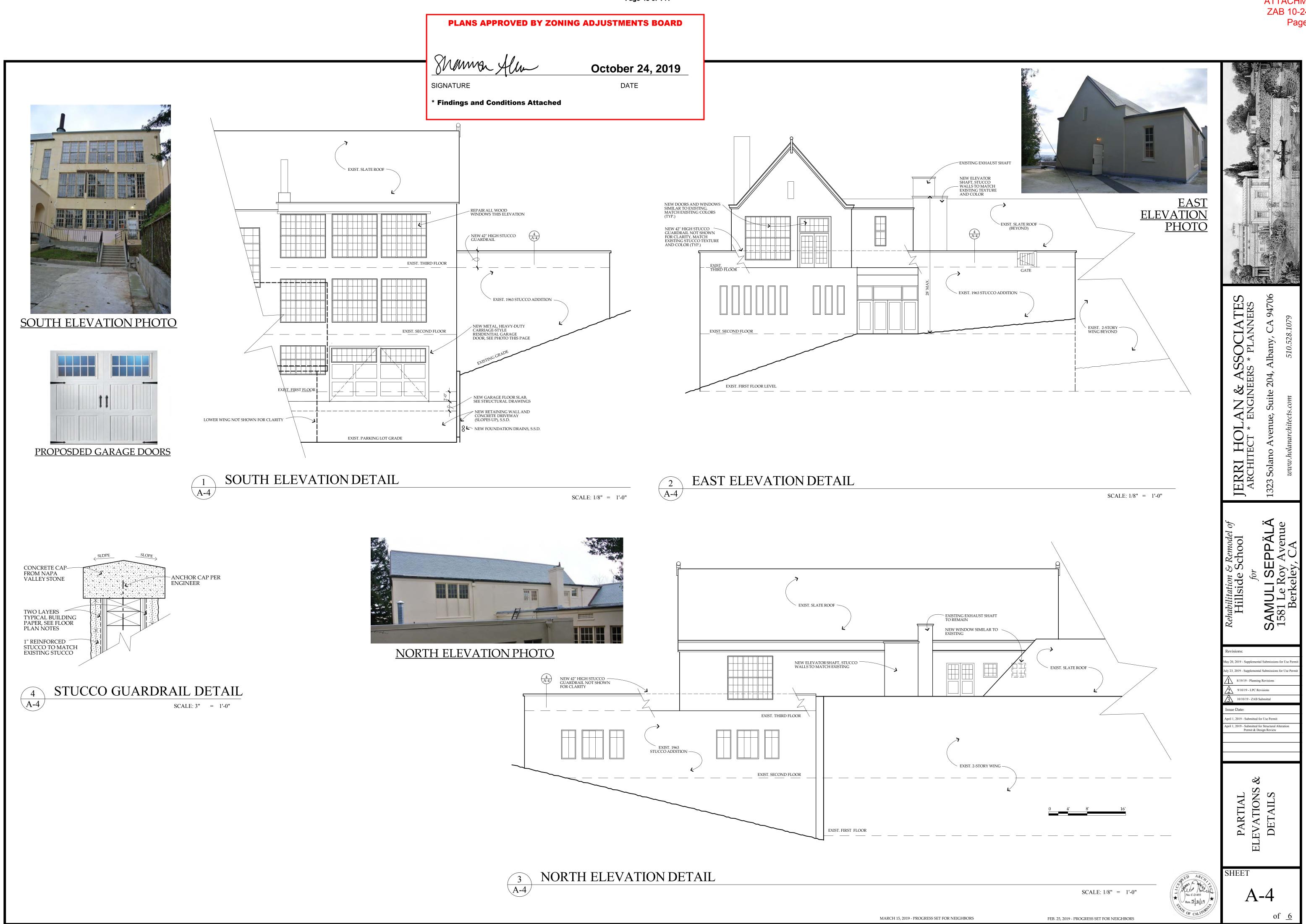
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of <u>6</u>





T 510.836.4200 F 510.836.4205

1939 Harrison Street, Ste. 150 Oakland, CA 94612 CITY OF BERKELEY CITY CLERX DEPT www.lozeaudrury.com 2019cDfellozeaudrusy.com 2019cDfellozeaudrusy.com 2019cDfellozeaudrusy.com 2019cDfellozeaudrusy.com 2019cDfellozeaudrusy.com

December 2, 2019

Mark Numainville, City Clerk City of Berkeley 2180 Milvia Ave., First Floor Berkeley, CA 94704

Re: Appeal of Zoning Adjustments Board Decision Re: Use Permit #ZP2019-0061; 1581 Le Roy Avenue - Hillside School Project

Dear Mr. Numainville:

On behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue in Berkeley (the "Hillside School Property"), along with those persons listed on the signature pages attached hereto as Exhibit 1 (collectively, "Appellants") concerning the application of the current owner of the Hillside School Property to convert it from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the "Project").

This letter constitutes an appeal of the Zoning Adjustments Board ("ZAB") decision of October 24, 2019 approving 1581 Le Roy Avenue, Use Permit #ZP2019-0061 and ZAB's related CEQA findings that the Project is exempt from environmental review under the California Environmental Quality Act ("CEQA"). By this appeal, Appellants request that the Berkeley City Council: 1) hold a public hearing to hear the concerns of Appellants and other members of the public; 2) deny Use Permit #ZP2019-0061; 3) find that the Project is not exempt from CEQA; and 4) send the Project back to staff for further review under CEQA.

The reasons for this appeal are detailed in the attached two letters. Appellants reserve their right to add additional information prior to or at a hearing on this appeal by the City Council.

Respectfully submitted,

Mulal

Hillside Path & Playground Preservation Association, and all persons listed on the attached signature list.

Encl.

Exh. 1 - Names and Signatures of Appellants

Exh. 2 - Hillside Path & Playground Preservation Association Oct. 17, 2019 Letter to ZAB

Exh. 3 - Hillside Path & Playground Preservation Association Oct. 24, 2019 Supp. Letter to ZAB

Appeal Document Page 1 of 62



My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061

(Further details attached)

Total

35

300 Feet Leroy Ave

Please Print Name Signature Address 200 Feet Barschi 1597 Le Roy Ave. asse 1) 11 . JACKSON TOREAT 1597 LERRY AVE 2) 3) MICHNEL F. STOTT 1570 LE ROY AVE 4) Marian C. O'Regan 1562, La Roy Ave. himic ciols 5) W.M. Captsch LeBoy Ave. 1544 LeRoy Are. 6) CARLOS BUSTAMANTE 7) Silvia Bustamante Aleio R. 1544 Le Roy stamente the. (, 8) Laterina Migone aterina Mygono 1544 LeRoy Ave. 19) THOMAS PRIPPE AVEREDARD 1551 1 10 Kirsten Berg Jupper Lavereda And, 46 ha hona 1 11 Jue onderville MARIS MEYERSON (12 1509 LA LOMA AVE las EYERION 509 LA LOMA AVE. **(** 13_ VAN Joth LIC 2550 BUEAR VIST Wy (14 115_ Vicki Piovia Udly 1570 LEROY AVC

15 = 300 Feet

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My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061. My signature also indicates that I own or lease property within 300 feet of the property located at 1581 Le Roy Avenue, Berkeley, California.

(Further details attached)

300 Feet

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MERTA WEIN	STEIN He	rta Denisten	2525 Buena	Vista Way
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" 3) MICHAEL S.	BANK ///	Mar Bulk	1509 Le Ro	y Ave.
(4) Sohn Ar	mitage 7	st l	25451Zue	ha lista
1 5) HELANE Z	HELGER F	Juger	1521 LE Roy A	Ne.
(6) URSULA E	schuzz hu	nteslig"	1520 Le Roy A	ve
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My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061

(Further details attached)

300 Feet

Buena Vista Way

	Please Print Name	Signature	Address
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Appeal Document Page 4 of 62

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My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061. My signature also indicates that I own or lease property within 300 feet of the property located at 1581 Le Roy Avenue, Berkeley, California.

(Further details attached)

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Signature Page ZAB:

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My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of ZAB's October 24, 2019 decision to approve Use Permit #ZP2019-0061

(Further details attached)

	Cedar Street	300 reet
Please Print Name	Signature	Address
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T 510.836.4200 F 510.836.4205 1939 Harrison Street, Ste. 150 Oakland, CA 94612 www.lozeaudrury.com rebecca@lozeaudrury.com

October 17, 2019

Via Email

Shoshana O'Keefe, Chairperson Denise Pinkston, Vice Chairperson Igor Tregub, Board Member Teresa Clarke, Board Member Patrick Sheahan, Board Member John Selawsky, Board Member Carrie Olson, Board Member Charles Kahn, Board Member Dohee Kim, Board Member Zoning Adjustments Board Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info Greg Powell Zoning Adjustments Board Secretary Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info

Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O'Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue, concerning the application of the current owner of the Hillside School to convert is from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the "Project"). Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board ("ZAB") to reject the Project because it fails to comply with the California Environmental Quality Act ("CEQA").

This comment was prepared with the assistance of fire expert Noah Brownlow. Mr. Brownlow's expert comments and CV are attached hereto as Exhibit A.

As discussed below, there is substantial evidence that the Project will adversely impact public safety, and will adversely impact the historic significance of the Hillside School property. Because of these significant impacts, the City cannot exempt the Project from CEQA. CEQA review is needed to analyze the Project's impacts and implement feasible mitigation measures and alternatives to reduce adverse impacts to public safety and historic resources. 1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 2 of 13

I. FACTUAL BACKGROUND

A. Hillside School

The Hillside School was built at 1581 Le Roy Avenue in 1925, following the 1923 Berkeley Hills Fire, which destroyed a number of houses previously located on the property. Once opened, the Hillside School operated as a public school until 1983, when Hillside School closed. Berkeley Unified School District ("BUSD") then leased the space to various educational institutions for approximately 30 years. In 2008 BUSD approved the sale of Hillside School to the German International School, which in turn sold it in September 2018 to Samuli Seppala, the current owner and Project proponent.

Designed by Master Architect Walter Ratcliff, the Hillside School serves as an important historic resource for Berkeley, and was designated City Landmark #61 in 1980. In 1982 it was recognized nationally and placed on the National Register of Historic Places. The local and national historic designations were made for the entire Hillside School property, including the path that runs in front of the school building that connects Le Roy Avenue and Buena Vista Way (the "Path"), as well as the playground in front of the school building (the "Playground").

B. Proposed Project

The new owner of the Hillside School, Mr. Seppala, now seeks a use permit to convert the Hillside School into a single family residence with an accessory dwelling unit. He will convert the south wing of the building into living quarters, which he will use as his primary residence. Mr. Seppala also plans to create an Accessory Dwelling Unit for an artist-inresidence, and to repurpose the existing classrooms into art studios to be used by Mr. Seppala and guest artists. The Project also proposes to build a pool and hot tub on a new rooftop deck, and an elevator to serve the Mr. Seppala's new main residence.

Mr. Seppala is also seeking a Moderate Home Occupation Permit for artistic activities he plans on hosting at the Project site, including private art classes, seminars, workshops, and retreats at the property. Specifically, he plans to host up to 25 artists at the property, twice per month, for "art-related projects." To accommodate all of these new uses, Mr. Seppala plans to transform two-thirds of the Playground into a parking lot for 18 cars or trailers and an art display area. In addition, the Project seeks to install up to five massive sheds on the current Playground for storage purposes.

Mr. Seppalla has allowed access on the Path and Playground "for the time being." While this is appreciated, nothing in the Project requires him to do so. Under CEQA, a lead agency must analyze the impacts of all activity allowed under a permit, not just what is currently proposed. San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645; City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398. Here, if the Project is approved, there is nothing preventing Mr. Seppala from cutting off public access to the Path or Playground. In doing so, he would limit potentially life-saving strategies that contribute to

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1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 3 of 13

public safety during an emergency. The impact of this action must be analyzed under CEQA.

C. Fire History

The possibility of catastrophic wildfire near the Project in the Berkeley Hills is very real. The Hillside School is located in a high-risk fire zone, a landslide zone, and a fault zone. There are a number of factors that make the neighborhood at a particularly high risk for fires, including its proximity to park land where the fuel load is high, narrow, curvy roads that hamper access by first responders and obstruct efficient evacuation routes, and steep topography, among others.

It is these conditions that have contributed to the East Bay Hills' long and tragic history of catastrophic fires. In 1923, a wildfire swept through north Berkeley, in the same spot the Project is located, destroying more than 600 584 homes and 100 structures. *Id.* In 1970, the Hills Fire burned more than 400 acres, destroying 37 homes. *Id.* The Wildcat Canyon Fire in 1980 destroyed five homes in just minutes. *Id.* More recently, the Tunnel Fire, in 1991, caused more than \$1 billion in damage, and took the lives of 25 people. *Id.*

As a result of climate change, since the 1991 Tunnel Fire, "wildfires have become larger, hotter, more destructive, and more difficult to control," Councilmember Wengraf Memo to City Council Supporting Resolution Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley (Oct. 15, 2019) ("Wengraf Memo"). We are beginning to better understand the importance of fire safety mitigation measures. This was demonstrated by the City's recent adoption of a resolution declaring wildfire prevention and safety a top priority in the City of Berkeley. CITE. Our increasing awareness of fire danger, particularly near Wildland Urban Interfaces in wooded areas with congested narrow streets, underscores the importance of public paths for use as evacuation routes, and open spaces for use as a staging area of emergency vehicles and a safe zone for people and pets.

D. The Path and Playground

For the past 93 years, the Playground and Path have been open to and used by the public for recreational and social activities. The Playground contains a number of metal play structures, basketball hoops, and a large open play space. See Photographs in Exhibit _____. Activities taking place at the Playground go beyond just playing on the metal structures and include basketball, baseball, Frisbee, bike riding, tag, capture the flag, and picnicking, just to name a few.

The Playground has been a defining part of the neighborhood for nearly a century. It has been used and enjoyed by residents of all ages, for multiple generations. Comments submitted to the Landmark Preservation Committee, and likely submitted to ZAB in this proceeding as well, recount dozens of stories of Berkeley residents who climbed on the playground structures as children, took their children to the playground, and now take their grandchildren to there. **CITE**. The Playground's central role in the neighborhood was by design. As Mr. Seppala's Applicant Statement for the Project acknowledges, "[t]he front yard of the school was designed as a playground *for both the school and the neighborhood*." Applicant's Statement, Hillside School,

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1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 4 of 13

1581 Le Roy Avenue, p. 1 (March 11, 2019) (emph. added).

As an open space, the Playground is vital to the Hillside community, which has very limited free space. The Playground is the only open space where families and community members could gather in case of an emergency due to fire, earthquake, or other tragic event. As discussed in detail below, loss of access to this open space would limit potentially life-saving strategies that contribute to public safety during an emergency.

The Path is a similarly vital asset to the neighborhood. Neighbors have walked the Path in front of the school to get from Le Roy Avenue to Buena Vista Way for nearly a century. It serves as a normal and often daily route for residents when accessing the UC Campus by foot or bike, as well as downtown Berkeley and BART. Some neighbors have described walking the Path daily, as it is the best way to get to the UC campus.

As detailed below, the Project and its potential to cut off public access to the Path and Playground not only changes the character of the neighborhood and the historic nature of the property, but it also poses a serious public safety risk.

II. LEGAL BACKGROUND

A. California Environmental Quality Act

CEQA mandates that "the long-term protection of the environment ... shall be the guiding criterion in public decisions" throughout California. Public Resources Code ("PRC") § 21001(d). CEQA applies to "discretionary projects" unless they are specifically exempted. PRC § 21080(a). A "project" is "the whole of an action" directly undertaken, supported, or authorized by a public agency "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). CEQA is concerned with an action's ultimate "impact on the environment." *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the "earliest possible stage . . . before [the project] gains irreversible momentum," *id.* at 277, "at a point in the planning process where genuine flexibility remains." *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

CEQA has a three-tiered structure for protecting the environment. 14 CCR § 15002(k); Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles (2008) 161 Cal.App.4th 1168, 1185-86 ("Hollywoodland"). First, if a project is exempt under CEQA or if it is certain that the project "will not have a significant effect on the environment," there need be no further agency evaluation. Id. But "where there is a reasonable possibility that a project or activity may have a significant impact on the environment, an exemption is improper." Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 206. Second, "if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study." Hollywoodland, 161 Cal.App.4th at 1185-86; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant

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1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 5 of 13

effect on the environment, the agency may issue a negative declaration. *Hollywoodland*, 161 Cal.App.4th at 1185-86; 14 CCR §§ 15063(b)(2), 15070. Third, an environmental impact report ("EIR") is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." PRC § 21080(d); *see also Communities for a Better Env't v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.

"Significant environmental effect" as used in this three-tiered test is defined very broadly as "a substantial or potentially substantial adverse change in the environment." PRC § 21068; *see also* 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 83. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Env 't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

Here, because City staff proposes to exempt the Project entirely from all CEQA review, the first step of the CEQA process is at issue.

B. Categorical Exemptions

CEQA identifies certain classes of projects that are exempt from the provisions of CEQA. These are called categorical exemptions. PRC § 21084(a); 14 CCR §§ 15300, 15354. Categorical exemptions are certain classes of activities that generally do not have a significant effect on the environment. *Id.* Public agencies utilizing such exemptions must support their determination with substantial evidence. PRC § 21168.5. CEQA exemptions are narrowly construed and "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Erroneous reliance by an agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. *Azusa,* 52 Cal. App. 4th at 1192. "[I]f the court perceives there was substantial evidence that the project might have an adverse impact, but the agency failed to secure preparation of an EIR, the agency's action must be set aside because the agency abused its discretion by failing to follow the law." *Dunn-Edwards,* 9 Cal. App. 4th at 656.

C. Exceptions to Categorical Exemptions

CEQA contains several exceptions to categorical exemptions. 14 CCR § 15300.2. If an exception applies, the exemption cannot be used, and the agency must instead prepare an initial study and CEQA document. *McQueen*, 202 Cal. App. 3d at 1149; *Hollywoodland*, 161 Cal. App. 4th at 1187. "Even if a project falls within the description of one of the exempt classes, it may nonetheless have a significant effect on the environment based on factors such as location, cumulative impact, or unusual circumstances." *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal. App. 4th 677, 689. The "unusual circumstances" exception

1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 6 of 13

provides that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to "unusual circumstances." 14 CCR §15300.2(c).

In the context of the unusual circumstances exception, what is "unusual" is "judged relative to the *typical* circumstances related to an otherwise typical exempt project." *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal. App. 4th 786, 801 (emphasis added). An unusual circumstance is "some feature of the project that distinguishes it from others in the exempt class." *San Lorenzo Valley*, 139 Cal. App. 4th at 1381. The *Azusa* Court held that the unusual circumstances test would be satisfied where the circumstances of a particular project: (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects. *Azusa*, 52 Cal. App. 4th at 1207; *Hollywoodland*, 161 Cal. App. 4th at 1187 (construction of new fence atop historic granite wall posed environmental risk that did not exist for "general class of exempt projects" under the Class 5 exemption due to differing historic nature of wall); *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260-1261 (court looked for "some feature of the project that distinguishes it from any other small, run-of-the-mill commercial building or use" covered by claimed exemption).

Here, the City's determination that the Project is exempt under the "Historical Resource Restoration/Rehabilitation" exemption fails because the Project goes beyond the scope of the exemption on its face, and because the unusual circumstances exception applies, precluding reliance on an exemption.

III. ANALYSIS

A. The Historical Resource Restoration/Rehabilitation exemption does not apply on its face.

The City claims that the Historic Resource Restoration/Rehabilitation CEQA exemption¹ applies to the Project. 14 CCR § 15331. The City's reliance on this exemption is misplaced.

The exemption is narrow in scope, and applies only to:

[P]rojects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

¹ The Historic Resource Restoration/Rehabilitation exemption is also known as a Class 31 exemption.

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14 CCR § 15331.

CEQA exemptions, such as the Historic Resource Restoration/Rehabilitation exemption, are narrowly construed, and limited to their terms. *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268; *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Strict construction is required in order to interpret categorical exemptions in a manner that affords the greatest environmental protection within the reasonable scope of their statutory language. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966. "Since a determination that a project falls within a categorical exemption excuses any further compliance with CEQA whatsoever, we must construe the exemptions narrowly in order to afford the fullest possible environmental protection." *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.

In the case of *Castaic Lake Water Agency v. Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268, the court held that CEQA's earthquake exemption did not apply to a city project involving earthquake retrofitting because the project also included other elements only loosely related to earthquakes. Similarly here, while the Project includes some maintenance, repair, and restoration, it includes many other elements that go far beyond the limited terms of the exemption. Thus, the exemption does not apply.

In addition to "maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction," the Project also includes many activities that go far beyond the language of the exemption, including:

- Construct a new roof deck;
- Install an unenclosed swimming pool and hot tub within the new roof deck;
- Construct a 36-square foot elevator penthouse above the second story;
- Create a new surface parking lot where the playground is now located
- Install up to five storage shed within portions of the former playground
- Repurpose part of the playground as an outdoor art space

Notice of Public Hearing (mailed Oct. 9, 2019).

With these elements, the proposed Project does not fit within the Class 31 exemption because is clearly not "limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction" of the Hillside School as a historic resource. The Project clearly does *include* restoration and rehabilitation activities. The problem is that the Project is not *limited* to those activities. The Project goes far beyond merely maintaining or repairing the Hillside School and Playground. Instead, the Applicant seeks to build new structures that never existed on the site before, and take away portions that are included as part of the Historic Landmark Designation. CITE. Among other things, the Applicant seeks to build a rooftop pool and hot tub, a new parking lot and five large storage sheds on what had previously

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been a historic playground. Yet the Class 31 exemption does not exempt projects that seek to add a pool or a parking lot to a historic resource. Similarly, paving over-converting-two-thirds of the playground to convert it into a parking lot and building five sheds on the parking lot does not fit within the plain terms of the exemption. The Project goes far beyond just maintenance or repair of an historic resource – the Project changes the historic resource. Since the Project goes far beyond the scope CEQA Guidelines section 15331, the exemption does not apply to the Project. *See, Castaic Lake,* 41 Cal. App. 4th at 1268 (CEQA earthquake exemption did not apply to rebuilding of City center because rebuilding project included elements beyond mere earthquake repairs and reconstruction).

Since the Project goes far beyond the limited terms of the exemption, the exemption is legally precluded.

B. The Project cannot be exempt from CEQA because it will have significant environmental impacts due to unusual circumstances.

Even assuming *arguendo* that the Project did fall within the Class 31 exemption (which it does not), the Project is still not exempt from CEQA because it falls under the "unusual circumstances" exception to categorical exemptions. 14 CCR § 15300.2(c). A categorical exemption is inapplicable "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Id.* Here, Shuttle Project does not present the same general risk of environmental impact as other projects falling under the Class 31 exemption, and therefore the Class 31 exemption is inapplicable.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, "a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, "[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance." *Id*.

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

1. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

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Appendix G of the CEQA Guidelines provides that a Project will have a significant impact if it would "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands." CEQA Guidelines, Appendix G. There is substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

Wildfire fighting expert Noah Brownlow submitted herewith a detailed analysis demonstrating that the Project will put people and property at risk. According to Mr. Brownlow, the Project "represents a threat to public safety by reducing access and egress to the Berkeley hills and by eliminating a potential safety zone or fire shelter deployment site for firefighters responding to [Wildland Urban Interface] fires." Brownlow, p. 1. The increased danger stems, in part from the ability for the Project owner to cut off public access to the pathway that runs in front of the Hillside School, and connects Le Roy Avenue and Buena Vista Way. *Id.* Mr. Brownlow explains that cutting off this public access poses a threat to community members trying to evacuate, and impede emergency vehicle access. Brownlow, p. 1. The Project "would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood." Brownlow, p. 1.

Mr. Brownlow concludes that:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

Id.

The Project will also increase the risk to human life and property if a fire or other emergency occurs because firefighters and other emergency workers will face additional constraints in handling a fire or other emergency.

In both the 1991 Tunnel Fire and the 1923 Berkeley Hills Fire, "emergency personnel access and civilian egress were a limiting factor in incident stabilization and contributing factor to fatalities and property loss." Brownlow, p. 1. In his comment letter, Mr. Brownlow describes the specific type of risks posed by Wildland Urban Interface ("WUI") fires, and the importance of open spaces and egresses. "Due to their potential for extreme and unpredictable behavior, huge energy and potential for loss of life, firefighters have certain protocols that must be in place before they attempt to engage WUI fires." Brownlow, p. 2. One such rule is that fire fighters must ensure that four conditions are in place at all times: 1) lookouts, 2) communications, 3) escape routes, and 4) safety zones. *Id.* The Project would impact fire fighters' ability to safely tackle a fire at or near the Project because these conditions would not be met. *Id.* The Project "would eliminate a potential escape route and safety zone, denying firefighters a currently

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existing space in which to deploy personal fire shelters if overrun or to escape a deadly fire altogether." *Id*.

Mr. Brownlow's comments constitute substantial evidence that loss of public access to the path between Le Roy Avenue and Buena Vista Way and loss of public access to the playground will "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires." This significant impact precludes the City from relying on an exemption to avoid CEQA review. The City must analyze the Project's impact on public safety under CEQA, and implement all feasible mitigation measures.

This public safety issue should be analyzed and mitigated in the open and public process created by CEQA. A CEQA process would allow the City to consider and impose feasible mitigation measures to reduce public safety risks. This may include, for example, a condition requiring the pathway between Le Roy and Buena Vista and a portion of the playground be kept open to the public and unobstructed. Public Safety experts for the City should be consulted to determine impact the Project will have on neighbors, fire fighters, and other emergency service workers in the event of a fire or earthquake. This information must all be disclosed to the public for review and comment.

The City's failure to include any analysis or mitigation of the Project's public safety impacts must be cured before the Project is approved.

2. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike "usual" or "typical" Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

At least two elements of the Project that distinguish it from other projects in the exempt class, and these characteristics create environmental risks not generally present for "Historical Resource Restoration/Rehabilitation" projects. The first unusual circumstances is the Project's location. Unlike most restorations, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquake-induced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most restorations, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake.

Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts. Here, such evidence exists. As discussed above, because of the high risk location of

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the Project, and its potential to cut off public access to the Path and Playground open space, the Project may "decrease both emergency vehicle access to the area, and civilian opportunities for egress." Brownlow, p. 1.

The Project's unusual circumstances, together with Mr. Brownlow's expert comments, preclude the City from relying on a CEQA exemption for the Project.

C. CEQA exemption is not allowed because the Project may have an adverse impact on a historic resource.

CEQA section 21084.1 prohibits the use of a CEQA exemption for projects that **may** cause a substantial adverse change in the significance of a historical resource. CEQA § 21084.1, CEQA Guidelines 15300.2(f). CEQA defines a "substantial adverse change" as the physical demolition, destruction, relocation or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. CEQA goes on to define "materially impaired" as work that materially alters, in an adverse manner, those physical characteristics that convey the resource's historical significance and justify its inclusion in the California Register of Historic Places, a local register of historical resources, or an historical resource survey. CEQA Guidelines 15064.5(b).

As discussed above, the Hillside School, path, and playground *collectively* are listed on the National Register of Historic Places. The Project will adversely affect the Hillside School, pathway, and playground as a historic resource. As discussed above, the Project goes beyond merely restoring or rehabilitating the Hillside School.

As proposed, the school playground that has been used by community members for more than 90 years, will be paved over, in part, and made into a parking lot for up to 18 vehicles. CITE. The Project also permits the owner to install up to five massive, garage-like sheds on the newly paved parking lot. See Exhibit ____. In addition, the Project would turn the remaining playground into a collection space for some type of sculptural art. CITE. None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside school, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. Pub. Res. Code § 21084.1.

D. CEQA does not allow mitigated categorical exemptions.

A project that requires mitigation measures cannot be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App4th 1098, 1102. The City has imposed numerous mitigation measures on the Project.

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For example, the August 1, 2019 Landmarks Preservation Commission staff report includes the following conditions, among others:

- **Repair and replacement of character-defining features**. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- **Chemical Treatments.** Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.
- **Roof equipment.** Any above ground or roof equipment, such as transformer(s),utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
- **Clear glass.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass shall be indicated on all drawings, and shall be reviewed for approval by historic preservation staff, prior to approval of any building permit for this project.
- **Exterior Lighting**. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- Landscape Plan. Prior to approval of any building permit for this project, the proposed landscape improvements shall be revised to include new plantings to screen-or to supplement existing plantings on both the north *and* south sides of the former playground area. Further, the landscape plan may be modified as needed to ensure compliance with zoning criterion for open space pavement.
- Irrigated, water efficient landscape. New areas of landscape shall provide irrigation. This shall be called out on Landscape building permit drawings. The property owner shall maintain automatic irrigation and drainage facilities adequate to assure healthy growing conditions for all required planting and landscape. The landscape shall be drought-tolerant and achieve maximum water efficiency.
- Storage sheds within the front yard area. The storage sheds shall be limited to not more than five total and to their proposed height, floor area and locations.
- **Curb cuts.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

Since the City has imposed numerous mitigation measures, a CEQA exemption is prohibited. An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects. Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, 1108 ("SPAWN"); Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165, 1198-1201. If mitigation measures are necessary, then at a minimum, the agency must prepare a mitigated negative declaration to analyze the impacts, and to determine whether the mitigation measures are adequate to reduce the impacts to below significance. The public must be allowed

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to analyze the proposed mitigation, comment on their adequacy, and suggest alternative measures.

CEQA requires the mitigation measures to be developed in a public process, with public review and comment, not in closed door negotiations between the city and the project proponent. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project.

The formulation of mitigation measures may not be delegated to staff, because mitigation measures must be subjected to public review. The City may not delegate the formulation and approval of programs to address environmental impacts because an agency's legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

IV. CONCLUSION

In light of the above comments, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,

Rebecca L. Davis Lozeau Drury LLP



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October 23, 2019

Via Email

Shoshana O'Keefe, Chairperson Denise Pinkston, Vice Chairperson Igor Tregub, Board Member Teresa Clarke, Board Member Patrick Sheahan, Board Member John Selawsky, Board Member Carrie Olson, Board Member Charles Kahn, Board Member Dohee Kim, Board Member Zoning Adjustments Board Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info

Greg Powell Zoning Adjustments Board Secretary Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info

Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O'Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue (the "Hillside School Property"), concerning the application of the current owner to convert the property from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the "Project"). This letter supplements Hillside Path & Playground Preservation Association's October 17, 2019 letter (the "October 17 Letter"). As described in the October 17 Letter, and for the supplemented reasons stated below, Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board ("ZAB") to reject the Project because it fails to comply with the California Environmental Quality Act ("CEQA"), and conflicts with Berkeley's General Plan and Municipal Code ("BMC").

A. The Project violates the Berkeley Municipal Code.

The ZAB Staff Report for the Project admits that, "[a]s a private residence located in a residential district, the [Project] site is not permitted to establish an 'arts/craft studio' use (BMC Section 23F.04, 'Definitions'), generally defined as an *establishment*, which staff interprets to be

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J.

a commercial or institutional, or otherwise non-residential, land use activity." Staff Report, p. 10. The Municipal Code defines an arts/craft studio as:

An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable district's requirements for incidental sales of goods made on site. Art/Craft Studios also include rehearsal spaces not designed for public performances.

Examples of individuals typically engaged in this work include, but are not limited to, woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with the definition above.

Berkeley Municipal Code § 23F.04. This is precisely the type of use the Project is proposing – space for multiple people, including non-residents, to make and show art. But, as Staff recognizes, Berkley's zoning ordinance does not permit an arts/craft studio" use in a residential district. Because the Project proposed an arts/craft studio use an a zone that does not permit that use, ZAB must deny the permit.

After determining that an "arts/craft studio" use is not permitted, Staff goes on to note that "artist studio" is a similar use that is allowed in a residential district. The Municipal Code defines an artist studio as:

A detached accessory building, used by residents of a main dwelling Unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.

Berkeley Municipal Code § 23F.04.

The Project's proposed use does not meet the definition of an artist studio. First, the Project owner is not proposing to create art in a "detached accessory building." Instead, he is proposing to create art in the main school building. This alone precludes the proposed use. Second, an artist studio is limited to being "used by residents of a main dwelling Unit." Under this definition, not even the "artist in residence" proposed to reside in the accessory dwelling unit would be permitted to use the property for creating original works of art. Further, allowing up to 25 guests to come onto the Property to create art would be even more inconsistent with the "artist studio" land use.

In an attempt to justify permitting the Project owner's proposed inconsistent use, the Staff Report says:

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In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

Staff Report, p. 10.

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Staff's interpretation is directly at odds with the plain meaning of the Municipal Code, and cannot be upheld. The activities proposed by the Project are inconsistent with the Municipal code provisions in residential districts. The Project permit must therefore be denied.

B. ZAB cannot make the findings required for approval of a use permit for the Project.

In order to issue a use permit for the Project, ZAB must find:

that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, *will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood* of such proposed use *or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood* or to the general welfare of the City.

BMC § 23B.32.040(A). If ZAB cannot make any of these findings, ZAB must deny the permit. BMC § 23B.32.040(C).

Here, ZAB must deny the permit because the Project will be detrimental to the safety, comfort, and general welfare of people living in the neighborhood, and would be detrimental or injurious to properties in the neighborhood. The ability of the Project owner to cut off the public's access to the Path and Playground is be detrimental to the safety of neighbors and their properties. As discussed in Noah Brownlow's expert comments¹:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

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¹ Attached as Exhibit A to Hillside Path & Playground Preservation Association's October 17, 2019 letter to ZAB.

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The proposed development would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood.

Brownlow, p. 2.²

In addition to posing a danger to neighbors and their properties, the Project would also be detrimental to the peace and comfort of neighbors as a result of the Project owner's plans to throw monthly parties for up to 100 people, combined with a new roof deck, pool, and hot tub. No explanation has been given as to where the additional 80 guests will park, given the proposal for an 18-car parking lot. On top of this, there will be additional traffic and noise created by the Project every other week when the owner holds outdoor art events in the art park for 50-75 people.

Because ZAB cannot make the findings required by BMC § 23B.32.040(A), ZAB must deny the permit.

C. The Project is inconsistent with Berkeley's General Plan and Municipal Code.

The Project is inconsistent with a number of General Plan Policies and Actions, including the following:

- **Policy LU-7 (Neighborhood Quality of Life)**: Preserve and protect the quality of life in Berkeley's residential areas through careful land use decisions.
- **Policy LU-7, Action A**: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
- **Policy LU-9 (Non-Residential Traffic)**: Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.
- **Policy LU-8 (Home Occupations)**: Monitor and evaluate the present and future effects of home occupations, home offices, and other similar developments on residential areas.
- **Policy LU-11 (Pedestrian and Bicycle Friendly Neighborhoods)**: Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.
- **Policy LU-11, Action A**: Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals.

² See also, Berkeleyside article, "The Berkeley Hills are kindling: City takes steps to tackle wildfire danger, Oct. 17, 2019, attached hereto as Exhibit 1.

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Each of these General Plan policies and actions is meant to protect the character, safety, and enjoyment of Berkeley's residential neighborhoods. Yet the proposed Project would do the exact opposite. It would change the character of the neighborhood. The hosting of indoor and outdoor parties for up to 100 people several times per month would negatively impact the quality of life of nearby neighbors. In addition to the increased noise generated, the Project would potentially require an additional 100 cars to drive and park near the Project, in the residential neighborhood. The scale of the proposed use is simply incompatible with the surrounding neighborhood.

The Project is similarly inconsistent with the Municipal Code. The Berkeley Municipal Code specifies that one of the purposes of the Single Family Residential (R-1) Districts, including the R-1H district, is to: "Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan." BMC § 23D.16.020(A).

Conversion of the Hillside School Property into a de facto event center that will host large parties would not protect the existing pattern of development in this single family residential neighborhood. Instead, the proposed Project will result in a dramatic increase in traffic, parking, and noise as a result of the proposed new use of the Property.

ZAB should deny the use permit because the Project is inconsistent with the General Plan and Municipal Code.

D. The Project is not exempt from CEQA.

The ZAB Notice of Public Hearing for the Project that was sent neighbors and other interested parties stated: "CEQA STATUS: Categorically exempt pursuant to Section 15331 for 'Historical Resource Restoration/Rehabilitation' of the CEQA Guidelines." A copy of this notice is attached hereto as Exhibit 2. In the ZAB Staff Report, posted only days before the ZAB meeting, the City claims for the first time that, in addition to the Class 31 Historical Resources Restoration/Rehabilitation exemption, the Project is also exempt under Class 1 and Class 3 CEQA exemptions. As detailed below, even the late addition of these exemptions are not sufficient to relieve the City of its obligation to conduct CEQA review for this Project. Neither of these two additional exemptions apply.

1. The Class 1 exemption does not apply on its face.

The City's exemption of the Project from CEQA now relies upon the Class 1 exemption for "operation, repair, maintenance, or minor alteration of existing structures or facilities." 14 CCR § 15301. This exemption does not apply on its face. The Class 1 exemption states:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

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The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. *The key consideration is whether the project involves negligible or no expansion of use*.

The key limitation on the face of the Class 1 exemption is that it applies only to activities involving "negligible" or "no expansion" of previous use beyond that existing at the time of the lead agency's determination. In contrast to the plain meaning of the exemption, the proposed Project involves a major expansion of use beyond the property's current use.

As the Applicant's Statement notes, the Project owner proposes to hold large events at the Hillside School Property on a monthly basis, expecting up to 100 people to attend. Oct. 8, 2019 Applicant's Statement, p. 3. Separately, twice per month, the owner plans for art showings at the property attracting 50-75 visitors. *Id.* On a daily and weekly basis, "use would accommodate 25-50 artists and visitors." *Id.* This constitutes a major expansion beyond the current use, which involves very few visitors, if any. As a result, the Class 1 exemption does not apply on its face, and cannot be relied on by the City.

2. Exceptions preclude reliance on the Class 1 or Class 3 exemptions.

As with the Class 31 exemption,³ the Class 1 and 3 exemptions do not apply because the Project falls within two exceptions to CEQA exemptions: 1) the "unusual circumstances" exception, and 2) the "historical resources" exception to categorical exemptions. 14 CCR § 15300.2(c), (f).

i. The Project will have significant environmental impacts due to unusual circumstances, precluding reliance on a CEQA exemption.

A categorical exemption is inapplicable "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Id.* Here, the Project does not present the same general risk of environmental impact as other projects falling under the Class 1, 3, or 31 exemptions, and therefore the exemptions cannot apply.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, "a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, "[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from

³ See discussion in Hillside Path & Playground Preservation Association's October 17, 2019 letter to ZAB.

1581 Le Roy Avenue (Hillside School) City of Berkeley October 23, 2019 Page 7 of 11

others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance." *Id.*

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

a. They City cannot rely on a CEQA exemption because the Project will result in a significant land use and planning impact.

A project has a significant land use impact if it would:

Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

CEQA Guidelines, App. G § X(b).

As discussed above, the Project could conflict with a number of general plan policies and zoning ordinances. The general plan policies and zoning ordinances were designed to avoid or mitigate a variety of environmental effects including noise, traffic, parking, aesthetics, among other things. In addition to violating the General Plan and zoning ordinance, these land use conflicts constitute a significant impact under CEQA, and preclude reliance on an exemption.

b. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

As discussed in Hillside Path & Playground Preservation Association's October 17 Letter, the Project will have a significant impact on public safety because it will "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands." CEQA Guidelines, Appendix G.

Fire expert Noah Brownlow's expert comments constituted substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

c. They City cannot rely on a CEQA exemption because the Project will result in inadequate emergency access, precluding reliance on a CEQA exemption.

1581 Le Roy Avenue (Hillside School) City of Berkeley October 23, 2019 Page 8 of 11

CEQA Guidelines Appendix G provides that a project will have a significant impact if the project will "[r]esult in inadequate emergency access." CEQA Guidelines, Appendix G § XVI(e). As explained in Mr. Brownlow's expert comments, the Project will have a significant impact on emergency vehicle access. According to Mr. Brownlow's expert opinion, the Project would decrease emergency vehicle access to the area. Brownlow, p. 1. He further explained that, by converting the Playground into a parking lot and art park, the Project is "eliminating a potential safety zone or fire shelter deployment site for firefighters responding to WUI fires." *Id*.

This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

d. They City cannot rely on a CEQA exemption because the Project will have significant traffic and parking impacts.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will;

Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

CEQA Guidelines, Appendix G § XVI(d).

The steep, narrow, meandering streets of the Berkeley Hills are difficult to navigate. This includes Le Roy Avenue and Buena Vista Way, and La Loma Avenue, the streets adjacent to the Project. In many locations, it is difficult – if not impossible - for two cars traveling opposite directions to drive by each other, particularly where cars are parked on the street. With events being held at the Hillside School Property for 50 to 100 people, and only 18 parking spots provided, the Project may result in up to 80 additional cars being parked on the streets surrounding the property. This will make an already dangerous driving environment even worse, substantially increasing the hazardous driving environment. This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

e. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike "usual" or "typical" Class 1 and Class 3 exemptions,⁴ Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

⁴ See October 17 Letter for discussion of the Project's unusual circumstances compared to other Class 31 Historical Resources Restoration/Rehabilitation project.

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The Class 1 exemption consists of "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." 14 CCR § 15301. Class 3 exemption consist of "construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure." 14 CCR § 15303.

At least three elements of the Project distinguish it from other projects in the Class 1 and Class 3 exemption categories, and these characteristics create environmental risks not generally present for Class 1 and Class 3 projects. Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts.

The first unusual circumstance is that the Hillside School Property is listed on the National Register of Historic Places and is listed as a local landmark. The impact of alterations, modifications, and construction that may ordinarily be exempt under Class 1 or 3 may have additional impacts when the existing facility is a historical resource. Here, the Project proposes to convert a large portion of the Playground to a parking lot and art park, which is inconsistent with the Project's historic resource listing.

Second, unlike most Class 1 and 3 projects, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquakeinduced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most Class 1 and 3 projects, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake. As discussed above, because of the high risk location of the Project may "decrease both emergency vehicle access to the area, and civilian opportunities for egress." Brownlow, p. 1.

Third, the scale of the changed use – from a vacant parcel to a pseudo-event center hosting parties for up to 100 people, is unusual. As a result of this unusual circumstance, the Project may have a significant noise impact.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will result in:

A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

CEQA Guidelines, Appendix G § XII(d).

1581 Le Roy Avenue (Hillside School) City of Berkeley October 23, 2019 Page 10 of 11

The California courts have held that CEQA review is required for noise-producing events, just like those that will be held at the Property. In the case of *Keep Our Mountains Quiet v. City of Santa Clara* (2015) 236 Cal.App.4th 714, 722, the court of appeal has held that an EIR was required for a permit allowing weddings of 150 people at a private home. This Project is no different. The Project owner seeks the right to host parties once per month for up to 100 people, and events for between 50 and 75 people every other week. These events will take place both indoors and outdoors, and will result in a "substantial temporary or periodic increase in ambient noise levels."

The Project's unusual circumstances preclude the City from relying on a CEQA exemption for the Project.

ii. The Historical Resources exception preludes reliance on a categorical exemption.

The CEQA guidelines provide that a "categorical exemption shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource." 14 CCR § 15300.2 (emph. added). As discussed in the October 17 Letter, Hillside School, Path, and Playground *collectively* are listed on the National Register of Historic Places and as a Berkeley local landmark. The Project will adversely affect the Hillside School, Path, and Playground as a historic resource because the Project goes beyond merely restoring or rehabilitating the Hillside School. As a result, the Project must be analyzed under CEQA, and cannot be exempt.

As proposed, the school playground that has been used by community members for more than 90 years, will be made into a parking lot for up to 18 vehicles. The Project also permits the owner to install up to five unsightly, garage-like sheds on the new parking lot. In addition, the Project would turn the remaining playground into a collection space for undescribed "art." None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside School, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. 14 CCR § 15300.2; Pub. Res. Code § 21084.1.

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1581 Le Roy Avenue (Hillside School) City of Berkeley October 23, 2019 Page 11 of 11

I. CONCLUSION

Based on these comments, and those in the October 17 Letter, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,

L

Rebecca L. Davis Lozeau Drury LLP



T 510.836.4200 F 510.836.4205

1939 Harrison Street, Ste. 150 Oakland, CA 94612 CITY OF BERKELEY CITY CLERK DEPT

www.lozeaudrury.com rebeccadeloobe0drag.com

December 2, 2019

Mark Numainville, City Clerk City of Berkeley 2180 Milvia Ave., First Floor Berkeley, CA 94704

Re: Appeal of Zoning Adjustments Board Decision Re: Structural Alteration Permit #LMSAP2019-0004; 1581 Le Roy Avenue - Hillside School Project

Dear Mr. Numainville:

On behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue in Berkeley (the "Hillside School Property"), along with those persons listed on the signature pages attached hereto as Exhibit 1 (collectively, "Appellants") concerning the application of the current owner of the Hillside School Property to make exterior alterations to a City Landmark school building and site in order to convert the property to residential use (Structural Alteration Permit #LMSAP2019-0004) (the "Project").

This letter constitutes an appeal of the Landmark Preservation Commission's ("LPC") decision of August 1, 2019 approving 1581 Le Roy Avenue, Structural Alteration Permit #LMSAP2019-0004 and LPC's related CEQA findings that the Project is exempt from environmental review under the California Environmental Quality Act ("CEQA"). By this appeal, Appellants request that the Berkeley City Council: 1) hold a public hearing to hear the concerns of Appellants and other members of the public; 2) deny Structural Alteration Permit #LMSAP2019-0004; 3) find that the Project is not exempt from CEQA; and 4) send the Project back to staff for further review under CEQA.

The reasons for this appeal are detailed in the attached two letters. Appellants reserve their right to add additional information prior to or at a hearing on this appeal by the City Council.

Respectfully submitted,

Mul A HAAA

Hillside Path & Playground Preservation Association, and all persons listed on the attached signature list.

Encl.

Exh. 1 – Names and Signatures of Appellants

Exh. 2 - Hillside Path & Playground Preservation Association Oct. 17, 2019 Letter to ZAB

Exh. 3 - Hillside Path & Playground Preservation Association Oct. 24, 2019 Supp. Letter to ZAB

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Signature Page Landmarks:

My signature below indicates my support of the Hillside Path & Playground Preservation Association appeal of Berkeley Landmarks Preservation Commission Thursday, August 1, 2019, 1581 LeRoy Avenue, Structural Alteration Permit LMSAP2019-0004

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(Further details attached)

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November 29, 2019



T 510.836.4200 F 510.836.4205 1939 Harrison Street, Ste. 150 Oakland, CA 94612 www.lozeaudrury.com rebecca@lozeaudrury.com

October 17, 2019

Via Email

Shoshana O'Keefe, Chairperson Denise Pinkston, Vice Chairperson Igor Tregub, Board Member Teresa Clarke, Board Member Patrick Sheahan, Board Member John Selawsky, Board Member Carrie Olson, Board Member Charles Kahn, Board Member Dohee Kim, Board Member Zoning Adjustments Board Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info Greg Powell Zoning Adjustments Board Secretary Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info

Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O'Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue, concerning the application of the current owner of the Hillside School to convert is from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the "Project"). Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board ("ZAB") to reject the Project because it fails to comply with the California Environmental Quality Act ("CEQA").

This comment was prepared with the assistance of fire expert Noah Brownlow. Mr. Brownlow's expert comments and CV are attached hereto as Exhibit A.

As discussed below, there is substantial evidence that the Project will adversely impact public safety, and will adversely impact the historic significance of the Hillside School property. Because of these significant impacts, the City cannot exempt the Project from CEQA. CEQA review is needed to analyze the Project's impacts and implement feasible mitigation measures and alternatives to reduce adverse impacts to public safety and historic resources.

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I. FACTUAL BACKGROUND

A. Hillside School

The Hillside School was built at 1581 Le Roy Avenue in 1925, following the 1923 Berkeley Hills Fire, which destroyed a number of houses previously located on the property. Once opened, the Hillside School operated as a public school until 1983, when Hillside School closed. Berkeley Unified School District ("BUSD") then leased the space to various educational institutions for approximately 30 years. In 2008 BUSD approved the sale of Hillside School to the German International School, which in turn sold it in September 2018 to Samuli Seppala, the current owner and Project proponent.

Designed by Master Architect Walter Ratcliff, the Hillside School serves as an important historic resource for Berkeley, and was designated City Landmark #61 in 1980. In 1982 it was recognized nationally and placed on the National Register of Historic Places. The local and national historic designations were made for the entire Hillside School property, including the path that runs in front of the school building that connects Le Roy Avenue and Buena Vista Way (the "Path"), as well as the playground in front of the school building (the "Playground").

B. Proposed Project

The new owner of the Hillside School, Mr. Seppala, now seeks a use permit to convert the Hillside School into a single family residence with an accessory dwelling unit. He will convert the south wing of the building into living quarters, which he will use as his primary residence. Mr. Seppala also plans to create an Accessory Dwelling Unit for an artist-inresidence, and to repurpose the existing classrooms into art studios to be used by Mr. Seppala and guest artists. The Project also proposes to build a pool and hot tub on a new rooftop deck, and an elevator to serve the Mr. Seppala's new main residence.

Mr. Seppala is also seeking a Moderate Home Occupation Permit for artistic activities he plans on hosting at the Project site, including private art classes, seminars, workshops, and retreats at the property. Specifically, he plans to host up to 25 artists at the property, twice per month, for "art-related projects." To accommodate all of these new uses, Mr. Seppala plans to transform two-thirds of the Playground into a parking lot for 18 cars or trailers and an art display area. In addition, the Project seeks to install up to five massive sheds on the current Playground for storage purposes.

Mr. Seppalla has allowed access on the Path and Playground "for the time being." While this is appreciated, nothing in the Project requires him to do so. Under CEQA, a lead agency must analyze the impacts of all activity allowed under a permit, not just what is currently proposed. San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645; City of Redlands v. County of San Bernardino (2002) 96 Cal.App.4th 398. Here, if the Project is approved, there is nothing preventing Mr. Seppala from cutting off public access to the Path or Playground. In doing so, he would limit potentially life-saving strategies that contribute to

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public safety during an emergency. The impact of this action must be analyzed under CEQA.

C. Fire History

The possibility of catastrophic wildfire near the Project in the Berkeley Hills is very real. The Hillside School is located in a high-risk fire zone, a landslide zone, and a fault zone. There are a number of factors that make the neighborhood at a particularly high risk for fires, including its proximity to park land where the fuel load is high, narrow, curvy roads that hamper access by first responders and obstruct efficient evacuation routes, and steep topography, among others.

It is these conditions that have contributed to the East Bay Hills' long and tragic history of catastrophic fires. In 1923, a wildfire swept through north Berkeley, in the same spot the Project is located, destroying more than 600 584 homes and 100 structures. *Id.* In 1970, the Hills Fire burned more than 400 acres, destroying 37 homes. *Id.* The Wildcat Canyon Fire in 1980 destroyed five homes in just minutes. *Id.* More recently, the Tunnel Fire, in 1991, caused more than \$1 billion in damage, and took the lives of 25 people. *Id.*

As a result of climate change, since the 1991 Tunnel Fire, "wildfires have become larger, hotter, more destructive, and more difficult to control," Councilmember Wengraf Memo to City Council Supporting Resolution Declaring Wildfire Prevention and Safety a Top Priority in the City of Berkeley (Oct. 15, 2019) ("Wengraf Memo"). We are beginning to better understand the importance of fire safety mitigation measures. This was demonstrated by the City's recent adoption of a resolution declaring wildfire prevention and safety a top priority in the City of Berkeley. CITE. Our increasing awareness of fire danger, particularly near Wildland Urban Interfaces in wooded areas with congested narrow streets, underscores the importance of public paths for use as evacuation routes, and open spaces for use as a staging area of emergency vehicles and a safe zone for people and pets.

D. The Path and Playground

For the past 93 years, the Playground and Path have been open to and used by the public for recreational and social activities. The Playground contains a number of metal play structures, basketball hoops, and a large open play space. See Photographs in Exhibit _____. Activities taking place at the Playground go beyond just playing on the metal structures and include basketball, baseball, Frisbee, bike riding, tag, capture the flag, and picnicking, just to name a few.

The Playground has been a defining part of the neighborhood for nearly a century. It has been used and enjoyed by residents of all ages, for multiple generations. Comments submitted to the Landmark Preservation Committee, and likely submitted to ZAB in this proceeding as well, recount dozens of stories of Berkeley residents who climbed on the playground structures as children, took their children to the playground, and now take their grandchildren to there. **CITE**. The Playground's central role in the neighborhood was by design. As Mr. Seppala's Applicant Statement for the Project acknowledges, "[t]he front yard of the school was designed as a playground *for both the school and the neighborhood*." Applicant's Statement, Hillside School,

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1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 4 of 13

1581 Le Roy Avenue, p. 1 (March 11, 2019) (emph. added).

As an open space, the Playground is vital to the Hillside community, which has very limited free space. The Playground is the only open space where families and community members could gather in case of an emergency due to fire, earthquake, or other tragic event. As discussed in detail below, loss of access to this open space would limit potentially life-saving strategies that contribute to public safety during an emergency.

The Path is a similarly vital asset to the neighborhood. Neighbors have walked the Path in front of the school to get from Le Roy Avenue to Buena Vista Way for nearly a century. It serves as a normal and often daily route for residents when accessing the UC Campus by foot or bike, as well as downtown Berkeley and BART. Some neighbors have described walking the Path daily, as it is the best way to get to the UC campus.

As detailed below, the Project and its potential to cut off public access to the Path and Playground not only changes the character of the neighborhood and the historic nature of the property, but it also poses a serious public safety risk.

II. LEGAL BACKGROUND

A. California Environmental Quality Act

CEQA mandates that "the long-term protection of the environment ... shall be the guiding criterion in public decisions" throughout California. Public Resources Code ("PRC") § 21001(d). CEQA applies to "discretionary projects" unless they are specifically exempted. PRC § 21080(a). A "project" is "the whole of an action" directly undertaken, supported, or authorized by a public agency "which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." PRC § 21065; CEQA Guidelines, 14 CCR § 15378(a). CEQA is concerned with an action's ultimate "impact on the environment." *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 283. CEQA requires environmental factors to be considered at the "earliest possible stage . . . before [the project] gains irreversible momentum," *id.* at 277, "at a point in the planning process where genuine flexibility remains." *Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.

CEQA has a three-tiered structure for protecting the environment. 14 CCR § 15002(k); Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles (2008) 161 Cal.App.4th 1168, 1185-86 ("Hollywoodland"). First, if a project is exempt under CEQA or if it is certain that the project "will not have a significant effect on the environment," there need be no further agency evaluation. Id. But "where there is a reasonable possibility that a project or activity may have a significant impact on the environment, an exemption is improper." Wildlife Alive v. Chickering (1976) 18 Cal.3d 190, 206. Second, "if there is a possibility the project will have a significant effect on the environment, the agency must perform an initial threshold study." Hollywoodland, 161 Cal.App.4th at 1185-86; 14 CCR § 15063(a). If the study indicates that there is no substantial evidence that the project or any of its aspects may cause a significant 1581 Le Roy Avenue (Hillside School) City of Berkeley October 17, 2019 Page 5 of 13

effect on the environment, the agency may issue a negative declaration. *Hollywoodland*, 161 Cal.App.4th at 1185-86; 14 CCR §§ 15063(b)(2), 15070. Third, an environmental impact report ("EIR") is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." PRC § 21080(d); *see also Communities for a Better Env't v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.

"Significant environmental effect" as used in this three-tiered test is defined very broadly as "a substantial or potentially substantial adverse change in the environment." PRC § 21068; *see also* 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 83. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Env't v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

Here, because City staff proposes to exempt the Project entirely from all CEQA review, the first step of the CEQA process is at issue.

B. Categorical Exemptions

CEQA identifies certain classes of projects that are exempt from the provisions of CEQA. These are called categorical exemptions. PRC § 21084(a); 14 CCR §§ 15300, 15354. Categorical exemptions are certain classes of activities that generally do not have a significant effect on the environment. *Id.* Public agencies utilizing such exemptions must support their determination with substantial evidence. PRC § 21168.5. CEQA exemptions are narrowly construed and "[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language." *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Erroneous reliance by an agency on a categorical exemption constitutes a prejudicial abuse of discretion and a violation of CEQA. *Azusa, 52* Cal. App. 4th at 1192. "[I]f the court perceives there was substantial evidence that the project might have an adverse impact, but the agency failed to secure preparation of an EIR, the agency's action must be set aside because the agency abused its discretion by failing to follow the law." *Dunn-Edwards,* 9 Cal. App. 4th at 656.

C. Exceptions to Categorical Exemptions

CEQA contains several exceptions to categorical exemptions. 14 CCR § 15300.2. If an exception applies, the exemption cannot be used, and the agency must instead prepare an initial study and CEQA document. *McQueen*, 202 Cal. App. 3d at 1149; *Hollywoodland*, 161 Cal. App. 4th at 1187. "Even if a project falls within the description of one of the exempt classes, it may nonetheless have a significant effect on the environment based on factors such as location, cumulative impact, or unusual circumstances." *Save Our Carmel River v. Monterey Peninsula Water Mgmt. Dist.* (2006) 141 Cal. App. 4th 677, 689. The "unusual circumstances" exception

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provides that a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to "unusual circumstances." 14 CCR §15300.2(c).

In the context of the unusual circumstances exception, what is "unusual" is "judged relative to the *typical* circumstances related to an otherwise typical exempt project." *Santa Monica Chamber of Commerce v. City of Santa Monica* (2002) 101 Cal. App. 4th 786, 801 (emphasis added). An unusual circumstance is "some feature of the project that distinguishes it from others in the exempt class." *San Lorenzo Valley*, 139 Cal. App. 4th at 1381. The *Azusa* Court held that the unusual circumstances test would be satisfied where the circumstances of a particular project: (i) differ from the general circumstances of the projects covered by a particular categorical exemption, and (ii) those circumstances create an environmental risk that does not exist for the general class of exempt projects. *Azusa*, 52 Cal. App. 4th at 1207; *Hollywoodland*, 161 Cal. App. 4th at 1187 (construction of new fence atop historic granite wall posed environmental risk that did not exist for "general class of exempt projects" under the Class 5 exemption due to differing historic nature of wall); *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260-1261 (court looked for "some feature of the project that distinguishes it from any other small, run-of-the-mill commercial building or use" covered by claimed exemption).

Here, the City's determination that the Project is exempt under the "Historical Resource Restoration/Rehabilitation" exemption fails because the Project goes beyond the scope of the exemption on its face, and because the unusual circumstances exception applies, precluding reliance on an exemption.

III. ANALYSIS

A. The Historical Resource Restoration/Rehabilitation exemption does not apply on its face.

The City claims that the Historic Resource Restoration/Rehabilitation CEQA exemption¹ applies to the Project. 14 CCR § 15331. The City's reliance on this exemption is misplaced.

The exemption is narrow in scope, and applies only to:

[P]rojects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historical resources in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

¹ The Historic Resource Restoration/Rehabilitation exemption is also known as a Class 31 exemption.

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14 CCR § 15331.

CEQA exemptions, such as the Historic Resource Restoration/Rehabilitation exemption, are narrowly construed, and limited to their terms. *Castaic Lake Water Agency v. City of Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268; *Mountain Lion Found. v. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 125; *McQueen v. Bd. of Dirs.* (1988) 202 Cal. App. 3d 1136, 1148. Strict construction is required in order to interpret categorical exemptions in a manner that affords the greatest environmental protection within the reasonable scope of their statutory language. *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966. "Since a determination that a project falls within a categorical exemption excuses any further compliance with CEQA whatsoever, we must construe the exemptions narrowly in order to afford the fullest possible environmental protection." *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697.

In the case of *Castaic Lake Water Agency v. Santa Clarita* (1995) 41 Cal.App.4th 1257, 1268, the court held that CEQA's earthquake exemption did not apply to a city project involving earthquake retrofitting because the project also included other elements only loosely related to earthquakes. Similarly here, while the Project includes some maintenance, repair, and restoration, it includes many other elements that go far beyond the limited terms of the exemption. Thus, the exemption does not apply.

In addition to "maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction," the Project also includes many activities that go far beyond the language of the exemption, including:

- Construct a new roof deck;
- Install an unenclosed swimming pool and hot tub within the new roof deck;
- Construct a 36-square foot elevator penthouse above the second story;
- Create a new surface parking lot where the playground is now located
- Install up to five storage shed within portions of the former playground
- Repurpose part of the playground as an outdoor art space

Notice of Public Hearing (mailed Oct. 9, 2019).

With these elements, the proposed Project does not fit within the Class 31 exemption because is clearly not "limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction" of the Hillside School as a historic resource. The Project clearly does *include* restoration and rehabilitation activities. The problem is that the Project is not *limited* to those activities. The Project goes far beyond merely maintaining or repairing the Hillside School and Playground. Instead, the Applicant seeks to build new structures that never existed on the site before, and take away portions that are included as part of the Historic Landmark Designation. CITE. Among other things, the Applicant seeks to build a rooftop pool and hot tub, a new parking lot and five large storage sheds on what had previously

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been a historic playground. Yet the Class 31 exemption does not exempt projects that seek to add a pool or a parking lot to a historic resource. Similarly, paving over converting-two-thirds of the playground to convert it into a parking lot and building five sheds on the parking lot does not fit within the plain terms of the exemption. The Project goes far beyond just maintenance or repair of an historic resource – the Project changes the historic resource. Since the Project goes far beyond the scope CEQA Guidelines section 15331, the exemption does not apply to the Project. *See, Castaic Lake,* 41 Cal. App. 4th at 1268 (CEQA earthquake exemption did not apply to rebuilding of City center because rebuilding project included elements beyond mere earthquake repairs and reconstruction).

Since the Project goes far beyond the limited terms of the exemption, the exemption is legally precluded.

B. The Project cannot be exempt from CEQA because it will have significant environmental impacts due to unusual circumstances.

Even assuming *arguendo* that the Project did fall within the Class 31 exemption (which it does not), the Project is still not exempt from CEQA because it falls under the "unusual circumstances" exception to categorical exemptions. 14 CCR § 15300.2(c). A categorical exemption is inapplicable "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Id.* Here, Shuttle Project does not present the same general risk of environmental impact as other projects falling under the Class 31 exemption, and therefore the Class 31 exemption is inapplicable.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, "a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, "[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance." *Id*.

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

1. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

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Appendix G of the CEQA Guidelines provides that a Project will have a significant impact if it would "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands." CEQA Guidelines, Appendix G. There is substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

Wildfire fighting expert Noah Brownlow submitted herewith a detailed analysis demonstrating that the Project will put people and property at risk. According to Mr. Brownlow, the Project "represents a threat to public safety by reducing access and egress to the Berkeley hills and by eliminating a potential safety zone or fire shelter deployment site for firefighters responding to [Wildland Urban Interface] fires." Brownlow, p. 1. The increased danger stems, in part from the ability for the Project owner to cut off public access to the pathway that runs in front of the Hillside School, and connects Le Roy Avenue and Buena Vista Way. *Id.* Mr. Brownlow explains that cutting off this public access poses a threat to community members trying to evacuate, and impede emergency vehicle access. Brownlow, p. 1. The Project "would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood." Brownlow, p. 1.

Mr. Brownlow concludes that:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

Id.

The Project will also increase the risk to human life and property if a fire or other emergency occurs because firefighters and other emergency workers will face additional constraints in handling a fire or other emergency.

In both the 1991 Tunnel Fire and the 1923 Berkeley Hills Fire, "emergency personnel access and civilian egress were a limiting factor in incident stabilization and contributing factor to fatalities and property loss." Brownlow, p. 1. In his comment letter, Mr. Brownlow describes the specific type of risks posed by Wildland Urban Interface ("WUI") fires, and the importance of open spaces and egresses. "Due to their potential for extreme and unpredictable behavior, huge energy and potential for loss of life, firefighters have certain protocols that must be in place before they attempt to engage WUI fires." Brownlow, p. 2. One such rule is that fire fighters must ensure that four conditions are in place at all times: 1) lookouts, 2) communications, 3) escape routes, and 4) safety zones. *Id.* The Project would impact fire fighters' ability to safely tackle a fire at or near the Project because these conditions would not be met. *Id.* The Project "would eliminate a potential escape route and safety zone, denying firefighters a currently

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existing space in which to deploy personal fire shelters if overrun or to escape a deadly fire altogether." *Id*.

Mr. Brownlow's comments constitute substantial evidence that loss of public access to the path between Le Roy Avenue and Buena Vista Way and loss of public access to the playground will "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires." This significant impact precludes the City from relying on an exemption to avoid CEQA review. The City must analyze the Project's impact on public safety under CEQA, and implement all feasible mitigation measures.

This public safety issue should be analyzed and mitigated in the open and public process created by CEQA. A CEQA process would allow the City to consider and impose feasible mitigation measures to reduce public safety risks. This may include, for example, a condition requiring the pathway between Le Roy and Buena Vista and a portion of the playground be kept open to the public and unobstructed. Public Safety experts for the City should be consulted to determine impact the Project will have on neighbors, fire fighters, and other emergency service workers in the event of a fire or earthquake. This information must all be disclosed to the public for review and comment.

The City's failure to include any analysis or mitigation of the Project's public safety impacts must be cured before the Project is approved.

2. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike "usual" or "typical" Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

At least two elements of the Project that distinguish it from other projects in the exempt class, and these characteristics create environmental risks not generally present for "Historical Resource Restoration/Rehabilitation" projects. The first unusual circumstances is the Project's location. Unlike most restorations, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquake-induced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most restorations, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake.

Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts. Here, such evidence exists. As discussed above, because of the high risk location of

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the Project, and its potential to cut off public access to the Path and Playground open space, the Project may "decrease both emergency vehicle access to the area, and civilian opportunities for egress." Brownlow, p. 1.

The Project's unusual circumstances, together with Mr. Brownlow's expert comments, preclude the City from relying on a CEQA exemption for the Project.

C. CEQA exemption is not allowed because the Project may have an adverse impact on a historic resource.

CEQA section 21084.1 prohibits the use of a CEQA exemption for projects that **may** cause a substantial adverse change in the significance of a historical resource. CEQA § 21084.1, CEQA Guidelines 15300.2(f). CEQA defines a "substantial adverse change" as the physical demolition, destruction, relocation or alteration of the historical resource or its immediate surroundings such that the significance of the historical resource would be materially impaired. CEQA goes on to define "materially impaired" as work that materially alters, in an adverse manner, those physical characteristics that convey the resource's historical significance and justify its inclusion in the California Register of Historic Places, a local register of historical resources, or an historical resource survey. CEQA Guidelines 15064.5(b).

As discussed above, the Hillside School, path, and playground *collectively* are listed on the National Register of Historic Places. The Project will adversely affect the Hillside School, pathway, and playground as a historic resource. As discussed above, the Project goes beyond merely restoring or rehabilitating the Hillside School.

As proposed, the school playground that has been used by community members for more than 90 years, will be paved over, in part, and made into a parking lot for up to 18 vehicles. CITE. The Project also permits the owner to install up to five massive, garage-like sheds on the newly paved parking lot. See Exhibit ____. In addition, the Project would turn the remaining playground into a collection space for some type of sculptural art. CITE. None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside school, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. Pub. Res. Code § 21084.1.

D. CEQA does not allow mitigated categorical exemptions.

A project that requires mitigation measures cannot be exempted from CEQA, nor can the agency rely on mitigation measures as a basis for determining that one of the significant effects exceptions does not apply. *Salmon Pro. & Watershed Network v. County of Marin* (2004) 125 Cal.App4th 1098, 1102. The City has imposed numerous mitigation measures on the Project.

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For example, the August 1, 2019 Landmarks Preservation Commission staff report includes the following conditions, among others:

- **Repair and replacement of character-defining features**. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old or historic feature in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
- Chemical Treatments. Any chemical treatments needed as construction progresses will be undertaken using the gentlest means possible.
- **Roof equipment.** Any above ground or roof equipment, such as transformer(s),utilities, fire apparatus, air conditioning units, compressors, etc. shall be shown to scale on the architectural drawings of the building permit set of drawings in both plan and elevation, in order to determine if additional screening and design review may be required.
- **Clear glass.** All glass is assumed to be clear glass. Any proposed glass that is not clear glass shall be indicated on all drawings, and shall be reviewed for approval by historic preservation staff, prior to approval of any building permit for this project.
- **Exterior Lighting**. Exterior lighting, including for signage, shall be downcast and not cause glare on the public right-of-way and adjacent parcels.
- Landscape Plan. Prior to approval of any building permit for this project, the proposed landscape improvements shall be revised to include new plantings to screen—or to supplement existing plantings on both the north *and* south sides of the former playground area. Further, the landscape plan may be modified as needed to ensure compliance with zoning criterion for open space pavement.
- **Irrigated, water efficient landscape.** New areas of landscape shall provide irrigation. This shall be called out on Landscape building permit drawings. The property owner shall maintain automatic irrigation and drainage facilities adequate to assure healthy growing conditions for all required planting and landscape. The landscape shall be drought-tolerant and achieve maximum water efficiency.
- Storage sheds within the front yard area. The storage sheds shall be limited to not more than five total and to their proposed height, floor area and locations.
- **Curb cuts.** All curbs and curb cuts shall be constructed per the standards and specifications of the Public Works Department. Curb cuts no longer utilized shall be restored per the Public Works Department specifications.

Since the City has imposed numerous mitigation measures, a CEQA exemption is prohibited. An agency may not rely on a categorical exemption if to do so would require the imposition of mitigation measures to reduce potentially significant effects. Salmon Protection & Watershed Network v. County of Marin (2004) 125 Cal.App.4th 1098, 1108 ("SPAWN"); Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster (1997) 52 Cal.App.4th 1165, 1198-1201. If mitigation measures are necessary, then at a minimum, the agency must prepare a mitigated negative declaration to analyze the impacts, and to determine whether the mitigation measures are adequate to reduce the impacts to below significance. The public must be allowed

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to analyze the proposed mitigation, comment on their adequacy, and suggest alternative measures.

CEQA requires the mitigation measures to be developed in a public process, with public review and comment, not in closed door negotiations between the city and the project proponent. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project.

The formulation of mitigation measures may not be delegated to staff, because mitigation measures must be subjected to public review. The City may not delegate the formulation and approval of programs to address environmental impacts because an agency's legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decision making; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

IV. CONCLUSION

In light of the above comments, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,

Rebecca L. Davis Lozeau Drury LLP



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October 23, 2019

Via Email

Shoshana O'Keefe, Chairperson Denise Pinkston, Vice Chairperson Igor Tregub, Board Member Teresa Clarke, Board Member Patrick Sheahan, Board Member John Selawsky, Board Member Carrie Olson, Board Member Charles Kahn, Board Member Dohee Kim, Board Member Zoning Adjustments Board Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info Greg Powell Zoning Adjustments Board Secretary Land Use Planning Division City of Berkeley 1947 Center Street, Second Floor Berkeley, CA 94704 zab@cityofberkeley.info

Re: Hillside School Project, 1581 Le Roy Avenue; Use Permit #ZP2019-0061

Dear Chairperson O'Keefe, Vice Chairperson Pinkston, ZAB Members, and ZAB Secretary:

I am writing on behalf of Hillside Path & Playground Preservation Association, an unincorporated association composed of residents of Berkeley living near the Hillside School located at 1581 Le Roy Avenue (the "Hillside School Property"), concerning the application of the current owner to convert the property from its previous use as a school, to residential use (Use Permit #ZP2019-0061) (the "Project"). This letter supplements Hillside Path & Playground Preservation Association's October 17, 2019 letter (the "October 17 Letter"). As described in the October 17 Letter, and for the supplemented reasons stated below, Hillside Path & Playground Preservation Association asks the Zoning Adjustment Board ("ZAB") to reject the Project because it fails to comply with the California Environmental Quality Act ("CEQA"), and conflicts with Berkeley's General Plan and Municipal Code ("BMC").

A. The Project violates the Berkeley Municipal Code.

The ZAB Staff Report for the Project admits that, "[a]s a private residence located in a residential district, the [Project] site is not permitted to establish an 'arts/craft studio' use (BMC Section 23F.04, 'Definitions'), generally defined as an *establishment*, which staff interprets to be

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a commercial or institutional, or otherwise non-residential, land use activity." Staff Report, p. 10. The Municipal Code defines an arts/craft studio as:

An establishment engaged in the creation of art or crafts that requires artistic skill. Such an establishment may participate in periodic open studios, but otherwise is subject to the applicable district's requirements for incidental sales of goods made on site. Art/Craft Studios also include rehearsal spaces not designed for public performances.

Examples of individuals typically engaged in this work include, but are not limited to, woodworkers, potters/ceramicists, costume makers, set designers, stained-glass makers, glassblowers, textile artists and weavers, jewelry makers, painters, fine art printmakers, photographers/filmmakers, leather workers, metal workers, musical instrument makers, model makers, papermakers, installation artists, sculptors, video artists, and other makers of art and crafts that the Zoning Officer determines to be consistent with the definition above.

Berkeley Municipal Code § 23F.04. This is precisely the type of use the Project is proposing – space for multiple people, including non-residents, to make and show art. But, as Staff recognizes, Berkley's zoning ordinance does not permit an arts/craft studio" use in a residential district. Because the Project proposed an arts/craft studio use an a zone that does not permit that use, ZAB must deny the permit.

After determining that an "arts/craft studio" use is not permitted, Staff goes on to note that "artist studio" is a similar use that is allowed in a residential district. The Municipal Code defines an artist studio as:

A detached accessory building, used by residents of a main dwelling Unit on the same lot, to create original works of art and crafts products, but not for living quarters or sleeping purposes.

Berkeley Municipal Code § 23F.04.

The Project's proposed use does not meet the definition of an artist studio. First, the Project owner is not proposing to create art in a "detached accessory building." Instead, he is proposing to create art in the main school building. This alone precludes the proposed use. Second, an artist studio is limited to being "used by residents of a main dwelling Unit." Under this definition, not even the "artist in residence" proposed to reside in the accessory dwelling unit would be permitted to use the property for creating original works of art. Further, allowing up to 25 guests to come onto the Property to create art would be even more inconsistent with the "artist studio" land use.

In an attempt to justify permitting the Project owner's proposed inconsistent use, the Staff Report says:

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In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

Staff Report, p. 10.

Staff's interpretation is directly at odds with the plain meaning of the Municipal Code, and cannot be upheld. The activities proposed by the Project are inconsistent with the Municipal code provisions in residential districts. The Project permit must therefore be denied.

B. ZAB cannot make the findings required for approval of a use permit for the Project.

In order to issue a use permit for the Project, ZAB must find:

that the establishment, maintenance or operation of the use, or the construction of a building, structure or addition thereto, under the circumstances of the particular case existing at the time at which the application is granted, *will not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood* of such proposed use *or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood* or to the general welfare of the City.

BMC § 23B.32.040(A). If ZAB cannot make any of these findings, ZAB must deny the permit. BMC § 23B.32.040(C).

Here, ZAB must deny the permit because the Project will be detrimental to the safety, comfort, and general welfare of people living in the neighborhood, and would be detrimental or injurious to properties in the neighborhood. The ability of the Project owner to cut off the public's access to the Path and Playground is be detrimental to the safety of neighbors and their properties. As discussed in Noah Brownlow's expert comments¹:

If a fire does occur in the Berkeley Hills, this pathway could prove crucial to the safety of nearby residents in escaping a fire. By closing this pathway to the public, the public faces an increased risk of harm if a fire does occur.

¹ Attached as Exhibit A to Hillside Path & Playground Preservation Association's October 17, 2019 letter to ZAB.

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The proposed development would decrease both emergency vehicle access to the area, and civilian opportunities for egress. When a Northeast wind-driven fire is sweeping through the hills firefighters and residents need as many open pathways as possible, and restricting or eliminating these pathways ignores the unique threats posed to this neighborhood.

Brownlow, p. 2.²

In addition to posing a danger to neighbors and their properties, the Project would also be detrimental to the peace and comfort of neighbors as a result of the Project owner's plans to throw monthly parties for up to 100 people, combined with a new roof deck, pool, and hot tub. No explanation has been given as to where the additional 80 guests will park, given the proposal for an 18-car parking lot. On top of this, there will be additional traffic and noise created by the Project every other week when the owner holds outdoor art events in the art park for 50-75 people.

Because ZAB cannot make the findings required by BMC § 23B.32.040(A), ZAB must deny the permit.

C. The Project is inconsistent with Berkeley's General Plan and Municipal Code.

The Project is inconsistent with a number of General Plan Policies and Actions, including the following:

- **Policy LU-7 (Neighborhood Quality of Life)**: Preserve and protect the quality of life in Berkeley's residential areas through careful land use decisions.
- **Policy LU-7, Action A**: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
- **Policy LU-9 (Non-Residential Traffic)**: Minimize or eliminate traffic impacts on residential areas from institutional and commercial uses through careful land use decisions.
- **Policy LU-8 (Home Occupations)**: Monitor and evaluate the present and future effects of home occupations, home offices, and other similar developments on residential areas.
- **Policy LU-11 (Pedestrian and Bicycle Friendly Neighborhoods)**: Ensure that neighborhoods are pedestrian- and bicycle-friendly with well-maintained streets, street trees, sidewalks, and pathways.
- **Policy LU-11, Action A**: Ensure that any City-owned pathways or dedicated easements adjacent to, abutting, or through private property are preserved when reviewing new development proposals.

² See also, Berkeleyside article, "The Berkeley Hills are kindling: City takes steps to tackle wildfire danger, Oct. 17, 2019, attached hereto as Exhibit 1.

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Each of these General Plan policies and actions is meant to protect the character, safety, and enjoyment of Berkeley's residential neighborhoods. Yet the proposed Project would do the exact opposite. It would change the character of the neighborhood. The hosting of indoor and outdoor parties for up to 100 people several times per month would negatively impact the quality of life of nearby neighbors. In addition to the increased noise generated, the Project would potentially require an additional 100 cars to drive and park near the Project, in the residential neighborhood. The scale of the proposed use is simply incompatible with the surrounding neighborhood.

The Project is similarly inconsistent with the Municipal Code. The Berkeley Municipal Code specifies that one of the purposes of the Single Family Residential (R-1) Districts, including the R-1H district, is to: "Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan." BMC § 23D.16.020(A).

Conversion of the Hillside School Property into a de facto event center that will host large parties would not protect the existing pattern of development in this single family residential neighborhood. Instead, the proposed Project will result in a dramatic increase in traffic, parking, and noise as a result of the proposed new use of the Property.

ZAB should deny the use permit because the Project is inconsistent with the General Plan and Municipal Code.

D. The Project is not exempt from CEQA.

The ZAB Notice of Public Hearing for the Project that was sent neighbors and other interested parties stated: "CEQA STATUS: Categorically exempt pursuant to Section 15331 for 'Historical Resource Restoration/Rehabilitation' of the CEQA Guidelines." A copy of this notice is attached hereto as Exhibit 2. In the ZAB Staff Report, posted only days before the ZAB meeting, the City claims for the first time that, in addition to the Class 31 Historical Resources Restoration/Rehabilitation exemption, the Project is also exempt under Class 1 and Class 3 CEQA exemptions. As detailed below, even the late addition of these exemptions are not sufficient to relieve the City of its obligation to conduct CEQA review for this Project. Neither of these two additional exemptions apply.

1. The Class 1 exemption does not apply on its face.

The City's exemption of the Project from CEQA now relies upon the Class 1 exemption for "operation, repair, maintenance, or minor alteration of existing structures or facilities." 14 CCR § 15301. This exemption does not apply on its face. The Class 1 exemption states:

Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use.

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The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. *The key consideration is whether the project involves negligible or no expansion of use*.

The key limitation on the face of the Class 1 exemption is that it applies only to activities involving "negligible" or "no expansion" of previous use beyond that existing at the time of the lead agency's determination. In contrast to the plain meaning of the exemption, the proposed Project involves a major expansion of use beyond the property's current use.

As the Applicant's Statement notes, the Project owner proposes to hold large events at the Hillside School Property on a monthly basis, expecting up to 100 people to attend. Oct. 8, 2019 Applicant's Statement, p. 3. Separately, twice per month, the owner plans for art showings at the property attracting 50-75 visitors. *Id.* On a daily and weekly basis, "use would accommodate 25-50 artists and visitors." *Id.* This constitutes a major expansion beyond the current use, which involves very few visitors, if any. As a result, the Class 1 exemption does not apply on its face, and cannot be relied on by the City.

2. Exceptions preclude reliance on the Class 1 or Class 3 exemptions.

As with the Class 31 exemption,³ the Class 1 and 3 exemptions do not apply because the Project falls within two exceptions to CEQA exemptions: 1) the "unusual circumstances" exception, and 2) the "historical resources" exception to categorical exemptions. 14 CCR § 15300.2(c), (f).

i. The Project will have significant environmental impacts due to unusual circumstances, precluding reliance on a CEQA exemption.

A categorical exemption is inapplicable "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances." *Id.* Here, the Project does not present the same general risk of environmental impact as other projects falling under the Class 1, 3, or 31 exemptions, and therefore the exemptions cannot apply.

In *Berkeley Hillside*, the California Supreme Court explained that there are two ways a party may invoke the unusual circumstances exception. First, "a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect. That evidence, if convincing, necessarily also establishes 'a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.'" *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1105 (emph. added). Alternatively, "[a] party invoking the exception may establish an unusual circumstance without evidence of an environmental effect, by showing that the project has some feature that distinguishes it from

³ See discussion in Hillside Path & Playground Preservation Association's October 17, 2019 letter to ZAB.

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others in the exempt class, such as its size or location. In such a case, to render the exception applicable, the party need only show a reasonable possibility of a significant effect due to that unusual circumstance." *Id*.

Both of these alternatives are established here because there are unusual circumstances that distinguish this Project from other Class 31 exemption projects, and there is substantial evidence that the Project will have a significant effect on the environment.

a. They City cannot rely on a CEQA exemption because the Project will result in a significant land use and planning impact.

A project has a significant land use impact if it would:

Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect.

CEQA Guidelines, App. G § X(b).

As discussed above, the Project could conflict with a number of general plan policies and zoning ordinances. The general plan policies and zoning ordinances were designed to avoid or mitigate a variety of environmental effects including noise, traffic, parking, aesthetics, among other things. In addition to violating the General Plan and zoning ordinance, these land use conflicts constitute a significant impact under CEQA, and preclude reliance on an exemption.

b. They City cannot rely on a CEQA exemption because the Project will have a significant impact on public safety.

As discussed in Hillside Path & Playground Preservation Association's October 17 Letter, the Project will have a significant impact on public safety because it will "[e]xpose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands." CEQA Guidelines, Appendix G.

Fire expert Noah Brownlow's expert comments constituted substantial evidence that the Project will expose people and structures to a significant risk of loss, injury or death involving wildfires in an area where residences are intermixed with wildlands.

c. They City cannot rely on a CEQA exemption because the Project will result in inadequate emergency access, precluding reliance on a CEQA exemption.

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CEQA Guidelines Appendix G provides that a project will have a significant impact if the project will "[r]esult in inadequate emergency access." CEQA Guidelines, Appendix G § XVI(e). As explained in Mr. Brownlow's expert comments, the Project will have a significant impact on emergency vehicle access. According to Mr. Brownlow's expert opinion, the Project would decrease emergency vehicle access to the area. Brownlow, p. 1. He further explained that, by converting the Playground into a parking lot and art park, the Project is "eliminating a potential safety zone or fire shelter deployment site for firefighters responding to WUI fires." *Id*.

This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

d. They City cannot rely on a CEQA exemption because the Project will have significant traffic and parking impacts.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will;

Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?

CEQA Guidelines, Appendix G § XVI(d).

The steep, narrow, meandering streets of the Berkeley Hills are difficult to navigate. This includes Le Roy Avenue and Buena Vista Way, and La Loma Avenue, the streets adjacent to the Project. In many locations, it is difficult – if not impossible - for two cars traveling opposite directions to drive by each other, particularly where cars are parked on the street. With events being held at the Hillside School Property for 50 to 100 people, and only 18 parking spots provided, the Project may result in up to 80 additional cars being parked on the streets surrounding the property. This will make an already dangerous driving environment even worse, substantially increasing the hazardous driving environment. This significant impact is an unusual circumstances, and precludes reliance on a categorical exemption.

e. The Project involves an unusual circumstance, precluding reliance on a CEQA exemption.

Even if there were not evidence that the Project *will* have a significant environmental impact, the unusual circumstances exception would still apply because, unlike "usual" or "typical" Class 1 and Class 3 exemptions,⁴ Historical Resource Restoration/Rehabilitation projects, this Project creates a significant public safety risk.

⁴ See October 17 Letter for discussion of the Project's unusual circumstances compared to other Class 31 Historical Resources Restoration/Rehabilitation project.

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The Class 1 exemption consists of "Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of existing or former use." 14 CCR § 15301. Class 3 exemption consist of "construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure." 14 CCR § 15303.

At least three elements of the Project distinguish it from other projects in the Class 1 and Class 3 exemption categories, and these characteristics create environmental risks not generally present for Class 1 and Class 3 projects. Once it is determined that a project presents an unusual circumstance, an exemption is precluded if there is substantial evidence that a project *may* have significant environmental impacts.

The first unusual circumstance is that the Hillside School Property is listed on the National Register of Historic Places and is listed as a local landmark. The impact of alterations, modifications, and construction that may ordinarily be exempt under Class 1 or 3 may have additional impacts when the existing facility is a historical resource. Here, the Project proposes to convert a large portion of the Playground to a parking lot and art park, which is inconsistent with the Project's historic resource listing.

Second, unlike most Class 1 and 3 projects, the Project is located in a High Fire Zone, within the State-designated Alquist-Priolo Earthquake Fault Zone, and is also in an earthquakeinduced landslide area mapped by the California Geologic Survey on its Seismic Hazard Mapping Act map. The location of the Project makes it and the surrounding area unusually susceptible to a natural disaster. The second unusual circumstance is that, unlike most Class 1 and 3 projects, the Project may cut off a previously public path and open space, both of which are vital to public safety in the event of a fire or earthquake. As discussed above, because of the high risk location of the Project may "decrease both emergency vehicle access to the area, and civilian opportunities for egress." Brownlow, p. 1.

Third, the scale of the changed use - from a vacant parcel to a pseudo-event center hosting parties for up to 100 people, is unusual. As a result of this unusual circumstance, the Project may have a significant noise impact.

CEQA Guidelines Appendix G provides that a project will have a significant impact if it will result in:

A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project.

CEQA Guidelines, Appendix G § XII(d).

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The California courts have held that CEQA review is required for noise-producing events, just like those that will be held at the Property. In the case of *Keep Our Mountains Quiet v. City of Santa Clara* (2015) 236 Cal.App.4th 714, 722, the court of appeal has held that an EIR was required for a permit allowing weddings of 150 people at a private home. This Project is no different. The Project owner seeks the right to host parties once per month for up to 100 people, and events for between 50 and 75 people every other week. These events will take place both indoors and outdoors, and will result in a "substantial temporary or periodic increase in ambient noise levels."

The Project's unusual circumstances preclude the City from relying on a CEQA exemption for the Project.

ii. The Historical Resources exception preludes reliance on a categorical exemption.

The CEQA guidelines provide that a "categorical exemption shall not be used for a project which *may* cause a substantial adverse change in the significance of a historical resource." 14 CCR § 15300.2 (emph. added). As discussed in the October 17 Letter, Hillside School, Path, and Playground *collectively* are listed on the National Register of Historic Places and as a Berkeley local landmark. The Project will adversely affect the Hillside School, Path, and Playground as a historic resource because the Project goes beyond merely restoring or rehabilitating the Hillside School. As a result, the Project must be analyzed under CEQA, and cannot be exempt.

As proposed, the school playground that has been used by community members for more than 90 years, will be made into a parking lot for up to 18 vehicles. The Project also permits the owner to install up to five unsightly, garage-like sheds on the new parking lot. In addition, the Project would turn the remaining playground into a collection space for undescribed "art." None of this is consistent with the historic nature of the site. Instead, the action would transform the playground from a historically significant element of the property into a parking lot. Changing the Playground from its current aesthetic that is cohesive with the school, into a parking lot with five large storage sheds and random art pieces would change the character of the property as a whole. Because these changes may have an adverse impact on the Hillside School, Path, and Playground as a historic resource, the City may not exempt the Project from CEQA. 14 CCR § 15300.2; Pub. Res. Code § 21084.1.

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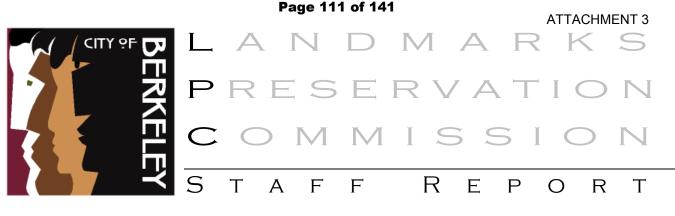
I. CONCLUSION

Based on these comments, and those in the October 17 Letter, the Hillside Path & Playground Preservation Association requests that the Zoning Adjustment Board deny Use Permit #ZP2019-0061, and send the Project back to staff with direction to review the Project's environmental impacts under CEQA.

Sincerely,

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Rebecca L. Davis Lozeau Drury LLP



FOR COMMISSION ACTION AUGUST 1, 2019

1581 Le Roy Avenue – Hillside School

Structural Alteration Permit (#LMSAP2019-0004) to make exterior alterations to a City Landmark school building and site in order to convert the property to residential use; changes include installation of a vehicle door, new windows, a rooftop swimming pool and hot tub, a surface parking lot, three storage sheds, perimeter fences and landscape improvements.

I. Application Basics

A. Land Use Designations:

- Zoning: Single Family Residential, Hillside Overlay (R-1H)
- **B. CEQA Determination:** categorially exempt from environmental review pursuant to CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation.

C. Parties Involved:

•	Property Owner:	Samuli Seppälä 1581 Le Roy Avenue Berkeley, CA 94704
•	Project Applicant & Architect:	Jerri Holan, Historic Architect, AIA Jerri Holan & Associate 1323 Solano Avenue, #204 Albany, CA 94706

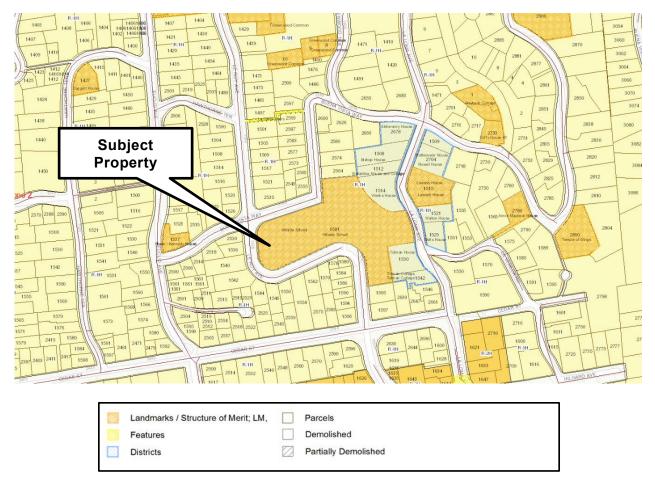


Figure 1: Vicinity Map showing nearby City Landmarks & Districts

Figure 2: Aerial photograph of subject building (omitting kindergarten wing), looking northeast



II. Background

Site Information

The subject property is a large, approximately 117,500-sq. ft., through lot parcel that is oriented in the east-west direction, with street frontage on Le Roy Avenue and Buena Vista Way on its western end, and La Loma Street on its eastern end. The parcel is irregularly-shaped, and laterally abuts several interior parcels on the north and south.

The Hillside School, the subject main building, was constructed in 1925 and then substantially rehabilitated between 1934 and 1938. It was designed in the Tudor Revival style by prominent Berkeley architect Walter H. Ratcliff Jr. (1881-1978). The building ranges from one to three stories in height. In 1963, a modern-era, single-story addition designed by the Ratcliff firm was constructed on the eastern portion. The building is approximately 50,000 sq. ft. in total area and located on the west side of the subject parcel.

The subject building consists of five primary segments:

- Auditorium wing one story with a basement
- Central classroom wing two stories
- Southern classroom wing three stories
- Kindergarten wing one story
- 1963 building addition one story

There are landscaped and terraced areas immediately surrounding the building, and a large, approximately 44,000-sq. ft. open area featuring the school playground on the east side of the property, which is partially landscaped but primarily paved with asphalt.

This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982. A copy of the landmark designation Notice of Decision (NOD) is attached to this report (Attachment 4); the NOD includes excerpts of the National Register nomination document.

The building and site operated as a school until 2017, when the last school organization relocated and sold the property after concluding that the structural and seismic rehabilitation program required for an expanded school use at this site would be cost-prohibitive. The current owner is a private individual who purchased the property in 2018.

Application Chronology

On April 10, 2019, historic architect Jerri Holan of Jerri Holan & Associates, submitted a Structural Alteration Permit application requesting permission to complete exterior changes to the Hillside School building and site, in order to convert the property from its historic K-12 school use to residential use. This SAP application submittal was accompanied by a submission of a Use Permit application (#ZP2019-0061) requesting permission to change the use to a single family residential dwelling and an accessory dwelling unit. The Use Permit hearing has not yet been scheduled.

On May 1, 2019, after reviewing the application submittal, staff determined that the materials were incomplete and requested supplemental reports and revised information. On May 21, 2019, the applicant submitted new materials in response to staff's request. On June 6, 2019, the Commission opened the hearing on this matter in accordance with Berkeley Municipal Code (BMC) Section 3.24.220 for *Permit Application – data and public hearing required,* which requires the timely review of these applications to begin within 70 days of submittal. The Commission continued the hearing in order to allow for additional time to review the application materials and prepare a staff recommendation.

The hearing on this matter continues tonight. In preparation for tonight's hearing, staff mailed and posted ten-day advance public notices on July 22, 2019, in accordance with the requirements of BMC Section 3.24.230.

III. Project Description

The applicant proposes to convert the Hillside School building and site to private residential use as a single-family residence and accessory dwelling unit. The proposed change-of-use is the subject of the pending Use Permit application; the associated exterior changes to this City Landmark property are the subject of this Structural Alteration Permit (SAP) approval.

The proposed exterior improvements that would result in visible changes to the building, its design, and features of the site, are as follows:

Main Building

- Repair and replace select doors, windows and skylights to match.
- Restore two windows on the third story of the west elevation of the southern classroom wing, and install a new solar tube on the roof.
- Remove windows on lower portion of southern classroom wing and replace with new vehicle doors in order to create a new, interior multi-vehicle garage.
- Remove exterior stairs and replace with a new sloped driveway along the east side of the kindergarten wing.
- Install a new swimming pool and hot tub on the roof of the 1963 building addition, and increase the parapet that currently ranges in height from 0.5 to 2 ft., to a new height of 3.75 ft. in order to serve as a safety enclosure for this new roof deck area.
- Introduce a new window and a double door with transom on the east elevation of the southern classroom wing, adjacent to the proposed roof deck and pool area.
- Install a new, roof-top elevator penthouse on the central classroom wing for a new elevator that would serve the proposed new residence in the southern classroom wing.

Outdoor and Landscape

- Consolidate the existing play equipment into a smaller, designated area of the former playground area; create a surface parking lot for a total of 18 vehicles within a portion of the paved former playground; and establish a new "Art Park" for private use by the residential occupants in the remainder of the paved area.
- Construct a total of five 120-sq. ft. storage sheds in the proposed "Art Park" with an average height of not more than 10 ft.

- Legalize installation of a chain link fence estimated to be 10 ft. in height on the perimeter of the site's playground area, which is proposed to be converted to a condensed play area, new surface parking lot and private "Art Park."
- Install planting to screen the chain link fence and the new surface parking lot.

For specific details, please refer to the proposed project plans, included as Attachment 2 of this report. Presently, the building will undergoing ministerial structural pest repairs and a voluntary seismic retrofit under active Building Permits B2019-0228 and B2019-0352.

Interior alterations to a privately-owned City Landmark property are not subject to Structural Alteration Permit approval. Therefore, the following description about proposed interior renovations to Hillside School is provided as information only. The project would create a total of two dwelling units: a five-bedroom, primary dwelling unit within the two upper stories of the southern classroom wing; and an 800-sq. ft. accessory dwelling unit on a portion of the lower story of the central classroom wing. Eight remaining classrooms (located within the central classroom wing and the kindergarten wing) would be used by the residential occupants and their guests as art studio space. The auditorium, restrooms and most storage rooms would maintain as such. The auditorium would be used for entertaining and hosting events by the resident occupants for themselves and their guests. Some rooms would be converted to service use for the proposed improvements and new uses, such as an elevator shaft and pool equipment room. The proposed floor plans are included with Attachment 2.

IV. Issues and Analysis

Staff has identified the following relevant criteria pertinent to this project from the Secretary of the Interior's Standards for the Treatment of Historic Properties (1977), the Landmarks Preservation Ordinance (BMC Section 3.24), and the Zoning Ordinance (BMC Chapter 23).

A. The Secretary of the Interior's Standards for Rehabilitation

The Secretary of the Interior (SOI)'s Standards for the Treatment of Historic Properties defines *Rehabilitation* as "the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historical, cultural, or architectural values." The applicant's request represents a *Rehabilitation* project because it proposes adaptive re-use of the school site as a residence and includes alterations to the exterior for this purpose. The analysis below summarizes staff's findings for this project with respect to all ten of the Secretary's Standards.

SOI Standard 1

A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

Analysis: With this proposal, the subject property and main building would be given a new residential use where it has historically been used as a K-12 school. The exterior building and landscape changes that are proposed for the adaptive reuse of site (itemized in Section III of this report) are considered to be minimal because they would not result is significant changes to character-defining features of the site, such as its Tudor Revival design, building massing, roof form, architectural and decorative building details, composition of the building façade, and spatial organization of the site overall.

Further, the proposed landscape improvements would enhance the vegetation surrounding the open front yard area and provide subtle screening from the public right-of-way. These plantings would also screen the proposed parking lot, to be located on the existing asphalt pavement. These interventions would be easily reversed in the future and would not permanently alter the historic character of the property.

Therefore, the project would not result in significant changes to the distinctive materials, features spaces and spatial relationships of the Hillside School site.

SOI Standard 2

The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

Analysis: Because the proposed exterior changes to this site are limited and expected to have a limited overall effect on the character of the site, as described above, this property is expected to retain its historic character as perceived through its building and site design. The proposed project scope does not include removal of distinctive building materials or alteration of its historic features, spaces and spatial relationships.

SOI Standard 3

Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

Analysis: The Hillside School would continue to be recognized a physical record of Berkeley's primary school and neighborhood development, where this site is the focal point of the immediate area. The building would retain its appearance, Tudor Revival style, location and relation to its surroundings. The proposed exterior changes to the historic building are not expected to create a false sense of historical development owing to their limited scope, which would result in minimal changes overall.

SOI Standard 4

Changes to a property that have acquired historic significance in their own right will be retained and preserved.

Analysis: No changes to a property that have acquired historic significance in their own right are the subject of this request. Certain new work – such as installation of a roof deck, swimming pool and hot tub – would occur on 1963 building addition, which is not historically significant.

SOI Standard 5

Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Analysis: The distinctive materials and features of this Tudor Revival building – such as its half-timber details and decorative architectural details – would not be affected by this request for exterior alterations and, therefore, would be preserved.

SOI Standard 6

Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

Analysis: This project applicant states that certain exterior doors and windows require repair or replacement. However, should this project be approved, then it would be subject to Conditions of Approval to ensure repair and replacement work is designed to match the building's historic style, color, texture and, where possible, materials.

SOI Standard 7

Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

Analysis: If approved, this project would be subject to a Condition that ensures only the gentlest measures are employed when chemical treatments are required.

SOI Standard 8

Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

Analysis: Because limited (or no) excavation would be required for the proposed alterations of this building and site, any existing archeological resources at this site would be unaffected by this proposal. Subsequent Use Permit approval of this project would include the City's standards conditions upon the discovery of any subsurface resources.

SOI Standard 9

New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

Analysis: The applicant has carefully designed the proposed project to adhere to these preservation principals. As discussed under the analysis for SOI Standards 2 and 3, above, the proposed project in its entirety is not expected to result in the destruction of historic fabric, materials, features or spatial relationships at this Landmark site. Certain new work – such as installation of a roof deck, swimming pool and hot tub – would occur on a portion of the building that is not historically significant, in and of itself. All other new work is limited in size and scale and, the thereby, would be compatible with the current conditions of this Landmark site.

SOI Standards 10

New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

Analysis: Staff concurs with the applicant's observation that the proposed new windows, garage door, and increased parapet height are alterations that could be removed and reversed in the future without affecting the form and overall integrity of the historic building. Similarly, the proposed landscape improvements and creation of a parking lot on the existing asphalt surface within the front yard area, do not represent permeant structural changes to the site and would be reversible in the future.

B. Landmarks Preservation Ordinance Review Standards and Criteria

The Landmarks Preservation Ordinance (LPO) requires the Commission to review and approve all requests for projects on a City Landmark property that are subject a City permit. In this case, the project proposal for the Hillside School is subject to Use Permit approval for the change-of-use, and building permit approval for the list of exterior building and site changes that is itemized in Section III of this report.

Uses not subject to LPO review. In accordance with BMC Sections 3.24.060.B and 3.24.200, the Commission's purview in this case is specific to the proposed physical alteration and new construction on this site or its features. Neither the LPO nor the LPC regulate the *use* of a City Landmark site. Several members of the public have expressed concern about possible changes to the current use of the subject property. Their correspondences are provided as Attachment 5 of this report. Their use-related concerns include: the change to residential use, which is exclusively private; the unknown scale of a private, residential art practice at the site; future occupants' ability to host large events; and the possible preclusion of public access to this site, the play area and the private walkway between Buena Vista Way on the north and Le Roy Avenue on the south.

However, these topics are not the subject of this hearing or consideration by the Commission.

In order to approve a request for a SAP to complete exterior changes on a City Landmark site, the Commission must find that the proposal would not adversely affect the features or special character of the subject structure or property. An analysis of the project with respect to the required findings of the LPO is outlined below.

BMC Section 3.24.260, Paragraph C.1

"For applications relating to landmark sites, the proposed work shall not adversely affect the exterior architectural features of the landmark and, where specified in the designation for a publicly owned landmark, its major interior architectural features..."

Analysis: As discussed previously in the analysis of the SOI Standards, the proposal would not adversely affect exterior architectural features of the Hillside School building and site. The proposed building alterations are designed to either restore character-defining features, such as windows and doors, or replicate and compliment these details with new windows and doors.

Within the playground area, the proposal to legalize installation of the existing chain link fence is found to be reasonable because the 10-ft. height is effective for securing the site and the design and materials maintain a visually open interface with the public right-of-way. Further, the proposed new planting screen for the proposed surface parking lot would enhance the partial vegetative screening of the fence and the open yard area. Staff believes the new plantings could be installed on the north side of the open yard, and not only on the south side as the applicant proposes, in order to screen the activity of the proposed, new Art Park. Therefore, as a Condition of Approval (COA), staff recommends that the Commission require the new plantings to surround the open yard in locations that would supplement the existing vegetation and trees that will remain. Please see COA #12 of Attachment 1.

The installation of five, 120-sq. ft. storage sheds is found to be permissible under the LPO because the sheds could be removed in the future without permanent impact to the historic character of the site. Further, the sheds are relatively small in comparison to the main building and the open yard area in which they would be located. However, the proposed sheds are not of the highest quality or design and, therefore, should be limited in their number in order to reduce their potential to adversely affect the overall quality of the open yard area. For this reason, staff will recommend that the Zoning Adjustments Board limit them to only the five that have been proposed, if the Commission approves their design and installation in the yard area.

In summary, the proposed building alterations and new perimeter plants are not expected to result in adverse effects on this Landmark site and would likely enhance and improve the current conditions. The proposed storage sheds are permissible owing to their modest size and temporary nature, but should be limited to only five in total to avoid the proliferation of structures within the front yard area of a Landmark site that otherwise lack high quality design.

"...nor shall the proposed work adversely affect the special character or special historical, architectural or aesthetic interest or value of the landmark and its site, as viewed both in themselves and in their setting."

Analysis: The special historic and aesthetic interest and value of the Hillside School lie in its Tudor Revival architectural design, its location and highly-visible placement in relation to the Le Roy/Buena Vista right-of-way, and the open space used erstwhile as a school yard playground. The proposed project would retain, repair and restore the architectural features of the main building, and introduce sensitive and compatible alterations, such as new garage doors of the south elevation in the historic service area of the building. There would be no significant changes to the location and setting of the building and the project site features.

The creations of a surface parking lot in the currently open yard area would be permissible under the LPO because it would not permanently impact or alter this Landmark site's integrity or historic fabric. Its superficial and impermanent nature make this proposal easily reversible in the future. The proposed, new landscape planting would screen any parked vehicles from the Le Roy right-of-way. This organic and subtle form of screening combined with the existing chain link fence is preferred to any opaque screen, such as a solid fence, which would limit visual penetrability and create a wall along the property's currently open public interface.

For all of these reasons, the proposed project is found be to permissible under the LPO, and staff recommends that Commission consider approving it as Conditioned in Attachment 1, *Draft Finding and Conditions for Approval.*

C. Zoning Ordinance conformance for open space pavement

In its proposed condition, the Art Park and other open areas in the former playground on this property may not satisfy the Zoning ordinance criteria for usable open space (BMC Section 23D.04.050 – Usable Open Space) and, therefore, the proposed site and landscape plan may require further refinement. Specifically, the area may contain pavement in excess of the Zoning ordinance requirement, and the Use Permit proposal would have to reduce the portions of the existing asphalt pavement and/or replace with other kinds of pavement (such as decorative pavement) or landscaped planting. Precise calculations of the open space areas will be required prior to Use Permit approval in order to confirm compliance.

If refinements to the pavement within the Art Park area are required subsequent to LPC action on this SAP request, then staff recommends that LPC permit the applicant to make necessary changes prior to final staff approval of any building permit for this project. Therefore, draft Condition of Approval #12 includes this directive.

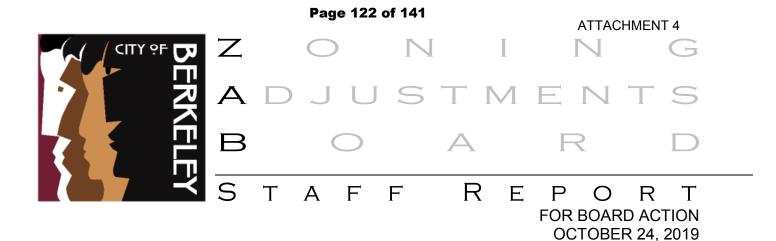
V. Recommendation

Staff recommends that the Commission hold a hearing on this matter and, upon close of the hearing, consider this request for a Structural Alteration Permit and then take favorable action pursuant to BMC Section 3.24.220.

Attachments:

- 1. Draft Findings and Conditions of Approval
- 2. Project Plans, received July 24, 2019
- 3. Applicant Statements, dated March 11and May 20, 2019
- 4. Landmarks designation Notice of Decision, June 21, 1982
- 5. Correspondences received

Prepared by: Fatema Crane, Senior Planner, <u>fcrane@cityofberkeley.info</u>; 510-981-7410



1581 Le Roy Avenue – The Hillside School

Use Permit #ZP2019-0061 to convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

I. Background

A. Land Use Designations:

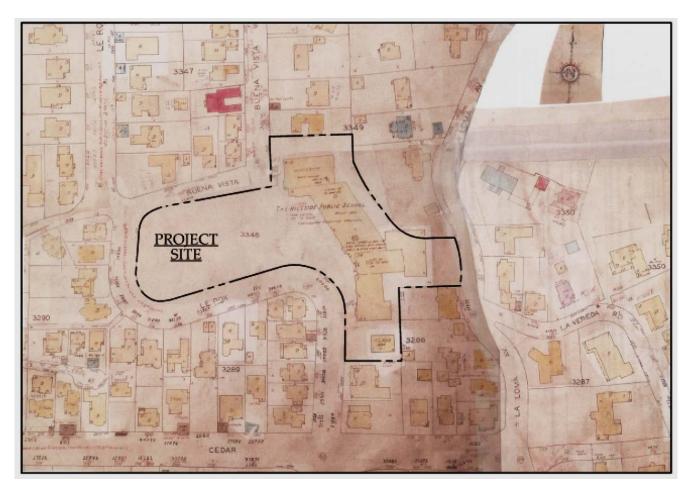
- General Plan: Low Density Residential
- Zoning: Single-Family Residential/Hillside Overlay (R-1/H)

B. Zoning Permits Required:

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.
- **C. CEQA Determination:** Categorically exempt pursuant to the following Sections of the CEQA Guidelines: Section 15301 for "Existing Facilities," 15303 for "New Construction or Conversion of Small Structures," and 15331 for "Historical Resources Restoration/Restoration."

- D. Parties Involved:
 - Applicant/Architect Jerri Holan, AIA, Holan & Associates, 1323 Solano Ave., Albany, CA
 - Property Owner Samuli Seppälä, 1581 Le Roy Avenue, Berkeley, CA

Figure 1: Vicinity Map





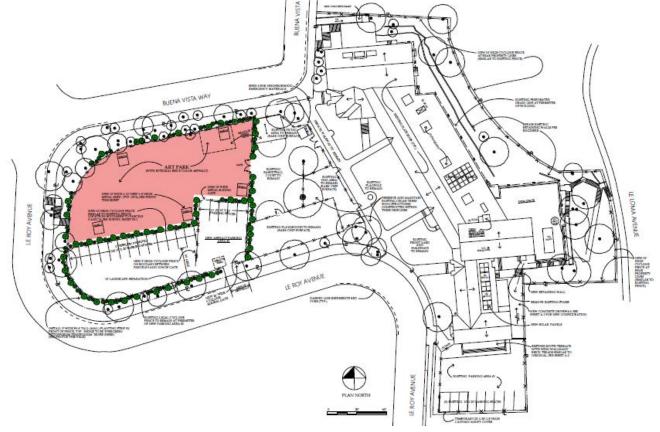


Figure 3 : Partial Aerial photograph of subject building, looking northeast



Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation	
Subject Property		School			
	North				
Surrounding	South	Single-Family	R-1/H	Low Density Residential	
Properties	East	Residences			
	West				

Table 2: Special Characteristics

	Applies	
Characteristic	to Project?	Explanation
Affordable Child Care Fee for qualifying non-residential projects (Per Resolution 66,618-N.S.) Affordable Housing Fee for qualifying non-residential projects (Per Resolution 66,617-N.S.) Affordable Housing Mitigations for rental housing projects (Per BMC 22.20.065)	No	These ordinances do not apply to this application which for a residential conversion of less than five units.
Creeks	No	This site is not located within 30 ft. of the center line of an open creek.
Historic Resources	Yes	This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982. On August 1, 2019, the Landmarks Preservation Commission approved the Structural Alteration Permit for this conversion request; the approval is subject to appeal and certification by City Council.
Housing Accountability Act Gov't Code Section 65589.5(j)	Yes	Because this proposal confirms to the objective standards of the BMC, it would be subject to the HAA; see Section V of this report.
Oak Trees	Yes	This site features coast live oak trees, and these trees would not affected by the proposed conversion request.
Residential Preferred Parking (RPP)	Yes	This area is included in the RPP program.
Seismic Hazards (SHMA)	Yes	This site is located in SHMA area of the Berkeley. This proposal, however, is not subject to an investigation because is not defined as a "project," owning to its limited scope, minimum construction and conversion from a more intense use (e.g.: K- 12 school) to a less intense use as a residence.
Soil/Groundwater Contamination	No	This project site not located in an Environmental Management Area of Berkeley nor does it appear on the lists of hazardous waste sites compiled by the Secretary of Environmental Protection.
Transit Proximity	Yes	This site is located within two blocks of AC Transit Line 65.

Table 3: Project Chronology

Date	Action
April 1, 2019	Application submitted
June 6, 2019	LPC opened and continued the Structural Alteration Permit hearing awaiting staff recommendations for final action.
August 1, 2019	LPC approved the Structural Alteration Permit pursuant to certain Findings & Conditions; see Attachment 1 of this report.
October 9, 2019	Public hearing notices mailed/posted
October 24, 2019	ZAB hearing

Table 4: Development Standards

Standard BMC Sections 23D.16.070-080		Existing School (approximate)	Proposed Residence	Permitted/ Required
Lot Area (sq. f	ť.)	117,500	No change	5,000 min
Gross Floor A	rea (sq. ft.)	50,300	No change	Not regulated
Dwelling Units	Dwelling Units		1+ADU	1+ADU max
Duilding	Average	35		28 max
Building Height	Maximum	50		30 max
пеідпі	Stories	3		3 max
	Front	20	No obongo	20 min
Building	Rear	15	No change	20 min
Setbacks	Left Side	25		min
	Right Side	25		min
Lot Coverage (%)		22		40 max
Usable Open Space (sq. ft.)		22,000	10,000	800 min
Parking		7	30	1 min

II. Project Setting

- A. Neighborhood/Area Description: The project site is located the 1500-block of Le Roy Avenue, in the Berkeley Hills neighborhood. This is a low-density, residential neighborhood that primarily features single-family residences along with schools, churches and City parks. It is characterized by sloping terrain, mature vegetation, winding street patterns, and expansive westward-facing views of the San Francisco Bay.
- **B. Site Conditions:** The subject property is a large, approximately 117,500-sq. ft., through lot parcel that is oriented in the east-west direction, with street frontage on Le Roy Avenue and Buena Vista Way on its western end, and La Loma Street on its eastern end. The parcel is irregularly-shaped, and laterally abuts several interior parcels on the north and south.

The Hillside School, the subject main building, was constructed in 1925 and then substantially rehabilitated between 1934 and 1938. It was designed in the Tudor Revival style by prominent Berkeley architect Walter H. Ratcliff Jr. (1881-1978). The

building ranges from one to three stories in height. In 1963, a modern-era, singlestory addition designed by the Ratcliff firm was constructed on the eastern portion. The building is approximately 50,000 sq. ft. in total area and located on the west side of the subject parcel.

The subject building consists of five primary segments:

- Auditorium wing one story with a basement
- Central classroom wing two stories
- Southern classroom wing- three stories
- Kindergarten wing one story
- 1963 building addition one story

There are landscaped and terraced areas immediately surrounding the building, and a large, approximately 44,000-sq. ft. open area featuring the school playground on the east side of the property, which is partially landscaped but primarily paved with asphalt.

This property is listed on the National Register of Historic Places, and was designated as a City Landmark in 1982.

The building and site operated as a school until 2017, when the last school organization relocated and sold the property after concluding that the structural and seismic rehabilitation program required for an expanded school use at this site would be cost-prohibitive. The current owner is a private individual who purchased the property in 2018.

III. Project Description

The applicant proposes to convert the former elementary school site and building to residential use. In accordance with the Development Standards for maximum residential density in the R-1 district, the proposal requests that the interior of the 50,000-sq. ft., three-story school building be re-purposed and partially remodeled to include a total of two new dwelling units: a single-family residence and an accessory dwelling unit. The proposed dwelling units and vast, interior building space have been designed for private individuals whose lifestyle includes an active and varied art practice.

The primary dwelling unit would be located on the two upper stories of the southern classroom wing, and would feature a total of five bedrooms, three full bathrooms, two half-bathrooms, a living room, a family room, a kitchen and other amenities such as a laundry facilities. A new elevator would serve the primary unit, and a new penthouse would be created on the roof of the central classroom wing. The accessory dwelling unit would be located on the lower story of the central classroom wing, and total 800 sq. ft. in

area. The remaining eight classrooms would be used as artist studio space, for the private use of the property's residential occupants and their guests.

The school's former multi-purpose room, on the lower story of the three-story classroom wing, would be converted to a garage for up to three vehicles. A new vehicle door would be created on the southern elevation of this area of the building, and accessed via a new sloped driveway that would be created on the east side of the kindergarten wing. A new rooftop, outdoor space with a new safety rail, an unenclosed swimming pool and hot tub would be installed in the roof of the 1963 building addition.

The auditorium, existing restrooms and most storage rooms would maintain as such. The auditorium would be used for entertaining and hosting events by the residential occupants for themselves and their guests. Some, smaller rooms and interior spaces would be converted to service use for the proposed improvements and new uses, such as an elevator shaft and pool equipment room.

The applicant anticipates that residential occupants of this site would host a small number guests on a regular basis (as many of five) and, occasionally, would host large, non-commercial events by invitation only. For this reason, the proposal includes the introduction of an on-site, surface parking lot serving up to 18 vehicles, to be located on a portion of the existing blacktop within the former school yard. An existing, 10 ft.-tall chain-link face that encloses the area would remain, and new trees would planted to supplement the existing, mature vegetation along the right-of-way inter-face in order to provide a continuous, organic visual screen for the proposed surface parking lot and outdoor art practice space.

A portion of the open, school yard would be used for outdoor art activities. This area has been delineated on the proposed site plan as an "Art Park," and would feature as many as five, detached storage shed of not larger than 120 sq. ft. or taller than 10 ft. in average height.

The proposed projects plans are included in Attachment 3 of this report. The applicant's detailed description of the intent and purpose of this conversion project is provided in the Applicant Statement, Attachment 4.

IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting this Use Permit application on April 1, 2019, the applicant installed two Proposed Development signs at the site: near the Le Roy Avenue in entrance, and near the La Loma Avenue street frontage.

The applicant and property owner meet with members of the neighborhood on several occasions before and after submitting this application to discuss the residential conversion proposal and provide information about the intended private art practice. Those meetings occurred on July 10, 30 and August 20, 2019, at the home of the President of the Hillside Association of Berkeley. A meditation session

with SEEDS occurred on September 30, 2019, at the Hillside School site. While some neighbors were supportive of the project and appreciative of the proposed improvements to the property, many others were opposed to the project. The themes of their objections are summarized in Table 5, below, along with a brief staff response. Correspondences received on this matter are provided as Attachment 6 of this report.

On October 9, 2019, City staff mailed and posted notices of tonight's hearing, in accordance with BMC Section 23B.32.020 (Public Notice Requirements).

- **B.** Landmarks Preservation Commission (LPC) Review: Because the subject property is listed on Berkeley's register of historically significant properties, this project is subject to prior Structural Alteration Permit approval, in accordance with BMC Section 3.24.200. On June 6 and August 1, 2019, the LPC reviewed the applicant's proposal for exterior changes to the property and main building, and then approved the project subject to certain Findings and Conditions of Approval; see Attachment 2 of this report. Some Commissioners requested that staff forward the following comments for ZAB's consideration of this Use Permit application:
 - Limit the number of sheds to not more than five in order to control for the proliferation of unsightly structures in the open area, which is prominently located.
 - Reduce the number of parking spaces in the new surface parking lot to the minimum needed to accommodate the anticipated guests.

Several members of the public attended the Structural Alteration Permit hearings, and many others wrote letters to the City. All letters received, whether addressed to the LPC or ZAB, are attached for ZAB's consideration; see Attachment 6. While some neighbors were supportive of the project and appreciative of the proposed improvements to the property, many others who spoke during Public Comment were opposed to the project. The themes of their objections are summarized in Table 5, below, along with a brief staff response.

General Comment	Staff Response
The proposed change to residential use is exclusively private.	The proposal to convert the former school site to a private residence is permissible under the BMC, and does not warrant concern with respect to Zoning requirements; see Section V.B.
The new property owner may preclude public access to this site, the play area and the private walkway between Buena Vista Way on the north and Le Roy Avenue on the south.	At this time, the City has no interest in pursuing an access easement at this site. The neighbors' request for such an easement is a civil matter, and City staff would not compel the property owner to enter into such an agreement. See Section V.G.

Table 5 – Summary of Public Comments

General Comment	Staff Response
The nature and scale of a private residential art practice at the site is unknown.	The applicant has described all aspects, including the scale, of the proposed residential art practice in her Applicant Statement; see Attachment 4 and staff's discussion in Sections V.C and F of this report.
Future occupants' will have the ability to host large events.	Anticipated events at this site are discussed in Section V.F.

V. Issues and Analysis

- A. Housing Accountability Act. The Housing Accountability Act requires that when a proposed housing development complies with the applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:
 - 1. The development would have a specific adverse impact¹ on public health or safety unless disapproved or approved at a lower density; and
 - 2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval or approval at a lower density.

This conversion project where no new construction is proposed, meets the applicable regulatory standards of the BMC related to maximum residential density and minimum usable open space and off-street parking. Therefore, §65589.5(j) **does** apply to this project as currently proposed.

- **B.** Creation of dwelling units on a former school site in R-1 district. The proposal to convert the former school site to residential use and achieve the maximum residential density permitted in the R-1 district is found to be reasonable and generally non-detrimental. This proposal adheres to the R-1 district standards for dwelling unit density, and exceeds the requirements for minimum usable open space and off-street parking; see Table 5, above. Further, the proposal is compatible with the *Purposes* of the district (BMC Section 23D.16.020), which are:
 - A. Recognize and protect the existing pattern of development in the low density, single family residential areas of the City in accordance with the Master Plan;
 - B. Make available housing for persons who desire detached housing accommodations and a relatively large amount of Usable Open Space;

¹ As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete."

- C. Protect adjacent properties from unreasonable obstruction of light and air; and
- D. Permit the construction of community facilities such as places for religious assembly, Schools, parks and libraries which are designed to serve the local population when such will not be detrimental to the immediate neighborhood.

Specifically, this proposal would re-use a vacant school site while introducing minimal changes to the building and its scale and massing, thereby maintaining the existing pattern of development in the immediate area and avoiding sunlight or air obstructions. The proposal would establish a low-density residential use on a site with abundant open space.

The site is located in an environmentally sensitive area (earthquake fault rupture and landside) and previous engineering assessments found that extensive structural and seismic improvements would be required in order to continue and expand its K-12 school use to full capacity. These upgrades proved cost-prohibitive to the most recent K-12 occupant, who then decided to relocate to a more suitable school site and to sell the property. Under these circumstances, staff concludes that it is not likely that a school would occupy this site at this time.

Owing to its alignment with the regulations of the R-1 district and consistency with the district *Purposes*, staff concludes that proposed conversion to residential use is permissible and recommends that the Board take favorable action on this request.

C. Private, residential art practice. The proposal to accommodate a private, residential art practice in dwelling units on a converted former-school site is found to be reasonable and generally non-detrimental. As a private residence located in a residential district, this site is not permitted to establish an "*arts/craft studio*" use (BMC Section 23F.04, "Definitions"), generally defined as an *establishment*, which staff interprets to be a commercial or institutional, or otherwise non-residential, land use activity. The analogous but permitted residential activity is defined as follows:

Artist Studio: A detached accessory building used by residents of a main dwelling Unit on the same lot, to create original works of art and craft products, but not for living quarters or sleeping purposes. (BMC Section 23F.04)

In this case, the applicant proposes such a use, though not located in a detached, accessory building and, instead, contained within a large main building and a confined outdoor area. Staff concludes, therefore, that the art activity is permissible on this residential property and, further, that the proposed location within the main building would be reasonable because the approximately 50,000-sq. ft. building could provide adequate space to sufficiently maintain both the dwelling uses and the art practice.

The outdoor art practice, similarly, could be found reasonable and consistent with the use of a residentially zoned property. Outdoor activity in R zones is generally un-

regulated and presumed to align with the primary use of the site. To ensure that the proposed art activities would not result in excessive noise, light glare or other disturbances, staff recommends that the Board consider an approval with specific conditions to limit hours of late-night outdoor activity and require downcast lighting, and adherence to the Community Noise Ordinance (BMC 13.42).

The Board must consider this request and the specific circumstances of this case, which appear to support a finding that the proposed residential art practice at this location would be reasonable, consistent with the BMC provisions for activity in residential districts, and not likely to result in detrimental impacts for the immediate neighborhood.

D. New surface parking lot within required front yard setback. The applicant proposes to establish an 18-vehicle parking lot in a portion of the former school's playground area. As a proposed single-family residence, this conversion request would require only one off-street parking space, in accordance with BMC Section 23D.16.080A (*Parking*). However, the applicant proposes a total of 30 spaces: 7 spaces in the existing parking area of the former school that would be maintained, 3 interior spaces in the new garage, and 18 new spaces in a surface lot. The 18-vehicle surface lot is intended to address the anticipated demand for parking that would result from visitors arriving by car for occasional events. The applicant arrived at the number 18 of spaces based on the estimated rate of regular visitors to the site (the equivalent of approximately five vehicles) as well as the anticipated number of visitors for the occasional events.

The BMC does not suggest a formula for this kind of over-flow parking in a residential context. In BMC Section 23D.16.080, the R-1 district sets standards for other uses, such as care facilities and libraries. BMC Section 23D.16.080.B (*Parking*) reads:

Other Uses requiring a Use Permit, including but not limited to Child Care Centers, Clubs, Lodges, and community centers, shall provide the number of Off-Street Parking Spaces determined by the Board, based on the amount of traffic generated by the particular Use and comparable with specified standards for other Uses.

After discussing this Use Permit application with the City Traffic Engineer, staff concluded that the applicant's proposal of 18 spaces is reasonable given the limited frequency of the proposed events. The Traffic Engineer did not formally comment on the applicant's rationale for arriving at 18 over-flow spaces and, instead, suggested that the applicant employ professional to review the proposal and assess the parking demand. Some interested parties, including some members of the LPC, believe 18 is "too many" spaces and requests that the Board consider approving the project with fewer spaces.

If the Board considers approving fewer spaces, then staff recommends that the reduction in space occur in areas of the proposed surface parking lot nearest the front property line in order to maintain an unobstructed front yard setback.

The proposal to maintain the existing chain-link fence and supplement the existing mature vegetation along the right-of-way with select new plantings would provide an effective yet visually penetrable screen. Such a screen would be preferred over a solid fence or other kind of screen, and would ensure continuity of the natural, organic character of the former playground area and the public interface.

For all of these reasons, staff recommends that the Board consider approving the proposed surface parking lot, number of spaces as presented by the applicant, and the locations of some spaces within 20 ft. of the front property line.

E. New building features: rooftop hot tub and elevator penthouse. The proposal to install a hot tub and swimming pool within a new roof deck on the eastern side of the subject building, is subject to Administrative Use Permit approval, in accordance with BMC Section 23D.08.060.C (*Fences and Other Accessory Structures*). This ordinance requires that any pumping equipment be mounted and enclosed so that its sound is not audible beyond the nearest, shared property line. In this case, the nearest abutting residence is located to the east of the subject site, at 1530 La Loma Avenue, approximately 100 ft. to the south of the proposed hot tub location. As a Condition of Approval, the applicant would be required to enclose any such equipment or otherwise ensure compliance with this standard prior to building permit approval for installation of the hot tub.

The proposed elevator penthouse of the north side of the three-story classroom wing would be approximately 28 ft. in height, and would not exceed the R-1 district's maximum height limit of 28 ft., or extend beyond the existing building height of 30 ft. or roofline profile. The proposed size of approximately 36-sq. ft. is modest and would not result in a significant increase in total building area or massing and scale. For these reasons, it is found to be permissible and unlikely to result in any detrimental effects.

F. Visitors and events on site – scale and frequency. In her statement (Attachment 4), the applicant explains that the property owner anticipates hosting up to 25 regular visitors for art activities on a weekly basis for six to nine months of the year. During this time, the owner will also hold invitation-only events that may draw as many as a 100 visitors. These figures represent the greatest number of possible visitors and frequency of events, but the applicant believes the figures would be far lower in reality. Nevertheless, the approximately 2.5-acre site and 50,000-sq ft. building are large enough to accommodate groups of this size. Both the number of visitors and recurrence of events are generally lower and less intense that the historic school use at this site. Therefore, staff believes the applicant's request to use the site in this manner would be unlikely to worsen traffic, congestion and noise conditions for abutting neighbors and the area as a whole.

G. Neighbors' request for an access easement. Multiple neighbors of the site have requested that the property owner enter into a access easement agreement to ensure the public's ability to use the paved pathway that exceeds across the site provide a pedestrian and bicycle link between Buena Vista Way to the north and Le Roy Avenue to the south. This pathway has been unobstructed and used by the public for several past decades.

Since acquiring the property in 2018, the property owner has maintained the pathway unobstructed and indicates (via the Applicant Statement) that he remains open to this informal arrangement indefinitely at this time, and wishes for a cooperative relationship with the neighborhood. However, as a private individual, he also recognizes the responsibility, legal liability and potential intrusion of privacy this arrangement engenders and, therefore, reserves the right to reconsider this arrangement in the future should circumstances require it.

Public Works staff has confirmed that there is no interest in pursuing a public access easement for this site. Public safety staff has also confirmed that this site has not been identified as a possible location for City-sponsored public safety response activities or services, as some members of the public have suggested. So, City staff has taken no action in regard to, nor general interest in, this private property.

Given these circumstances, staff does not believe the Board should consider compelling the property owner to enter into an access easement agreement with the City or other parties.

- **H. General Plan Consistency:** The 2002 General Plan contains several policies applicable to the project, including the following:
 - 1. <u>Policy LU-7–Neighborhood Quality of Life, Action A</u>: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
 - 2. <u>Policy H-33–Regional Housing Needs</u>: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.
 - 3. <u>Policy UD-6</u>: Encourage adaptive reuse of historically or architecturally interesting building in cases where the new use would be compatible with the structure itself and the surrounding area.

<u>Staff Analysis</u>: This proposal to establish two, new dwelling units within an existing, vacant school building and on site that may otherwise go under-utilized due to its location in an environmental sensitive area, is expected to result in highest and best use of the site at this time when only this proposal as come forward for consideration. By maintaining, improving and re-purposing this City

Landmark building and site, the proposal would be compatible with the scale, historic character and surrounding uses.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board:

A. APPROVE Use Permit #ZP2019-0061 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

- 1. Findings and Conditions
- 2. Approved Structural Alteration Permit Findings & Conditions (pending appeal and City Council certification)
- 3. Project Plans, dated October 10, 2019
- 4. Applicant Statement, dated October 9, 2019
- 5. Notice of Public Hearing
- 6. Correspondence Received

Staff Planner: Fatema Crane, Senior Planner LPC Secretary, fcrane@cityofberkeley.info, (510) 981-7413

ATTACHMENT 5



Department of Fire and Emergency Services Office of the Fire Chief David Brannigan, Fire Chief Land Use Planning Received October 23, 2019

To: Land Use Planning Division, 1947 Center Street, Second Floor, Berkeley, CA 94704

From: Dave Brannigan, Fire Chief, City of Berkeley Fire Department

Subject: Hillside School, 1581 Le Roy Avenue, Berkeley CA 94708, Use Permit # ZP2019-0061

The property at 1581 Le Roy Avenue lies within Berkeley's Fire Zone 2 and as such is subject to applicable codes related to vegetation management, building construction, and inspections. All properties in this area are required to maintain defensible space and comply with building code requirements to harden structures against the threat of wildfire.

The Berkeley Fire Department coordinates city-wide planning, training, and exercises for public evacuation and multi-department response for a wildland urban interface fire. These plans and exercises focus on evacuation through public rights of way in existing transportation networks. The neighborhood surrounding 1581 Le Roy Avenue is representative of the hills with winding, irregular streets and public paths and stairs that connect streets such as the Hill Court Steps. Within one to two blocks west and south of site, the roadway network is a grid. A less typical feature that this neighborhood has are sidewalks on many of the streets.

1581 Le Roy is not public property nor does it contain a public right of way and therefore we do not consider it an official option for evacuation routes or a temporary area of refuge such as our public schools and parks in the area. While the property is well suited to be a temporary area of refuge for firefighters and possibly the public, it is private property, and we do not plan to count on it regardless of the use of the property. The need and availability will be considered in the event of a wildland urban interface fire.

The Fire Department is leading the new Safe Passages program which identifies narrow rights of way and improves access and egress to them through parking restrictions, dedicated fire lanes, and vegetation management throughout Fire Zones 2 and 3. This work will also include public paths and stairs. Limited staff resources mean that areas to be treated will be prioritized by risk and other factors including neighborhood input. Concerns about evacuation in and around this neighborhood will be factored in to prioritize it for assessment and treatment through the Safe Passages program.

The structure itself at 1581 Le Roy is protected by a slate roof which is ideal to resist wildfire. The building also has fire sprinklers which are being reviewed in the permitting process and may need to be upgraded for a residential property. As of October 23, 2019 the property's vegetation is fairly well maintained in regards to defensible space and reduction of ladder fuels that can carry a grass fire into the tree canopy.



This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department

2180 Milvia Street Berkeley, CA 94704 (510) 981-6900

or from:

The City of Berkeley, City Council's Web site http://www.cityofberkeley.info/citycouncil/

NOTICE OF PUBLIC HEARING — BERKELEY CITY COUNCIL

LOCATION: B.U.S.D. BOARD ROOM, 1231 ADDISON STREET DATE / TIME: TUESDAY, FEBURARY 25, 2020; 6:00 PM

APPEALS OF LANDMARKS PRESERVATION COMMISSION AND ZONING ADJUSTMENTS BOARD DECISIONS TO APPROVE CONVERSION OF THE HILLSIDE SCHOOL TO RESIDENTIAL USE LOCATED AT 1581 LE ROY AVENUE

Notice is hereby given that the City Council of the City of Berkeley will conduct a public hearing to consider appeals of decision by the Landmarks Preservation Commission approve Structural Alteration Permit #LMSAP2019-0004 and the decision by the Zoning Adjustments Board to approve Use Permit #ZP20190061 to convert the Hillside School to residential use.

All persons interested in this matter may attend and be heard. Written comments should be mailed or delivered directly to the <u>City Clerk, 2180 Milvia Street, Berkeley, CA 94704</u>, at least five days prior to the hearing in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

A copy of the agenda material for this hearing will be available on the City's website at <u>www.CityofBerkeley.info</u> as of February 13, 2020. Information may also be reviewed in person at the office of the City Clerk, 2180 Milvia Street, during normal business hours, which are generally 8 a.m. to 5 p.m., Monday through Friday.

For further information about the project, please contact Fatema Crane, Senior Planner, Land Use Planning Division at 510-981-7413.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 510-981-6900 or <u>clerk@cityofberkeley.info</u> for further information.

Mark Numainville, City Clerk

Mailed: February 11, 2020

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny (Code Civ. Proc. 1094.6(b)) or approve (Gov. Code 65009(c)) a project, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board or Landmarks Preservation Commission decision may be filed more than 90 days after the date of the decision of the City Council. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board or Landmarks Preservation or Landmarks Preservation Commission decision to approve or deny a Zoning Adjustments Board or Landmarks Preservation Commission decision to approve or deny a Zoning Adjustments Board or Landmarks Preservation Commission decision to approve or deny a Zoning Adjustments Board or Landmarks Preservation Commission decision to approve or deny a Zoning Adjustments Board or Landmarks Preservation Commission decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

If you believe that this decision or any condition attached to it denies you any reasonable economic use of the subject property, was not sufficiently related to a legitimate public purpose, was not sufficiently proportional to any impact of the project, or for any other reason constitutes a "taking" of property for public use without just compensation under the California or United States Constitutions, the following requirements apply:

- A. That this belief is a basis of your appeal.
- B. Why you believe that the decision or condition constitutes a "taking" of property as set forth above.
- C. All evidence and argument in support of your belief that the decision or condition constitutes a "taking" as set forth above.

If you do not do so, you will waive any legal right to claim that your property has been taken, both before the City Council and in court.

Accessibility Information / ADA Disclaimer:

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

1581 Le Roy Avenue – The Hillside School

Use Permit #ZP2019-0061 to convert the vacant, elementary school property to residential use: to establish the approximately 50,000-sq. ft., main building as a single-family residence and accessory dwelling unit, incorporating several former classrooms as private (non-commercial) art studio space; to install an unenclosed swimming pool and hot tub within a new roof deck; to construct an approximately 36-sq. ft., elevator penthouse above the second story (but below the third story roof ridge); to convert a former multi-purpose room to a garage; to create a new, surface parking lot and to locate up to five, new storage sheds within portions of the former playground to be partially re-purposed as an outdoor (non-commercial) art practice space; and to complete landscape improvements along the public interface.

I. Background

A. Land Use Designations:

- · General Plan: Low Density Residential
- Zoning: Single-Family Residential/Hillside Overlay (R-1/H)

B. Zoning Permits Required:

- Use Permit, under BMC (Berkeley Municipal Code) Section 23D.16.030, to create a dwelling unit in the R-1 district;
- Administrative Use Permit, under BMC Section 23D.12.080, to locate parking spaces with the required front yard setback of a residential property;
- Administrative Use Permit, under BMC Section 23D.16.030, to install an unenclosed hot tub on a residential property; and
- Administrative Use Permit, under BMC Section 23D.16.070.C, to construct a residential building addition greater than 14 ft. in average height.
- C. CEQA Determination: Categorically exempt pursuant to the following Sections of the CEQA Guidelines: Section 15301 for "Existing Facilities," 15303 for "New Construction or Conversion of Small Structures," and 15331 for "Historical Resources Restoration/Restoration."

1581 Le Roy Avenue – Hillside School

Structural Alteration Permit (#LMSAP2019-0004) to make exterior alterations to a City Landmark school building and site in order to convert the property to residential use; changes include installation of a vehicle door, new windows, a rooftop swimming pool and hot tub, a surface parking lot, three storage sheds, perimeter fences and landscape improvements.

- I. Application Basics
 - A. Land Use Designations:
 - Zoning: Single Family Residential, Hillside Overlay (R-1H)
 - B. CEQA Determination: categorially exempt from environmental review pursuant to CEQA Guidelines Section 15331 for Historical Resource Restoration/Rehabilitation.



Office of the City Manager

PUBLIC HEARING February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Timothy Burroughs, Director, Planning & Development Department

Subject: ZAB Appeal: 2422 Fifth Street, Use Permit #ZP2018-0108

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt a Resolution affirming the Zoning Adjustments Board (ZAB) decision to approve Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces, and dismiss the appeal.

FISCAL IMPACTS OF RECOMMENDATION None.

CURRENT SITUATION AND ITS EFFECTS

On May 24, 2018, Devi Dutta Architecture submitted an application for Use Permit #ZP2018-0108 to convert the upper unit in the existing two-story duplex on the front of the lot at 2422 Fifth Street into medical offices (acupuncture), and construct a new duplex on the rear of the lot.

On December 7, 2018, based upon an advisory letter from the Rent Stabilization Board on the rental history of the property and the Rent Board's recommendations, staff advised the applicants that a Variance would be required to eliminate the rent-controlled dwelling unit through its conversion into a commercial unit (medical offices), and that the Variance would not be supported by staff.

On May 8, 2019, in response to staff's advisory, the applicant submitted a revised Use Permit application for a project that retained the rent-controlled, front duplex and would construct two dwelling units and medical offices in a new rear building, in order to avoid requesting a Variance.

On October 24, 2019, the ZAB conducted a public hearing for the Use Permit application. After hearing public comments and holding discussion, the ZAB approved the Use Permit by a vote of 9-0-0-0 (Yes: Clarke, Ching, Kim, Matthews, O'Keefe,

Selawsky, Sharenko, Simon-Weisberg, Tregub; No: None; Abstain: None; Absent: None).

On November 5, 2019, staff issued the ZAB Notice of Decision.

On November 19, 2019, Redwood Tree Studios HOA, a residential association composed of neighbors residing at 2430 Fifth Street (the property to the south of the project site), filed an appeal of the ZAB decision with the City Clerk.

On February 11, 2020, staff posted the public hearing notice at the site and two nearby locations, and mailed notices to property owners and occupants within 300 feet of the project site, and to all registered neighborhood groups that cover this area. The Council must conduct a public hearing to resolve the appeal.

BACKGROUND

On May 8, 2019, the applicant submitted a revised project to avoid the elimination of a rent-controlled dwelling unit after staff advised the applicant that a Variance would be required for the project, and that the Variance would not be supported by staff. The original project proposed three dwelling units and a medical office, for which the district parking standard requires three commercial and three residential parking spaces on site (six total). To accommodate the parking requirement, the original project provided five parking spaces – three commercial spaces (two in tandem along the driveway, one ADA¹ space behind the existing duplex) and two residential parking spaces was requested.²

The *revised* project proposed four dwelling units and a medical office of similar size, for which the district parking standard requires three commercial and four residential parking spaces on site (seven total). The revised project would provide three parking spaces – three commercial spaces (including one ADA space), with two to be used jointly with two residential parking spaces. A permit to waive two of the four required residential parking spaces was requested.³ A permit was also required to allow the joint parking arrangement between the commercial and residential parking. See Figure 1 below for a summary of the parking for the original project versus the revised project.

¹ Americans with Disabilities Act (ADA).

² A waiver of one residential parking space requirement for each new dwelling proposed is allowed with a Use Permit (UP), per BMC Section 23E.84.080.F, if the findings can be made. The findings call for evidence that the evening parking supply is adequate and/or that other mitigating circumstances exist on the property. The originally proposed tandem layout would have also required approval by both the Traffic Engineer and the ZAB.

³ A waiver of two residential parking spaces is allowed with the Use Permit described in Footnote 2, and a joint parking agreement is allowed with an Administrative Use Permit (AUP) per BMC Section 23E.28.060.A, if the findings for each permit can be made.

Figure 1: Project Parking Summary

Original Project Parking	District Standard	Required	Provided	Permits Requested
Residential (3 dwelling units)	1 per du	3	2	UP to waive 1 parking space
Commercial (793 square feet)	1 per 300 sf	3	3	-
Total	-	6	5	-

Revised Project Parking	District Standard	Required	Provided	Permits Requested
Residential (4 dwelling units)	1 per du	4	2	UP to waive 2 parking spaces
Commercial (967 square feet)	1 per 300 sf	3	3	-
Total	-	7	3	AUP for joint use of 2 parking spaces

The applicant worked with Land Use division staff and the Traffic Engineer throughout the first application review process to develop the parking survey scope and submitted the first survey, dated October 25, 2018, to support the waiver of one parking space, as requested in the original project and as required by the use permit findings. When staff advised the applicant that it could not support the project because Variance findings could not be made, the applicant explored alternative proposals that would retain the existing rent-controlled, front duplex units while proposing to put the medical offices in a new rear building, along with additional new dwelling units. The applicant discussed several proposals with staff within the context of the City's Zoning Ordinance and submitted the revised project on May 8, 2019 – the project that was approved by the ZAB on October 24, 2019.

Because the project description changed in the revised submittal, staff advised that the applicant provide additional time periods in the parking survey to support the findings required to approve the two permits needed for the requested reduction in parking. In response, the applicant's consultant prepared and submitted the second parking survey, mistakenly dated March 21, *2018*, instead of the correct date of March 21, *2019*. The project description on the revised survey was also not updated accurately. The revised March 21, 2019 parking survey includes the data collected from the first survey (dated October 25, 2018) alongside the data for the additional times requested by staff, and replaced the first survey. The applicant has submitted a parking survey with the corrected date and project description for the Council to review as part of this appeal (see Attachment 3).

In response to Appeal Issue 1e, discussed later in this report, the applicant has also submitted a draft parking layout that is compliant with ADA parking standards. Staff has reviewed the draft revised site plan and confirms that it does not change the ZAB permit approvals. Please see Attachment 4, ADA-Compliant Parking Layout, and Issue 1e discussion below for more details.

For additional project background, please see Attachment 5, the ZAB staff report for this project.

ENVIRONMENTAL SUSTAINABILITY

The proposed project is in compliance with all state and local environmental requirements.

RATIONALE FOR RECOMMENDATION

The issues raised in the appellant's letter and staff's responses follow. For the sake of brevity, the appeal issues are not re-stated in their entirety. Please refer to the attached appeal letter (Attachment 2) for the full text. Because of the complexity of the appeal point on Parking (Issue 1), the issue is separated into multiple sub-issues.

<u>Issue 1: Parking Waiver and Joint Parking</u>. The appellants assert that the approval of the waiver of two residential parking spaces is based on an invalid parking survey that is out of date and does not accurately assess the current parking demand or the impact of the proposed development in the neighborhood.

- Issue 1a: The appellants assert that the approval of the waiver of two residential parking spaces is based on a parking survey that does not accurately assess the current parking demand. Furthermore, joint use of the on-site parking assumes that the residential parking will not be needed on the site during normal business hours. In West Berkeley, many residents use car-alternative means to commute and leave their cars at home, often on the street. Joint parking does not provide the amount of parking required by the zoning ordinance and would place additional demand on an already impacted parking situation on Fifth Street.
- Response 1a: The parking survey supports the waiver of two residential parking spaces and the joint-use parking arrangement because the data indicate that there is a significant surplus of street parking near the project site during peak demand hours. The survey provides data for on-street parking occupancy/vacancies observed within a one-block radius of the site for one-hour time periods during peak times for commercial and residential parking⁴ – 1:30 p.m. on a Wednesday and Thursday; 5:30 p.m. on a Wednesday; 8 p.m. on a Thursday; 2:30 p.m. and 8 p.m. on a Saturday; and 1 p.m. and 6 p.m. on a Sunday (see Attachment 3, Parking Survey

⁴ There is no public off-street parking within the one-block radius of the site.

for complete results). The empirical data provided for observed parking demand in the vicinity of the site is believed to accurately assess the existing parking demand.

Figure 2: Parking Survey Results

Wednesday, October 17, 2018:

10-17-18 (1:30 PM)		10-17-18 (5:30 PM)		
Total Supply:	153	Total Supply:	153	
Total Demand:	116	Total Demand:	86	
Net Vacant Spaces	s: 37	Net Vacant Spaces:	67	

Saturday March 16, 2019:

3-16-19 (2:30 PM	1)	3-16-19 (8:00 PM)		
Total Supply: 153		Total Supply:	153	
Total Demand:	64	Total Demand:	54	
Net Vacant Spaces:	89	Net Vacant Spaces:	99	

Sunday March 17, 2019:

3-17-19 (1:00 PM)		3-17-19 (6:00 PM)		
Total Supply:	153	Total Supply:	153	
Total Demand:	63	Total Demand:	53	
Net Vacant Spaces:	90	Net Vacant Spaces:	100	

Thursday March 21, 2019:

3-21-19 (1:30 PM)		3-21-19 (8:00 PM)		
Total Supply:	153	Total Supply:	153	
Total Demand:	129	Total Demand:	97	
Net Vacant Spaces	24	Net Vacant Spaces:	56	

The amount of parking required for the project by the MU-R zoning district is seven spaces – four residential and three commercial. The project would provide three parking spaces on site (including 1 ADA space). The project requested a Use Permit to waive two residential spaces for the two new dwellings proposed.⁵ In addition, the project requests an Administrative Use Permit to create a joint parking

⁵ Pursuant to BMC Section 23E.84.080.F, if the Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units.

agreement for sharing two of the three spaces on site between the three commercial and two residential parking spaces required after the waiver of two residential spaces with the first Use Permit.⁶ Both permits were approved by the ZAB because, based upon the data collected in the parking survey and staff's analysis, the findings for both were satisfied.

The permit for the residential parking waiver requires the finding that the "existing evening parking supply is adequate" to accommodate the waiver. The survey showed street parking vacancies ranging from 56 to 67 spaces during peak weekday evening times, and vacancies ranging from 89 to 100 spaces during peak weekend times. The threshold used by the City Traffic Engineer to determine if a parking reduction is supported is that there are at least two times the number of spaces available that are requested to be waived for at least two hours during parking demand times of the proposed use. The data showed a minimum of 56 spaces available during two weekday peak demand hours and four weekend peak demand hours, for the two residential spaces requested to be waived. Thus, the data confirmed that the parking availability met and exceeded this threshold, and that the findings for the parking waiver were met.

The primary finding for approval of the permit for joint parking between the commercial and residential parking is that "the times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served".⁷ Because the medical office hours were proposed to be 8 a.m. to 4 p.m., during normal business hours (commonly accepted to be from 8 a.m. to 6 p.m. on weekdays), and the residential parking is anticipated to be mostly on night and weekends, the ZAB determined that this finding (as well as the other two findings) for this permit were satisfied. However, staff acknowledges that residents could potentially utilize alternative transport to work, and leave their vehicles near their homes during normal business hours. The survey data shows that there is enough street parking to accommodate the parking for all four dwellings – 24 to 37 available spaces during peak commercial parking times – should their residents choose to leave their cars near the site, while the three spaces

⁶ Pursuant to BMC Section 23E.28.060.A, the Board may approve permit to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:

^{1.} The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;

^{2.} The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and

^{3.} The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.

⁷ See Footnote 6.

on site are reserved for medical office parking. Thus, joint parking on the site would not adversely affect street parking in the area.

Finally, the significant surplus of parking availability documented in the survey results contradict the assertion that there is a dearth of parking in the vicinity of the project site, both during peak demand weekday hours and peak demand night and weekend hours.

- Issue 1b: The appellants assert that the parking survey doesn't accurately anticipate the amount of parking needed for a medical office of this size (for employees and patients) and does not account for future expansion of the business. One to two non-ADA spaces is not enough.
- Response 1b: Pursuant to the MU-R district ordinance, the parking ratio for medical offices is based upon the gross floor area of the office (one space per 300 square feet of office area). The project provides the required minimum of three commercial parking spaces for 967 square feet of office area. The project also proposes to share the three spaces with the two required residential spaces. As discussed in Response 1a, the findings for the joint parking permit are satisfied.

Furthermore, as discussed in the previous response, the parking survey results support the assumption that enough parking is available to accommodate additional parking demand beyond the district requirement for on-site parking, including the demand from cars that are parked in the neighborhood if residents use alternative transport for commuting to work (thus increasing local daytime parking demand). The amount of available parking during the weekdays surveyed in the report (a minimum of 24 vacancies within a one-block radius of the site) also appears to support the accommodation of occasional spikes in patronage or an increase in staff or patronage due to future expansion of the business.

One ADA parking space is required for the proposed commercial use, and the City counts ADA spaces toward satisfying overall commercial parking requirements for projects. Therefore, the project provides the minimum number of parking spaces required per the district standard.

- Issue 1c: The appellants assert that the parking survey is invalid because it is based on an incorrect project description.
- Response 1c: Staff acknowledges that the project description in the revised parking survey was not correctly updated to reflect the changes made in the project in the May 8, 2019 submittal. The project description has since been corrected and is included here as Attachment 3. However, the

parking survey is a compilation of empirical data, and is dependent upon the survey's scope (time periods and area radius), which is determined in consultation with Land Use staff and the Traffic Engineer. The applicant's traffic consultant does not provide analysis of the data or conclusions that are based upon the data or the project description. Rather, analysis and conclusions based upon the survey are provided by Land Use Staff and the Traffic Engineer to inform the ZAB's decision for approval. Thus, the failure to accurately update the project description in the report did not affect the validity of the data collected, because staff determined the survey scope based upon revised project, and the scope was carried out in the March 21, 2019 report. The survey is believed to provide accurate empirical data for the existing conditions on the site.

- Issue 1d: The appellants assert that the parking survey is invalid because it doesn't account for new development projects that are under construction or that are in the approval pipeline. Parking is impacted because of inadequate off-street parking in neighborhood and delivery traffic to manufacturing and distribution businesses in the nearby blocks.
- Response 1d: The purpose of the parking survey was to provide data on available street parking to satisfy the findings for the parking waiver and the joint parking arrangement permit approvals. No traffic study was required because the project did not reach the City's thresholds for triggering a traffic study.⁸ Thus, the traffic generated by the project is considered negligible.

Three projects were referenced by the appellant in the appeal letter as developments which contribute to a cumulative significant impact on parking in the area: 1) 739 Channing (ZP2017-0039) – construction of 10 dwelling units, four live/work units, and one office space; 2) 2431 Fifth Street (ZP2019-0134) – addition of one commercial tenant space and the establishment of a light manufacturing use and a wholesale trade use; 3) 2326 Fifth Street (ZP2016-0102) – establishment of a quick-service restaurant incidental to a pizza dough manufacturing use. All land use permit applications are subject to the same thresholds for requiring a traffic study. The 739 Channing project submitted a Traffic Impact Analysis (TIA), as required by the City submittal requirements, which found no significant traffic impacts and recommended no mitigations; also, the parking provided by the project exceeds the district requirement. For the 2431 Fifth Street project, no TIA was required and

⁸ The City's Zoning Project Submittal Requirements requires the submittal of a Traffic Impact Analysis for projects creating 10 or more dwelling units, 5,000 square feet of more of gross floor area, or 25 peak hour or more vehicle trips (based on ITE trip generation rates), or other projects as determined necessary by the project planner and traffic engineer.

an existing parking lot would provide parking that exceeds the amount required by the addition of the tenant space and the proposed uses. For the 2326 Fifth Street project, no TIA was required and existing on-site parking was deemed adequate for the new use. For all three projects, City staff found no indication that the projects would cause a significant impact on traffic or parking in the vicinity. Therefore, cumulative impacts were not considered in the analysis of the 2422 Fifth Street project. Based upon the submitted parking survey and staff's analysis, the ZAB determined that the findings to approve both requested permits for the reduction of parking requirements were adequately made.

In addition, the results of the survey indicate a significant surplus of onstreet parking within a one-block radius of the site, and contradict the appellant's claim that parking is inadequate in the vicinity of the project site.

- Issue 1e: The survey is invalid because it is out of date and contains insufficient data to assess the actual parking demand in the neighborhood, which has continued to increase rapidly in the 18 months since the original survey. The 1 to 2 p.m. time period surveyed is not representative of the daily parking demand because it falls during the typical lunch hour for the businesses in the area. Also, the ADA space does not comply with ADA code.
- Response 1e: As discussed previously, the date on the revised parking survey submitted was initially incorrect and has since been corrected - the correct report date is March 21, 2019. The survey was submitted shortly after the report date, and includes data from March 16, 17, and 21 of 2019 (in addition to the October 17, 2018 data), in response to staff's request for additional survey data. The revised parking survey was nine months old at the time of the ZAB approval of the use permits (and included one data set which was 14 months old). According to the Traffic Engineer, traffic data is considered valid up to three years after the report date, unless a known significant increase of parking demand has occurred since the survey was conducted. Also, as discussed in Issue Response 1d, recently approved projects in the area are providing the required parking or exceeding the anticipated demand from those individual projects, and no cumulative effects on parking or traffic are expected in the vicinity of the project site that would warrant an update of the survey.

According to the Traffic Engineer, 1 to 2 p.m. is considered a peak hour for commercial parking demand, and is a time period that is typically included in the scope of parking surveys required by the City.

Staff acknowledges that the ADA parking shown in the approved site plan is not standard – the access aisle for the ADA space should be on the right side of the space and not the left. The applicant has submitted a draft parking layout according to the Traffic Engineer's direction that is compliant with ADA parking standards (see Attachment 4). Staff confirms that this revised site plan does not change the ZAB permit approvals. The project will be required to meet all building and zoning codes prior to the issuance of any building permits.

- Issue 2: <u>Affordable Housing</u>. The appellants assert that the project does not address the affordable housing crisis in the City as suggested in the application, and the applicant misrepresented this issue at the ZAB hearing. The project would yield two new market-rate units, and the existing units would reset to market rate when the new construction is complete.
- Response 2: The project description was clearly stated in the staff report and the Finding and Conditions document in the ZAB hearing materials, and on all public hearing notices. The project maintains the two rent-controlled units on the front of the lot while proposing two additional dwelling units (total four dwelling units on the parcel) in the new rear building, along with new medical offices. There is no indication that the ZAB or the public were misled about the project description by any published hearing materials.

At the October 24, 2019 ZAB hearing, the applicant made statements that one ZAB member thought implied that the proposed project would help alleviate the "affordable housing crisis" by providing affordable units. The ZAB member immediately followed the statements with questions that clarified that the project is not a project that contains lowincome (affordable) units. ZAB members were aware that the project did not provide affordable (below market rate) units when they approved it.

According to the property owner, the tenants in the existing duplex units wish to vacate prior to construction of the new project and would not return to the property. Under the Rent Stabilization Ordinance (BMC Chapter 13.76), rents for these units would be allowed to increase to the current market rate once vacated.

The project has proposed fewer than five new dwelling units, and is thus not subject to the City's Affordable Housing Mitigation Fee to mitigate the effects of the construction of new market-rate rental units in the City. The project meets the approval criterion of General Plan consistency by adding two new dwelling units to the City's housing stock, and helps the City meet its General Plan policy goal to "encourage adequate housing production to meet City needs and the City's share of regional housing needs" (Policy H-33–Regional Housing Needs Assessment).

- Issue 3: <u>Project Changes</u>. The appellants assert that the project approved by the ZAB is substantially different from the one originally proposed by the applicants, which proposed fewer units and more parking. Neighbors are concerned about the proximity, size and design (materials, colors, windows) of the new building proposed.
- Response 3: As described in the Background section of this report, the project was revised in response to site constraints based on the existing dwelling units. The revised project proposed two new dwelling units instead of one in the original project, and three parking spaces instead of five in the original project.

Staff confirmed that immediate neighbors and the general public were properly notified of the change in the project description after the revised project was submitted on May 8, 2019. A new Pre-Application Poster with an updated project description was posted on the site, and a neighborhood meeting was held on June 18, 2019 to obtain feedback on the revised project from the neighbors. The applicants stated that after the June 18 meeting, they obtained the plans for the neighboring building to the south (appellants' residence) and redesigned the proposed south facade in order to offset the windows and sightlines between the neighbors and the new building, to address neighbor privacy concerns. The applicants provided evidence that multiple attempts were made to arrange additional meetings and discussions with the neighbors, and stated that two separate discussions occurred after the meeting on June 18. There was adequate opportunity to comment on the project prior to the project being deemed complete on September 6, 2019.

The project also underwent a staff-level design review concurrent with the zoning review, and received no comments during the comment period, October 16 to October 30, 2019. Staff notes that in the revised rear building design, the five-foot setback from the left (south) property line did not change from original design, and the 17-foot separation between the proposed building and the existing appellants' building to the south also did not change. Staff also notes that the revised rear building has a smaller footprint than the original building, and both have a similar height.

ALTERNATIVE ACTIONS CONSIDERED

Pursuant to BMC Section 23B.32.060.D, the Council may (1) continue the public hearing, (2) reverse, affirm, or modify the ZAB's decision, or (3) remand the matter to the ZAB.

Action Deadline:

Pursuant to BMC Section 23B.32.060.G, if the disposition of the appeal has not been determined within 30 days from the date the public hearing was closed by the Council (not including Council recess), then the decision of the Board shall be deemed affirmed and the appeal shall be deemed denied.

CONTACT PERSONS

Timothy Burroughs, Director, Planning & Development Department, (510) 981-7437 Steven Buckley, Land Use Planning Manager, (510) 981-7411 Sharon Gong, Project Planner, (510) 981-7429

Attachments:

- 1. Draft Resolution
 - Exhibit A: Findings and Conditions
 - Exhibit B: Project Plans, received September 6, 2019
- 2. Appeal Letter, dated received November 19, 2019
- 3. Parking Survey, dated March 21, 2019
- 4. ADA-Compliant Parking Layout
- 5. October 24, 2019 ZAB Hearing Staff Report
- 6. Index to Administrative Record
- 7. Administrative Record
- 8. Public Hearing Notice

RESOLUTION NO. ##,###-N.S.

AFFIRMING THE ZONING ADJUSTMENTS BOARD APPROVAL OF USE PERMIT #ZP2018-0108 TO CONSTRUCT A THREE-STORY, 4,806-SQUARE-FOOT MIXED-USE BUILDING CONTAINING 967 SQUARE FEET OF MEDICAL OFFICE SPACE AND TWO DWELLING UNITS ON THE REAR OF A LOT WITH AN EXISTING DUPLEX, INCLUDING A REQUEST TO WAIVE TWO RESIDENTIAL PARKING SPACES AND PROVIDE JOINT PARKING FOR THE COMMERCIAL AND RESIDENTIAL USES; AND DISMISSING THE APPEAL

WHEREAS, on May 24, 2018, Devi Dutta Architecture ("applicant") filed an application for a Use Permit to convert the upper unit in the existing two-story duplex on the front of the lot at 2422 Fifth Street into medical offices and construct a new duplex on the rear of the lot ("project"); and

WHEREAS, on December 7, 2018, staff advised the applicants that a Variance would be required to eliminate the rent-controlled dwelling unit through its conversion into a commercial unit (medical offices), and that the Variance would not be supported by staff; and

WHEREAS, on May 8, 2019, the applicant submitted a revised project to retain the rentcontrolled, front duplex units and construct two dwelling units and medical offices in a new rear building, and to reduce parking and provide joint parking between the uses; and

WHEREAS, on September 6, 2019, staff deemed this application complete and determined that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under Section 15332 of the CEQA Guidelines ("In-Fill Development Projects"); and

WHEREAS, on October 8, 2019, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on October 24, 2019, the ZAB held a public hearing in accordance with BMC Section 23B.32.030, and approved the project; and

WHEREAS, on November 5, 2019, staff issued the notice of the ZAB decision; and

WHEREAS, on November 19, 2019, Redwood Tree Studios HOA, a residential association for neighbors residing at 2430 Fifth Street, filed an appeal of the ZAB decision with the City Clerk; and

WHEREAS, on or before February 11, 2020, staff mailed and posted a Notice of Public Hearing for the project in accordance with BMC Section 23B.32.020; and

WHEREAS, on February 25, 2020, the Council held a public hearing to consider the ZAB's decision, and in the opinion of this Council, the facts stated in, or ascertainable

from the public record, including the staff report and comments made at the public hearing, warrant approving the project.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the City Council hereby adopts the findings made by the ZAB in Exhibit A to affirm the decision of the ZAB to approve Use Permit #ZP2018-0108, adopts the conditions of approval in Exhibit A, and adopts the project plans in Exhibit B, and dismisses the appeal.

Exhibits A: Findings and Conditions B: Project Plans, received September 6, 2019

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ATTACHMENT 1, EXHIBIT A

FINDINGS AND CONDITIONS

February 25, 2020

2422 Fifth Street

Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish joint use of two parking spaces.

PERMITS REQUIRED

- Use Permit under BMC 23E.84.030.A to establish a mixed-use building;
- Administrative Use Permit under BMC 23E.84.030.A to establish a new medical office space that is 5,000 square feet or less;
- Administrative Use Permit under BMC 23E.84.030.A to create two new dwelling units;
- Use Permit under BMC 23E.84.080.F to waive two residential parking spaces; and
- Administrative Use Permit under BMC 23E.28.060 to allow a joint parking agreement to satisfy the off-street parking requirement.

I. CEQA FINDINGS

- The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA, Public Resources Code §21000, et seq. and California Code of Regulations, §15000, et seq.) pursuant to Section 15332 of the CEQA Guidelines ("In-Fill Development Projects").
- 2. Furthermore, none of the exceptions in CEQA Guidelines Section 15300.2 apply, as follows: (a) the site is not located in an environmentally sensitive area, (b) there are no cumulative impacts, (c) there are no significant effects, (d) the project is not located near a scenic highway, (e) the project site is not located on a hazardous waste site pursuant to Government Code Section 65962.5, and (f) the project would not affect any historical resource.

II. FINDINGS FOR APPROVAL

- As required by Section 23B.32.040.A of the BMC, the project, under the circumstances of this
 particular case existing at the time at which the application is granted, would not be detrimental to
 the health, safety, peace, morals, comfort, and general welfare of the persons residing or working
 in the neighborhood of such proposed use or be detrimental or injurious to property and
 improvements of the adjacent properties, the surrounding area or neighborhood, or to the general
 welfare of the City because:
 - A. Although shadow conditions will increase on the aforementioned portions of neighboring dwellings, shadow impacts would be relatively short in duration, occurring only in the morning and midday or evening hours, and not both. Therefore, shading from proposed project is found to be typical of urban settings and not detrimental.
 - B. The siting of the proposed rear, mixed-use building satisfies all minimum setback requirements, and would provide adequate air space on the north, east and south sides of the building. The 4'-wide rear yard is provided between the project and the warehouse to the west, and is a buffer that will satisfy City Fire Department emergency egress requirements (44") in a zoning district (MU-R) that does not require any rear yard;

- C. The relatively flat topography of the project site, along with existing one-, two-, and threestory buildings in the vicinity, does not offer significant views of features such as Berkeley Hills or the Bay. Therefore, staff believes that this project will not be detrimental with respect to views; and
- D. The proposed project will not cause significant privacy impacts to the warehouse to the west and the dwelling on the property to the north. The dwelling on the property to the north is sited toward the front half of the lot, away from the proposed project on the rear of the project site, so that there would be no direct sightlines between them. In response to privacy concerns raised by residents in the live/work building to the south at the June 18, 2019 neighborhood meeting, the project's south elevation was redesigned so that all windows will be offset from the windows in the live/work building, and direct sightlines will be avoided. Thus, the privacy impacts from the project will be reasonable for this mixed-use district.

III. OTHER FINDINGS FOR APPROVAL

- As required by Section 23E.84.090.B of the BMC, the Zoning Adjustments Board must make the following required findings to approve any Use Permit in the district. The proposed use or structure must:
 - A. Be compatible with the purposes of the District;

The project is consistent with the following purposes of the Mixed Use Residential District (MU-R):

- Implement the West Berkeley Plan's designation of a Mixed Residential District.
- Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses.
- Strengthen residential concentrations which exist within the District.

The project is a mixed-use building that will provide two residential units and 967 square feet of medical office space on the ground floor in a district planned for mixed-use development. The project would add two new dwellings to an area that is already developed with single-family dwellings, duplexes, live/work buildings, and other multi-family dwellings.

• Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R.

As a mixed-use building on the rear of a lot that has an existing duplex on the front, the project adds a compatible commercial use to the lot to help the MU-R neighborhood serve as a transition from the R-1A district to the east to the MU-LI district to the west.

- Support the development of businesses of all types which contribute to the maintenance and improvement of the environment.
- To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully.

The proposed mixed-use project with medical offices on the ground floor will bring a compatible commercial use into the area to diversify the existing commercial and industrial uses within the nearby MU-R District, which include warehouses, offices, and live/work spaces. The mixed-use project will be on a lot that is clustered with other mixed-use and residential-only developments within the district, which have coexisted with adjacent industrial uses for years.

- B. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
- C. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses; and
- D. Be designed in such a manner to be supportive of the character and purposes of the District.

The proposed mixed-use project with medical offices on the ground floor and two dwellings on the upper floors would add to the residential development already in the area, and would reinforce the existing mixed pattern of commercial/industrial/residential development in the neighborhood.

- **3.** As required by Section 23E.84.080.F of the BMC, the Zoning Adjustments Board must find that existing evening parking supply is adequate and/or that there are other mitigating circumstances exist on the property to waive the requirement for an additional off-street parking space through a Use Permit when an additional residential unit is added to a property with one or more residential units.
 - A. To support the waiver of two residential parking spaces, the applicant submitted a parking survey prepared by the project transportation consultant, dated October 25, 2018 and revised on March 21, 2019. The parking survey was reviewed by the Transportation Division, which confirmed that the evening parking supply is adequate and that all other parking data supports the waiver of two residential parking spaces.
 - B. The approval of the permit to waive residential parking will be concurrent with the approval of the joint-use parking permit (see Finding #4 below).
- **4.** As required by Section 23E.28.060.A of the BMC, the Zoning Adjustments Board may approve permit to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:
 - The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;
 - The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
 - The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.
 - A. The three joint-use parking spaces are located on the lot that they serve.
 - B. The residential and medical office uses will utilize the parking at different peak times. The medical office would be limited to a three to four weekday per week schedule, from 9:00 a.m. to 4:00 p.m., and the residences could utilize the spaces for the rest of the time one to two week days during the day, after 4:00 p.m. on weekdays, and anytime on the weekends. This availability is general compatible with residential parking demand, which occurs mostly on weekday nights and weekends. The ADA parking space would always be reserved for accessible parking demands.
 - C. The three joint-use parking spaces are not committed to satisfy any other parking requirement.
 - D. The approval of the joint-use parking permit will be concurrent with the approval of the permit to waive residential parking (see Finding #3 above).

IV. STANDARD CONDITIONS OF APPROVAL FOR ALL PROJECTS

The following conditions, as well as all other applicable provisions of the Zoning Ordinance, apply to this Permit:

1. Conditions and Shall be Printed on Plans

The conditions of this Permit shall be printed on the *second* sheet of each plan set submitted for a building permit pursuant to this Use Permit, under the title 'Use Permit Conditions.' *Additional sheets* may also be used if the *second* sheet is not of sufficient size to list all of the conditions. The sheet(s) containing the conditions shall be of the same size as those sheets containing the construction drawings; 8-1/2" by 11" sheets are not acceptable.

2. Applicant Responsible for Compliance with Conditions

The applicant shall ensure compliance with all of the following conditions, including submittal to the project planner of required approval signatures at the times specified. Failure to comply with any condition may result in construction being stopped, issuance of a citation, and/or modification or revocation of the Use Permit.

3. Uses Approved Deemed to Exclude Other Uses (Section 23B.56.010)

- A. This Permit authorizes only those uses and activities actually proposed in the application, and excludes other uses and activities.
- B. Except as expressly specified herein, this Permit terminates all other uses at the location subject to it.

4. Modification of Permits (Section 23B.56.020)

No change in the use or structure for which this Permit is issued is permitted unless the Permit is modified by the Board, except that the Zoning Officer may approve changes that do not expand, intensify, or substantially change the use or building.

Changes in the plans for the construction of a building or structure, may be modified prior to the completion of construction, in accordance with Section 23B.56.030.D. The Zoning Officer may approve changes to plans approved by the Board, consistent with the Board's policy adopted on May 24, 1978, which reduce the size of the project.

5. Plans and Representations Become Conditions (Section 23B.56.030)

Except as specified herein, the site plan, floor plans, building elevations and/or any additional information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted with an application or during the approval process are deemed conditions of approval.

6. Subject to All Applicable Laws and Regulations (Section 23B.56.040)

The approved use and/or construction is subject to, and shall comply with, all applicable City Ordinances and laws and regulations of other governmental agencies. Prior to construction, the applicant shall identify and secure all applicable permits from the Building and Safety Division, Public Works Department and other affected City divisions and departments.

7. Exercised Permit for Use Survives Vacancy of Property (Section 23B.56.080)

Once a Permit for a use is exercised and the use is established, that use is legally recognized, even if the property becomes vacant, except as set forth in Standard Condition #8, below.

8. Exercise and Lapse of Permits (Section 23B.56.100)

- A. A permit for the use of a building or a property is exercised when, if required, a valid City business license has been issued, and the permitted use has commenced on the property.
- B. A permit for the construction of a building or structure is deemed exercised when a valid City building permit, if required, is issued, and construction has lawfully commenced.
- C. A permit may be declared lapsed and of no further force and effect if it is not exercised within one year of its issuance, except that permits for construction or alteration of structures or buildings may not be declared lapsed if the permittee has: (1) applied for a building permit; or, (2) made substantial good faith efforts to obtain a building permit and begin construction, even if a building permit has not been issued and/or construction has not begun.

9. Indemnification Agreement

The applicant shall hold harmless, defend, and indemnify the City of Berkeley and its officers, agents, and employees against any and all liability, damages, claims, demands, judgments or other losses (including without limitation, attorney's fees, expert witness and consultant fees and other litigation expenses), referendum or initiative relating to, resulting from or caused by, or alleged to have resulted from, or caused by, any action or approval associated with the project. The indemnity includes without limitation, any legal or administrative challenge, referendum or initiative filed or prosecuted to overturn, set aside, stay or otherwise rescind any or all approvals granted in connection with the Project, any environmental determination made for the project and granting any permit issued in accordance with the project. This indemnity includes, without limitation, payment of all direct and indirect costs associated with any action specified herein. Direct and indirect costs, and other litigation fees. City shall have the right to select counsel to represent the City at Applicant's expense in the defense of any action specified in this condition of approval. City shall take reasonable steps to promptly notify the Applicant of any claim, demand, or legal actions that may create a claim for indemnification under these conditions of approval.

V. ADDITIONAL CONDITIONS IMPOSED BY THE ZONING ADJUSTMENTS BOARD

Pursuant to BMC 23B.32.040.D, the Zoning Adjustments Board attaches the following additional conditions to this Permit:

Prior to Submittal of Any Building Permit:

10. Project Liaison. The applicant shall include in all building permit plans and post onsite the name and telephone number of an individual empowered to manage construction-related complaints generated from the project. The individual's name, telephone number, and responsibility for the project shall be posted at the project site for the duration of the project in a location easily visible to the public. The individual shall record all complaints received and actions taken in response, and submit written reports of such complaints and actions to the project planner on a weekly basis. Please designate the name of this individual below:

Project Liaison _

Name

Phone #

11.<u>Illegal Structures</u>. The property owner shall remove all structures on the parcel (i.e. shipping container) which were constructed without permits or obtain all necessary permits to legalize the structures that are to remain.

- **12.** <u>Parking Management Plan</u>. The applicant shall submit a Parking Management Plan for the joint use off-street parking spaces to Planning Staff and Transportation Staff for review and approval.
- **13.** <u>Address Assignment</u>. The applicant shall file an "Address Assignment Request Application" with the Permit Service Center (1947 Center Street) for any address change or new address associated with this Use Permit. The new address(es) shall be assigned and entered into the City's database prior to the applicant's submittal of a building permit application.
- 14. <u>Geotechnical Plan Review</u>. The applicant's geotechnical consultant shall review and approve all geotechnical aspects of the final project building and grading plans (i.e., site preparation and grading, site drainage improvements and design parameters for foundations, retaining walls, and driveway) to ensure that their recommendations have been properly incorporated. The results of the plan review shall be summarized by the geotechnical consultant in a letter and submitted to the City Engineer for review and approval prior to issuance of building permits.
- **15.** <u>Construction Noise Reduction Program</u>. The applicant shall develop a site specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
 - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. Utilize "quiet" models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

Prior to Issuance of Any Building & Safety Permit (Demolition or Construction)

16. <u>Construction Noise Management - Public Notice Required</u>. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within **500 feet** of the project site. This notice shall at a minimum provide the following: (1) project

description, (2) description of construction activities, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, (5) commitment to notify neighbors at least four days in advance of authorized extended work hours and the reason for extended hours, and (6) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.

- **17.** <u>Construction and Demolition</u>. Applicant shall submit a Waste Diversion Form and Waste Diversion Plan that meet the diversion requirements of BMC Chapters 19.24 and 19.37.
- **18.** <u>Toxics</u>. The applicant shall contact the Toxics Management Division (TMD) at 1947 Center Street or (510) 981-7470 to determine which of the following documents are required and timing for their submittal:
 - A. Environmental Site Assessments:
 - 1) Phase I & Phase II Environmental Site Assessments (latest ASTM 1527-13). A recent Phase I ESA (less than 6 months old*) shall be submitted to TMD for developments for:
 - All new commercial, industrial and mixed use developments and all large improvement projects.
 - All new residential buildings with 5 or more dwelling units located in the Environmental Management Area (or EMA).
 - EMA is available online at:
 - <u>http://www.cityofberkeley.info/uploadedFiles/IT/Level_3_-_General/ema.pdf</u>
 - 2) Phase II ESA is required to evaluate Recognized Environmental Conditions (REC) identified in the Phase I or other RECs identified by TMD staff. The TMD may require a third party toxicologist to review human or ecological health risks that may be identified. The applicant may apply to the appropriate state, regional or county cleanup agency to evaluate the risks.
 - 3) If the Phase I is over 6 months old, it will require a new site reconnaissance and interviews. If the facility was subject to regulation under Title 15 of the Berkeley Municipal Code since the last Phase I was conducted, a new records review must be performed.
 - B. Soil and Groundwater Management Plan:
 - 1) A Soil and Groundwater Management Plan (SGMP) shall be submitted to TMD for all non-residential projects, and residential or mixed-use projects with five or more dwelling units, that: (1) are in the Environmental Management Area (EMA) and (2) propose any excavations deeper than 5 feet below grade. The SGMP shall be site specific and identify procedures for soil and groundwater management including identification of pollutants and disposal methods. The SGMP will identify permits required and comply with all applicable local, state and regional requirements.
 - 2) The SGMP shall require notification to TMD of any hazardous materials found in soils and groundwater during development. The SGMP will provide guidance on managing odors during excavation. The SGMP will provide the name and phone number of the individual responsible for implementing the SGMP and post the name and phone number for the person responding to community questions and complaints.
 - 3) TMD may impose additional conditions as deemed necessary. All requirements of the approved SGMP shall be deemed conditions of approval of this Use Permit.
 - C. Building Materials Survey:

- 1) Prior to approving any permit for partial or complete demolition and renovation activities involving the removal of 20 square or lineal feet of interior or exterior walls, a building materials survey shall be conducted by a qualified professional. The survey shall include, but not be limited to, identification of any lead-based paint, asbestos, polychlorinated biphenyl (PBC) containing equipment, hydraulic fluids in elevators or lifts, refrigeration systems, treated wood and mercury containing devices (including fluorescent light bulbs and mercury switches). The Survey shall include plans on hazardous waste or hazardous materials removal, reuse or disposal procedures to be implemented that fully comply state hazardous waste generator requirements (22 California Code of Regulations 66260 et seq). The Survey becomes a condition of any building or demolition permit for the project. Documentation evidencing disposal of hazardous waste in compliance with the survey shall be submitted to TMD within 30 days of the completion of the demolition. If asbestos is identified, Bay Area Air Quality Management District Regulation 11-2-401.3 a notification must be made and the J number must be made available to the City of Berkeley Permit Service Center.
- D. Hazardous Materials Business Plan:
 - 1) A Hazardous Materials Business Plan (HMBP) in compliance with BMC Section 15.12.040 shall be submitted electronically at http://cers.calepa.ca.gov/ within 30 days if on-site hazardous materials exceed BMC 15.20.040. HMBP requirement can be found at http://ci.berkeley.ca.us/hmr/

Prior to Issuance of Any Building (Construction) Permit

- **19.** <u>Interior Noise Levels</u>. Prior to issuance of a building permit, the applicant shall submit a report to the Building and Safety Division and the Zoning Officer by a qualified acoustic engineer certifying that the interior residential portions of the project will achieve interior noise levels of no more than 45 Ldn (Average Day-Night Levels). If the adopted Building Code imposes a more restrictive standard for interior noise levels, the report shall certify compliance with this standard.
- **20.** <u>Recycling and Organics Collection</u>. Applicant shall provide recycling and organics collection areas for occupants, clearly marked on site plans, which comply with the Alameda County Mandatory Recycling Ordinance (ACWMA Ordinance 2012-01).
- **21.** <u>Water Efficient Landscaping</u>. Applicant shall provide an updated Bay-Friendly Basics Landscape Checklist that includes detailed notes of any measures that will not be fully met at the project. Landscape improvements shall be consistent with the current versions of the State's Water Efficient Landscape Ordinance (WELO) and the East Bay Municipal Utility District's Section 31: Water Efficiency Requirements.
- **22.** <u>Public Works ADA</u>. Plans submitted for building permit shall include replacement of sidewalk, curb, gutter, and other streetscape improvements, as necessary to comply with current City of Berkeley standards for accessibility.
- **23.** <u>Parking for Disabled Persons</u>. Per BMC Section 23E.28.040.D of the Zoning Ordinance, "Notwithstanding any reduction in off-street parking spaces that may be granted for mixed-use projects in non-residential districts listed in Sub-title 23E, the requirement for off-street parking spaces for disabled persons in the project shall be calculated as if there had been no reduction in total parking spaces."

During Construction:

- **24.** <u>Construction Hours</u>. Construction activity shall be limited to between the hours of 7:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and 4:00 PM on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
- **25.** <u>Transportation Construction Plan</u>. The applicant and all persons associated with the project are hereby notified that a Transportation Construction Plan (TCP) is required for all phases of construction, particularly for the following activities:
 - Alterations, closures, or blockages to sidewalks, pedestrian paths or vehicle travel lanes (including bicycle lanes);
 - Storage of building materials, dumpsters, debris anywhere in the public ROW;
 - Provision of exclusive contractor parking on-street; or
 - Significant truck activity.

The applicant shall secure the City Traffic Engineer's approval of a TCP. Please contact the Office of Transportation at 981-7010, or 1947 Center Street, and ask to speak to a traffic engineer. In addition to other requirements of the Traffic Engineer, this plan shall include the locations of material and equipment storage, trailers, worker parking, a schedule of site operations that may block traffic, and provisions for traffic control. The TCP shall be consistent with any other requirements of the construction phase.

Contact the Permit Service Center (PSC) at 1947 Center Street or 981-7500 for details on obtaining Construction/No Parking Permits (and associated signs and accompanying dashboard permits). Please note that the Zoning Officer and/or Traffic Engineer may limit off-site parking of construction-related vehicles if necessary to protect the health, safety or convenience of the surrounding neighborhood. <u>A current copy of this Plan shall be available at all times at the construction site for review by City Staff.</u>

- **26.** <u>Halt Work/Unanticipated Discovery of Tribal Cultural Resources</u>. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
- **27.** <u>Avoid Disturbance of Nesting Birds</u>. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer

(typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

- **28.** <u>Archaeological Resources (Ongoing throughout demolition, grading, and/or construction)</u>.</u> Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
 - A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
 - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
- **29.** <u>Human Remains (Ongoing throughout demolition, grading, and/or construction)</u>. In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
- **30.** <u>Paleontological Resources (Ongoing throughout demolition, grading, and/or construction).</u> In the event of an unanticipated discovery of a paleontological resource during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards [SVP 1995,1996]). The qualified paleontologist shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find. The paleontologist shall notify the appropriate

agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The plan shall be submitted to the City for review and approval.

- **31.** <u>Stormwater Requirements.</u> The applicant shall demonstrate compliance with the requirements of the City's National Pollution Discharge Elimination System (NPDES) permit as described in BMC Section 17.20. The following conditions apply:
 - A. The project plans shall identify and show site-specific Best Management Practices (BMPs) appropriate to activities conducted on-site to limit to the maximum extent practicable the discharge of pollutants to the City's storm drainage system, regardless of season or weather conditions.
 - B. Trash enclosures and/or recycling area(s) shall be covered; no other area shall drain onto this area. Drains in any wash or process area shall not discharge to the storm drain system; these drains should connect to the sanitary sewer. Applicant shall contact the City of Berkeley and EBMUD for specific connection and discharge requirements. Discharges to the sanitary sewer are subject to the review, approval and conditions of the City of Berkeley and EBMUD.
 - C. Landscaping shall be designed with efficient irrigation to reduce runoff, promote surface infiltration and minimize the use of fertilizers and pesticides that contribute to stormwater pollution. Where feasible, landscaping should be designed and operated to treat runoff. When and where possible, xeriscape and drought tolerant plants shall be incorporated into new development plans.
 - D. Design, location and maintenance requirements and schedules for any stormwater quality treatment structural controls shall be submitted to the Department of Public Works for review with respect to reasonable adequacy of the controls. The review does not relieve the property owner of the responsibility for complying with BMC Chapter 17.20 and future revisions to the City's overall stormwater quality ordinances. This review shall be shall be conducted prior to the issuance of a Building Permit.
 - E. All paved outdoor storage areas must be designed to reduce/limit the potential for runoff to contact pollutants.
 - F. All on-site storm drain inlets/catch basins must be cleaned at least once a year immediately prior to the rainy season. The property owner shall be responsible for all costs associated with proper operation and maintenance of all storm drainage facilities (pipelines, inlets, catch basins, outlets, etc.) associated with the project, unless the City accepts such facilities by Council action. Additional cleaning may be required by City of Berkeley Public Works Engineering Dept.
 - G. All on-site storm drain inlets must be labeled "No Dumping Drains to Bay" or equivalent using methods approved by the City.
 - H. Most washing and/or steam cleaning must be done at an appropriately equipped facility that drains to the sanitary sewer. Any outdoor washing or pressure washing must be managed in such a way that there is no discharge or soaps or other pollutants to the storm drain. Sanitary connections are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.
 - I. Sidewalks and parking lots shall be swept regularly to prevent the accumulation of litter and debris. If pressure washed, debris must be trapped and collected to prevent entry to the storm drain system. If any cleaning agent or degreaser is used, wash water shall not discharge to the storm drains; wash waters should be collected and discharged to the sanitary sewer. Discharges to the sanitary sewer are subject to the review, approval and conditions of the sanitary district with jurisdiction for receiving the discharge.

- J. The applicant is responsible for ensuring that all contractors and sub-contractors are aware of and implement all stormwater quality control measures. Failure to comply with the approved construction BMPs shall result in the issuance of correction notices, citations, or a project stop work order.
- **32.** <u>Public Works Implement BAAQMD-Recommended Measures during Construction</u>. For all proposed projects, BAAQMD recommends implementing all the Basic Construction Mitigation Measures, listed below to meet the best management practices threshold for fugitive dust:
 - A. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
 - B. All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
 - C. All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
 - D. All vehicle speeds on unpaved roads shall be limited to 15 mph.
 - E. All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
 - F. Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
 - G. All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified visible emissions evaluator.
 - H. Post a publicly visible sign with the telephone number and person to contact at the lead agency regarding dust complaints. This person shall respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.
- **33.** <u>Public Works</u>. All piles of debris, soil, sand, or other loose materials shall be covered at night and during rainy weather with plastic at least one-eighth millimeter thick and secured to the ground.
- **34.** <u>Public Works</u>. The applicant shall ensure that all excavation takes into account surface and subsurface waters and underground streams so as not to adversely affect adjacent properties and rights-of-way.
- **35.** <u>Public Works</u>. The project sponsor shall maintain sandbags or other devices around the site perimeter during the rainy season to prevent on-site soils from being washed off-site and into the storm drain system. The project sponsor shall comply with all City ordinances regarding construction and grading.
- **36.** <u>Public Works</u>. Prior to any excavation, grading, clearing, or other activities involving soil disturbance during the rainy season the applicant shall obtain approval of an erosion prevention plan by the Building and Safety Division and the Public Works Department. The applicant shall be responsible for following these and any other measures required by the Building and Safety Division and the Public Works Department.
- **37.** <u>Public Works</u>. The removal or obstruction of any fire hydrant shall require the submission of a plan to the City's Public Works Department for the relocation of the fire hydrant during construction.

38. <u>Public Works</u>. If underground utilities leading to adjacent properties are uncovered and/or broken, the contractor involved shall immediately notify the Public Works Department and the Building & Safety Division, and carry out any necessary corrective action to their satisfaction.

Prior to Final Inspection or Issuance of Occupancy Permit:

- **39.** <u>Compliance with Conditions</u>. The project shall conform to the plans and statements in the Use Permit. The developer is responsible for providing sufficient evidence to demonstrate compliance with the requirements throughout the implementation of this Use Permit.
- **40.** <u>Compliance with Approved Plan</u>. The project shall conform to the plans and statements in the Use Permit. All landscape, site and architectural improvements shall be completed per the attached approved drawings dated **October 15, 2019**, except as modified by conditions of approval.
- **41.** <u>Construction and Demolition Diversion</u>. A Waste Diversion Report, with receipts or weigh slips documenting debris disposal or recycling during all phases of the project, must be completed and submitted for approval to the City's Building and Safety Division. The Zoning Officer may request summary reports at more frequent intervals, as necessary to ensure compliance with this requirement. A copy of the Waste Diversion Plan shall be available at all times at the construction site for review by City Staff.
- **42.** <u>Geotechnical Construction Inspections</u>. The geotechnical consultant shall inspect, test (as needed), and approve all geotechnical aspects of the project construction. The inspections shall include, but not necessarily be limited to: site preparation and grading, site surface and subsurface drainage improvements, and excavations for foundations and retaining walls prior to the placement of steel and concrete. The results of these inspections and the as-built conditions of the project shall be described by the geotechnical consultant in a letter and submitted to the City Engineer for review prior to final (granting of occupancy) project approval.

At All Times:

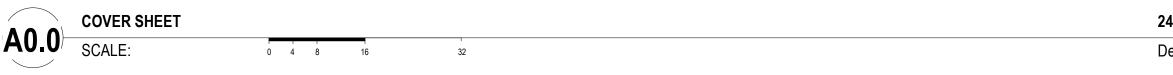
- **43.** <u>Exterior Lighting</u>. All exterior lighting shall be energy efficient where feasible; and shielded and directed downward and away from property lines to prevent excessive glare beyond the subject property.
- **44.** <u>Rooftop Projections.</u> No additional rooftop or elevator equipment shall be added to exceed the approved maximum roof height without submission of an application for a Use Permit Modification, subject to Board review and approval.
- **45.** <u>Design Review.</u> Signage and any other exterior modifications, including but not limited to landscaping and lighting, shall be subject to Design Review approval.
- **46.** <u>Drainage Patterns</u>. The applicant shall establish and maintain drainage patterns that do not adversely affect adjacent properties and rights-of-way. Drainage plans shall be submitted for approval of the Building & Safety Division and Public Works Department, if required.
- 47. <u>Electrical Meter.</u> Only one electrical meter fixture may be installed per dwelling unit.
- **48.** <u>Bike Parking</u>. Secure and on-site bike parking <u>for at least</u> 4 bicycles shall be provided for the life of the building.

- **49.** Tenant rights shall continue to apply to occupants of rental units of the front-of-lot duplex as described in BMC Chapters 13.76, 13.79, and 13.84.
- **50.** <u>Tenant Notification</u>. The developer shall provide tenant notification, via a lease rider or deed covenant, that each dwelling unit is located in a mixed-use area that includes commercial, food service and entertainment uses, and that each occupant shall not seek to impede their lawful operation.

5TH STREET TOWNHOMES AND WELLNESS OFFICES

2422 5TH STREET, BERKELEY, CA 94710

ARCHITECT/APPLICANT	<u>OWNER</u>	LANDSCAPE	TRAFFIC ENGINEER	PROJECT DES
DEVI DUTTA-CHOUDHURY, AIA DEVI DUTTA ARCHITECTURE 928 CARLETON STREET BERKELEY, CA 94710	ANNA & CARL GOLD 2422 5TH STREET BERKELEY, CA 94710	MANTLE LANDSCAPE ARCHITECTURE 930 CARLETON STREET BERKELEY, CA 94710	ABRAMS ASSOCIATES 1875 OLYMPIC BOULEVARD, SUITE 210 WALNUT CREEK, CA 94596	CONSTRUCTI ACUPUNCTUF EXISTING FRO
510/705-1937 hello@devidutta.com		510-927-3202	925-945-0201	<u>SHEET LIST A</u>
				A0.0
				A0.1
				A0.2
				A0.3
and the second sec				A0.4 A0.5
Real Constants				A0.5 A1.1
				A1.2
				A1.3
				A1.4
		1		A2.1
				A2.2 A3.1
				A3.2
				A5.1
				A6.1
			N. A.	A7.1
				A7.2
			A	<u>SHEET LIST L</u>
				110
				L1.0 L2.0
				L2.1





DESCRIPTION

CTION OF 2 NEW DWELLING UNITS AND 1 FURE & WELLNESS OFFICE AT REAR YARD. FRONT DUPLEX TO REMAIN.

T ARCHITECTURAL

COVER SHEET PROJECT INFORMATION AREA DIAGRAMS SURVEY STREET STRIP VICINITY MAP PROPOSED SITE PLAN PROPOSED FIRST FLOOR PLAN PROPOSED SECOND FLOOR PLAN PROPOSED THIRD FLOOR PLAN **EAST & NORTH ELEVATIONS** WEST & SOUTH ELEVATIONS PROPOSED BUILDING SECTIONS PROPOSED BUILDING SECTIONS **OPEN SPACE DIAGRAM** DETAILS NEIGHBORHOOD CONTEXT PERSPECTIVE VIEWS

<u> LANDSCAPE</u>

SCHEMATIC MATERIAL PLAN SCHEMATIC PLANTING PLAN PROPOSED PLANTING PALETTE

2422 5TH STREET

Zoning Submittal

Devi Dutta Architecture Inc.

PROJECT ADDRESS

2422 5TH STREET, BERKELEY, CA 74710

ASSESSOR'S PARCEL #: 56-1944-11

ZONING INFORMATION

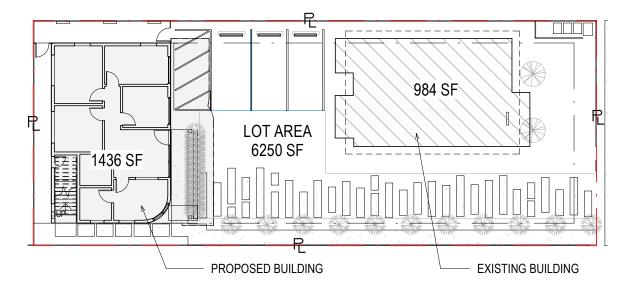
ZONING DISTRICT:	MU-R
FLOOD ZONE:	NO
FIRE ZONE:	1
ENV. MGMT AREA:	NO
LANDMARKS STRUCTURE OF MERIT:	NO

PROJECT SITE

32

16





1 LOT COVERAGE DIAGRAM 3/64" = 1'-0"

PROJECT INFORMATION A0.1

ZONING DEVELOPMENT STANDARDS

	EXISTING	PROPOSED	REQUIRED/ No. C32382	
			PERMITTED Ren. 7/31/2021	
NUMBER OF DWELLING UNITS	2	4	5 MAX	
AREAS				
LOT SIZE	125' X 50' = 6250 SF	125' X 50' = 6250 SF	40' WIDTH MIN.	
TOTAL GROSS FLOOR AREA	1670 SF	1670 SF + 3136 SF = 4806 SF		
NEW DUPLEX AREA UNIT 1 UNIT 2 MEDICAL OFFICES AREA		2170 SF 1070 SF 1100 SF 967 SF		
FAR	0.27	0.77	1.5	
BUILDING FOOTPRINT	984 SF	984 SF + 1436 SF = 2420 SF		
LOT COVERAGE	15.7 %	38.7 %	40% MAX.	
MPERVIOUS SURFACE	2295 SF	2331 SF		
JSEABLE OPEN SPACE	3297 SF	645 SF	600 SF MIN.	
HEIGHT & STORIES				
AVERAGE	16'-3"	32' - 0"	35' - 0"	
MAXIMUM	18' - 1/2"	35' - 0"	35' - 0"	
STORIES	2	3	3	
SETBACKS				
FRONT:	19"-0"	14' - 9 1/2"	5' - 0"	
NORTH SIDE	4' - 0"	5' - 0"	5' - 0" (10% OF LOT WIDTH)	
SOUTH SIDE	22' - 0"	5' - 0"	5' - 0" (10% OF LOT WIDTH)	
REAR:	67' - 0"	4' - 0"	NONE (ADJACENT TO NON-RESIDENTIAL	
PARKING SPACES				
RESIDENTIAL*:	1 / UNIT = 2 TANDEM SPACES	(2) PROVIDED VIA JOINT USE PARKING PER BMC 23D.12.060	1 / UNIT = 4 REQUIRED	
MEDICAL:	N/A	(3) PROVIDED	1 / 300 SF = 3 REQUIRED	
BIKE PARKING: *(2) PARKING WAIVER	1	(3) RESIDENTIAL, (1) COMMERCIAL	1 / 2000 SF NON-RES AREA = 1 REQ	

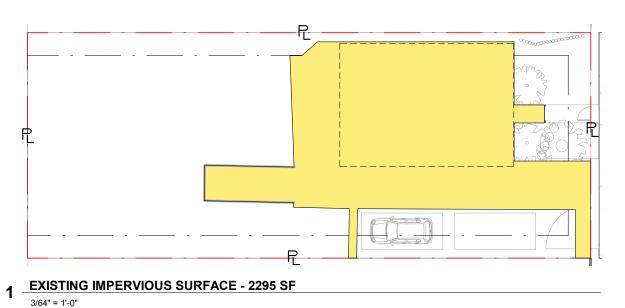
2422 5TH STREET	Zoning Submittal
Devi Dutta Architecture Inc.	10.15.2019 ⁹⁵⁴

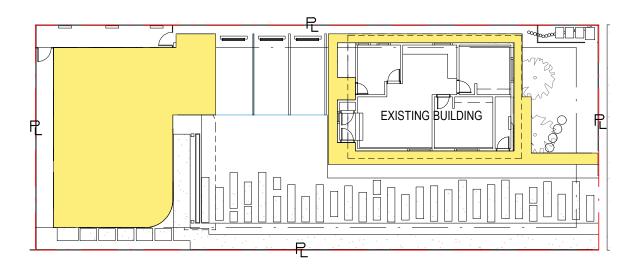
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ABBREVIATIONS

A/C ADJ. A.F.F.	AIR CONDITIONING ADJACENT ABOVE FINISH FLOOR	JAN. JT.	
ALUM. ALT.	ALUMINUM ALTERNATE	L.P.	
APPROX.	APPROXIMATELY	MAX	
ARCH.	ARCHITECTURAL	M.C.	
A.C.T.	ACOUSTIC CEILING TILE	M.D.	
		MECH.	
B.BD	TELEPHONE BACK BOARD	MFR	
BLDG.	BUILDING	MIN	
BLKG.	BLOCKING	MTD.	
BOT.	BOTTOM	MTL.	
CL CAB.	CENTER LINE CABINET	(N) N.I.C.	
C.G.	CORNER GUARD	NO.	
CHG.	CHANGE	N.T.S.	
CLG.	CEILING	0.C.	
CLOS.	CLOSET	OFF.	
CLOS. CLR.	CLOSET	OPP. OPNG.	
C.M.U.	CONCRETE MASONRY UNIT	OPNG.	
COL.			
COL. CONC.	COLUMN CONCRETE	0.T.B.	
CONC. CONN.		PR.	
	CONNECTION	P.LAM.	
CONST. CORR.	CONSTRUCTION	P-LAWI. PTD.	
CORR. C.T.	CORRIDOR CERAMIC TILE	PTD. PLWD.	
CTR.		PLWD. P.O.	
DET.	CENTER DETAIL	P.U.	
DIA/O		R	
DIA/O		R.C.P.	
	DIMENSION		
DN. DWG.	DOWN DRAWING	R.D.	
DWG. DS.	DOWNSPOUT	REFR. REQ.	
D3.	DOWNSPOUL	REQ. RM.	
(E)	EXISTING	R.O.	
EA.	EACH	R.U.	
EL.	ELEVATION	S.C.	
ELEC.	ELECTRICAL	S.D.	
ELEC. ELEV.	ELEVATOR	SAF	
ELEV. EQ.	EQUAL	SAF STOR.	
EQUIP.	EQUIPMENT	SHT.	
EXP. EXPOS.	EXPANSION	SIM. SCD	
EXFOS. EXT.	EXPOSED EXTERIOR	SED	
EXI.	EXTERIOR	SLD	
F.D.			
F.D. FIN.	FLOOR DRAIN FINISH	SMD SPD	
FIN. FL.	FLOOR	SSD	
FL. FLASH.	FLOOR FLASHING	STRL.	
FLUOR.	FLUORESCENT	SIRL.	
F.O.F.	FACE OF FINISH	т	
F.O.S.	FACE OF STUD	T.B.D.	
FPRFP.	FIREPROOF	T&G	
FSD	FIRE SEPARATION DISTANCE	TEL.	
FURR.	FURRING	T.O.	
TOTAL.		TYP.	
GA.	GAGE		
GALV.	GALVANIZED	U.O.N.	
G.C.	GENERAL CONTRACTOR	0.0.11.	
GL.	GLASS	V.I.F.	
GR.	GRADE	v	
GYP. BD.	GYPSUM BOARD	WD.	
		W.P.	
H.B.	HOSE BIB	•••••	WRB
HC	HANDICAPPED		
H.C.	HOLLOW CORE		
HDWR.	HARDWARE		
HGT.	HEIGHT		
H.M.	HOLLOW METAL		
HP	HIGH POINT		
HR.	HOUR		
H.W.	HOT WATER		
INSUL.	INSULATION/INSULATED		
INT.	INTERIOR		

JANITOR JOINT
LOW POINT
MAXIMUM MEDICINE CABINET MOTION DETECTOR MECHANICAL MANUFACTURER MINIMUM MOUNTED METAL
NEW NOT IN CONTRACT NUMBER NOT TO SCALE ON CENTER OFFICE OPENING OPPOSITE OPEN TO BELOW
PAIR PLASTIC LAMINATE PAINTED PLYWOOD PRIVATE OFFICE
RISER REFLECTED CEILING PLAN ROOF DRAIN REFRIGERATOR REQUIRED ROOM ROUGH OPENING
SOLID CORE STORM DRAIN SELF-ADHERED FLASHING STORAGE SHEET SIMILAR SEE CIVIL DRAWINGS SEE ELECTRICAL DRAWINGS SEE MECHANICAL DRAWINGS SEE PLUMBING DRAWINGS SEE STRUCTURAL DRAWINGS STRUCTURAL
TREAD TO BE DETERMINED TONGUE AND GROOVE TELEPHONE TOP OF TYPICAL
UNLESS OTHERWISE NOTED
VERIFY IN FIELD
WOOD WATERPROOF WEATHER RESISTANT BARRIER







A0.2 SCALE:

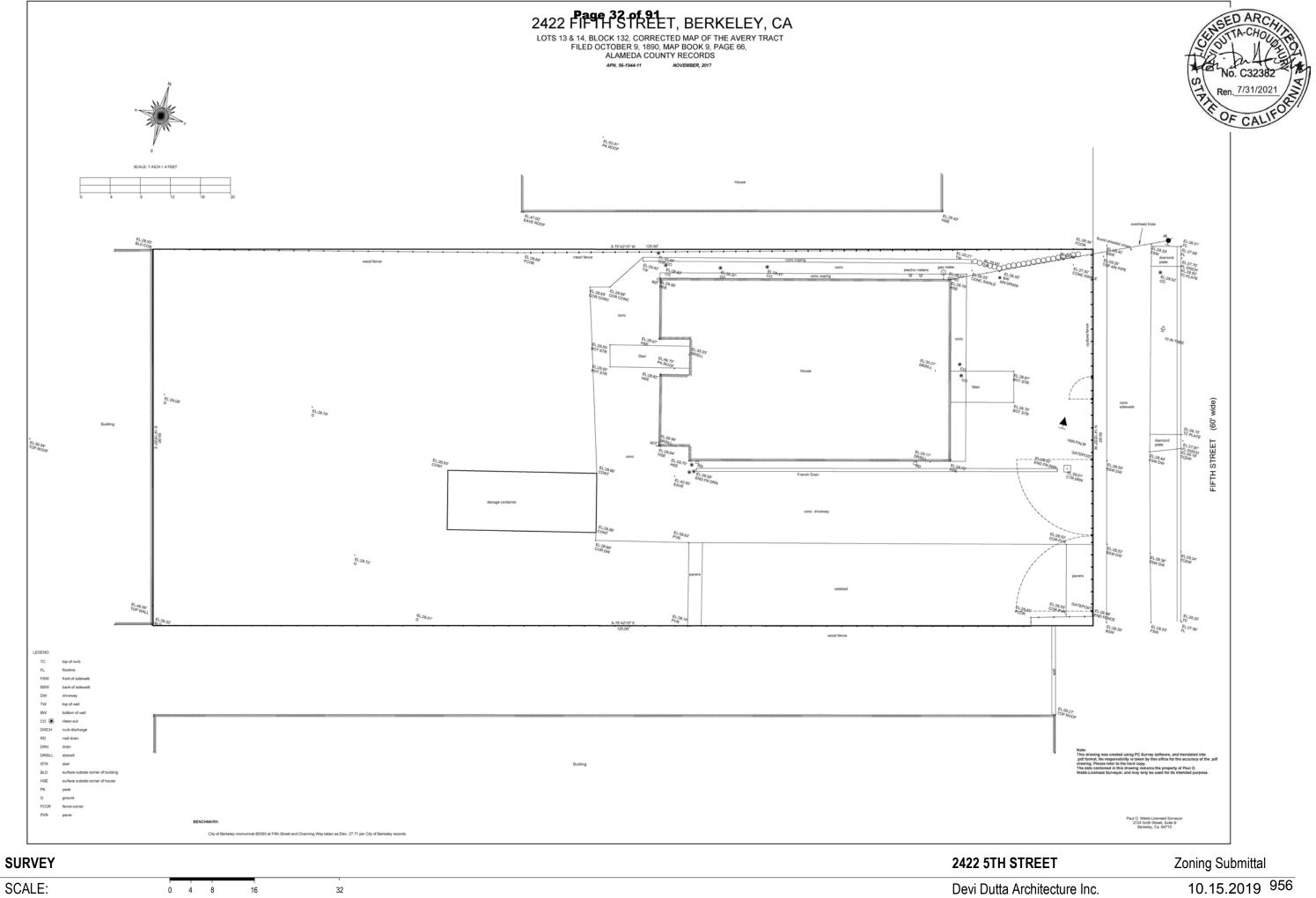
32



2422 5TH STREET

Zoning Submittal

Devi Dutta Architecture Inc.



A0.3



EXISTING WEST VIEW 2422 5TH STREET

SUBJECT PROPERTY



PROPOSED WEST VIEW 2422 5TH STREET

SUBJECT PROPERTY



EXISTING EAST VIEW 2422 5TH STREET



STREET STRIP

SCALE:

0 4 8 16 32

2422 5TH STREET

Zoning Submittal 10.15.2019 957

Devi Dutta Architecture Inc.



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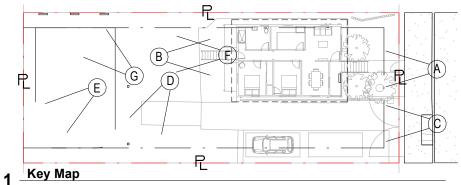
A - EXISTING FRONT OF HOUSE



B - EXISTING BACK OF HOUSE



C - EXISTING DRIVEWAY



Key Map 1/32" = 1'-0"



G - REAR YARD NORTH SIDE



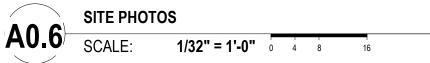
D,E - ADJACENT MULTI-FAMILY BUILDING



32



F - EXISTING REAR STAIR/YARD

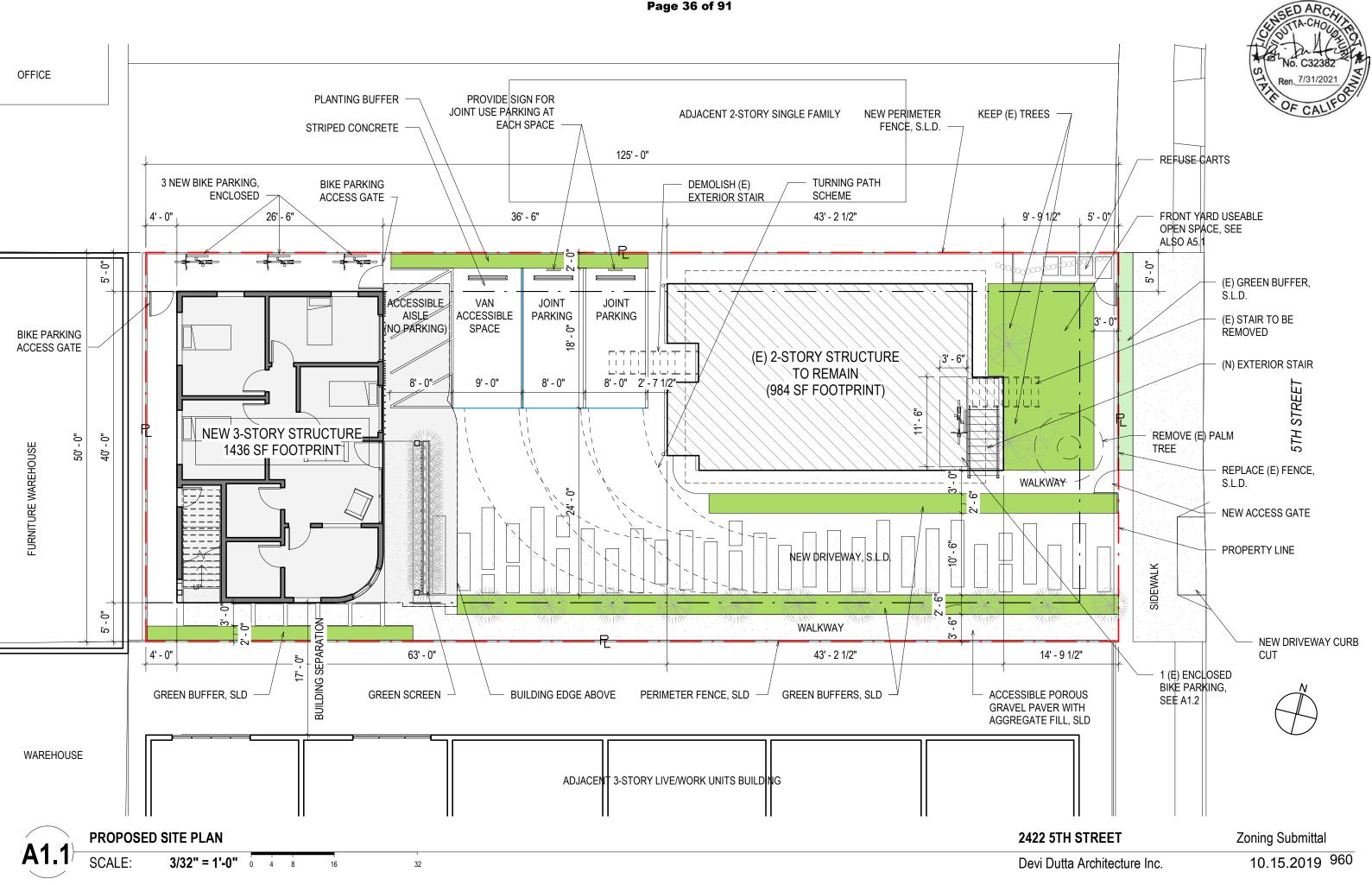


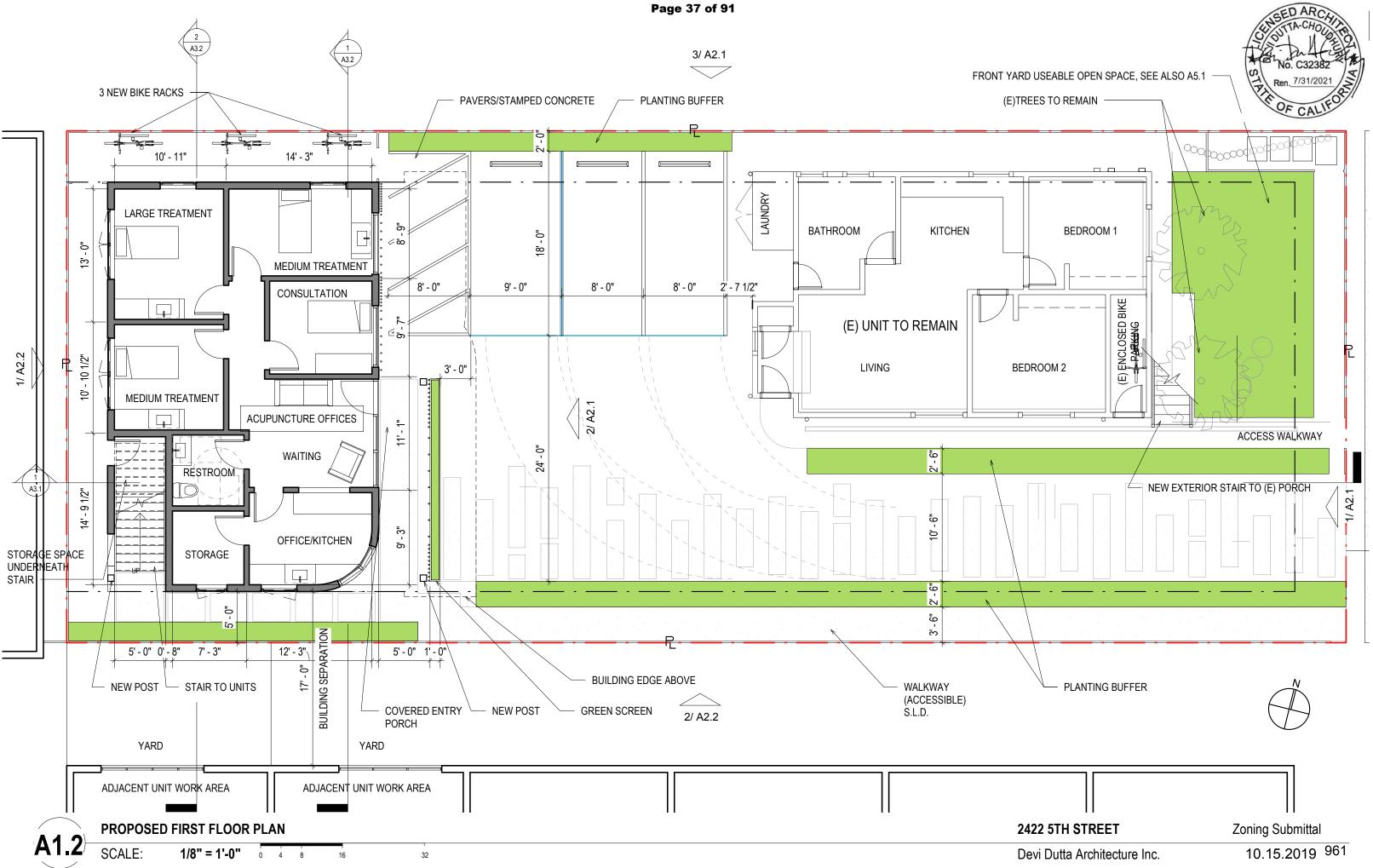


2422 5TH STREET

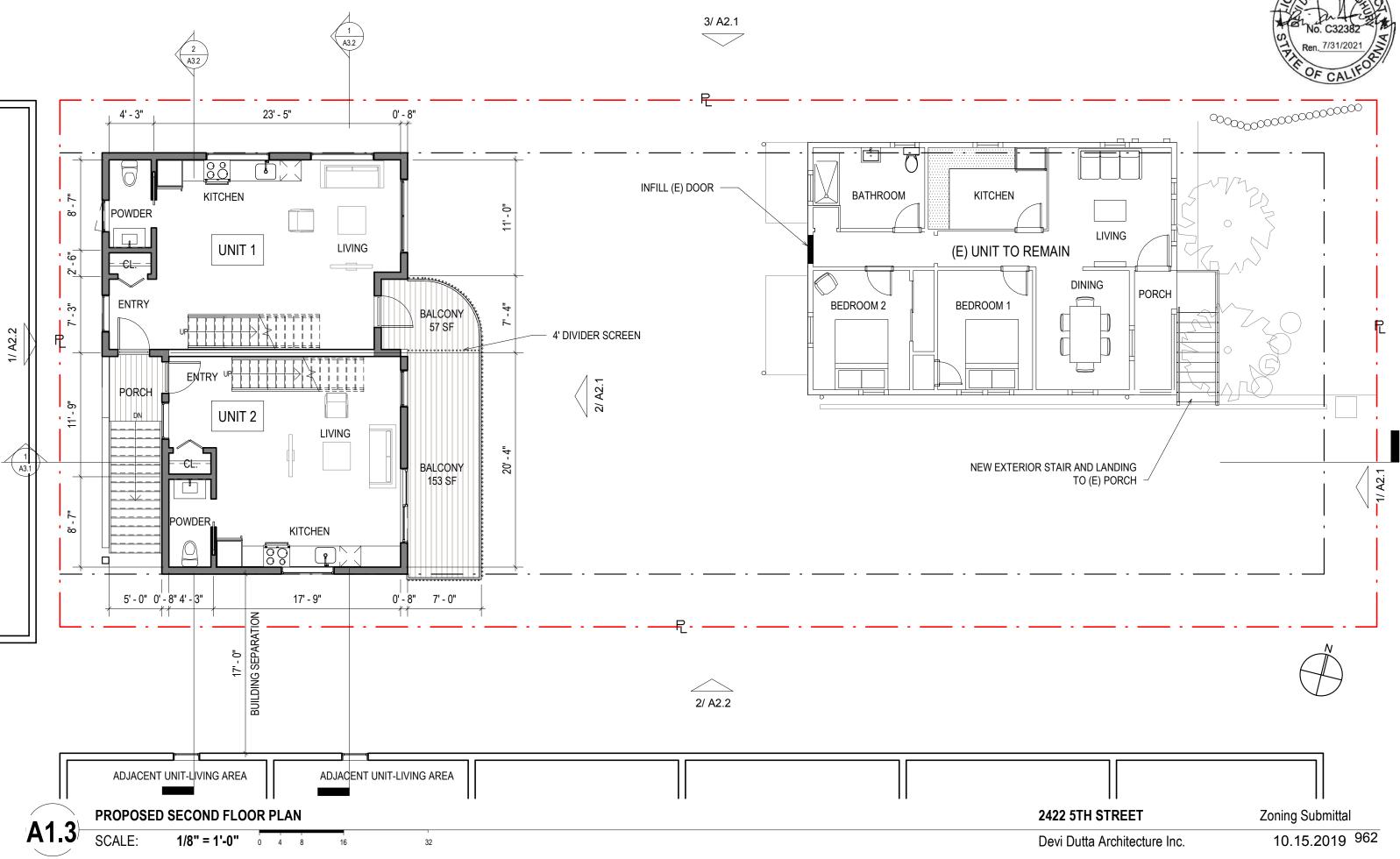
Zoning Submittal 10.15.2019 959

Devi Dutta Architecture Inc.

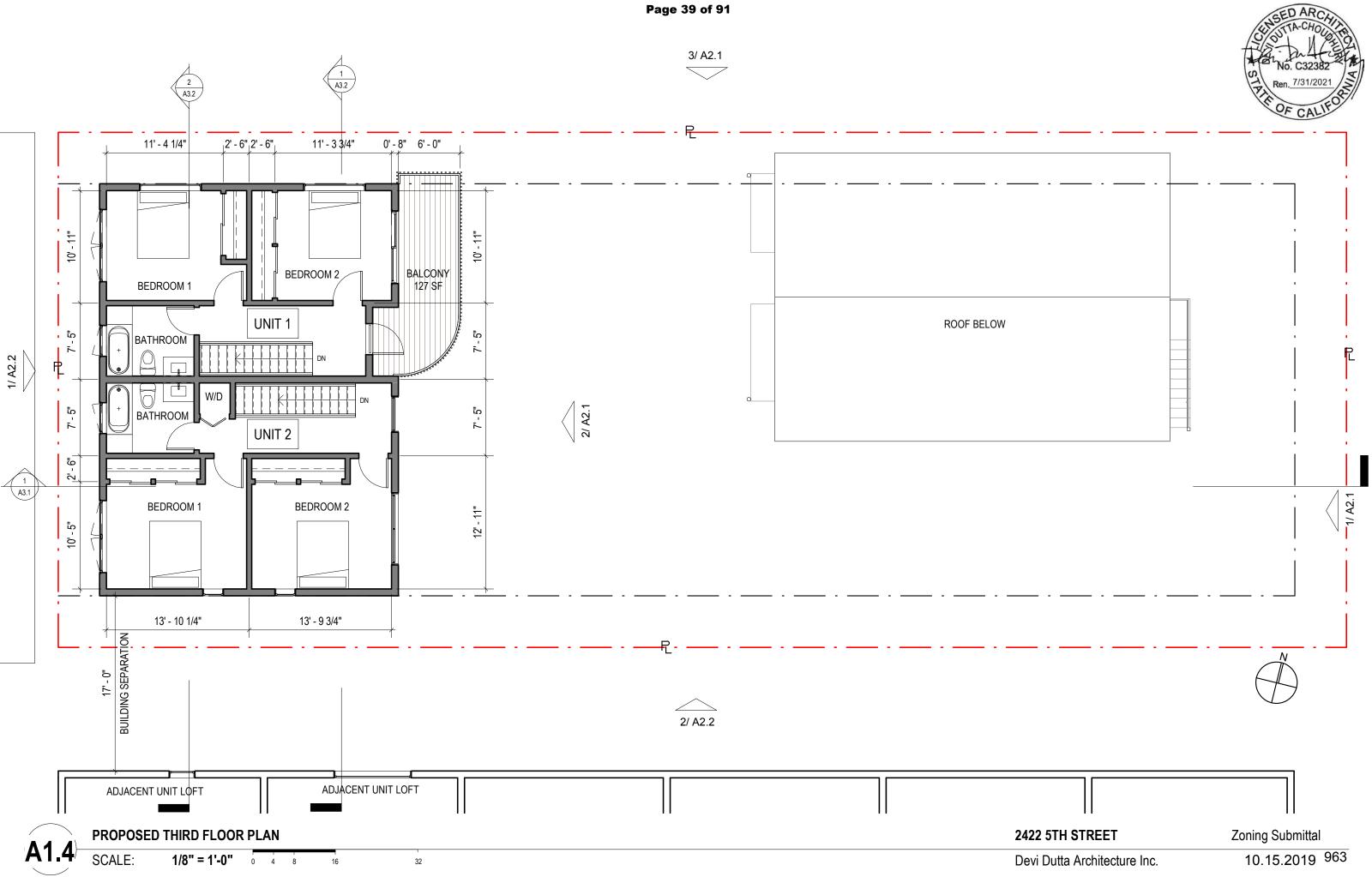


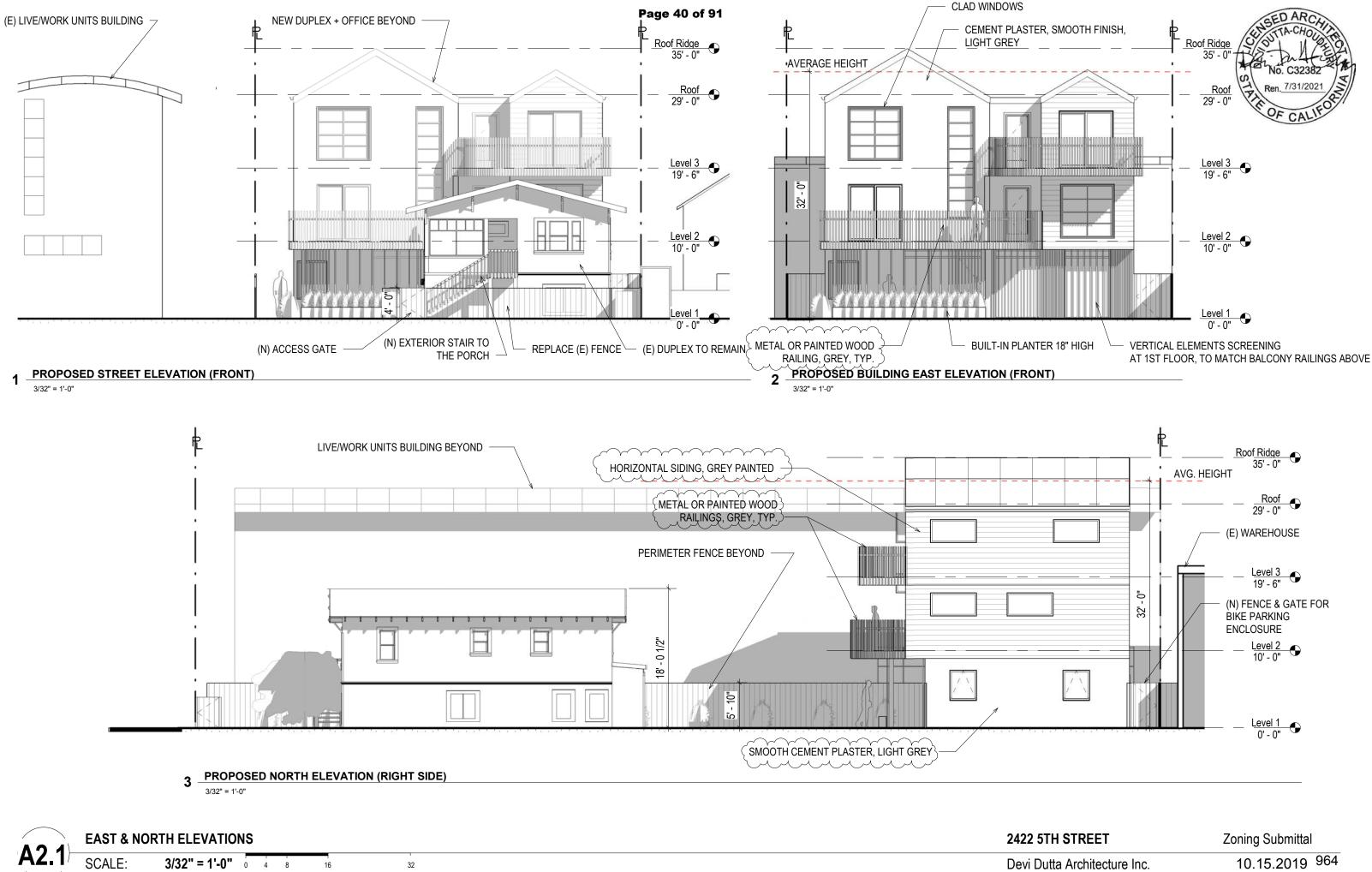


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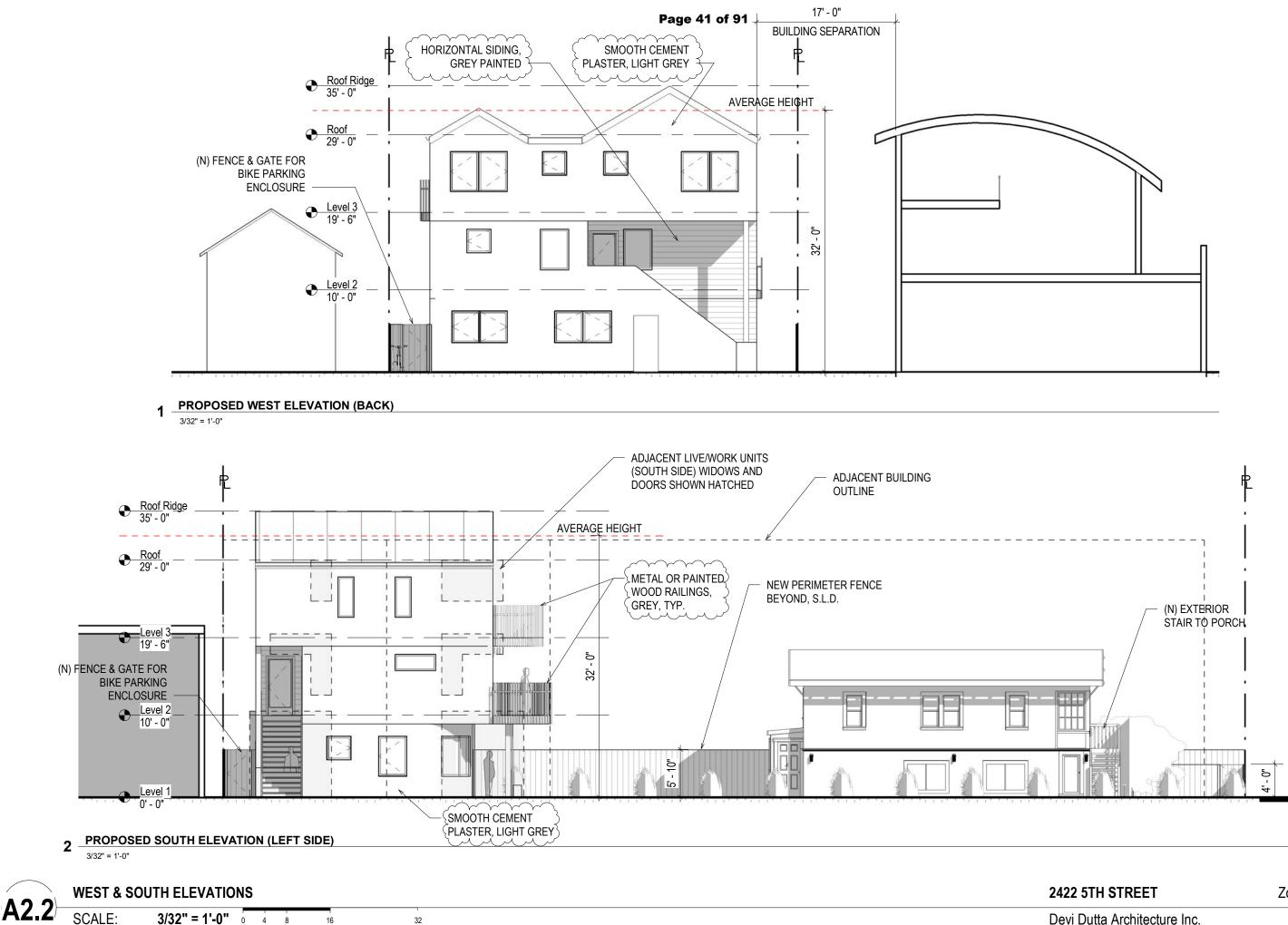








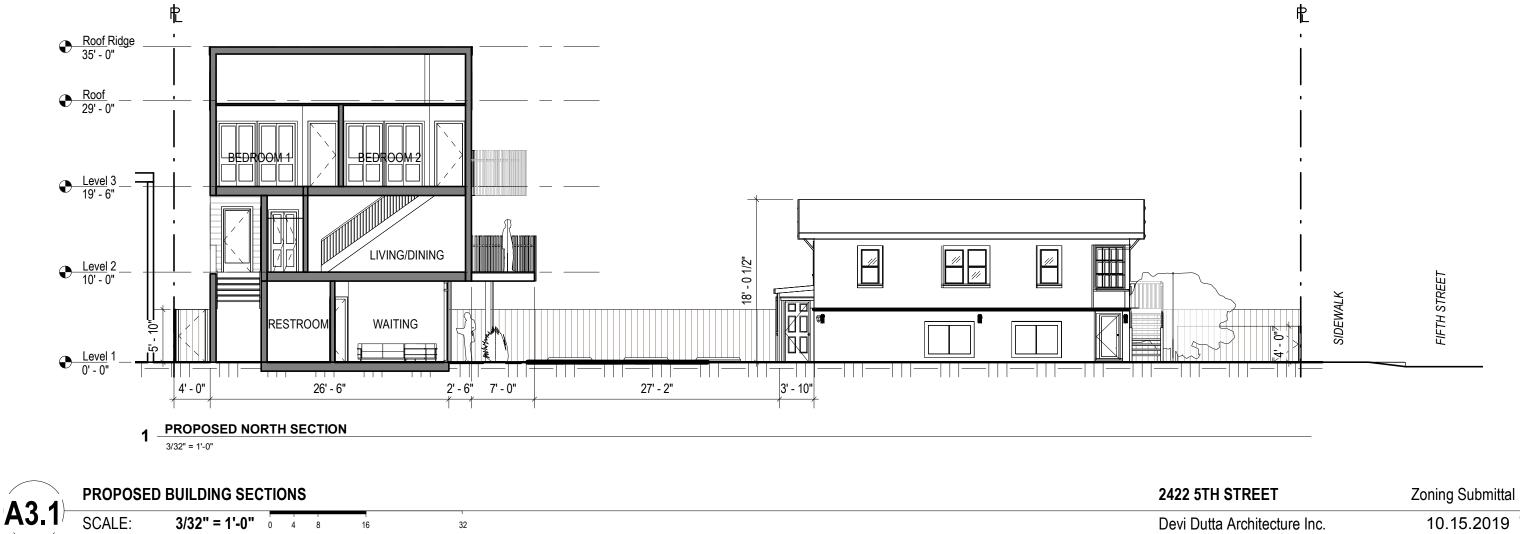
Devi Dutta Architecture Inc.



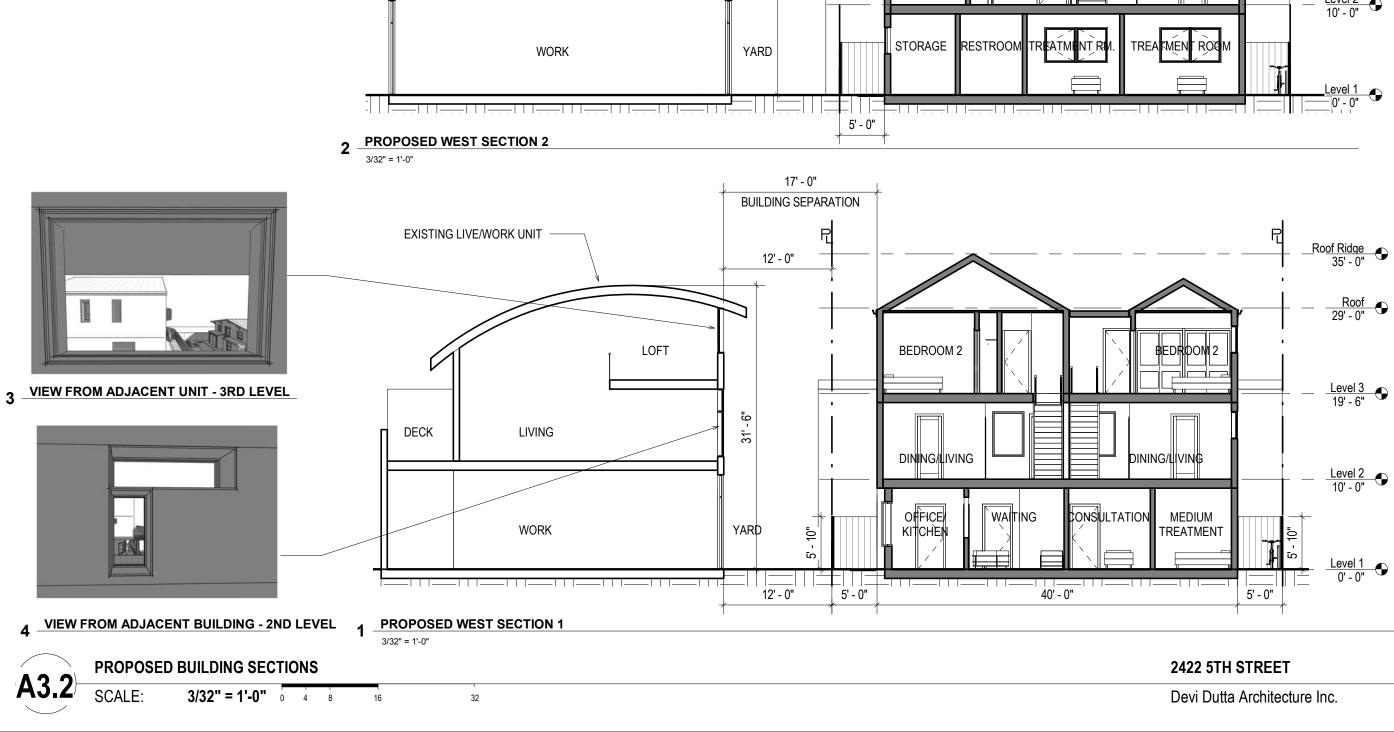


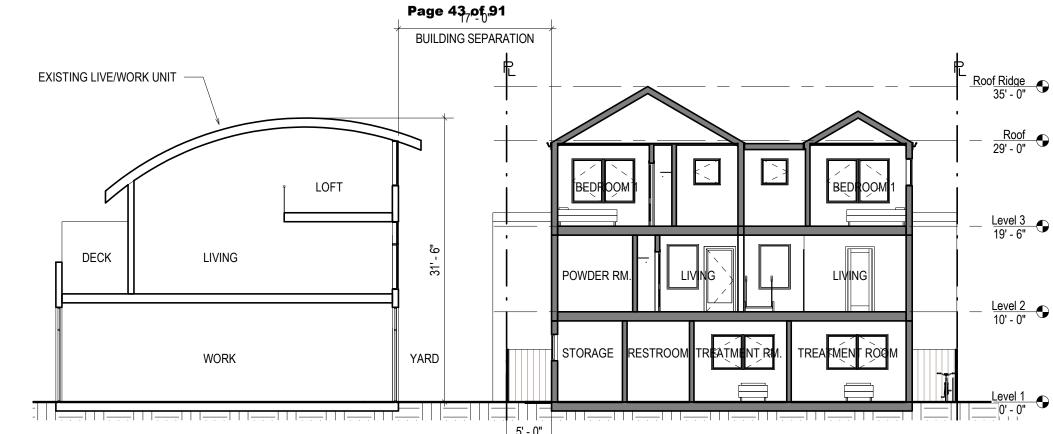
Zoning Submittal

Devi Dutta Architecture Inc.



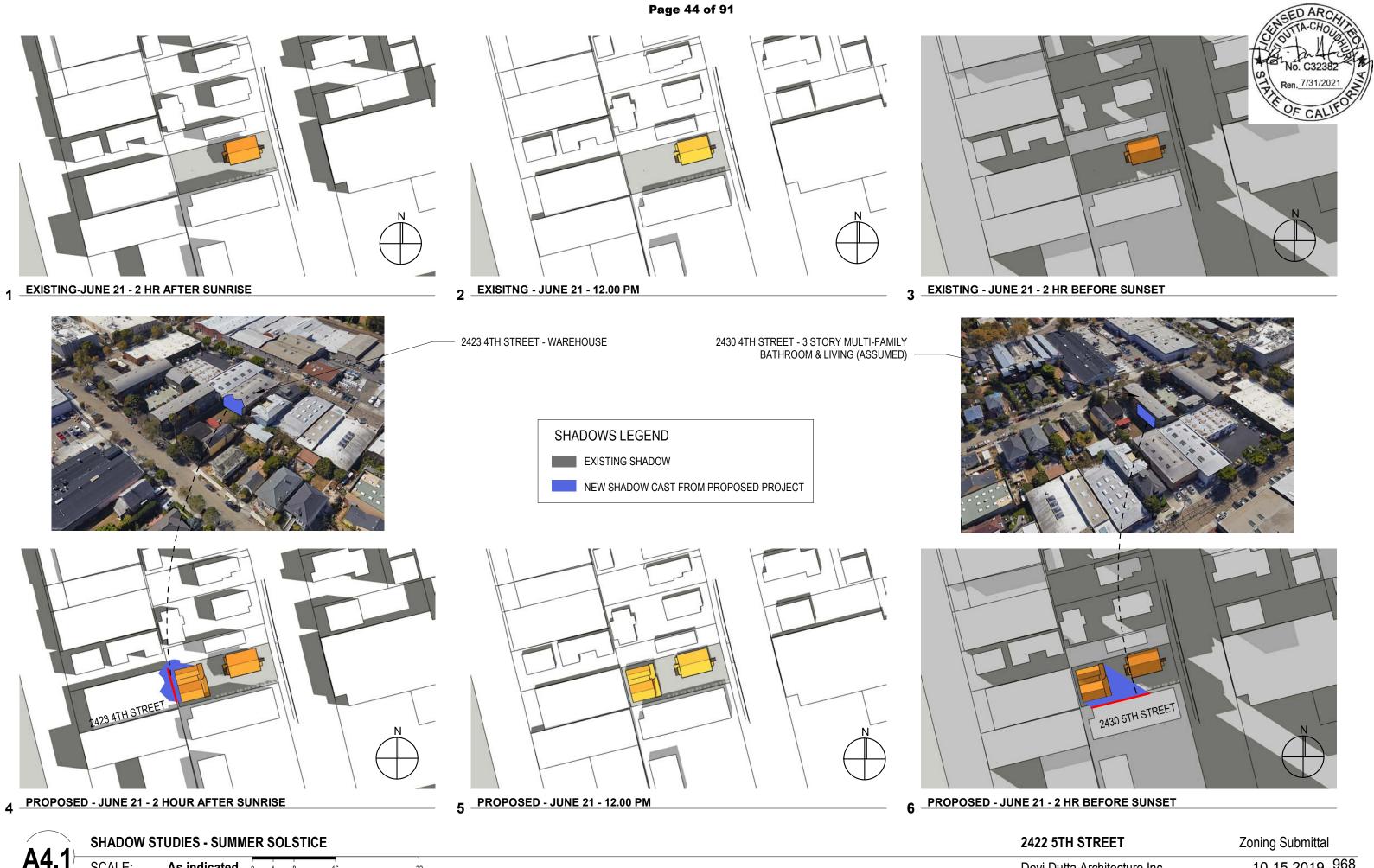








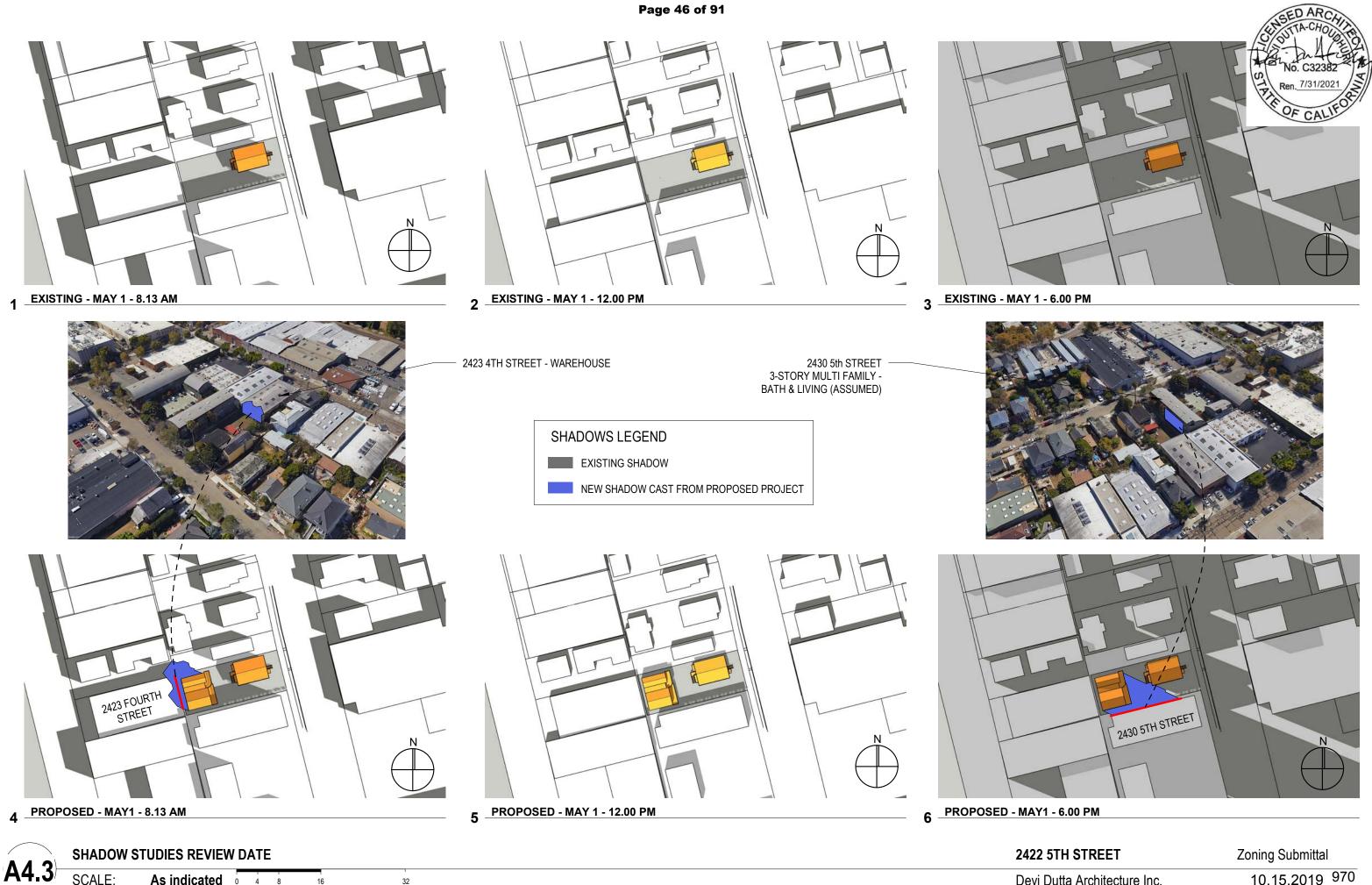
Zoning Submittal



10.15.2019 968

Devi Dutta Architecture Inc.





10.15.2019 970

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32

1 Level 1 - Open Space

3/64" = 1'-0"

A5.1

OPEN SPACE DIAGRAM



2422 5TH STREET

Zoning Submittal

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32

NTERIOR SHEATING

SEALANT & BACKER ROD

SEALANT JOINT & BACKER ROD

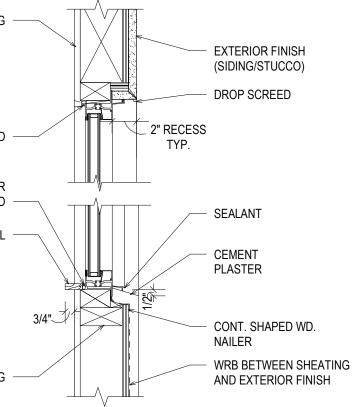
WOOD SILL

2X4 WD FRAMING

1 <u>TYPICAL NEW WINDOW DETAIL</u> 1 1/2" = 1'-0"

2422 5TH STREET Devi Dutta Architecture Inc.

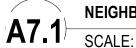




Zoning Submittal

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2422 5TH STREET

Zoning Submittal

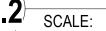
Devi Dutta Architecture Inc.

10.15.2019 973



PERSPECTIVE VIEWS

4 EAST PERSPECTIVE





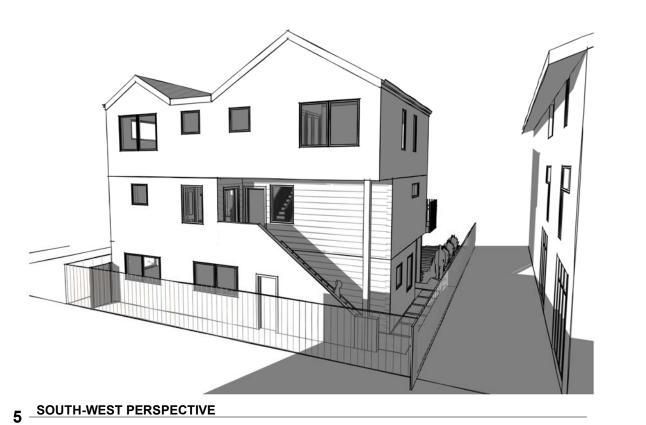


EAST ELEVATION 1





3 ENTRY PERSPECTIVE - LEFT CORNER





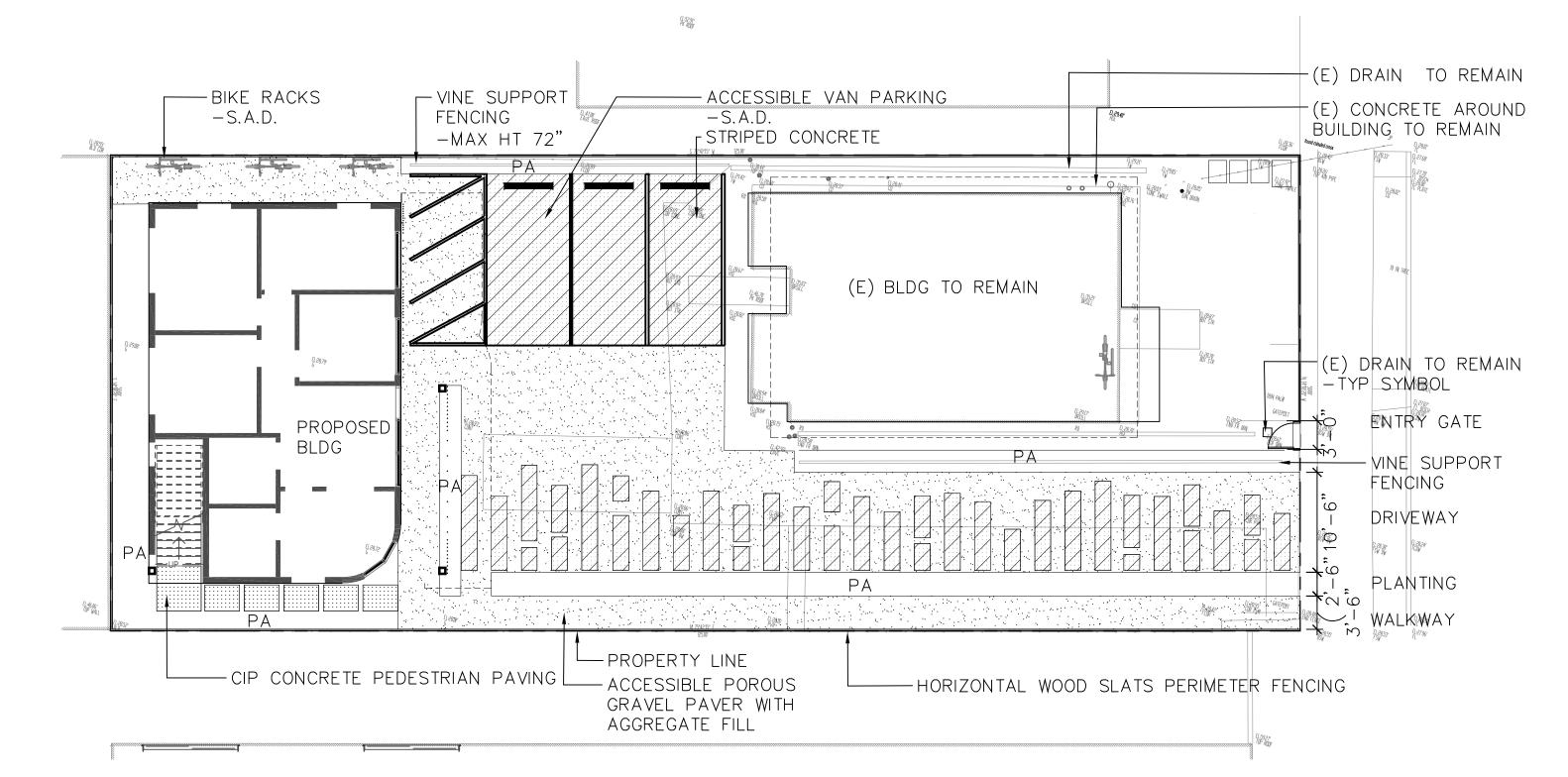


2422 5TH STREET

Zoning Submittal 10.15.2019 974

Devi Dutta Architecture Inc.

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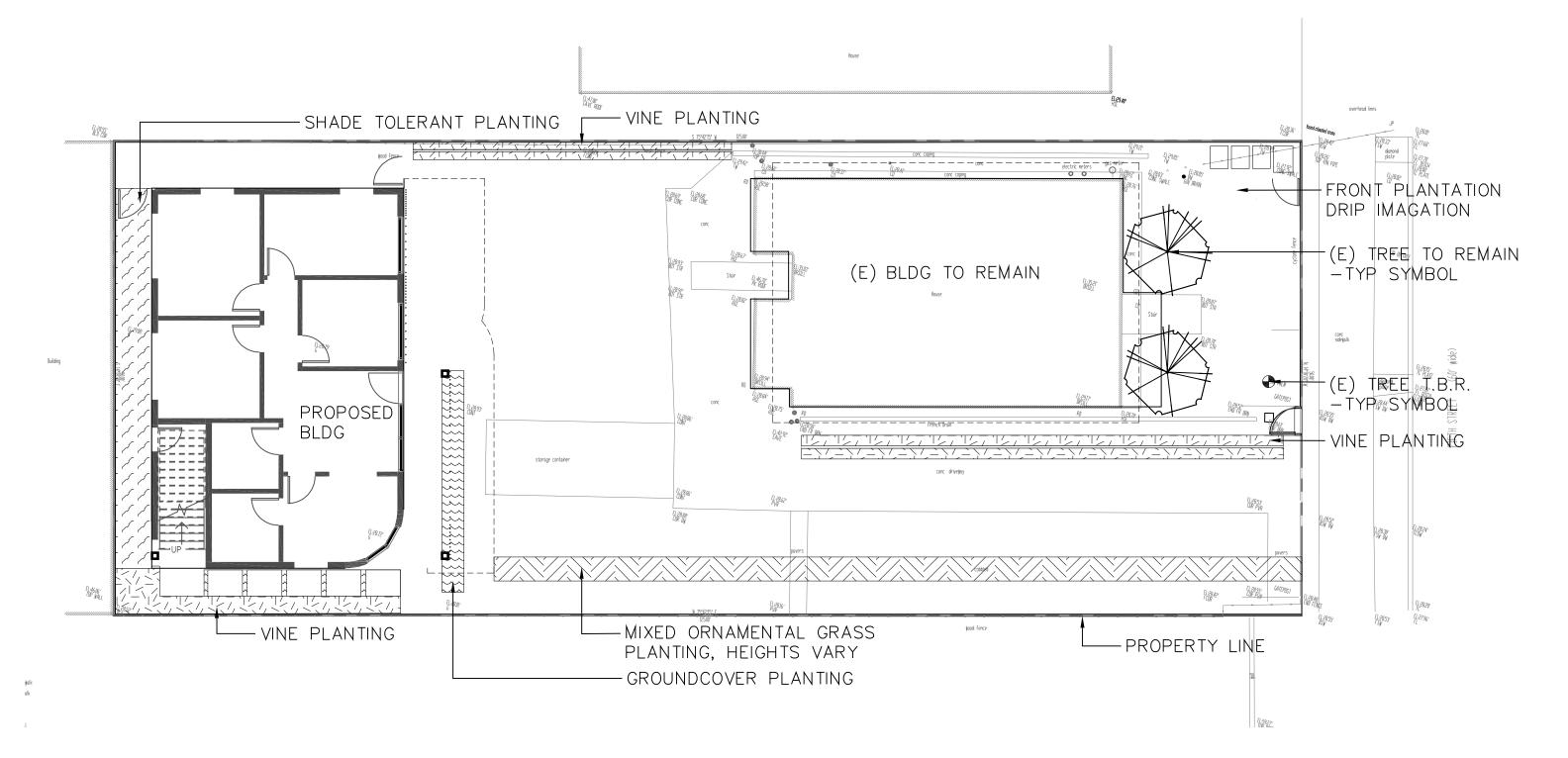


2422 5TH STREET MANTLE LANDSCAPE ARCHITECTURE

ZONING PROGRESS 08.22.2019



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2422 5TH STREET MANTLE LANDSCAPE ARCHITECTURE

ZONING PROGRESS 10.10.2019



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GRASS PLANTING Carex divulsa + Pennisetum alopecuroides



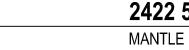
VINE PLANTING

















ZONING PROGRESS 06.19.2019



Page 54 of 91 ATTACHMENT 2

> CITY OF BERKELEY CITY CLERK DEPT 2019 NOV 19 PM 3:33

Berkeley City Council Attn: City Clerk 2180 Milvia Street, 1st Floor Berkeley, CA. 94704

November 19, 2019

Dear City Council Members,

The Redwood Tree Condominium Association (HOA) is appealing the decision made by the Zoning Adjustment Board (ZAB) on October 24th approving Use Permit, # ZP2018-0108 (2422 Fifth Street, West Berkeley). We are appealing for the reasons stated below, and are suggesting solutions in order to generate neighborhood support for the project.

Basis of Appeal:

- 1. The approval and waiver of 2 required residential parking spaces is based on an invalid parking survey that is out of date and does not accurately assess the current parking demand, or the impact of the proposed development, in the neighborhood.
- 2. The project does NOT address the affordable housing crisis in Berkeley as suggested in the application and misrepresented by the Applicants at the hearing. The project will produce two new MARKET-RATE residential units, and the vacated existing units will most likely reset to market rate when new construction is complete.
- 3. The project approved by ZAB is substantially different from the project originally proposed by the Applicants.

Detailed discussion of Appeal points:

- 1. WAIVER:
- The proposed project adds 2 market-rate rental apartments and an 840 sf medical office with four treatment rooms to an existing two-unit residential duplex. Under existing zoning codes, the proposed project is required to provide 4 residential parking spaces and 3 parking spaces for the medical office, for a total of 7 parking spaces, including one HC Van Accessible parking space.
- The project as approved provides only three parking spaces in total, shared between the residential and medical office uses.
- The approved site plan and layout of the required Handicapped Van Accessible parking space does not comply with current Accessibility codes and the approved site plan is therefore invalid.
- The Applicants propose a daytime joint ("shared") parking agreement between the residential and medical office uses and ask the City to waive a requirement for two residential spaces based on the parking survey conclusions that there is adequate available street parking capacity.

- The proposed joint parking agreement assumes that all residential parking spaces will be vacant during normal business hours. This is NOT a valid assumption in West Berkeley where many residents walk, bike or commute to work by public transportation, leaving their cars at home during the day, often on the street.
- Even with the proposed joint parking agreement, the project as approved does not provide the code required residential parking at a ratio of one space per residential unit, and will therefore create additional residential parking demand on an already crowded Fifth St.
- The conclusions of Abrams Associates parking survey and the ZAB staff approval of same are invalid because they do not address the proposed project correctly.
 - The proposed medical office indicates three treatment rooms and a "consultation" room.
 - We have consulted with a practicing medical doctor who has advised us regarding the reasonably anticipated patient/traffic flow associated with the proposed medical office.
 - We have been advised that a medical practice with 4 treatment/consultation rooms will typically see 4-7 patients per hour. Including patients waiting for appointments, it is reasonable to anticipate that the parking demand created by the proposed medical facility with be 3-5 vehicles per hours, forcing 2-4 vehicles onto Fifth Street at any given time. Fifth St. is already severely impacted by lack of parking for existing businesses and residents.
 - We are advised that in a facility with 4 treatment/consultation rooms as proposed it would not be uncommon to have one staff assistant and/or an additional practitioner in addition to the primary physician, creating additional parking demand.
 - Of the 3 provided joint spaces indicated on the site plan, one space is a dedicated Handicapped Van Accessible space (24 hours). The Applicant acknowledges that she will generally utilize one on-site parking space when on the premises, leaving only ONE offstreet parking space remaining for daytime use by patients, medical staff, and residential tenants (This assumes no additional staff at the medical office). Any residents who need daytime parking, as well as a significant portion of the anticipated patient load, will be forced onto the street during business hours.
 - Since Dr. Gold plans to maintain her existing medical practice in San Francisco, it is reasonable to assume that the Applicant may add another practitioner to expand her practice, or perhaps rent space to an independent practitioner for his/her own similar practice, leading to an even greater parking shortage. It is conceivable that 4 patients, 2 practitioners, and 4 residential tenants (a total of 10 persons) could be vying for two parking spaces (one space if Dr. Gold is also parked on the premises).
 - It is therefore likely that, in practice, there will be 0-1 parking spaces (not including the designated HC Van Accessible space) available on-site during business hours, forcing a minimum of 2-4 vehicles onto the street at any given time. The Abrams parking study does not correctly account for the reasonably anticipated medical office use.

Tuesday, November 19, 2019 APPEAL, USE PERMIT #ZP2018-0109 (2422 Fifth St.)

- The conclusions of Abrams Associates parking survey are invalid as they are based on an incorrect description of the project.
 - The Abrams Associates letter dated October 2018 states that the project adds two new residential units to one existing residential unit (total residential units = 3). There are in fact two existing residential units on site and the proposed project adds two additional residential units, resulting in a total of 4 residential units on the completed site.
- The conclusions of Abrams Associates parking survey are invalid because they do not account for new development projects currently under construction or in the pipeline.
 - Street parking is already severely impacted on Fifth St. and is generally at or over capacity due to business employee and customer vehicles, overflow residential parking due to inadequate on-site residential parking in the neighborhood, and commercial/delivery traffic (large vans and semi-tractor trailers) associated with manufacturing and distribution businesses on the surrounding blocks.
 - Fifth St. will continue to become increasingly congested in the future due to development projects already in the pipeline. These include the 14-unit live/work residential building currently under construction at the corner of 5th and Channing, a reconfiguration of the existing industrial/distribution building at the corner of Dwight Way and Fifth St. (2431/2424 Fifth), to multi-tenant use (light manufacturing and wholesale cannabis distribution), a new restaurant at 2326 Fifth, and several other proposed developments anticipated or already in the pipeline along Fifth Street.
- The parking survey prepared by Abrams Associates in March 2018 (updated in October 2018) is out of date and consists of insufficient data to properly assess the actual parking demand in the neighborhood, which has continued to increase rapidly in the 18 months since the original survey was prepared.
 - The survey and its conclusions are based on only four periods of observation over two days (October 17-18, 2018), made during the periods of 1-2pm and 5-6pm. The 1-2pm period is not representative of actual daily parking demand in the area as it falls within the typical lunch "hour" for businesses in the area.
 - The survey does not address the significant commercial parking demand in the immediate area during business hours. Fifth Street between Dwight and Bancroft is often clogged with double parked commercial vehicles due to severe lack of existing off-street parking capacity relative to existing parking demand.
- SOLUTIONS:
 - Redesign the project so that it can accommodate the its own code required off-street parking requirements within the site.
 - Lease additional parking spaces from an adjacent business use with excess or underutilized parking through a LEGITMATE (contractual) shared parking agreement with a nearby business. This should be a condition of approval for any proposed development project that cannot accommodate its own parking requirements on-site.

4. AFFORDABLE HOUSING:

- The four rental units proposed for this project are NOT AFFORDABLE housing units and will not contribute to affordable housing stock in Berkeley.
 - Only one of the units in the duplex on site is currently rented, and the applicants indicated at the hearing that the remaining tenants will vacate when construction begins. The rent on that unit, therefore, will likely reset to market rate, as will the rent on the second existing unit in the duplex when it is rented (currently vacant and being used by the Applicants for storage).
 - The two new units being constructed, while subject to future rent control, will most likely be rented at current market rate, between \$3,500 and \$4,000 per month.
- The Applicants stated at the hearing that by building additional housing units they are contributing to addressing the Berkeley housing availability and affordability issues, implying (and apparently convincing some ZAB commissioners) that they were providing affordable housing units. This is not the case! The newly constructed residential units (and probably the existing units) will be MARKET-RATE rental units, NOT "Affordable" units as defined by law.

5. PROPOSED PROJECT:

- The proposed project is substantially different than the project originally proposed.
- The project has an additional residential unit (total 4 units) and has less on-site parking than proposed in the original application.
- Adjacent neighbors have valid concerns related to the proximity and size of the proposed new building, particularly to the design (materials, colors, windows, etc.) south elevation which is in close proximity to existing Redwood Tree Studio units.
- SOLUTIONS:
 - Approval should be conditioned on the Applicants working with the neighbors to address and mitigate material, color, and privacy concerns associated with the proximity of the new building to adjacent buildings immediately to the south and north of the proposed project.

Conclusions:

A quick survey of the 4th and 5th street neighborhood north of Dwight Way and south of Channing Street yielded 28 signatures from concerned residents, business owners, and tenants who believe that the parking situation is already untenable. [See attached signature pages.] This neighborhood is changing very, very rapidly and ignoring or understating the concerns of its residents and business operators would, we respectfully submit, be unfair.

We welcome the Golds as neighbors and are happy to have Dr. Gold's practice, as well as new residential units, added to the neighborhood. However, we believe that there is additional work to be done in order to create the best possible project for the Applicants and the neighborhood.

We urge the Council to acknowledge the concerns of the surrounding neighborhood by overturning the ZAB approval and sending the proposed project back into the planning process the concerns expressed above and create a more compatible project.

Respectfully submitted:

Redwood Tree Studios HOA

22 HOA presided

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I live within 300 feet of the proposed building project at 2422 Fifth Street in Berkeley, California. I support the appeal filed by the Redwood Tree Homeowner's Association.

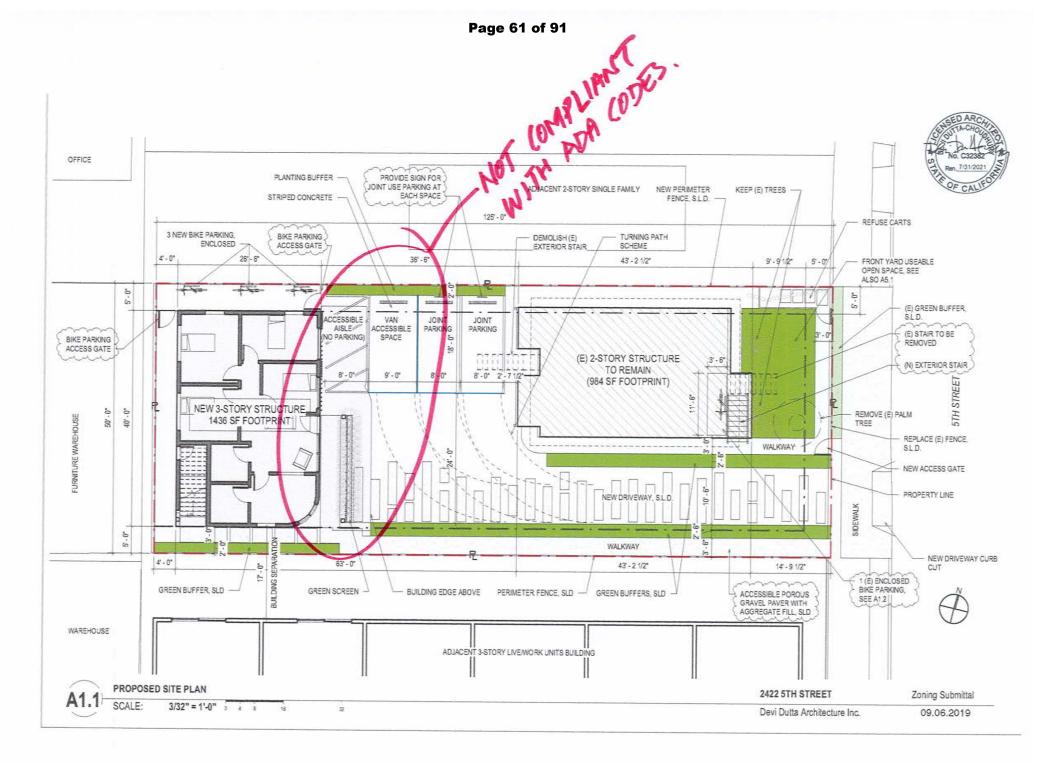
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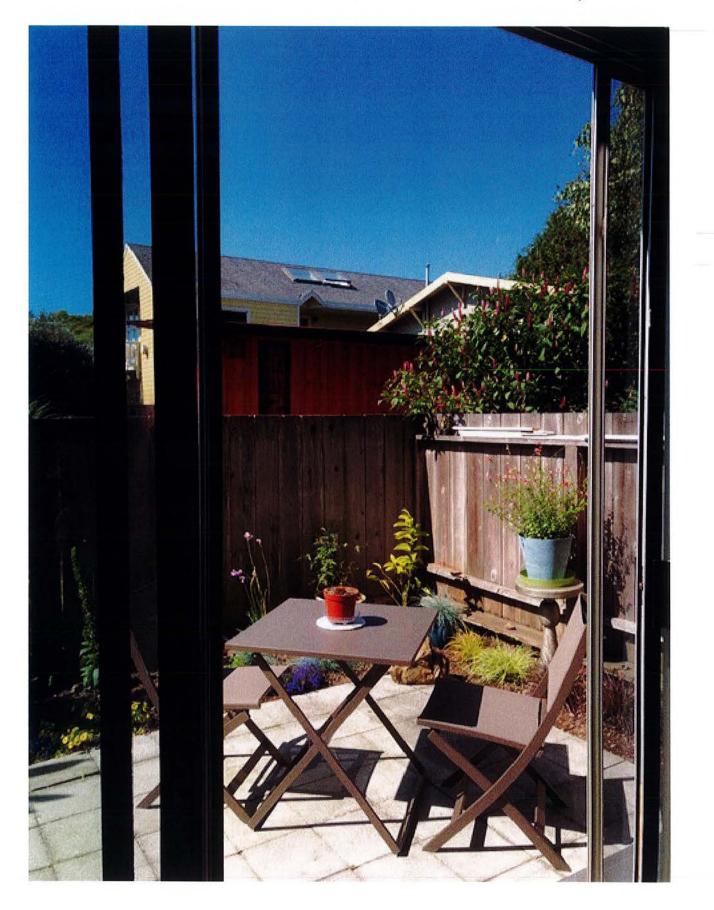
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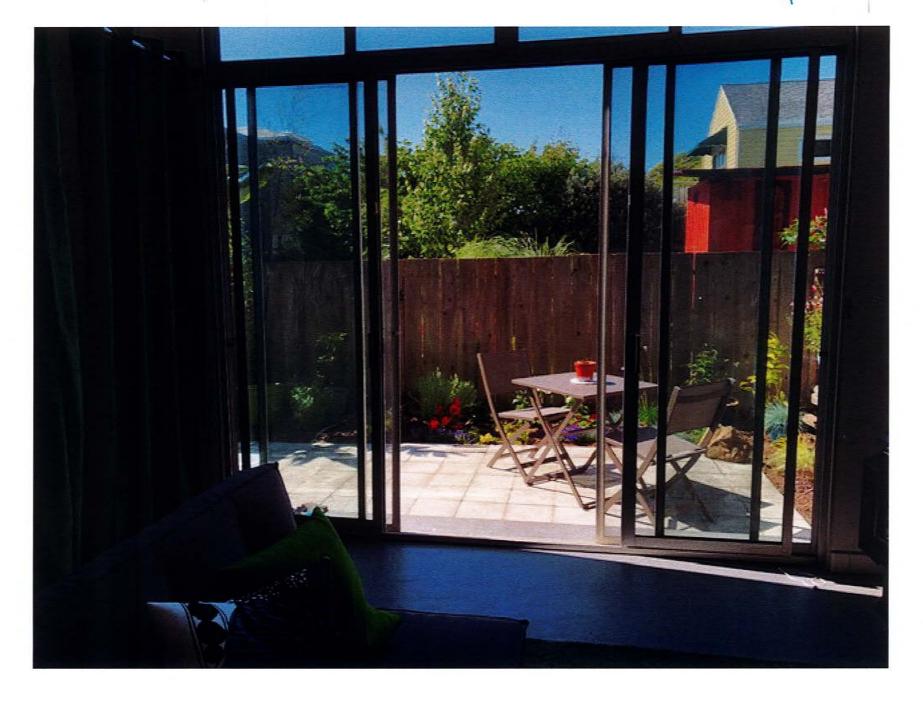




Page 1 of 7 986

2430-5th. Street, Suite E

Ground Floor Patto Facing North

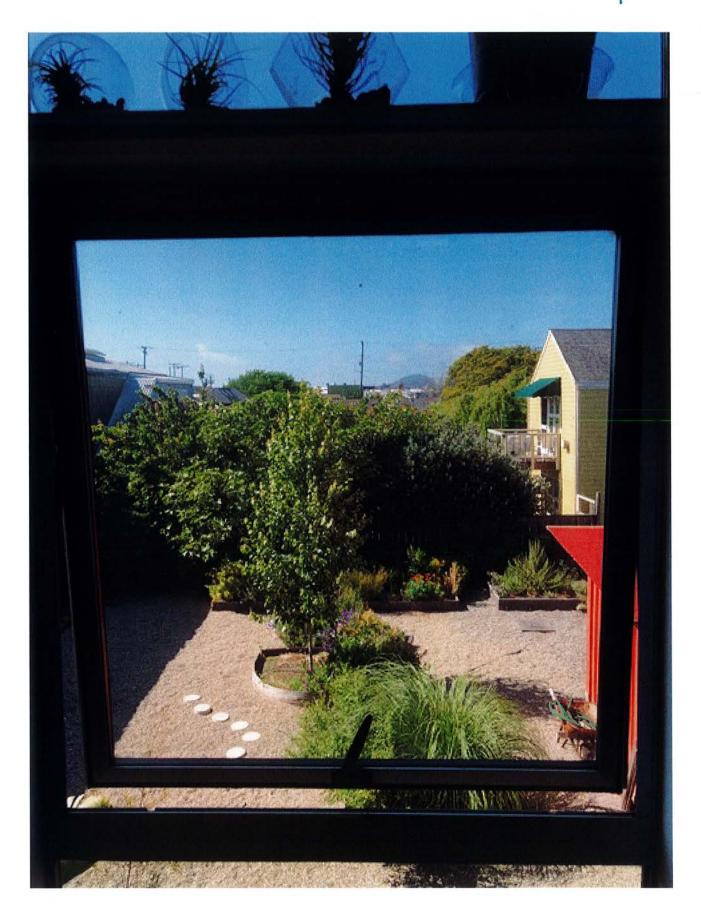


Page 2 of 7

2430-5th Street, Suite E

Page 64 of 91

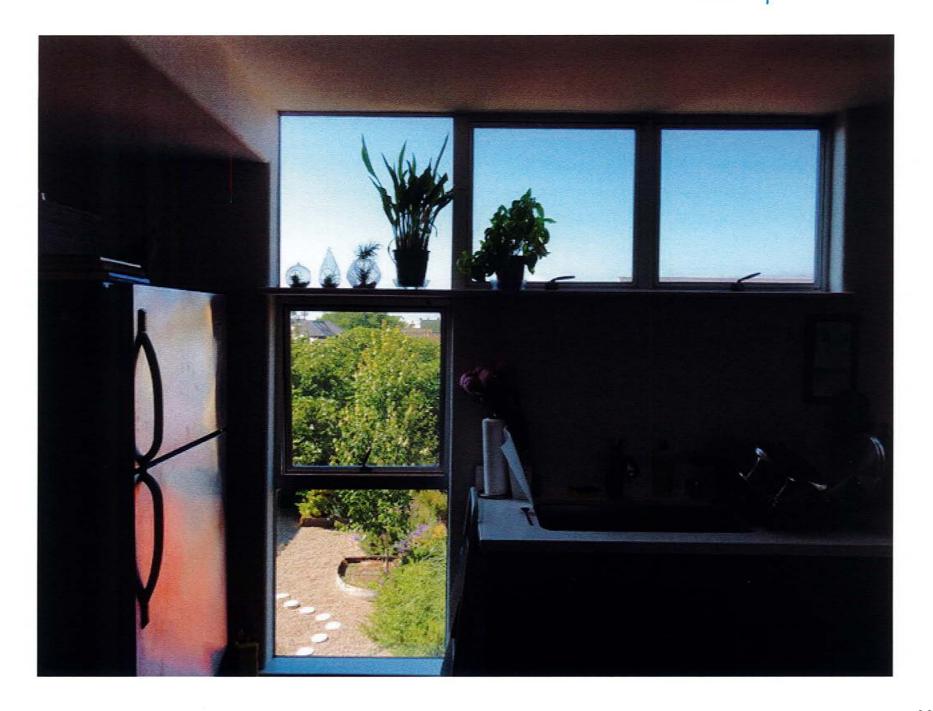
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Page 3 of 7

2430-5th Street, Suite E

2nd Floor-Kitchon Windows Facing North



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2430-5th Street, Suite E

3rd Floor Bedroom Window Facting Worth



Page 5 of 7

2430-5th. Street, Suite E

3nd Floor Bedroom Window Factory Notth



2430-544. Street, Swite E

3rd Floor Bedroom Window Facing North





March 21, 2019

Devi Dutta-Choudhury Devi Dutta Architecture, Inc. 928 Carleton Street Berkeley, CA 94710

Re: On-Street Parking Occupancy Surveys for the Proposed Project at 2455 5th Street in the City of Berkeley

This report summarizes the results of the parking surveys for the proposed development to be located at 2422 Fifth Street in the City of Berkeley. The proposed project involves constructing two additional apartments on the site along with 929 square feet of medical office space. The residential area would include 2,170 square feet resulting in a total of 3,099 square feet for the building. The purpose of this report is to support a request to waive the requirement for 2 additional residential parking spaces as per Section 23E.84.080.F of the Berkeley Municipal Code which states the following: *"If the Zoning Officer or Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units."* The project is also requesting to joint park 3 commercial and 2 residential parking spaces under an amended use permit as per Section 23E.28.060 of the Berkeley Municipal Code.

On-Street Parking Surveys - In order to evaluate the local parking situation on-street parking occupancy surveys were conducted based on the standard guidelines specified by the City of Berkeley. This survey included a detailed inventory of all on-street and public off-street parking within one block of the project site. The study involved a block-by-block survey of the number and types of spaces and the current parking occupancy conditions on weekday afternoons and weekday evenings.

The surveys were conducted on Wednesday October 17, 2018, Saturday, March 16, 2019, Sunday March 17, 2019, and Thursday March 21, 2019. The surveys indicated there are approximately 153 on-street parking spaces located within about one block of the project site. The weekday surveys found the highest occupancy levels on a Thursday during the afternoon between 1:00 and 2:00 PM. At this time there were about 129 spaces (84%) that were occupied, and about 24 spaces available. During the early evening between 5:00 and 6:00 PM, about 86 of the 153 on-street parking spaces were occupied, which is an occupancy rate of 56%, with about 67 available on-street spaces. During the late evening between 8:00 and 9:00 PM, about 97 of the 153 on-street parking spaces were occupied, which is an occupancy rate of 63%, with about 56 available on-street spaces. The Saturday and Sunday surveys were very

Page 2 of 2 – 2455 5th Street Parking Surveys



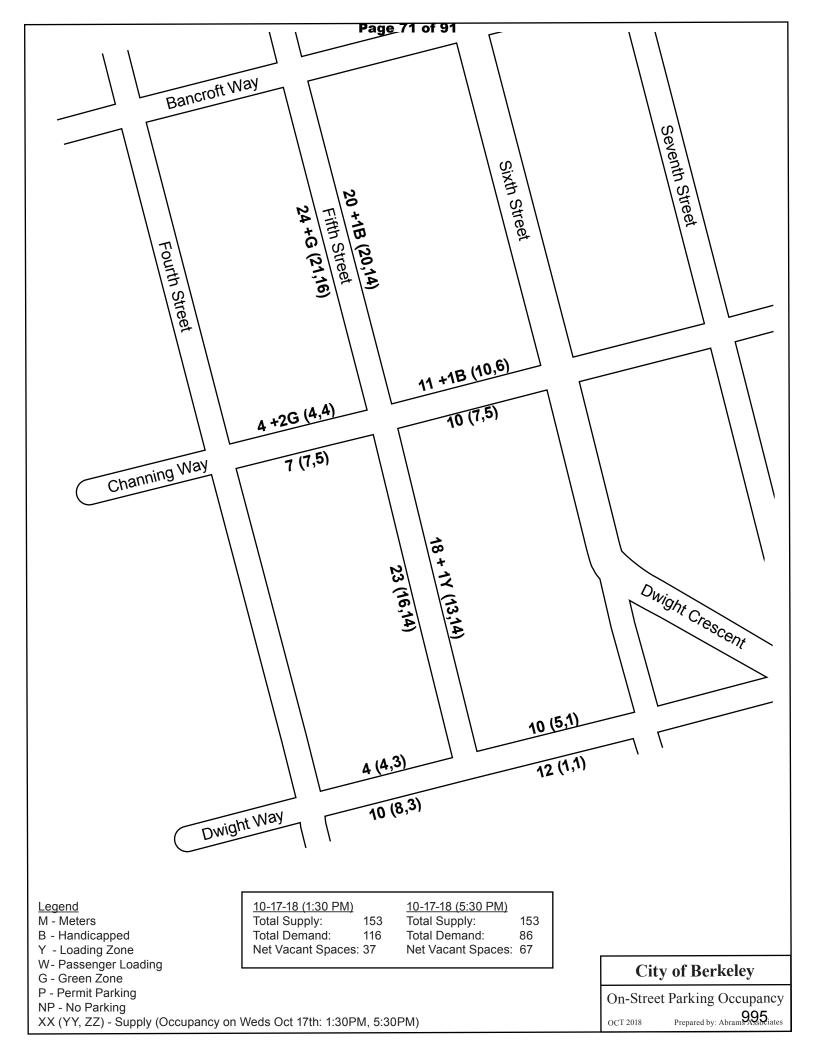
similar to each other and had lower occupancy levels than the weekday surveys. Those surveys found the highest weekend occupancy levels were during the afternoon on Saturday between 1:00 and 2:00 PM when there were about 64 spaces (42%) that were occupied, and about 89 spaces available. During the evening between 5:00 and 6:00 PM, about 54 of the 153 on-street parking spaces were occupied, which is an occupancy rate of 35%, with about 99 available on-street spaces. The detailed survey results are attached to this report.

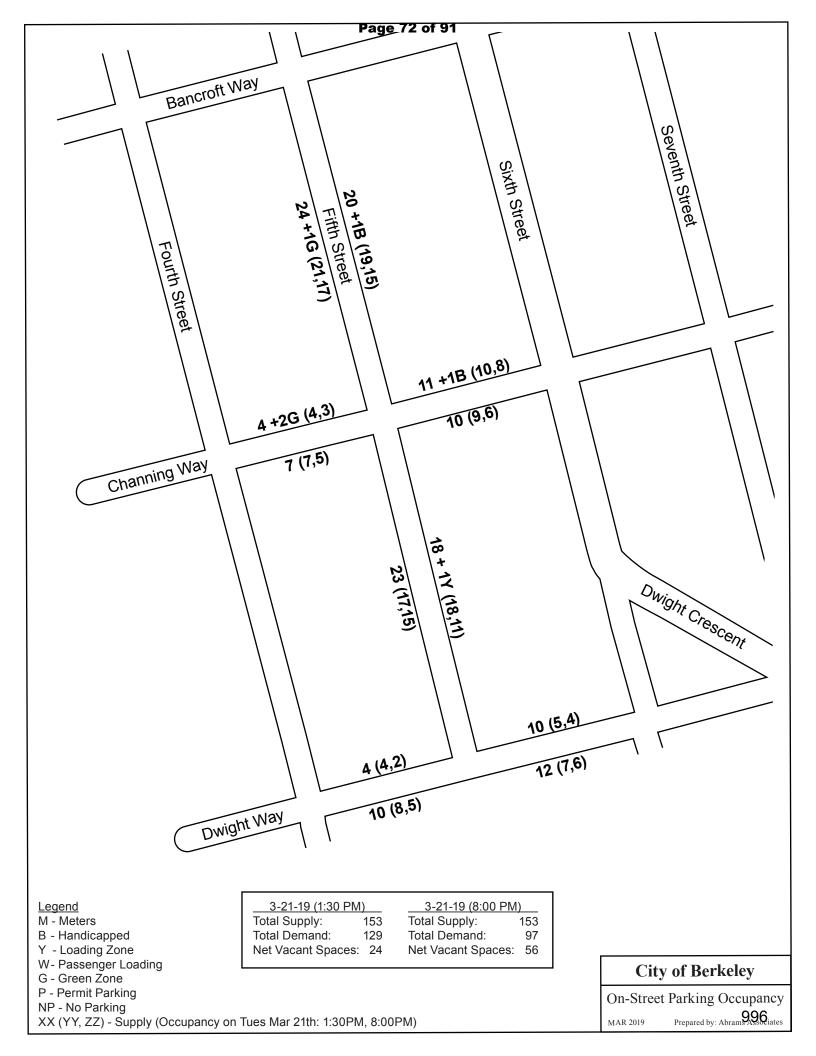
Please don't hesitate to contact me if you have any questions or need addional information.

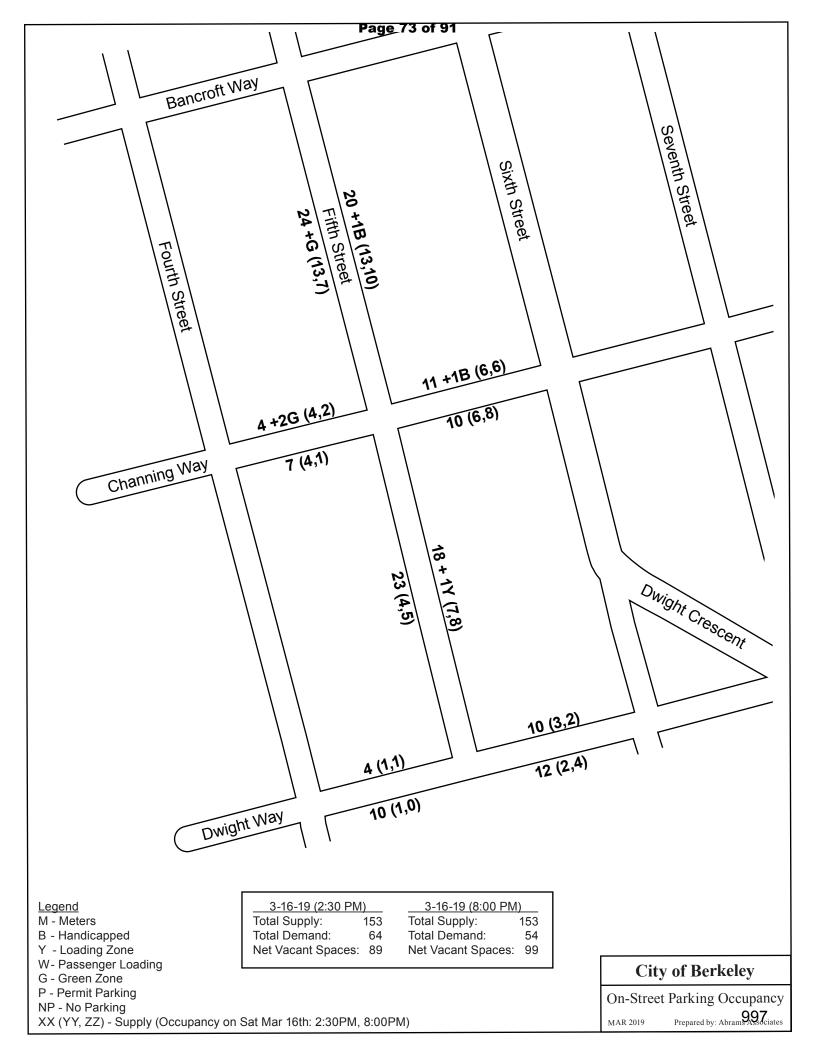
Sincerely,

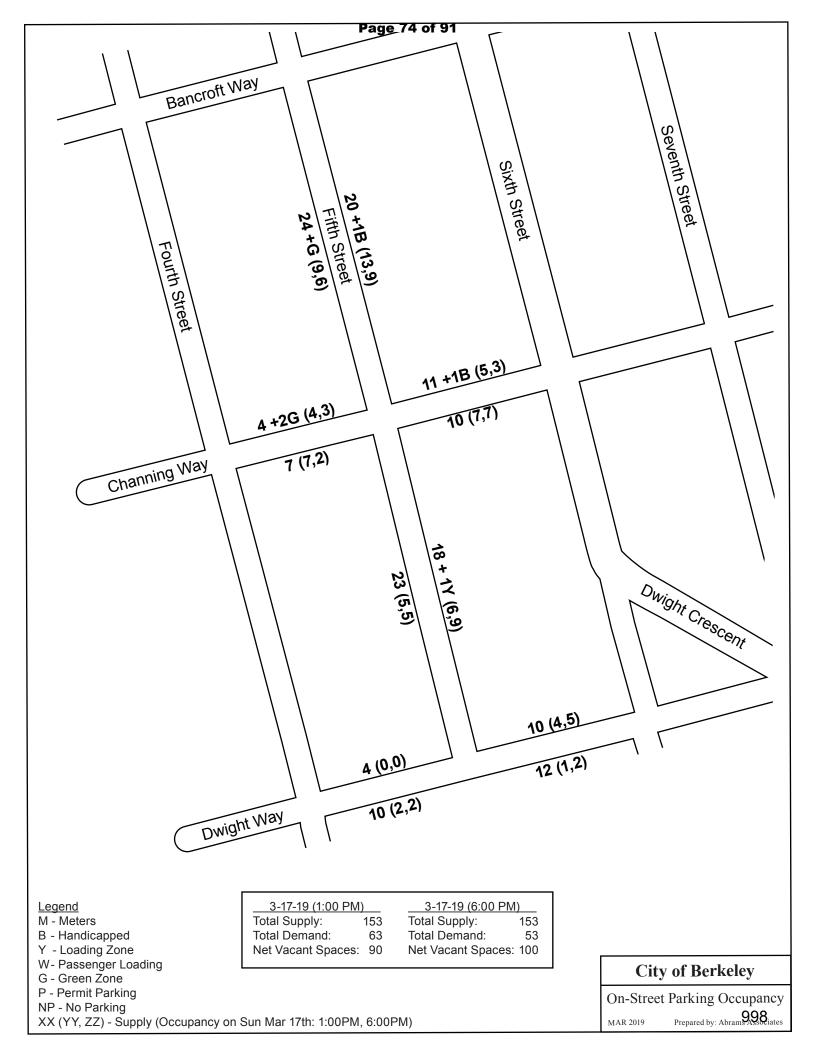
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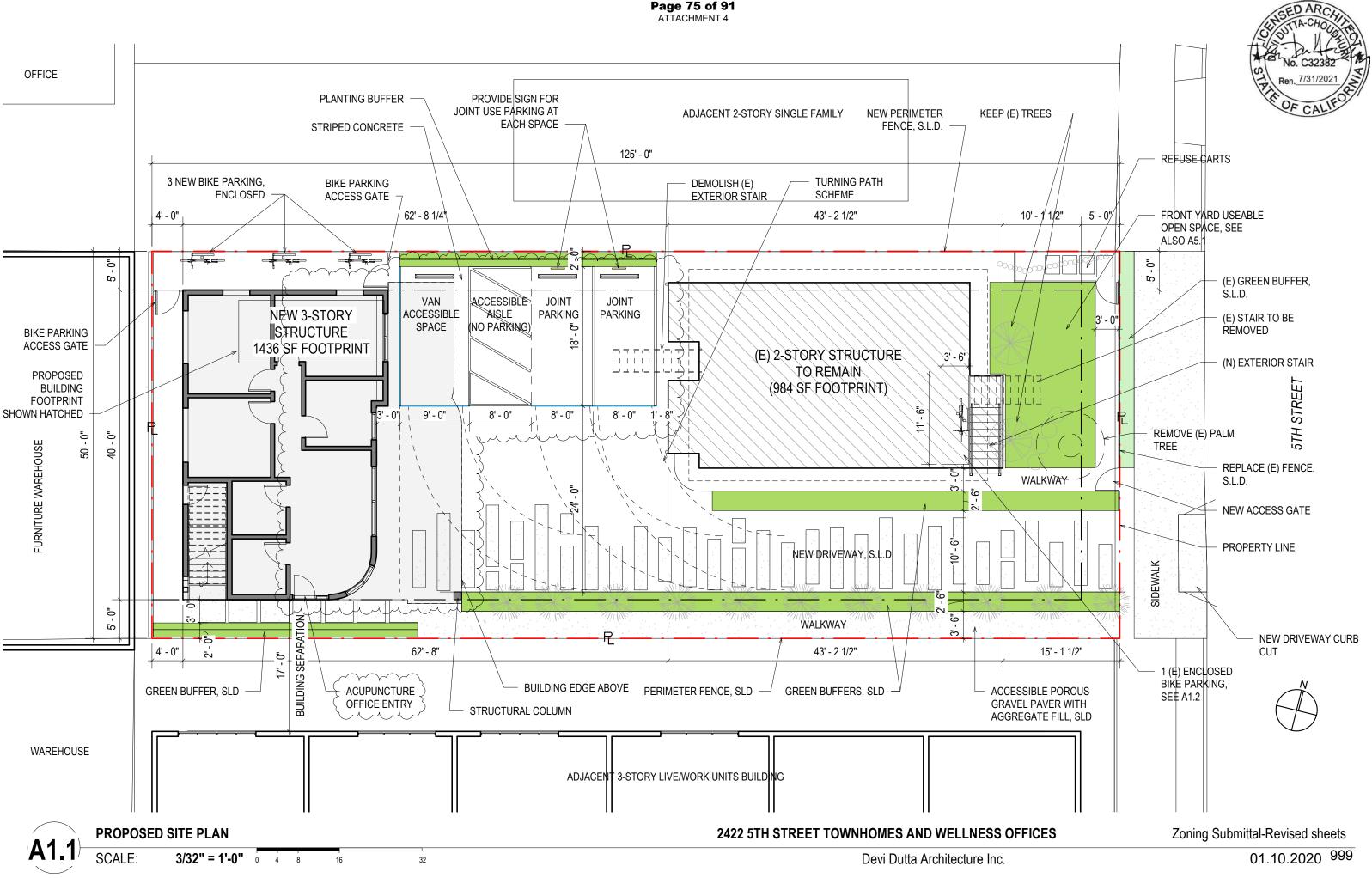
Stephen C. Abrams President, Abrams Associates T.E. License No. 1852

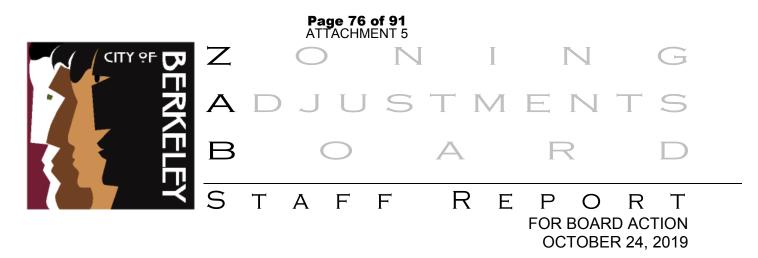












2422 Fifth Street

Use Permit #ZP2018-0108 to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces.

I. Background

A. Land Use Designations:

- General Plan: MU Mixed Use
- Zoning: MU-R Mixed Use Residential District

B. Zoning Permits Required:

- Administrative Use Permit under BMC 23E.28.060 to allow a joint parking agreement to satisfy the off-street parking requirement;
- Administrative Use Permit under BMC 23E.84.030.A to establish a new medical office space that is 5,000 square feet or less;
- Use Permit under BMC 23E.84.030.A to establish a mixed-use building;
- Administrative Use Permit under BMC 23E.84.030.A to create two new dwelling units; and,
- Use Permit under BMC 23E.84.080.F to waive two residential parking spaces.
- **C. CEQA Determination:** Categorically exempt pursuant to Sections 15303 (New Construction or Conversion of Small Structures) and 15332 (In-Fill Development Projects) of the CEQA Guidelines.

D. Parties Involved:

- Applicant: Devi Dutta Architecture, 928 Carleton Street, Berkeley, CA 94710
- Owner: Anna and Carl Gold, 2422 Fifth Street, Berkeley, CA 94710

Figure 1: Zoning Map

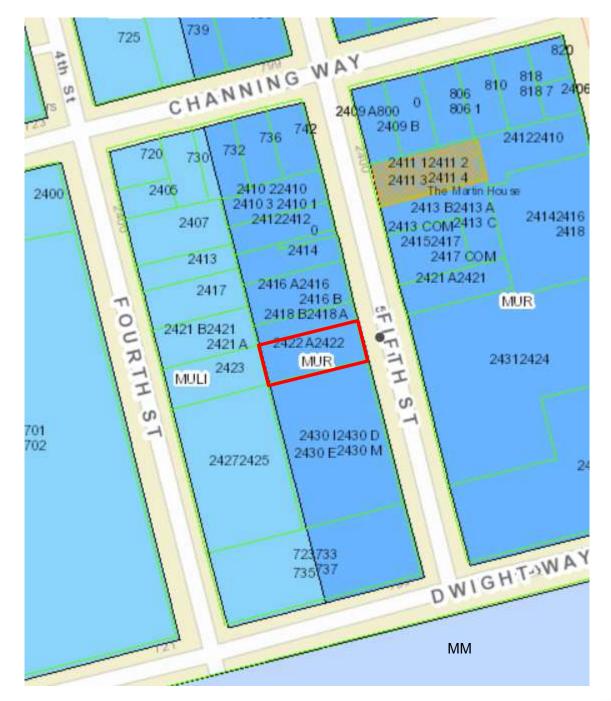
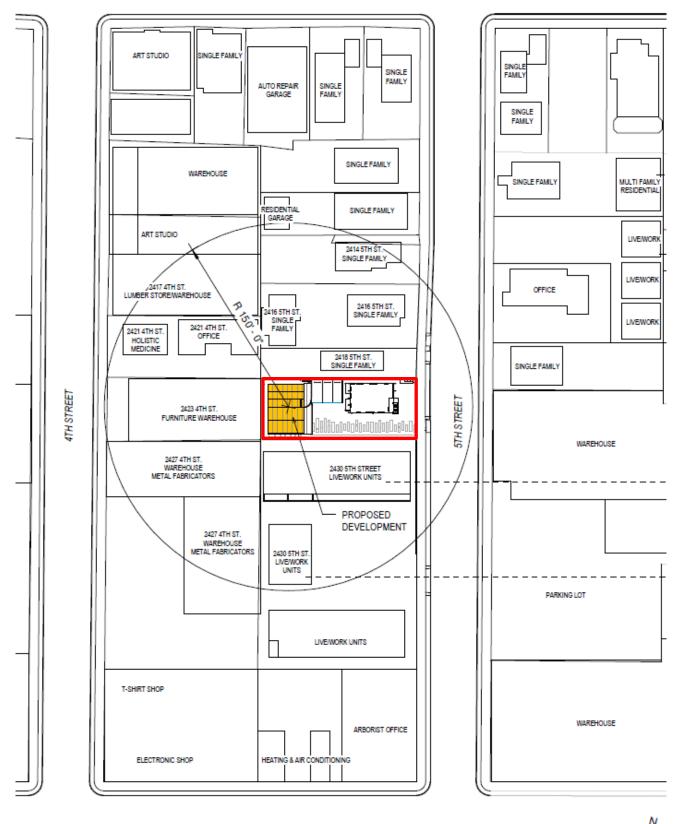




Figure 2: Surrounding Uses



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Figure 3: Proposed Site Plan

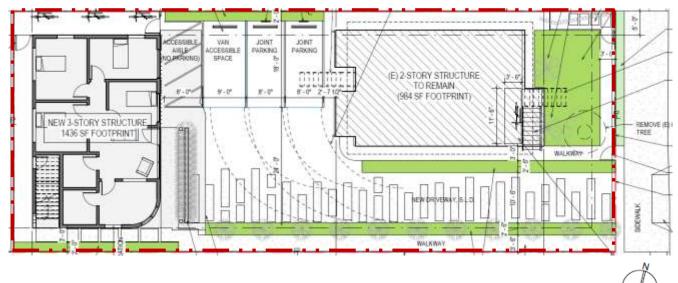


Table 1: Land Use Information

Location		Existing Use	Zoning District	General Plan Designation	
Subject Property		Duplex			
Surrounding Properties	North	Single-Family Dwelling		Mixed Use (MU)	
	East	Single-Family Dwelling/Warehouse	MU-R		
	South	Live/Work			
	West	Warehouse			

Table 2: Special Characteristics

Characteristic	Applies to Project?	Explanation
Coast Live Oaks	No	There are no oak trees on the project site.
Creeks	No	The project site is not within a creek buffer.
Green Building Score	Yes	The applicant submitted a GreenPoint Rated checklist for the project. The minimum score required is 50 points, and the checklist indicates a score of 66 out of a possible total of 374 points for the dwelling.
Historic Resources	No	The project does not propose the demolition or substantial alteration of a main building.
Housing Accountability Act (Govt. Code 65589.5(j))	No	The project is a "housing development project" consisting of residential units only, but requests modifications to development standards. Therefore, the HAA findings <i>do not</i> apply to this project. See Section V.B for discussion.
Rent Controlled Units	Yes	According to the Rent Stabilization Board (RSB), the two existing dwelling units (front duplex) are subject to BMC Chapter 13.76 (Rent Stabilization and Eviction for Good Cause Program). These two dwelling units are proposed to remain.

Seismic Hazards (SHMA)	Yes	The project site is located in an area susceptible to liquefaction, as defined by the State Seismic Hazards Mapping Act (SHMA). A geotechnical report dated July 23, 2018, was submitted for the project, and was determined to be in compliance with the SHMA. The report was peer reviewed by the City Geotechnical Consultant, who made conditions of approval recommendations for geotechnical plan review and construction inspections to be performed by the geotechnical consultant prior to final occupancy. These recommendations have been included as conditions of approval #13 and #41.	
Soil/Groundwater ContaminationMaNo14Ma		The project site is located within the City's Environmental Management Area. A Phase I Environmental Assessment dated June 14, 2018, was submitted. The report was reviewed by the City Toxics Management Division, and no further study was required. Standard Conditions for toxics are applicable to the project.	

Date	Action
May 24, 2018	Application submitted
June 22, 2018	Application deemed incomplete
July 24, 2018	Revised application submitted
August 10, 2018	Application deemed incomplete
November 7, 2018	Revised application submitted
December 7, 2018	Application deemed incomplete
May 8, 2019	Revised application submitted
June 4, 2019	Application deemed incomplete
July 19, 2019	Revised application submitted
July 29, 2019	Application deemed incomplete
August 22, 2019	Revised application submitted
September 6, 2019	Application deemed complete
October 8, 2019	Public hearing notices mailed/posted
October 24, 2019	ZAB hearing

Table 3: Project Chronology

Table 4: Development Standards

MU-R Standards BMC Sections 23E.84.070- 080		Existing Conditions (Front Duplex)	Proposed Rear Building	Proposed Total for Parcel	Permitted/ Required Total for Parcel
Lot Area (sq. ft.)		6,250	n/a	6,250	n/a
Gross Floor Area (sq. ft.)	Residential	1,670	2,170	3,840	9,375
	Commercial (Medical Office)	0	967	967	n/a
FAR		0.27	n/a	0.77	1.5 max. ¹
Dwelling Units		2	2	4	5 max. (1,250 sf min./du)
Building Height	Average	16'-3"	32'-0"	32'-0"	n/a
	Maximum	18'-1"	35'-0"	35'-0"	35' max.
	Stories	2	3	3	3 max.
	Front	19'-0"	n/a	19'-0"	5' min.
	Building Separation	n/a	36'-6"	36'-6"	12' min.
Building Setbacks	Rear	67'-0"	4'-0"	4'-0"	0' min.
	Left Side	22'-0"	5'-0"	5'-0"	0' min.
	Right Side	4'-0"	5'-0"	4'-0"	5' min. (10% of 50' width) ²
Lot Coverage (%)		16	23	39	n/a
Usable Open Space (sq. ft.)		> 3,000	Unit 1: 184 <u>Unit 2: 153</u> Total: 337	Fr. Duplex: 308 Unit 1: 184 <u>Unit 2: 153</u> Total: 645	600 min. (150 per du)
Parking	Residential	2	0	2	4 min. (1 per du)
	Commercial	0	3	3	3 min. (1 per 300 sf)
	Total	2	3	5 (3 spaces w/ joint parking)	7 min.

¹ Buildings in which at least 50% of the floor area is used for residential space and/or for live/work space may have a FAR not to exceed 1.5.

² If the side or rear of a lot abuts or confronts either a property with one or more dwelling units or a property situated in an R District, the side or rear yard shall be either ten feet, or 10%, whichever is less, of the respective width or depth of the lot.
 = UP to waive 2 residential parking and AUP to establish joint parking on 3 parking spaces for 3 commercial and 2

residential parking.

II. Project Setting

A. Neighborhood/Area Description: The subject site is located on the west side of Fifth Street, in a mixed-use neighborhood that consists of a mixture of warehouses, offices, live/work, and single-family and multiple-family dwellings. Parcels in the immediate neighborhood are primarily developed with one- and two-story buildings, with threestory, live/work developments immediately adjacent and south of the site and northeast of the site on Fifth Street. (See Figure 2: Surrounding Uses.)

The site is 4-1/2 blocks south of the University Avenue commercial corridor and 6 blocks west of the San Pablo Avenue commercial corridor (both areas in the C-W District). Both University Avenue and San Pablo Avenue are well served by transit bus lines. The site is approximately 2.1 miles from both the Downtown and Ashby BART stations.

B. Site Conditions: The subject lot is rectangular, with a 50' front along Fifth Street and 125' depth, and is generally flat. The lot is currently occupied by a two-story, 1,670-square-foot, duplex on the front half of the parcel, and a shipping container used for storage.¹ A use permit (#A1627) was approved in 1989 to convert the single-family dwelling that was constructed 1920, into a duplex. Both units in the existing duplex have been determined by the Rent Stabilization Board (RSB) to be subject to rent control. The duplex units would remain. The entry stair to the upper unit would be rebuilt to open to the south. (See Figure 3: Existing Site Plan.)

III. Project Description

The applicant proposes to remove the shipping container and construct a 3,137-squarefoot, three-story, 35'-0"-tall (maximum height), mixed-use building on the rear of the parcel. The building would contain 967 square feet of medical office space on the ground floor and two, side-by-side, two-level dwelling units (Unit 1 - 1,070 square feet, Unit 2 - 1,100 square feet) on the second and third floors. The proposal requests a reduction in the residential parking requirement from four to two spaces, and would provide three offstreet parking spaces with a joint use agreement between the medical office (three spaces required) and residential uses (two spaces required after reduction).² The duplex would remain as-is, except that the entry stair to the upper unit would be rebuilt to open to the south in order to meet usable open space requirements. (See Figure 3: Proposed Site Plan; see Attachment 1 for the full set Project Plans.)

¹ The shipping container is an unpermitted, illegal structure which must be removed or legalized, regardless of whether this use permit is approved.

² The original application proposal involved the conversion of the upper unit in the existing duplex into medical offices, and the construction of a new duplex on the lot rear. The applicants were advised that a Variance would have been required to eliminate a rent-controlled dwelling unit through conversion into a commercial unit. In response, the applicant revised the proposal to the current configuration to avoid requesting a Variance. A new poster with the new project description was installed at the site, and a neighborhood meeting was held on June 18, 2019 to discuss the revised project.

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IV. Community Discussion

A. Neighbor/Community Concerns: Prior to submitting the application to the City on May 24, 2018, a pre-application poster was installed by the applicant at the project site. Later, after the applicant revised the project to avoid requesting a Variance, a new poster was installed with the revised project description and photo documentation was submitted on July 19, 2019.

On June 18, 2019, a neighborhood meeting was held to review the project and discuss concerns, and was attended by seven members of the public. One resident of 2430 Fifth Street, the live/work building adjacent and south of the site, expressed concerns over impacts to views from her unit, which would have windows facing the proposed building. Another resident at 2430 Fifth Street suggested re-orienting the project to face the north, away from their building. In response, the applicants rearranged the windows on the south façade in the proposal to avoid direct sightlines between the buildings.

On October 8, 2019, the City mailed public hearing notices to property owners and occupants within 300 feet of the project site, and to interested neighborhood organizations, and the City posted notices within the neighborhood in three locations. No further communications regarding the project were received as of the writing of this staff report.

- B. Committee Review: This project is not subject to advisory committee review.
- C. Staff-Level Design Review: As with all exterior improvements proposed in a non-residential district, this project was subject to Design Review. On October 10, 2019, Staff Level Design Review was completed in accordance with BMC Section 23E.12.040.C. The Design Review Committee Chair concurred with Staff's recommendation for Staff Level Design Review, instead of the Design Review Committee, as the project is well-scaled for its adjacent neighborhood. The appeal and comment period for the favorable Staff-level decision will end at 4:00 p.m. on October 30, 2019.

V. Issues and Analysis

- **A.** Housing Accountability Act: The Housing Accountability Act §65589.5(j) requires that when a proposed housing development complies with applicable, objective general plan and zoning standards, but a local agency proposes to deny the project or approve it only if the density is reduced, the agency must base its decision on written findings supported by substantial evidence that:
 - 1. The development would have a specific adverse impact on public health or safety unless disapproved, or approved at a lower density³; and

³ As used in the Act, a "specific, adverse impact" means a "significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, polices, or conditions as they existed on the date the application was complete.

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2. There is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, other than the disapproval, or approval at a lower density.

The project has proposed elements that do not comply with applicable, objective general plan and zoning standards in the zoning ordinance, including:

- A waiver of the residential parking requirement for the two new units; and
- An allowance for the joint use of three parking spaces between the commercial (three required) and residential uses (two required after the reduction).

Therefore, §65589.5(j) *does not apply* to this project, as proposed.

B. Findings for Use Permits and Administrative Use Permits. Pursuant to BMC Section 23E.84.090.A, in order to approve any Use Permit in the district, the Board must make the non-detriment finding. The project is subject to the City's standard conditions of approval regarding construction noise and air quality, waste diversion, toxics, and stormwater requirements, thereby ensuring the project would not be detrimental to the health, safety, peace, morals, comfort or general welfare of persons residing or working in the area or neighborhood of such proposed use or be detrimental or injurious to property and improvements of the adjacent properties, the surrounding area or neighborhood or to the general welfare of the City. Staff believes that this finding can be made.

A discussion of the project's impact on sunlight/shadows, air, privacy, and views as they relate to potential detriment follows:

- 1. **Sunlight/shadow:** According to the shadow studies submitted by the applicant (see Attachment 1, Sheets A4.1 through A4.3 for Shadow Studies), new shadows would be cast by the proposed dwelling onto:
 - 2430 Fifth Street (live/work building, adjacent, south) on the bathroom and living room windows of multiple units during the few hours before sunset in the summer;
 - 2422 Fifth Street (duplex, front of subject property) on living room and bedroom windows during the few hours before sunset in the winter;
 - 2418 Fifth Street (single-family dwelling, adjacent, one lot north) on living room windows during the few hours before sunset in the winter; and
 - 2416 Fifth Street (single-family dwelling on rear of lot, two lots north) on living area windows during the few hours after sunrise and around noon in the winter.

Although shadow conditions would increase as listed above on neighboring dwellings, shadow impacts would be relatively short in duration, occurring only in the morning and midday or evening hours, and not both. Therefore, shading from proposed project is found to be typical of urban settings and not detrimental.

 Air: The proposed rear dwelling would be 36'-6" from the existing (front) dwelling, 17' from the live/work building to the south (2430 Fifth Street); 4' from the warehouse to the west (2423 Fourth Street); approximately 35' from the singlefamily dwelling directly north, two lots away (2416 Fifth Street); and approximately 20' from the single-family dwelling to the northwest on the adjacent lot (2418 Fifth Street). Thus, the siting of the proposed rear, mixed-use building satisfies all minimum setback requirements, and would provide adequate air space on the north, east and south sides of the building. A 4'-wide rear yard would be provided between the project and the warehouse to the west, and is a buffer that would satisfy City Fire Department emergency egress requirements (44") in a zoning district (MU-R) that does not require any rear yard. (The warehouse is built on the property line, and is in the MU-LI District, where no yards are required.)

- 3. **Views:** The relatively flat topography of the project site, along with existing one-, two-, and three-story buildings in the vicinity, does not offer significant views of features such as Berkeley Hills or the Bay. Therefore, staff believes that this project would not be substantially detrimental with respect to views.
- 4. Privacy: The proposed dwelling would not cause significant privacy impacts to the warehouse to the west, as it is a non-residential building and also has no windows on the façade closest to the project site. The dwelling on the property to the north is sited toward the front half of the lot, away from the proposed project on the rear of the project site, so that there would be no direct sightlines between them. The live/work building to the south is 17' away, which is a reasonable buffer between dwellings, given that in residential zoning districts the minimum buffer at the side property line is eight feet. Nevertheless, in response to privacy concerns raised by residents in the live/work building at the June 18, 2019 neighborhood meeting, the applicants obtained the window layout of the live/work building and redesigned the project's south elevation so that all the windows would be offset from the neighboring building windows, and direct sightlines would be avoided. With these revisions to the window layout, the privacy impacts from the project would be reasonable for this mixed-use district.
- **C. Findings for Use Permit in MU-R District:** Pursuant to BMC Section 23E.84.090.B, in order to approve any Use Permit in the district, the Board must make the following required findings. The proposed use or structure must:
 - 1. Be compatible with the purposes of the District;

The project is consistent with the following purposes of the Mixed Use Residential District (MU-R):

- Implement the West Berkeley Plan's designation of a Mixed Residential District.
- Support the continued development of a mixed use District which combines residential, live/work, light industrial, arts and crafts and other compatible uses.
- Strengthen residential concentrations which exist within the District.

<u>Staff Analysis</u>: The project is a mixed-use building that would provide two residential units and 967 square feet of medical office space on the ground floor in a district planned for mixed-use development. The project would add two new dwellings to an area that is already developed with single-family dwellings, duplexes, live/work buildings, and other multi-family dwellings. (See Figure 2: Surrounding Uses.)

• Provide a transitional district between the residential districts to the east of the MU-R and the industrial districts to the west of the MU-R.

<u>Staff Analysis</u>: As a mixed-use building on the rear of a lot that has an existing duplex on the front, the project adds a compatible commercial use to the lot to help the MU-R neighborhood serve as a transition from the R-1A district to the east to the MU-LI district to the west.

- Support the development of businesses of all types which contribute to the maintenance and improvement of the environment.
- To the extent feasible, protect industrial uses, particularly light industrial uses, from unreasonable intrusions on their ability to operate lawfully.

<u>Staff Analysis</u>: The proposed mixed-use project with medical offices on the ground floor would bring a compatible commercial use into the area to diversify the existing commercial and industrial uses within the nearby MU-R District, which include warehouses, offices, and live/work spaces. The mixed-use project would be on a lot that is clustered with other mixed-use and residential-only developments within the district, which have coexisted with adjacent industrial uses for years.

- 2. Be consistent with the normal use and operation of surrounding uses and buildings, including residential and industrial buildings;
- 3. Not be likely, under reasonably foreseeable circumstances, to either induce or contribute to a cumulative change of use in buildings away from residential; live/work; light industrial, or arts and crafts uses; and
- 4. Be designed in such a manner to be supportive of the character and purposes of the District.

<u>Staff Analysis:</u> The proposed mixed-use project with medical offices on the ground floor and dwellings on the upper floors would add to the residential development already in the area, and would reinforce the existing mixed pattern of commercial/industrial/residential development in the neighborhood.

D. Findings for Use Permit to Waive Residential Parking. Pursuant to BMC Section 23E.84.080.F, if the Board finds that existing evening parking supply is adequate and/or that other mitigating circumstances exist on the property, the requirement for an additional off-street parking space may be waived through a Use Permit when an additional residential unit is added to a property with one or more residential units.

The project proposes to waive two parking spaces under this provision (one per dwelling unit required, for two proposed dwelling units). The remaining parking requirement if this waiver is granted would be three commercial parking (medical offices) and two residential parking (front duplex). To support the waiver of two residential parking spaces, the applicant submitted a parking survey prepared by the project transportation consultant, dated October 25, 2018. The parking survey was reviewed by the Transportation Division, which confirmed that the evening parking supply is adequate and that all other parking data supports the waiver of two residential parking spaces. Thus, staff recommends that the parking waiver be approved concurrently with the joint parking request discussed in V.E below.

- **E. Findings for Administrative Use Permit to Allow Joint Parking:** Pursuant to BMC Section 23E.28.060.A, the Board may approve permit to allow a Joint Use Parking Agreement to satisfy off-street parking space requirements, if all of the following findings are made:
 - 1. The off-street parking spaces designated for joint use are located within 800 feet of the use to be served;
 - 2. The times demanded for these parking spaces will not conflict substantially between the use offering the spaces and the use to be served; and
 - The off-street parking spaces designated for joint use are not otherwise committed to satisfying the parking requirements for some other use at similar times.

Staff believes that these three findings can be made. The three joint parking spaces are located on the lot that they serve. Further, as stated by the applicant, the residential and medical office uses would utilize the parking at different peak times. The medical office would be limited to a three to four weekday per week schedule, from 9:00 a.m. to 4:00 p.m., and the residences could utilize the spaces for the rest of the time – one to two weekdays during the day, after 4:00 p.m. on all weekdays, and anytime on the weekend. This availability is general compatible with residential parking demand, which occurs mostly on weekday nights and weekends. The ADA parking space would always be reserved for accessible parking demands. Finally, the three joint parking spaces are not committed to satisfy any other parking requirement. Thus, staff recommends the approval of the permit for joint parking in conjunction with the approval of the permit to waive two residential parking spaces. Staff recommends that these two permits be approved or denied together, because the denial of either would cause non-compliance with the district parking standard.

- **F. General Plan Consistency:** Based on the foregoing project description and analysis, staff concludes that the project will comply with the following 2002 General Plan goals and policies:
 - <u>Policy LU-3–Infill Development</u>: Encourage infill development that is architecturally and environmentally sensitive, embodies principles of sustainable planning and construction, and is compatible with neighboring land uses and architectural design and scale.
 - 2. <u>Policy LU-7–Neighborhood Quality of Life, Action A</u>: Require that new development be consistent with zoning standards and compatible with the scale, historic character, and surrounding uses in the area.
 - 3. <u>Policy LU-23–Transit-Oriented Development</u>: Encourage and maintain zoning that allows greater commercial and residential density and reduced residential parking requirements in areas with above-average transit service such as Downtown Berkeley.
 - 4. <u>Policy UD-16–Context</u>: The design and scale of new or remodeled buildings should respect the built environment in the area, particularly where the character of the built environment is largely defined by an aggregation of historically and architecturally significant buildings.

5. <u>Policy UD-24–Area Character</u>: Regulate new construction and alterations to ensure that they are truly compatible with and, where feasible, reinforce the desirable design characteristics of the particular area they are in.

<u>Staff Analysis</u>: The project would add two new dwelling units to a residential property located in a mixed-use district, in close proximity to transit. The proposed building height is consistent with the character of the neighborhood and the project will meet all of the zoning standards for the MU-R District, except the parking standard, for which staff believes the findings for the exceptions are adequately made (see sections V.D and V.E). The project is compatible with the existing uses in the neighborhood, which consists of a blend of mixed-use, residential-only, commercial, and industrial developments. Design Review staff has reviewed the project, and has found it to be architecturally compatible with the surrounding developments.

6. <u>Policy UD-32–Shadows</u>: New buildings should be designed to minimize impacts on solar access and minimize detrimental shadows.

<u>Staff Analysis</u>: As discussed in section V.B.1 above, shadow impacts resulting from the proposal would be short in duration and not substantially detrimental. Thus, impact to solar access and detrimental shadows are minimized.

7. <u>Policy H-33–Regional Housing Needs</u>: Encourage adequate housing production to meet City needs and the City's share of regional housing needs.

<u>Staff Analysis</u>: The project would add two new dwelling units to the City's housing stock, furthering this Housing Element policy to expand the City's existing housing supply.

- 8. <u>Policy EM-5–"Green" Buildings</u>: Promote and encourage compliance with "green" building standards. (Also see Policies EM-8, EM-26, EM-35, EM-36, and UD-6.)
- 9. <u>Policy UD-33–Sustainable Design</u>: Promote environmentally sensitive and sustainable design in new buildings.

<u>Staff Analysis</u>: The GreenPoint Rated checklist for the project shows a rating of 66, demonstrating that the project would exceed the minimum rating of 50.

VI. Recommendation

Because of the project's consistency with the Zoning Ordinance and General Plan, and minimal impact on surrounding properties, staff recommends that the Zoning Adjustments Board: **APPROVE** Use Permit #ZP2018-0108 pursuant to Section 23B.32.030 and subject to the attached Findings and Conditions (see Attachment 1).

Attachments:

- 1. Findings and Conditions
- 2. Project Plans, received September 6, 2019
- 3. Notice of Public Hearing

Staff Planner: Sharon Gong, sgong@cityofberkeley.info, (510) 981-7429



This attachment is on file and available for review at the City Clerk Department, or can be accessed from the City Council Website. Copies of the attachment are available upon request.

City Clerk Department

2180 Milvia Street Berkeley, CA 94704 (510) 981-6900

or from:

The City of Berkeley, City Council's Web site http://www.cityofberkeley.info/citycouncil/

ATTACHMENT 8

NOTICE OF PUBLIC HEARING-BERKELEY CITY COUNCIL SCHOOL DISTRICT BOARD ROOM, 1231 ADDISON STREET ZAB APPEAL: USE PERMIT #ZP2018-0108, 2422 FIFTH STREET

Notice is hereby given by the City Council of the City of Berkeley that on **TUESDAY**, **FEBRUARY 25**, **2020** at **6:00 P.M.** a public hearing will be conducted to consider an appeal of a decision by the Zoning Adjustments Board to approve Use Permit #ZP2018-0108, to construct a three-story, 4,806-square-foot mixed-use building containing 967 square feet of medical office space and two dwelling units on the rear of a lot with an existing duplex, including a request to waive two residential parking spaces and establish two joint use commercial/residential spaces.

A copy of the agenda material for this hearing will be available on the City's website at <u>www.CityofBerkeley.info</u> as of **February 13, 2020**.

For further information, please contact Sharon Gong, Project Planner at (510) 981-7429. Written comments should be mailed or delivered directly to the <u>City Clerk, 2180 Milvia</u> <u>Street, Berkeley, CA 94704</u>, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or <u>clerk@cityofberkeley.info</u> for further information.

Mark Numainville, City Clerk

Mailed: February 11, 2020

NOTICE CONCERNING YOUR LEGAL RIGHTS: If you object to a decision by the City Council to approve or deny (Code Civ. Proc. 1094.6(b)) or approve (Gov. Code 65009(c)) a project, the following requirements and restrictions apply: 1) Pursuant to Code of Civil Procedure Section 1094.6, no lawsuit challenging a City decision to deny or approve a Zoning Adjustments Board decision may be filed more than 90 days after the date of the decision of the City Council. Any lawsuit not filed within that 90-day period will be barred. 2) In any lawsuit that may be filed against a City Council decision to approve or deny a Zoning Adjustments Board decision, the issues and evidence will be limited to those raised by you or someone else, orally or in writing, at a public hearing or prior to the close of the last public hearing on the project.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to

the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.



SUPPLEMENTAL AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: November 12, 2019

Item Number: 30

Item Description: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

Submitted by: Dee Williams-Ridley, City Manager

Attached is the originally published staff report with updated attachments. The staff report that was published did not include the surveillance technology reports. The following has been incorporated into the attachments:

- Surveillance Technology Report for Body Worn Cameras incorporated into Attachment 2.
- Surveillance Technology Report for Global Positioning System Tracking Devices incorporated into Attachment 3.
- Surveillance Technology Report for Automated License Plate Readers incorporated into Attachment 4.



Office of the City Manager

ACTION CALENDAR November 12, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police David White, Deputy City Manager

Subject: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plater Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

²¹⁸⁰ Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7000 • TDD: (510) 981-6903 • Fax: (510) 981-7099 E-Mail: <u>manager@CityofBerkeley.info</u> Website: <u>http://www.CityofBerkeley.info/Manager</u>

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Resolution Accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy Pursuant to Chapter 2.99 of the Berkeley Municipal Code

ACTION CALENDAR November 12, 2019

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

• Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and Resolution Accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy Pursuant to Chapter 2.99 of the Berkeley Municipal Code

ACTION CALENDAR November 12, 2019

• Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council's approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD's website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

<u>CONTACT PERSON</u> Andrew Greenwood, Chief of Police, (510) 981-7017 David White, Deputy City Manager, (510) 981-7012

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Resolution Accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy Pursuant to Chapter 2.99 of the Berkeley Municipal Code

ACTION CALENDAR November 12, 2019

ATTACHMENTS

- 1. Proposed Resolution
- 2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras Policy 1300 Body Worn Camera Use Policy Policy 1300(a) Appendix: Body Worn Camera Acquisition Report Policy 425 Body Worn Camera Policy (Existing Policy)

- Global Positioning System Tracking Devices Surveillance Technology Report Policy 1301 Global Positioning System Tracking Devices Use Policy Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report
- Automated License Plate Readers Surveillance Technology Report: Automated License Plate Readers Policy 1302 Automated License Plate Reader Use Policy Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report Policy 422 Automated License Plate Reader (Latest version of existing Policy)
- 5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

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RESOLUTION NO. ##,###-N.S.

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS, GPS TRACKERS, AND BODY WORN CAMERAS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plater Readers, GPS Trackers, and Body Worn Cameras, the City Council hereby finds and determines the following:

- a. The benefits of using the technologies outweigh the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Reports, Surveillance Acquisition Reports, and Surveillance Use Policies for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras.

ATTACHMENT 2: BODY WORN CAMERAS

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Surveillance Technology Report: Body Worn Cameras

March 1, 2018 – Sept. 30, 2019

Description	A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.					
	Body Worn Ca	meras are used	to capture video	precordings of co	ontacts between	
	 Body Worn Cameras are used to capture video recordings of contacts between department personnel and the public, to provide an objective record of these events. These recording are used in support of criminal prosecutions, to limit civil liability, 					
		oarency and enh to the commur	-	alism and accour	ntability in the delivery of	
	Body Worn Ca	mera files are sł	nared with the A	lameda County D	District Attorney's office in	
	support of prosecution for crime, and may be shared with other law enforcement					
	agencies to support criminal investigations.					
		Summary	of Body Worn Ca	amera Videos Un	loaded	
	Summary of Body Worn Camera Videos Uploaded March 1, 2018 to Sept. 30, 2019					
	Total Number of Videos 42,677					
	Total Hours of Videos 10,681.93				.93	
		Tota	GB of Videos	20,669	.11	
					••	
	Summary of All Evidence Created March 1, 2018 to Sept. 30, 2019					
		Туре	Count of files	Size (in Mb)	GBs Storage	
		Audio	2,315	23,855.82	23.86	
		Document	125	17.56	0.02	
		Image	64,931	270,329.62	270.33	
		Other	896	118,080.19	118.08	
		Videos*	70,670	32,489,190.50	32,489.19	
		Grand Totals	138,937	32,901,473.69	32,901.47	
					Other idea	
	* Includes all uploaded BWC videos and all other videos booked into the evidence management system. Other videos include iPhone videos uploaded, security camera video, copies of BWC videos (for redaction, etc.), and any other videos.					
Geographic Deployment	Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically. Body Worn Cameras are worn by all BPD uniformed officers city-wide at all times; BWCs are not deployed based on geographic considerations.					
Complaints	A summary of each complaint, if any, received by the City about the Surveillance Technology.					
	There have been no complaints about the deployment and use of Body Worn Cameras.					
				·	-	

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Audits and	The results of any non-privileged internal audits, any information about violations or potential violations of the
Violations	Surveillance Use Policy, and any actions taken in response.
	File meta-data are routinely reviewed by our BWC manager, to ensure required meta-
	data fields are completed. There have been no complaints with regards to violations of
	the Surveillance Use Policy.
Data Breaches	Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.
	There have been no known data breaches or other unauthorized access to BWC data.
Effectiveness	Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.
•	Body Worn Cameras have proven effective in supporting criminal prosecutions, as video
	footage is available for all criminal prosecutions.
• .	Body Worn Cameras have been effective for training purposes, as footage can be reviewed in incident de-briefs.
	Body Worn Cameras have been extremely effective in support of Internal Affairs investigations and Use of Force Review.
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.
	The annual cost for the Body Worn Cameras, including cameras, replacement cameras, software, and Axon's secure digital evidence management system is approx. \$204,000 per year over a five-year, \$1,218,000 contract. The systems cost for the 19 month period of this initial report was \$385,700.
	There is one full-time employee assigned to the BWC program, an Applications Programmer Analyst II, at a cost of \$168,940 per year, including benefits.
÷	

Policy **1300**

Berkeley Police Department

Surveillance Use Policy - Body Worn Cameras

1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

(a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
 - 1. Upon approval by a supervisor, by any member of the Department who is participating

in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

- 2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- 3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- 4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
- (b) Investigators conducting criminal or internal investigations shall:
 - 1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
 - 2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
 - 3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1300.7 DATA RETENTION

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

1300.8 PUBLIC ACCESS

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

1300.9 THIRD-PARTY DATA-SHARING

1300.9.1 CITY ATTORNEY

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - BODY WORN CAMERAS

BODY WORN CAMERAS (BWCs)

A. DESCRIPTION

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

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metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannon be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

B. PURPOSE

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

- 1. The BWC shall be activated in any of the following situations:
 - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
 - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
 - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
 - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

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- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

- 2. Prohibited uses of the BWC system include:
 - i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
 - ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
 - iii. Officers are prohibited from retaining BWC recordings.
 - iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

C. LOCATION

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

D. IMPACT

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

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strictest requirements of both state and federal law concerning release of audio/video recordings.

E. MITIGATION

In order to minimize violations of privacy, BWC policy provides that:

- 1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
- 2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
- 3. BWC use is limited to enforcement and investigative activates involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
- 4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
- 5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
- 6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
- 7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy

F. DATA TYPES AND SOURCES

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

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The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

- 1. Category of contact (from Department's defined list)
- 2. Disposition of contact (arrest, citation, etc.)
- 3. Associated case number

G. DATA SECURITY

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

- 1. Establishing a system for uploading, storing and security of recordings.
- 2. Designating persons responsible for uploading recorded data.
- 3. Establishing a maintenance system to ensure availability of BWCs.
- 4. Establishing a system for tagging and categorizing data according to the type of incident captured.
- 5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- 6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- 7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

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thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

H. FISCAL COST

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

I. THIRD PARTY DEPENDENCE AND ACCESS

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

J. ALTERNATIVES

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

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K. EXPERIENCE OF OTHER ENTITIES

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, <u>https://www.bja.gov/bwc/pdfs/14-005 Report BODY WORN CAMERAS.pdf - pages 6-8</u>, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <u>https://www.bwcscorecard.org/</u>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

Policy **425**

Berkeley Police Department Law Enforcement Services Manual

Body Worn Cameras

425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

425.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/ her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

425.6 SUPERVISOR RESPONSIBILITIES

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

425.7 ACTIVATION OF THE BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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425.8 VICTIMS AND WITNESSES OF CRIMES: INFORMANTS

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) Witnesses: In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- Victims: Upon request by the victim, officers have the discretion to not record the (b) interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
 - 1. Domestic Violence Victims: Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
 - 2. Child Abuse and Sexual Assault Victims: Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) Informants: Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

425.10 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

425.11 CESSATION OF RECORDING

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

425.12 EXPLOSIVE DEVICE

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

425.13 PROHIBITED USE OF BODY WORN CAMERAS

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

425.14 PROCESSING AND HANDLING OF RECORDINGS

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

425.15 RETENTION REQUIREMENTS

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

425.17 REVIEW OF RECORDINGS BY A MEMBER

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

(a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

- 1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
- 2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
- 3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

425.20 TRAINING REQUIRED

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

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ATTACHMENT 3: Global Positioning System Tracking Devices

Surveillance Technology Report: Global Positioning System Tracking Devices

A description of all non-privileged and non-confidential information about use of the Surveillance Technology, Description including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing. Global Positioning System Trackers are used to track the movements of vehicles, bicycles, other items, and/or individuals for the purpose of investigating criminal activity. Global Positioning System (GPS) "Electronic Stake Out" (ESO) devices were deployed on "bait" bicycles eighty-five (85) times during this reporting period, resulting in forty-nine (49) arrests. GPS "Slap-N-Track" (SNT) devices were used in two investigations during this reporting period: (1) a robbery and laptop snatch series involving multiple cases and suspects in Berkeley and in the region, with all suspects ultimately arrested; and (2) a currentlyactive case involving a series of auto burglaries in Berkeley and in the region. Data may be shared with the District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence; other law enforcement personnel as a part of an active criminal investigations; and other third parties, pursuant to a court order. Where applicable, non-privileged and non-confidential information about where the surveillance technology was Geographic deployed geographically. Deployment GPS ESO-equipped bikes were deployed primarily in commercial districts across the city where bikes are frequently stolen. GPS SNT devices are deployed with judicial pre-approval, based on suspect location, rather than geographical consideration. A summary of each complaint, if any, received by the City about the Surveillance Technology. Complaints There were no complaints made regarding GPS Trackers. The results of any non-privileged internal audits, any information about violations or potential violations of the Audits and Surveillance Use Policy, and any actions taken in response. Violations There were no audits and no known violations relating to GPS Trackers. Non-privileged and non-confidential information about any data breaches or other unauthorized access to the Data data collected by the surveillance technology, including information about the scope of the breach and the **Breaches** actions taken in response. There were no known data breaches relating to GPS Trackers.

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Effectiveness	Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.
	GPS Trackers continue to be very effective in apprehending bicycle thieves, many of whom are repeat offenders who've committed not only bike thefts, but other crimes as well. SNT trackers are effective in that they provide invaluable information on suspect vehicle location during the investigation of complex cases where suspects may be moving around the Bay Area and beyond.
	GPS Trackers greatly reduce costs associated with surveillance operations. A bike may be left for days. Surveillance operations generally involve four or more officers for the entire duration of an operation. A moving surveillance is extremely resource-intensive, requiring multiple officers in multiple vehicles for extended periods of time. Using both types of GPS trackers eliminates the need for officers' immediate presence until officers are ready to apprehend the suspect(s).
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.
	The annual cost for the GPS Trackers' data service is \$1,920; the total cost for the 19 month period of this initial report was \$3,040. Further information regarding costs is contained in Policy 1301a, the Surveillance Acquisition Report.
	There are staff time costs associated with preparing and placing SNT trackers. The investigator must prepare a search warrant and obtain a judge's approval, and a small number of officers must place the tracker on the suspect's car. The total number of hours is a fraction of the time it would take to do a full surveillance operation involving numerous officers.
	There are staff time costs associated with preparing ESO trackers and placing ESO tracker-equipped bikes for bait bike operations. These are on the order of two-four hours per operation. The total number of hours is extremely small, given the large number of operations, and resulting arrests.

Policy 1301

Berkeley Police Department Policy Manual

Surveillance Use Policy - GPS Tracking Devices

1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

1301.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

1301.9 THIRD-PARTY DATA-SHARING

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

1301.10 TRAINING

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

1301.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

1301.12 MAINTENANCE

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

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1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

GPS TRACKING DEVICES

A. DESCRIPTION

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds or property. The manufacturer, 3SI Security Systems, describes them as follows:

- 1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
- 2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

B. PURPOSE

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

C. LOCATION

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

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1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

E. MITIGATION

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

F. DATA TYPES AND SOURCES

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

G. DATA SECURITY

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

H. FISCAL COST

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

I. THIRD PARTY DEPENDENCE AND ACCESS

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

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1301 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

J. ALTERNATIVES

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

K. EXPERIENCE OF OTHER ENTITIES

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.

ATTACHMENT 4: Automated License Plate Readers

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Surveillance Technology Report: Automated License Plate Readers

March 1, 2018 – Sept. 30, 2019

Description

A description of all non-privileged and non-confidential information about use of the Surveillance Technology, including but not limited to the quantity of data gathered and sharing of data, if any, with outside entities. If sharing has occurred, the report shall include general, non-privileged and non-confidential information about recipient entities, including the names of the entities and purposes for such sharing.

Automated License Plate Readers (ALPRs) are used by Parking Enforcement Bureau vehicles for time zone parking and scofflaw enforcement. The City's Transportation Division uses anonymized information for purposes of supporting the City's GoBerkeley parking management program. ALPR use replaced the practice of physically "chalking" tires.

Summary of ALPR Time Zone Enforcement Data

Read Data

There were an average of 9,075 "Reads" per working day (Based on one month's data: 9/9/19-10/9/19)

Hit Data

There were 69,738 "Hits" 18,410 "Enforced Hits" resulted in citation issuance. 51,328 "Not Enforced" Hits resulted in no citation issuance. (Based on one year's data: 10/9/18-10/9/19)

Genetec is the vendor for the ALPR Time Zone enforcement system. A "read" indicates the ALPR system successfully read a license plate. A "hit" indicates the ALPR system detected a possible violation, which prompts the Parking Enforcement Officer to further assess the vehicle. In many cases, hits are "rejected" or "not enforced" because the Parking Enforcement Officer determines the vehicle has an appropriate placard or permit, or there is other information which precludes citation.

Summary of ALPR Booting Scofflaw Enforcement Data

255 vehicles booted from 9/1/18-6/30/19

Paylock is the vendor for the ALPR Booting Scofflaw Enforcement Program. A single parking enforcement vehicle is equipped with the Paylock system ALPR. The Paylock ALPR system provides the operator a "hit" when a plate is recognized as having five or more unpaid parking tickets. The operator then further assesses the vehicle, confirms the citation data, and, if confirmed, creates a boot entry in Paylock, and boots the car.

Paylock uploads and retains information to their secure server solely on *confirmed* boots or tows. Hits and reads are not retained in the Paylock server. Booting Scofflaw enforcement has been temporarily suspended due to the transition to a different citation management vendor.

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	All BPD ALPR data may only be shared with other law enforcement or prosecutorial agencies for official law enforcement purposes, or as otherwise permitted by law. All ALPR data is subject to the provisions of BPD Policy 415 - Immigration Law, and therefore may not be shared with federal immigration enforcement officials.
Geographic Deployment	Where applicable, non-privileged and non-confidential information about where the surveillance technology was deployed geographically.
	Only Parking Enforcement Vehicles are equipped with ALPRs. ALPRs are deployed based on areas where there are parking time restrictions. ALPRs are not deployed based on geographic considerations not related to parking and scofflaw enforcement.
Complaints	A summary of each complaint, if any, received by the City about the Surveillance Technology.
	There have been no complaints about the deployment and use of Automated License Plate Readers.
Audits and Violations	The results of any non-privileged internal audits, any information about violations or potential violations of the Surveillance Use Policy, and any actions taken in response.
	There have been no complaints of violations of the ALPR Surveillance Use Policy.
Data Breaches	Non-privileged and non-confidential information about any data breaches or other unauthorized access to the data collected by the surveillance technology, including information about the scope of the breach and the actions taken in response.
	There have been no known data breaches or other unauthorized access to Automated License Plate Reader data.
Effectiveness	Information that helps the community assess whether the Surveillance Technology has been effective in achieving its identified outcomes.
-	ALPRs have proven effective in parking enforcement for time zone enforcement.
	ALPRs have proven effective in supporting enforcement upon vehicles which have five or more unpaid citations. The ALPR's ability to read and check license plates while being driven greatly increases efficiency, allowing an operator to cover larger areas more quickly without having to stop except to confirm a hit.
Costs	Total annual costs for the Surveillance Technology, including personnel and other ongoing costs.
	The annual system maintenance cost for Genetec is \$47,000. This cost is borne by the Transportation Division, which also purchased the ALPR units used in Time Zone Enforcement.
	No Genetec LPR units were purchased during the period covered by this report.
	Genetec ALPR units are in use on 20 Parking Enforcement vehicles. Parking Enforcement personnel perform a variety of parking enforcement activities, and are not limited solely to time zone enforcement. Therefore, personnel costs specifically attributable to time zone enforcement are not tracked.

The cost of Paylock is \$140 per boot.

One Parking Enforcement Officer is assigned to scofflaw enforcement and abandoned auto enforcement on a full time basis. Assuming the Officer works approximately half their day on scofflaw enforcement, the annual personnel cost would be approximately one half a fulltime Parking Enforcement Officer's pay with benefits, or \$65,000.

Policy **1302**

Berkeley Police Department Policy Manual

Surveillance Use Policy - ALPR

1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

(a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

1302.8 PUBLIC ACCESS

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

1302.9 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

1302.10 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

1302.11 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

1302.12 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

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policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

A. DESCRIPTION

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

E. MITIGATION

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

F. DATA TYPES AND SOURCES

Photographs of license plates and location data may be obtained through the use of ALPR Units.

G. DATA SECURITY

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- 1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- 2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- 3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- 4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

H. FISCAL COST

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

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1302 APPENDIX A

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

I. THIRD PARTY DEPENDENCE AND ACCESS

- 1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
 - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
 - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
- 2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
 - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
 - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
- Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

- 4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or 'prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- 5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
- 6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

J. ALTERNATIVES

None.

K. EXPERIENCE OF OTHER ENTITIES

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

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Policy **422**

Berkeley Police Department

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because .such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

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or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

422.5 .DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.
 - 2. The name of the person requesting.
 - 3. The intended purpose of obtaining the information.

- 4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking

enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

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ATTACHMENT 5: Police Review Commission Communication



Police Review Commission (PRC)

September 11, 2019

- To: Honorable Mayor and, Members of the City Council
- From: George Perezvelez, Chairperson, Police Review Commission
- Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

<u>Summary</u>: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

<u>Background</u>: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen, The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

<u>Final action</u>: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

1947 Center Street, 1st Floor, Berkeley, CA 94704 Tel: 510-981-4950 TDD: 510-981-6903 Fax: 510-981-4955 e-mail: prc@cityofberkeley.info website: www.cityofberkeley.info/prc/ Honorable Mayor and Members of the City Council Proposed Berkeley Police Department Policy 422, Automated License Plate Readers September 11, 2019 p. 2

The above action was approved by the following vote: Moved/Seconded (Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager Andrew Greenwood, Chief of Police David White, Deputy City Manager PRC Commissioners Policy **422**

Berkeley Police Department Policy Manual

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

422.5 DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

(a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.

(b) Metadata of reads showing violations will be stored for up to30 days. Images of reads not showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.

- 2. The name of the person requesting.
- 3. The intended purpose of obtaining the information.
- 4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

(a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.



ACTION CALENDAR February 25, 2020 (Continued from January 28, 2020)

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Andrew Greenwood, Chief of Police David White, Deputy City Manager

Subject: Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers, GPS Trackers, and Body Worn Cameras

RECOMMENDATION

Adopt a Resolution accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy for Automatic License Plate Readers and Body Worn Cameras submitted pursuant to Chapter 2.99 of the Berkeley Municipal Code.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"). The purpose of the Ordinance is to provide transparency surrounding the use of surveillance technology, as defined by Section 2.99.020 in the Ordinance, and to ensure that decisions surrounding the acquisition and use of surveillance technology consider the impacts that such technology may have on civil rights and civil liberties. Further, the Ordinance requires that the City evaluate all costs associated with the acquisition of surveillance technology and regularly report on their use.

The Ordinance imposes various reporting requirements on the City Manager and staff. The purpose of this staff report and attached resolution is to satisfy annual reporting requirements as outlined in sections 2.99.050 and 2.99.070. The attached Surveillance Technology Reports, Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plater Readers, GPS Trackers, and Body Worn Cameras are for technologies that were acquired by the City prior to the adoption of the Ordinance.

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Resolution Accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy Pursuant to Chapter 2.99 of the Berkeley Municipal Code

ACTION CALENDAR February 25, 2020

Section 2.99.050 of the Ordinance required the City Manager to submit a Surveillance Acquisition Report and Surveillance Use Policy for each surveillance technology that has been possessed or used prior to the effective date of the Ordinance. The requirements of this section were not satisfied due to a multitude of factors, and the Police Department opted to submit the attached acquisition reports and use policies to the Police Review Commission prior to their review by the City Council. The Police Review Commission underwent an extensive engagement process and the full Commission discussed the attached use policies and reports at scheduled meetings from May to October 2019. In all cases, the Police Review Commission approved the attached acquisition reports and use policies and conveyed any concerns or suggested modifications to the Police Chief. In addition to the technologies covered by the attached resolution, City staff continues to evaluate whether or not there is any other technology that is used or possessed that is subject to the Ordinance.

Finally, Section 2.99.040 of the Ordinance allows the City Manager to borrow, acquire, or temporarily use surveillance technology in exigent circumstances without having to obtain the approval of City Council. Since the adoption of the ordinance, the City is reporting two instances in which the City Manager has made use of Section 2.99.040. In preparation for the potentially violent August 5, 2018 demonstration in downtown Berkeley, the City borrowed remote accessible cameras from the Northern California Regional Intelligence Center (NCRIC) in order to have the ability to remotely monitor intersections in real time. The cameras did not have face recognition technology. Signage was posted in the areas of the cameras, informing people that the area may be under video surveillance. Using cameras to monitor intersections is at times preferable to physically placing officers in those locations. In addition, as a mutual aid resource, the Police Department requested the Alameda County Sheriff's Office Small Unmanned Aerial System (sUAS) team as a mutual aid resource. The purpose of the request was to support the identification and apprehension of any felony suspects, should a felony occur. Following the felony vandalism of over ten City of Berkeley vehicles, the sUAS team deployed a drone, but no suspects were apprehended.

BACKGROUND

On March 27, 2018, the City Council adopted Ordinance 7,592-N.S., adding Chapter 2.99 to the Berkeley Municipal Code, which is also known as the Surveillance Technology Use and Community Safety Ordinance. The Ordinance contains various reporting requirements including the following:

• Section 2.99.050, which requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and Resolution Accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy Pursuant to Chapter 2.99 of the Berkeley Municipal Code

ACTION CALENDAR February 25, 2020

• Section 2.99.070 of the Ordinance, which requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November.

For each of the three technologies, the Surveillance Technology Report, Surveillance Acquisition Report and Surveillance Use Policies were prepared to satisfy the specific, section-by-section requirements of the Ordinance, and are attached to this report. It should be noted that substantial policies already existed for Body Worn Cameras and License Plate Readers. Those policies—also reviewed by the Police Review Commission for purposes of this report—are also attached. The existing policies will continue to remain in effect upon Council's approval. Henceforth, all new Surveillance Use Policies and Surveillance Acquisition Reports will be listed in Chapter 13 of the Berkeley Police Department Policy Manual, which is being created to provide easy access to all policies relating to BMC 2.99. All BPD policies are available to the public on BPD's website.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

City Council is being asked to adopt the attached resolution for the City to be in compliance with the Ordinance.

ALTERNATIVE ACTIONS CONSIDERED

City Council could decide not to adopt the resolution or could direct staff to revise the attached policies.

<u>CONTACT PERSON</u> Andrew Greenwood, Chief of Police, (510) 981-7017 David White, Deputy City Manager, (510) 981-7012

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Resolution Accepting the Surveillance Technology Report, Surveillance Acquisition Report, and Surveillance Use Policy Pursuant to Chapter 2.99 of the Berkeley Municipal Code

ACTION CALENDAR February 25, 2020

ATTACHMENTS

- 1. Proposed Resolution
- 2. Body Worn Cameras

Surveillance Technology Report: Body Worn Cameras Policy 1300 Body Worn Camera Use Policy Policy 1300(a) Appendix: Body Worn Camera Acquisition Report Policy 425 Body Worn Camera Policy (Existing Policy)

- Global Positioning System Tracking Devices Surveillance Technology Report Policy 1301 Global Positioning System Tracking Devices Use Policy Policy 1301(a) Appendix: Global Positioning System Tracking Devices Acquisition Report
- Automated License Plate Readers
 Surveillance Technology Report: Automated License Plate Readers
 Policy 1302 Automated License Plate Reader Use Policy
 Policy 1302(a) Appendix: Automated License Plate Reader Acquisition Report
 Policy 422 Automated License Plate Reader (Latest version of existing Policy)
- 5. Police Review Commission Memorandum Regarding Automatic License Plate Readers

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RESOLUTION NO. ##,###-N.S.

A RESOLUTION ACCEPTING THE SURVEILLANCE TECHNOLOGY REPORT, SURVEILLANCE ACQUISITION REPORT, AND SURVEILLANCE USE POLICY FOR AUTOMATIC LICENSE PLATE READERS AND BODY WORN CAMERAS

WHEREAS, on March 27, 2018, the City Council adopted Ordinance 7,592-N.S., which is known as the Surveillance Technology Use and Community Safety Ordinance ("Ordinance"); and

WHEREAS, Section 2.99.050 of the Ordinance requires that the City Manager shall submit a Surveillance Acquisition Report and a proposed Surveillance Use Policy for each piece of technology governed by the Ordinance that had been possessed or used by the City prior to the effective date of the Ordinance; and

WHEREAS, Section 2.99.070 of the Ordinance requires that the City Manager must submit to the City Council a Surveillance Technology Report as defined by Section 2.99.020(2) of the Ordinance at the first regular City Council meeting in November; and

WHEREAS, the Surveillance Acquisition Reports and Surveillance Use Policies for Automatic License Plate Readers and Body Worn Cameras satisfy the requirements of the Ordinance.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley:

Section 1. Pursuant to Section 2.99.060, as it pertains to the use of Automatic License Plater Readers and Body Worn Cameras, the City Council hereby finds and determines the following:

- a. The benefits of using the technologies outweigh the costs;
- b. The policies attached to this resolution safeguard civil liberties; and
- c. No feasible alternatives exist with similar utility that will have a lesser impact on civil rights or liberties.

Section 2. The City Council hereby accepts the Surveillance Technology Reports, Surveillance Acquisition Reports, and Surveillance Use Policies for Automatic License Plate Readers and Body Worn Cameras.

ATTACHMENT 2: BODY WORN CAMERAS

Surveillance Technology Report Body Worn Cameras To be provided as part of supplemental communications Policy **1300**

Berkeley Police Department Policy Manual

Surveillance Use Policy - Body Worn Cameras

1300.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department Body Worn Camera Policy #425 and adds elements as required by BMC 2.99.

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel. (Ref. policy 425.2)

1300.2 AUTHORIZED USE

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation. (Ref. policy 425.7)

1300.2.1 PROHIBITED USE

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. (Ref. policy 425.13)

1300.3 DATA COLLECTION

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. (Ref. policy 425.3)

1300.4 DATA ACCESS

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 1300.4.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report. (Ref. policy 425.17)

1300.4.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

(a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed the video files.

It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident." (Ref. policy 425.17.1)

1300.4.2 SUPERVISORY REVIEW

With the exception of section 1300.4.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates. (Ref. policy 425.17.2)

1300.4.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance. (Ref. policy 425.17.3)

- (a) Recorded files may also be reviewed:
 - 1. Upon approval by a supervisor, by any member of the Department who is participating

in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.

- 2. Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- 3. By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- 4. Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.
- (b) Investigators conducting criminal or internal investigations shall:
 - 1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
 - 2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
 - 3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

1300.4.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video. (Ref. policy 425.17.4)

1300.4.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee. (Ref. policy 425.17.5)

1300.5 DATA PROTECTION

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. (Ref. policy 425.14)

1300.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of BWC data. These policies will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1300.7 DATA RETENTION

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days. (Ref. policy 425.15)

1300.8 PUBLIC ACCESS

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy. (Ref. policy 425.18)

1300.9 THIRD-PARTY DATA-SHARING

1300.9.1 CITY ATTORNEY

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur. (Ref. policy 425.18)

1300.9.2 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation. (Ref. policy 425.18.1)

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

1300.10 TRAINING

Training for the operation of BWC's shall be provided by BPD personnel. All BPD personnel who use BWC's shall be provided a copy of this Surveillance Use Policy.

1300.11 AUDITING AND OVERSIGHT

Division Captains for divisions utilizing BWC's shall ensure compliance with this Surveillance Use Policy.

1300.12 MAINTENANCE

The BWC system will be maintained by the Applications Programmer Analyst and assigned

Department of Information and Technology (IT) staff.

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18) (Ref policy 425.4):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.
- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.
- (h) All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

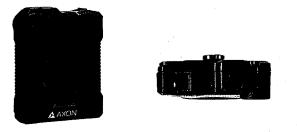
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BODY WORN CAMERAS (BWCs)

A. DESCRIPTION

The BWC system consists of four main components: The camera, the docking station, and the Digital Information Management System (DIMS) and smartphone applications.

The first component, the Axon camera, is a system which incorporates an audio and video recording device. It is designed to record events in real time for secure storage, retrieval, and analysis. The camera is to be attached to an officer's uniform and is powered by an internal rechargeable battery. The camera features low-light performance, full-shift battery life, a capture rate of 30 frames per second with no dropped frames, HD video, pre-event buffering, multi-camera playback, and the ability to automatically categorize video using the police department's computer aided dispatch system. An officer can start and stop recording by pressing a button on the front of the camera. The camera does not contain a screen for footage review.



The second component of the system is the docking station. Once the Axon camera is placed in the docking station it recharges the camera's battery. The dock also triggers the uploading of data from the camera to a cloud based Digital Information Management System (DIMS) called Evidence.com. The dock does not directly provide functionality to view, modify or delete video data stored on Axon cameras.



The third component is the Digital Information Management System called Evidence.com. Evidence.com streamlines data management and sharing on one secure platform. The evidence management system is comprehensive, secure, and intuitive to use. The DIMS is located in a cloud-based data center for security, scalability, and ease of administration. Users can add

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metadata to existing videos such as associated case numbers, incident type, incident dispositions, etc. to make the videos easier to find. However, the videos themselves cannot be altered by the user.

The fourth component of the system to be utilized are two Axon mobile applications, which allow officers to collect and review evidence in the field and more effectively use their BWCs. The applications use secure Bluetooth and Wi-Fi technology to access the BWC systems and footage. These applications are compliant with US Department of Justice evidentiary standards, meaning that they are both secure and are set up in a way that prohibits the altering or destruction of evidence. The applications are called Axon View and Axon Capture. Axon View allows users to change their camera settings, view live video, and review and tag recorded videos while they are stored on the BWC. Recorded videos remain in the BWC's memory, and cannon be manipulated or deleted. Axon Capture allows officers to use their city-issued smartphone's camera and microphone to take photographs, and record audio and video, and to upload this data directly to Evidence.com. These applications do not allow users to alter, manipulate, or edit any of the footage recorded by the BWC. These applications use secure technology to add value and efficiency to the BWC program.

B. PURPOSE

The primary objective of the BWC system is to document officer contacts, arrests, and critical incidents. Video footage collected by the BWCs will be used as evidence in both criminal and administrative investigations. Video footage not relevant to any investigation will be discarded after a defined retention period.

In instances where the officer might be expected to take law enforcement action of any kind, the officer is expected to record the encounter for the benefit of both the officer and the member of the public.

- 1. The BWC shall be activated in any of the following situations:
 - i. All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
 - ii. Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
 - iii. Self-initiated field contacts in which a member would normally notify the Communications Center.
 - iv. Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.

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- v. Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- vi. Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is an officer expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the user can do so safely.

Officers should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Officers shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

- 2. Prohibited uses of the BWC system include:
 - i. Officers shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.
 - ii. Officers are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.
 - iii. Officers are prohibited from retaining BWC recordings.
 - iv. Officers shall not duplicate or distribute such recordings, except for department business purposes.

C. LOCATION

Officers may use BWCs anywhere where officers have jurisdiction to operate as sworn officers, in accordance with BPD policy #425.

D. IMPACT

With the introduction of BWCs, officers record all enforcement contacts with the public. To that end, an officer could find themselves engaged in their lawful duties in both public and private areas. Additionally, due to the nature of law enforcement work, an officer may be required to engage in sensitive conversations with individuals of all ages, including children.

The right to maintain someone's anonymity versus the need to gain information to maintain public safety is of paramount concern. The Department recognizes that all people have a right to privacy and is committed to protecting and safeguarding civil rights by adhering to the

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strictest requirements of both state and federal law concerning release of audio/video recordings.

E. MITIGATION

In order to minimize violations of privacy, BWC policy provides that:

- 1. Officers should record any incident they feel would be appropriate or valuable to document. The BWC policy shall require officers to activate the BWC under the criteria listed above.
- 2. Officers should not activate the BWC and/or use caution when entering a public locker room, changing room, restroom, doctor's or attorney's office, or other place where individuals unrelated to the investigation are present and would have a heightened expectation of privacy unless the officer is investigating criminal activity or responding to a call for service.
- 3. BWC use is limited to enforcement and investigative activates involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy.
- 4. BWC footage will be retained or released in accordance with applicable state and federal law. Criminal defendants will have access to relevant BWC footage via the court discovery process.
- 5. Officers are prohibited from retaining BWC recordings, Officers shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.
- 6. Officers are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Officers may request restriction and subsequent deletion of an accidental recording according to the BWC policy.
- 7. Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted by law and department policy. Department policy does not authorize release of investigative files or documents that would constitute an unwarranted invasions of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy

F. DATA TYPES AND SOURCES

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigations, and other proceedings protected by confidentiality laws and department policy.

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The BWC collects video and audio recordings of events occurring in the user's presence. As each video is created, the system automatically stamps the video with the current date/time and the camera user's identity. The user has the option to add metadata manually to existing recordings after they are created. Such metadata may include but is not limited to:

- 1. Category of contact (from Department's defined list)
- 2. Disposition of contact (arrest, citation, etc.)
- 3. Associated case number

G. DATA SECURITY

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for transferring the data into the digital evidence management system. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings.

Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited. The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code Section 832.18) (Ref. policy 425.14):

- 1. Establishing a system for uploading, storing and security of recordings.
- 2. Designating persons responsible for uploading recorded data.
- 3. Establishing a maintenance system to ensure availability of BWCs.
- 4. Establishing a system for tagging and categorizing data according to the type of incident captured.
- 5. Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- 6. Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- 7. Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file,

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thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

H. FISCAL COST

In 2017, the Berkeley City Council approved a resolution authorizing a contract between BPD and Axon. Axon was chosen after a competitive Request for Proposal (RFP) process. The contract will not exceed \$1,218,103 and includes the cost of 200 body worn cameras, charging stations, accessories, software licenses, training and unlimited storage for five years. The purchase also includes replacement cameras and charging stations during the third and fifth year of the contract.

There will be an annual cost of approximately \$250,000 to the police department's budget for a staff person to administer the body worn camera program beginning in FY 2019.

I. THIRD PARTY DEPENDENCE AND ACCESS

All BWC data will be uploaded and stored on Axon Cloud Services, Evidence.com. Axon complies with the EU-U.S. Privacy Shield Framework and the Swiss-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union and Switzerland to the United States (collectively, "Privacy Shield"). Axon has certified to the U.S. Department of Commerce that it adheres to the Privacy Shield Principles.

J. ALTERNATIVES

Officers rely primarily on traditional policing techniques to gather evidence related to criminal investigations such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of BWCs to document police activity.

BWC technology provides video and audio documentation of policing activity in addition to the oral and written statements of officers, victims, and witnesses. Alternatives to the use of BWCs would be vehicle-based cameras and/or not utilizing BWCs. However, BPD sees the use of BWCs as an integral strategy to strengthen police transparency, prevent and resolve complaints against the police by civilians, document police-public interaction, and promote the perceived legitimacy and sense of procedural justice that communities have about their departments. There is a broad consensus – among community leaders, the ACLU, the Department of Justice, the Berkeley Police Department, and elected officials – that body-worn cameras can be an important tool for improving the high-quality public service expected of police officers.

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K. EXPERIENCE OF OTHER ENTITIES

Numerous police agencies have adopted BWCs as a tool to help combat crime, to reduce citizen complaints and to reduce use of force situations. Many departments have developed their own usage policies which may include standards for required officer use, supervisory review, storage and data retention standards, and internal and public access.

A report for the U.S. Bureau of Justice Administration, <u>https://www.bja.gov/bwc/pdfs/14-005 Report BODY WORN CAMERAS.pdf - pages 6-8</u>, cites a 2013 Rialto, CA study that showed that the use of BWCs led to a 59 percent decrease in UOF and an 87.5 percent decrease in citizen complaints. Likewise, the Mesa, AZ report noted in "Impact" Section above also points to large decreases in UOF and citizen complaints.

The 2017 Police Body Worn Cameras: A Policy Scorecard, <u>https://www.bwcscorecard.org/</u>, provides an analysis of how scores of different police agencies have employed BWCs through a defined list of metrics.

Policy **425**

Berkeley Police Department Law Enforcement Services Manual

Body Worn Cameras

425.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable Body Worn Cameras (BWCs) by members of this department while in the performance of their duties.

This policy does not apply to non-BWC evidence, including other methods of audio or video recordings, interviews or interrogations conducted at any Berkeley Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

425.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between department personnel and the public provides an objective record of these events, and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts, which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in the delivery of police services to the community. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel.

While recordings obtained from BWCs provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience of the individual member(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events as perceived and recalled by the involved member. Specifically, it is understood that the BWC will capture information that may not have been seen and/or heard by the involved member and that the involved member may see and hear information that may not have been captured by the BWC.

425.3 CONFIDENTIALITY AND PROPER USE OF RECORDINGS

BWC use is limited to enforcement and investigative activities involving members of the public. The BWC recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, training, civil litigation, and other proceedings protected by confidentiality laws and department policy. Improper use or release of BWC recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded and is prohibited.

425.4 COORDINATOR

The Chief of Police, or his/her designee shall appoint a member of the Department to coordinate the use and maintenance of BWCs and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for uploading, storing and security of recordings.
- (b) Designating persons responsible for uploading recorded data.

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- (c) Establishing a maintenance system to ensure availability of BWCs.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with the City Attorney's office to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining an audit trail record for all access to evidence files, wherein access information for each evidence file is logged through use of a secure log-in system. The Department's storage system associates an audit trail record with each evidence file, thereby logging the date, time, user name, activity and client IP address occurring during each evidence file access.

All recordings made by members acting in their official capacity shall remain the property of the Department. Subject to the provisions of this Policy, members shall have no expectation of privacy or ownership interest in the content of these recordings.

425.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member who is assigned to wear a BWC will be responsible for making sure that he or she is equipped with a BWC issued by the Department, and that the BWC is in good working order. If the BWC is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/ her supervisor to permit the supervisor or other department employee to provide the member with a functioning BWC as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner as prescribed by the Department, to provide a generally unobstructed camera view of contacts between members of the public and department members.

Members lawfully engaged in their duties as a police officer are not required to obtain consent from, or give notice to, members of the public, prior to recording with their BWC.

Upon the approval of the Chief of Police, or his/her designee, non-uniformed members lawfully engaged in their duties as a police officer may use an approved BWC.

Members are required to document the existence of a recording in any report or other official record of the contact, such as a CAD entry, including any instance where the member is aware that the BWC malfunctioned or the member deactivated the recording. In the event activity outlined in section 425.7 is not captured in whole or in part the member shall document this and explain in their report their understanding, if any, of why the footage was not captured in the recording.

425.6 SUPERVISOR RESPONSIBILITIES

At such time as the scene is considered secure and safe, the on-scene supervisor shall take immediate physical custody of involved officer's/officers' BWC when the device may have captured an incident involving an officer-involved shooting or use of force resulting in death or great bodily injury, and shall ensure the data is uploaded in a timely manner as prescribed by BPD policy

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(Penal Code § 832.18). Supervisors may review relevant BWC video and audio files in the field in furtherance of their duties and responsibilities.

Supervisors shall also review relevant BWC recordings prior to submitting any administrative reports.

425.7 ACTIVATION OF THE BODY WORN CAMERA

This policy is not intended to describe every possible situation in which the BWC should be used. Members shall activate the BWC as required by this policy in (a)-(f) below, and may activate the BWC at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The BWC shall be activated in any of the following situations:

- (a) All in-person enforcement and investigative contacts including pedestrian stops and field interview (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated field contacts in which a member would normally notify the Communications Center.
- (d) Any search activity, including the service of search or arrest warrants; probation, parole, or consent searches where the member is seeking evidence of an offense, or conducting a safety sweep or community caretaking sweep of the premises. Once a location has been secured and the member is not interacting with detainees or arrestees, the member may mute their BWC when conducting a search for evidence.
- (e) Any other contact that the member determines has become adversarial after the initial contact in a situation where the member would not otherwise activate BWC recording.
- (f) Transporting any detained or arrested person and where a member facilitates entry into or out of a vehicle, or any time the member expects to have physical contact with that person.

At no time is a member expected to jeopardize his or her safety in order to activate a BWC. The BWC should be activated by members in anticipation of situations described above, and in any unanticipated, rapidly unfolding situation where activation becomes required, as soon as the member can do so safely.

Members should activate their BWC when conducting custodial interviews unless there are other recording devices being used. Members shall document and explain in their report the reason for not recording custodial interviews, should a BWC be de-activated while conducting a custodial interview or interrogation.

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425.8 VICTIMS AND WITNESSES OF CRIMES; INFORMANTS

In the event that an officer has the opportunity to record interviews of victims and witnesses of crimes, they shall consider the following:

- (a) Witnesses: In the event a crime witness or a member of the community wishes to report or discuss criminal activity anonymously, officers have the discretion to not record. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the witness's recorded statement. In cases where a witness requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
- (b) Victims: Upon request by the victim, officers have the discretion to not record the interview. Members may offer to avert their camera to capture only audio during the interview, when doing so would facilitate obtaining the victim's recorded statement. In cases where a victim requests they not be recorded, and the member agrees not to record, members should record their request prior to turning the camera off. When a member is already recording, the member shall record their explanation for turning the camera off prior to doing so.
 - 1. **Domestic Violence Victims**: Members should attempt to record interviews of domestic violence victims to facilitate future prosecution efforts and discourage later recanting of statements. Members should also record interviews with children who witness domestic violence, when the child is willing.
 - 2. Child Abuse and Sexual Assault Victims: Members shall have the discretion to record, absent any request to not record the interview by victims, witnesses, or non-suspect parents of victims, during child abuse and/or sexual assault investigations.
- (c) **Informants:** Members shall not activate their recorders when conducting an interview or engaging in a conversation with a confidential informant, unless needed as evidence.

Members have no obligation to advise a victim or witness that he or she is being recorded, but may do so at their discretion. When a victim or witness requests they not be recorded, members may consider their request (See Penal Code 632).

Members shall remain sensitive to the dignity of all individuals being recorded and exercise discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy concerns may outweigh any legitimate law enforcement interest in recording. Recording should resume when privacy concerns are no longer at issue unless the member determines that the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which members make an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, members may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community.

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425.9 ACTIVATION IN CROWD CONTROL SITUATIONS

During crowd control, protest or mass arrest incidents, members shall use their BWCs consistent with this policy, or when directed by the Incident Commander. The Incident Commander shall document his or her orders to activate in an appropriate report (e.g. Operations Plan or After Action Report).

The limitations outlined in the Intelligence Procedures for First Amendment Activities Policy governing intelligence-gathering procedures for First Amendment activities, apply to the use of BWCs and other recording devices.

Video recording of individuals who are picketing or engaged in peaceful protest will be avoided unless the officer believes a violation of criminal law is occurring, may occur, or if the officer interacts with a participant or third party to the event, or a participant or third party initiates contact with the member.

425.10 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police, or his/her designee.

Members are prohibited from using department-issued BWCs for non-work related personal activity. BWCs will not be activated in places where members have a reasonable expectation of privacy, such as workplace locker rooms, dressing rooms, members' private vehicles or restrooms.

425.11 CESSATION OF RECORDING

Once activated, the member may mute or deactivate their BWC at any time based on their discretion, in the following circumstances:

- (a) Discussion of tactical or confidential information with other law enforcement personnel.
- (b) Where members are on a perimeter or assigned to a static post where the member's direct participation in the incident is complete and they are not actively part of an investigation.
- (c) If it is necessary to discuss issues or concerns with an employee, supervisor, doctor, nurse, or paramedic in private.
- (d) In the member's judgment, a recording would interfere with his or her ability to conduct an investigation.

Decisions regarding the reason for muting or BWC deactivation shall be noted on the recording, or otherwise documented.

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Members shall cease audio/video recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation. This does not apply to conversations with paramedics or EMTs during their response at a scene, and during transport.

425.12 EXPLOSIVE DEVICE

Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

Members believing that the use of a BWC may detonate an explosive device may deactivate their BWC in such cases.

425.13 PROHIBITED USE OF BODY WORN CAMERAS

Members are prohibited from using a department-issued BWC for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity.

Members are prohibited from retaining BWC recordings. Members shall not duplicate or distribute such recordings, except for department business purposes. All such recordings shall be retained at the Department.

Members may not use personally owned recorders (e.g. personal cell phone) to document contacts unless exigent circumstances exist to warrant the use of personally owned recording devices. Regardless, if a member is using a department-issued BWC, and/or another recording device, members shall comply with the provisions of this policy, including retention and release requirements. In every event where members use any recording device aside from or in addition to their department-issued BWC, the member shall document and explain the use and the exigent circumstance in their police report (e.g. the BWC failed and evidence needed to be captured at that moment in time).

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

425.14 PROCESSING AND HANDLING OF RECORDINGS

To assist with identifying and preserving data and recordings, members shall tag and download recordings in accordance with procedure, and document the existence of the recording in the related case report. Transfers must occur at the end of the member's shift, and any time the member is aware that the storage capacity of the BWC is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the BWC and be responsible for uploading the data. Officers shall tag each file with the appropriate case/incident number, provide a descriptive title, and select an appropriate category for each recording, using the Axon View app or via the Evidence.com site.

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Members are prohibited from intentionally erasing, altering, reusing, modifying or tampering with original audio video recordings. Members may request restriction and subsequent deletion of an accidental recording as described under section 425.16 below.

425.15 RETENTION REQUIREMENTS

The Department shall retain all recordings for a minimum of 60 days. Incidents involving consensual contacts, and aid to citizens will be retained for six months, and cold reports will be retained for one year. Recordings of incidents involving use of force by a police officer, detentions, arrests, or recordings relevant to a formal or informal complaint shall be retained for a minimum of two years and one month. Recordings relating to court cases and personnel complaints that are being adjudicated will be manually deleted at the same time other evidence associated with the case is purged in line with the Department's evidence retention policy. Any recordings related to administrative or civil proceedings shall be maintained until such matter is fully adjudicated, at which time it shall be deleted in line with the Department's evidence retention policy, and any applicable orders from the court.

Recordings created by equipment testing or accidental activation may be deleted after 60 days.

425.16 ACCIDENTAL RECORDING - REQUEST FOR RESTRICTION

In the event of an accidental or sensitive personal recording of non-departmental business activity, where the resulting recording is of no investigative or evidentiary value, the recording employee may request that the file be restricted pending 60-day deletion by submitting an email request via their chain of command to the Professional Standards Division Captain. The Professional Standards Division Captain will approve or deny the restriction request. In cases where the request is denied, an appeal may be submitted to the Chief of Police, or his/her designee, for restriction authorization. In all cases of restriction requests, a determination should be made within seven calendar days.

425.17 REVIEW OF RECORDINGS BY A MEMBER

Members are authorized to review their own BWC video files at any time in furtherance of official business. Such official business includes, but is not limited to, preparing written reports, prior to or while providing testimony in a case or being deposed. Members may review recordings as an evidentiary resource, except as stated in subsection 425.17.1 below. Members shall not retain personal copies of recordings. Members shall not use the fact that a recording was made as a reason to write a less detailed report.

425.17.1 OFFICER INVOLVED INCIDENTS RESULTING IN GRAVE BODILY INJURY OR DEATH

(a) In the event of a critical incident that results in grave bodily injury or death, including an officer-involved shooting or an in-custody death, the BWC of the involved member(s) shall be taken from him or her and secured by a supervisor, commander, or appropriate investigator, as necessary. The involved member(s) shall not access or obtain their footage of the incident until such time as the criminal investigator(s) have reviewed

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the video files. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member's supervisor to obtain footage of the incident on behalf of the member.

- (b) Personnel uploading secured BWC video files shall not view the files unless authorized.
- (c) No member involved in a critical incident may view any video recordings prior to an interview by the appropriate criminal investigative unit, and receiving command approval.
- (d) Prior to the conclusion of the criminal interview process, the involved member and/ or the member's representative will have an opportunity to review the member's recording(s). The involved member may choose to provide additional information to supplement his or her statement by providing a supplemental statement or separate supplemental document. In no case shall a member alter a report made prior to reviewing the recording.
- (e) The Department acknowledges that recordings taken during critical incidents obtained from BWCs do not necessarily reflect the full extent of the nature of the event or the experience, analysis, training, threat assessment or state of mind of the individual officers(s) in a given incident. Moreover, the recordings, especially video, have limitations and may depict events differently than the events recalled by the involved officer. Specifically, it is understood that the recording device will capture information that may not have been heard and/or observed by the involved officer and that officers may see and hear events that are not captured by the camera.

Officers who are involved in any critical incident where video recordings exist depicting the involved officer, either as a subject officer or witness, shall be provided the following admonishment to the initial interview or submission of the initial written report:

"In this case, there is video evidence that you will have an opportunity to view. Video evidence has limitations and may depict the events differently than you recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The "frame rate" of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on the video may be different than what is seen by the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your statement explains your state of mind at the time of the incident."

425.17.2 SUPERVISORY REVIEW

With the exception of section 425.17.1 above, supervisors are authorized to review relevant recordings any time they are reviewing and approving case reports from their subordinates.

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Body Worn Cameras

425.17.3 INVESTIGATORY REVIEW

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct, or whenever such recordings support review of the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in conduct of an official investigation, such as a personnel complaint, an administrative investigation or a criminal investigation.
- (b) Pursuant to lawful process or by court or District Attorney personnel who are otherwise authorized to review evidence in a related case.
- (c) By personnel assigned to investigatory units who are authorized to view any BWC video file associated to their active investigations, unless otherwise prohibited by policy.
- (d) Upon approval by the Chief of Police, Internal Affairs investigators may review BWC video with a complainant.

Investigators conducting criminal or internal investigations shall:

- 1. Advise the coordinator to restrict access to the BWC file in criminal or internal investigations, as necessary.
- 2. Review the file to determine whether the BWC file is of evidentiary value and process it in accordance with established protocols.
- 3. Notify the coordinator to remove the access restriction when the criminal/internal investigation is closed.

425.17.4 TEACHING OR LEARNING TOOL

BWC files may also be reviewed by training staff regarding specific incidents where such files may serve as an internal learning or teaching tool. In the event that videos are intended to be used for training purposes, the involved officer(s) will first be consulted. If he/she objects to the use of the video, such objection shall be submitted to the person in charge of training who shall weigh the value of the video for training against the officer(s) objections and basis for the objection. Should the person in charge of training refuse to grant the request of the involved officer(s), the matter shall be heard by the Chief of Police, or his/her designee, prior to utilizing the video.

425.17.5 COB CIVIL CLAIMS AND LAWSUITS

BWC recordings may be reviewed and used by City of Berkeley defense counsel for the purposes of defending the city in civil claims and lawsuits, with the authorization of the Chief of Police, or his/her designee.

425.18 RELEASE OF RECORDINGS

All recordings should be reviewed by the Custodian of Records and the City Attorney's Office prior to public release, see General Order R-23 (Release of Public Records and Information).

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Body Worn Cameras

In the event that the Police Department or City Department intends to release or publish for any purpose video recordings where officers are captured on video or the video depicts actions taken by them in the course of the performance of their official duties, those officers shall be given written notice of the intention to release or publish said video at least 48 hours prior to such release.

BPD may, without prior notice to involved officers, share video footage with law enforcement, national security, military, or other government agencies outside of Berkeley, when there is reasonable suspicion that criminal activity has occurred or is about to occur.

425.18.1 POLICE REVIEW COMMISSION (PRC)

Access to recorded files will be granted for the purposes of review to the Police Review Commission Officer and/or Investigator investigating a specific complaint where BWC evidence files are available, and are not part of any ongoing criminal investigation.

- (a) The PRC Officer and PRC Investigator will be provided user account access to evidence files through the evidence management system for their use during a complaint investigation and to facilitate viewing by Board of Inquiry members during a Board of Inquiry.
- (b) The PRC Officer and PRC investigator shall not make or create a copy of any evidence file, nor make or allow to be made any audio or video recording of any evidence file while it is being streamed and viewed from the evidence management system.
- (c) The PRC Officer and PRC Investigator shall not allow any unauthorized individuals to view or access evidence files.
- (d) The evidence management system associates an audit trail record with each evidence file, thereby logging the date, time, user, activity, and client IP address occurring during each evidence file access.
- (e) The evidence management system shall only be accessed on City premises.
- (f) The Department retains custody and control of the recordings, and content of the video will be subject to applicable legal standards including, but not limited to the confidentiality requirements of the Public Safety Officers' Procedural Bill of Rights, (Government Code § 3300, et seq., Penal Code § 832.7, and the California Public Records Act; Government Code § 6250, et seq.)

425.18.2 PUBLIC RECORDS ACT (PRA) REQUEST

Access to recorded files will be granted for the purposes of review in response to a public records request, as permitted under Government Code § 6254(f) and BPD General Order R-23 (Release of Public Records and Information). General Order R-23 does not authorize release of investigative files or documents that would constitute an unwarranted invasion of privacy. Circumstances where this might arise in video include footage taken inside a home, a medical facility, the scene of a medical emergency, or where an individual recorded has a "reasonable expectation of privacy."

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Body Worn Cameras

425.18.3 MEDIA

Access to recorded files will be granted for the purposes of review to media personnel or the general public with permission of the Chief of Police, or his/her designee, subject to General Order R-23 and privacy protections indicated in this policy.

425.19 COMPLIANCE WITH BMC 2.99 ACQUISITION AND USE OF SURVEILLANCE TECHNOLOGY

This policy shall comply at all times with the requirement of BMC 2.99 Acquisition and Use of Surveillance Technology.

425.20 TRAINING REQUIRED

Officers who are assigned BWCs must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of BWCs under this policy. Information resulting from the outcomes of this review shall be incorporated into the City Manager's annual "Surveillance Technology Report" as required under BMC 2.99 Acquisition and Use of Surveillance Technology.

The Department, Police Review Commission and other City Departments shall maintain the confidentiality of Department sworn employee personnel records as required by state and local law. Failure to maintain the confidentiality of Department sworn employee personnel records, whether or not intentional, may subject individuals to civil penalties and discipline, up to and including termination of employment.

ATTACHMENT 3: Global Positioning System Tracking Devices

Surveillance Technology Report GPS Tracker To be provided as part of supplemental communications Policy **1301** Berkeley Police Department Policy Manual

Surveillance Use Policy - GPS Tracking Devices

1301.1 PURPOSE

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals. GPS trackers electronically relay their precise location in real time, and thereby assist BPD in the recovery of evidence and arrest of suspects.

1301.2 AUTHORIZED USE

GPS trackers shall only be used during active criminal investigations. GPS trackers shall only be used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

GPS trackers shall only be utilized for law enforcement purposes.

1301.3 DATA COLLECTION

Location data may be obtained through the use of a GPS Tracker.

1301.4 DATA ACCESS

Access to GPS tracker data shall be limited to Berkeley Police Department (BPD) personnel utilizing the GPS Tracker(s) for active criminal investigations. Information may be shared in accordance with 1301.9 below.

In support of active criminal investigations, BPD personnel may receive GPS tracker data from probation or parole agencies which utilize GPS trackers (e.g. ankle monitors) as a condition of probation or parole.

1301.5 DATA PROTECTION

The data from the GPS tracker is encrypted by the vendor. The data is only accessible through a secure website to BPD personnel who have been granted security access.

1301.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. Provisions of this policy, including 1301.4 Data Access, 1301.5 Data Protection, 1301.7 Data Retention, 1301.8 Public Access and 1301.9 Third Party Data Sharing serve to protect against any unauthorized use of GPS tracker data. These procedures ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1301.7 DATA RETENTION

A GPS Tracker data record consists of date, time, latitude, longitude, map address, and tracker

identification label. This data is stored indefinitely by the vendor. The data does not contain any images, names of subjects, vehicle information, etc.

Tracker data received from the vendor shall be kept in accordance with applicable laws, BPD policies that do not conflict with applicable law or court order, and/or as specified in a search warrant.

1301.8 PUBLIC ACCESS

Data collected and used in a police report shall be made available to the public in accordance with department policy and applicable state or federal law.

1301.9 THIRD-PARTY DATA-SHARING

Data collected from the GPS trackers may be shared with the following:

- (a) The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- (b) Other law enforcement personnel as part of an active criminal investigation;
- (c) Other third parties, pursuant to a Court Order.

1301.10 TRAINING

Training for the operation of the GPS trackers shall be provided by BPD personnel. All BPD personnel shall be provided with this Surveillance Use Policy.

1301.11 AUDITING AND OVERSIGHT

Division Captains or their designee shall ensure compliance with this Surveillance Use Policy.

1301.12 MAINTENANCE

GPS trackers shall only be obtained with the permission of the Investigations Division Captain or his/her designee. The Investigations Division Captain or his/her designee will ensure the trackers are returned when the mission/investigation is completed.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

GPS TRACKING DEVICES

A. DESCRIPTION

Global Positioning System (GPS) tracking devices track the movements of vehicles, bicycles, cargo, machinery, other items, and/or individuals.

The Berkeley Police Department currently uses two types of GPS Tracking Devices to track the movements of vehicles, bicycles, or other kinds or property. The manufacturer, 3SI Security Systems, describes them as follows:

- 1. The "Slap-n-Track" (SNT) tracker tracks vehicles, cargo, and other large assets for long deployments. Offers extended battery life, rugged and weatherproof housing, and optional magnets.
- 2. The "Electronic Stake Out" (ESO) tracker offers Law Enforcement miniaturized and covertly packaged GPS Tracking Solutions to target property crimes, especially pattern crimes, in their local jurisdictions.

B. PURPOSE

Global Positioning System (GPS) tracking devices provide precise, real-time location information during the conduct of active criminal investigations. GPS trackers are only used pursuant to a lawfully issued search warrant, or with consent of the owner of the object to which the GPS tracker is attached.

C. LOCATION

GPS tracking devices shall be deployed in locations consistent with the authority granted by consent or a lawfully issued search warrant or court order.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. GPS Trackers are used in place of expensive, resource-intensive surveillance operations which typically involve multiple officers, often over long periods of time. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with GPS trackers help to ensure no unauthorized use of of GPS tracker data occurs. BPD Policy 1301 Surveillance Use Policy – GPS Tracking Devices ensure the use of GPS trackers and the resulting data are not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

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E. MITIGATION

Data from a GPS tracker is encrypted from the vendor. Data shall be maintained in a secure, non-public location, such as locations requiring security access or badge access, thereby safeguarding the public from any impacts identified in subsection (D).

F. DATA TYPES AND SOURCES

A GPS tracker data record consists of date, time, latitude, longitude, map address (derived by using latitude, longitude and Google maps), and tracker identification label. The data does not contain any images, names of subjects, vehicle information, etc.

G. DATA SECURITY

Data from a GPS tracker is encrypted by the vendor on secure servers. The data is only accessible through a secure website to BPD personnel who have been granted security access. Captains whose Divisions utilize GPS trackers are responsible for ensuring compliance with the procedures for utilizing GPS Trackers.

H. FISCAL COST

The initial cost of the GPS trackers totaled \$4,335.

- Between 2015-present BPD purchased 5 GPS "ESO" trackers for \$2,250 (\$450 each).
- In 2017 BPD purchased 3 GPS "SNT" trackers for \$2,085 (\$695 each).

The annual cost for the GPS data service totals \$1,920.

- The annual data service for the five ESO trackers is \$1,020 (\$204 each).
- The annual data service for the three SNT trackers is \$900 (\$300 each).

Personnel costs are minimal in that the GPS trackers are used as a resource during normal working hours.

GPS trackers are funded through the Investigations Division's general budget.

I. THIRD PARTY DEPENDENCE AND ACCESS

Data collected from the GPS trackers may be shared with the following:

- a. The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- b. Other law enforcement offices as part of a criminal investigation;
- c. Other third parties, pursuant to a Court Order.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - GPS TRACKING DEVICES

J. ALTERNATIVES

An alternative to the use of GPS trackers is to conduct resource-intensive surveillance operations utilizing numerous personnel over extended periods of time.

K. EXPERIENCE OF OTHER ENTITIES

The use of GPS tracker technology is common amongst law enforcement agencies throughout the country.

ATTACHMENT 4: Automated License Plate Readers

Surveillance Technology Report Automated License Plate Reader To be provided as part of supplemental communications Policy **1302**

Berkeley Police Department Policy Manual

Surveillance Use Policy - ALPR

1302.1 PURPOSE

This Surveillance Use Policy is issued in compliance with BMC 2.99, and incorporates by reference language from the Berkeley Police Department ALPR Policy #422 and adds elements as required by BMC 2.99.

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review. (Ref. policy 422.2)

1302.2 AUTHORIZED AND PROHIBITED USES USE

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use, or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53). (Ref. policy 422.4)

- (a) An ALPR shall only be used for official law enforcement business.
- (b) An ALPR may be used to support a patrol operation or criminal investigation. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped cars to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

1302.3 DATA COLLECTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law. (Ref. policy 422.5)

1302.4 DATA ACCESS

- (a) No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.
- (b) No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so.
- (c) If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert.

1302.5 DATA PROTECTION

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref. policy 422.6):

- (a) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (b) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- (c) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (d) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

1302.6 CIVIL LIBERTIES AND RIGHTS PROTECTION:

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures described within this policy (Data Access, Data Protection, Data Retention, Public Access and Third Party Data Sharing) protect against the unauthorized use of ALPR data. These policies ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups.

1302.7 DATA RETENTION

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data. Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT) department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence. (Ref. policy 422.5)

(a) Collected images and metadata of hits will not be stored for more than 365 days. Metadata of reads will not be stored for more than 30 days. Images of reads will not be transferred to the server.

1302.8 PUBLIC ACCESS

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. (Ref. policy 422.6 (a))
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question. (Ref. policy 422.6 (b))

1302.9 THIRD-PARTY DATA-SHARING

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. ALPR data is subject to the provisions of BPD Policy 415, and hence may not be shared with federal immigration enforcement officials.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager. (Ref. policy 422.6 (e))

1302.10 TRAINING

Training for the operation of ALPR Technology shall be provided by BPD personnel. All BPD employees who utilize ALPR Technology shall be provided a copy of this Surveillance Use Policy.

1302.11 AUDITING AND OVERSIGHT

ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually. (Ref. policy 422.6 (g))

1302.12 MAINTENANCE

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data. (Ref. policy 422.3)

1302.12.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53) (Ref.

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policy 422.3.1):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

AUTOMATED LICENSE PLATE READER (ALPR) DEVICES

A. DESCRIPTION

Automated License Plate Readers (ALPRs) are high-speed, computer controlled camera systems that are typically mounted on Berkeley Police Department Parking Enforcement Vehicles.

ALPRs capture license plate numbers which come into view, along with the location, date and time. The data, which includes a photo of the front or the back of the car displaying the license plate, is then uploaded to a central server.

B. PURPOSE

The Berkeley Police Department's Parking Enforcement Unit utilizes vehicles equipped with ALPRs to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's also access information in the California Law Enforcement Telecommunications System's (CLETS) Stolen Vehicle System (SVS) database, which provides information on matches for stolen and wanted vehicles.

The Berkeley Police Department's Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates, and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding parking citation fees.

C. LOCATION

Parking Enforcement vehicles travel throughout the city; using the ALPRs as described above.

D. IMPACT

The Berkeley Police Department is dedicated to the most efficient utilization of its resources and services in its public safety endeavors. The Berkeley Police Department recognizes the need to protect its ownership and control over shared information and to protect the privacy and civil liberties of the public, in accordance with federal and state law. The procedures utilized with ALPR Units will help to ensure unauthorized use of its data. The procedures will ensure the data is not used in a way that would violate or infringe upon anyone's civil rights and/or liberties, including but not limited to potentially disparate or adverse impacts on any communities or groups. BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

E. MITIGATION

All saved data will be safeguarded and protected by both procedural and technological means which are implemented to safeguard the public from any impacts identified in subsection (D). See subsection (G) for further.

F. DATA TYPES AND SOURCES

Photographs of license plates and location data may be obtained through the use of ALPR Units.

G. DATA SECURITY

The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- 1. All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- 2. Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action and parking enforcement.
- 3. Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- 4. Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.

H. FISCAL COST

In 2015, Public Works brought an ALPR Contract to City Council. Council approved a contract for Public Works to buy five Genetec ALPR Units with PCS Mobile communication, for a pilot program for \$450,000.

In 2017, after success with the program, City Council approved an amendment to the contract, allowing Public Works to purchase 15 more ALPR Units for Parking Enforcement vehicles, and to continue its use of PCS Mobile, for 1,200,000. The money was allocated from the goBerkeley/Federal Highway Administration Parking Meter Fund.

Yearly service for the ALPR Units includes warranties, hosting services, cellular connection, mobile computing, and training which varies. The costs through fiscal year 2022 are currently estimated at \$1,175,000.

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BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

Personnel costs are minimal in that the ALPR Units are used as a resource during normal working hours.

I. THIRD PARTY DEPENDENCE AND ACCESS

- 1. Vendor Access-Scofflaw Enforcement: The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:
 - a. All data captured by the ALPR is stored on the booting vehicle's laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.
 - b. When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.
- 2. Vendor Access-General Parking Enforcement and goBerkeley Program: The contracted vendor for the City's Parking Enforcement ALPR is currently Genetec. The city uses Genetec ALPRs to support efficient enforcement of posted time limit parking and Residential Preferential Parking permits.
 - a. In addition, Genetec periodically provides reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that the City's program can analyze data about parking demand. These reports do not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports consist of completely anonymized information, using identification numbers that are not associated with a particular license plate or registered owner.
 - b. The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and Residential Permit Pass (RPP) area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.
- Department of Information Technology Access: Technical support and assistance for ALPR's is provided by the City of Berkeley's Department of Information Technology (IT) and associated ALPR system providers/vendors as identified herein. IT staff who

BERKELEY POLICE DEPARTMENT SURVEILLANCE ACQUISITION REPORT - AUTOMATED LICENSE PLATE READER DEVICES

do not have the proper clearance and training do not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT provides initial infrastructure set-up, and continued systems support as needed to ensure efficient and accurate performance of the ALPR hardware and software. Only IT staff members who have successfully undergone DOJ background checks and training are authorized by the Chief of Police to view specific ALPR records.

- 4. Other Law Enforcement Agency Access: ALPR data may only be shared with other law enforcement or 'prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law. Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55). Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- 5. Member Access: No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training. No ALPR operator may access CLETS data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through CLETS before taking enforcement action that is based solely on an ALPR alert.
- 6. Public Access: Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law. Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.

J. ALTERNATIVES

None.

K. EXPERIENCE OF OTHER ENTITIES

The use of ALPR technology is common amongst law enforcement agencies throughout the country, in support of parking enforcement, and law enforcement criminal investigations.

Policy **422**

Berkeley Police Department Policy Manual

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because .such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

The Investigations Division Captain, or his/her designee, shall be responsible for developing guidelines and procedures to comply with the requirements of Civil Code § 1798.90.5 et seq. This includes, but is not limited to (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) A description of the job title or other designation of the members and independent contractors who are authorized to use or access the ALPR system or to collect ALPR information.
- (b) Training requirements for authorized users.
- (c) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
- (d) Procedures for system operators to maintain records of access in compliance with Civil Code § 1798.90.52.
- (e) The title and name of the current designee in overseeing the ALPR operation.
- (f) Ensuring this policy and related procedures are conspicuously posted on the City's website.

422.4 USE OF THE ALPR

An ALPR shall only be used for official law enforcement business.

Use of an ALPR is restricted to the purposes outlined below. Department members shall not use,

|1

or allow others to use the equipment or database records for any unauthorized purpose (Civil Code § 1798.90.51; Civil Code § 1798.90.53).

- (a) An ALPR may be used by Berkeley Police Department Parking Enforcement for parking and scofflaw enforcement.
- (b) An ALPR may be used to support criminal investigations. Reasonable suspicion or probable cause is not required before using an ALPR.
- (c) While an ALPR may be used to canvass license plates around any crime scene, particular consideration should be given to using ALPR-equipped vehicles to canvass areas around homicides, shootings and other major incidents. Partial license plates reported during major crimes should be entered into the ALPR system in an attempt to identify suspect vehicles.

No member of this department shall operate ALPR equipment or access ALPR data without first completing department-approved training.

No ALPR operator may access California Law Enforcement Telecommunications System (CLETS) data unless otherwise authorized to do so. If practicable, the officer should verify an ALPR response through the California Law Enforcement Telecommunications System (CLETS) before taking enforcement action that is based solely on an ALPR alert

422.5 .DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review.

The Investigations Division Captain, or his/her designee, is responsible for ensuring proper collection and retention of ALPR data.

Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

All ALPR data downloaded to the server should be stored for a minimum of one year (Government Code § 34090.6) and in accordance with the established records retention schedule. Thereafter, ALPR data should be purged unless it has become, or it is reasonable to believe it will become, evidence in a criminal or civil action or is subject to a lawful action to produce records. In those circumstances the applicable data should be downloaded from the server onto portable media and booked into evidence.

- (a) Collected images and metadata of reads showing violations will not be stored for more than 365 days.
- (b) Metadata of reads showing violations will be stored for up to 30 days. Images of reads not

showing violations will not be transferred to the server.

422.6 ACCOUNTABILITY

All saved data will be safeguarded and protected by both procedural and technological means. The Berkeley Police Department will observe the following safeguards regarding access to and use of stored data (Civil Code § 1798.90.51; Civil Code § 1798.90.53):

- (a) Non-law enforcement requests for access to stored ALPR data shall be processed according to the Records Maintenance and Release Policy in accordance with applicable law.
- (b) Non-law enforcement requests for information regarding a specific vehicle's license plate may be honored when the requester is the registered owner of the vehicle in question, and when providing such information will not invade the privacy of a third party. The requestor in such cases must provide acceptable proof of his or her identity and of ownership of the vehicle in question.
- (c) All ALPR data downloaded to any workstation or server shall be accessible only through a login/password-protected system capable of documenting all access of information by name, date and time (Civil Code § 1798.90.52).
- (d) Berkeley Police Department members approved to access ALPR data under these guidelines are permitted to access the data for legitimate law enforcement purposes only, such as when the data relate to a specific criminal investigation or department-related civil or administrative action or parking enforcement.
- (e) Aggregated ALPR data not related to specific criminal investigations shall not be released to any local, state or federal agency or entity without the express written consent of the City Manager.
- (f) Measures will be taken to ensure the accuracy of ALPR information. Errors discovered in ALPR data collected by ALPR units shall be marked, corrected or deleted in accordance with the type and severity of the error in question.
- (g) ALPR system audits will be conducted by the Professional Standards Bureau's Audit and Inspections Sergeant on a regular basis, at least biannually.

For security or data breaches, see the Records Release and Maintenance Policy.

422.7 RELEASING ALPR DATA

The ALPR data may be shared only with other law enforcement or prosecutorial agencies for official law enforcement purposes or as otherwise permitted by law, using the following procedures:

- (a) The agency makes a written request for the ALPR data that includes:
 - 1. The name of the agency.
 - 2. The name of the person requesting.
 - 3. The intended purpose of obtaining the information.

- 4. The related case number.
- (b) The request is reviewed by the Investigations Division Captain, or his/her designee, and approved before the request is fulfilled.
- (c) The approved request is retained on file.

Requests for ALPR data by non-law enforcement or non-prosecutorial agencies will be processed as provided in the Records Maintenance and Release Policy (Civil Code § 1798.90.55).

ALPR data is subject to the provisions of the Berkeley Police Department's Immigration Law Policy, and hence may not be shared with federal immigration enforcement officials.

422.8 SCOFFLAW ENFORCEMENT

The Berkeley Police Department uses ALPR technology in the Parking Enforcement Unit for parking and scofflaw enforcement.

The Parking Enforcement Unit will utilize vehicles equipped with ALPR units to conduct enforcement of posted time limits in commercial areas and Residential Preferential Parking (RPP) permit areas. These ALPR's will also access information in the DMV's Stolen Vehicle System (SVS) database for wanted and stolen vehicles.

The Scofflaw Enforcement program (often referred to as the "booting" program) utilizes an ALPR to scan license plates and check the scanned "reads" against a list of vehicles which have five or more outstanding parking citations exceeding 30 days old. Typically, upon a confirmed "hit," the vehicle is immobilized with a "boot", or towed, and the owner has to pay the outstanding citations and fees in order to release the boot and/or recover their car from storage. This allows the City to recover outstanding citation fees.

The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

The reports will provide only the date, time, location, approximate address, "goBerkeley" blockface ID, and RPP area in which a vehicle was observed. If a citation was not issued for an RPP or other time limit violation, the report may also provide the reason a parking

enforcement officer concluded there was no parking violation, e.g., RPP visitor pass, disabled placard or license plate, etc.

ATTACHMENT 5: Police Review Commission Communication



Police Review Commission (PRC)

September 11, 2019

- To: Honorable Mayor and, Members of the City Council
- From: George Perezvelez, Chairperson, Police Review Commission
- Re: Proposed Berkeley Police Department Policy 422, Automated License Plate Readers

<u>Summary</u>: This memo is to inform you of the Police Review Commission's qualified approval of the BPD's proposed policy for the use of Automated License Plate Readers (ALPRs).

<u>Background</u>: The BPD submitted the ALPR policy, Policy 422, to the PRC for review, along with the Surveillance Use Policy and the Surveillance Acquisition Report (Policy 1302 and Appendix A) for these devices. This process was undertaken in advance of BPD submitting these items to the City Council as required by the Surveillance Technology Use and Community Safety Ordinance (B.M.C. Ch. 2.99).

These policies were first considered by the full Commission, which then referred them to its Lexipol Policies Subcommittee. In response to feedback from the PRC and the Subcommittee, the BPD revised the proposed policy, which was reviewed by both bodies. At various stages, the PRC and the subcommittee had the opportunity to hear from and ask questions of Police Chief Greenwood and other members of the BPD, and Deputy City Attorney Chris Jensen, The PRC also heard input from representatives of Media Alliance and Oakland Privacy.

<u>Final action</u>: At its September 4, 2019 meeting, the PRC voted to approve for submission to the City Council for your review and discussion the version of Policy 422 that is attached here, with two caveats. First, there was concern among some commissioners that the ALPR was originally acquired for the purpose of parking enforcement and that this policy represents an expansion of that function. If this is not what the Council had in mind, then this policy should be modified accordingly. Second, Section 422.4(c) of the policy does not adequately define what constitutes a "crime scene."

Finally, the Commission wishes to remind the Council that they will see actual use of the ALPR technology under the reporting mechanism in place in the Surveillance Technology Use and Community Safety Ordinance.

1947 Center Street, 1st Floor, Berkeley, CA 94704 Tel: 510-981-4950 TDD: 510-981-6903 Fax: 510-981-4955 e-mail: prc@cityofberkeley.info website: www.cityofberkeley.info/prc/ Honorable Mayor and Members of the City Council Proposed Berkeley Police Department Policy 422, Automated License Plate Readers September 11, 2019 p. 2

The above action was approved by the following vote: Moved/Seconded (Perezvelez/Mikiten) -- Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, Ramsey; Noes: Earnest, Mizell; Abstain: Allamby; Absent: None.

Attachment: Revised Policy 422

cc: Dee Williams-Ridley, City Manager Andrew Greenwood, Chief of Police David White, Deputy City Manager PRC Commissioners Policy **422**

Berkeley Police Department

Automated License Plate Readers (ALPRs)

422.1 PURPOSE AND SCOPE

The purpose of this policy is to provide guidance for the capture, storage and use of digital data obtained through the use of Automated License Plate Reader (ALPR) technology.

422.2 POLICY

The policy of the Berkeley Police Department is to utilize ALPR technology to capture and store digital license plate data and images while recognizing the established privacy rights of the public.

All data and images gathered by the ALPR are for the official use of this department. Because such data may contain confidential information, it is not open to public review.

422.3 ADMINISTRATION

Any installation and maintenance of ALPR equipment, as well as ALPR data retention and access, shall be managed by the Investigations Division Captain. The Investigations Division Captain will assign members under his/her command to administer the day-to-day operation of the ALPR equipment and data.

422.3.1 ALPR ADMINISTRATOR

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422.4 USE OF THE ALPR

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422.5 DATA COLLECTION AND RETENTION

All data and images gathered by an ALPR are for the official use of the Berkeley Police Department. Such data may contain confidential CLETS information and is not open to public review. ALPR information gathered and retained by this department may be used and shared with prosecutors or other law enforcement agencies only as permitted by law.

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Technical support and assistance shall be provided by the City of Berkeley's Information Technology (IT Department and associated ALPR system providers/vendors as identified below. IT staff will not have the ability to access or view individual records or reports, as they may contain CLETS information they are not authorized to receive. IT's role will be limited to providing initial infrastructure set-up, unless particular IT staff members have been cleared by DOJ background checks and authorized by the Chief of Police to receive ALPR records.

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The contracted vendor for the City's Scofflaw Enforcement program is currently Paylock. Paylock stores data on a secure server, and provides access to authorized personnel via Paylock's "Bootview" secure website, as described below:

(a) All data captured by the ALPR is stored on the laptop for 30 days, and is only accessible during that period via the ALPR proprietary software. This includes reads, hits, and photographs associated with each.

When a car is booted and/or towed, the read, hit and photographic data relating to the booting and/or towing of scofflaw vehicles is uploaded to Paylock's secure server. No other data is uploaded to Paylock's secure server.

The City's Parking Enforcement ALPR vendor (currently Genetec) will periodically provide reports to the City of Berkeley Transportation Division's "goBerkeley" parking management program so that it can analyze data about parking demand. These reports will not contain any information about a vehicle's license plate number, the name of the registered owner, address of registered owner, or any other information gleaned from the license plate number associated

with a particular vehicle. Rather, the reports will consist of 100 percent anonymized information using identification numbers that are not associated with a particular license plate or registered owner.

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INFORMATION CALENDAR February 25, 2020

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Erin Steffen, Assistant to the City Manager

Subject: Audit Status Report Response: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight

INTRODUCTION

On June 26th, 2018, the City Auditor submitted a Code Enforcement Unit (CEU) audit report¹, with recommendations to improve operations efficiencies and implement a resource analysis process. The purpose of this report is to update City Council on the status of implementing the audit report's recommendations. This is the third status report regarding this audit.

CURRENT SITUATION AND ITS EFFECTS

The audit report contains twelve recommendations. During the previous update presented to Council on June 25, 2019, five of the recommendations were implemented, five were partially implemented, and two not implemented. As of the date of this writing, no additional recommendations have updates, due to a high volume of staff turnover. Please see Attachment 1 for a detailed table of audit report recommendations, corrective action plans, and implementation progress. The next status report is anticipated to be delivered to City Council on July 28, 2020.

BACKGROUND

The City of Berkeley's Code Enforcement Unit's goal is to provide a clean and safe environment for all Berkeley residents, workers, and visitors. The CEU is responsible for the enforcement of administrative violations of the Berkeley Municipal Code and some provisions of California State codes related to building, zoning, and housing. The City

¹ Audit: Code Enforcement Resources Significantly Constrained and Improvements Needed in Case Management and Oversight:

https://www.cityofberkeley.info/uploadedFiles/Auditor/Level_3_-_General/A.2_RPT_Code%20Enforcement_Fiscal%20Year%202018.pdf

Page 2 of 19

Audit Report Response: Code Enforcement Resources Significantly Significantly Constrained and Improvements Needed In Case Management And Oversight From April 17, 2019 – December 13, 2019

Manager's Office oversees the CEU, which now consists of three full-time employees: one Code Enforcement Supervisor and two Code Enforcement Officer IIs.

ENVIRONMENTAL SUSTAINABILITY

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

POSSIBLE FUTURE ACTION

The City Manager's Office will continue to work with the Code Enforcement Unit to complete implementation of the recommendations.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION None

<u>CONTACT PERSON</u> Erin Steffen, Assistant to the City Manager (510) 981-7017

Attachments:

1: Audit Findings, Recommendations, and Management Response Summary Table

Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
 Finding 1: Code Enforcement Unit resource Implement a resource analysis process by which proposed legislation is discussed with City management to evaluate the impact on current City resources and determine the feasibility of making the intended impact. The analysis should take place before the policy is presented to Council for adoption and include considerations of: Staff time and other City resource needs, including the fiscal impact of those resource needs Opportunity cost, i.e., consideration of other activities that will be deprioritized in order to meet new demands 	City Council	Agree	et demand	Initial Status December 2018: Partially Implemented.On June 26, 2018, City Council approved a recommendation to implement a resource analysis process as part of the Code Enforcement Unit (CEU) Audit. On December 11, 2018, City Council adopted Resolution No. 68,725-N.S., which included the framework and procedures for standing Policy Committees of the City Council as part of the City's legislative process. During the Policy Committee review of resolutions, ordinances and referrals, staff will undertake a high-level, preliminary analysis of potential costs, timelines and staffing demands associated with the item. Reports leaving a Policy Committee must adequately identify budget implications, administrative feasibility, basic legal concerns, and staff resource demands in order to allow for informed consideration by the full Council.Status Update June 2019: Partially Implemented On January 22, 2019 Council adopted revised Resource No. 68755-N.S., which confirmed the establishment of six standing policy committees and the assignment of Council

Au	Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Fir	idings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary	
	 Feasibility impact to determine how best to rollout out new legislation 				 members to each for a term of one year effective January 31 of each year. Each committee has since met, developed review procedures, and discussed issues within their purview. <u>Status Update February 2020: Partially Implemented</u> Council utilizes the standing policy committees to consider the impact of select proposed legislation on City resources; City staff regularly attend the committee meetings. 	
1.2	Require that the Agenda Committee ensure ordinances have undergone a resource analysis as described in Recommendation 1.1 when necessary and, if not, are returned to the appropriate City Council member for further assessment before being passed into local law.	City Council	Agree	December 11, 2018	Status: Implemented Resolution No. 68,725-N.S. states that any new policy or program, including ordinances, submitted by Councilmembers with moderate or significant resource impacts will first go to the Agenda Committee, which will refer it to the appropriate Policy Committee.	
1.3	Conduct a staffing analysis to determine the appropriate staffing level needed for the Code Enforcement Unit (CEU) to effectively enforce City codes. In conducting the analysis, include an	City Manager (CEU)	Agree	November 2020	Status: Not Implemented Due to the seasonal nature of the unit's work, staff anticipates that a full year of analysis will be most effective in	

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Fin	dings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
	assessment of the workload impact created by the codes for which the CEU is solely responsible as well as those created by the codes for which CEU shares responsibility with other enforcement units.				 capturing the unit's workload. Staff plan to conduct the staffing analysis in 2019. <u>Status Update February 2020: Not Implemented</u> Due to significant staff turnover in the division, there were insufficient resources to dedicate to this project. When the vacated positions have been filled in 2020, staff will resume work on a staffing analysis.
1.4	 Use the staffing analysis performed in response to Recommendation 1.3 to: Quantify the full-burden cost of additional staff Determine if sufficient budgetary funding is available for additional staff Request additional staffing from Council during the annual appropriations process 	City Manager (CEU)	Agree	June 2021	Status: Not ImplementedFollowing the completion of Recommendation 1.3, the next annual appropriations process is tentatively scheduled to take place in May 2020.Status Update February 2020: Not ImplementedDue to the delay in completion of Recommendation 1.3, the projected implementation date is also delayed.

Au	Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight					
Fin	dings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary	
1.5	If budgetary constraints prevent additional staffing or if Council does not approve the budget needed to fund additional staffing, report to Council the restrictions placed on the Code Enforcement Unit's ability to effectively enforce City codes. Include information explaining the hindrance this will cause for any new ordinances the City Council may want to pass in the future. Provide this information regularly, for example, annually as part of the budget process, to keep Council informed of the CEU's capacity restrictions. See also Recommendation 1.7.	City Manager (CEU)	Agree	July 2021	Initial Status June 2018: Not ImplementedAt this time, it has not been determined how best to providethis information. CEU is currently recording various monthlystatistics meant to capture performance metrics, trends, andother measures which can be made available to Council on aregular basis to be determined by management.Status Update January 2019 : Partially ImplementedTo date, CEU staff have had both formal and informalconversations and input during several new codeconsiderations and existing amendments5 FTE has beenapproved in the 2019 City budget specifically for short termrental enforcement and CEU has been involved indetermining enforcement limitations for the TNC Object,Cannabis and GLA ordinance modifications, and duringvetting considerations for the BPA Free ordinance suggestedby the Health Commission.At this time, it has not been determined how best to providethis information. CEU is currently recording various monthlystatistics meant to capture performance metrics, trends, and	

Audit Title: Code Enforcement: Resources Significantly Constrained and Improvements Needed in Case Management and Oversight						
Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary		
				other measures which can be made available to Council on a regular basis, to be determined by management.Status Update February 2020: Partially ImplementedIn January 2019, the vacant Assistant Planner position, formerly located in Code Enforcement and funded by PermitService Center funds, was transferred to the Planning Department. Enforcement of the Short term reptal guidelines		
				 Department. Enforcement of the Short-term rental guidelines was transferred to Planning at the same time. In October 2019, CEU staff assumed an additional responsibility requiring conducting twice-weekly Temporary NonCommercial Objects (sidewalk ordinance) operations, which represent an addition of approximately 16 hours of work per week. Sidewalk ordinance (BMC 14.48.120 and 		
				14.48.020) operations investigate and enforce against accumulated possessions which are out of compliance with the ordinance, either by their location, type of possession, overall size, or the time of day. The City Manager also directed staff to incorporate occasional weekend work into the schedule, to further improve the effectiveness of the program. To reconcile this addition to staff workload, staff		

Au	dit Title: Code Enforcement: Resources	Significantl	y Constraine	d and Improveme	nts Needed in Case Management and Oversight
Fin	dings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
					have extended the anticipated response time to any code enforcement request, from 3-5 business days to 5-7 business days.
1.6	 Assess Berkeley municipal codes to identify the codes for which the CEU is solely responsible and those for which the CEU has a shared role with other work units. Use the results of the assessment to: Create process workflows showing shared work unit responsibilities Create written guidance describing work unit responsibilities 	City Manager (CEU)	Agree	January 1, 2018	Status: Implemented In January 2018, CEU Supervisor drafted and implemented a complaint matrix that identifies the most common complaint types, the subject matter department or division experts, the process workflow, and enforcement authority. The matrix is updated quarterly or as needed, and disseminated to all departments via the senior executive team.
1.7	Implement code enforcement software that:	City Manager (CEU)	Agree	January 1, 2018: Temporary	Status: Partially Implemented Effective January 1, 2018, all cases or customer complaints received by CEU have been entered into Lagan, which is serving as single point of entry into the code enforcement

Findings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
 Identifies case assignment to CEU officers and other work units Prioritizes cases, in particular high-risk cases posing health and safety risks Captures pertinent case dates, e.g., opened, notice of violation, citation issuance, and closed Tracks enforcement actions taken within the CEU and other work units Quantifies citations issued and collected Allows for readily identifying repeat offenders Includes performance measurement tools, e.g., turnaround times within defined 			alternative implemented Full implementatio n: To be determined based on funding availability and assessment of code enforcement software options	 queue. Lagan provides the ability to allocate cases to individual CEU staff, and re-allocate cases already in the code enforcement queue. It allows cases to be assigned one of the three priorities (high, medium=moderate, low=standard) based on the complaint type. Lagan captures the date a case is created, and when it is closed. Additional inspection dates and results, as well as photos, notices, citations, and other documentation, are captured in the software as "case notes". Because Lagan assigns a specific case number, cross referenced with a property address, CEU staff can readily determine repeat offenders by searching for an address. Although Lagan is not a traditional code enforcement software, it does provides the ability to extrapolate data which is used for performance metrics and workload trends. It does not provide reporting templates or quantified citations (issued or collected), nor does it allow for staff use on mobile devices in the field. CEU has explored two separate options for enforcement software. Envision Connect, the program currently used by

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 specifications (see Recommendation 2.2) Allows for uploading information from mobile technologies (see Recommendation 1.8) Includes reporting tool to showcase workload trends and capacity restrictions (i.e., backlogs) 				Environmental Health and Toxics, was purchased as a company by Accela, which no longer offers the software to new users. Accela, the software used by Building & Safety, Planning, Public Works, and others, has a code module which has yet to be built out. That option is currently on hold according to I.T. CEU will continue to explore enforcement software options which include the aforementioned additional capabilities. <u>Status Update February 2020: Partially Implemented</u> In July 2019, CEU was informed that the Planning Department was initiating a request for proposals (RFP) to replace its permitting system, which would include a module to support code enforcement throughout the City. Code Enforcement staff have been included in the vendor selection process, which is still underway.		

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pr Of fie th th ha cc so	applement mobile computers and inters to allow Code Enforcement ficers to complete more work in the eld, thus improving their time spent in e community and reducing time in e office. Mobile computers should ave the capacity to interface with the ode enforcement case management ftware implemented in response to ecommendation 1.7.	City Manager (CEU)	Agree	September 1, 2017: Partially implemented Full implementatio n: To be determined based on funding availability and assessment of code enforcement software option selected in response to Recommendati on 1.7	Status: Partially ImplementedCEU staff are issued Apple smartphones, which provide the ability to take photos, capture notes, and mark GPS locations which can be uploaded to City e-mail. Most code enforcement software available on the market provide IOS function and support which would make mobile application integration fairly seamless.At this time, CEU's software does not support printing documentation in the field. Manual notices will continue to serve this function until such time as the enforcement software described in Recommendation 1.7 is implemented, and can support printing documents in the field.Status Update February 2020: Partially Implemented The delayed implementation of a field-accessible code enforcement software in Recommendation 1.7, currently tied to a larger permitting system replacement project, has subsequently delayed the purchase of this equipment.

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2.1	 Develop and issue written procedures for code enforcement operations that: Reflect current practices and management expectations. Describe the tiered prioritization system giving attention to cases based on risk levels of high, moderate, and standard. Require adherence to a uniform technology policy, which includes: Assigning unique numbers to cases. Recording all pertinent case data timely, e.g., within two business days of receipt. 	City Manager (CEU)	Agree	April 1, 2018 / Ongoing	Status: Implemented The CEU supervisor issued new procedures which included the recommended. Meetings were held with CEU staff to review the new procedures, solicit input, and to ensure their understanding of the new guidance.			
	 Using a single, centralized system to record, manage, 							

ndings and Recommendations	Lead Dept.	Agree, Partially Agree, or Do Not Agree	Expected or Actual Implementati on Date	Status of Audit Recommendations, Corrective Action Plan, and Progress Summary
 and monitor case information. Using case file management standards so that pertinent data are captured uniformly. Inform staff that preferential treatment should not be given to complaints made or referred by City Council members, Council staff, and City management. Those complaints should be prioritized based on established objectives and channeled through the appropriate supervisor. 				
 Describe processes for issuing citations in a consistent and equitable manner. 				

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	 Include beat assignments once feasible to do so, i.e., after the CEU addresses the backlog and receives adequate software tools. 				
2.2	 Implement performance metrics and goals to: Assess the effectiveness of code enforcement operations and goal achievement Identify constraints preventing goal attainability. Submit regular reports, e.g., biannually, to City management on performance. Include a metric to provide at least some proactive code enforcement activities. Develop this metric after implementing the process and system 	City Manager (CEU)	Agree	February 1, 2018 / Ongoing	 <u>Status: Partially Implemented</u> Data extrapolated from Lagan provides metrics on code enforcement operations, including the number of cases opened and closed by month, the average amount of time to close cases, the number of citations issued and the total amount of fines assessed, and additional information regarding non-enforcement related time such as taxi inspections, sidewalk vendor permitting, homeless encampment contacts and resolution, and public record request activities. Effective February 2018, CEU provides a monthly report to City management on the unit's performance, which notes constraints to goal attainability and includes a breakdown of

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improvement recommendations made in this report.				proactive code enforcement activities conducted in the preceding month. Future metrics to be determined based the reporting capabilities of the code enforcement software from
				Recommendation 1.7. <u>Status Update February 2020: Partially Implemented</u> The metrics previously developed from Lagan on general code enforcement operations are on hiatus, due to the transition of the Code Enforcement Supervisor who reviews the Lagan data and develops the metrics. This practice will resume when the Code Enforcement Supervisor position is filled.
				With the transition of Temporary NonCommercial objects operations into Code Enforcement, Neighborhood Services has continued to track and report on outcomes from the program, providing a regular update to City leadership. This practice will be transitioned to the Code Enforcement Supervisor when the position is filled.

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2.3	Assess the feasibility of using complaint thresholds and self-certifying techniques for standard-priority violations. For example, wait to receive at least two complaints about a standard-level violation before performing an investigation, and allow a code violator to self-report on a standard-level violation to remove the need for reinspection. If feasible, implement the techniques to give code enforcement officers more time on field inspections of high-risk cases.	City Manager (CEU)	Agree	January 1, 2018	Status: ImplementedWe assessed the feasibility of using complaint thresholds and opted not to use them at this time due, in part, to the following considerations.Pursuant to BMC Chapter 1.22.010, the City of Berkeley shall "promote higher standards of living, full employment, and conditions of economic and social progress and development." Complaint thresholds, which include requiring multiple complaints, not accepting anonymous complaints, and others, restrict CEUs ability to meet those requirements.Furthermore, The American Association of Code Enforcement states in their Importance of Code Enforcement hand-out, "The professionalism and approach of the Code Enforcement Officer has the potential to shape community notion of local government and municipal experience. Building relationships and knowledge of the community is so integral to a proactive and professional code enforcement approach," which could	

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				 also be adversely effected by implementing complaint thresholds. Berkeley's CEU regularly receives anonymous complaints from reporting parties who fear retribution. By conducting site inspections on all reports, CEU staff promote a higher standard of living, a better customer service experience, and provide more equitable, effective enforcement of City codes, while spending more time in the field on all levels of enforcement. Occasionally, low-level inspections become higher level priorities based on what the officer has documented during the initial site inspection. Self-certifying techniques, although common in proactive rental housing inspection programs, are not known to be used in other aspects of code enforcement since officer compliance verification is typically required for case closures or escalation of enforcement. An exception considered could be when a complainant or reporting party certifies a violation has been abated, the closure of which would be at the discretion of the enforcing officer.

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2.4	 Develop procedures for monitoring staffs' work and addressing weaknesses that may prevent goal achievement, such as conflicts of interest. For example: Review Form 700s to identify property owned by CEU personnel before assigning cases to officers. Randomly select case records to look for: Indicators that case action did not progress as required or expected suggesting favoritism or kickbacks. Properties with closed cases that continue to receive complaints for the same issue. This could indicate a repeat offender as well as a 	City Manager (CEU)	Agree	May 1, 2018	Status: ImplementedThe CEU procedures manual includes procedures foridentifying and addressing conflicts of interest. The CEUsupervisor randomly spot checks complex code enforcementcases, to determine how investigations are proceeding withconsistency and equity, and that investigators are handlingcases fairly and ethically. Additionally, the Code EnforcementSupervisor regularly reviews open Lagan cases to ensure anyapplicable case history on an identified property address isapplied to the current enforcement action. This is done toassess the need to escalate enforcement as appropriatewithout duplicating efforts.Effective October 2017, the Assistant to the City Manager forNeighborhood Services and the CEU supervisor meet twicemonthly to review unit performance and to discussoutstanding issues related to ongoing investigations, whichinclude potential or perceived conflicts of interest.At the May 2018 City Council Aide / City Staff RoundtableDiscussion, the Assistant to the City Manager reiterated Code		

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failure to take appropriate actions against a code violator. The Assistant to the City Manager for Neighborhood Services should perform this oversight of the Code Enforcement Unit Supervisor, and the Code Enforcement Supervisor should perform this oversight of Code Enforcement Officers and the Assistant Planner.				 Enforcement's commitment to equitably investigate complaints received, regardless of their source. Effective May 2018, the Assistant to the City Manager and the Code Enforcement Supervisor annually review the Form 700s submitted by their respective direct reporting parties, and discuss potential conflicts of interest.

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TO: Honorable Members of the City Council

FROM: Mayor Arreguín

SUBJECT: Report on Regional Leadership and Goals for 2020

<u>SUMMARY</u>

In January, Mayor Jesse Arreguín was sworn in as the new President of ABAG for a two-year term. This comes at an important time in our region, with our population expected to grow by 2 million people over the next 20 years, while we face challenges such as housing, homelessness and transportation.

BACKGROUND

The San Francisco Bay Area is comprised of 101 municipalities and nine counties, and is home to almost 8 million people. It is also home to one of the fastest growing economies in the world. While each city has its own history and laws, no place exists within a bubble. The Bay Area is intertwined, and the decisions on housing, transportation, or the economy in one city has a ripple effect on others. Knowing that jurisdictions have a collective stake in addressing the issues that affect us all, the Association of Bay Area Governments (ABAG) was formed in 1961 to promote regional planning and collaboration. Today, ABAG is working with regional partners to address the needs and challenges of the Bay Area, from the affordable housing crisis to rising sea levels.

ABAG is led by an Executive Board comprised of Mayors, Councilmembers and County Supervisors from throughout the nine Bay Area counties. Decisions on the budget and work plan are made by the General Assembly of delegates from each Bay Area city and county. ABAG is truly representative of cities and towns of all sizes, and the goal of the agency is to be a voice for all of our region's local governments.

FUTURE ACTIONS

ABAG is set to make some big decisions in the coming year concerning the future of the

region. ABAG and the Metropolitan Transportation Commission (MTC) are developing a 30year regional land use and transportation plan, also known as Plan Bay Area 2050¹. This Plan is required by state and federal law to guide transportation investments and meet state climate goals. The goal of Plan Bay Area 2050 is to create a more equitable and resilient future for the region through investments in the local economy, environment, housing and transportation. During Mayor Arreguín's tenure as President, he is committed to working with local and regional representatives throughout the Bay Area in crafting a collaborative plan that the region can get behind. From addressing growing inequities to making us more resilient against the increasing threat of climate change, we must work together as one region if we are to achieve our goals. The ABAG Executive Board and MTC are expected to vote on Plan Bay Area 2050 in June 2021.

ABAG, which helps shape regional housing and land use policy, will become even more involved due to newly enacted state bills. One law of note is Assembly Bill 1487, the San Francisco Bay Area Regional Housing Finance Act, which empowers ABAG and MTC to place a regional measure on the Bay Area ballot for affordable housing funding. While it is common for counties and cities to place such measures on the ballot, it has not been done on a regional scale before, giving us the advantage of working through the regional lens we all know is necessary to truly address our crisis of affordable housing. Such a proposal will help us achieve our regional affordable housing goals and prevent displacement. However, specific zoning and local land use authority will continue to be under the scope of local jurisdictions.

The Regional Housing Needs Allocation (RHNA) is a state mandated process of allocating the region's housing need to individual counties and cities. Local governments must update their housing elements, and zoning if necessary, to demonstrate specific sites and regulations to permit the number of RHNA housing units allocated to each jurisdiction. The RHNA is a non-binding decision, but local Housing Elements must be in conformance to the RHNA or face penalty by the state. RHNA is the primary way in which we can measure the creation of new housing in the Bay Area. It is also how we implement state law under the Housing Element, which provides the total number of units that the Bay Area needs to be built. Drafting a RHNA methodology and allocation for the 2022-2030 cycle recently began and is being led by a Housing Methodology Committee, which Mayor Arreguín chairs. Mayor Arreguín will work to make sure that RHNA adoption guides us towards an equitable distribution of housing throughout the region, and addresses decades of past inequities in the production of affordable housing throughout the region. To this end, the state Housing

¹ <u>https://www.planbayarea.org</u>

Element law was recently amended to require that the RHNA affirmatively further fair housing. As the Bay Area is facing an unprecedented housing affordability crisis, the RHNA can be a tool to increase opportunity and ensure equity and affordability. No city alone can address this crisis for the entire Bay Area; all of us have a stake.

Recent fires in Northern California have made the impacts of climate change real. Drier temperatures have made our communities more susceptible to fire risk. Berkeley in particular is along the urban-wildland interface and has seen devastating fires in its history. Preparing for and mitigating the risk of wildfire is one of many climate adaptation strategies we must prioritize. We also know that shoreline communities face the growing risk of rising sea levels. This will affect wetlands, park lands, highways and even whole city blocks. Regional planning must account for the threat of sea level rise and investments made in green and grey infrastructure to help reduce the risk of flooding.

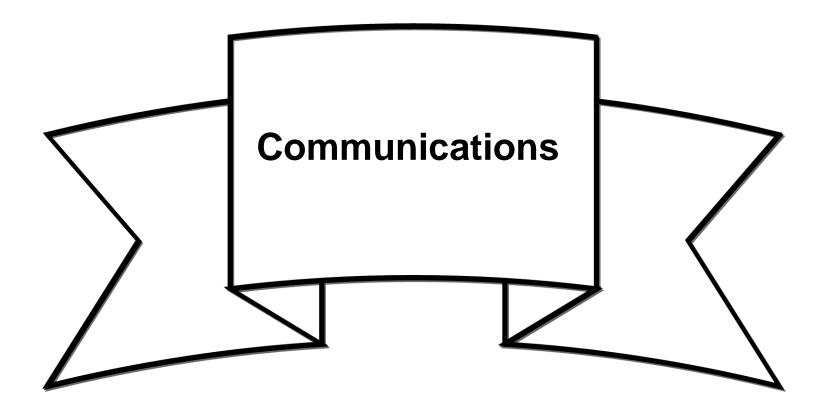
The Bay Area and California are leading in climate change research and policy. As the new President of ABAG, Mayor Arreguín will make climate change a priority for our regional planning agency. This means recognizing the climate emergency that exists, and coordinating planning and policy across multiple regional agencies. It also involves policies and funding to decarbonize our buildings, transportation and promote local renewable energy infrastructure in our region.

In addition, homelessness is one of the most visible problems facing our region. While addressing the housing affordability crisis and preventing displacement are key homelessness prevention strategies, the growth of unsheltered homelessness is alarming. Despite the efforts of many cities, including Berkeley, to provide emergency shelter, permanent housing and social services, policy development and programs remain siloed. Some cities are leading the way, and others have done very little, or done more harm through laws pushing homeless out of their borders. Homelessness is a regional challenge and it requires a regional approach. As ABAG President, Mayor Arreguín plans to convene a regional conversation with elected officials and service providers to coordinate our response to homelessness.

The Bay Area is one of the most beautiful places in the world. The diversity of our residents and landscapes makes it an ideal location. Yet we know we face significant challenges that are proven to be a barrier for many to live here. With the Bay Area's population growing by 1% per year, we must make sure that we have the infrastructure and resources needed to keep up with our increasing population. This is what makes ABAG so important. It focuses on the needs of the region while working with local communities to help them achieve our

collective goals.

<u>CONTACT</u> Mayor Jesse Arreguín mayor@cityofberkeley.info | 510-981-7100



All communications submitted to the City Council are public record. Communications are not published directly to the City's website. Copies of individual communications are available for viewing at the City Clerk Department and through Records Online.

City Clerk Department

2180 Milvia Street Berkeley, CA 94704 (510) 981-6900

Records Online

http://www.cityofberkeley.info/recordsonline

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- 1. Select Search Type = "Public Communication Query (Keywords)"
- 2. From Date: Enter the date of the Council meeting
- 3. To Date: Enter the date of the Council meeting (this may match the From Date field)
- 4. Click the "Search" button
- 5. Communication packets matching the entered criteria will be returned
- 6. Click the desired file in the Results column to view the document as a PDF