

PUBLIC HEARING

May 20, 2025

To: Honorable Mayor and Members of the City Council

From: Paul Buddenhagen, City Manager

Submitted by: Henry Oyekanmi, Director, Finance

Subject: Authorizing the Execution, Sale, and Delivery of Lease Revenue Notes for the Fire Administration and Training Project

RECOMMENDATION

Conduct a public hearing and upon conclusion adopt a Resolution authorizing the issuance and sale by the Berkeley Joint Powers Financing Authority of federally taxable Lease Revenue Notes in the aggregate principal amount of not to exceed \$11,000,000 to provide financing for the construction of improvements to property used for fire administration and training, and approving related documents and actions.

FISCAL IMPACTS OF RECOMMENDATION

Authorization of the Resolution will provide the City with sufficient funds, along with existing City funds, to complete improvements to six buildings that the City currently leases for fire administration and training. The total cost of the improvements is estimated to be between \$15 million and \$17 million. The City plans to finance \$10 million of the cost with the federally taxable Lease Revenue Notes (the "Notes") to be issued by the Berkeley Joint Powers Financing Authority (the "Authority"), and use cash for the balance of the improvement costs. The Notes will be structured as a four-year note with interest payments only until final maturity on October 1, 2029, when the full principal amount will be paid. During the interest only period, from FY 2025-26 to FY 2028-29, debt service payments are approximately \$586,000 per year. The Notes will not have capitalized interest or a debt service reserve fund. The interest on the Notes will be subject to federal income taxation because of the initial private ownership of the financed improvements by the property's landlord. The City has an option to acquire the properties subject to the leases beginning upon completion of the improvements and continuing through December 31, 2028, and the City expects to refinance the Notes in connection with the City's acquisition of the property on a federally tax-exempt basis.

The Notes are payable from lease payments made by the City to the Authority from any available funds, pursuant to a lease agreement involving various City assets. The City intends to internally budget a portion of Measure FF – Public Safety tax revenues as the funding source for the lease payments payable to the Authority. The leased assets proposed for the Notes are the Fire Station #2 (2035 Berkeley Way) and Fire Station #5 (2680 Shattuck Ave).

May 20, 2025

### CURRENT SITUATION AND ITS EFFECTS

The City wishes to finance the acquisition and construction of certain improvements in six buildings located at 1250-1288 9th Street, 1226 9th Street, 1221 8th Street, 1223 8th Street, 1225 8th Street and 1249 8th Street, Berkeley, California 94710 (the "Fire Property"), which the City currently leases for fire administration and training. The total cost of the improvements is estimated to be between \$15 million and \$17 million. The City plans to finance \$10 million of the total cost with these Notes and use cash for the balance of the improvement costs.

The City also has an option to acquire the Fire Property under its existing lease. The City has until December 31, 2028, to exercise its option to purchase the Fire Property, otherwise the City will continue in a 20-year lease. The four-year term and redemption provisions of the Notes is structured to align with potential future financing before December 31, 2028, during which a portion of the future financing would be used to purchase the Fire Property, and a portion would be used to pay off the Notes.

### BACKGROUND

The City currently leases the Fire Property under a certain Standard Multi-Tenant Office Lease - Gross dated as of June 27, 2024, by and between Smith & Walters, Inc. and the City. Substantial improvements to the Fire Property need to occur, including demolition, seismic construction, wall construction, HVAC, and other capital improvements. The cost of these improvements is estimated to be between \$15 million and \$17 million. The City will pay for these improvements using a combination of cash and proceeds from the Notes. The proceeds from the Notes are needed by the City by the end of June 2025.

### RATIONALE FOR RECOMMENDATION

There are a few primary reasons for issuing the Notes in the current structure:

- Issuing the Notes will provide the City with the necessary funds to pay for the improvements by the end of June 2025.
- The Notes will need to be issued on a federally taxable basis because the Fire Property is currently owned by the landlord.
- The four-year term and redemption provision of the Notes is structured to align with a potential future financing before December 31, 2028, during which a portion of the future financing would be used to purchase the Fire Property, and a portion would be used to pay off the Notes.

The Indenture of Trust and the Lease Agreement include covenants to initiate a refinancing of the Notes beginning on October 1, 2029 if a refinancing has not already occurred.

May 20, 2025

## 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 Notes are payable from lease payments made by the City from any available funds. "SECURITY FOR THE NOTES." 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 Annual Comprehensive Financial Report for fiscal year 2023-24 is included in Appendix C to the Preliminary Official Statement.

In addition, the City includes information about material risks to purchasers of the Notes in "NOTE 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."

## ALTERNATIVE ACTIONS CONSIDERED

None

May 20, 2025

CONTACT PERSON

Henry Oyekanmi, Director, Finance Department, 510-981-7326

Attachments:

- 1: Resolution – A Resolution of the City Council of the City of Berkeley Approving the Issuance and Sale of Lease Revenue Notes in the Aggregate Principal Amount of Not to Exceed \$11,000,000 by the Berkeley Joint Powers Financing Authority to Provide Financing for the Construction of Improvements to Property Used for Fire Administration and Training, and Approving Related Documents and Actions.
- 2: Draft Preliminary Official Statement
- 3: Draft Indenture of Trust
- 4: Draft Lease Agreement
- 5: Draft Site Lease
- 6: Draft Assignment Agreement
- 7: Draft Official Notice of Sale
- 8: Notice of Public Hearing
- 9: Approving Legal Opinion

ACTION CALENDAR  
May 20, 2025

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY APPROVING THE ISSUANCE AND SALE OF LEASE REVENUE NOTES IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$11,000,000 BY THE BERKELEY JOINT POWERS FINANCING AUTHORITY TO PROVIDE FINANCING FOR THE CONSTRUCTION OF IMPROVEMENTS TO PROPERTY USED FOR FIRE ADMINISTRATION AND TRAINING, AND APPROVING RELATED DOCUMENTS AND ACTIONS**

WHEREAS, the City of Berkeley (the “City”) wishes to finance the acquisition and construction of certain improvements to the buildings (the “Project”) located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California 94710 (the “Fire Property”), which the City uses for fire administration and training; and

WHEREAS the City currently leases the Fire Property under that certain Standard Multi-Tenant Office Lease - Gross dated as of June 27, 2024 (as amended and assigned from time to time, the “Existing Lease”), by and between Smith & Walters, Inc., a California corporation (the “Lessor”), and the City, and has an option to acquire the Fire Property under the Existing Lease; and

WHEREAS, the City and the California Municipal Finance Authority are parties to an Amended and Restated Joint Exercise of Powers Agreement dated as of October 2, 2012, pursuant to which there has been established under the Joint Exercise of Powers Act (Government Code §6500 et seq.) the Berkeley Joint Powers Financing Authority (the “Authority”) as a joint powers authority under the laws of the State of California for the purpose, among others, of assisting the financing and refinancing of certain public programs and projects of the City; and

WHEREAS, the City has proposed to lease to the Authority the land and improvements constituting two City fire stations (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 to finance the Project; and

WHEREAS, in order to raise funds to pay the Site Lease Payment, the Authority proposes to issue and sell its Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable) (the “Notes”) under Article 4 of the Joint Exercise of Powers Act (the “Bond Law”); and

WHEREAS, in order to secure the payments of principal of and interest on the Notes, and any bonds, notes or other obligations issued by the Authority to refund the Notes, 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 (the "Lease Payments") as rental for the Leased Property, and, pursuant to an Assignment Agreement (the "Assignment Agreement"), 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 Notes (the "Trustee"); and

WHEREAS, there has been submitted to the City Council a form of preliminary Official Statement in connection with the marketing of the Notes, and the City Council, with the aid of its staff, has reviewed the preliminary Official Statement to assure proper disclosure of all material facts relating to the Notes that are in the personal knowledge of the members of the City Council and the City staff; and

WHEREAS, the Authority proposes to sell the Notes pursuant to a competitive bidding process; and

WHEREAS, in order to assist the purchaser of the Notes (the "Underwriter") in complying with Rule 15c2-12 of the Securities and Exchange Commission, the City will undertake certain continuing disclosure obligations with respect to the Notes pursuant to a continuing disclosure certificate to be executed by the City (the "Continuing Disclosure Certificate"), the form of which is on file with the City Clerk; and

WHEREAS, in order to comply with Government Code Section 5852.1, certain information relating to the Notes is set forth in Appendix A attached to this Resolution, and such information is hereby disclosed and made public; and

WHEREAS, as a condition precedent to the issuance of the Notes, Section 6586.5 of the California Government Code requires that the City approve the Authority's issuance of the Notes and make certain findings, and Section 6586.5 further requires that the City give the approval and make the findings only after holding a noticed public hearing; and

WHEREAS, as required by Section 6586.5, the City has caused publication of a notice of a public hearing once at least five days prior to the hearing in a newspaper of general circulation in the City; and

WHEREAS, on the date hereof, the City Council held a public hearing at which all interested persons were provided the opportunity to speak on the subject of the proposed issuance of Notes by the Authority to provide financing for the Project; 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 Notes;

NOW THEREFORE, BE IT RESOLVED by the Council as follows:

SECTION 1. Recitals. The City Council hereby finds that the recitals are true and correct.

SECTION 2. Findings. Pursuant to the Bond Law, and based on the information provided to the City Council by City staff and consultants, all as set forth in the proceedings and

documents providing for the issuance and delivery of the Notes, the City Council hereby finds and determines that the issuance of the Notes and the transactions related thereto will result in significant public benefits within the contemplation of Section 6586 of the Bond Law, namely, demonstrable savings in note preparation, note underwriting and note issuance costs.

SECTION 3. Issuance of Notes. The City Council hereby approves the issuance of the Notes by the Authority under the Bond Law in the maximum principal amount set forth in Section 5, for the purpose of providing funds to finance the Project.

SECTION 4. Approval of Related Financing Agreements. The City Council hereby approves each of the following agreements required for the issuance and sale of the Notes, 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 Deputy City Manager or the Finance Director (each, an "Authorized Officer"); execution of the agreements by the City Manager (or the City Manager's designee) shall be conclusive evidence of the approval of any such changes or additions. The City Manager (or the City Manager's designee), acting alone, 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, if applicable, the final form of each such agreement, as follows:

- Site Lease, 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 finance the Project.
- Lease Agreement, 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 interest on the Notes when due and the debt service coming due and payable on any bonds, notes or other obligations issued by the Authority to refinance the Notes.
- Continuing Disclosure Certificate, to be executed by the City for the purpose of providing continuing disclosure to owners of the Notes.

SECTION 5. Method of Sale of Notes. The City Council hereby approves the competitive sale of the Notes by the Authority. The Notes shall be sold in accordance with the Notice or Sale in substantially the form approved by the Authority and in accordance with the resolution adopted by the Authority Commission with respect to the issuance and sale of the Notes, provided that the aggregate principal amount of the Notes may not exceed \$11,000,000, the true interest cost may not exceed 8.00% and the aggregate price of the Notes may not be less than 98%.

In order to provide greater flexibility for the sale of the Notes if staff determines that it is not in the best interests of the City for the Notes to be sold in a competitive sale, the City

Council further hereby authorizes an Authorized Officer to direct the City's municipal advisor, NHA Advisors, LLC, to contact a limited number of underwriters and negotiate the sale of the Notes (including through a private placement). An Authorized Officer is hereby authorized to cause Jones Hall, A Professional Law Corporation, as bond counsel to the City, to prepare and to execute and deliver a Note Purchase Agreement in connection with a negotiated sale of the Notes in such form (including designation of the underwriter) as an Authorized Officer shall approve, such approval to be conclusively evidenced by the execution and delivery thereof by the City Manager (or the City Manager's designee).

SECTION 6. Official Statement. The City Council hereby approves the preliminary Official Statement describing the Notes 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 of the Notes 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 of the Notes. The final Official Statement shall be executed on behalf of the City by an Authorized Officer.

SECTION 7. California Environmental Quality Act (CEQA). Use Permit #ZP2024-0136 for the Project was granted by the Zoning Adjustments Board and took effect on January 21, 2025. The Project was determined to be exempt from CEQA (Public Resources Code Section 21000 *et seq.*) pursuant to the categorical exemption in Section 15301 (Existing Facilities) of the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 *et seq.*) because the Project involves demolition of two accessory structures and conversion of existing residential buildings to nonresidential use, and none of the exceptions to the CEQA categorical exemptions in CEQA Guidelines Section 15300.2 apply. A Notice of Exemption was filed with the County Clerk on January 23, 2025. No further environmental review is required because there have been no changes to the Project that involve the application of the categorical exemption in Section 15301 or the exceptions from the CEQA categorical exemptions in Section 15300.2.

SECTION 8. Official Actions. The City Manager (or the City Manager's designee) is 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. 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 9. Approval of Professional Services. 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 Notes, and the City Attorney 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 NHA Advisors, LLC, as municipal advisor to the City in connection with the issuance of the Notes, and the City Manager (or the City Manager’s designee) is authorized to execute an agreement with said firm in substantially the form of the agreement on file with the City Clerk.

SECTION 10. Effective Date. This Resolution shall take effect immediately upon its passage and adoption.

The foregoing Resolution was adopted by the Berkeley City Council on May 20, 2025 by the following vote:

Ayes:

Noes:

Absent:

\_\_\_\_\_  
Adena Ishii, Mayor

Attest: \_\_\_\_\_  
Mark Numainville, City Clerk

APPENDIX A

**REQUIRED DISCLOSURES PURSUANT TO  
GOVERNMENT CODE SECTION 5852.1**

The following estimates have been provided by NHA Advisors, LLC, the City's municipal advisor, as of April 16, 2025:

1. Estimated True Interest Cost of the Notes: 4.80%
2. Estimated finance charge of the Notes, being the sum of all fees and charges paid to third parties, in the amount of approximately \$265,046. Such amount consists of costs of issuing the Notes in the amount of approximately \$216,196 together with estimated underwriter's compensation in the amount of \$48,850.
3. Estimated proceeds of the Notes expected to be received by or on behalf of 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 Notes: \$10,000,000.
4. Estimated Total Payment Amount for the Notes, being the sum of all debt service to be paid on the Notes to final maturity: \$12,284,147.

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*\*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 Notes.*

PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2025

NEW ISSUE - FULL BOOK-ENTRY

RATING: S&P: "\_\_\_\_"  
See "RATING."

Bond Counsel observes that interest on the Notes (as defined herein) is not intended 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. See "TAX MATTERS."



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**BERKELEY JOINT POWERS FINANCING AUTHORITY**  
**2025 LEASE REVENUE NOTES**  
**(Fire Administration and Training Project)**  
**(Federally Taxable)**

Dated: Date of Delivery

Due: October 1, as shown on inside cover

**Authority for Issuance.** The lease revenue notes captioned above (the "Notes") 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 May 20, 2025, and an Indenture of Trust dated as of June 1, 2025 (the "Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A. as trustee (the "Trustee"). See "THE NOTES – Authority for Issuance."

**Purpose.** The Notes are being issued primarily to finance the construction of certain tenant improvements of the City of Berkeley (the "City"), within the fire administration and training building and such other improvements that may be identified from time to time by the City. In addition, the proceeds of the Notes will be used to pay the costs of issuing the Notes. See "FINANCING PLAN."

**Security.** Under the Indenture, the Notes 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 June 1, 2025, 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 Notes are also secured by certain funds on deposit under the Indenture. Neither the Authority nor the City is establishing a reserve fund for the Notes. See "SECURITY FOR THE NOTES."

**Covenant to Refinance the Notes.** The Lease Payments are payable in an amount sufficient to provide for payment of interest on the Notes when due, but not to provide for payment of the principal of the Notes at maturity. In order to provide for the payment of the Notes at maturity, the Authority has covenanted to, no later than April 1, 2029, institute proceedings to refinance the Notes at maturity. See "SECURITY FOR THE NOTES – Covenant to Issue Refunding Obligations."

**Book-Entry Only.** The Notes 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 Notes are issuable as fully registered securities in denominations of \$5,000 or any integral multiple of \$5,000. Purchasers of the Notes (the "Beneficial Owners") will not receive physical certificates representing their interest in the Notes. See "THE NOTES" and "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM."

**Payments.** Interest on the Notes accrues from the date of delivery and is payable semiannually on April 1 and October 1 of each year, commencing April 1, 2026. Payments of principal and interest on the Notes 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 Notes. See "THE NOTES – General Provisions."

**Redemption.** The Notes are subject to optional redemption and special mandatory redemption from insurance or condemnation proceeds prior to maturity. See "THE Notes – Redemption."

NONE OF THE NOTES, 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 NOTES ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE NOTES 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.



**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 Notes. Prospective investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Notes will be sold and awarded pursuant to a competitive bidding process to be held on June 3, 2025, as set forth in the Official Notice of Sale. The Notes 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 Notes will be delivered in book-entry form through the facilities of DTC on or about June 17, 2025.

The date of this Official Statement is: \_\_\_\_\_, 2025

\* Preliminary; subject to change.

This Preliminary Official Statement and the information contained herein are subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances will this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor will there be any sale of these securities in any jurisdiction in which such offer solicitation or sale would be unlawful.

BERKELEY JOINT PUBLIC FINANCING AUTHORITY  
2025 Lease Revenue Notes  
(Fire Administration and Training Project)  
(Federally Taxable)

MATURITY SCHEDULE\*  
(Base CUSIP:† \_\_\_\_\_)

\$ \_\_\_\_\_ Lease Revenue Notes

<u>Maturity Date</u> <u>(October 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP†</u>
2026					
2027					
2028					
2029					

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\* Preliminary; subject to change.

† CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, which is owned by FactSet Research Systems Inc. ("FactSet"). FactSet will manage the CUSIP system on behalf of the American Bankers Association. Neither the City nor the Underwriter 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**

Adena Ishii, Mayor  
Rashi Kesarwani, Councilmember District 1  
Terry Taplin, Councilmember District 2  
Ben Bartlett, Councilmember District 3  
Igor Tregub, Councilmember District 4  
Shoshana O'Keefe, Councilmember District 5  
Brent Blackaby, Councilmember District 6  
Cecilia Lunaparra, Councilmember District 7  
Mark Humbert, Councilmember District 8

**CITY OFFICIALS AND STAFF**

Paul Buddenhagen  
City Manager

David White  
Deputy City Manager

Henry Oyekanmi  
Director of Finance

Farimah Brown  
City Attorney

Jenny Wong  
*City Auditor*

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**PROFESSIONAL SERVICES**

**BOND AND DISCLOSURE COUNSEL**

Jones Hall, A Professional Law Corporation  
San Francisco, California

**MUNICIPAL ADVISOR**

NHA Advisors, LLC  
San Rafael, California

**Trustee**

The Bank of New York Mellon Trust Company, N.A.  
Los Angeles, California

## GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

**Use of Official Statement.** This Official Statement is submitted in connection with the sale of the Notes referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract between any note 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 Notes 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 Notes: 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 overallocate or take other steps that stabilize or maintain the market prices of the Notes 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 Notes 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 Notes 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 Notes 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 Notes 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 Notes.

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- APPENDIX C - ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2024
- APPENDIX D - PROPOSED FORM OF OPINION OF BOND COUNSEL
- APPENDIX E - FORM OF CONTINUING DISCLOSURE CERTIFICATE
- APPENDIX F - DTC AND THE BOOK-ENTRY ONLY SYSTEM

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**OFFICIAL STATEMENT**

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**BERKELEY JOINT PUBLIC FINANCING AUTHORITY**  
**2025 Lease Revenue Notes**  
**(Fire Administration and Training Project)**  
**(Federally Taxable)**

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 Notes captioned above (the “**Notes**”) 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 Notes to potential investors is made only by means of the entire Official Statement.*

**Authority for Issuance.** The Authority is issuing the Notes 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 [May 20], 2025, (the “**Authority Resolution**”), and by the City Council (the “**City Council**”) of the City of Berkeley (the “**City**”) on [May 20], 2025, (the “**City Resolution**”); and
- (c) an Indenture of Trust (the “**Indenture**”) dated as of June 1, 2025, 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 125,327 as of January 1, 2024, 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

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\* Preliminary; subject to change.

of the City's economy, employing more than 265,000 full and part-time workers across all University of California campuses.

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 C. 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 City is currently facing significant budget deficits. See "APPENDIX A – FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY – General Fund Budget – *Adopted Biennial Budget.*"

**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 Notes.** The Notes are being issued primarily to finance the construction of certain tenant improvements of the City within the fire administration and training building, and such other improvements that may be identified from time to time by the City. In addition, proceeds of the Notes will be used to pay the costs of issuing the Notes. See "FINANCING PLAN."

**Security for the Notes and Pledge of Revenues.** Under the Indenture, the Notes 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 June 1, 2025, 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 Notes are also secured by certain funds on deposit under the Indenture. See "SECURITY FOR THE NOTES."

The City and the Authority will enter into a Site Lease dated as of June 1, 2025 (the "**Site Lease**"). Under the Site Lease, the City will lease certain real property to the Authority, consisting of two City fire stations (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. See "THE LEASED PROPERTY."

**Form of Notes; Book-Entry Only.** The Notes 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 Notes. Purchasers of the Notes will not receive certificates representing the Notes that are purchased. See "THE NOTES – Book-Entry Only System" and "APPENDIX F – DTC AND THE BOOK-ENTRY ONLY SYSTEM."

**Redemption.** The Notes are subject to optional redemption and special mandatory redemption from the proceeds of insurance or condemnation proceeds prior to their stated maturity dates. See "THE Notes – 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 Owners of the Notes would receive less than the full amount of principal of and interest on the Notes. 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 NOTES – Abatement” and “NOTE OWNERS’ RISKS.”

**Covenant to Refinance the Notes.** The Lease Payments are payable in an amount sufficient to provide for payment of interest on the Notes when due, but not to provide for payment of the principal of the Notes at maturity. In order to provide for the payment of the Notes at maturity, the Authority has covenanted in the Indenture to, no later than April 1, 2029, institute proceedings to refinance the Notes at maturity. Under the Lease Agreement, the City covenants to pay lease payments in an amount equal to regularly scheduled installments of debt service on all obligations issued by the Authority to refund the Notes and any future refunding obligations. See “SECURITY FOR THE NOTES.”

**Legal Opinion.** Upon delivery of the Notes, Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel (“**Bond Counsel**”), will release its final approving legal opinion with respect to the Notes, regarding the validity of the Notes, in the form attached hereto as APPENDIX D.

**Risks of Investment.** Debt service on the Notes 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 Notes, see “NOTE OWNERS’ RISKS.”

NONE OF THE NOTES, 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 NOTES ARE SECURED SOLELY BY THE PLEDGE OF REVENUES AND CERTAIN FUNDS HELD UNDER THE INDENTURE. THE NOTES ARE NOT SECURED BY A PLEDGE OF THE TAXING POWER OF THE CITY.

**FINANCING PLAN**

**The Project**

A portion of the proceeds of the Notes will be used primarily to finance the construction of certain tenant improvements within the fire administration and training building in the City (the "Project").

The proposed Project is \_\_\_\_\_. The Project is expected to commence in \_\_\_\_\_ 20\_\_ and be completed in \_\_\_\_\_ 20\_\_.

**Estimated Sources and Uses of Funds**

The estimated sources and uses of funds relating to the Notes are as follows:

**Sources of Funds:**

Principal Amount of Notes	\$
<i>Plus:</i> Net Original Issue Premium	
<i>TOTAL SOURCES</i>	\$ _____

**Uses of Funds:**

Deposit to Project Fund	\$
Deposit to Costs of Issuance Fund <sup>(1)</sup>	
Underwriter's Discount	
<i>TOTAL USES</i>	\$ _____

<sup>(1)</sup> 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 Notes.

## 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 two City fire stations .

[Additional information to come]

### 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations), 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 Notes, 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 Notes, 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 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations), 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 (or any Refunding Documents) which removes the Released Property from the Lease, the Site Lease and the Assignment Agreement (or such Refunding Documents).
- The City has certified in writing to the Authority and the Trustee (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 Notes or the outstanding principal amount of the Refunding Obligations, as applicable, 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 NOTES

*This section provides summaries of the Notes 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 Notes are being issued under the Law, the Authority Resolution, City Resolution and Indenture. Under the Authority Resolution and City Resolution, the Notes may be issued in a principal amount not to exceed \$\_\_\_\_\_.

### General Provisions

**Note Terms.** The Notes will be dated their date of delivery and issued in fully registered form without coupons in integral multiples of \$5,000, and will mature on October 1, 2029.

Interest on the Notes will be payable on April 1 and October 1 in each year, commencing April 1, 2026 (each an “**Interest Payment Date**”). The Notes will mature in the amounts and on the dates, and bear interest at the rate of \_\_\_\_%.

**Calculation of Interest.** Interest on the Notes is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Note 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 Note 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 Note 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 Notes 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 Notes is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below.

Interest on any Note 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 Note 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 Notes by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Notes 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 Notes 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 Notes 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 Notes 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 Notes are subject to the book-entry system, the principal, interest and any redemption premium with respect to the Notes will be paid by the Trustee to DTC for subsequent disbursement to beneficial owners of the Notes. See “– Book-Entry Only System” below.*

#### **Redemption\***

***Make-Whole Optional Redemption.*** The Notes are subject to optional redemption, in whole or in part, on any date prior to their stated maturity, at the option of the Authority, at a redemption price equal to the greater of the following:

- (a) 100 percent of the principal amount of Notes to be redeemed, plus interest thereon to the redemption date; and
- (b) the sum of the present value of the remaining scheduled payments of principal and interest on the Notes to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Notes are to be redeemed, discounted to the date on which such Notes are to be redeemed on a semiannual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus 15 basis points, plus, in each case, accrued and unpaid interest on the Notes to be redeemed to the date fixed for redemption.

“Treasury Rate” means, with respect to any redemption date for the Notes, the yield to maturity as to such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available on a date selected by the City that is at least two Business Days prior to the redemption date (excluding inflation indexed securities) or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the redemption date to the maturity date of the Notes to be redeemed; provided however, that if the period from the redemption date to such maturity date is less than

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\* Preliminary; subject to change.

one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

**Special Mandatory Redemption from Insurance or Condemnation Proceeds.** The Notes are subject to redemption as a whole or in part, 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.

As long as the Refunding Obligations are outstanding, 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 the Lease and the Refunding Documents.

**Selection of Notes for Redemption.** Whenever provision is made in the Indenture for the redemption of less than all of the Notes, the Trustee will select the Notes of that maturity to be redeemed from all Notes 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 Note as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Note.

**Notice of Redemption.** The Trustee shall mail notice of redemption of the Notes 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 Notes 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 Notes 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 Notes 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 Note 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.

**No Partial Redemption of Notes.** The Notes may only be redeemed in whole based on the principal amount of the outstanding Notes, and shall not be subject to redemption in part.

**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 Notes (or portions thereof)

so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Notes (or portions thereof) so called for redemption will become due and payable, interest on the Notes so called for redemption will cease to accrue, said Notes (or portions thereof) will cease to be entitled to any benefit or security under the Indenture, and the Owners of said Notes will have no rights in respect thereof except to receive payment of the redemption price thereof.

### **Book-Entry Only System**

The Notes will be issued as fully registered Notes 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 Notes are subject to the book-entry system, the principal, interest and any redemption premium with respect to a Note 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 Notes. Purchasers of the Notes 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 Notes apply only during any period in which the Notes are not subject to DTC’s book-entry system. While the Notes 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.”*

**Note 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 Notes, 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 Notes as provided in the Indenture.

**Transfer of Notes.** Any Note 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 Note 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 Note or Notes are surrendered for transfer, the Authority will execute and the Trustee will authenticate and deliver to the transferee a new Note or Notes of like series, interest rate, maturity and aggregate principal amount. The Authority will pay the cost of printing Notes and any services rendered or expenses incurred by the Trustee in connection with any transfer of Notes.

**Exchange of Notes.** The Notes may be exchanged at the Office of the Trustee for a like aggregate principal amount of Notes 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 Notes and any services rendered or expenses incurred by the Trustee in connection with any exchange of Notes.

**Limitations on Transfer and Exchange.** The Trustee may refuse to transfer or exchange, under these provisions of the Indenture, any Notes selected by the Trustee for redemption under the Indenture, or any Notes during the period established by the Trustee for the selection of Notes for redemption.

**DEBT SERVICE SCHEDULE**

The table below shows annual debt service payments on the Notes, assuming no optional or mandatory redemption thereof.

<b>Year Ending October 1</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Debt Service</b>
2025			
2026			
2027			
2028			
2029			
Total:			

## SECURITY FOR THE NOTES

*The principal of and interest on the Notes 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 Notes 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 Notes) 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 Notes 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), but excluding 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.

### **Covenant to Issue Refunding Obligations**

In order to provide for the payment of principal of the Notes coming due at the maturity thereof on the maturity date, the Authority has covenanted in the Indenture that if it has not deposited with the Trustee, on or before April 1, 2029, an amount of funds sufficient to pay in full the principal of the Notes coming due on the maturity date, the Authority will immediately institute proceedings for the issuance of its notes, bonds or other obligations (the "**Refunding Obligations**") which are secured by Revenues and any other legally available funds, in an amount sufficient to provide for payment of each series of Notes at maturity. The Authority has further covenanted to authorize, execute and deliver any and all documents, including but not limited to any amendment to the Lease and the Site Lease, as may be required in order to (a) provide Revenues when and as required for payment of the Refunding Obligations, and (b) issue, sell and otherwise provide adequate security for the Refunding Obligations.

The principal amount of all series of Refunding Obligations which are outstanding at any time shall not exceed the estimated value of the Leased Property, as such value is determined by the Authority and the City as of the date of issuance of the final series of Refunding Obligations

In the event Refunding Obligations are issued to refund the Notes, all Lease Payments will be assigned under the means the indenture of trust, trust agreement or other document entered into by the Authority, authorizing the issuance of any Refunding Obligations (the "**Refunding Documents**").

### **Allocation of Revenues by Trustee; Application of Funds**

***Deposit of Revenues in Debt Service Fund.*** All Revenues will be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Debt Service 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 Debt Service Fund, after payment in full of the principal (including the principal amount of any Term Bonds that is subject to mandatory sinking fund redemption, if any) of and interest on the Notes 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 Debt Service Fund and deposit into the following respective accounts (each of which the Trustee will establish and maintain within the Debt Service Fund), the following amounts in the following order of priority:

- (a) Deposit to Interest Account. 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 Notes then Outstanding.
- (b) Deposit to Principal Account. 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 Notes coming due and payable on such Interest Payment Date.

**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 (as it shall be revised by the Authority and the City in connection with the issuance any Refunding Obligations), and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in the Lease (as it shall be amended in revised by the Authority and the City in connection with the issuance of any Refunding Obligations).

Any amount held in the Debt Service Fund, the Interest Account and the Principal Account under the Indenture (and all amounts on deposit in the respective funds established under the Refunding Documents for payment of current debt service on the related issue of Refunding Obligations) 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 Notes or Refunding Obligations 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) on any Lease Payment Date if the amounts then held in the Debt Service Fund, the Interest Account and the Principal Account (or all amounts on deposit in the respective funds established under the Refunding Documents for payment of current debt service on the related issue of Refunding Obligations) 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, the Lease continues in full force and effect and the City waives any right to terminate the Lease by virtue of any such damage and destruction.

Notwithstanding the foregoing, there will be no abatement of Lease Payments under the Lease to the extent that the proceeds of hazard insurance or rental interruption insurance are available to pay Lease Payments that would otherwise be abated under the Lease, it being declared that such proceeds and amounts constitute a special fund for the payment of the Lease Payments.

## No Reserve Fund

No debt service reserve fund has been established with respect to the Notes. See “NOTE 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 Notes.

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 Debt Service 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 Notes as set forth in the Indenture.

So long as the Refunding Obligations are outstanding, the trustee, fiscal agent or paying agent, as assignee of the Authority, under the Refunding Documents, will have the right to receive all Net Proceeds. The trustee, fiscal agent or paying agent will deposit all Net Proceeds as directed in the Refunding Documents.

## 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 XIII A of the State Constitution

On June 6, 1978, California voters approved Proposition 13, which added Article XIII A to the State Constitution. Article XIII A, 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 or lease of real property for school facilities, approved by 55 percent of the voters voting on the proposition. Article XIII A 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 XIII A 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 XIII A

Legislation has been enacted and amended a number of times since 1978 to implement Article XIII A. 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 XIII B of the State Constitution**

In addition to the limits Article XIII A imposes on property taxes that may be collected by local governments, certain other revenues of the State and most local governments are subject to an annual “appropriations limit” imposed by Article XIII B which effectively limits the amount of such revenues those entities are permitted to spend. Article XIII B, 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 XIII B 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.

### **Articles XIII C and XIII D 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 XIII C and XIII D to the California Constitution and contains a number of interrelated provisions affecting the ability of the City to levy and collect both existing and future taxes, assessments, fees and charges.

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

**Taxes.** Article XIII C requires that all new local taxes be submitted to the electorate before they become effective. Taxes for general governmental purposes of the City (“general taxes”) require a majority vote; taxes for specific purposes (“special taxes”), even if deposited in the City’s General Fund, require a two-thirds vote.

**Property-Related Fees and Charges.** Article XIII D also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs.

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

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

**Judicial Interpretation of Proposition 218.** The interpretation and application of Articles XIII C and XIII D 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 XIII C and XIII D reduce the flexibility of the City to raise revenues for the General Fund, and no assurance can be given that the City will be able to impose, extend or increase the taxes, fees, charges or taxes in the future that 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 XIII A, (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 XIII A, XIII B, XIII C and XIII D 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.

## NOTE OWNERS' RISKS

*The following describes certain special considerations and risk factors affecting the payment of and security for the Notes. The following discussion is not meant to be an exhaustive list of the risks associated with the purchase of any Notes and does not necessarily reflect the relative importance of the various risks. Potential investors in the Notes are advised to consider the following special factors along with all other information in this Official Statement in evaluating the Notes. There can be no assurance that other considerations will not materialize in the future.*

### **No Assurances on Issuance of Refunding Obligations**

As described above, the Lease Payments have been calculated to be sufficient to pay interest coming due on the Notes, but will not provide for payment of the principal of the Notes at maturity. Payment of the principal of the Notes is dependent on the issuance of Refunding Obligations by the Authority. Although the Authority has covenanted to issue Refunding Obligations as required to pay principal of the Notes at or before the maturity thereof, such issuance is dependent upon a variety of factors over which neither the Authority or the City has control.

Factors which could affect the ability of the Authority to issue Refunding Obligations include the financial condition of the City at the time the Authority institutes proceedings to issue Refunding Obligations, the presence of conditions prevailing in the bond market which could make it difficult or impossible for the Authority to issue Refunding Obligations, and the difficulty of obtaining municipal bond insurance or other credit enhancement or a liquidity facility for the Refunding Obligations. No assurances can be given that the Authority will be able to issue Refunding Obligations when and as required to provide for payment of the principal of the Notes at or before maturity.

### **No Pledge of Taxes**

The obligation of the City to pay the Lease Payments and Additional Rental Payments 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 Payments 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 XIIC and Article XIID 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 XIIC and Article XIID 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 XIIC and Article XIID 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 XIIC and Article XIID 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 XIIC and Article XIID of the State Constitution on the City's finances. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

### **Additional Obligations of the City**

There is some risk that failure to complete a project that is part of the Leased Property before any capitalized interest has been fully expended could result in the fair rental value of the Leased Property being less than the scheduled Lease Payments and, in such a situation, if the proceeds of rental interruption insurance are exhausted and the reserve fund (if any) is fully depleted, abatement of the Lease Payments may occur. However, the City believes that the requirement for capitalized interest to established through a date that is not less than six months after the anticipated completion date should provide sufficient protection against this risk.

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 Notes. 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 Payments, 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 Notes or pay debt service on the Notes.

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 Notes as and when due. See "SECURITY FOR THE NOTES – Abatement" and "APPENDIX B – SUMMARY OF PRINCIPAL LEGAL DOCUMENTS."

There will be no abatement of Lease Payments under the Lease Agreement to the extent that the proceeds of hazard insurance or rental interruption insurance are available to pay Lease Payments that would otherwise be abated. See "SECURITY FOR THE NOTES – Abatement." However, there is no assurance that the Authority will receive proceeds of hazard insurance or rental interruption insurance in time to make debt service payments on the Notes when due.

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 NOTES – 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 Notes during any period of abatement. See "SECURITY FOR THE NOTES – 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 Notes when due.

### **No Debt Service Reserve Fund**

The Authority will not fund a debt service reserve fund for the Notes. If Revenues are insufficient for the Authority to pay debt service on the Notes 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 Notes when due.

**Reduction in Inflationary Rate.** Article XIII A 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 XIII A 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 XIII A 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 XIII A 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 XIII A.

**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.

## Natural Calamities

From time to time, the City could be subject to natural calamities that may adversely affect economic activity in the City, which could have a negative impact on the City's finances. Additionally, a natural calamity adversely affecting the Leased Property could have a negative impact of the City's use of such property, which could result in abatement of Lease Payments. See "– Abatement" above.

**Seismic.** Major earthquake fault zones in the vicinity of the City include the Hayward fault, a member of the San Andreas fault system, among others. The 1989 Loma Prieta earthquake on the San Andreas fault was centered about 60 miles south of San Francisco and registered 6.9 on the Richter scale of earthquake intensity, and caused fires and collapses of and structural damage to buildings, highways, and bridges in the San Francisco Bay region. In 2015, the 2014 Working Group on California Earthquake Probabilities (a collaborative effort of the United States Geological Survey, the California Geological Society and the Southern California Earthquake Center) updated the 30-year earthquake forecast for California and concluded that there is a 72% probability that at least one earthquake of magnitude 6.7 or greater will strike somewhere in the San Francisco Bay region before the year 2043. Such an earthquake would likely be very destructive and property within the City could sustain significant damage in a major earthquake, and the area's economic activity could be adversely affected.

The City cannot predict how much damage may occur within the City to the Leased Property, specifically, and how much reduction in assessed valuation in the City may result from an earthquake.

Under the Lease Agreement, the City is not required to obtain earthquake insurance on the Leased Property.

**Flood.** In the City, three types of flooding typically occur: coastal flooding, creek flooding and storm drain overflow. Creek flooding in the City has the potential to affect an estimated 675 structures, mainly in the western, industrial area of the City. It is unlikely that floodwaters will reach higher than three feet, but damages to homes, businesses, and their contents could total over \$201 million. Storm drain creates localized flooding in many known intersections in the City. With few properties covered by flood insurance, these costs would be borne primarily by City residents and businesses.

**Fire Hazards.** In recent years, wildfires have caused extensive damage throughout the State. Certain of these fires have burned thousands of acres and destroyed hundreds and in some cases thousands of homes. In some instances, entire neighborhoods have been destroyed. Several fires which occurred in 2017 damaged or destroyed property in areas that were not previously considered to be at risk from such events. In November 2018, the Camp Fire occurred in Butte County, California. Climate change is expected to lead to even more frequent and damaging wildfires in the future.

The land within the City may be susceptible to wildland fires due to a combination of factors including winds, temperatures, humidity levels, fuel moisture content of vegetation and topography. The risk to the community is increased in some areas because of the combustibility of building materials including roofs, adequacy of access roads, water supply duration, and pressure and maintenance of flammable vegetation surrounding structures.

To quantify this potential hazard, the California Department of Forestry and Fire Protection (“**Cal Fire**”) has developed a fire modeling and mapping process that utilizes three main criteria in order to evaluate and recommend potential fire hazards in wildland areas. The criteria are type of vegetation, fire weather, and topography. The maps developed by Cal Fire currently identify certain areas within the City as Fire Hazard Severity Zones.

In the event taxable property within the City were destroyed by wildfires, the assessed valuation of such property would be reduced. Such reduction of assessed valuations could result in a reduction of property tax revenues to the City.

**Droughts.** California is subject to droughts from time to time. In October, 2021, the Governor declared a Statewide drought state of emergency and requested that all water users voluntarily reduce water use by 15%. The declaration encouraged water agencies to draw upon supplies other than groundwater and to implement their water shortage contingency plans and authorized the State Water Resources Control Board to adopt regulations that prohibit wasteful water use. While some drought-related water restrictions were eased in May 2023, no assurance can be given that drought conditions will not return in the future.

### **Public Health Emergencies**

In recent years, public health authorities have warned of threats posed by outbreaks of disease and other public health threats. For example, in 2020 the WHO announced that COVID-19, an upper respiratory tract illness, was a pandemic as it spread across the globe, having significant adverse health and financial impacts throughout the world. The spread of the COVID-19 coronavirus pandemic, and responses intended to slow its spread, resulted in negative health and economic impacts to various communities, including the City (on a temporary basis).

Although the COVID-19 pandemic is now in decline, future pandemics may arise in the future with similar or even more adverse economic impacts. Uncertain too are the actions that may be taken by federal, State and local governmental authorities to contain or mitigate the effects of any such future outbreak.

### **Limitations on Remedies Available to Note 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 Notes 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 Note owner remedies contained in the Lease and the Indenture, the rights and obligations under the Notes, 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 Notes to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation or modification of their rights.

The opinion to be delivered by Bond Counsel, concurrently with the issuance of the Notes, will include a qualification that the rights of the owners of the Notes and the enforceability of the Notes 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."

### **Cyber Security**

The City, like many other public and private entities, relies on computer and other digital networks and systems to conduct its operations. As a recipient and provider of personal, private or other sensitive electronic information, the City is potentially subject to multiple cyber threats, including without limitation hacking, viruses, ransomware, malware and other attacks. No assurance can be given that the City's efforts to manage cyber threats and attacks will be successful in all cases, or that any such attack will not materially impact the operations or finances of the City. The City is also reliant on other entities and service providers in connection with the administration of the Notes, including without limitation the County tax collector for the levy and collection of property taxes, and the Trustee. No assurance can be given that the City and these other entities will not be affected by cyber threats and attacks in a manner that may affect the Note owners.

### **Secondary Market for Notes**

There can be no guarantee that there will be a secondary market for the Notes or, if a secondary market exists, that any Notes 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.** The interest on the Notes is not intended by the Issuer to be excluded from gross income for federal income tax purposes. However, in the opinion of Bond Counsel, interest on the Notes is exempt from California personal income taxes. The proposed form of opinion of Bond Counsel with respect to the Notes to be delivered on the date of issuance of the Notes is set forth in APPENDIX E.

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

## CERTAIN LEGAL MATTERS

Jones Hall, A Professional Law Corporation, Bond Counsel, will render an opinion with respect to the validity of the Notes, 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, 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 contemplated by the Lease, the Site Lease or the Indenture, or the financial conditions, 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, a business unit of Standard & Poor's Financial Services LLC ("**S&P**"), has assigned its municipal Note rating of "\_\_\_" to the Notes.

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 Notes may have an adverse effect on the market price or marketability of the Notes.

## CONTINUING DISCLOSURE

The City (on behalf of the Authority and itself) will covenant for the benefit of owners of the Notes 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, 2026, with the report for the fiscal year ending June 30, 2025, and to provide notices of the occurrence of certain listed 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 E. These covenants will be made in order to assist the Purchaser (as defined below) in complying with Securities and 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 8 of the City's Annual Comprehensive Financial Report attached to this Official Statement as APPENDIX C.

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

## 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 Notes. The Municipal Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The Municipal Advisor is a municipal advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities. The Municipal Advisor's compensation is contingent upon the delivery of the Notes.

### COMPETITIVE SALE OF NOTES

The Notes will be sold pursuant to a competitive bidding process held on June 3, 2025, pursuant to the terms set forth in the Official Notice of Sale for the Notes (the “**Official Notice of Sale**”).

The Notes were awarded to \_\_\_\_\_ (the “**Purchaser**”), whose proposal represented the lowest trust interest cost for the Notes as determined in accordance with the Official Notice of Sale. The Purchaser has agreed to purchase the Notes at a purchase price of \$ \_\_\_\_\_ (which is equal to the par amount of the Notes, less a Purchaser’s discount of \$ \_\_\_\_\_, and plus a net original issue premium of \$ \_\_\_\_\_).

The Purchaser intends to offer the Notes 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 Notes, fees payable to the following professionals involved in the offering are contingent upon the issuance and delivery of the Notes: Jones Hall, A Professional Law Corporation, as Bond Counsel and Disclosure Counsel; the Municipal Advisor; and the Trustee.

**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: \_\_\_\_\_  
Treasurer

**CITY OF BERKELEY**

By: \_\_\_\_\_  
Director of Finance

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 125,327 as of January 1, 2024, 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 265,000 full and part-time workers across all University of California campuses statewide.

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

Population

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

CITY OF BERKELEY  
Population Estimates  
As of January 1

Year	City of Berkeley	County of Alameda	State of California
2020	127,659	1,681,337	39,535,623
2021	120,950	1,666,341	39,327,868
2022	124,054	1,643,683	39,114,785
2023	125,181	1,50,656	39,061,058
2024	125,327	1,641,869	39,128,162

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

City Government

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

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

<u>Member</u>	<u>District</u>	<u>Term Expires</u>
Adena Ishii	Mayor	11/30/2028
Rashi Kesarwani	1	11/30/2026
Terry Taplin	2	11/30/2028
Ben Bartlett	3	11/30/2028
Igor Tregub	4	11/30/2026
Shoshana O'Keefe	5	11/30/2028
Brent Blackaby	6	11/30/2024
Cecilia Lunaparra	7	11/30/2026
Mark Humbert	8	11/30/2026

### 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 C.

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, Berkeley, California, is the City's current auditor (the "**Auditor**"). The annual comprehensive financial report of the City for fiscal year 2023-24 is attached hereto as APPENDIX C. *The City's financial statements are public documents and are included within this Official Statement without the prior approval of the Auditor.*

The Governmental Accounting Standards Board ("**GASB**") published its Statement No. 34 "Basic Financial Statements – and Management's Discussion and Analysis – for State and Local Governments" on June 30, 1999. Statement No. 34 provides guidelines to auditors, state and local governments and special purpose governments such as school districts and public utilities, on new requirements for financial reporting for all governmental agencies in the United States. Generally, the basic financial statements and required supplementary information should include (i) Management's Discussion and Analysis; (ii) government-wide financial statements prepared

using the economic measurement focus and the accrual basis of accounting and fund financial statements prepared using both the current financial resources measurement focus and the modified accrual method of accounting (governmental funds) and funds using the economic measurement focus and the accrual basis of accounting (proprietary funds) and (iii) required supplementary information. The City's financial statements are prepared in conformance with the requirements of Statement No. 34.

### **Comparative Financial Statements**

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

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

	<u>Actual 2020-21</u>	<u>Actual 2021-22</u>	<u>Actual 2022-23</u>	<u>Actual 2023-24</u>
<b>ASSETS:</b>				
Cash and investments in treasury*	\$146,849	\$171,955	\$160,249	\$134,929
Receivables (net of allowance applicable):				
Accounts	4,782	5,384	9,314	10,228
Interest	834	1,078	2,000	2,620
Taxes	13,092	10,795	9,083	9,915
Subventions/grants	1	--	--	50
Due from other funds	12,814	17,740	16,034	16,362
Notes receivable	6,197	13,818	15,954	31,326
Other	5	5	4	5
Prepaid Items	--	--	--	--
<b>Total assets</b>	<b>184,574</b>	<b>220,776</b>	<b>212,640</b>	<b>205,434</b>
<b>LIABILITIES:</b>				
Accounts payable	10,444	7,094	6,147	9,368
Accrued salaries and wages	8,081	8,934	3,541	4,672
Accrued interest payable	740	445	1,117	1,178
Advances from other funds	1,760	814	814	--
Deposits held	921	886	935	1,118
Unearned revenue	--	--	--	--
Tax and revenue anticipation notes	42,405	44,660	28,000	23,620
Other liabilities	4,955	6,129	6,515	4,693
<b>Total liabilities</b>	<b>69,307</b>	<b>68,962</b>	<b>47,070</b>	<b>44,649</b>
Deferred Inflows of Resources	3,385	3,770	7,103	7,756
<b>FUND BALANCES</b>				
Reserved for:				
Assigned to	19,577	12,163	16,753	31,326
Nonspendable	--	--	--	61,788
Restricted and Committed	35,941	60,697	71,799	92,455
Unreserved/Unassigned, report in:				
General fund	56,364	75,184	69,915	29,577
<b>Total fund balances</b>	<b>111,882</b>	<b>148,043</b>	<b>158,467</b>	<b>153,029</b>
<b>Total liabilities and fund balances</b>	<b><u>\$184,574</u></b>	<b><u>\$220,776</u></b>	<b><u>\$212,640</u></b>	<b><u>\$205,434</u></b>

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

Source: City of Berkeley, Annual Comprehensive Financial Reports.

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

	<u>Actual</u> <u>2020-21</u>	<u>Actual</u> <u>2021-22</u>	<u>Actual</u> <u>2022-23</u>	<u>Actual</u> <u>2023-24</u>
<b>REVENUES:</b>				
Taxes	\$187,395	\$225,100	\$216,259	\$216,040
Licenses and Permits	1,805	1,580	1,471	1,457
Subvention and Grants/Intergovernmental	3,700	652	1,589	833
Service Fees	6,990	7,806	9,812	11,952
Fines and Forfeitures	3,579	4,967	6,117	5,947
Rents	189	294	233	273
Franchises	1,714	1,713	1,811	1,987
Private contribution	184	45	134	150
Interest	8,110	(10,069)	3,261	22,319
Other	74	506	560	826
<b>TOTAL REVENUES</b>	<b>213,740</b>	<b>232,595</b>	<b>241,248</b>	<b>\$261,783</b>
<b>EXPENDITURES:</b>				
General Government	27,357	29,693	32,732	42,002
Public Safety	120,179	124,901	128,306	137,522
Highways and Streets	3,163	3,833	3,055	2,224
Health and Human Services	19,320	17,897	15,695	15,531
Culture-Recreation	7,362	8,708	9,291	10,632
Community Development	9,258	12,693	16,592	22,499
Economic Development	2,534	3,005	3,643	3,271
Debt Service	139	98	496	2,347
Capital Outlay	--	--	1,494	5,850
<b>TOTAL EXPENDITURES</b>	<b>189,313</b>	<b>200,827</b>	<b>211,304</b>	<b>241,875</b>
Excess Revenues Over (Under) Expenditures	24,427	31,767	29,944	19,908
Transfers In(out)/Other	(10,614)	4,394	(19,520)	(25,345)
Net Change in Fund Balance	13,813	36,161	10,424	(5,438)
Fund Balance, July 1	98,069	111,882	148,043	158,467
Prior Period Adjustment	--	-	-	--
<b>Fund Balance, June 30*</b>	<b>\$111,882</b>	<b>\$148,043</b>	<b>\$158,467</b>	<b>\$153,029</b>

\* Totals may not sum due to rounding.

Source: City of Berkeley Annual Comprehensive Financial Reports.

## General Fund Budget

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

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

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

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

**Adopted Biennial Budget.** The City adopted its fiscal years 2024-25 and 2025-26 biennial budget on June 25, 2024. For fiscal year 2024-25, the City authorized operating and capital budget expenditures of \$776.2 million based on revenues of approximately \$667.1 million. For fiscal year 2025-26, the City authorized operating and capital budget expenditures of \$717.0 million based on revenues of approximately \$692.6 million. In both fiscal years, prior year savings (accumulated fund balance), bond proceeds collected in prior fiscal years and/or anticipated grant funding offset the net increase in expenditures among the different funds to balance the budget.

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

For fiscal year 2024-25, baseline revenues for the General Fund are projected to be \$273.4 million, while baseline expenditures are projected to be \$285.5 million, resulting in a deficit of \$12.1 million. For fiscal year 2025-26, baseline revenues for the General Fund are projected to be \$284 million, which baseline expenditures are projected to be \$296.1 million, resulting in a deficit of \$12 million. These projected deficits are based on revenue data received through the third quarter of the current fiscal year.

The City is unable to predict the impact that certain federal policies may have on its finances and operations, including uncertain tariff and trade policies, the impact of reduced federal funding on some City services and programs, and the impending possibilities of increased unemployment and an economic recession. In an effort to maintain a balanced budget and to prepare for these potentialities, on April 21, 2025, the City imposed a hiring freeze, effective immediately, noting that the action is intended to slow down deficit spending, and that the City continues to discuss additional steps to balance the City budget, including transfers between funds, restricting certain General Fund contributions, maintaining vacant positions and using certain current fund balances.

The City has utilized balancing measures to ensure the current budget is balanced, as has been its historical practice. Some of the measures used include increasing salary savings for the public safety employees from 5% to 9%, utilizing the section 115 pension trust fund to fund a portion of the increased pension cost, and utilizing certain fund balances to balance other funds. Through these one-time measures, the budget is balanced for both fiscal years.

**Five-Year Forecast**

Also on June 25, 2024, the Budget and Finance Policy Committee was presented with a five-year forecast, showing a structural annual deficit in fiscal years 2023-24 through 2027-28. The following table shows the projected revenues and expenditures over the next five fiscal years for the City's General Fund and Special Funds.

**CITY OF BERKELEY  
Five-Year Forecast  
Fiscal Years 2023-24 through 2027-28**

	<u>2023-24</u>	<u>2024-25</u>	<u>2025-26</u>	<u>2026-27</u>	<u>2027-28</u>
Beginning Fund Balance	\$85,414,113	\$73,516,703	\$61,370,747	\$49,297,696	\$38,716,143
Total Revenues	273,448,848	273,404,097	284,047,718	296,147,777	302,488,599
Total Expenditures	285,346,258	285,550,053	296,120,769	306,729,330	317,787,520
Annual Surplus/(Shortfall)	(11,897,410)	(12,145,956)	(12,073,051)	(10,581,553)	(15,298,921)
Projected Ending Balance	\$73,516,703	\$61,370,747	\$49,297,696	\$38,716,143	\$23,417,222

*Source: City of Berkeley Annual Comprehensive Financial Reports*

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

**General Fund Reserves**

**Establishment of General Fund Reserve.** On January 24, 2017, the City Council adopted a General Fund reserve policy, establishing a General Fund reserve (the “**Reserve**”), to prepare for the impact of economic cycles and catastrophic events and assure fluctuations in

revenue do not impede the City's ability to meet expenditure obligations. When revenues fail to meet the City's normal operating requirements, or the need for disbursements temporarily exceeds receipts, the Reserve, upon a 2/3 vote of the City Council, may be used in accordance with the standards set forth therein.

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

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

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

The Reserve is accounted for in the Restricted and Committed fund balance of the City's balance sheet.

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

The long-term goal for the Reserve is a minimum of 30% of the adopted General Fund revenues, to be achieved within no more than 10 years ("**Long-Term Goal**"). Based on a risk assessment (according to best practices), to be updated at least every five years, the City Council may consider increasing or lowering the Reserve level.

As of July 1, 2025, the Stability Reserve is projected to have \$32,798,073, and the Catastrophic Reserve is projected to have \$25,516,697, which total 21.33% of adopted General Fund revenues, below the long-term goal of 30% in 2027.

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

While staff envisions that, in most cases, repayment will start as soon as possible, the repayment guidelines are meant to reflect a commitment to maintain a sufficient Reserve, while also recognizing that a use of Reserve amounts may occur during an economic downturn and it may be necessary to postpone repayment while the economy improves. In fiscal year 2023-24, the City repaid \$7.5 million to the Stability Reserve, and \$2.2 million is expected to be repaid in fiscal year 2024-25. In fiscal year 2023-24, the City repaid \$6.1 million to the Catastrophic Reserve and \$1.8 is expected to be repaid in fiscal year 2024-25.

## **Unfunded Liability Obligations and Unfunded Infrastructure Needs**

**General.** On April 11, 2024, the City Manager presented a biennial report of the City's unfunded liability obligations and unfunded infrastructure needs (the "**Report**"). The Report includes, among other things:

1. Employee and retiree benefit costs over a 10-year horizon
2. Costs for current active employees including:
  - a. total payroll costs for active employees during the current year;
  - b. projected payroll costs for the same number of employees for the next 10-year period.
3. A summary of all current City obligations including:
  - a. general obligation bonds;
  - b. certificates of participation;
  - c. loans;
  - d. all other current long-term obligations.
4. Summary of all capital assets and infrastructure including:
  - a. Appraisal of Public Buildings valued at \$5 million or more
  - b. Condition of Streets and Roads, projecting costs to bring streets and roads condition to an average Pavement Condition Index of 75 within 5 years.
  - c. Sewers: updated asset management plan for public sewers including projected costs for succeeding 5 years and projected revenue from sewer fees for the succeeding 5 years.

Certain provisions of the Report are described herein. The Report, which is not incorporated by reference herein, is available on the City's internet website at: [https://berkeleyca.gov/sites/default/files/documents/2023-05-23%20Special%20Item%2001%20Unfunded%20Liability%20Obligations\\_0.pdf](https://berkeleyca.gov/sites/default/files/documents/2023-05-23%20Special%20Item%2001%20Unfunded%20Liability%20Obligations_0.pdf). *The City takes no responsibility for the continued accuracy of the Internet addresses or for the accuracy or timeliness of information posted there, and such information is not incorporated in this Official Statement by these references.*

The Report concludes that maintaining a careful balance between cash on hand to fund daily operations and liquidity to cover unfunded liabilities is a key challenge for all governments, and reports that liabilities tied to pension benefits total \$1,971 million (of which only 77.4% is funded). For OPEB benefits, net liabilities is \$146 million (of which only 26.17% is funded). The City's unfunded infrastructure needs total \$2.52 billion.

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

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

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

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

As a result of the age of the City's infrastructure and limited resources allocated to infrastructure, the projected costs of the City's aging infrastructure needs are anticipated to reach more than \$2.52 billion by fiscal year 2027-28.

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

The City is currently facing significant budget deficits. See "General Fund Budget - Adopted Biennial Budget" above.

### **State Budget and its Impact on the City**

**Fiscal Year 2025-26 State Budget.** The Governor sent the fiscal year 2025-26 budget proposal to the legislature on January 10, 2025 (the "**2025-26 State Budget Proposal**"). The 2025-26 State Budget Proposal presents a balanced budget with what are noted as significant reserves in the coming fiscal year, resulting in an upgrade to the State's financial forecast in the near term and modest upward revisions in the long term. A stronger-than-anticipated performance of the economy, stock market, and cash receipts, combined with an improved economic outlook, are noted as contributors to an upgraded revenue forecast, with General Fund revenues, before accounting for transfers and tax policy proposals, projected to be higher by approximately \$16.5 billion (2.7%) than was assumed in the 2024-25 State Budget for the three-year budget window of fiscal years 2023-24 through 2025-26.

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

**Additional Information.** Information about the 2025-26 State Budget Proposal and other State budgets is available at [www.dof.ca.gov](http://www.dof.ca.gov) or [www.ebudget.ca.gov](http://www.ebudget.ca.gov). An impartial analysis of the budget is posted by the Legislative Analyst Office at [www.lao.ca.gov](http://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](http://www.treasurer.ca.gov). *The information referred*

*to in this paragraph is prepared by the respective State agency maintaining each website and not by the City. The City takes no responsibility for the continued accuracy of the Internet addresses or for the accuracy or timeliness of information posted there, and such information is not incorporated in this Official Statement by these references.*

### **Federal Revenues**

**General.** The federal government provides annual funding for several City programs, including funding from the Housing of Urban Development through the Community Block Grant, Emergency Solutions Grant, and HOME Investment Partnership in addition to other health and human services programs.

In January 2025, the federal government indicated that it was considering the reduction of federal funding to a number of programs, including programs that impact City programs. The City is unable to predict whether the federal government's review of spending may eventually impact its receipt of federal funding, and whether any such impact would have a material effect on the finances or operations of the City. The City is reviewing mitigation plans for federal funding changes that may impact the City in the future.

**Sanctuary Cities.** On January 21, 2025, the City Council adopted a resolution reaffirming the City's status as a sanctuary city and to reassert policies and procedures to guide and support staff should U.S. Immigration and Customs Enforcement ("ICE") contact City officials or visit City offices.

In January 2025, President Trump signed an executive order directing the Department of Homeland Security and the Department of Justice to explore denying federal funds to sanctuary jurisdictions and to pursue civil or criminal actions against them. Additionally, the United States Congress is considering bill H.R. 32, the "No Bailout for Sanctuary Cities Act," that would empower the president to withhold federal funding from cities, counties and states with sanctuary city status. Multiple lawsuits have been filed by local governments challenging the executive order.

The City is unable to predict the outcome of ongoing litigation against the sanctuary cities executive order or whether the federal government's restriction of funding for sanctuary cities may eventually impact its receipt of federal funding, and whether any such impact would have a material effect on the finances or operations of the City. The City is reviewing mitigation plans to deal with any ongoing litigation that may impact City financials.

### **Ad Valorem Property Taxes**

**Tax Levies and Collections.** Property taxes collected by the City decreased by \$1.2 million, or 1.0%, to \$117.8 million in fiscal year 2023-24 from \$119.0 million in fiscal year 2022-23, primarily as a result of increases/decreases in the following revenue sources:

- Property Transfer Tax revenue in fiscal year 2023-24 was \$18.0 million, \$4.0 million less than the fiscal year 2022-23 total of \$22.0 million. This decline was primarily as a result of a 26.2% decrease in the dollar value of property sales and a 10.0% decrease in the number of property sales transactions.
- Measure P Property Tax revenue in fiscal year 2023-24 was \$6.8 million, \$2.9 million or 29.9% less than the fiscal year 2022-23 total of \$9.7 million. This decline was primarily due to a 40.0% decrease in the dollar value of property sales, a 34.1% decrease in the number of property sales

transactions, and significantly less property sales of \$10 million or more in fiscal year 2023-24 than there were in fiscal year 2022-23;

- Secured Property Taxes increased by \$5.6 million from \$79.3 million in fiscal year 2022-23 to \$84.9 million in fiscal year 2023-24, due to an increase in assessed value of 7.256% in the City.
- Secured Property Taxes increased \$5.6 million due to an increase in assessed value of 7.256% in the City.
- Vehicle In-Lieu Taxes increased \$1.2 million or 7.3% in fiscal year 2023-24 from \$16.7 million in fiscal year 2022-23 to \$17.9 million in fiscal year 2023-24, due to increase in assessed value of 7.256% in the City.

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

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

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

The County levies (except for levies to support prior voter-approved indebtedness) and collects all property taxes for property falling within that county's taxing boundaries.

**Assessed Valuation History.** The following is a table summarizing the historical assessed valuation of the taxable property in the City.

**CITY OF BERKELEY**  
**Assessed Valuations of All Taxable Property**  
**Fiscal Years 2015-16 to 2024-25**

<u>Fiscal Year</u>	<u>Local Secured<sup>(1)</sup></u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>	<u>Percent Change</u>
2015-16	\$15,224,697,461	\$388,860	\$702,428,523	\$15,927,514,844	--%
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
2020-21	21,450,331,604	424,880	931,765,413	22,382,521,897	7.67
2021-22	22,405,866,300	513,120	950,013,132	23,356,392,552	4.35
2022-23	24,817,832,049	513,120	1,110,901,185	25,929,246,354	11.02
2023-24	26,609,636,419	513,120	1,211,900,795	27,822,050,334	7.30
2024-25	28,302,520,996	513,120	1,270,511,989	29,573,546,105	6.30

(1) Amounts are net of homeowners' exemption.  
Source: California Municipal Statistics, Inc.

**Factors Relating to Increases/Decreases in Assessed Value.** As indicated in the previous table, assessed valuations are subject to change in each year. Increases or decreases in assessed valuation result from a variety of factors including but not limited to general economic conditions, supply and demand for real property in the area, government regulations such as zoning, and disasters such as wildfires, earthquakes, droughts, floods, climate change and pandemics, among others. The City cannot predict or make any representations regarding the effects that natural disasters or other conditions have or may have on the value of taxable property within the City, or to what extent the effects said disasters might have on economic activity in the City or throughout the State.

**Wildfires.** According to the State, fire season is starting earlier and ending later each year, with the increased length of the season corresponding to an increase in the extent of forest fires across the State. In addition to destroying land and structures, there have been human fatalities and negative impacts on air quality throughout the State. Fires in the State and neighboring states have threatened the region's power grids, making some power lines unreliable. The City cannot predict or make any representations regarding the effects that wildfires and related conditions have or may have on the City, or to what extent the effects said disasters might have on economic activity in the City or throughout the State.

**Seismic Events.** The City is located in a seismically active region. An earthquake of large magnitude could result in extensive damage to property within the City and could adversely affect the assessed valuation of property within the City, or more generally the region's economy.

**Drought.** The State has experienced drought conditions in recent years, including a period of drought followed by record-level precipitation, which resulted in related severe flooding and mudslides in certain regions. As of February 11, 2025, the U.S. Drought Monitor indicates that the State is classified as experiencing no drought conditions in the northern part of the State, some abnormally dry, moderate and severe drought conditions, with pockets of severe and extreme drought conditions on the southeast border, with the County experiencing no drought conditions.

During 2021, the Governor of the State proclaimed a drought state of emergency for all counties in the State, culminating with an October 19, 2021, proclamation, urging Californians to step up their water conservation efforts. In January 2022, the State Water Board adopted emergency regulations aimed at saving water and raising drought awareness, with prohibitions focused on reducing outdoor water use, enforceable by local agencies and the State Water Board, generally with warning letters, mandatory water use audits, and fines. In January 2023, the State Water Board adopted its first five-year temporary groundwater recharge permit, in addition to adopting new statewide sanitary sewer orders and appointing eleven members to the Advisory Group on Safe Drinking Water Funding. Local agencies can impose and enforce their own drought conservation rules.

Climate Change. In addition to the events described above, climate change caused by human activities may have adverse effects on the assessed value of property within the City. As greenhouse gas emissions continue to accumulate in the atmosphere as a result of economic activity, many scientists expect that climate change will intensify, increasing the frequency, severity and timing of extreme weather events such as coastal storm surges, drought, wildfires, floods, heat waves, and rising sea levels. Projections of the impact of global climate change are complex and depend on a variety of factors outside of the City's control. The various scientific studies that forecast the amount and timing of adverse impacts of climate change are based on assumptions contained in such studies, but actual events may vary materially. In addition, the scientific understanding of climate change and its effects continues to evolve. Accordingly, the City is unable to forecast with certainty when or if adverse impacts of climate change will occur or the extent of such impacts.

Public Health Emergencies. In recent years, public health authorities have warned of threats posed by outbreaks of disease and other public health threats. On February 11, 2020, the World Health Organization announced the official name for the outbreak of the disease known as COVID-19 ("**COVID-19**"), an upper respiratory tract illness, that spread across the globe. The ultimate impact of COVID-19 on the City's operations and finances and the economy, real estate market, development within the City and tax collections may not be fully known, and it may be some time before the full adverse impact of the COVID-19 outbreak is known. Further, there could be future COVID-19 outbreaks or other public health emergencies that could have material adverse effects on the City's operations and finances. In addition, the City cannot predict whether future pandemics will occur and whether any such pandemics may impact its finances or operations. As of this date, several vaccines have been provided approval by federal health authorities and are widely available, and both the national emergency and state of emergency have officially ended, and the World Health Organization declared an end to the COVID-19 global health emergency.

***Property Tax Base Transfer Ballot Measure.*** On November 3, 2020, State voters approved a constitutional amendment entitled Property Tax Transfers, Exemptions and Revenue for Wildfire Agencies and Counties Amendment ("**Proposition 19**"), which will: (i) expand special rules that give property tax savings to homeowners that are over the age of 55, severely disabled, or whose property has been impacted by a natural disaster or contamination, when they buy a different home; (ii) narrow existing special rules for inherited properties; and (iii) broaden the scope of legal entity ownership changes that trigger reassessment of properties. The City cannot make any assurance as to what effect the implementation of Proposition 19 will have on assessed valuation of real property in the City.

**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 not 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 2017-18 through 2023-24 are shown in the following table:

**CITY OF BERKELEY  
SECURED TAX CHARGES AND DELINQUENCIES  
2017-18 TO 2023-24  
(Dollar amounts in thousands)**

Fiscal Year	Secured Tax Charge <sup>(1)</sup>	Amount Delinquent June 30	% Delinquent June 30
2017-18	\$56,317,983.19	\$488,950.31	0.87%
2018-19	59,739,122.88	512,267.28	0.86
2019-20	63,775,410.84	663,946.24	1.04
2020-21	68,573,256.97	647,280.27	0.94
2021-22	71,841,268.69	816,482.41	1.14
2022-23	79,749,223.16	906,881.07	1.14
2023-24	85,366,082.98	1,059,277.48	1.24

(1) 1% General Fund apportionment.  
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 2024-25.

**CITY OF BERKELEY  
Largest 2024-25 Local Secured Taxpayers**

	<b>Property Owner</b>	<b>Primary Land Use</b>	<b>2024-25 Assessed Valuation</b>	<b>% of Total <sup>(1)</sup></b>
1.	Bayer Healthcare LLC	Industrial	\$ 439,329,442	1.55%
2.	CA AG Logan Park Property Owner LLC	Apartments	167,132,007	0.59
3.	Berkeley Multifamily I Property Owner LLC	Apartments with Retail	160,806,953	0.57
4.	Mark at Berkeley LLC	Apartments	152,520,052	0.54
5.	MCREAF Acheson LLC	Apartments	149,273,988	0.53
6.	Foundry31 Owner DE LLC	Industrial	147,427,512	0.52
7.	Kaiser Foundation Health Plan Inc.	Medical Offices	140,640,881	0.50
8.	Aquatic Park Science Center II LLC	Industrial	122,272,400	0.43
9.	Berkeley Downtown Hotel Owner LLC	Hotel	106,000,000	0.37
10.	1500 San Pablo LLC	Apartments	98,638,253	0.35
11.	Hanumandla R. & Hanumandla J. Reddy, Trustees	Apartments	90,686,301	0.32
12.	CVBAF ACQ LLC	Apartments	82,320,286	0.29
13.	2176 Kittredge Owner LLC	Apartments	81,955,369	0.29
14.	Redwood Gardens Renewal LP	Apartments	76,515,932	0.27
15.	1951 Shattuck LLC	Apartments	73,331,266	0.26
16.	GEDR Hillside LLC	Apartments	69,360,606	0.25
17.	Berkeley VQOF II SPE LLC	Apartments	68,610,714	0.24
18.	Core Berkeley Bancroft LLC	Apartments	67,912,092	0.24
19.	Parkershattuck Owner LLC	Apartments	66,359,703	0.23
20.	John K. Gordon J and Janis L. Mitchell, Trust	Commercial Properties	62,367,885	0.22
			<u>\$2,423,461,642</u>	<u>8.56%</u>

(1) 2024-25 Local Secured Assessed Valuation: \$28,302,520,996.

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 XIII A 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 XIII A.

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.

In certain recent years, Proposition 8 appeals resulted in changes to assessed valuation, as shown below.

<u>Year</u>	<u>Changes in Assessed Valuation</u>
2020-21	\$1,233,243,959
2021-22	(1,335,630,976)
2022-23	—
2023-24	—
2024-25	—

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 Notes to increase accordingly, so that the fixed debt service on the Notes (and other outstanding general obligation bonds, if any) may be paid.

## Other General Fund Revenues and Transfers

In addition to property taxes, the City has several other major tax and fee revenue sources, as described below. The following table summarizes the City's actual audited General Fund revenues and transfers from fiscal year 2020-21 through fiscal year 2023-24.

### CITY OF BERKELEY GENERAL FUND REVENUES AND TRANSFERS

	Actual Revenue <u>FY 2021</u>	Actual Revenue <u>FY 2022</u>	Actual Revenue <u>FY 2023</u>	Actual Revenue <u>FY 2024</u>
Real Property	\$68,166,155	\$70,657,482	\$79,260,689	\$84,850,061
Unsecured Property	3,448,412	4,422,414	3,830,697	4,506,444
Supplemental Taxes	2,249,517	2,317,723	3,561,752	2,842,273
Property Transfer Tax	21,469,955	42,901,750	22,878,336	17,528,223
Property Transfer Tax-Measure P	10,919,576	20,591,313	10,199,580	6,272,861
Sales Tax	15,792,305	18,928,278	19,194,971	18,717,040
Soda Tax	953,069	1,025,800	1,162,310	1,101,210
Business License	17,809,332	20,324,937	21,854,193	23,754,845
Business License – Cannabis Recreation	1,712,641	1,250,792	997,572	152,834
Measure U1	4,818,740	4,913,872	5,844,564	6,322,118
Utility Users Tax	13,892,200	14,750,065	17,634,565	17,209,441
Hotel Tax	2,292,480	5,727,046	7,477,911	6,979,323
Vehicle In-Lieu	14,380,453	15,006,003	16,659,665	17,875,821
Parking Fines	3,571,391	4,765,819	5,875,858	6,034,002
Moving Violations	131,756	156,253	149,420	166,152
Interest	5,917,722	6,694,122	12,117,025	15,155,999
Ambulance Fees	3,081,204	3,833,730	5,143,120	7,910,668
Franchise Fees	1,726,470	1,720,056	1,822,528	2,008,162
Other Revenue	18,514,060	17,185,630	15,872,263	13,600,820
Transfers and IDC	<u>21,180,762</u>	<u>29,445,571</u>	<u>23,605,162</u>	<u>20,312,614</u>
TOTAL	<u>\$232,028,200</u>	<u>\$286,618,657</u>	<u>\$275,142,181</u>	<u>\$273,300,911</u>

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

**Sales and Use Tax.** The sales tax is an excise tax imposed on retailers for the privilege of selling or leasing tangible personal property. The use tax is an excise tax imposed for the storage, use, or other consumption of tangible personal property purchased from any retailer. The total sales tax rate within the City is currently 10.25%. The proceeds of sales and uses taxes imposed within the City are distributed by the State to various agencies, with the City receiving 1.0% of the amount collected.

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

Using the prior year's like quarterly tax allocation as a starting point, the CDTFA first eliminates nonrecurring transactions such as fund transfers, audit payments and refunds, and then adjusts for growth, in order to establish the estimated base amount. The CDTFA disburses 90% of the base amount to each local jurisdiction in three monthly installments (advances) prior to the final computation of the quarter's actual receipts. Ten percent is withheld as a reserve against unexpected occurrences that can affect tax collections (such as earthquakes, fire or other natural disaster) or distributions of revenue such as unusually large refunds or negative fund transfers. The first and second advances each represent 30% of the 90% distribution, while the third advance represents the remaining 40%. One advance payment is made each month, and the quarterly reconciliation payment (clean-up) is distributed in conjunction with the first advance for the subsequent quarter. Statements showing total collections, administrative costs, prior advances and the current advance are provided with each quarterly clean-up payment.

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

Sales tax revenues increased approximately \$42,822 or 0.2% to \$19.97 million in fiscal year 2023-24 from \$19.92 million in fiscal year 2022-23. The City currently projects that sales tax revenue will decrease by 1.2% in fiscal year 2024-25 and then increase 2.9% in fiscal year 2025-26.

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

	2019	2020	2021	2022	2023
Retail and Food Services:					
Apparel Stores	\$42,772	\$20,385	\$37,143	\$43,166	\$44,187
Gen. Merchandise Stores	21,434	16,902	19,066	22,498	19,762
Food Stores	155,025	169,569	144,467	115,170	115,398
Eating and Drinking Places	391,474	208,146	283,279	366,323	383,140
Home Furnishings and Appliances	66,188	45,479	87,133	59,435	51,568
Bldg. Materials, Farm Implements	101,937	113,116	141,811	152,845	149,126
Auto Dealers, Auto Supplies	119,679	94,927	114,276	135,123	109,251
Gas/Service Stations	94,217	57,950	87,759	110,009	99,486
Other Retail Stores	<u>261,020</u>	<u>188,434</u>	<u>236,279</u>	<u>245,362</u>	<u>224,668</u>
Total Retail and Food Services	1,263,746	914,910	1,151,213	1,249,931	1,196,586
All Other Outlets	<u>372,108</u>	<u>315,081</u>	<u>341,988</u>	<u>431,788</u>	<u>401,687</u>
TOTAL ALL OUTLETS	<u>\$1,635,854</u>	<u>\$1,229,990</u>	<u>\$1,493,201</u>	<u>\$1,681,719</u>	<u>\$1,598,273</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. Utility users taxes decreased \$0.8 million or 4.6% from \$17.6 million in fiscal year 2022-23 to \$16.8 million in fiscal year 2023-

24. The decrease came primarily from decreases in every category, except electric (increased \$0.8 million), as follows: Gas (decreased \$1.1 million); telephone (decreased \$0.7 million); cellular (decreased \$0.04); and cable (decreased \$0.05 million). Utility users tax is expected to be flat from fiscal year 2024-25 through fiscal year 2025-26.

**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. Business license taxes revenue decreased \$0.7 million or 3.0% from \$23.4 million in fiscal year 2021-22 to \$23.9 million in fiscal year 2022-23 primarily due to business licenses taxes on recreational cannabis of \$1.0 million being added to business license taxes for fiscal year 2022-23 but being included in other revenue categories in fiscal year 2023-24. The City projects an 0.41% decrease in business licenses taxes in fiscal year 2024-25 and a 2% increase in fiscal year 2025-26.

**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, title companies held the reserved amount in escrow until the work was completed, but since May 2007, the City has held the money in escrow accounts, with the interest going to the City.

Prior to fiscal year 2017-18, it was the City Council's policy that property transfer tax in excess of \$10.5 million was treated as one-time revenue to be transferred to the Capital Improvement Fund for capital infrastructure needs, but that amount was increased to \$12.5 million in fiscal year 2017-18 until fiscal year 2022-23; in fiscal year 2022-23, the City Council increased the baseline for fiscal year 2022-23 and fiscal year 2023-24 to \$18 million, with a permanent adjustment to \$16 million beginning in fiscal year 2024-25.

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

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

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

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

Vehicle in-lieu taxes increased \$1.2 million or 7.3% in fiscal year 2023-24 from \$16.7 million in fiscal year 2022-23 to \$17.9 million in fiscal year 2023-24 due to increases in assessed value of 7.256% in the City.

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

### **Direct and Overlapping Debt**

Set forth below is a direct and overlapping debt report (the “**Debt Report**”) prepared by California Municipal Statistics, Inc., and effective April 1, 2025. 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.

**CITY OF BERKELEY  
STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT  
(As of April 1, 2025)**

**2024-25 Assessed Valuation:** \$29,573,546,105

<b><u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u></b>	<b><u>% Applicable</u></b>	<b><u>Debt 4/1/25</u></b>
Alameda County	7.031%	\$ 33,673,217
Bay Area Rapid Transit District	2.822	67,481,357
Peralta Community College District	18.975	74,357,333
Berkeley Unified School District	99.996	355,655,773
<b>City of Berkeley</b>	<b>100.000</b>	<b>195,595,000<sup>(1)</sup></b>
East Bay Regional Park District	4.403	6,502,130
City of Berkeley Thousand Oaks Heights AFUU Assessment District	100.000	750,000
<b>TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$734,014,810</b>
<b><u>DIRECT AND OVERLAPPING GENERAL FUND DEBT:</u></b>		
Alameda County and Coliseum Obligations	7.031%	\$44,273,680
Alameda-Contra Costa Transit District Certificates of Participation	8.272	794,112
Peralta Community College District Pension Obligation Bonds	18.975	20,392,015
<b>City of Berkeley Lease Revenue Bonds and COP</b>	<b>100.000</b>	<b>15,700,000</b>
<b>TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT</b>		<b>\$81,159,807</b>
<b>COMBINED TOTAL DEBT</b>		<b>\$815,174,617<sup>(2)</sup></b>

**Ratios 2024-25 Assessed Valuation:**

<b>Direct Debt (\$195,595,000)</b> .....	<b>0.66%</b>
Total Direct and Overlapping Tax and Assessment Debt.....	2.48%
<b>Combined Direct Debt (\$211,295,000)</b> .....	<b>0.71%</b>
Combined Total Debt.....	2.76%

(1) Excludes Notes to be sold.

(2) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and non-bonded capital lease obligations.

Source: California Municipal Statistics, Inc.

## Retirement Programs

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

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

**PERS Plan Contributions.** The City is required to contribute the actuarially determined remaining amounts necessary to fund the benefits for its members. The actuarial methods and assumptions used are those adopted by the PERS Board of Administration (the "**Board of Administration**"). For the measurement period ended June 30, 2023 (the measurement date), the average active employee contribution rate is 8.0% of annual pay for the Miscellaneous Plan and 9.0% of annual pay for the Safety Plan (Fire and Police), and the employer contribution rate is 23.446% of annual payroll for the Miscellaneous Plan, 48.776% of annual payroll for the Public Safety Fire Plan, and 79.138% of annual payroll for the Public Safety Police Plan. The contribution requirements of the plan members are established by State statute, and the employer contribution rates are established and may be amended by PERS.

**Implementation of GASB No. 68.** Commencing with fiscal year ended June 30, 2015, the City implemented the provisions of GASB Statement No. 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.

For a more detailed discussion of the eligibility requirements for the City's retirement plans, see Appendix C, Note 12. The City's fiscal year 2023-24 contributions to the pension plans and the funded status of the pension plans as of June 30, 2023, are set forth below.

Total Pension Liability	Plan Fiduciary Net Position	Net Pension Liability	Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	Covered Employee Payroll	Plan Net Pension Liability as a Percentage of Covered Employee Payroll	Contributions Employer
<b>PERS – Miscellaneous Plan</b>						
\$1,256,885,291	\$895,078,800	\$361,806,491	71.21%	\$110,614,150	327.09%	\$34,576,213
<b>PERS – Public Safety Fire Plan</b>						
\$334,094,804	\$233,174,881	\$100,919,923	69.79%	\$18,118,697	556.99%	\$10,869,629
<b>PERS – Public Safety Police Plan</b>						
\$518,958,201	\$313,908,941	\$205,049,260	60.49%	\$21,578,636	950.24%	\$19,066,702

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

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

	2023-24	2024-25	2025-26	2026-27 Projected
Miscellaneous	\$25.8	\$30.1	\$31.9	\$34.6
Police	14.1	16.4	17.9	18.9
Fire	6.1	8.0	8.8	9.4
Total	\$46.0	\$54.5	\$58.6	\$62.9

**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 2023-24 contribution to the BPRIBP and the funded status of the BPRIBP, as of June 30, 2024, is set forth below.

Total Pension Liability	Plan Fiduciary Net Position	Plan Net Pension Liability	Plan Fiduciary Net Position as a Percentage of the Total Pension Liability	Covered Payroll	Plan Net Pension Liability as a Percentage of Covered Employee Payroll	Contributions Employer
\$68,306,425	\$3,612,186	\$64,694,239	5.29%	\$21,578,636*	271.89%	\$2,235,650

\* Estimated.

For a more detailed discussion of the BPRIBP, see APPENDIX C 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, 2024 was \$392,104.

**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, 2024, the City’s contribution to SMPF was \$74,479.

The funded status of the SMPF as of June 30, 2024, 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
6/30/2024	--	\$146,122	\$146,122	--%	N/A	N/A

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

**Post-Employment Health Benefit**

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

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

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

**City of Berkeley Fire Employees Retiree Health Plan.** The FRFH is a single-employer defined benefit medical plan. To be eligible for benefits, sworn Fire employees must retire from the City on or after July 1, 1997, be vested in a PERS pension, and retire from the City on or after age 50. Benefits commence immediately upon retirement. Benefits are payable for the retiree’s lifetime and continue for his or her covered spouse’s/domestic partner’s lifetime. The amount the City contributes toward the Fire Employees Retiree Health Plan is 4.5% per year regardless of the amount of increase in the underlying premium rate. The establishment and amendments of benefit provisions are negotiated between the employee bargaining units and the City Labor Negotiating Team, and are approved by the City Manager and City Council. As of June 30, 2024, there were 138 active employees, 27 retirees deferred and 89 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 2023-24 and the four preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Cost Contributed	Net OPEB Liability
6/30/2020	\$2,104,622	36%	\$21,177,486
6/30/2021	2,575,970	35	23,873,248
6/30/2022	1,354,619	39	18,507,610
6/30/2023	3,659,767	36	22,908,062
6/30/2024	3,879,000	38	22,235,604

The funded status of the FRFH as of June 30, 2024, 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 Liability-UAAL	Funded Ratio	Covered Payroll	UAAL as Percentage of covered Payroll
7/1/2024	\$12,665,380	\$35,573,442	\$22,235,604	38.0%	\$18,640,673	119.29%

**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, 2024, there were 1,140 active employees, 393 inactive employees or beneficiaries currently receiving benefits and 203 inactive employees entitled to but not yet receiving benefits.

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 2023-24 and the four preceding years were as follows:

Fiscal Year Ended	Annual OPEB Cost	Percentage of Annual OPEB Cost Contributed	Net OPEB Obligation
6/30/2020	\$5,534,572	32.7%	\$60,659,492
6/30/2021	4,871,995	42.9	41,895,470
6/30/2022	2,071,289	50.2	29,470,744
6/30/2023	6,017,367	52.3	29,845,739
6/30/2024	6,553,000	56.8	26,807,574

The funded status of the RHPAP as of June 30, 2024, the most recent actuarial report, is set forth below:

Actuarial Valuation Date	Actuarial Accrued Liability (AAL)	Actuarial Value of Assets	Unfunded Actuarial Accrued Liability-UAAL	Funded Ratio	Covered Payroll	UAAL as Percentage of covered Payroll
7/1/2024	\$62,048,880	\$35,241,306	\$26,807,574	56.8%	\$118,898,025	22.55%

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

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

- I. A person who is vested in, 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.

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

Beginning September 19, 2012, each month after the employee retires the City will pay the health care service provider an appropriate percentage based on years of service above an amount equal to \$1,200 per month for two-party coverage for the retiree and a qualifying spouse/domestic partner or \$600 per month for single party coverage. Upon death of either the

retiree or the retiree’s spouse, the City will only pay the appropriate percentage of the single party rate to the provider on behalf of the surviving retiree or spouse/domestic partner. If there is no spouse/domestic partner at the time of retirement, the City shall only pay the single party rate. The retiree and/or surviving spouse/domestic partner will be responsible for payment of the difference between the amount the City contributes toward payment of the premium and the actual premium cost. The funds for this difference will come from the retiree’s retirement account and the retiree must authorize such withdrawal of funds.

Beginning July 1, 2013, and effective each July 1 thereafter, the base rates the City contributes toward payment of the premium amount described in the preceding paragraph shall be increased by either the amount Kaiser increases the retiree medical premium for that year, or 6%, whichever is less. The retiree and/or surviving spouse/domestic partner shall pay the difference between the amount the City contributes toward payment of the premium and the actual premium cost. As of July 1, 2024, there were 150 active employees and 47 retirees.

For the retiree health premium assistance plan, the City’s annual OPEB cost, the percentage of annual OPEB cost contributed to the plan, and the net OPEB asset for fiscal year 2023-24 and the four preceding years were as follows:

<b>Fiscal Year Ended</b>	<b>Annual OPEB Cost</b>	<b>Percentage of Annual OPEB Cost Contributed</b>	<b>Net OPEB Liability</b>
6/30/2020	\$4,432,549	4.0%	\$57,472,394
6/30/2021	5,076,625	4.0	49,355,501
6/30/2022	4,636,861	6.2	32,429,614
6/30/2023	5,245,557	5.8	35,423,408
6/30/2024	2,591,000	6.0	34,445,786

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

As of July 1, 2024, the most recent actuarial valuation date, the plan was 6.0% funded. The actuarial accrued liability for benefit was \$36.7 million, and the actuarial value of assets was \$2.2 million, resulting in an unfunded accrued liability of \$34.4 million. The covered payroll (annual payroll of active employees covered by the plan) was approximately \$22.6 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, 2024, the most recent actuarial valuation date is as follows:

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
\$2,214,765	\$36,660,551	\$34,445,786	6.0%	\$22,582,297	152.5%

**Defined Contribution Plans**

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

**Labor Relations**

As of March 31, 2025, the City employed approximately 1,605 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 155 unrepresented employees that include Executive Management, Confidential professional or Confidential Office support positions. The City has not experienced any work stoppages or strikes by its employees.

**CITY OF BERKELEY  
Labor Relations**

<u>Labor Organization</u>	<u>Employees</u>	<u>Contract Expiration Date</u>
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	164	06/30/2026
Berkeley Police Association	140	06/30/2026
I. B. E. W. Local 1245	11	06/30/2025
Service Employees International Local 1021 Maintenance and Clerical Chapters	460	06/26/2027
Service Employees International Local 1021 Community Services and Part-Time Recreation Leaders Association Chapters	393	06/26/2027
Public Employees Local 1	199	06/26/2027
Unrepresented Employees	131	06/26/2027

*Source: City of Berkeley.*

**Risk Management**

The City is exposed to various risks of loss related to torts; theft of, damage to and destruction of assets; errors and omissions; injuries to employees; and natural disasters.

The City is self-insured for liability claims below \$350,000. The City is a member of the Bay Cities Joint Powers Insurance Authority (“**BCJPIA**”). The BCJPIA consists of 20 municipal or public agency members, all located within the metropolitan San Francisco Bay Area. The BCJPIA provides general liability, auto liability, and errors and omissions coverage between \$350,000 and \$1,000,000. The California Affiliated Risk Management Authority (“**CARMA**”) provides additional coverage to the BCJPIA and its member entities for claims in excess of \$1,000,000, up to \$29,000,000.

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

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

At June 30, 2024, \$7,229,101 and \$40,698,360 have been accrued for public liability, and workers' compensation claims, respectively. These accruals represent estimates of amounts to ultimately be paid for reported claims and, upon past experience, recent claim settlement trends and other information. It is the City's practice to obtain an actuarial study on an annual basis. Although the amount of actual losses incurred through June 30, 2024 are dependent on future developments, based upon information from the administrators and others involved with the administration of the programs, the City's management believes that the aggregate accrual is adequate to cover such losses.

### City Debt Structure

**Short-Term Debt.** The City has issued Tax and Revenue Anticipation Notes ("TRANS") in each recent year. The City's TRANS are a general obligation of the City, payable from the City's General Fund and any other lawfully available moneys. The fiscal year 2024-25 TRANS have an outstanding principal amount of \$35,395,000 and mature on July 29, 2025.

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

*Certificates of Participation.* On June 2, 2021, Berkeley Joint Powers Financing Authority (the "**Authority**") executed and delivered certificates of participation in the aggregate principal amount of \$3,975,000 (the "**Certificates of Participation**"). The City's underlying rental obligation is a General Fund obligation of the City. The Notes bear interest at rates between 2.00%-5.00%, and the final maturity date is October 1, 2031. As of May 1, 2025, the principal balance outstanding was \$\_\_\_\_\_.

*Lease Revenue Bonds.* In October 2012, Authority issued lease revenue bonds on behalf of the City in the aggregate principal amount of \$27,260,000 to refund the Authority's 1999 Lease Revenue Bonds and 2003 Certificates of Participation. The City's underlying rental obligation is a General Fund obligation of the City. The bonds bear interest at rates between 3.00%-5.00%, and the final maturity date is October 1, 2037. As of May 1, 2025, the principal balance outstanding was \$\_\_\_\_\_.

## Employment

The unemployment rate in the Oakland-Fremont-Berkeley MD was 4.5% in February 2025, down from a revised 4.7% in January 2025, and unchanged from the year-ago estimate of 4.5%. This compares with an unadjusted unemployment rate of 5.5% for California and 4.5% for the nation during the same period. The unemployment rate was 4.4% in Alameda County, and 4.6% in Contra Costa County.

The table below provides information about employment by industry type for Alameda County for calendar years 2020 through 2024.

**OAKLAND- FREMONT-BERKELEY MD  
(Alameda and Contra Costa Counties)  
Civilian Labor Force, Employment and  
Unemployment, Unemployment by Industry  
(Annual Averages)**

	2020	2021	2022	2023	2024
Civilian Labor Force <sup>(1)</sup>	1,425,400	1,414,000	1,432,000	1,448,500	1,448,600
Employment	1,303,300	1,329,500	1,384,800	1,392,800	1,383,700
Unemployment	122,000	84,500	47,200	55,700	64,900
Unemployment Rate	8.6%	6.0%	3.3%	3.8%	4.5%
<u>Wage and Salary Employment:</u> <sup>(2)</sup>					
Agriculture	1,500	1,700	1,900	1,800	1,500
Mining and Logging	200	200	300	300	300
Construction	71,100	74,300	75,600	75,700	74,100
Manufacturing	98,700	106,000	112,300	111,200	104,100
Wholesale Trade	42,100	41,100	41,500	41,200	40,700
Retail Trade	101,500	105,300	106,200	105,300	103,400
Transportation, Warehousing, Utilities	44,600	47,100	51,700	52,200	52,000
Information	25,600	24,700	25,000	24,200	22,400
Finance and Insurance	35,900	34,800	33,600	32,200	31,500
Real Estate and Rental and Leasing	16,800	17,200	18,400	18,500	18,400
Professional and Business Services	184,900	190,700	194,700	188,200	186,000
Educational and Health Services	191,300	198,500	205,800	216,900	229,400
Leisure and Hospitality	84,700	92,500	108,300	111,700	110,800
Other Services	33,100	35,600	39,200	41,500	42,700
Federal Government	14,200	13,400	13,100	13,200	13,300
State Government	38,200	35,900	33,100	33,500	32,300
Local Government	113,500	111,800	115,200	117,700	121,400
Total, All Industries <sup>(3)</sup>	1,097,900	1,130,800	1,175,800	1,185,100	1,184,300

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

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

(3) Calculations may not foot 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  
2024**

<u>Employer</u>	<u>Number of Employees</u>	<u>% of Total Employment</u>
University of California Berkeley	13,847	21.26%
Lawrence Berkeley National Laboratory	3,581	5.50
Sutter East Bay Medical Foundation/Hospitals	2,031	3.12
Berkeley Unified School District	1,767	2.71
City of Berkeley	1,764	2.71
Bayer Corporation	979	1.50
Kaiser Permanente Medical Group	959	1.47
Siemens Corporation/Healthcare Diagnostics, Inc.	594	0.91
Berkeley Bowl Produce	586	0.90
YMCA of The Central Bay Area	542	0.83

*Source: City of Berkeley, Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2024.*

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**ALAMEDA COUNTY**  
**Major Employers**  
**(Listed Alphabetically)**  
**As of April 2025**

<b>Employer Name</b>	<b>Location</b>	<b>Industry</b>
Alameda County Law Enforcement	Oakland	Government Offices-County
Alameda County Sheriff's Dept	San Leandro	Government Offices-County
Alameda County Sheriff's Ofc	Oakland	Government Offices-County
Alta Bates Summit Med Ctr Alta	Berkeley	Hospitals
BART PD	Oakland	Transit Lines
California State Univ East Bay	Hayward	Schools-Universities & Colleges Academic
Cooper Vision Inc	Pleasanton	Optical Goods-Wholesale
Dell EMC	Pleasanton	Computer Storage Devices (mfrs)
East Bay Muni Utility Dist	Oakland	Water & Sewage Companies-Utility
Kaiser Permanente Oakland Med	Oakland	Hospitals
Lawrence Berkeley Lab	Berkeley	Laboratories-Research & Development
Lawrence Livermore Natl Lab	Livermore	University-College Dept/Facility/Office
Peoplesoft Inc	Pleasanton	Computer Software-Manufacturers
Ross Stores Inc	Dublin	Department Stores
Sanfrancisco Bayarea Rapid	Oakland	Transit Lines
Stanford Health Care-Vlllycr	Livermore	Clinics
Tesla Fremont Factory	Fremont	Automobile-Manufacturers
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

*Source: California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2025 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 and median household effective buying income for the City, the County, the State and the United States for the period 2021 through 2025.

**CITY OF BERKELEY; ALAMEDA COUNTY;  
STATE OF CALIFORNIA; UNITED STATES  
Effective Buying Income  
2021 through 2025**

<b>Year</b>	<b>Area</b>	<b>Total Effective Buying Income (000's Omitted)</b>	<b>Median Household Effective Buying Income</b>
2021	City of Berkeley	\$6,203,796	\$79,437
	Alameda County	77,794,202	88,389
	California	1,290,894,604	67,956
	United States	9,809,944,764	56,790
2022	City of Berkeley	\$6,646,946	\$88,676
	Alameda County	85,225,529	99,940
	California	1,452,426,153	77,058
	United States	11,208,582,541	64,448
2023	City of Berkeley	\$6,074,419	\$88,720
	Alameda County	80,766,211	98,721
	California	1,461,799,662	77,175
	United States	11,454,846,397	65,326
2024	City of Berkeley	\$6,251,098	\$89,175
	Alameda County	84,213,255	101,689
	California	1,510,708,521	80,973
	United States	11,987,185,826	67,876
2025	City of Berkeley	\$6,486,075	\$89,591
	Alameda County	88,476,678	106,127
	California	1,557,429,767	82,725
	United States	12,525,577,707	69,687

Source: Claritas, LLC.

## Construction Activity

Provided below are the building permits and valuations for the City and County for calendar years 2019 through 2023.

### CITY OF BERKELEY Total Building Permit Valuations (Valuations in Thousands)

	2019	2020	2021	2022	2023
<u>Permit Valuation</u>					
New Single-family	\$9,666.3	\$6,444.7	\$13,533.1	\$9,058.9	\$18,885.4
New Multi-family	7,513.6	12,643.5	53,032.6	12,373.6	22,887.6
Res. Alterations/Additions	<u>40,596.9</u>	<u>26,204.9</u>	<u>47,099.2</u>	<u>28,834.2</u>	<u>36,880.3</u>
Total Residential	57,776.8	45,293.1	113,664.9	50,266.7	78,653.3
New Commercial	10,816.3	25,867.1	15,167.2	5,577.0	0.0
New Industrial	0.0	0.0	0.0	0.0	0.0
New Other	4,718.7	272.0	1,760.3	3,501.9	2,024.2
Com. Alterations/Additions	<u>12,885.4</u>	<u>23,290.5</u>	<u>65,213.8</u>	<u>13,158.1</u>	<u>21,111.1</u>
Total Nonresidential	28,420.4	49,429.6	82,141.3	22,237.0	23,135.3
New Dwelling Units					
Single Family	46	21	69	40	70
Multiple Family	<u>42</u>	<u>117</u>	<u>286</u>	<u>72</u>	<u>384</u>
TOTAL	88	138	355	112	454

Source: Construction Industry Research Board, Building Permit Summary.

### ALAMEDA COUNTY Total Building Permit Valuations (Valuations in Thousands)

	2019	2020	2021	2022	2023
<u>Permit Valuation</u>					
New Single-family	\$675,129.8	\$394,500.3	\$407,585.0	\$339,046.4	\$332,289.9
New Multi-family	782,536.4	722,038.0	829,822.2	795,917.3	507,952.9
Res. Alterations/Additions	<u>512,409.9</u>	<u>293,866.8</u>	<u>222,971.3</u>	<u>323,712.1</u>	<u>425,659.0</u>
Total Residential	1,970,076.1	1,410,405.1	1,460,378.5	1,458,675.8	\$1,265,901.8
New Commercial	718,569.0	238,516.5	312,914.6	268,498.1	405,330.0
New Industrial	5,638.5	0.0	600.0	33,740.8	65,576.2
New Other	78,049.8	131,447.0	110,817.0	120,294.6	94,551.2
Com. Alterations/Additions	<u>992,668.1</u>	<u>628,230.5</u>	<u>892,656.8</u>	<u>993,782.1</u>	<u>852,215.1</u>
Total Nonresidential	1,794,925.4	998,194.0	1,316,988.4	1,416,315.6	\$1,417,672.5
New Dwelling Units					
Single Family	1,871	1,152	1,589	1,175	1,061
Multiple Family	<u>4,145</u>	<u>2,610</u>	<u>4,494</u>	<u>3,366</u>	<u>3,686</u>
TOTAL	6,016	3,762	6,083	4,541	4,747

Source: Construction Industry Research Board, Building Permit Summary.

**APPENDIX B**  
**SUMMARY OF PRINCIPAL LEGAL DOCUMENTS**

**APPENDIX C**

**ANNUAL COMPREHENSIVE FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2024**

**APPENDIX D**

**PROPOSED FORM OF OPINION OF BOND COUNSEL**

APPENDIX E

FORM OF CONTINUING DISCLOSURE CERTIFICATE

\$ \_\_\_\_\_  
**BERKELEY JOINT PUBLIC FINANCING AUTHORITY**  
**2025 Lease Revenue Notes**  
**(Fire Administration and Training Project)**  
**(Federally Taxable)**

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 Notes captioned above (the “Notes”). The Notes are being issued under an Indenture of Trust dated as of June 1, 2025 (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. Purpose of the Disclosure Certificate. 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 Notes and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

Section 2. Definitions. 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 \_\_\_\_\_, 2025, executed by the City and the Authority in connection with the issuance of the Notes.

“*Participating Underwriter*” means \_\_\_\_\_, the original purchaser of the Notes required to comply with the Rule in connection with offering of the Notes.

“*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, 2026 (the “**Initial Reporting Date**”), with the report for the 2024-25 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, a notice in substantially the form required by the Rule.

(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. Content of Annual Reports. 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 the preceding fiscal year, substantially similar to that provided in the corresponding tables and charts in the Official Statement, as follows:

- (i) 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 recently-completed 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 available; 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. Reporting of Significant Events.

(a) The City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Notes:

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

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

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

Section 7. Termination of Reporting Obligation. The City's obligations under this Disclosure Certificate shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Notes. If such termination occurs prior to the final maturity of the Notes, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

Section 8. Dissemination Agent. The City may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Certificate, and may discharge any such Agent, with or without appointing a successor Dissemination Agent. The initial Dissemination Agent will be NHA Advisors, LLC. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

Section 9. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Certificate, the City may amend this Disclosure Certificate, and any provision of this Disclosure Certificate may be waived, provided that the following conditions are satisfied:

(a) if the amendment or waiver relates to the provisions of 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 Notes, or type of business conducted;

(b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule

at the time of the primary offering of the Notes, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) the proposed amendment or waiver either (i) is approved by holders of the Notes 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 Notes.

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

Section 11. Default. 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 Notes may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the 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 Note 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 Notes.

(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. 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 Notes, and shall create no rights in any other person or entity.

Section 14. Counterparts. 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: \_\_\_\_\_, 2025

CITY OF BERKELEY

By: \_\_\_\_\_  
Finance Director

## 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 Notes, payment of principal, interest and other payments on the Notes to DTC Participants or Beneficial Owners, confirmation and transfer of beneficial ownership interest in the Notes and other related transactions by and between DTC, the DTC Participants and the Beneficial Owners is based solely on information provided by DTC. Accordingly, no representations can be made concerning these matters and neither the DTC Participants nor the Beneficial Owners should rely on the foregoing information with respect to such matters, but should instead confirm the same with DTC or the DTC Participants, as the case may be.*

*Neither the Authority (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 Notes, (b) certificates representing ownership interest in or other confirmation or ownership interest in the Notes, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Notes, or that they will so do on a timely basis, or that DTC, DTC Participants or DTC Indirect Participants will act in the manner described in this Appendix. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC Participants are on file with DTC.*

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

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

company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly ("Indirect Participants"). DTC has a Standard & Poor's rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com) and [www.dtc.org](http://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 Direct 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 book-entry 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 4-19-25

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## INDENTURE OF TRUST

Dated as of June 1, 2025

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**  
**2025 Lease Revenue Notes**  
**(Fire Administration and Training Project)**  
**(Federally Taxable)**

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## INDENTURE OF TRUST

This INDENTURE OF TRUST (this “**Indenture**”), dated for convenience as of June 1, 2025, 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**”) currently leases for fire administration and training purposes certain buildings located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California 94710, as more particularly described in Appendix A attached hereto and by this reference incorporated herein (the “**Fire Property**”), under that certain Standard Multi-Tenant Office Lease - Gross dated as of June 27, 2024 (as amended and assigned from time to time, the “**Existing Lease**”), by and between Smith & Walters, Inc., a California corporation (the “**Lessor**”), and the City.

2. The City has a unilateral option to purchase the Fire Property under the Existing Lease.

3. Prior to exercising its right to purchase the Fire Property, the City intends to complete the construction of improvements to the Fire Property as may be identified from time to time by the City (the “**Project**”). The City wishes to finance the construction of the Project.

4. To that end, the City has proposed to lease to the Authority certain real property and improvements, initially consisting of the [\_\_\_\_], including land and improvements, as more particularly described in Appendix B 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 construction of the Project.

5. The Authority wishes to issue its Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable) in the aggregate principal amount of \$\_\_\_\_\_ (the “**Notes**”) 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.

6. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Notes and any Refunding Obligations (as defined below), 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.

7. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Notes under an Assignment Agreement, dated the date hereof, between the Authority as assignor and the Trustee as assignee.

8. In order to provide for the authentication and delivery of the Notes, to establish and declare the terms and conditions upon which the Notes are to be issued and to secure the payment of the principal thereof (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any), premium (if any) and interest thereon, the Authority has authorized the execution and delivery of this Indenture.

9. Section 5.11 of the Lease and 6.11 of this Indenture provide for an obligation of the Authority and the City to initiate a refunding of the Notes. The obligations issued by the Authority for the purpose of refunding the Notes are referred to herein and in the Lease as Refunding Obligations.

10. The Authority has found and determined, and hereby affirms, that all acts and proceedings required by law necessary to make the Notes, 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and the interest and redemption premium (if any) on all the Outstanding Notes 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 Notes 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 Notes 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 Notes, 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 NOTES

SECTION 2.01. *Authorization of Notes.* 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 Notes 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 Notes in the manner and form provided in this Indenture.

The Authority hereby authorizes the issuance of Notes 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 finance the construction of the Project. The Notes are authorized and issued under, and are subject to the terms of, this Indenture and the Bond Law. The Notes are designated the "Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable)."

SECTION 2.02. *Terms of the Notes.*

(a) Payment Provisions. The Notes shall be issued in fully registered form without coupons in denominations of \$5,000 or any integral multiple thereof, so long as no Note has more than one maturity date. The Bonds shall mature on October 1, 2029, and bear interest (calculated on the basis of a 360-day year of twelve 30-day months) at the rate of \_\_\_\_%.

Interest on the Notes is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- (a) a Note 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 Note 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 Note 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 Notes is registered on the Registration Books at the close of business on the immediately preceding Record Date, except as provided below. Interest on any Note 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 Note 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 Notes by check of the Trustee mailed by first class mail, postage prepaid, on each Interest Payment Date to the Owners of the Notes 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 Notes 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 Notes 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 Notes (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) 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 Notes.*

(a) Transfer. Any Note 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 Note 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 Note or Notes shall be surrendered for transfer, the Authority shall execute and the Trustee shall authenticate and deliver to the transferee a new Note or Notes of like series, interest rate, maturity and aggregate

principal amount. The Authority shall pay the cost of printing Notes and any services rendered or expenses incurred by the Trustee in connection with any transfer of Notes. Prior to any transfer of Notes, the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045, as amended. The Trustee shall conclusively rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

(b) Exchange. The Notes may be exchanged at the Office of the Trustee for a like aggregate principal amount of Notes 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 Notes and any services rendered or expenses incurred by the Trustee in connection with any exchange of Notes.

(c) Limitations. The Trustee may refuse to transfer or exchange, under the provisions of this Section 2.03, any Notes selected by the Trustee for redemption under Article IV, or any Notes during the period established by the Trustee for the selection of Notes for redemption.

#### SECTION 2.04. *Book-Entry System.*

(a) Original Delivery. Unless otherwise provided in a Supplemental Indenture, the Notes will be initially delivered in the form of a separate single fully registered bond (which may be typewritten) for each maturity of the Notes. Upon initial delivery, the Trustee shall register the ownership of each Note on the Registration Books in the name of the Nominee. Except as provided in subsection (c), the ownership of all of the Outstanding Notes shall be registered in the name of the Nominee on the Registration Books.

With respect to Notes 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 Notes. 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 with respect to any ownership interest in the Notes, (ii) the delivery to any Depository System Participant or any other person, other than a Note Owner as shown in the Registration Books, of any notice with respect to the Notes, including any notice of redemption (except to the extent such notice is required to be given by the Authority to the Trustee or to the DTC), (iii) the selection by the Depository of the beneficial interests in the Notes to be redeemed if the Authority elects to redeem the Notes in part, (iv) the payment to any Depository System Participant or any other person, other than a Note Owner as shown in the Registration Books, of any amount with respect to principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption), premium, if any, or interest on the Notes or (v) any consent given or other action taken by the Depository as Owner of the Notes. The Authority and the Trustee may treat and consider the person in whose name each Note is registered as the absolute owner of such Note for the purpose of payment of principal (including the principal amount

of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and premium, if any, and interest on such Note, for the purpose of giving notices of redemption and other matters with respect to such Note, for the purpose of registering transfers of ownership of such Note, and for all other purposes whatsoever. The Trustee shall pay the principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and the interest and premium, if any, on the Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium, if any, on the Notes to the extent of the sum or sums so paid. No person other than a Note Owner shall receive a Note evidencing the obligation of the Authority to make payments of principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any), 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) Representation Letter. In order to qualify the Notes 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 Notes other than the Note 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 Notes 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 Notes, or (ii) the Authority determines to terminate the Depository as such, then the Authority shall thereupon discontinue the book-entry system with such Depository. In such event, the Depository shall cooperate with the Authority and the Trustee in the issuance of replacement Notes by providing the Trustee with a list showing the interests of the Depository System Participants in the Notes, and by surrendering the Notes, registered in the name of the Nominee, to the Trustee on or before the date such replacement Notes are to be issued. The Depository, by accepting delivery of the Notes, 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 Notes 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 Notes shall designate, in accordance with the provisions hereof.

In connection with any proposed transfer outside the book-entry only system, the transferor shall provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code

Section 6045, as amended. The Trustee may rely on the information provided to it and shall have no responsibility to verify or ensure the accuracy of such information.

If the Authority determines that it is in the best interests of the beneficial owners of the Notes that they be able to obtain certificated Notes, the Authority may notify the Depository System Participants of the availability of such certificated Notes through the Depository. In such event, the Trustee will issue, transfer and exchange Notes 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 Notes to any Depository System Participant having Notes credited to its account with the Depository, or (z) to arrange for another Securities Depository to maintain custody of a single certificate evidencing such Notes, all at the Authority's expense.

(d) Payments to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Note is registered in the name of the Nominee, all payments with respect to principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium, if any, on such Note and all notices with respect to such Note 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 Notes, 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 Notes as hereinbefore provided.

SECTION 2.06. *Form and Execution of Notes.* The Notes, 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 President of the Authority shall execute, and the Secretary of the Authority shall attest each Note. 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 Note 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 Note may be signed and attested on behalf of the Authority by such persons as at the actual date of the execution of such Note are the proper officers of the Authority, duly authorized to execute debt instruments on behalf of the Authority, although on the date of such Note any such person was not an officer of the Authority.

Only those Notes 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 Notes have been duly authenticated and delivered hereunder and are entitled to the benefits of this Indenture.

SECTION 2.07. *Notes Mutilated, Lost, Destroyed or Stolen.* If any Note is mutilated, the Authority, at the expense of the Owner of such Note, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Note of like tenor in exchange and substitution for the Note so mutilated, but only upon surrender to the Trustee of the Note so mutilated. The Trustee shall cancel every mutilated Note surrendered to it and deliver such mutilated Note to, or upon the order of, the Authority. If any Note 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 Note of like tenor in lieu of and in substitution for the Note so lost, destroyed or stolen. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Note issued under this Section and of the expenses which may be incurred by the Trustee in connection therewith. Any Note issued under the provisions of this Section in lieu of any Note alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation on the part of the Authority whether or not the Note so alleged to be lost, destroyed or stolen be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Notes issued under this Indenture.

Notwithstanding any other provision of this Section 2.07, in lieu of delivering a new Note for which principal has become due for a Note which has been mutilated, lost, destroyed or stolen, the Trustee may make payment of such Note in accordance with its terms upon receipt of indemnity satisfactory to the Trustee.

## ARTICLE III

### ISSUANCE OF NOTES; APPLICATION OF PROCEEDS

SECTION 3.01. *Issuance of the Notes.* 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 Notes to the Original Purchaser.

SECTION 3.02. *Application of Proceeds of Sale of Notes.* On the Closing Date, the Original Purchaser will pay a purchase price for the Notes in the amount of \$[\_\_\_\_], which is equal to the original principal amount of the Notes (\$[\_\_\_\_]), 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 Project 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 Notes 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 in the form attached hereto as Appendix D 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 shall be sufficient evidence to the Trustee of the facts stated therein and the Trustee shall have no duty to confirm the accuracy of such facts. The Trustee may conclusively rely on such Written Requisitions and shall be fully protected in relying thereon. On September 15, 2025, 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 Project Fund.* The Trustee shall establish, maintain and hold in trust a separate fund designated as the "Project Fund." The Trustee shall deposit a portion of the proceeds of sale of the Notes into the Project Fund under Section 3.02(a).

The Trustee shall administer such fund as provided in this Section 3.04. Amounts on deposit in the Project Fund shall be used, as provided below, to pay the Project Costs, and to reimburse the City for the same. Pending such use, amounts on deposit in the Project Fund shall be invested only in Permitted Investments, with interest earnings and other investment income thereon being retained therein. All moneys remaining in the Project Fund upon the completion of the Project (as determined by the City in its sole discretion with written notice to the Trustee) shall be transferred by the Trustee as hereinafter provided.

The Trustee shall, from time to time, disburse money from the Project Fund to pay the Project Costs for the Project, as hereinafter provided, in each case promptly after receipt of, and in accordance with, a Written Certificate in the form attached hereto as Appendix C.

In making such payments, the Trustee may rely upon the representations made in the Written Certificate. If for any reason the City should decide prior to the payment of any item in said Written Certificate not to pay such item, then it shall give written notice of such decision to the Trustee and thereupon the Trustee shall not make such payment, and the Trustee shall have no liability to the City or the designated payee as a result of such nonpayment. In no event shall the Trustee be responsible for the adequacy or due performance of any contracts relating to the Project or for the use or application of money properly disbursed pursuant to requests made under this Section 3.04.

If, after payment by the Trustee of all Written Certificates theretofore tendered to the Trustee under the provisions of this Section 3.04 and after the City has notified the Trustee of the completion of the Project, there shall remain any balance of money in the

Project Fund, all money so remaining (other than a reasonable retainage to pay Project Costs, as determined in the sole discretion of the City with written notice to the Trustee) shall be transferred to the Principal Account and shall be applied to the prepayment of Lease Payments under Section 9.3 of the Lease and the corresponding redemption of the Notes under Section 4.01(a).

At such time as no moneys remain in the Project Fund, the Project Fund shall be closed.

SECTION 3.05. *Validity of Notes.* The recital contained in the Notes 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 NOTES

#### SECTION 4.01. *Terms of Redemption.*

(a) Optional Redemption. The Notes are subject to optional redemption, in whole or in part, on any date prior to their maturity, at the option of the City, from any source of available funds, at a redemption price equal to the greater of the following:

(i) 100 percent of the principal amount of the Notes to be redeemed, plus interest accrued on the Notes to the redemption date; or

(ii) the sum of the present value of the remaining scheduled payments of principal and interest on the Notes to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Notes are to be redeemed, discounted to the date on which such Notes are to be redeemed on a semiannual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus 15 basis points, plus, in each case, accrued and unpaid interest on the Notes to be redeemed to the date fixed for redemption.

“Treasury Rate” means, with respect to any redemption date for the Notes, the yield to maturity as to such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available on a date selected by the City that is at least two Business Days prior to the redemption date (excluding inflation indexed securities) or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the redemption date to the maturity date of the Notes to be redeemed; provided however, that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

The Authority must give the Trustee at least 10 days’ written notice of its intention to redeem Notes under this subsection (a), in sufficient time for the Trustee to give notice of such redemption in accordance with Section 4.03.

(b) Special Mandatory Redemption From Insurance or Condemnation Proceeds. The Notes are subject to redemption as a whole, or in part, 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.

(c) Reserved.

SECTION 4.02. *Selection of Notes for Redemption.* Whenever provision is made in this Indenture for the redemption of less than all of the Notes, the Trustee shall select the Notes 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 Note as consisting of separate \$5,000 portions and each such portion shall be subject to redemption as if such portion were a separate Note.

SECTION 4.03. *Notice of Redemption; Rescission.* The Trustee shall mail notice of redemption of the Notes 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 Notes 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 Notes (or all Notes of a single maturity) are to be redeemed, the CUSIP numbers and (in the event that not all Notes within a maturity are called for redemption) Note numbers of the Notes to be redeemed, and in the case of Notes 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 Notes the redemption price thereof, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Notes 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 Notes 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 Notes under Section 4.01(a) by written notice to the Trustee on or prior to the date 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 Notes then called for redemption, and such cancellation shall not constitute an Event of Default. The Authority and the Trustee have no liability to the Owners of the Notes 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. *No Partial Redemption of Notes.* The Notes may only be redeemed in whole based on the principal amount of the Outstanding Notes, and shall not be subject to redemption in part.

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 Notes (or portions thereof) so called for redemption being held by the Trustee, on the redemption date designated in such notice, the Notes (or portions thereof) so called for redemption shall become due and payable, interest on the Notes so called for redemption shall cease to accrue, said Notes (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of said Notes shall have no rights in respect thereof except to receive payment of the redemption price thereof.

All Notes 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 Notes; Debt Service Fund.*

(a) Pledge of Revenues and Other Amounts. 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 Notes) held in any fund or account established under this Indenture (except the Project Fund, the Costs of Issuance Fund and such other funds and accounts specified in a Supplemental Indenture) are hereby pledged to secure the payment of the principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium (if any) on the Notes 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) 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 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) Deposit of Revenues in Debt Service Fund. All Revenues shall be promptly deposited by the Trustee upon receipt thereof in a special fund designated as the "Debt Service 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 Debt Service Fund, after payment in full of (i) the principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest on the Notes 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 Debt Service Fund and deposit into the following respective accounts (each of which the Trustee shall establish and maintain within the Debt Service Fund), the following amounts in the following order of priority:

- (a) Deposit to Interest Account. 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 Notes then Outstanding.
- (b) Deposit to Principal Account. 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) amount of the Notes 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 Notes as it comes due and payable (including accrued interest on any Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) amount of the Notes 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 Notes to be redeemed under Section 4.01(a) or (b); *provided, however*, that at any time prior to the selection of Notes for redemption, the Trustee may apply such amounts to the purchase of Notes 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 Notes. 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) Establishment of Fund. 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) Application of Insurance Proceeds. 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 Notes 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 Notes 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) Application of Eminent Domain Proceeds. 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 Notes 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) Reliance on Independent Advice. 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.

Notwithstanding any other provision of this Section 5.07 or the Lease, the Trustee shall pay to the City all moneys in the Insurance and Condemnation Fund upon the Trustee's receipt of Written Request of the City which states that, pursuant to Section 3.2 of the Lease, the City has substituted other real property for the Leased Property that was damaged or destroyed and that there will be no abatement of the Lease Payments as a result of such damage or destruction.

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 Debt Service 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 may conclusively rely on the written investment direction of the Authority as to the suitability and legality of the directed investments. The Trustee shall

incur no liability for losses arising from any investments made under this Section 5.08. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Authority to provide timely written investment direction. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories.

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 and may charge its ordinary and customary fees for such trades, including account maintenance fees. 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 to purchase investments that are not included on the list provided by 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.

Under Section 10.5 of the Lease, the City may direct the Authority as to the investment of funds under this Section 5.08, subject to compliance with the provisions of this Article V and Section 6.07.

**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 Notes (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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium (if any) on all the Notes in strict conformity with the terms of the Notes 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 Notes.* The Authority shall not directly or indirectly extend or assent to the extension of the maturity of any of the Notes or the time of payment of any claims for interest by the purchase of such Notes or by any other arrangement, and in case the maturity of any of the Notes or the time of payment of any such claims for interest shall be extended, such Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of all of the Notes 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 Notes for the purpose of refunding any Outstanding Notes, and such issuance does not constitute an extension of maturity of the Notes.

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 Notes 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 Notes and Make Pledge and Assignment.* The Authority is duly authorized under law to issue the Notes 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 Notes 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 Note 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 Notes 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. *Reserved.*

SECTION 6.07. *Reserved.*

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 Notes, 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 Notes of the rights and benefits provided in this Indenture.

SECTION 6.11. *Refunding Covenant.* The Authority hereby covenants that it will issue its Refunding Obligations which are secured by Revenues and any other legally available funds of the Authority, in an amount sufficient to provide for payment of the Notes in whole on or before the maturity thereof. If the Authority has not deposited with the Trustee, on or before April 1, 2029, an amount of funds sufficient to pay in full the principal of such series of the Notes coming due at maturity, the Authority shall immediately institute proceedings for the issuance of Refunding Obligations in an amount sufficient to provide for payment of such series of the Notes on or before the maturity thereof. The Authority shall authorize, execute and deliver any and all documents, including but not limited to any amendment to the Lease and the Site Lease, as may be required in order to (a) provide the Revenues when and as required for payment of the Refunding Obligations, and (b) issue, sell and otherwise provide adequate security for the Refunding Obligations. The principal amount of all series of Refunding Obligations which are outstanding at any time shall not exceed the estimated value of the Leased Property, as such value is determined by the Authority and the City as of the date of issuance of the final series of Refunding Obligations.

## 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of any Notes 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 Notes 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 Notes, 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 Notes 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 Notes 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 Notes contained to the contrary notwithstanding.

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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and installments of interest on the Notes

payment of which is overdue, with interest on such overdue principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) at the rate borne by the respective Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest on the Notes 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 Notes then Outstanding, by written notice to the Authority, the City and the Trustee, may, on behalf of the Owners of all of the Notes, 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 Noteholder any plan of reorganization, arrangement, adjustment, or composition affecting the Notes or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Noteholder in any such proceeding without the approval of the Noteholders 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest then due on the Notes (upon presentation of the Notes 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 (including the principal amount of any Term Notes that

is subject to mandatory sinking fund redemption, if any) of any Notes which shall have become due, whether at maturity or by acceleration or redemption, with interest on the overdue principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) at the rate borne by the respective Notes (to the extent permitted by law), and, if the amount available shall not be sufficient to pay in full all the Notes, together with such interest, then to the payment thereof ratably, according to the amounts of principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) due on such date to the persons entitled thereto, without any discrimination or preference; and

SECTION 7.04. *Trustee to Represent Note Owners.* The Trustee is hereby irrevocably appointed (and the successive respective Owners of the Notes, 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 Notes 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 Notes, this Indenture and applicable provisions of any law. All rights of action under this Indenture or the Notes may be prosecuted and enforced by the Trustee without the possession of any of the Notes 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 Notes, subject to the provisions of this Indenture.

SECTION 7.05. *Limitation on Note Owners' Right to Sue.* Notwithstanding any other provision hereof, no Owner of any Notes 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 Notes, 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 Notes 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; and (e) no direction inconsistent with such written request has been given to the Trustee during such 60 day period by the Owners of a majority in aggregate principal amount of the Notes 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 Notes of any remedy hereunder or under law; it being understood and intended that no one or more Owners of Notes 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 Notes, or to enforce any right under the Notes, this Indenture, the Lease or other applicable law with respect to the Notes, 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 Notes, subject to the provisions of this Indenture.

SECTION 7.06. *Absolute Obligation of Authority.* Nothing herein or in the Notes contained affects or impairs the obligation of the Authority, which is absolute and unconditional, to pay the principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium (if any) on the Notes to the respective Owners of the Notes 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 Notes.

SECTION 7.07. *Termination of Proceedings.* In case any proceedings taken by the Trustee or by any one or more Note 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 Note Owners, then in every such case the Authority, the Trustee and the Note 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 Note 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 Notes 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 Notes 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 Notes may be exercised from time to time and as often as may be deemed expedient by the Trustee or the Note Owners.

SECTION 7.10. *Notice to Note 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 Note, 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 Note Owners if and so long as the Trustee in good faith determines that it is in the best interests of the Note 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 Notes 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 Notes 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. The Trustee shall be paid in full for any fees and expenses owing to it prior to, or contemporaneous with, signing any instrument or agreement to effect the transfer to a successor Trustee.
- (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 Note 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 Notes and to the Note 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 Notes 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 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 on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

SECTION 8.04. *Liability of Trustee.*

(a) The recitals of facts herein and in the Notes contained shall be taken as 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 Notes 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 Notes assigned to or imposed upon it. The Trustee shall, however, be responsible for its representations contained in its certificate of authentication on the Notes. 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 Notes 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 Note Owners, whether or not such committee shall represent the Owners of a majority in principal amount of the Notes 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 Notes 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. The Trustee may consult with counsel with respect to legal

questions 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.

(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.

(e) The Trustee shall not be deemed to have knowledge of any Event of Default 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 Notes. 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 Notes or of any of the documents executed in connection with the Notes, 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 shall require 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, custodians, attorneys or nominees appointed with due care, and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, receiver, custodian, attorney or nominee 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 Note 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 Notes) 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.

(l) 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 Notes.

(m) The Trustee is authorized and directed to execute the Assignment Agreement in its capacity as Trustee hereunder.

(n) The Trustee shall have the right to accept and act upon instructions, including funds transfer instructions ("Instructions") given pursuant to this Indenture and delivered using Electronic Means ("Electronic Means" shall mean the following communications methods: e-mail, secure electronic transmission containing 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 may conclusively rely and 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, requisition, 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 Notes appearing in the Registration Books as the absolute owners of the Notes 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. The Trustee shall be under no duty or obligation to analyze or verify any documentation supporting any Written Certificate, Written Request or Written Requisition, but shall hold and provide to Owners upon request such documentation supporting the payments or reimbursements, solely as a repository for the benefit of Owners.

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 Note 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. Upon an Event of Default, and only upon an Event of Default, the Trustee shall have a first lien with right of payment prior to payment on account of principal of and premium, if any, and interest on any Note, upon the Revenues for the foregoing fees, charges and expenses incurred by it.

The Authority shall indemnify the Trustee, its officers, directors, employees and agents against any cost, fine, penalty, 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 (whether asserted by the Authority or any holder or any other person) 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 Notes 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 Notes 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.

If, in connection with the Notes, the Trustee renders any service hereunder not provided for in this Indenture or related financing documents, or the Trustee is made a party to or intervenes in any litigation pertaining to this Indenture or related financing documents or institutes interpleader proceedings relative hereto, the Trustee shall be compensated reasonably by the Authority for such extraordinary services and reimbursed for any and all claims, liabilities, losses, damages, fines, penalties, and expenses, including out-of-pocket and incidental expenses and legal fees and expenses occasioned thereby.

## ARTICLE IX

### MODIFICATION OR AMENDMENT HEREOF

#### SECTION 9.01. *Amendments Permitted.*

(a) Amendments With Note Owner Consent. This Indenture and the rights and obligations of the Authority and of the Owners of the Notes 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 Notes then Outstanding are filed with the Trustee. No such modification or amendment may (i) extend the fixed maturity of any Notes, 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 Note so affected, or (ii) reduce the aforesaid percentage of Notes 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 Notes 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 Notes then Outstanding. It is not necessary for the consent of the Note Owners to approve the particular form of any Supplemental Indenture, but it is sufficient if such consent approves the substance thereof.

(b) Amendments Without Owner Consent. This Indenture and the rights and obligations of the Authority, of the Trustee and the Owners of the Notes 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 Note 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 Notes, including, without limitation, for any one or more of the following purposes:

- (i) 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 Notes (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 Note Owners, in the opinion of Bond Counsel filed with the Trustee; or
- (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..

(c) Limitation. 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) Bond Counsel Opinion Requirement. 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 the Trustee shall be fully protected in relying upon such opinion of Bond Counsel.

(e) Notice of Amendments. 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 Notes, 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 Notes 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 Notes; Preparation of New Notes*. Notes 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 Notes Outstanding at the time of such execution and presentation of his Notes 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 Notes. If the Supplemental Indenture shall so provide, new Notes 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 Notes then Outstanding shall be exchanged at the Office of the Trustee, without cost to any Note Owner, for Notes then Outstanding, upon surrender for cancellation of such Notes, in equal aggregate principal amount of the same maturity.

SECTION 9.04. *Amendment of Particular Notes*. The provisions of this Article IX do not prevent any Note Owner from accepting any amendment as to the particular Notes held by such Owner.

## ARTICLE X

### DEFEASANCE

SECTION 10.01. *Discharge of Indenture.* Any or all of the Outstanding Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium (if any) on such Notes, 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 Notes; or
- (c) by delivering all of such Notes to the Trustee for cancellation.

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 Notes 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 Notes and all covenants, agreements and other obligations of the Authority under this Indenture with respect to such Notes 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 Notes 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 Notes.* 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 Notes (whether upon or prior to the maturity or the redemption date of such Notes), provided that, if such Notes 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 Notes 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 Notes previously issued and delivered, which the Authority may have

acquired in any manner whatsoever, and such Notes, 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 Notes, 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 Notes and all unpaid interest thereon to maturity, except that, in the case of Notes 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 Notes, 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of and interest and premium (if any) on the Notes to be paid or redeemed, as such principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any), interest and premium become due, provided that in the case of Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any), interest and premium (if any) with respect to such Notes, and (ii) the Authority shall have delivered to the Trustee an opinion of Bond Counsel to the effect that such Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of, or interest on, any Notes and remaining unclaimed for 2 years after the principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of all of the Notes 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 Notes 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 Notes 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 Notes 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 Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of or interest on the Notes 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 Note Owners.* Nothing in this Indenture or in the Notes 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 Notes, 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 Notes.

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 Notes 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 Notes.* Whenever in this Indenture provision is made for the cancellation by the Trustee, and the delivery to the Authority, of any Notes, the Trustee shall destroy such Notes as may be allowed by law and, upon the written request of the Authority, the Trustee shall 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 Notes 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 Notes 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 Electronic Means, 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.

*If to the City*  
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.  
333 S. Hope Street, Suite 2525  
Los Angeles, CA 90071  
Attention: Corporate Trust Department

SECTION 11.08. *Evidence of Rights of Note Owners.* Any request, consent or other instrument required or permitted by this Indenture to be signed and executed by Note Owners may be in any number of concurrent instruments of substantially similar tenor and shall be signed or executed by such Note 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 Notes 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 Notes shall be proved by the Registration Books.

Any request, consent, or other instrument or writing of the Owner of any Note shall bind every future Owner of the same Note and the Owner of every Note 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 Notes.* In determining whether the Owners of the requisite aggregate principal amount of Notes have concurred in any demand, request, direction, consent or waiver under this Indenture, Notes 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 Notes, 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 Notes, shall be disregarded and deemed not to be Outstanding for the purpose of any such determination unless all Notes are so owned or held, in which case such Notes shall be considered Outstanding for the purpose of such determination.. Notes so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Trustee the pledgee's right to vote such Notes 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 Notes. 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 Notes disqualified under this Section 11.09, and the Trustee may conclusively rely on such certifications.

SECTION 11.10. *Money Held for Particular Notes.* The money held by the Trustee for the payment of the interest, premium, if any, or principal (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) due on any date with respect to particular Notes (or portions of Notes in the case of Notes 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 Notes 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 (including the principal amount of any Term Notes that is subject to mandatory sinking fund redemption, if any) of or interest or premium (if any) on the Notes 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 President 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**

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A.,**  
*as Trustee*

By \_\_\_\_\_  
Authorized Officer

## APPENDIX A

### DEFINITIONS

“Additional Rental Payments” 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.

“Assignment Agreement” means the Assignment Agreement dated as of June 1, 2025, between the Authority as assignor and the Trustee as assignee, as originally executed or as thereafter amended.

“Authority” 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.

“Authorized Representative” 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.

“Bond Law” 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.

“Business Day” means a day (i) other than a Saturday or a Sunday or (ii) any other day on which commercial banks located in the City in which the Office of the Trustee is located are authorized or required by law to close, or (iii) a day on which the New York Stock Exchange or the payment system of the Federal Reserve System is not operational.

“City” means the City of Berkeley, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California.

“Closing Date” means the date of delivery of the Notes to the Original Purchaser.

“Costs of Issuance” 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 Notes, 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, municipal advisors, accounting firms, consultants and other professionals; fees and charges for preparation, execution and safekeeping of the Notes; and any other cost, charge or fee in connection with the original issuance of the Notes.

“Costs of Issuance Fund” means the fund by that name established and held by the Trustee under Section 3.03.

“Debt Service Fund” means the fund by that name established and held by the Trustee under Section 5.01.

“Depository” means (a) initially, DTC, and (b) any other Securities Depositories acting as Depository under Section 2.04.

“Depository System Participant” means any participant in the Depository’s book-entry system.

“DTC” means The Depository Trust Company, New York, New York, and its successors and assigns.

“Event of Default” means any of the events specified in Section 7.01.

“Excess Investment Earnings” 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 Notes at a yield in excess of the yield on the Notes.

“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, (iii) the investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) any commingled investment fund in which the Authority and related parties do not own more than a 10% beneficial interest therein if the return paid by the fund is without regard to the source of the investment. To the extent required by the applicable regulations under the Tax Code, the term “investment” will include a hedge.

“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.

“Fiscal Year” 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.

“Indenture” 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.

“Interest Account” means the account by that name established and held by the Trustee in the Debt Service Fund under Section 5.02.

“Interest Payment Date” means each April 1 and October 1, commencing October 1, 2025, so long as any Notes remain unpaid.

“Lease” means the Lease Agreement dated as of June 1, 2025, 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.

“Lease Payment Date” means, with respect to any Interest Payment Date, the Business Day immediately preceding such Interest Payment Date.

“Lease Payments” 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.

“Leased Property” means the real property described in Appendix A to the Lease, together with all improvements and facilities at any time situated thereon.

“Net Proceeds” 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.

“Nominee” means (a) initially, Cede & Co. as nominee of DTC, and (b) any other nominee of the Depository designated under Section 2.04(a).

“Notes” means the \$\_\_\_\_\_ aggregate principal amount of Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable) authorized by and at any time Outstanding under this Indenture.

“Office” 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 Notes 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.

“Original Purchaser” means \_\_\_\_\_, as original purchaser of the Notes upon their delivery by the Trustee on the Closing Date,.

“Outstanding”, when used as of any particular time with reference to Notes, means all Notes theretofore, or thereupon being, authenticated and delivered by the Trustee under this Indenture except: (a) Notes theretofore canceled by the Trustee or surrendered to the Trustee for cancellation; (b) Notes with respect to which all liability of the Authority shall have been discharged in accordance with Section 10.02, including Notes (or portions thereof) described in Section 11.09; and (c) Notes for the transfer or exchange of or in lieu of or in substitution for which other Notes shall have been authenticated and delivered by the Trustee under this Indenture.

“Owner”, whenever used herein with respect to a Note, means the person in whose name the ownership of such Note is registered on the Registration Books.

“Permitted Encumbrances” 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, but only to the extent that the same are acquired at Fair Market Value:

- (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) Demand deposits, 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, other deposit products, or interest bearing money market accounts in federal or State chartered savings and loan associations or in federal or State of California banks, banker's acceptances with a maximum term of one year of depository institutions (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 in the highest investment category granted thereby from S&P, 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) Notes 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.

- (l) 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.

“Principal Account” means the account by that name established and held by the Trustee in the Debt Service Fund under Section 5.02.

“Project” means the public capital improvements described in Appendix D attached to the Lease.

“Project Costs” means, with respect to the Project, all costs of the construction and installation thereof which are paid from moneys on deposit in the Project Fund, including but not limited to:

- (a) all costs required to be paid to any person under the terms of any agreement for or relating to the acquisition, construction and installation of the Improvements;

- (b) obligations incurred for labor and materials in connection with the acquisition, construction and installation of the Project;

- (c) the cost of performance or other bonds and any and all types of insurance that may be necessary or appropriate to have in effect in connection with the acquisition, construction and installation of the Project;

- (d) all costs of engineering and architectural services, including the actual out-of-pocket costs for test borings, surveys, estimates, plans and specifications and preliminary investigations therefor, development fees, sales commissions, and for supervising construction, as well as for the performance of all other duties required by or consequent to the proper acquisition, construction and installation of the Project;

- (e) any sums required to reimburse the City for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the acquisition, construction and installation of the Project;

- (f) all Costs of Issuance of the Notes and other financing costs incurred in connection with the acquisition, construction and installation of the Project; and

- (g) the interest components of the Lease Payments allocable to the Project or any component thereof, which come due during the period of acquisition, construction and installation of the improvements or such component.

“Project Fund” means the fund by that name established and held by the Trustee under Section 3.04.

“Record Date” means, with respect to any Interest Payment Date, the 15<sup>th</sup> calendar day of the month preceding such Interest Payment Date, whether or not such day is a Business Day.

“Redemption Fund” means the fund by that name established and held by the Trustee under Section 5.06.

“Refunding Documents” means the indenture of trust, trust agreement or other document entered into by the Authority, authorizing the issuance of any Refunding Obligations.

“Refunding Obligations” means the bonds, notes or other obligations issued by the Authority for the purpose of refunding the Notes on or before the maturity thereof.

“Registration Books” means the records maintained by the Trustee under Section 2.05 for the registration and transfer of ownership of the Notes.

“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 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.

“Securities Depositories” 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.

“Site Lease” means the Site Lease dated as of June 1, 2025, between the City as lessor and the Authority as lessee, as amended from time to time in accordance with its terms.

“Site Lease Payment” means the amount of \$[ ] which is payable by the Authority to the City on the Closing Date for the Notes under Section 3 of the Site Lease.

“S&P” means S&P Global Ratings, a business unit of Standard & Poor’s Financial Services LLC business, its successors and assigns.

“Supplemental Indenture” 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.

“Term” means, with reference to the Lease, the time during which the Lease is in effect, as provided in Section 4.2 thereof.

“Term Notes” means with respect to the Notes, if any.

“Trustee” 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.

“Written Certificate,” “Written Request” and “Written Requisition” 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.

APPENDIX B

NOTE FORM

NO. R- \_\_\_\_\_

\*\*\*\$ \_\_\_\_\_ \*\*\*

UNITED STATES OF AMERICA  
STATE OF CALIFORNIA

**SPECIMEN**  
**BERKELEY JOINT POWERS FINANCING AUTHORITY**

**2025 LEASE REVENUE NOTES  
(FIRE ADMINISTRATION AND TRAINING PROJECT)  
(FEDERALLY TAXABLE)**

INTEREST RATE: \_\_\_\_\_%      MATURITY DATE: October 1, \_\_\_\_\_      ORIGINAL ISSUE DATE: June \_\_, 2025      CUSIP: \_\_\_\_\_

REGISTERED OWNER:      CEDE & CO.

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 Note unless (i) this Note is authenticated on or before an Interest Payment Date and after the close of business on the 15<sup>th</sup> day of the month preceding such interest payment date, in which event it shall bear interest from such Interest Payment Date, or (ii) this Note is authenticated on or before September 15, 2025, 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 Note, interest is in default on this Note, this Note shall bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment on this Note, at the Interest Rate per annum specified above, payable semiannually on April 1 and October 1 in each year, commencing October 1, 2025 (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 Notes, by wire transfer in immediately available funds to an account in the United States designated by such registered owner in such written request.

This Note 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 Note be payable out of any funds or properties of the Authority other than the Revenues.

This Note is one of a duly authorized issue of notes of the Authority designated as the “Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (2025 Fire Administration and Training Project) (Federally Taxable)” (the “Notes”), 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 June 1, 2025, between the Authority and the Trustee (the “Indenture”) and a resolution of the Authority adopted on May 20, 2025, authorizing the issuance of the Notes. 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 Notes are issued, the provisions with regard to the nature and extent of the Revenues, and the rights thereunder of the owners of the Notes 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 Note, by acceptance hereof, assents and agrees.

The Notes have been issued by the Authority to provide financing for the construction of certain improvements for use by the City. This Note 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 June 1, 2025, 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 Notes.

The rights and obligations of the Authority and the owners of the Notes 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 Notes, 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 Note so affected.

The Notes are subject to optional redemption, in whole or in part, on any date prior to their maturity, at the option of the City, from any source of available funds, at a redemption price equal to the greater of the following:

(i) 100 percent of the principal amount of the Notes to be redeemed, plus interest accrued on the Notes to the redemption date; or

(ii) the sum of the present value of the remaining scheduled payments of principal and interest on the Notes to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Notes are to be redeemed, discounted to the date on which such Notes are to be redeemed on a semiannual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate (as defined in the Indenture) plus 15 basis points, plus, in each case, accrued and unpaid interest on the Notes to be redeemed to the date fixed for redemption..

The Notes 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 Notes 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 Notes may be conditional, and may be rescinded under the circumstances set forth in the Indenture, upon notice to the owners of such Notes.

If this Note 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 Note 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 Note. Upon registration of such transfer, a new Note or Notes, of authorized denomination or denominations, for the same aggregate principal amount and of the same maturity will be issued to the transferee in exchange herefor. This Note may be exchanged at the Trust Office for Notes 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 Note 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 Note 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 Note 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 Note, 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 Notes permitted to be issued under the Indenture.

This Note 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 Note to be executed in its name and on its behalf with the facsimile signature of its President and attested to by the facsimile signature of its Secretary, all as of the Original Issue Date specified above.

**BERKELEY JOINT POWERS FINANCING  
AUTHORITY**

By \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

*SPECIMEN*

**CERTIFICATE OF AUTHENTICATION**

This is one of the Notes 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 Note 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 Note in every particular without alteration or enlargement or any change whatsoever.

APPENDIX C

FORM OF PROJECT FUND REQUISITION

DISBURSEMENT REQUEST NO.: \_\_\_\_\_

[Trustee]  
Attn.: Global Corporate Trust Services  
[address]

Re:     \$[Principal Amount] Berkeley Joint Powers Financing Authority 2025 Lease  
          Revenue Notes (Fire Administration and Training Project) (Federally  
          Taxable)

Ladies and Gentlemen:

In accordance with the terms of an Indenture of Trust, by and between you and the undersigned, dated as of June 1, 2025 (the "Indenture"), I am an Authorized Representative and you are hereby authorized and requested to make immediate disbursement of funds held by you in the Project Fund for Project Costs relating to the Project (as such terms are defined in the Indenture) pursuant to Section 3.04 of the Indenture.

You are hereby requested to pay from the Project Fund established by the Indenture, to the person(s), corporation(s) or other entity(ies) designated on Schedule A attached hereto, in payment of all or a portion of the Project Costs described on said Schedule.

The undersigned hereby certifies that (i) the amounts listed on Schedule A constitute Project Costs (as defined in the Indenture), (ii) no part of the amount requested herein has been included in any other request previously filed with you; (iii) to the knowledge of the undersigned, there has not been filed with or served upon the City any notice of any lien or attachment upon or claim (except for any preliminary notice of lien as may be filed in accordance with law) affecting the right of the person, corporation or other entity stated below to receive payment of the amount stated below, which lien has not been released or will not be released simultaneously with the payment requested hereunder; and (iv) the labor, services and/or materials covered hereby have been performed upon or furnished to the Improvements and the payment requested herein is due and payable under a purchase order, contract or other authorization;

Dated: \_\_\_\_\_, 20\_\_.

CITY OF BERKELEY

By: \_\_\_\_\_  
          Designated Officer

SCHEDULE A

Payee  
(include address)

Description  
of Costs

Project Costs  
Amount

APPENDIX D

FORM OF COSTS OF ISSUANCE FUND REQUISITION

DISBURSEMENT REQUEST NO.: \_\_\_\_\_

[Trustee]  
Attn.: Global Corporate Trust Services  
[address]

Re:    \$[Principal Amount] Berkeley Joint Powers Financing Authority 2025 Lease  
      Revenue Notes (Fire Administration and Training Project) (Federally  
      Taxable)

Ladies and Gentlemen:

In accordance with the terms of an Indenture of Trust, by and between you and the undersigned, dated as of June 1, 2025 (the "Indenture"), I am an Authorized Representative and you are hereby authorized and requested to make immediate disbursement of funds held by you in the Costs of Issuance Fund for Costs of Issuance (as such term is defined in the Indenture) pursuant to Section 3.03 of the Indenture.

You are hereby requested to pay from the Costs of issuance Fund established by the Indenture, to the person(s), corporation(s) or other entity(ies) designated on Schedule A attached hereto, in payment of all or a portion of the Costs of Issuance described on said Schedule.

The undersigned hereby certifies that (i) the amounts listed on Schedule A constitute Costs of Issuance (as defined in the Indenture) and (ii) no part of the amount requested herein has been included in any other request previously filed with you.

Dated: \_\_\_\_\_, 20\_\_\_\_.

CITY OF BERKELEY

By: \_\_\_\_\_  
      Designated Officer

SCHEDULE A

Payee  
(include address)

Description  
of Costs

Project Costs  
Amount

Jones Hall draft 4-19-25

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## LEASE AGREEMENT

Dated as of June 1, 2025

between the

**BERKELEY JOINT POWERS FINANCING AUTHORITY,**  
*as lessor*

and the

**CITY OF BERKELEY,**  
*as lessee*

Relating to

\$(          )  
**Berkeley Joint Powers Financing Authority**  
**2025 Lease Revenue Notes**  
**(Fire Administration and Training Project)**  
**(Federally Taxable)**

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## LEASE AGREEMENT

This LEASE AGREEMENT (this "**Lease**"), dated for convenience as of June 1, 2025, 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 currently leases for fire administration and training purposes certain buildings located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California 94710 (the "**Fire Property**"), under that certain Standard Multi-Tenant Office Lease - Gross dated as of June 27, 2024 (as amended and assigned from time to time, the "**Existing Lease**"), by and between Smith & Walters, Inc., a California corporation (the "**Lessor**"), and the City.

2. The City has a unilateral option to purchase the Fire Property under the Existing Lease.

3. Prior to exercising its right to purchase the Fire Property, the City intends to complete the construction of certain improvements to the Fire Property as such other improvements as may be identified from time to time by the City, as described in more detail in Appendix C attached hereto and by this reference incorporated herein (the "**Project**"). The City wishes to finance the construction of the Project.

4. To that end, the City has proposed to lease to the Authority certain real property and improvements, initially consisting of the two City fire stations, 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 construction of the Project. The Site Lease is being recorded concurrently with a memorandum of this Lease.

5. The Authority has authorized the issuance of its Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable) in the aggregate principal amount of \$[ ] (the "**Notes**") under an Indenture of Trust dated as of June 1, 2025 (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 the Site Lease.

6. In order to provide revenues that are sufficient to enable the Authority to pay debt service on the Notes and any Refunding Obligations (as defined in the Indenture) issued in order to refund the Notes in order to comply with Section 5.11 of this Lease, 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.

7. The lease payments made by the City under this Lease have been assigned by the Authority to the Trustee for the security of the Notes 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. Similarly, in connection with the issuance of Refunding Obligations, the lease payments will be assigned in accordance with the Refunding Documents (as defined herein).

8. 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.

#### **A G R E E M E N T :**

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 and the Trustee as of the date of the execution and delivery of this Lease:

- (a) Due Organization and Existence. 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) Due Execution. 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) Valid, Binding and Enforceable Obligations. 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) Consents and Approvals. 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) Due Organization and Existence. 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) Due Execution. 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) Valid, Binding and Enforceable Obligations. 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) No Conflicts. 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) Consents and Approvals. 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.
  
- (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 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; Construction of the Project.*

(a) Deposit of Note Proceeds. On the Closing Date, the Authority will cause the proceeds of sale of the Notes to be deposited with the Trustee. The Trustee shall deposit such proceeds in accordance with Section 3.02 of the Indenture.

(b) Acquisition and Construction of the Project. The Authority hereby appoints the City as its agent to carry out all phases of the construction of the Project under and in accordance with the provisions hereof. The City hereby accepts its appointment as agent of the Authority and assumes all rights, liabilities, duties and responsibilities of the Authority regarding the construction of the Project. The City, as agent of the Authority hereunder, shall enter into, administer and enforce all purchase orders or other contracts relating to the construction of the Project. The City shall requisition the payment of Project Costs from amounts held by the Trustee in the Project Fund (and the applicable accounts therein), pursuant to and in accordance with Section 3.04 of the Indenture. All contracts for, and all work relating to, the construction of the Project are subject to all applicable provisions of law relating to the acquisition, construction, improvement, and equipping of like facilities and property by the City.

As agent of the Authority, the City hereby agrees to supervise and provide for, or cause to be supervised and provided for, the construction of the Project in accordance with the plans and specifications, purchase orders, construction contracts and other documents relating thereto and approved by the City under all applicable requirements of law.

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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations), 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, together with (i) an endorsement thereto making such policy payable to the Trustee for the benefit of the Owners (or the trustee, fiscal agent or paying agent for any Refunding Obligations), (ii) if applicable, a tie-in endorsement such that the total insured amount under the title insurance policies then in effect with respect to the Leased Property following the proposed substitution will be at least equal to the aggregate principal amount of outstanding Notes (or the trustee, fiscal agent or paying agent for any Refunding Obligations) at the time of the substitution, and (iii) a certificate of the City to the effect that the exceptions, if any, contained in such policy do not interfere with the beneficial use and occupancy of the Leased Property by the City.

- (d) The City has certified in writing to the Authority and the Trustee (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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.
- (f) The City has filed with the Authority and the Trustee (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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, 20[\_\_\_], 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 Notes, 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.
- (g) The City has mailed written notice of such substitution to each rating agency which then maintains a rating on the Notes or Refunding Obligations, as applicable.

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 (or any Refunding Documents) 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 (or any Refunding Documents).

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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations), 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 (or any Refunding Documents) which removes the Released Property from the Site Lease, the Assignment Agreement and this Lease (or such Refunding Documents).
- (c) The City has certified in writing to the Authority and the Trustee (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 Notes or the outstanding principal amount of the Refunding Obligations, as applicable, 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 Notes or Refunding Obligations, as applicable.

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.

SECTION 3.4. *Reserved.* SECTION 3.5. *Amendment of Site Lease and Assignment Agreement.* The Authority and the City shall amend the Site Lease and the Assignment Agreement (or any Refunding Documents) as necessary in order to accomplish any Substitution or Release of property pursuant to this Article III.

## 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, 20[ ]].

If Refunding Obligations are issued, the Term of this Lease ends on the day that is 10 years after the final maturity date of such Refunding Obligations.

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 and interference with completion of the construction of the Project.

#### SECTION 4.3. *Lease Payments.*

(a) Obligation to Pay. Subject to the provisions of Sections 6.2 and 6.3 and the 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 (as it shall be revised by the Authority and the City in connection with the issuance of any Refunding Obligations), and to be deposited by the City with the Trustee on each of the Lease Payment Dates specified in Appendix B (as it shall be revised by the Authority and the City amended in connection with the issuance of any Refunding Obligations). Any amount held in the Debt Service Fund, the Interest Account and the Principal Account under the Indenture (and all amounts on deposit in the respective funds established under the Refunding Documents for payment of current debt service on the related issue of Refunding Obligations) 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 Notes or Refunding Obligations 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) on any Lease Payment Date if the amounts then held in the Debt Service Fund, the Interest Account and the Principal Account (or all amounts on deposit in the respective funds established under the Refunding Documents for payment of current debt service on the related issue of Refunding Obligations) 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 Notes or the Refunding Obligations, as applicable, 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 Notes thereby redeemed under Section 4.01 of the Indenture or the Refunding Obligations redeemed under the Refunding Documents.

(c) Rate on Overdue Payments. 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 Note or Refunding Obligation, as applicable.

(d) 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 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) Assignment. 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 Notes, 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.

In the event Refunding Obligations are issued to refund the Notes, (i) the City understands and agrees that all Lease Payments will be assigned under the Refunding Documents, for the benefit of the Owners of the Refunding Obligations, and the City hereby assents to such assignment and (ii) the City hereby agrees to pay all payments payable by the City under this Section and all amounts payable by the City under Article IX as specified in the Refunding Documents.

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 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 (i) 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 and (ii) the trustee, fiscal agent or paying agent under the Refunding Documents for all reasonable expenses, charges, costs, liabilities, legal fees and other disbursements incurred in and about the performance of its powers and duties,
- (c) the reasonable fees and expenses of such accountants, consultants, attorneys and other experts as may be engaged by the Authority or the Trustee (or the trustee, fiscal agent or paying agent for any Refunding Obligations) to prepare audits, financial statements, reports, opinions or provide such other services required under this Lease or the Indenture or Refunding Documents,
- (d) amounts coming due and payable as Excess Investment Earnings in accordance with Section 7.6(e),
- (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 Notes, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Notes, or incurred by the Authority in connection with any litigation which may at any time be instituted involving this Lease, the Notes, the Indenture or any of the other documents contemplated hereby or thereby, or otherwise incurred in connection with the administration of this Lease, and
- (f) the reasonable out-of-pocket expenses of the Authority in connection with the execution and delivery of the Refunding Documents, or in connection with the issuance of the Refunding Obligations, including but not limited to any and all expenses incurred in connection with the authorization, sale and delivery of the Refunding Obligations, or incurred by the Authority in connection with any litigation which may at any time be instituted involving the Refunding Obligations, the Refunding Documents 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 City must certify to the Trustee that the estimated value of the Leased Property, upon completion of any additions, modifications and improvements made thereto under this Section, is at least equal to the aggregate Outstanding principal amount of the Notes (or the Refunding Obligations, if applicable) and the fair rental value of the Leased Property is at least equal to the Lease Payments thereafter coming due and payable hereunder. 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 aggregate of the replacement value of each the insured improvement considered separately, or (b) 100% of the aggregate principal amount of the Outstanding Notes (or the Refunding Obligations, if applicable). 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 Debt Service Fund, or paid to the trustee, fiscal agent or paying agent for any Refunding Obligations and deposited in the funds established under the Refunding Documents for payment of current debt service on the related Refunding Obligations, 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 Notes or the Refunding Obligations, as applicable. All Net Proceeds received under any such title insurance policy must be deposited with the Trustee in the Debt Service Fund or with the trustee, fiscal agent or paying agent for any Refunding Obligations and deposited in the respective funds established under the Refunding Documents for payment of current debt service on the Refunding Obligations, in each case 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations). 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 (and the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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).

SECTION 5.11. *Issuance of Refunding Obligations.* The Authority hereby covenants that it will issue its Refunding Obligations which are secured by Revenues and any other legally available funds of the Authority, in an amount sufficient to provide for payment of the Notes in whole on or before the maturity thereof. If the Authority has not deposited with the Trustee, on or before April 1, 2029, an amount of funds sufficient to pay in full the principal of such series of the Notes coming due at maturity, the Authority shall immediately institute proceedings for the issuance of Refunding Obligations in an amount sufficient to provide for payment of such series of the Notes on or before the maturity

thereof. The Authority and the City shall authorize, execute and deliver any and all documents, including but not limited to any amendment to this Lease and the Site Lease, as may be required in order to (a) provide the Revenues when and as required for payment of the Refunding Obligations, and (b) issue, sell and otherwise provide adequate security for the Refunding Obligations. The principal amount of all series of Refunding Obligations which are outstanding at any time shall not exceed the estimated value of the Leased Property, as such value is determined by the Authority and the City as of the date of issuance of the final series of Refunding Obligations.

## ARTICLE VI

### DAMAGE, DESTRUCTION AND EMINENT DOMAIN; USE OF NET PROCEEDS

SECTION 6.1. *Application of Net Proceeds.* So long as the Notes are outstanding, 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.

So long as the Refunding Obligations are outstanding, the trustee, fiscal agent or paying agent, as assignee of the Authority under the Refunding Documents, will have the right to receive all Net Proceeds. The trustee, fiscal agent or paying agent will deposit all Net Proceeds as directed in the Refunding Documents.

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. Notwithstanding the foregoing, there shall be no abatement of Lease Payments under this Section 6.3 to the extent that the proceeds of hazard insurance or rental interruption insurance are available to pay Lease Payments which would otherwise be abated under this Section 6.3, it being hereby declared that such proceeds constitute a special fund for the payment of the Lease Payments.

SECTION 6.4. *Abatement Due to Non-Completion of the Project.* The Lease Payments are subject to abatement during any period prior to the issuance of a certificate of occupancy for the Project, if it constitutes all or a portion of the Leased Property, if 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 usable portions of the Leased Property. Such abatement will continue for the period commencing with the substantial interference with the use and occupancy of the Leased Property and ending with the earlier of (a) the substantial completion of the Project and (b) the delivery by the City to the Trustee (or the trustee, fiscal agent or paying agent for the Refunding Obligations) of a certificate to the effect that the fair rental value of the Leased Property is at least equal to the Lease Payments thereafter coming due and payable hereunder. In the event of any such interference with use and occupancy during construction of the Project, this Lease continues in full force and effect and the City waives any right to terminate this Lease by virtue of any substantial interference.

## ARTICLE VII

### OTHER COVENANTS OF THE CITY

SECTION 7.1. *Disclaimer of Warranties.* THE AUTHORITY AND THE TRUSTEE (AND THE TRUSTEE, FISCAL AGENT OR PAYING AGENT FOR ANY REFUNDING OBLIGATIONS) 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 any trustee, fiscal agent or paying agent for Refunding Obligations) 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, or the acceptance and performance of the duties of the trustee, fiscal agent or paying agent under the Refunding Documents.

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 any trustee, fiscal agent or paying agent for Refunding Obligations) 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:

- (a) 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 (and any trustee, fiscal agent or paying agent for Refunding Obligations) 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 (and any trustee, fiscal agent or paying agent for Refunding Obligations) a written opinion of Bond Counsel stating that such sublease does not cause the interest on the Notes or the Refunding Obligations, as applicable, 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 Notes or the owners of a majority in aggregate principal amount of the outstanding Refunding Obligations, as applicable; or (b) without the consent of the Trustee or any trustee, fiscal agent or paying agent for Refunding Obligations or any of the Note Owners or owners of the Refunding Obligations, but only if such amendment or modification is for any one or more of the following purposes:

- (a) 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;
- (b) 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;
- (c) to modify, amend or supplement this Lease in such manner as to assure that the interest on the Notes or the Refunding Obligations, as applicable, remains excluded from gross income under the Tax Code;
- (d) 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; or
- (e) 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 Notes or the owners of the Refunding Obligations, as applicable.

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 Notes or the owners of the affected Refunding Obligations, as applicable, or (b) modify any of the rights or obligations of the Trustee (or any trustee, fiscal agent or paying agent for Refunding Obligations) without its written assent thereto. If the Trustee's consent (or the consent of any trustee, fiscal agent or paying agent for Refunding Obligations) to such modification or amendment is required, the Trustee (or any trustee, fiscal agent or paying agent for Refunding Obligations) shall be entitled to the same documents as it would be entitled to under Article IX of the Indenture (or similar provisions under the Refunding Documents) for such type of modification or amendment.

SECTION 7.6. *Reserved.*

SECTION 7.7. *Continuing Disclosure.*

(a) 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 Notes 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.

(b) The City shall comply with and carry out all of the provisions of any continuing disclosure undertaking executed by the City in connection with the issuance of any Refunding Obligations, 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 undertaking 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 Refunding Obligations 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 (or any trustee, fiscal agent or paying agent for Refunding Obligations). 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. Similarly, notwithstanding anything herein or in the Refunding Documents to the contrary, neither the Authority nor any trustee, fiscal agent or paying agent for the Refunding Obligations 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 re-leasing 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) Termination of Lease. 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 Debt Service Fund or the respective funds established under the Refunding Documents for payment of current debt service on the related issue of Refunding Obligations. 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) Proceedings at Law or In Equity. 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 (or the trustee, fiscal agent or paying agent for any Refunding Obligations) 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 or the applicable provisions of the Refunding Documents.

SECTION 8.7. *Trustee and Note 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 Note Owners, to which assignment the City hereby consents. The Trustee and the Note Owners shall exercise such rights and remedies in accordance with the Indenture.

Similarly, such rights and remedies as are given to the Authority under this Article VIII shall be assigned by the Authority under the Refunding Documents for the benefit of the owners of the Refunding Obligations, to which assignment the City hereby consents. The trustee, fiscal agent or paying agent for any Refunding Obligations shall exercise such rights and remedies in accordance with the Refunding Documents.

## ARTICLE IX

### PREPAYMENT OF LEASE PAYMENTS

SECTION 9.1. *Security Deposit.*

(a) *Notes.* 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:

- (i) 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
- (bii) 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.

(b) *Refunding Obligations.* 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, fiscal agent or paying agent for any Refunding Obligations an amount of cash which, together with other available amounts on deposit in the funds and accounts established under the Indenture, is either:

- (i) 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
- (bii) invested in whole or in part in non-callable federal securities in accordance with the Refunding Documents in such amount as will, in the opinion of an independent certified public accountant, (which opinion must be addressed and delivered to the trustee, fiscal agent or paying agent), 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 a manner consistent with Section 4.01(a) of the Indenture or the optional redemption provisions of the Refunding Documents, as applicable.

Such prepayment price related to the Notes shall be deposited by the Trustee in the Redemption Fund to be applied to the redemption of Notes 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.

While the Refunding Obligations are outstanding, the prepayment price related to any Refunding Obligations shall be deposited and the City shall provide notice as specified in the Refunding Documents.

SECTION 9.3. *Mandatory Prepayment From Net Proceeds of Insurance or Eminent Domain.* As long as the Notes are Outstanding, 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 Notes under Section 4.01(b) of the Indenture.

As long as the Refunding Obligations are outstanding, 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 the Refunding Documents. 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 the Refunding Obligations.

SECTION 9.4. *Credit for Amounts on Deposit.* As long as the Notes are Outstanding, 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 Debt Service Fund (and the accounts therein) will be credited towards the amounts then required to be so prepaid.

As long as the Refunding Obligations are outstanding, if the principal components of the Lease Payments are prepaid in full under this Article IX, such that the Refunding Documents are discharged by their terms as a result of such prepayment, at the written election of the City filed with the trustee, fiscal agent or paying agent for the Refunding Obligations any or all amounts then on deposit in the funds established under the Refunding Documents for payment of current debt service on the related issue of Refunding Obligations 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.

*If to the City  
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.  
333 S. Hope Street, Suite 2525  
Los Angeles, CA 90071  
Attention: Corporate Trust Department

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. *City Direction of Investments.* The City may direct the Authority as to the investment of funds under the Indenture, subject to compliance with the provisions of Article V and Section 6.07 of the Indenture.

SECTION 10.6. *Third Party Beneficiary.* The Trustee is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary. The trustee, fiscal agent or paying agent for any Refunding Obligations is hereby made a third party beneficiary hereunder with all rights of a third party beneficiary.

SECTION 10.7. *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 10.8. *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 10.9. *Applicable Law.* This Lease is governed by and construed in accordance with the laws of the State of California.

SECTION 10.10. *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 10.11. *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**

By \_\_\_\_\_  
Chief Administrative Officer

Attest:

\_\_\_\_\_  
City Clerk

**CITY OF BERKELEY, as lessee**

By \_\_\_\_\_  
City Manager

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:

[To come]

**APPENDIX B**  
**SCHEDULE OF LEASE PAYMENTS\***

<u>Lease</u> <u>Payment Date**</u>	<u>Principal</u> <u>Component</u>	<u>Interest</u> <u>Component</u>	<u>Aggregate</u> <u>Lease Payment</u>
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\* This Appendix B shall be revised by the Authority and the City in connection with the issuance of any Refunding Obligations.

\*\* Lease Payment Dates are the Business Day immediately preceding each date listed in the schedule

**APPENDIX C**

**DESCRIPTION OF THE PROJECT**

The Project to be financed by the Notes consists of improvements to the real property and improvements located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California, and such other improvements identified by the City from time to time .

Jones Hall draft 4-19-25

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, Esq.

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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 June 1, 2025, 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. The Site Lease. 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 June 1, 2025, and recorded concurrently herewith.

2. The Lease. 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 June 1, 2025, 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. Term of the Lease. The Lease Agreement is for a term commencing as of the date of recording hereof and ending on October 1, 20[ ], 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.

If Refunding Obligations are issued, the Term of the Lease Agreement ends on the day that is 10 years after the final maturity date of such Refunding Obligations.

4. Assignment of Rights. 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 June 1, 2025, by and between the Authority and the Trustee, which is being recorded concurrently herewith.

If Refunding Obligations are issued, the Authority will assign its rights under the Lease Agreement to the trustee, fiscal agent or paying agent for the Refunding Obligations.

5. Provisions Binding on Successors and Assigns. 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. Purpose of Memorandum. 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. Execution. 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*

By \_\_\_\_\_  
Chief Administrative Officer

**CITY OF BERKELEY,**  
*as sublessee*

By \_\_\_\_\_  
City Manager

**[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:

[To be inserted]

(End of Legal Description)

Jones Hall draft 4-19-25

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.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX UNDER SECTION 11929 OF THE REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES UNDER SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

## SITE LEASE

This SITE LEASE (this “**Site Lease**”), dated for convenience as of June 1, 2025, 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 currently leases for fire administration and training certain improvements located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California 94710, under that certain Standard Multi-Tenant Office Lease - Gross dated as of June 27, 2024 (as amended and assigned from time to time, the “**Existing Lease**”), by and between Smith & Walters, Inc., a California corporation (the “**Lessor**”), and the City.

2. The City has a unilateral option to purchase the Fire Property under the Existing Lease.

3. Prior to exercising its right to purchase the Fire Property, the City intends to complete the construction of certain improvements to the Fire Property as may be identified from time to time by the City (the “**Project**”). The City wishes to finance the construction of the Project.

4. To that end, the City has proposed to lease to the Authority certain real property and improvements, initially consisting of the two City fire stations, including land and improvements, as more particularly described in Appendix B 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 construction of the Project.

5. The Authority has authorized the issuance of its Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable) in the aggregate principal amount of \$\_\_\_\_\_ (the “**Notes**”) under an Indenture of Trust dated as of June 1, 2025 (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.

6. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Notes and any Refunding Obligations (as defined in the Indenture) issued in order to refund the Notes in order to comply with Section 5.11 of the Lease, the Authority has agreed to lease the Leased Property back to the City under a Lease Agreement dated as of June 1, 2025 (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.

7. The lease payments made by the City under the Lease have been assigned by the Authority to the Trustee for the security of the Notes under an Assignment Agreement dated as of June 1, 2025, between the Authority as assignor and the Trustee as assignee, which has been recorded concurrently herewith. Similarly, in connection with the issuance of Refunding Obligations, the lease payments will be assigned in accordance with the Refunding Documents (as defined herein).

**A G R E E M E N T :**

*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, 20[\_\_\_].

If Refunding Obligations are issued, the Term of this Site Lease ends on the day that is 10 years after the final maturity date of such Refunding Obligations.

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 Notes and the execution

and delivery hereof, and will be paid from the proceeds of the Notes. 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 Notes will be applied to make the Site Lease Payment by depositing the Note proceeds it receives from the Original Purchaser in the Costs of Issuance Fund and the Project Fund.

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 (or any trustee, paying agent or fiscal agent for the Refunding Obligations) 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.

*If to the City  
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.  
333 S. Hope Street, Suite 2525  
Los Angeles, CA 90071  
Attention: Corporate Trust Department

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 Notes or the owners of a majority in aggregate principal amount of the Refunding Obligations, as applicable; or (b) without the consent of any of the Note Owners or the owners of the Refunding Obligations, as applicable, but only if such amendment or modification is for any one or more of the following purposes:

- (i) 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 Note Counsel, such modifications or amendments do not materially adversely affect the interests of the Owners of the Notes or the owners of the Refunding Obligations, as applicable;
- (ii) 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 Notes or the Refunding Obligations, as applicable, 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 the amendment provisions of the Refunding Documents, as applicable, or the Lease Agreement, which is made thereto in accordance with Section 7.5 of the Lease Agreement; 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. The trustee, fiscal agent or paying agent for any Refunding Obligations is hereby made a third party beneficiary hereunder 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 \_\_\_\_\_  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

**BERKELEY JOINT POWERS FINANCING  
AUTHORITY, as lessee**

By \_\_\_\_\_  
Chief Administrative Officer

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:

[To come]

Jones Hall draft 4-19-25

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.

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## ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT (this “**Agreement**”), dated for convenience as of June 1, 2025, 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**”) currently leases for fire administration and training purposes certain buildings located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California 94710 (the “**Fire Property**”), under that certain Standard Multi-Tenant Office Lease - Gross dated as of June 27, 2024 (as amended and assigned from time to time, the “**Existing Lease**”), by and between Smith & Walters, Inc., a California corporation (the “**Lessor**”), and the City

2. The City has a unilateral option to purchase the Fire Property under the Existing Lease.

3. Prior to exercising its right to purchase the Fire Property, the City intends to complete the construction of certain tenant improvements within the Fire Property as may be identified from time to time by the City (the “**Project**”). The City wishes to finance the construction of the Project.

4. 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 construction of the Project. The Site Lease is being recorded concurrently herewith.

5. The Authority has authorized the issuance of its Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable) in the aggregate principal amount of \$\_\_\_\_\_ (the “**Notes**”) 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.

6. In order to provide revenues which are sufficient to enable the Authority to pay debt service on the Notes and any Refunding Obligations (as defined in the Indenture) issued in order to refund the Notes in order to comply with Section 5.11 of this Lease, 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.

7. 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 Owners of the Notes.

**A G R E E M E N T :**

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 Trust Agreement.

SECTION 2. *Assignment.* The Authority hereby assigns to the Trustee, for the benefit of the Owners of all Notes which are issued and Outstanding under the Trust Agreement, 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 Trust Agreement, or (ii) otherwise to protect the interests of the Owners of the Notes 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 Trust Agreement, for the benefit of the Owners of Notes. 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 Trust Agreement to, and the rights under the Lease and Trust Agreement of, the Owners of the Notes, all subject to the provisions of the Trust Agreement. 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 Trust Agreement. The assignment hereunder to the Trustee is solely in its capacity as Trustee under the Trust Agreement, and the Trustee shall have the same rights, protections, immunities and indemnities hereunder as afforded to it under the Trust Agreement.

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 \_\_\_\_\_  
Chief Administrative Officer

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:

[To come]

Jones Hall draft 4-19-25

## OFFICIAL NOTICE OF SALE

\$ \_\_\_\_\_<sup>1</sup>  
**BERKELEY JOINT POWERS FINANCING AUTHORITY  
2025 LEASE REVENUE NOTES  
(FIRE ADMINISTRATION AND TRAINING PROJECT)  
(FEDERALLY TAXABLE)**

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 notes of the Authority designated the "Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable)" (the "Notes"). Bids will be received in electronic form through BiDCOMP™/Parity® ("Parity") on:

**TUESDAY, June 3, 2025**

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 notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor (<http://www.tm3.com>).

The Notes will be issued under the provisions of resolution adopted by the Authority Commission of the Authority on May 20, 2025 (the "Note Resolution"), and under the laws of the State of California. The Notes are more particularly described in the proposed Indenture of Trust, dated as of June 1, 2025 (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 NOTES

**PURPOSE:** The proceeds of the Notes will be applied by the Authority for the purpose of financing construction of improvements used for fire administration and training by the City of Berkeley (the "City").

**ISSUE; BOOK-ENTRY FORM:** The Notes will be issued in the aggregate principal amount of \$ \_\_\_\_\_\* in the form of fully registered Notes without coupons. The Notes will be dated as of as of their original delivery, and will be issued in minimum denominations of \$5,000. The Notes will be issued in a book entry only system with no physical distribution of the Notes made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Notes which will be immobilized in its custody. The Notes will be registered in the name of Cede & Co., as nominee for DTC, on behalf of the participants in the DTC system and the subsequent beneficial owners of the Notes.

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<sup>1</sup> Preliminary, subject to change.

**MATURITY DATE:** The Notes will mature on October 1, 2029. The final principal amount of the Notes is subject to increase or reduction as described below under the heading “Adjustment of Principal Amount”.

**PAYMENT PROVISIONS:** Interest on the Notes will be payable on October 1, 2025, 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 trustee (the “Trustee”) or, in the case of the owner of Notes 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 Note will be paid upon presentation and surrender thereof at the office of the Trustee. Principal, interest and premium (if any) on the Notes are payable in lawful money of the United States of America.

**OPTIONAL REDEMPTION:** The Notes are subject to optional redemption, in whole or in part, on any date prior to their maturity, at the option of the City, from any source of available funds, at a redemption price equal to the greater of the following:

(i) 100 percent of the principal amount of the Notes to be redeemed, plus interest accrued on the Notes to the redemption date; or

(ii) the sum of the present value of the remaining scheduled payments of principal and interest on the Notes to be redeemed, not including any portion of those payments of interest accrued and unpaid as of the date on which such Notes are to be redeemed, discounted to the date on which such Notes are to be redeemed on a semiannual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate plus 15 basis points, plus, in each case, accrued and unpaid interest on the Notes to be redeemed to the date fixed for redemption.

“Treasury Rate” means, with respect to any redemption date for the Notes, the yield to maturity as to such redemption date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available on a date selected by the City that is at least two Business Days prior to the redemption date (excluding inflation indexed securities) or, if such Statistical Release is no longer published, any publicly available source of similar market data) most nearly equal to the period from the redemption date to the maturity date of the Notes to be redeemed; provided however, that if the period from the redemption date to such maturity date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

**SPECIAL MANDATORY REDEMPTION FROM INSURANCE OR CONDEMNATION PROCEEDS.** The Notes are subject to redemption as a whole, or in part 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.

**SECURITY:** The Notes 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:** The Authority does not intend for the interest on the Notes to be excluded from gross income for federal income tax purposes. In the opinion of Jones Hall, A Professional Law Corporation, bond counsel to the Authority (“Bond Counsel”), interest on the

Notes is exempt from California personal income taxes. Bidders are referred to the Preliminary Official Statement for a description of the proposed opinion of Note Counsel.

**LEGAL OPINION:** The legal opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, approving the validity of the Notes, will be furnished to the purchaser of the Notes without cost. A copy of the legal opinion, certified by the official in whose office the original is filed, will be printed on each Note at the expense of the Authority.

**FURTHER INFORMATION:** A copy of the Preliminary Official Statement describing the Notes, 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 [Rob@NHAadvisors.com](mailto:Rob@NHAadvisors.com), website: [www.NHAadvisors.com](http://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 Authority reserves the right to cancel, postpone or reschedule the sale of the Notes upon notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor ([www.tm3.com](http://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 Notes.

**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 Note 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 Notes hereby offered for sale.

The Authority will accept par, discount or premium bids for the Notes.

**DESIGNATION OF INTEREST RATES:** Each bidder must specify the rate or rates of interest which the Notes will bear. The maximum rate bid on any Notes may not exceed [6.00]% per annum. A bidder will be permitted to bid different rates of interest for each maturity of Notes, but:

- each interest rate specified must be in a multiple of 1/20% or 1/8%;
- no Note may bear more than one rate of interest;
- interest on each Note 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 Notes maturing at any one time will bear the same rate of interest.

**DETERMINATION OF BEST BID:** The Notes will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Notes. 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 Notes from the date of original delivery (which is assumed to be [June 17], 2025) to their final maturity date of October 1, 2029, 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 Notes 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 Notes.

**ADJUSTMENT OF PRINCIPAL AMOUNT:** In order to achieve the financial goals of the Authority, the Authority may need to adjust the principal amount of the Notes based on the bids that are received. Therefore, the Authority reserves the right to increase or decrease the aggregate principal amount of the Notes (or, in the case of the term Notes. The aggregate principal amount of the Notes may be reduced as a result of such adjustment, in an amount not exceeding 10% of the amount of Notes 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. 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 Notes 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 Notes 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 Notes 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 Notes will be delivered to DTC for the account of the winning bidder on [June 17], 2025. The winning bidder has the right, at the winning bidder's option, to cancel the contract of purchase if the Notes 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 Notes.

**PAYMENT OF PURCHASE PRICE:** The winning bidder will be required to pay the purchase price of the Notes in funds that are immediately available to the Authority. Such payment shall be made on the date of original delivery of the Notes 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.

**NO LITIGATION:** There is no litigation pending concerning the validity of the Notes, 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 Notes.

**CUSIP NUMBERS:** It is anticipated that CUSIP number(s) will be printed on the Notes, but neither the failure to print such numbers on any Notes 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 Notes in accordance with the terms hereof. All expenses in relation to the printing of CUSIP numbers on the Notes 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 Notes are the sole responsibility of the purchaser of the Notes.

**OFFICIAL STATEMENT:** The Authority has approved a preliminary Official Statement relating to the Notes. Copies of such preliminary Official Statement will be distributed to any bidder, upon request, prior to the sale in a form "deemed final" by the 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 Notes 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 Notes.

***CERTIFICATE REGARDING OFFICIAL STATEMENT:*** A responsible officer of the Authority will certify to the original purchaser of the Notes, 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 Note Counsel and the winning bidder will relieve the winning bidder of its obligation to purchase the Notes.

***ACKNOWLEDGEMENT OF NO FIDUCIARY DUTY.*** The Authority acknowledges and agrees that (i) the purchase and sale of the Notes 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 Notes 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 Notes.

GIVEN by order of the Authority Commission of the Authority by resolution adopted on May 20, 2025.

CITY OF BERKELEY

NOTICE OF PUBLIC HEARING  
REGARDING FINANCING FOR THE CONSTRUCTION OF  
CERTAIN PUBLIC CAPITAL IMPROVEMENTS

NOTICE IS HEREBY GIVEN THAT, at its special meeting commencing at 4:30 p.m., or as soon thereafter as the matter can be heard, on May 20, 2025, in the Berkeley Unified School District Boardroom, 1231 Addison Street, Berkeley, California, 94702, the City Council of the City of Berkeley (the "City") will hold a public hearing at which it will hear and consider information concerning the approval by the City of (i) a lease financing by the City and the Berkeley Joint Powers Financing Authority (the "Authority") for certain public capital improvements to be used by the City and the substantial public benefits of such financing by the Authority in accordance with the criteria specified in Section 6586 of the California Government Code and (ii) the adoption of a resolution by the City Council of the City approving the execution and delivery of a property lease to be entered into with the Authority in connection with such lease financing.

The proposed lease financing will, among other things, provide funds for the construction of improvements to Fire Department administration and training buildings located at 1250-1288 9<sup>th</sup> Street, 1226 9<sup>th</sup> Street, 1221 8<sup>th</sup> Street, 1223 8<sup>th</sup> Street, 1225 8<sup>th</sup> Street and 1249 8<sup>th</sup> Street, Berkeley, California 94710. In connection with the lease financing, the City will lease certain real property and improvements to the Authority, and the Authority will lease such property back to the City.

Those wishing to comment on the proposed lease financing may either appear in person at the public hearing or submit written comments which must be received by the City Council prior to the public hearing. A copy of the agenda material for this hearing will be available on the City's website at <https://berkeleyca.gov/>. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology. Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed to [council@berkeleyca.gov](mailto:council@berkeleyca.gov) 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 (510) 981-6900 or [clerk@berkeleyca.gov](mailto:clerk@berkeleyca.gov) for further information.

**Published:** May 9, 2025 – The Berkeley Voice

To be published one time, in a newspaper of general circulation in the City, once at least five days prior to the hearing.

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I hereby certify that the Notice for this Public Hearing 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 May 15, 2025.

\_\_\_\_\_  
Mark Numainville, City Clerk

June \_\_\_, 2025

Berkeley Joint Powers Financing Authority  
2180 Milvia Street  
Berkeley, CA 94704

**OPINION:** \$\_\_\_\_\_ Berkeley Joint Powers Financing Authority 2025 Lease Revenue Notes (Fire Administration and Training Project) (Federally Taxable)

Members of the Authority Commission and City Council:

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

The Notes are issued pursuant to Article 4 of Chapter 5, Division 7, Title 1 of the Government Code of the State of California, the Indenture of Trust, dated as of June 1, 2025 (the "Indenture"), by and between the Authority and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), and a resolution (the "Resolution") of the governing body of the Authority, adopted on May 20, 2025.

Under the Indenture, the Authority has pledged certain revenues (the "Revenues") for the payment of principal, premium (if any), and interest on the Notes when due, including lease payments made by the City under a Lease Agreement dated as of June 1, 2025 (the "Lease Agreement") between the Authority and the City.

Regarding questions of fact material to our opinion, we have relied on representations of the Authority contained in the Indenture and the City contained in the Lease Agreement, and in the certified proceedings and other certifications of public officials furnished to us, without undertaking to verify the same by independent investigation.

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

1. The Authority is a duly created and validly existing joint exercise of powers authority with the power to adopt the Resolution, enter into the Indenture and the Lease Agreement, perform the agreements on its part contained therein, and issue the Notes.

*Berkeley Joint Powers Financing Authority*  
*City of Berkeley*  
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2. The City is a duly created and validly existing municipal corporation and charter city with the power to enter into the Lease Agreement and perform the agreements on its part contained therein.

3. The Indenture has been duly authorized, executed and delivered by the Authority, and constitutes a valid and binding obligation of the Authority, enforceable against the Authority.

4. The Lease Agreement has been duly authorized, executed and delivered by the Authority and the City, and constitutes a valid and binding obligation of the Authority and the City, enforceable against the Authority and the City.

5. The Indenture creates a valid lien on the Revenues and other funds pledged by the Indenture for the security of the Notes.

6. The Notes have been duly authorized and executed by the Authority, and are valid and binding limited obligations of the Authority, payable solely from the Revenues and other funds provided therefor in the Indenture.

7. The interest on the Notes is not intended to be excluded from gross income for federal income tax purposes.

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

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

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

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

Respectfully submitted,

A Professional Law Corporation

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