



Office of the City Manager

ACTION CALENDAR

November 19, 2013

To: Honorable Mayor and Members of the City Council

From:  Christine Daniel, City Manager

Submitted by: Robert Hicks, Director, Finance

Subject: Authorizing the Issuance of Up To \$15,000,000 in General Obligation Bonds for the Measure M – Street and Integrated Watershed Improvements

RECOMMENDATION

Adopt a Resolution ratifying and amending Resolution No. 66,212-N.S. which authorized the issuance of up to \$15,000,000 aggregate principal amount of general obligation bonds (Measure M – Street and Integrated Watershed Improvements), approving an official statement and authorizing actions related hereto.

FISCAL IMPACTS OF RECOMMENDATION

Authorization of the resolution will provide the City with approximately \$15,000,000 in proceeds for the street improvement projects that are anticipated to begin in FY 2014. Debt service on the general obligation bonds will be paid from ad valorem taxes collected on all taxable assessed value located in the City. Staff will request authorization to issue the remaining amount of bonds authorized by Measure M, \$15,000,000, after the 5 Year Street Paving Plan is updated based on the results of the initial projects.

There will be no fiscal impact to the City's General Fund from the issuance of the general obligation bonds.

CURRENT SITUATION AND ITS EFFECTS

As part of the City's annual tax rate levy actions in June, the proposed resolution ratifies and amends the June 2013 resolution to incorporate the approval of the official statement and modify the bond sale terms to reflect the issuance in January 2014. Public Works will present the expenditure plan to Council concurrently with this item. Currently, it is estimated that there will be expenditures of \$2.5 million in FY 2014, \$6 million in FY 2015, and \$6 million in FY 2016.

BACKGROUND

In November 2012, the residents of Berkeley voted for and approved Ballot Measure M, for the sum of \$30,000,000 of General Obligation Bonds to accelerate street repaving and rehabilitation consistent with the 5-Year Street Rehabilitation Plan, integrating green

infrastructure to the extent feasible. Green infrastructure includes, but is not limited to: (a) surface level bio-retention measures (rain gardens, swales, bio-retention cells, permeable paving, etc.) within the parking strip, planter area of sidewalks, red zone curb-extensions, and in street medians as feasible; and (b) large underground storage pipes, which would fill during storm events and then discharge metered flows into the existing storm drain pipelines.

The Public Works Commission has recommended an update to the 5 Year Street Rehabilitation Plan that reflects the City's Street Rehabilitation and Repair Policy, the objectives of Measure M, and the scorecard analysis developed by the Commission as part of its community meeting process over the last year. The Commission's recommendation is set forth in a separate report on this same agenda. The funds generated by the bonds recommended to be issued in this report will support the work recommended by the Commission.

The first tax rate will be in 2013-14 for approximately \$7.00 per \$100,000 of assessed value.

#### RATIONALE FOR RECOMMENDATION

The voters approved this indebtedness in November 2012. The expenditure plan has been being developed by Public Works staff and the Public Works Commission, and it cannot be implemented without issuing the bond.

#### CONTACT PERSON

Robert Hicks, Director, Finance Department, 510-981-7301

#### Attachments:

- 1: Resolution
- 2: Draft Preliminary Official Statement
- 3: Form of Notice of Intention to Sell Bonds
- 4: Form of Notice of Sale
- 5: Draft Costs of Issuance Custodian Agreement

RESOLUTION NO. \_\_\_\_\_ N.S.

RATIFYING AND AMENDING RESOLUTION NO. 66,212-N.S. AND APPROVING AN OFFICIAL STATEMENT RELATED TO THE ISSUANCE AND SALE OF NOT TO EXCEED \$15,000,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS TO FINANCE IMPROVEMENTS TO STREETS, WITH INTEGRATED WATERSHED IMPROVEMENTS, AND AUTHORIZING ACTIONS RELATED THERETO

WHEREAS, the City of Berkeley (the "City") is empowered under Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (the "Bond Law") to issue general obligation bonds which are authorized by two-thirds of the electors voting on the proposition; and

WHEREAS, more than two-thirds of the electors voting at a general municipal election held on November 6, 2012, voted for a proposition authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$30,000,000 for the purpose of providing funds to finance improvements to streets, with integrated watershed improvements; and

WHEREAS, on June 11, 2013, by Resolution No. 66,212-N.S. (the "Original Resolution"), this City Council authorized the issuance and sale of its general obligation bonds under such authority in the aggregate principal amount of not to exceed \$15,000,000 (the "Bonds") under the Original Resolution and in conformity with the Bond Law; and

WHEREAS, this City Council wishes to ratify and amend the Original Resolution, and to approve the Official Statement for the Bonds.

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

Section 1. Ratification and Amendment of Original Resolution. The Original Resolution is hereby ratified in its entirety, except as it is amended below:

(a) all references to the "Bonds" in the Original Resolution shall be deemed to be a reference to the "City of Berkeley 2014 General Obligation Bonds (Street and Integrated Watershed Improvements),"

(b) the first interest payment date on the Bonds shall be September 1, 2014, or such other date determined by the City Manager, the Finance Director and any other officer of the City authorized by resolution of the City Council of the City to act on behalf of the City with respect to this Resolution and the Bonds (each, a "City Representative") in connection with the pricing of the Bonds, and

(c) the sinking fund redemption schedule shall be determined by a City Representative in connection with the pricing of the Bonds.

*Section 2. Approval of Official Statement.* The City Council hereby approves the Official Statement describing the Bonds, in substantially the form on file with the City Clerk, together with any changes therein or additions thereto deemed advisable by a City Representative. The City Council authorizes and directs a City Representative on behalf of the City to deem “final” pursuant to Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”) the Official Statement prior to its distribution by the financial advisors to the City. The execution of the Official Statement, which shall include such changes and additions thereto deemed advisable by a City Representative and such information permitted to be excluded from the Official Statement pursuant to the Rule, shall be conclusive evidence of the approval of the Official Statement by the City.

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

*Section 3. Approval of Additional Actions.* Each City Representative, and any and all other officers of the City, are each authorized and directed in the name and on behalf of the City to make any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful issuance, sale and delivery of the Bonds. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.

*Section 4. Effective Date.* This Resolution becomes effective upon the date of its passage and adoption.

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_, 2013****NEW ISSUE - FULL BOOK-ENTRY**

**RATINGS:**  
**Standard & Poor's:** "\_\_\_\_"  
**Fitch:** "\_\_\_\_"

*In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations, such interest is taken into account in determining certain income and earnings. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. See "LEGAL MATTERS - Tax Exemption."*



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**CITY OF BERKELEY**  
**2013 General Obligation Bonds**  
**(Street and Integrated Watershed Improvements)**

**Dated: Date of Delivery****Due March 1, as shown on inside front cover**

**Issuance.** The general obligation bonds captioned above (the "Bonds") are being issued by the City of Berkeley (the "City") under provisions of the California Government Code and under a Resolution adopted by the City Council of the City (the "City Council") on \_\_\_\_\_, 2013 (the "Bond Resolution"). The Bonds were authorized at an election of the registered voters of the City held on November 6, 2012, at which more than two-thirds of the persons voting on the proposition voted to authorize the issuance and sale of not to exceed \$30,000,000 principal amount of general obligation bonds. The Bonds are the first series of bonds to be sold and issued under this authorization. See "THE BONDS - Authority for Issuance."

**Purpose.** The Bonds are being issued to finance improvements to streets, with integrated watershed improvements within the City. See "PLAN OF FINANCE - Purpose of Issue."

**Security.** The Bonds are general obligations of the City, payable solely from *ad valorem* property taxes levied by the City and collected by Alameda County (the "County"). The City Council is empowered and is obligated to annually levy *ad valorem* taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except certain personal property which is taxable at limited rates). See "SECURITY FOR THE BONDS."

**Book-Entry Only.** The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York ("DTC"). The Bonds are issuable as fully registered securities in denominations of \$5,000 or any integral multiple of \$5,000. Purchasers of the Bonds (the "Beneficial Owners") will not receive physical certificates representing their interest in the Bonds. See "THE BONDS" and "APPENDIX E - DTC AND THE BOOK-ENTRY ONLY SYSTEM."

**Payments.** Interest on the Bonds accrues from the date of delivery and is payable semiannually on March 1 and September 1 of each year, commencing March 1, 2014. Payments of principal and interest on the Bonds will be paid by The Bank of New York Mellon Trust Company, N.A., as Paying Agent, to DTC for subsequent disbursement to DTC Participants, which will remit such payments to the Beneficial Owners of the Bonds. See "THE BONDS - Description of the Bonds."

**Redemption.** The Bonds are subject to optional and mandatory redemption prior to maturity. See "THE BONDS - Redemption."

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

**NHA | ADVISORS**  
 Strategy. Innovation. Solutions.

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**Maturity Schedule**  
**(See inside cover)**

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**Cover Page.** This cover page contains certain information for general reference only. It is not a summary of all the provisions of the Bonds. Prospective investors must read the entire Official Statement to obtain information essential to making an informed investment decision.

The Bonds will be offered when, as and if issued and accepted by the Underwriter, subject to the approval as to legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel to the City, and subject to certain other conditions. Jones Hall is also serving as Disclosure Counsel to the City. Certain legal matters are being passed upon for the City by the City Attorney. It is anticipated that the Bonds, in book entry form, will be available for delivery by DTC in New York, New York, on or about \_\_\_\_\_, 2013.

The date of this Official Statement is \_\_\_\_\_, 2013.

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\* Preliminary; subject to change.

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

**\$\_\_\_\_\_ Serial Bonds**

<u>Maturity Date</u> <u>(March 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Yield</u>	<u>Price</u>	<u>CUSIP†</u>
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C: Priced to first par optional call date of \_\_\_\_\_ 1, 20\_\_.

\$\_\_\_\_\_ % Term Bond Due \_\_\_\_\_ 1, 20\_\_, Yield: \_\_\_\_\_%, Price: \_\_\_\_\_  
CUSIP† No.: \_\_\_\_\_

† Copyright 2013, American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc., and are provided for convenience of reference only. Neither the City nor the Underwriter assumes any responsibility for the accuracy of these CUSIP data.

## GENERAL INFORMATION ABOUT THIS OFFICIAL STATEMENT

**Use of Official Statement.** This Official Statement is submitted in connection with the sale of the Bonds referred to herein and may not be reproduced or used, in whole or in part, for any other purpose. This Official Statement is not a contract between any bond owner and the City or the Underwriter. This Official Statement and the information contained herein are subject to completion or amendment without notice.

**No Offering Except by This Official Statement.** No dealer, broker, salesperson or other person has been authorized by the City or the Underwriter to give any information or to make any representations relating to the Bonds other than those contained in this Official Statement and, if given or made, such other information or representation must not be relied upon as having been authorized by the City or the Underwriter.

**No Unlawful Offers or Solicitations.** This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy nor may there be any sale of the Bonds by a person in any jurisdiction in which it is unlawful for such person to make such an offer, solicitation or sale.

**Estimates and Projections.** When used in this Official Statement and in any continuing disclosure by the City, in any press release and in any oral statement made with the approval of an authorized officer of the City, the words or phrases “will likely result,” “are expected to,” “will continue,” “is anticipated,” “estimate,” “project,” “forecast,” “expect,” “intend” and similar expressions identify “forward looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. Such statements are subject to risks and uncertainties that could cause actual results to differ materially from those contemplated in such forward-looking statements. Any forecast is subject to such uncertainties. Inevitably, some assumptions used to develop the forecasts will not be realized and unanticipated events and circumstances may occur. Therefore, there are likely to be differences between forecasts and actual results, and those differences may be material.

**Information in Official Statement.** The information set forth in this Official Statement has been furnished by the City and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness by the City.

**Involvement of Underwriter.** The Underwriter (as defined in “UNDERWRITING”) has reviewed the information in this Official Statement in accordance with, and as a part of, its responsibilities to investors under the Federal Securities Laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

**Document Summaries.** All summaries of the Bond Resolution or other documents referred to in this Official Statement are made subject to the provisions of such documents and qualified in their entirety to reference to such documents, and do not purport to be complete statements of any or all of such provisions.

**No Securities Laws Registration.** The Bonds have not been registered under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, in reliance upon exceptions therein for the issuance and sale of municipal securities. The Bonds have not been registered or qualified under the securities laws of any state.

**Effective Date.** This Official Statement speaks only as of its date, and the information and expressions of opinion contained in this Official Statement are subject to change without notice. Neither the delivery of this Official Statement nor any sale of the Bonds will, under any circumstances, give rise to any implication that there has been no change in the affairs of the City, or the other parties described in this Official Statement, or the condition of the property within the City since the date of this Official Statement.

**Website.** The City maintains a website. However, the information presented on the website is not a part of this Official Statement and should not be relied upon in making an investment decision with respect to the Bonds.

# **CITY OF BERKELEY**

## **ELECTED OFFICIALS**

Tom Bates, Mayor  
Linda Maio, Councilmember District 1  
Darryl Moore, Councilmember District 2  
Max Anderson, Councilmember District 3  
Jesse Arreguín, Councilmember District 4  
Laurie Capitelli, Councilmember District 5  
Susan Wengraf, Councilmember District 6  
Kriss Worthington, Councilmember District 7  
Gordon Wozniak, Councilmember District 8

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## **CITY OFFICIALS**

Christine Daniel  
*City Manager*

Robert Hicks  
*Director of Finance*

William Rogers  
*Deputy City Manager*

Zach Cowan  
*City Attorney*

Ann-Marie Hogan  
*Auditor*

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## **PROFESSIONAL SERVICES**

### **BOND AND DISCLOSURE COUNSEL**

Jones Hall, A Professional Law Corporation  
*San Francisco, California*

### **FINANCIAL ADVISOR**

NHA Advisors LLC  
San Rafael, California

### **BOND REGISTRAR, TRANSFER AGENT, AND PAYING AGENT**

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

## TABLE OF CONTENTS

INTRODUCTION.....	1
PLAN OF FINANCE.....	3
Purpose of Issue.....	3
Sources and Uses of Funds.....	3
THE BONDS.....	4
Authority for Issuance.....	4
Description of the Bonds.....	4
Payment.....	5
Redemption.....	5
Registration, Transfer and Exchange of Bonds.....	6
Defeasance.....	7
DEBT SERVICE SCHEDULE.....	8
SECURITY FOR THE BONDS.....	10
Ad Valorem Taxes.....	10
Debt Service Fund.....	10
Limited Obligation.....	11
PROPERTY TAXATION.....	11
Property Tax Collection Procedures.....	11
Taxation of State-Assessed Utility Property.....	12
Assessed Valuation.....	12
Alternative Method of Tax Apportionment - Teeter Plan.....	14
Tax Rates.....	15
Major Taxpayers.....	16
Direct and Overlapping Debt.....	16
CONSTITUTIONAL AND STATUTORY PROVISIONS.....	18
AFFECTING CITY REVENUES AND APPROPRIATIONS.....	18
Article XIII A of the State Constitution.....	18
Legislation Implementing Article XIII A.....	18
Article XIII B of the State Constitution.....	19
Articles XIII C and XIII D of the State Constitution.....	20
Proposition 62.....	20
Proposition 1A.....	21
Possible Future Initiatives.....	22
LEGAL MATTERS.....	22
Tax Exemption.....	22
Continuing Disclosure.....	23
Absence of Material Litigation.....	24
RATINGS.....	24
FINANCIAL ADVISOR.....	25
UNDERWRITING.....	25

APPENDIX A - FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY

APPENDIX B - FISCAL YEAR 2011-12 BASIC FINANCIAL STATEMENTS AND SUPPLEMENTAL DATA

APPENDIX C - PROPOSED FORM OF OPINION OF BOND COUNSEL

APPENDIX D - FORM OF CONTINUING DISCLOSURE CERTIFICATE

APPENDIX E - DTC AND THE BOOK-ENTRY ONLY SYSTEM

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## OFFICIAL STATEMENT

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**CITY OF BERKELEY**  
**2013 General Obligation Bonds**  
**(Street and Integrated Watershed Improvements)**

The purpose of this Official Statement, which includes the cover page, inside cover page and attached appendices, is to set forth certain information concerning the sale and delivery of the bonds captioned above (the “**Bonds**”) by the City of Berkeley (the “**City**”). All capitalized terms used in this Official Statement, unless noted otherwise, have the meanings set forth in the Bond Resolution (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 Bonds to potential investors is made only by means of the entire Official Statement.

**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 an estimated January 1, 2013 population of 115,716, 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 approximately 12,700 full and part-time workers.

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

See “APPENDIX A - FINANCIAL, ECONOMIC AND DEMOGRAPHIC INFORMATION FOR THE CITY OF BERKELEY AND ALAMEDA COUNTY” and “APPENDIX B - FISCAL YEAR 2011-12 BASIC FINANCIAL STATEMENTS AND SUPPLEMENTAL DATA,” for demographic and financial information regarding the City.

**Authority for Issuance.** The Bonds represent a sale of bonds approved by more than two-thirds of the qualified voters in the City voting at a municipal election on November 6, 2012 to approve the issuance of up to \$30,000,000 of general obligation bonds. The Bonds are the

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\* Preliminary; subject to change.

first series of bonds issued under the 2012 authorization. See “THE BONDS - Authority for Issuance.”

The Bonds are being issued under Chapter 4 (commencing with section 43600) of Division 4 of Title 4 of the California Government Code, and pursuant to and consistent with the Charter of the City. The City authorized the issuance of the Bonds under a Resolution adopted by the City Council of the City (the “**City Council**”) on \_\_\_\_\_, 2013 (the “**Bond Resolution**”).

**Purpose for Issuance.** The Bonds are being issued to finance the acquisition, construction and improvement of facilities to be used as a public library within the City. See “PLAN OF FINANCE - Purpose of Issue.”

**Security and Sources of Payment for the Bonds.** The Bonds are general obligations of the City payable solely from *ad valorem* property taxes levied by the City and collected by the County. The City Council is empowered and is obligated to annually levy *ad valorem* taxes for the payment of interest on, and principal of, the Bonds upon all property subject to taxation by the City, without limitation of rate or amount (except with respect to certain personal property which is taxable at limited rates). See “SECURITY FOR THE BONDS.”

**Payment and Registration of the Bonds.** The Bonds will be dated their date of original issuance and delivery (the “**Dated Date**”) and will be issued as fully registered bonds, without coupons, in the denominations of \$5,000 or any integral multiple of \$5,000, registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“**DTC**”), and will be available under the book-entry system maintained by DTC, only through brokers and dealers who are or act through DTC Participants as described below. Beneficial Owners will not be entitled to receive physical delivery of the Bonds. See “THE BONDS” and “APPENDIX E - DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

Interest on the Bonds accrues from the Dated Date and is payable semiannually on March 1 and September 1 of each year, commencing March 1, 2014. See “THE BONDS - Description of the Bonds.”

**Early Redemption.** The Bonds are subject to optional and mandatory redemption prior to their maturity as described in “THE BONDS - Redemption.”

**Changes from the Preliminary Official Statement.** The following information has been updated from the Preliminary Official Statement: (i) information in Appendix A under the headings “Budgetary Process,” “Employee Relations and Collective Bargaining” and “Retirement System” has been updated to reflect the July 19, 2010 approval by the City Council of an agreement with an employee group and (ii) information in Appendix A under the headings “Sales Taxes – History of Taxable Transactions,” “Effective Buying Income” and “Construction Activity” has been updated to reflect newly-released information.

**Other Information.** This Official Statement speaks only as of its date, and the information contained herein is subject to change. Copies of documents referred to in this Official Statement and information concerning the Bonds are available from the City of Berkeley City Clerk, 2180 Milvia Street, Berkeley, California 94704, (510) 981-7000. The City may impose a charge for copying, mailing and handling.

## PLAN OF FINANCE

### Purpose of Issue

The net proceeds of the Bonds will be used to finance the acquisition, construction and improvement of facilities to be used as a public library within the City.

### Sources and Uses of Funds

The estimated sources and uses of funds with respect to the Bonds will be applied as follows:

#### Sources of Funds

Principal Amount of Bonds

*Plus:* Net Original Issue Premium<sup>(1)</sup>

Total Sources

#### Uses of Funds

Deposit to Project Fund

Costs of Issuance<sup>(2)</sup>

Deposit to Debt Service Fund

Total Uses

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(1) Of this amount, \$\_\_\_\_\_ will be used to pay costs of issuing the Bonds.

(2) Includes Underwriter's discount, Financial Advisor fees, Bond Counsel and Disclosure Counsel fees, printing costs, rating agency fees and other related costs.

## THE BONDS

### Authority for Issuance

The Bonds are issued under Chapter 4 (commencing with section 43600) of Division 4 of Title 4 of the California Government Code (the “**Act**”) and other applicable law, and pursuant to the City’s powers under and consistent with the Charter of the City. The City authorized the issuance of the Bonds pursuant to the Bond Resolution.

The City received authorization at an election held on November 6, 2012, by an affirmative vote of 73.29% of the eligible voters within the City (the “**Authorization**”) to issue \$30,000,000 of general obligation bonds. The Bonds are the first series of Bonds to be sold and issued under the Authorization.

### Description of the Bonds

**Book-Entry Form.** The Bonds will be issued in book-entry form only, and will be initially issued and registered in the name of Cede & Co. as nominee of The Depository Trust Company, New York, New York (“**DTC**”). Purchasers of the Bonds (the “**Beneficial Owners**”) will not receive physical certificates representing their interest in the Bonds. Payments of principal of and interest on the Bonds will be paid by the Paying Agent to DTC for subsequent disbursement to DTC Participants which will remit such payments to the Beneficial Owners of the Bonds.

As long as DTC’s book-entry method is used for the Bonds, the Paying Agent will send any notice of prepayment or other notices to owners only to DTC. Any failure of DTC to advise any DTC Participant, or of any DTC Participant to notify any Beneficial Owner, of any such notice and its content or effect will not affect the validity or sufficiency of the proceedings relating to the prepayment of the Bonds called for prepayment or of any other action premised on such notice.

The Paying Agent, the City, and the Underwriter of the Bonds have no responsibility or liability for any aspects of the records relating to or payments made on account of beneficial ownership, or for maintaining, supervising or reviewing any records relating to beneficial ownership, of interests in the Bonds.

See “APPENDIX E - DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

**Interest.** Interest on the Bonds is payable semiannually on March 1 and September 1 of each year (the “**Interest Payment Dates**”), commencing March 1, 2014.

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

1. a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
2. a Bond is authenticated prior to an Interest Payment Date and after the close of business on the 15th day of the month preceding the Interest Payment Date (each, a “**Record Date**”), in which event it will bear interest from such Interest Payment Date,

3. a Bond is authenticated on or before February 15, 2014, in which event it shall bear interest from the Closing Date, or
4. at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

Interest on the Bonds will be calculated on the basis of a 360-day year comprised of twelve 30-day months.

**Denominations and Maturity.** The Bonds shall be issued in the denomination of \$5,000 each or any integral multiple of \$5,000. The Bonds mature on March 1 in the years and amounts set forth on the inside cover page hereof.

See the maturity schedule on the inside cover page hereof and "DEBT SERVICE SCHEDULE" below.

### **Payment**

Interest on the Bonds (including the final interest payment upon maturity) is payable by check of the Paying Agent mailed to the owner thereof at such owner's address as it appears on the Registration Books (as defined below) at the close of business on the 15th day of the month preceding the Interest Payment Date, except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request.

Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the principal office of the Paying Agent.

### **Redemption**

**Optional Redemption.** The Bonds maturing on or before March 1, 20\_\_, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after March 1, 20\_\_, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on March 1, 20\_\_, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

**Mandatory Sinking Fund Redemption.** The Term Bonds maturing on March 1, 20\_\_ are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each March 1, on and after March 1, 20\_\_ in the principal amounts as set forth in the following tables:

\$ \_\_\_\_\_ Term Bond Due March 1, 20\_\_

Payment Date (March 1)	Payment Amount
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(Maturity)

**Redemption Procedure.** The Paying Agent will cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 30 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books (as defined below) maintained by the Paying Agent. Such mailing will not be a condition precedent to such redemption and failure to mail or to receive any such notice will not affect the validity of the proceedings for the redemption of such Bonds.

Such notice will state the redemption date and the redemption price and, if less than all of the then Outstanding Bonds are to be called for redemption, will designate the serial numbers of the Bonds to be redeemed by giving the individual number of each Bond or by stating that all Bonds between two stated numbers, both inclusive, or by stating that all of the Bonds of one or more maturities have been called for redemption, and will require that such Bonds be then surrendered at the principal office of the Paying Agent for redemption at the said redemption price, giving notice also that further interest on such Bonds will not accrue from and after the redemption date.

**Partial Redemption.** Upon surrender of Bonds redeemed in part only, the City will execute and the Paying Agent will authenticate and deliver to the owner, at the expense of the City, a new Bond or Bonds, of the same maturity, of authorized denominations in aggregate principal amount equal to the unredeemed portion of the Bond or Bonds.

**Effect of Redemption.** From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium, if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under the Bond Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice.

### Registration, Transfer and Exchange of Bonds

If the book-entry system as described above and in Appendix E is no longer used with respect to the Bonds, the following provisions will govern the registration, transfer, and exchange of the Bonds.

**Registration Books.** The Paying Agent will keep or cause to be kept sufficient books for the registration and transfer of the Bonds (the "**Registration Books**"), which will at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, the Bonds.

**Transfer.** Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the principal office of the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed.

Whenever any Bond or Bonds are surrendered for transfer, the City will execute and the Paying Agent will authenticate and deliver a new Bond or Bonds, for like aggregate principal amount.

**Exchange.** Bonds may be exchanged at the principal office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.

### **Defeasance**

The City has the option to pay and discharge the entire indebtedness on all or any portion of the outstanding Bonds in any one or more of the following ways:

- (a) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (b) by irrevocably depositing, in trust, at or before maturity:
  - (i) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity; or
  - (ii) Federal Securities (as defined below), the principal of and interest on, which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid interest to maturity on the Bonds to be paid, as such principal and interest become due.
- (c) by delivering such Bonds to the Paying Agent for cancellation by it.

**“Federal Securities”** means United States Treasury notes, bonds, bills or certificates of indebtedness, or any other obligations, the timely payment of which is directly or indirectly guaranteed by the faith and credit of the United States of America.

**DEBT SERVICE SCHEDULES**

The following table shows the debt service schedule with respect to the Bonds (assuming no optional redemptions).

<b>Year Ending March 1</b>	<b>Principal</b>	<b>Interest</b>	<b>Total Debt Service</b>
2014			
2015			
2016			
2017			
2018			
2019			
2020			
2021			
2022			
2023			
2024			
2025			
2026			
2027			
2028			
2029			
2030			
2031			
2032			
2033			
2034			
2035			
2036			
2037			
2038			
2039			
2040			
2041			
2042			
2043			
<b>Total</b>			

The following table shows the total debt service payable with respect to all outstanding general obligation bonds of the City, including the Bonds, assuming no optional redemptions).

Year Ending March 1	2002 Bonds	2007 A Bonds	2007 B Bonds	2008 Bonds	2009 Bonds	2010 Bonds	The Bonds	Total Debt Service
2014								
2015								
2016								
2017								
2018								
2019								
2020								
2021								
2022								
2023								
2024								
2025								
2026								
2027								
2028								
2029								
2030								
2031								
2032								
2033								
2034								
2035								
2036								
2037								
2038								
2039								
2040								
2041								
2042								
2043								
<b>Total</b>								

## SECURITY FOR THE BONDS

### Ad Valorem Taxes

**Bonds Payable from Ad Valorem Property Taxes.** The Bonds are general obligations of the City, payable solely from *ad valorem* property taxes levied by the City and collected by the County. The City is empowered and is obligated to annually levy *ad valorem* taxes for the payment of the Bonds and the interest thereon upon all property within the City subject to taxation by the City, without limitation of rate or amount (except certain personal property which is taxable at limited rates).

**Levy and Collection.** The City will levy and the County will collect such *ad valorem* taxes in such amounts and at such times as is necessary to ensure the timely payment of debt service. Such taxes, when collected, will be deposited into a debt service fund for the Bonds, which is maintained by the City and which is irrevocably pledged for the payment of principal of and interest on the Bonds when due.

City property taxes are assessed and collected by the County in the same manner and at the same time, and in the same installments as other *ad valorem* taxes on real property, and will have the same priority, become delinquent at the same times and in the same proportionate amounts, and bear the same proportionate penalties and interest after delinquency, as do the other *ad valorem* taxes on real property. As described below, the County has adopted the Teeter Plan which provides that the City will receive all of the property taxes which are levied by the City, and that any penalties and interest on delinquent taxes will be retained by the County. See "PROPERTY TAXATION - Alternative Method of Tax Apportionment - Teeter Plan."

**Annual Tax Rates.** The amount of the annual *ad valorem* tax levied by the City to repay the Bonds will be determined by the relationship between the assessed valuation of taxable property in the City and the amount of debt service due on the Bonds. Fluctuations in the annual debt service on the Bonds and the assessed value of taxable property in the City may cause the annual tax rate to fluctuate.

Economic and other factors beyond the City's control, such as economic recession, deflation of land values, a relocation out of the City or financial difficulty or bankruptcy by one or more major property taxpayers, or the complete or partial destruction of taxable property caused by, among other eventualities, earthquake, flood or other natural disaster, could cause a reduction in the assessed value within the City and necessitate a corresponding increase in the annual tax rate.

### Debt Service Fund

The City will establish the Debt Service Fund (the "**Debt Service Fund**"), which will be established as a separate fund to be maintained distinct from all other funds of the City. All taxes levied by the City pursuant to the Bond Resolution for the payment of the principal of and interest and premium (if any) on the Bonds will be deposited in the Debt Service Fund by the City promptly upon the receipt from the County. The Debt Service Fund is pledged for the payment of the principal of and interest and premium (if any) on the Bonds when and as the same become due. The City will transfer amounts in the Debt Service Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent as required to pay the principal of and interest and premium (if any) on the Bonds.

If, after payment in full of the Bonds, any amounts remain on deposit in the Debt Service Fund, the City shall transfer such amounts to its General Fund, to be applied solely in a manner which is consistent with the requirements of applicable state and federal tax law.

### **Limited Obligation**

The Bonds are payable solely from the proceeds of an *ad valorem* tax levied by the City, and collected by the County, for the payment of principal and interest on the Bonds. Although the County is obligated to collect the *ad valorem* tax for the payment of the Bonds, the Bonds are not a debt of the County.

## **PROPERTY TAXATION**

### **Property Tax Collection Procedures**

In California, property which is subject to ad valorem taxes is classified as “secured” or “unsecured.” The “secured roll” is that part of the assessment roll containing state assessed public utilities’ property and property, the taxes on which are a lien on real property sufficient, in the opinion of the county assessor, to secure payment of the taxes. A tax levied on unsecured property does not become a lien against such unsecured property, but may become a lien on certain other property owned by the taxpayer. Every tax which becomes a lien on secured property has priority over all other liens arising pursuant to State law on such secured property, regardless of the time of the creation of the other liens. Secured and unsecured property are entered separately on the assessment roll maintained by the county assessor. The method of collecting delinquent taxes is substantially different for the two classifications of property.

Property taxes on the secured roll are due in two installments, on November 1 and February 1 of each fiscal year. If unpaid, such taxes become delinquent after December 10 and April 10, respectively, and a 10% penalty attaches to any delinquent payment. In addition, property on the secured roll with respect to which taxes are delinquent is declared tax defaulted on or about June 30 of the fiscal year. Such property may thereafter be redeemed by payment of the delinquent taxes and a delinquency penalty, plus a redemption penalty of 1-1/2% per month to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to sale by the County.

Property taxes are levied for each fiscal year on taxable real and personal property situated in the taxing jurisdiction as of the preceding January 1. A bill enacted in 1983, SB813 (Statutes of 1983, Chapter 498), however, provided for the supplemental assessment and taxation of property as of the occurrence of a change of ownership or completion of new construction. Thus, this legislation eliminated delays in the realization of increased property taxes from new assessments. As amended, SB813 provided increased revenue to taxing jurisdictions to the extent that supplemental assessments of new construction or changes of ownership occur subsequent to the January 1 lien date and result in increased assessed value.

Property taxes on the unsecured roll are due on the January 1 lien date and become delinquent, if unpaid on the following August 31. A 10% penalty is also attached to delinquent taxes in respect of property on the unsecured roll, and further, an additional penalty of 1-1/2% per month accrues with respect to such taxes beginning the first day of the third month following the delinquency date. The taxing authority has four ways of collecting unsecured personal

property taxes: (1) a civil action against the taxpayer; (2) filing a certificate in the office of the county clerk specifying certain facts in order to obtain a judgment lien on certain property of the taxpayer; (3) filing a certificate of delinquency for record in the county recorder's office, in order to obtain a lien on certain property of the taxpayer; and (4) seizure and sale of personal property, improvements or possessory interests belonging or assessed to the assessee. The exclusive means of enforcing the payment of delinquent taxes in respect of property on the secured roll is the sale of the property securing the taxes for the amount of taxes which are delinquent.

### **Taxation of State-Assessed Utility Property**

The State Constitution provides that most classes of property owned or used by regulated utilities be assessed by the State Board of Equalization (“SBE”) and taxed locally. Property valued by the SBE as an operating unit in a primary function of the utility taxpayer is known as “unitary property,” a concept designed to permit assessment of the utility as a going concern rather than assessment of each individual element of real and personal property owned by the utility taxpayer. State-assessed unitary and “operating nonunitary” property (which excludes nonunitary property of regulated railways) is allocated to the counties based on the situs of the various components of the unitary property. Except for unitary property of regulated railways and certain other excepted property, all unitary and operating nonunitary property is taxed at special county-wide rates and tax proceeds are distributed to taxing jurisdictions according to statutory formulae generally based on the distribution of taxes in the prior year.

### **Assessed Valuation**

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

**Table 1**  
**CITY OF BERKELEY**  
**Assessed Valuations of All Taxable Property**  
**Fiscal Years 2004-05 to 2013-14**

<u>Fiscal Year</u>	<u>Local Secured</u>	<u>Utility</u>	<u>Unsecured</u>	<u>Total</u>	<u>Percent Change</u>
2004-05	\$8,687,909,495	\$3,075,097	\$571,603,260	\$9,262,587,852	7.01%
2005-06	9,499,976,877	2,520,396	574,192,669	10,076,689,942	8.79
2006-07	10,377,045,760	2,335,203	592,977,821	10,972,358,784	8.89
2007-08	11,160,531,045	1,324,910	606,785,227	11,768,641,182	7.26
2008-09	11,918,409,630	473,910	671,983,004	12,590,866,544	6.99
2009-10	12,085,578,735	473,910	720,264,455	12,806,317,100	1.71
2010-11	12,147,575,627	555,664	677,887,524	12,826,018,815	0.15
2011-12	12,525,929,662	555,664	667,789,011	13,194,274,337	2.87
2012-13	12,834,926,300	555,664	673,174,230	13,508,656,194	2.38
2013-14	13,686,258,913	555,664	677,170,723	14,363,985,300	6.33

*Source: Alameda County Auditor-Controller's Office*

**Assessed Valuation by Land Use.** The following table shows the land use of parcels in the City, according to assessed valuation. As shown, the majority of land in the City is used for residential purposes.

**Table 2  
CITY OF BERKELEY  
Assessed Valuation and Parcels by Land Use  
Fiscal Year 2013-14**

<b>Land Use</b>	<b>2013-14 Local Secured Assessed Valuation (1)</b>	<b>% of Total</b>	<b>No. of Parcels</b>	<b>% of Total</b>
<b>Non-Residential:</b>				
Commercial/Office	\$1,703,357,440	12.45%	1,641	5.70%
Vacant Commercial	21,652,475	0.16	57	0.20
Industrial	824,639,702	6.03	449	1.56
Vacant Industrial	8,580,609	0.06	24	0.08
Recreational	35,594,268	0.26	15	0.05
Government/Social/Institutional	<u>15,909,618</u>	<u>0.12</u>	<u>653</u>	<u>2.27</u>
Subtotal Non-Residential	\$2,609,734,112	19.07%	2,839	9.86%
<b>Residential:</b>				
Single Family Residence	\$ 7,051,057,966	51.52%	17,213	59.81%
Condominium/Townhouse	693,707,808	5.07	2,659	9.24
Cooperative	21,977,880	0.16	113	0.39
2-4 Residential Units	1,478,485,071	10.80	4,009	13.93
5+ Residential Units/Apartments	1,761,417,366	12.87	1,402	4.87
Miscellaneous Residential	2,201,498	0.02	10	0.03
Vacant Residential	<u>67,677,212</u>	<u>0.49</u>	<u>536</u>	<u>1.86</u>
Subtotal Residential	\$11,076,524,801	80.93%	25,942	90.14%
<b>Total</b>	<b>\$13,686,258,913</b>	<b>100.00%</b>	<b>28,781</b>	<b>100.00%</b>

(1) Local Secured Assessed Valuation; excluding tax-exempt property.  
Source: California Municipal Statistics, Inc.

**Assessed Valuation of Single Family Residential Parcels.** The following table shows a breakdown of the assessed valuations of improved single-family residential parcels in the City, according to assessed valuation.

**Table 3  
CITY OF BERKELEY  
Per Parcel 2013-14 Assessed Valuation  
of Single Family Homes**

Single Family Residential	<u>No. of Parcels</u>	<u>2013-14 Assessed Valuation</u>	<u>Average Assessed Valuation</u>	<u>Median Assessed Valuation</u>		
<b>2013-14 Assessed Valuation</b>	<b>No. of Parcels (1)</b>	<b>% of Total</b>	<b>Cumulative % of Total</b>	<b>Total Valuation</b>	<b>% of Total</b>	<b>Cumulative % of Total</b>

(1) Improved single family residential parcels. Excludes condominiums and parcels with multiple family units.  
Source: California Municipal Statistics, Inc.

**Alternative Method of Tax Apportionment - Teeter Plan**

The Board of Supervisors of the County has approved the implementation of the Alternative Method of Distribution of Tax Levies and Collections and of Tax Sale Proceeds (the “**Teeter Plan**”), as provided for in Section 4701 *et seq.* of the California Revenue and Taxation Code. Under the Teeter Plan, the County apportions secured property taxes on an accrual basis when due (irrespective of actual collections) to participating political subdivisions, including the City, 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.

The property tax levies and collections for the City for 2002-03 through 2011-12 are shown in the following table:

**CITY OF BERKELEY  
SECURED TAX CHARGES AND DELINQUENCIES  
2003-04 TO 2012-13  
(Dollar amounts in thousands)**

Fiscal Year	Secured Tax Charge <sup>(1)</sup>	Amount Delinquent June 30	% Delinquent June 30
2003-04	\$25,985,291.16	\$515,310.65	1.98%
2004-05	28,028,117.55	552,435.47	1.97
2005-06	30,573,949.35	684,004.33	2.24
2006-07	33,552,146.54	1,189,361.30	3.54
2007-08	36,038,297.51	1,680,289.97	4.66
2008-09	38,438,858.24	1,757,281.78	4.57
2009-10	38,834,067.28	1,222,174.35	3.15
2010-11	38,858,160.99	937,557.29	2.41
2011-12	40,085,111.77	814,536.14	2.03
2012-13			

<sup>(1)</sup> 1% General Fund apportionment.  
Source: California Municipal Statistics, Inc.

**Tax Rates**

The table below shows historical property tax rates within the City:

**CITY OF BERKELEY  
TYPICAL TAX RATE PER \$100 ASSESSED VALUATION  
(TRA 13-000 – 2013-14 Assessed Valuation: \$\_\_\_\_\_)**

	Fiscal Year <u>2009-10</u>	Fiscal Year <u>2010-11</u>	Fiscal Year <u>2011-12</u>	Fiscal Year <u>2012-13</u>	Fiscal Year <u>2013-14</u>
Countywide Rate	1.0000	1.0000	1.0000	1.0000	1.0000
Berkeley Unified School District Bonds	.1502	.1463	.1478	.1406	
Peralta Community College District	.0430	.0430	.0436	.0434	
Bay Area Rapid Transit	.0057	.0031	.0041	.0043	
East Bay Municipal Utility District	.0065	.0067	.0071	.0068	
East Bay Regional Park District	.0108	.0084	.0067	.0051	
City of Berkeley	<u>.0506</u>	<u>.0480</u>	<u>.0470</u>	.0470	
Total	1.2668	1.2555	1.2563	1.2472	

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 2013-14.

**Table 5**  
**CITY OF BERKELEY**  
**Largest 2013-14 Local Secured Taxpayers**

No.	Property Owner	Primary Land Use	2013-14 Assessed Valuation	% of Total (1)
1.	Bayer Healthcare LLC	Industrial	\$ 279,182,166	2.04%
2.	EQR Berkeley	Apartments	155,257,803	1.13
3.	CVBAF ACQ LLC	Condominiums	67,810,000	0.50
4.	Granite Library Gardens LP	Apartments	63,259,879	0.46
5.	Essex Berkeley 4 <sup>th</sup> Street LP	Apartments	47,310,495	0.35
6.	SC Hillside Berkeley Inc.	Apartments	46,439,673	0.34
7.	1950 MLK LLC	Apartments	36,834,109	0.27
8.	Ed Roberts Campus	Office Building	36,014,145	0.26
9.	Oxford Plaza LP	Apartments	35,723,090	0.26
10.	Hanumandla R. and Hanumandla J. Reddy, Trust	Apartments	35,513,959	0.26
11.	Seventh Street Properties	Industrial	30,106,210	0.22
12.	BVP Fulton LLC	Apartments	28,982,540	0.21
13.	2600 Tenth Street LLC	Office Building	26,612,797	0.19
14.	John K. Gordon and Janis L. Mitchell, Trustees	Office Building	26,021,618	0.19
15.	920 Heinz LP	Supermarket	24,840,343	0.18
16.	Prasad R. and Santi Lakireddy	Office Building	23,770,390	0.17
17.	Numano Sake Company Inc.	Industrial	23,622,756	0.17
18.	Pyramid Gilman Street Property LLC	Industrial	22,668,956	0.17
19.	California Family LLC & CWR Holdings LLC	Apartments	20,764,556	0.15
20.	RSGF Granada Building LLC	Commercial	<u>19,240,861</u>	<u>0.14</u>
			<u>\$1,049,976,346</u>	<u>7.67%</u>

(1) 2013-14 Local Secured Assessed Valuation: \$13,686,258,913.  
Source: California Municipal Statistics, Inc.

## Direct and Overlapping Debt

Set forth below is a direct and overlapping debt report (the “**Debt Report**”) prepared by California Municipal Statistics, Inc. and effective October 1, 2013. The Debt Report is included for general information purposes only. The City has not reviewed the Debt Report for completeness or accuracy and makes no representation in connection therewith.

The Debt Report generally includes long-term obligations sold in the public credit markets by public agencies whose boundaries overlap the boundaries of the City in whole or in part. Such long-term obligations generally are not payable from revenues of the City (except as indicated) nor are they necessarily obligations secured by land within the City. In many cases, long-term obligations issued by a public agency are payable only from the general fund or other revenues of such public agency.

The contents of the Debt Report are as follows: (1) the first column indicates the public agencies which have outstanding debt as of the date of the Debt Report and whose territory overlaps the City; (2) the second column shows the percentage that the City’s assessed valuation represents of the total assessed valuation of each public agency identified in the first column; and the third column is an apportionment of the dollar amount of each public agency’s

outstanding debt to property in the City, as determined by multiplying the total outstanding debt of each agency by the percentage of the City's assessed valuation represented in the second column.

**Table 6  
CITY OF BERKELEY  
STATEMENT OF DIRECT AND OVERLAPPING BONDED DEBT  
(As of October 1, 2013)**

2013-14 Assessed Valuation:   \$14,363,985,300

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 10/1/13</u>
Bay Area Rapid Transit District	2.733%	\$ 11,158,156
East Bay Municipal Utility District, Special District No. 1	18.081	3,354,930
Peralta Community College District	19.364	78,168,595
Berkeley Unified School District	99.996	241,204,573
<b>City of Berkeley</b>	<b>100.000</b>	<b>72,565,000</b>
City of Berkeley Community Facilities District No. 1	100.000	5,040,000
East Bay Regional Park District	4.218	8,561,486
City of Berkeley Thousand Oaks Heights AFUU Assessment District	100.000	<u>1,240,000</u>
<b>TOTAL DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$421,292,740</b>
 <u>DIRECT AND OVERLAPPING GENERAL FUND DEBT:</u>		
Alameda County and Coliseum Obligations	6.905%	\$ 44,120,188
Alameda County Pension Obligations	6.905	7,545,618
Alameda-Contra Costa Transit District Certificates of Participation	8.176	2,301,953
Peralta Community College District Pension Obligations	19.364	30,702,414
<b>City of Berkeley Lease Revenue Bonds &amp; Certificates of Participation</b>	<b>100.000</b>	<b>31,940,000 (1)</b>
<b>City of Berkeley Pension Obligations</b>	<b>100.000</b>	<b><u>1,485,000</u></b>
<b>TOTAL DIRECT AND OVERLAPPING GENERAL FUND DEBT</b>		<b>\$118,095,173</b>
 <u>OVERLAPPING TAX INCREMENT DEBT:</u>		
Successor Agency to Berkeley Redevelopment Agency		
West Berkeley Project Area	100.000%	<u>\$1,775,000</u>
<b>TOTAL OVERLAPPING TAX INCREMENT DEBT</b>		<b>\$1,775,000</b>
 <b>COMBINED TOTAL DEBT</b>		 <b>\$541,162,913 (2)</b>

Ratios to 2013-14 Assessed Valuation:

<b>Direct Debt (\$72,565,000)</b> .....	<b>0.51%</b>
Total Direct and Overlapping Tax and Assessment Debt.....	2.93%
<b>Combined Direct Debt (\$105,990,000)</b> .....	<b>0.74%</b>
Combined Total Debt .....	3.77%

Ratios to 2013-14 Redevelopment Incremental Valuation (\$211,539,544):

Overlapping Tax Increment Debt .....	0.84%
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(1) Excludes issue 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.*

## **CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS**

Principal of and interest on the Bonds are payable from the proceeds of an *ad valorem* tax levied by the City for the payment thereof. See “THE BONDS” and “SECURITY FOR THE BONDS” above. Articles XIII A, XIII B, XIII C and XIII D of the State Constitution, Propositions 62, 111, and 218 and 1A, and certain other provisions of law discussed below are included in this section to describe the potential effect of these Constitutional and statutory measures on the ability of the City to levy taxes and spend tax proceeds for operating and other purposes, and it should not be inferred from the inclusion of such materials that these laws impose any limitation on the ability of the City to levy taxes for payment of the Bonds. The tax levied by the City for payment of the Bonds was approved by the City’s voters in compliance with Article XIII A and all applicable laws.

### **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.

The City has never exceeded its appropriations limit. Because the issuance of the Bonds has been approved by the voters, the tax levy which is required to pay debt service on the Bonds is not subject to the limitations of Article XIII B.

## **Articles XIIC and XIID of the State Constitution**

On November 5, 1996, the voters of the State approved Proposition 218, known as the "Right to Vote on Taxes Act." Proposition 218 adds Articles XIIC and XIID 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. The interpretation and application of Proposition 218 will ultimately be determined by the courts with respect to a number of the matters discussed below, and it is not possible at this time to predict with certainty the outcome of such determination.

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

Article XIID also adds several provisions making it generally more difficult for local agencies to levy and maintain property-related fees, charges, and assessments for municipal services and programs. These provisions include, among other things, (i) a prohibition against assessments which exceed the reasonable cost of the proportional special benefit conferred on a parcel, (ii) a requirement that assessments must confer a "special benefit," as defined in Article XIID, over and above any general benefits conferred, (iii) a majority protest procedure for assessments which involves the mailing of notice and a ballot to the record owner of each affected parcel, a public hearing and the tabulation of ballots weighted according to the proportional financial obligation of the affected party, and (iv) a prohibition against fees and charges which are used for general governmental services, including police, fire or library services, where the service is available to the public at large in substantially the same manner as it is to property owners. If the City is unable to continue to collect these revenues, the services and programs funded with these revenues would have to be curtailed and/or the City's General Fund might have to be used to support them. The City is unable to predict whether or not in the future it will be able to continue all existing services and programs funded by the fees, charges and assessments in light of Proposition 218 or, if these services and programs are continued, which amounts (if any) would be used from the City's General Fund to continue to support these activities.

Article XIIC 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.

## **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 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, provides 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 prohibits 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 must be approved by two-thirds of both houses of the Legislature. Proposition 1A provides, however, that beginning in fiscal year 2008-09, the State may shift to schools and community colleges up to 8% of local government property tax revenues, which amount must be repaid, with interest, within three years, if the Governor proclaims that the shift is needed due to a severe state financial hardship, the shift is approved by two-thirds of both houses and certain other conditions are met. The State may also approve voluntary exchanges of local sales tax and property tax revenues among local governments within a county. Proposition 1A also provides that if the State reduces the motor vehicle license fee rate currently in effect, 0.65 percent of vehicle value, the State must provide local governments with equal replacement revenues. Further, Proposition 1A requires the State, beginning July 1, 2005, to suspend State mandates affecting cities, counties and special districts, excepting mandates relating to employee rights, schools or community colleges, in any year that the State does not fully reimburse local governments for their costs to comply with such mandates.

Proposition 1A may result in increased and more stable City revenues. The magnitude of such increase and stability is unknown and would depend on future actions by the State. However, Proposition 1A could also result in decreased resources being available for State programs. This reduction, in turn, could affect actions taken by the State to resolve budget difficulties. Such actions could include increasing State taxes, decreasing spending on other State programs or other action, some of which could be adverse to the City.

## 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.

See the section entitled "CITY FINANCES – State Budget and its Impact on the City" in Appendix A for information about the State's fiscal year 2009-10 budget and a shift of local property revenues under Proposition 1A.

## LEGAL MATTERS

### Tax Exemption

**Federal Tax Status.** In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications set forth below, under existing law, the interest on the Bonds is excluded from gross income for federal income tax purposes, such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, provided, however, that, for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings.

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

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

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

Tax Code contains certain provisions relating to the accrual of original issue discount in the case of purchasers of the Bonds who purchase the Bonds after the initial offering of a substantial amount of such maturity. Owners of such Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Bonds with original issue discount, including the treatment of purchasers who do not purchase in the original offering, the allowance of a deduction for any loss on a sale or other disposition, and the treatment of accrued original issue discount on such Bonds under federal individual and corporate alternative minimum taxes.

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

**California Tax Status.** In the further opinion of Bond Counsel, interest on the Bonds is exempt from California personal income taxes.

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

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

### **Continuing Disclosure**

The City will covenant for the benefit of owners of the Bonds to provide certain financial information and operating data relating to the City by not later than March 1 after the end of each fiscal year of the City (currently June 30<sup>th</sup>), commencing with the report for the 2012-13 fiscal year (the "**Annual Report**"), and to provide notices of the occurrence of certain enumerated events. The specific nature of the information to be contained in the Annual Report or the notices of material events is summarized in "APPENDIX D - FORM OF CONTINUING DISCLOSURE CERTIFICATE," attached to this Official Statement. These covenants have been made in order to assist the Underwriter (as defined below) in complying with Securities Exchange Commission Rule 15c2-12(b)(5) (the "**Rule**").

The City and its related governmental entities have previously entered into numerous disclosure undertakings under the Rule in connection with the issuance of long-term obligations (See "APPENDIX B – The City's Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2012." Notes to Financial Statements, Note 6"). To assist it in meeting its continuing disclosure obligations, the City has retained The Bank of New York Mellon Trust Company, N.A., as its trustee and dissemination agent (the "**Dissemination Agent**") for the

past five years. The Dissemination Agent, the City and the City's affiliated governmental entities have not, on a handful of occasions during the past five years, fully complied, in all material respects, with the City's disclosure undertakings.

Specifically, during the last five years:

(i) The audited financial statements and annual reports with respect to several series of the City's bonds (or series of bonds of the City's affiliated governmental entities), were submitted to the Dissemination Agent, but do not appear on the Electronic Municipal Market Access ("**EMMA**") evidencing proper filing with the MSRB (although references to the attempted filing of such financial statements and annual reports can be found there). Additionally, the Dissemination Agent failed to file the audited financial statements and the annual reports for several of series of the City's bonds on a timely basis and did not provide proper notice of delay.

(ii) The Dissemination Agent, the City and the City's affiliated governmental entities did not file material event notices regarding changes to the ratings of certain of the City's obligations as a result of changed underlying bond ratings and downgrades of the ratings of bond insurance companies that insured their bonds.

(iii) The City failed to file on a timely basis notice that certain bonds had been defeased and redeemed.

Supplemental annual reports, notices of the rating changes and filings to correct all of known filing errors made by the Dissemination Agent, the City and the City's affiliated governmental entities in their attempts to fully comply with the City's continuing disclosure undertakings will be made prior to issuance of the Notes.

In order to ensure future compliance with the City's continuing disclosure undertakings, the City and the City's affiliated governmental entities will continue to work with the Dissemination Agent and they may include in their audited financial statements all financial and operating data that is required to be included in their annual reports, with the goal of filing only one document for each obligation on an annual basis.

### **Absence of Material Litigation**

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

### **RATINGS**

Upon issuance of the Bonds, Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies, Inc. ("**S&P**") will assign the Bonds a rating of "\_\_\_" and Fitch, Inc. ("**Fitch**") will assign the Bonds a rating of "\_\_\_."

The City has furnished to S&P and Fitch information and material which has not been included in this Official Statement. Generally, rating agencies base their ratings on information

and material so furnished and on investigations, studies and assumptions made by the rating agencies. The ratings reflect only the view of such organization and an explanation of the significance of such rating may be obtained from S&P and Fitch.

There is no assurance that the ratings will continue for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agency, if, in the judgment of such rating agency, circumstances so warrant. Any such downward revision or withdrawal of such rating may have an adverse effect on the market price of the Bonds.

### **FINANCIAL ADVISOR**

NHA Advisors LLC, San Rafael, California (“**NHA Advisors**”) served as Financial Advisor to the City with respect to the sale of the Bonds. NHA Advisors assisted the City in matters relating to the planning, structuring, and sale of the Bonds and preparation of this Official Statement and will receive compensation contingent upon the sale and delivery of the Bonds. NHA Advisors provides financial advisory services and does not engage in the underwriting, marketing, or trading of municipal securities or other negotiable instruments.

### **UNDERWRITING**

**Purchase of the Bonds.** Under the terms of a competitive bid, \_\_\_\_\_ (the “**Underwriter**”) has agreed to purchase the Bonds at a price of \$\_\_\_\_\_ (which is equal to the aggregate principal amount of the Bonds (\$\_\_\_\_\_), plus a net original issue premium of \$\_\_\_\_\_, less an Underwriter’s discount of \$\_\_\_\_\_ and less \$\_\_\_\_\_ to be retained by the Underwriter and used to pay a portion of the costs of issuing the Bonds). The Underwriter will purchase all of the Bonds if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the “Official Notice of Sale,” including the approval of certain legal matters by counsel and certain other conditions.

**Offering of the Bonds.** The Underwriter intends to offer the Bonds to the public at the offering prices set forth on the inside cover page of this Official Statement. The Underwriter may offer and sell to certain dealers and others at a price lower than the offering prices stated on the inside cover page hereof. The offering price may be changed from time to time by the Underwriter.

**EXECUTION**

The execution of this Official Statement and its delivery have been approved by the City Council.

**CITY OF BERKELEY**

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

## APPENDIX A

### CERTAIN INFORMATION CONCERNING THE CITY OF BERKELEY

#### Introduction

The City of Berkeley, California (the “**City**”) is located in Alameda County (the “**County**”) on the east side of the San Francisco Bay, approximately 10 miles northeast of San Francisco. The City encompasses a total area of approximately 19 square miles and had an estimated January 1, 2013 population of 115,716, 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 approximately 12,700 full and part-time workers.

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

#### Population

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

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

<b>Year</b>	<b>City of Berkeley</b>	<b>County of Alameda</b>	<b>State of California</b>
2009	109,762	1,484,085	36,704,375
2010	110,982	1,497,799	36,966,713
2011	113,925	1,517,756	37,427,946
2012	114,688	1,530,176	37,668,804
2013	115,716	1,548,681	37,966,471

*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, whom 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, 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 Council also appoints the City Attorney. The 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.

<u>Member</u>	<u>District</u>	<u>Term Expires</u>
Tom Bates	Mayor	11/30/2016
Linda Maio	1	11/30/2014
Darryl Moore	2	11/30/2016
Maxwell Anderson	3	11/30/2016
Jesse Arreguin	4	11/30/2014
Laurie Capitelli	5	11/30/2016
Susan Wengraf	6	11/30/2016
Kriss Worthington	7	11/30/2014
Gordon Wozniak	8	11/30/2014

## **CITY FINANCIAL INFORMATION**

### **Accounting Policies and Financial Reporting**

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

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

The City, all its funds and the funds of certain other component entities of the City are audited annually by a certified public accounting firm. The firm of Badawi and Associates, Certified Public Accounts, Oakland, California, is the City's current auditor (the "**Auditor**"). The comprehensive annual financial report of the City for fiscal year 2011-12 is attached hereto as Appendix B. *The City's financial statements are public documents and are included within this Official Statement without the prior approval of the Auditor. Accordingly, the Auditor has not performed any post-audit of the financial condition of the City.*

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 four-year history of the City’s Comparative Balance Sheet, General Fund revenues, expenditures, transfers, and ending fund balances.

**CITY OF BERKELEY  
GENERAL FUND BALANCE SHEET  
(As of June 30)**

	<u>Actual 2008-09</u>	<u>Actual 2009-10</u>	<u>Actual 2010-11</u>	<u>Actual 2011-12</u>
<b>ASSETS:</b>				
Cash and investments in treasury*	\$62,156,359	\$56,902,860	\$28,430,832	\$80,421,748
Receivables (net of allowance where applicable):				
Accounts	3,085,498	7,539,275	6,964,852	8,221,054
Interest	2,013,751	1,353,780	1,320,269	816,560
Taxes	4,913,871	4,998,911	5,915,953	5,403,585
Due from other funds	7,155,244	9,314,083	9,165,640	6,777,054
Due from Components Units	247,077	201,829	218,555	179,629
Notes receivable	2,825,135	3,313,193	3,357,980	3,438,803
Other	124,769	490,900	1,517,817	487,519
Total assets	<u>82,521,705</u>	<u>84,114,831</u>	<u>56,891,898</u>	<u>105,745,951</u>
<b>LIABILITIES:</b>				
Accounts payable	2,089,909	1,749,133	1,851,560	2,951,049
Accrued salaries and wages	5,319,269	5,849,849	6,245,234	2,368,020
Deposits held	490,289	477,608	458,928	603,155
Deferred revenue	2,991,872	5,777,327	4,832,951	6,392,105
Other liabilities	1,638,942	1,973,192	1,853,149	5,362,762
Tax and revenue anticipation notes*	25,000,000	25,000,000	--	50,000,000
Total liabilities	<u>37,530,282</u>	<u>40,827,109</u>	<u>15,241,822</u>	<u>67,677,092</u>
<b>FUND BALANCES</b>				
Reserved for:				
Encumbrances/Assigned to	2,765,499	2,762,840	2,271,366	2,343,500
Due from and advances to other funds	7,155,244	--	--	--
Due from Component Units	247,077	--	--	--
Notes receivable/Nonspendable	2,825,135	3,313,193	3,357,980	3,438,803
Lawsuits	--	--	--	--
Shortfall for utility undergrounding	--	--	--	--
Unreserved/Unassigned, report in:				
General fund	31,998,467	37,211,689	36,020,731	32,286,557
Total fund balances	<u>44,991,423</u>	<u>43,287,722</u>	<u>41,650,076</u>	<u>38,068,859</u>
Total liabilities and fund balances	<u>\$82,521,705</u>	<u>\$84,114,831</u>	<u>\$56,891,898</u>	<u>\$105,745,951</u>

\* Balances for fiscal year 2010-11 are net of TRAN.  
Source: City of Berkeley, Comprehensive Annual Financial Reports

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

	Actual <u>2008-09</u>	Actual <u>2009-10</u>	Actual <u>2010-11</u>	Actual <u>2011-12</u>	Budgeted <u>2012-13</u>	Budgeted <u>2013-14</u>
<b>REVENUES:</b>						
Taxes	\$97,988	\$96,351	\$100,584	\$ 102,406	\$ 108,237	\$109,536
Licenses and Permits	343	742	464	682	519	519
Subvention and Grants/Intergovernmental	9,051	9,165	9,281	9,023	9,491	9,553
Service Fees	7,214	6,464	7,628	7,736	7,686	7,985
Fines and Forfeitures	10,553	10,805	10,135	9,496	8,696	8,896
Rents	113	127	122	116	119	119
Franchises	1,848	1,915	1,772	1,540	1,805	1,801
Interest	8,746	5,434	4,256	2,529	3,200	3,200
Indirect Cost Reimbursements	5,388	--	--	--	--	--
Other	1,053	1,160	883	15	932	400
<b>TOTAL REVENUES</b>	<u>142,296</u>	<u>132,162</u>	<u>135,126</u>	<u>133,893</u>	<u>140,685</u>	<u>142,009</u>
<b>EXPENDITURES:</b>						
General Government	31,563	26,743	27,108	27,234	34,098	32,541
Public Safety	74,982	76,814	80,465	81,385	81,709	83,200
Highways and Streets	2,204	1,728	1,665	2,119	1,623	1,501
Health and Human Services	10,291	6,870	6,630	6,364	6,860	6,754
Culture-Recreation	5,952	5,551	5,950	5,522	5,228	5,372
Community Development	3,661	6,952	6,475	6,487	6,641	6,765
Economic Development	2,200	2,199	1,737	1,889	2,040	1,939
Debt Service	1,033	1,150	258	185	252	200
Transfers Out/Other	--	--	--	--	--	--
<b>TOTAL EXPENDITURES</b>	<u>131,885</u>	<u>128,006</u>	<u>130,289</u>	<u>131,185</u>	<u>138,451</u>	<u>138,272</u>
Excess Revenues Over Expenditures	10,411	4,156	4,837	2,708	2,234	3,737
Transfers In(out)/Other	(13,238)	(5,913)	(6,477)	(6,289)	(2,559)	(3,636)
Fund Balance, July 1	48,303	44,991	43,288	41,650	38,069	37,744
Prior Period Adjustment	<u>(485)</u>	<u>53</u>	<u>--</u>	<u>--</u>	<u>--</u>	<u>--</u>
Net change in fund balances	(2,826)	(1,756)	(1,638)	(3,581)	(325)	101
<b>Fund Balance, June 30</b>	<u><u>\$ 44,991</u></u>	<u><u>\$ 43,288</u></u>	<u><u>\$ 41,650</u></u>	<u><u>\$ 38,069</u></u>	<u><u>\$ 37,744</u></u>	<u><u>\$ 37,845</u></u>

\* Totals may not add due to rounding.

Source: City of Berkeley Comprehensive Annual Financial Reports; City of Berkeley for Fiscal Years 2012-13 and 2013-14 Budgeted.

## **Budgetary Process and Administration**

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

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

See “SECURITY FOR AND SOURCES OF PAYMENT OF THE NOTES – The City’s Approach to Budgeting and Current Budget Status” in the body of this Official Statement.

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 and welfare, culture and recreation, community development, housing 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.

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

**General.** In recent years, the State of California has faced significant financial and budgetary stress, from which it has only begun to recover in fiscal year 2012-13, experiencing budget shortfalls in the billions of dollars each of the last several years. State revenues declined significantly as a result of recent economic conditions and other factors.

On June 27, 2013, Governor Edmun G. Brown Jr. approved the 2013-14 Budget Act, projecting \$97.1 billion in general fund revenues and adopting a \$96.3 billion spending plan, the first balanced budget in many years. Temporary revenues provided by the passage of Proposition 30 and spending cuts in the past two years mean that the State’s budget is projected to remain balanced for the foreseeable future. The 2013-14 State Budget maintains a \$1.1 billion reserve and pays down budgetary deficit, to be reduced from \$35 billion to \$27 billion in 2013-14 and to below \$5 billion by the end of 2016-17. The 2013-14 State Budget overhauls the State’s system of K-12 education finance. The 2013-14 State Budget adopts a

new allocation formula, known as the Local Control Funding Formula, which moves from a State-controlled system to a locally-controlled system.

The execution of the 2013-14 Budget Act may be affected by numerous factors, including but not limited to: (i) shifts of costs from the federal government to the State, (ii) national, State and international economic conditions, (ii) litigation risk associated with proposed spending reductions, (iii) rising health care costs and (iv) other factors, all or any of which could cause the revenue and spending projections made in the 2013-14 Budget Act to be unattainable. While the State is not a significant source of City revenues, and the City does not anticipate that the State's financial condition will materially adversely affect the financial condition of the City, there can be no assurances that any of the State's current financial pressures, the 2013-14 Budget Act, or future State budgets will not adversely affect the City. Additionally, the City cannot predict the accuracy of any projections made in the 2013-14 Budget Act. To the extent that the 2013-14 Budget Act or future State budget processes results in reduced revenues to the City, the City will be required to make adjustments to the General Fund budget. Decrease in State revenues may have an adverse impact on the City's ability to repay the Notes.

Information about the 2013-14 Budget Act and other State budgets is regularly available at various State-maintained websites. 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 is prepared by the respective State agency maintaining each website and not by the City, or the Underwriter, and the City and the Underwriter take no responsibility for the continued accuracy of the Internet addresses or for the accuracy or timeliness of information posted there, and such information is not incorporated herein by these references.

***Dissolution of Redevelopment Agencies.*** State legislation enacted as part of the 2011 Budget Act, and upheld by the California Supreme Court (as amended, the "**Dissolution Act**"), resulted in the formal dissolution of redevelopment agencies, including the Berkeley Redevelopment Agency (the "**Redevelopment Agency**"), effective as of February 1, 2012. The impact on the City's General Fund of the dissolution of the Redevelopment Agency is minimal because the City is in the process of winding down its redevelopment program, and the funding the City received from the Redevelopment Agency prior to its dissolution only supported 1.5 full-time employees.

### **Other General Fund Revenues**

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 or budgeted general fund revenues from fiscal year 2009-10 through fiscal year 2011-12 (actuals) and fiscal years 2012-13 and 2013-14 (budgeted).

**CITY OF BERKELEY  
GENERAL FUND REVENUES**

	Actual Revenue FY 2010	Actual Revenue FY 2011	Actual Revenue FY 2012	Budgeted Revenue FY 2013	Budgeted Revenue FY 2014
Real Property	\$37,400,654	\$37,638,086	\$38,820,291	\$40,552,591	\$41,180,566
Property Transfer Tax	7,987,670	9,126,631	9,573,812	9,000,000	10,000,000
Unsecured Property	2,350,521	2,341,601	2,447,266	2,441,601	2,447,266
Sales Tax	12,693,183	14,218,084	14,910,245	15,485,857	15,972,075
Business License	13,505,958	13,955,148	15,645,924	14,874,599	15,852,545
Hotel Tax	3,647,693	4,164,608	4,918,033	4,931,811	5,234,447
Utility Users Tax	14,412,076	14,396,426	14,231,620	14,716,885	15,011,223
Vehicle In-Lieu	8,545,142	8,819,730	8,477,452	8,908,853	9,009,210
Parking Fines	9,021,035	9,074,431	9,483,199	9,535,000	8,285,000
Moving Violations	333,629	289,864	228,447	300,000	230,000
Interest	5,388,379	5,447,352	4,761,231	4,000,000	3,200,000
Service Fees	<u>6,508,372</u>	<u>7,689,367</u>	<u>7,702,479</u>	<u>7,766,632</u>	<u>7,799,619</u>
SUB-TOTAL	\$121,794,312	\$127,161,328	\$131,199,999	\$132,513,829	\$134,221,951
Other Revenues	<u>17,890,526</u>	<u>17,252,780</u>	<u>16,625,242</u>	<u>16,694,737</u>	<u>16,578,599</u>
TOTAL	<u>\$139,684,838</u>	<u>\$144,438,108</u>	<u>\$147,825,241</u>	<u>\$149,208,566</u>	<u>\$150,800,550</u>

*Source: City of Berkeley FY 2013 Adopted Mid-Biennial Budget Update and FY 2014 Adopted Budget; City of Berkeley Finance Department*

**Sales and Use Tax.** The sales tax is an excise tax imposed on retailers for the privilege of selling or leasing tangible personal property. The use tax is an excise tax imposed for the storage, use, or other consumption of tangible personal property purchased from any retailer. The total sales tax rate within the City is currently 9.00%. 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 less 0.25% shifted to the State pursuant to a mechanism commonly known as “Triple Flip.” The 0.25% reduction in local sales tax is used to pay State economic recovery bonds, but cities and counties are then provided with *ad valorem* property tax revenues in lieu of these revenues. See “RISK FACTORS – Impact of State Sales and Use Tax Redirection.”

Collection of the sales and use tax is administered by the California State Board of Equalization. Under its procedures, the State Board of Equalization projects receipts of the sales and use tax on a quarterly basis and remits an advance of the receipts of the sales and use tax to the City on a monthly basis. The amount of each monthly advance is based upon the State Board of Equalization’s quarterly projection. During the last month of each quarter, the State Board of Equalization adjusts the amount remitted to reflect the actual receipts of the sales and use tax for the previous quarter. The Board of Equalization 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.

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. In fiscal year 2011-12, revenues from sales and use taxes increased by 4.9% from fiscal year 2010-11.

In 2009, the State Board of Equalization converted the business codes of sales and use tax permit holders to North American Industry Classification System codes. As a result of the coding change, retail stores data for 2009 is not comparable to that of prior years. A summary of historic taxable sales within the City during the past five calendar years is shown in the following table.

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

	2007	2008	2009 <sup>(1)</sup>	2010 <sup>(1)</sup>	2011 <sup>(1)</sup>
Retail and Food Services:					
Apparel Stores	\$57,539	\$56,735	\$54,648	\$54,930	\$58,189
Gen. Merchandise Stores	61,427	56,729	9,020	9,119	9,796
Food Stores	63,256	63,315	82,004	89,959	99,355
Eating and Drinking Places	230,566	236,391	226,592	233,765	247,864
Home Furnishings and Appliances	67,632	54,595	61,908	64,135	60,559
Bldg. Materials, Farm Implements	87,127	82,177	80,987	80,430	79,168
Auto Dealers, Auto Supplies	122,122	109,791	105,991	112,777	111,874
Gas/Service Stations	79,962	86,391	69,433	81,167	96,585
Other Retail Stores	<u>272,605</u>	<u>269,252</u>	<u>258,281</u>	<u>243,838</u>	<u>252,917</u>
Total Retail and Food Services	\$1,042,236	\$1,015,377	\$948,865	\$970,121	\$1,016,307
All Other Outlets	<u>310,560</u>	<u>324,421</u>	<u>281,337</u>	<u>299,939</u>	<u>306,720</u>
<b>TOTAL ALL OUTLETS</b>	<u>\$1,352,796</u>	<u>\$1,339,797</u>	<u>\$1,230,203</u>	<u>\$1,270,060</u>	<u>\$1,323,027</u>

(1) Retail Stores data not comparable to years prior to 2009.

Source: State Board of Equalization

**Utility Users Tax.** The City imposes a 7.5% tax on users of gas, electricity, telephone and water, 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. Telecommunications and cable generated approximately 40% of this revenue in fiscal year 2011-12, with revenue from gas and electricity usage generating approximately 60%. Electricity and gas rates are expected to be higher, but reductions in usage should partially offset the effect of the rate increases. In fiscal year 2011-12, revenues from utility users taxes decreased by 1.1% from fiscal year 2010-11.

**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 \$25.00 per \$1,000 gross receipts for cannabis clubs 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. In fiscal year 2011-12, revenues from the business license tax increased by 12.1% from fiscal year 2010-11.

**Property Transfer Tax.** The City collects a 1.5% tax on the value of any documented sale or transfer of real property within the City. The tax is due when the transfer is recorded with the County. Title companies collect the tax as part of the sale closing process and remit the funds to the County when sales or transfers are finalized. The County remits the amounts due

monthly, and the amounts are credited to the general fund. A buyer of residential housing built before 1989 may voluntarily choose to reserve up to one-third of the transfer tax to perform seismic upgrades. Buyers typically have up to one year to complete the work and file for a rebate. Previously the title companies held the reserved amount in escrow until the work was completed, but since May 2007, the City has held the money in escrow accounts, with the interest going to the City. In fiscal year 2011-12, revenues from property transfer taxes increased by 4.9% from fiscal year 2010-11.

**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. In fiscal year 2011-12, revenues from parking fines increased by 4.5% from fiscal year 2010-11.

**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.

In fiscal year 2011-12, the VLF revenues decreased by 3.9% from fiscal year 2010-11.

**Other Revenues.** The City also collects additional general fund revenues from franchise fees, transient occupancy taxes, ambulance fees, and other more minor sources. Under the City’s cable and electric and gas franchise fee arrangements, the local cable provider pays an annual franchise fee of 5% of gross revenues, and the electricity and gas providers pay the greater of 2% of gross receipts attributable to miles of line operated or 0.5% of gross receipts. The transient occupancy tax, also known as the hotel tax, is a 12% tax on the room charge for

rental of transient lodging; it is paid by the hotel guest. The City also has an agreement with the County to be the exclusive provider of all emergency ground ambulance services within the City; the specific ambulance fee depends on the type of service delivered and is billed to clients or their insurance companies. Finally, other more minor revenue sources include payments for moving violations, interest on existing funds, and other service fees.

## **Retirement Programs**

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

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

***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 required employer contribution rate for fiscal year 2011-12 was 19.047%, 28.602%, and 40.379% for Miscellaneous Plan, Safety Fire Plan and Safety Police Plan employees annual covered payroll, respectively; the rates for fiscal year 2012-13 are 19.180%, 29.109%, and 42.017%, respectively; for fiscal year 2013-14, the rates are 20.147%, 30.264% and 44.324%, respectively. The contribution requirements of the plan members are established by State statute, and the employer contribution rates are established and may be amended by PERS.

For a more detailed discussion of the eligibility requirements for the City's retirement plans, see Appendix B, Note IV(D) for detailed information about the actuarial assumptions underlying the contributions.

A three-year history of the City's contributions is set forth below:

<u>Fiscal Year Ended</u>	<u>Annual Pension Cost (APC)</u>	<u>Percentage of APC Contributed</u>	<u>Net Pension Obligation</u>
<b>Miscellaneous Plan</b>			
6/30/2010	\$14,444,453	100%	N/A
6/30/2011	14,437,926	100	N/A
6/30/2012	15,713,788	100	N/A
<b>Public Safety - Fire Plan</b>			
6/30/2010	3,598,119	100	N/A
6/30/2011	3,839,076	100	N/A
6/30/2012	4,394,363	100	N/A
<b>Public Safety - Fire Plan</b>			
6/30/2010	7,756,713	100	N/A
6/30/2011	7,829,710	100	N/A
6/30/2012	8,708,429	100	N/A

**PERS Plans Funding Status.** A three-year history of the funded status of the pension plans is set forth below:

<u>Actuarial Valuation Date</u>	<u>Actuarial Asset Value</u>	<u>Actuarial Accrued Liability-Entry Age</u>	<u>Unfunded Actuarial Accrued Liability-UAAL</u>	<u>Funded Ratio</u>	<u>Covered Payroll</u>	<u>UAAL as Percentage of covered Payroll</u>
<b>CalPERS – Miscellaneous Plan</b>						
6/30/2009	\$520,135,684	\$627,609,326	\$107,473,642	82.90%	\$90,422,589	118.9%
6/30/2010	548,374,504	662,163,240	113,788,736	82.80	91,164,520	124.8
6/30/2011	580,466,135	709,344,488	128,878,353	81.80	50,006,928	143.2
<b>CalPERS - Public Safety Fire Plan</b>						
6/30/2009	\$164,903,251	\$189,798,794	\$24,895,543	86.9	\$14,874,302	167.4
6/30/2010	170,108,400	196,510,989	26,402,589	86.6	15,397,099	171.5
6/30/2011	177,340,403	208,285,054	30,944,651	85.1	15,867,897	195.0
<b>CalPERS - Public Safety Police Plan</b>						
6/30/2009	\$197,576,597	\$270,317,116	\$72,740,519	73.1	\$20,898,773	348.1
6/30/2010	205,865,230	286,191,617	80,326,387	71.9	21,640,256	371.2
6/30/2011	214,461,825	304,386,154	89,924,329	70.5	21,513,222	418.0

As of June 30, 2011, the market value of the assets in the plans was:

Miscellaneous Plan: \$518,786,616 (73.1% funded ratio)

Safety Fire Plan: \$157,791,475 (75.8% funded ratio)

Safety Police Plan: \$192,049,367 (63.1% funded ratio)

For a more detailed discussion of the City's PERS retirement plans, see Appendix B, Note IV(D).

**Recent Actions by PERS.** On March 14, 2012, the PERS Board voted to reduce its discount rate, which rate is attributable to its expected price inflation and investment rate of return (net of administrative expenses), from 7.75% to 7.5%. As a result of such discount rate decrease, among other things, (i) the amounts of PERS member state and schools employer contributions will increase by 1.2 to 1.6% for Miscellaneous plans and 2.2 to 2.4% for Safety plans beginning fiscal year 2012-13 and (ii) the amounts of PERS member public agency contributions will increase by 1 to 2% for Miscellaneous plans and 2 to 3% for Safety plans beginning fiscal year 2013-14. More information about the PERS discount rate adjustment can be accessed through PERS's web site at [www.calpers.ca.gov/index.jsp?bc=/about/press/pr-2012/mar/discount-rate.xml](http://www.calpers.ca.gov/index.jsp?bc=/about/press/pr-2012/mar/discount-rate.xml). *The reference to this internet website is shown for reference and convenience only, the information contained within the website may not be current and has not been reviewed by the City and is not incorporated herein by reference.*

The PERS Board adjustment has been undertaken in order to address underfunding of the PERS funds, which arose from significant losses incurred as a result of the economic crisis arising in 2008 and persists due to a slower than anticipated, subsequent economic recovery. The City is unable to predict what the amount of PERS liabilities will be in the future, or the amount of the PERS contributions which the City may be required to make.

At its April 17, 2013 meeting, the PERS Board of Administration approved a recommendation to change the PERS amortization and smoothing policies. Prior to this change, PERS employed an amortization and smoothing policy which spread investment returns over a 15-year period with experience gains and losses paid for over a rolling 30-year period. After this change, PERS will employ an amortization and smoothing policy that will pay for all gains and losses over a fixed 30-year period with the increases or decreases in the rate spread directly over a 5-year period.

The new amortization and smoothing policy will be used for the first time in the June 30, 2013 actuarial valuations. These valuations will be performed in the fall of 2014 and will set employer contribution rates for the fiscal year 2015-16. The City cannot predict how this change in amortization and smoothing policies will affect its contribution levels.

According to PERS, the current amortization and smoothing policy was designed to reduce volatility in employer contribution rates, and, although the policy accomplished this goal fairly well since its adoption, a number of concerns have developed:

- The use of an actuarial value of assets corridor can lead to significant single year increases to rates in years when there are large investment losses.
- The use of long asset smoothing periods and long rolling amortization periods result in slow progress toward full funding.
- The use of an actuarial value of assets requires the disclosure of two different funded statuses and unfunded liability numbers in actuarial valuation reports. This adds confusion and inhibits transparency.
- The use of rolling amortization and long asset smoothing periods makes it difficult for employers to predict when contribution rates will peak and how high that peak will be.
- The use of rolling amortization and asset smoothing periods may result in additional calculations for the new accounting standards. These calculations would be avoided with a quicker funded status recovery.

According to PERS, the adoption of the new smoothing and amortization policies will change future employer contribution rates, as follows:

- Funding levels will improve, which will reduce the funding level risk.
- Local agencies' plans will experience more rate volatility in normal years, but a much reduced chance of very large rate increases in years when there are large investment losses.
- Contribution rates in the near term will increase.
- Long-term contribution rates will be lower.
- There will be greater transparency about the timing and impact of future employer contribution rate changes.
- The new policy eliminates the need for an actuarial value of assets. As a result, there will be only one funded status and unfunded liability in actuarial reports.
- There will be less confusion when the new accounting standards are implemented since there will be no need for extra liability calculations.

**Pension Reform Act of 2013 (Assembly Bill 340).** On September 12, 2012, Governor Brown signed AB 340, a bill that will enact the California Public Employees' Pension Reform Act of 2013 ("PEPRA") and that will also amend various sections of the California Education and Government Codes, including the County Employees Retirement Law of 1937. AB 340 (i) increases the retirement age for new State, school, and city and local agency employees depending on job function, (ii) caps the annual PERS pension benefit payout, (iii) addresses numerous abuses of the system, and (iv) requires State, school, and certain city and local agency employees to pay at least half of the costs of their PERS pension benefits. PEPRA will apply to all public employers *except* the University of California, charter cities and charter counties (except to the extent they contract with PERS).

The provisions of AB 340 went into effect on January 1, 2013 with respect to State employees hired on that date and after; local government employee associations, including employee associations of the City, will have a five-year window to negotiate compliance with AB 340 through collective bargaining. If no deal is reached by January 1, 2018, a city, public agency or school district could force employees to pay their half of the costs of PERS pension benefits, up to 8 percent of pay for civil workers and 11 percent or 12 percent for public safety workers.

PERS predicts that the impact of AB 340 on employers, including the City, and employees will vary, based on each employer's current level of benefits. To the extent that the new formulas lower retirement benefits, employer contribution rates could decrease over time as current employees retire and employees subject to the new formulas make up a larger percentage of the workforce. This change would, in some circumstances, result in a lower retirement benefit for employees than they currently earn. Additionally, PERS notes that changes arising from AB 340 could ultimately have an adverse impact on public sector recruitment in areas that have historically experienced recruitment challenges due to higher pay for similar jobs in the private sector.

More information about AB 340 can be accessed through PERS's website at [www.calpers.ca.gov/index.jsp?bc=/member/retirement/pension-reform-impacts.xml&pst=ACT&pca=ST](http://www.calpers.ca.gov/index.jsp?bc=/member/retirement/pension-reform-impacts.xml&pst=ACT&pca=ST). *The reference to this internet website is shown for reference and convenience only; the information contained within the website may not be current and has not been reviewed by the City and is not incorporated in this Official Statement by reference.*

**Berkeley Police Retirement Income Benefit Plan.** Up 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. Employees hired after December 22, 2012 are not eligible to participate in BPRIBP.

A three-year history of the City’s contributions is set forth below:

<b>Fiscal Year Ended</b>	<b>Annual Required Contribution</b>	<b>Percentage Contributed</b>
6/30/2010	\$2,756,206	42.8%
6/30/2011	4,760,824	24.8
6/30/2012	4,176,504	28.9

A three-year history of the funded status of the BPRIP is set forth below:

<b>Actuarial Valuation Date</b>	<b>Actuarial Asset Value</b>	<b>Actuarial Accrued Liability-Entry Age</b>	<b>Unfunded Actuarial Accrued Liability-UAAL</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as Percentage of covered Payroll</b>
<b>Berkeley Police Retirement Income Benefit Plan</b>						
7/1/2008	\$4,734,673	\$37,241,858	\$32,507,185	12.7	\$21,898,343	148.4
7/1/2010	5,928,724	61,483,076	55,554,352	9.64	19,703,000	282.0
7/1/2012	6,246,804	58,708,200	52,461,396	10.64	19,760,000	265.5

The actuarial value of the assets in the BPRIBP as of July 1, 2012 was equal to their market value.

For a more detailed discussion of the BPRIP, see Appendix B, Note IV(D).

**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 BPRIBP/PORAC for fiscal year ending June 30, 2013, is estimated to be \$1,208,429.

**Safety Member Pension Fund.** In addition, the City maintains the Safety Member 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, 2012, the City’s annual required contribution was \$1,338,800, of which \$596,000 was paid through the Funding Agreement and \$742,800 was paid from the City’s general fund. The City’s contribution to SMPF for fiscal year ending June 30, 2013, is estimated to be \$1,180,039.

A three-year history of the City’s contributions to the SMPF is set forth below:

<b>Fiscal Year Ended</b>	<b>Annual Pension Cost (APC)</b>	<b>Percentage of APC Contributed</b>	<b>Net Pension Obligation</b>
6/30/2010	\$1,666,559	100%	N/A
6/30/2011	1,554,836	100	N/A
6/30/2012	1,338,800	100	N/A

A three-year history of the funded status of the SMPF is set forth below:

<b>Actuarial Valuation Date</b>	<b>Actuarial Asset Value</b>	<b>Actuarial Accrued Liability-Entry Age</b>	<b>Unfunded Actuarial Accrued Liability-UAAL</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as Percentage of covered Payroll</b>
<b>Berkeley Safety Members Pension Fund</b>						
7/1/2009	\$3,042,685	\$7,611,896	\$4,569,211	40.0%	N/A	N/A
7/1/2010	2,630,205	6,895,254	4,265,049	38.1	N/A	N/A
7/1/2011	2,251,156	5,912,070	3,660,914	38.1	N/A	N/A

The actuarial value of the assets in the SMPF as of July 1, 2011 was equal to their market value.

For a more detailed discussion of the SMPF, see Appendix B, Note IV(D).

### **Post-Employment Health Benefits**

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

The City has adopted Government Accounting Standards Board Statement 45 which requires governmental agencies to change their accounting for Other Post-Employment Benefits (“**OPEB**”) from pay-as-you-go to an accrual basis.

See Appendix B, Note IV(E) for information about the City's OPEB liabilities.

**City of Berkeley Fire Employees Retiree Health Plan.** The FRFH is a single-employer defined benefit medical plan. To be eligible for benefits, sworn Fire employees must retire from the City on or after July 1, 1997, be vested in a PERS pension, and retire from the City on or after age 50. Benefits commence immediately upon retirement. Benefits are payable for the retiree's lifetime and continue for his or her covered spouse's/domestic partner's lifetime. The amount the City contributes toward the Fire Employees Retiree Health Plan is 4.5% per year regardless of the amount of increase in the underlying premium rate. The establishment and amendments of benefit provisions are negotiated between the employee bargaining units and the City Labor Negotiating Team, and are approved by the City Manager and City Council. As of July 1, 2012, there were 115 active employees, 62 retirees receiving benefits and zero terminated employees entitled to receive benefits in the future.

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 2011-12 and the two preceding years were as follows:

Fiscal Year Ended	Annual Required Contribution	Percentage of ARC Contributed
6/30/2010	\$695,572	104.0%
6/30/2011	739,507	97.7
6/30/2012	758,408	96.9

A three-year history of the funded status of the FRFH is set forth below:

Actuarial Valuation Date	Actuarial Value of Assets	Actuarial Accrued Liability (AAL)-Unit Credit	Unfunded Actuarial Accrued Liability-UAAL	Funded Ratio	Covered Payroll	UAAL as Percentage of covered Payroll
<b>Berkeley Fire Employees Retiree Health Plan (FRHF)</b>						
7/1/2008	\$3,455,055	\$9,340,812	\$5,885,757	37.0%	\$15,107,000	39.0%
7/1/2010	5,030,505	11,027,941	5,997,436	45.6	13,593,000	44.1
7/1/2012	6,348,008	12,017,316	5,669,308	52.8	12,828,000	44.2

The actuarial value of the assets in the FRFH as of July 1, 2012 was equal to their market value.

**City of Berkeley Miscellaneous Employees Retiree Health 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 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 July 1, 2012, there were 1,068 active employees, 261 terminated participants and 224 retirees.

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 2011-12 and the two preceding years were as follows:

<b>Fiscal Year Ended</b>	<b>Annual Required Contribution</b>	<b>Percentage of ARC Contributed</b>
6/30/2010	\$2,196,134	93.2%
6/30/2011	2,484,401	80.2
6/30/2012	2,484,401	82.0

A three-year history of the funded status of the RHPAP is set forth below:

<b>Actuarial Valuation Date</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Liability (AAL)-Unit Credit</b>	<b>Unfunded Actuarial Liability-UAAL</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as Percentage of covered Payroll</b>
<b>Berkeley Miscellaneous Employees Retiree Health Plan (RHPAP)</b>						
7/1/2008	\$5,450,647	\$22,133,755	\$16,683,108	24.6%	\$89,867,000	18.6%
7/1/2010	9,235,065	27,081,758	17,846,693	34.1	90,790,000	19.7
7/1/2012	12,655,994	36,543,741	23,887,747	34.6	91,227,000	26.2

The actuarial value of the assets in the RHPAP as of July 1, 2012 was equal to their market value.

### Defined Contribution Plans

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

## Labor Relations

As of May 1, 2013, the City employed approximately 1,285 full-time equivalent budgeted employees. There are six employee unions as shown below. In addition, the City employs approximately 109 unrepresented 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 <sup>(1)</sup>	114	June 23, 2012
Berkeley Police Association	167	July 5, 2014
I. B. E. W. Local 1245	15	June 20, 2015
Service Employees International Local 1021 Maintenance and Clerical Chapters <sup>(1)</sup>	434	July 4, 2015
Service Employees International Local 1021 Community Services and Part-Time Recreation Leaders Association Chapters <sup>(1)</sup>	307	June 23, 2012
Public Employees Local 1 <sup>(1)</sup>	139	June 23, 2012
Unrepresented Employees	109	None

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(1) The City is currently in bargaining with representatives of the Berkeley Fire Fighters Association, Local 1227; Service Employees International Union Local 1021 Maintenance and Clerical Chapters; and Service Employees International Union Local 1021 Community Services Unit and Part-Time Recreation Leaders Association Chapters for renegotiation of the labor agreements. At this time, the City does not anticipate the results of such renegotiation to cause a material fiscal impact upon the City's General Fund.

Source: City of Berkeley

## Risk Management

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

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

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

The City expects to pay approximately \$4.8 million, covering all workers' compensation claims for all years, for the fiscal year ending June 30, 2013.

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 insure that injured employees receive proper care.

## **City Debt Structure**

**Short-Term Debt.** The City has issued Tax and Revenue Anticipation Notes ("TRANS") in each recent year. The City's TRANS are a general obligation of the City, payable from the City's general fund and any other lawfully available moneys. For fiscal year 2012-13, the City issued TRANS in the amount of \$25,000,000. The TRANS mature on July 11, 2013.

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

In June 2010, the Authority issued certificates of participation on behalf of the City in the aggregate principal amount of \$5,750,000. The City's underlying rental obligation is a general obligation payable from any available funds of the City. The certificates bear interest at rates between 3.00%-5.75% and the final maturity date is August 1, 2040. As of May 31, 2013, the principal balance outstanding was \$5,650,000.

**Lease Revenue Bonds.** In October 2012, the Authority issued lease revenue bonds on behalf of the City in the aggregate principal amount of \$27,260,000 to refund the Authority's 1999 Lease Revenue Bonds and 2003 Certificates of Participation. The City's underlying rental obligation is a general fund obligation of the City. The bonds bear interest at rates between 2.00%-5.00% and the final maturity date is October 1, 2031. As of May 31, 2013, the principal balance outstanding was \$27,260,000.

**Pension Obligation Bonds.** In May 1998, the City issued pension obligation refunding bonds in the aggregate principal amount of \$12,415,000 to refund the City's certificates of participation issued in February 1989. The certificates were sold to satisfy a portion of the City's obligations under an ordinance adopted to provide payments to the Safety Members Pension Fund. The bonds bear interest at rates between 3.80%-5.00% and the final maturity date is June 1, 2018. As of May 31, 2013, the principal balance outstanding was \$1,865,000. The obligation to repay the bonds is a general fund obligation of the City.

## Employment

The unemployment rate in the Oakland-Fremont-Hayward MD was 7.8 percent in March 2013, up from a revised 8.1 percent in February 2013, but below the year-ago estimate of 9.5 percent. This compares with an unadjusted unemployment rate of 9.4 percent for California and 7.6 percent for the nation in during the same period. The unemployment rate was 7.7 percent in Alameda County and 7.8 percent in Contra Costa County. The table below shows the civilian labor force and industry employment for Alameda County.

### ALAMEDA COUNTY Civilian Labor Force, Employment and Unemployment; Employment by Industry (Annual Averages)

	2008	2009	2010	2011	2012
Civilian Labor Force <sup>(1)</sup>	757,600	761,000	762,000	765,300	775,900
Employment	710,900	681,200	676,000	686,100	705,900
Unemployment	46,700	79,800	85,900	79,200	70,000
Unemployment Rate	6.2%	10.5%	11.3%	10.4%	9.0%
<u>Wage and Salary Employment:</u> <sup>(2)</sup>					
Agriculture	700	700	700	600	N/A
Goods Producing	112,600	97,700	91,800	91,700	N/A
Wholesale Trade	38,900	35,900	34,200	34,100	N/A
Retail Trade	65,800	60,900	59,900	60,000	N/A
Transportation, Warehousing, Utilities	27,100	24,900	23,500	23,600	N/A
Information	16,100	14,900	14,000	13,700	N/A
Finance and Insurance	20,500	13,100	13,800	14,100	N/A
Real Estate and Rental and Leasing	10,100	9,300	9,000	8,700	N/A
Professional and Business Services	112,900	102,800	107,500	108,800	N/A
Educational and Health Services	83,000	89,500	88,700	88,300	N/A
Leisure and Hospitality	56,300	53,900	54,500	55,100	N/A
Other Services	23,700	22,900	23,200	23,500	N/A
Federal Government	10,400	10,200	10,500	9,700	N/A
State Government	38,000	37,900	36,900	37,200	N/A
Local Government	76,200	73,200	68,700	67,800	N/A
Total, All Industries <sup>(3)</sup>	692,300	647,700	636,900	636,700	N/A

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

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

(3) Totals may not add due to rounding.

Source: State of California Employment Development Department.

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

**CITY OF BERKELEY  
Major Employers  
2012**

<b><u>Employer</u></b>	<b><u>Number of Employees</u></b>	<b><u>% of Total Employment</u></b>
University of California Berkeley	12,665	19.77%
Lawrence Berkeley National Laboratory	4,200	5.98
Alta Bates Medical Center	2,665	3.80
City of Berkeley	1,486	2.12
Bayer Corporation	1,300	1.85
Berkeley Unified School District	1,166	1.66
Kaiser Permanente Medical Group	668	0.95
Pacific Steel Casting Company	470	0.67
Berkeley Bowl	442	0.63
Berkeley YMCA	371	0.53

*Source: City of Berkeley, Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2012.*

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**COUNTY OF ALAMEDA  
Major Employers (Listed Alphabetically)  
2013**

<b>Employer Name</b>	<b>Location</b>	<b>Industry</b>
Alameda County Law Enforcement	Oakland	Sheriff
Alameda County Sheriff's Ofc	Oakland	Sheriff
Alta Bates Summit Medical Ctr	Oakland	Hospitals
Bayer Corp	Berkeley	Drug Millers (Mfrs)
Berkeley Coin & Stamp	Berkeley	Coin Dealers Supplies & Etc.
California State-East Bay	Hayward	Schools-Universities & Colleges Academic
Childrens Hospital Health Lbry	Oakland	Special Interest Libraries
Clorox Co	Oakland	Specialty Cng Plshng/Sanitation (Mfrs)
Clorox Co	Pleasanton	Specialty Cng Plshng/Sanitation (Mfrs)
Cooper Vision Inc	Pleasanton	Physicians & Surgeons Equip & Supls-Mfrs
East Bay Water	Oakland	Transit Lines
Highland Hospital	Oakland	Physicians & Surgeons
Kaiser Permanente Hospital	Hayward	Hospitals
Kaiser Permanente Medical Ctr	Oakland	Hospitals
Lawrence Berkeley National Lab	Berkeley	Physicians & Surgeons
Lawrence Livermore Natl Lab	Livermore	Alternative Fuels
Residential & Student Svc Prog	Berkeley	Schools-Universities & Colleges Academic
Safeway Inc	Pleasanton	Grocers-Retail
Tesla Motors	Fremont	Automobile Dealers-Used Cars
Transportation Dept-California	Oakland	State Government-Transportation Programs
University of CA-Berkeley	Berkeley	Schools-Universities & Colleges Academic
University-CA Dept Edu Otrch	Oakland	Schools-Universities & Colleges Academic
Washington Hospital	Fremont	Hospitals
Waste Management Inc	Oakland	Alternative Fuels

*Source: State of California Employment Development Department, extracted from The America's Labor Market Information System (ALMIS) Employer Database, 2013 2<sup>nd</sup> Edition.*

**Effective Buying Income**

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

The following table summarizes the total effective buying income for the City of Berkeley, the County of Alameda, the State and the United States for the period 2008 through 2012. Data for 2013 is not yet available.

**CITY OF BERKELEY AND COUNTY OF ALAMEDA  
Effective Buying Income  
As of January 1, 2008 through 2012**

Year	Area	Total Effective Buying Income (000's Omitted)	Median Household Effective Buying Income
2008	Berkeley	\$ 3,033,685	\$45,264
	Alameda County	38,889,500	55,987
	California	832,531,445	48,952
	United States	6,443,994,426	42,303
2009	Berkeley	\$ 3,058,515	\$46,114
	Alameda County	40,053,865	57,997
	California	844,823,319	49,736
	United States	6,571,536,768	43,252
2010	Berkeley	\$ 2,996,260	\$44,932
	Alameda County	38,097,873	54,732
	California	801,393,028	47,177
	United States	6,365,020,076	41,368
2011	Berkeley	\$ 3,060,805	\$43,939
	Alameda County	39,064,683	54,542
	California	814,578,458	47,062
	United States	6,438,704,664	41,253
2012	Berkeley	\$ 3,581,245	\$46,898
	Alameda County	43,677,855	55,396
	California	864,088,828	47,307
	United States	6,737,867,730	41,358

*Source: The Nielsen Company (US), Inc.*

## Construction Activity

Provided below are the building permits and valuations for the City of Berkeley for calendar years 2007 through 2011.

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

	2007	2008	2009	2010	2011
<u>Permit Valuation</u>					
New Single-family	\$4,101.2	\$4,202.6	\$1,267.6	\$1,133.0	\$1,150.3
New Multi-family	21,849.9	42,613.6	27,787.3	2,337.0	4,500.0
Res. Alterations/Additions	<u>45,385.8</u>	<u>40,840.1</u>	<u>32,856.7</u>	<u>38,019.5</u>	<u>33,936.8</u>
Total Residential	\$71,336.9	\$87,656.3	\$61,911.6	\$41,489.5	\$39,587.1
New Commercial	11,620.0	22,586.9	2,996.6	0.0	693.5
New Industrial	1,125.0	0.0	1,200.0	0.0	0.0
New Other	2,166.4	2,163.1	3,373.0	2,478.4	65.0
Com. Alterations/Additions	<u>20,298.1</u>	<u>25,713.4</u>	<u>18,740.3</u>	<u>34,104.3</u>	<u>43,056.9</u>
Total Nonresidential	\$35,209.5	\$50,463.4	\$26,310.0	\$36,582.8	\$43,815.4
<u>New Dwelling Units</u>					
Single Family	13	15	4	2	4
Multiple Family	<u>156</u>	<u>394</u>	<u>174</u>	<u>16</u>	<u>38</u>
TOTAL	169	409	178	18	42

*Source: Construction Industry Research Board, Building Permit Summary.*

**APPENDIX B**

**FISCAL YEAR 2011-12 BASIC FINANCIAL STATEMENTS AND SUPPLEMENTAL DATA**

## APPENDIX C

### PROPOSED FORM OF OPINION OF BOND COUNSEL

\_\_\_\_\_, 2013

City Council  
City of Berkeley  
7351 Rosanna Street  
Gilroy, California 95020

**OPINION:**     \$\_\_\_\_\_ City of Berkeley  
                  2013 General Obligation Bonds  
                  (Street and Integrated Watershed Improvements)

Members of the City Council:

We have acted as bond counsel in connection with the issuance by the City of Berkeley (the "City") of its City of Berkeley 2013 General Obligation Bonds (Street and Integrated Watershed Improvements) issued in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"). The Bonds have been issued by the City under the Constitution and laws of the State of California and a resolution adopted by the City Council of the City on \_\_\_\_\_, 2013 (the "Resolution"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion.

As to questions of fact material to our opinion, we have relied upon representations of the City contained in the Resolution and in the certified proceedings and certifications of public officials and others furnished to us, without undertaking to verify the same by independent investigation.

Based upon the foregoing, we are of the opinion, under existing law, as follows:

1. The City is duly organized and validly existing as a charter city and municipal corporation under the Constitution and laws of the State of California, with the power to adopt the Resolution, perform the agreements on its part contained therein and issue the Bonds.
2. The Bonds are valid and binding general obligations of the City.
3. The City has the power, is obligated and in the Resolution has covenanted to levy ad valorem taxes upon all property within the City which is subject to taxation by the City, without limitation of rate or amount, for the payment of the Bonds and the interest thereon.
4. Interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose

of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining certain income and earnings. The opinion set forth in the preceding sentence is subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986 which must be satisfied subsequent to the issuance of the Bonds in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The City has covenanted in the Resolution and in other instruments relating to the Bonds to comply with each of such requirements; and the City has full legal authority to make and comply with such covenants. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bonds in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

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

The rights of the owners of the Bonds and the enforceability of the Bonds 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 appropriate cases.

Respectfully submitted,

A Professional Law Corporation

## APPENDIX D

### FORM OF CONTINUING DISCLOSURE CERTIFICATE

This Continuing Disclosure Certificate (this "Disclosure Certificate") is executed and delivered by the City of Berkeley (the "City") in connection with the issuance of the bonds captioned above (the "Bonds"). The Bonds are being issued under a resolution adopted by the City Council of the City on \_\_\_\_\_, 2013 (the "Bond Resolution").

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 for the benefit of the holders and beneficial owners of the Bonds and in order to assist the Participating Underwriter in complying with S.E.C. Rule 15c2-12(b)(5).

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

*"Annual Report"* means any Annual Report provided by the City pursuant to, and as described in, Sections 3 and 4.

*"Annual Report Date"* means the date not later than March 1 after the end of each fiscal year of the City (currently June 30<sup>th</sup>).

*"Dissemination Agent"* means the City or any other Dissemination Agent designated in writing by the City and which has filed with the City a written acceptance of such designation. As of the date of this Disclosure Certificate, the City is acting as Dissemination Agent.

*"Listed Events"* means any of the events listed in Section 5(a).

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

*"Official Statement"* means the final official statement executed by the City in connection with the issuance of the Bonds.

*"Participating Underwriter"* means any of the original underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

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

**Section 3. Provision of Annual Reports.**

(a) The City shall, or shall cause the Dissemination Agent to, not later than the Annual Report Date, commencing April 1, 2014 with the report for the 2012-13 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 attached as Exhibit A.

(c) With respect to each Annual Report, the Dissemination Agent shall:

- (i) determine each year prior to the Annual Report Date the then-applicable rules and electronic format prescribed by the MSRB for the filing of annual continuing disclosure reports; and
- (ii) if the Dissemination Agent is other than the City, file a report with the City certifying that the Annual Report has been provided pursuant to this Disclosure Certificate, and stating the date it was provided.

**Section 4. Content of Annual Reports.** The City's Annual Report shall contain or incorporate by reference the following:

(a) The City's audited financial statements prepared in accordance with generally accepted accounting principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the City's audited financial statements are not available by the Annual Report Date, the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available.

(b) Unless otherwise provided in the audited financial statements filed on or before the Annual Report Date, financial information and operating data with respect to the City for the preceding fiscal year, substantially similar to that provided in the Official Statement:

- (i) Assessed value of taxable property within the jurisdiction of the City;
- (ii) Summary of property tax rates for all taxing entities within the City expressed as a percentage of assessed valuation in the form of Table 4 of the Official Statement;

- (iii) Top ten property tax assesses for current fiscal year, taxable value and percentage of total assessed value in substantially the form of Table 5 of the Official Statement;
- (iv) If and to the extent such information is available from the County, property tax collection delinquencies for the City; and
- (v) Amount of all general obligation debt of the City outstanding, and total scheduled debt service on such general obligation debt.

(c) In addition to any of the information expressly required to be provided under this Disclosure Certificate, the City shall provide such further material information, if any, as may be necessary to make the specifically required statements, in the light of the circumstances under which they are made, not misleading.

(d) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the City or related public entities, which are available to the public on the MSRB's internet web site or filed with the Securities and Exchange Commission. The City shall clearly identify each such other document so included by reference.

**Section 5. 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 Bonds, if material:

- (1) Principal and interest payment delinquencies.
- (2) Non-payment related defaults.
- (3) Unscheduled draws on debt service reserves reflecting financial difficulties.
- (4) Unscheduled draws on credit enhancements reflecting financial difficulties.
- (5) Substitution of credit or liquidity providers, or their failure to perform.
- (6) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the security, or other material events affecting the tax status of the security.
- (7) Modifications to rights of security holders, if material.
- (8) Bond calls, if material, and tender offers.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities, if material.
- (11) Rating changes.
- (12) Bankruptcy, insolvency, receivership or similar event of the City or other obligated person.
- (13) The consummation of a merger, consolidation, or acquisition involving the City or an obligated person, or the sale of all or substantially all of the assets of the City or an obligated person (other than in the ordinary course

of business), the entry into a definitive agreement to undertake such an action, or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

- (14) Appointment of a successor or additional trustee or the change of name of a trustee, if material.

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

(c) The City acknowledges that the events described in subparagraphs (a)(2), (a)(7), (a)(8) (if the event is a bond call), (a)(10), (a)(13), and (a)(14) of this Section 3 contain the qualifier "if material." The City shall cause a notice to be filed as set forth in paragraph (b) above with respect to any such event only to the extent that the City determines the event's occurrence is material for purposes of U.S. federal securities law.

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

**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 Bonds. If such termination occurs prior to the final maturity of the Bonds, the City shall give notice of such termination in the same manner as for a Listed Event under Section 5(b).

**Section 8. 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 Dissemination Agent, with or without appointing a successor Dissemination Agent. Any Dissemination Agent may resign by providing 30 days' written notice to the City.

**Section 9. 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 Bonds, or type of business conducted;
- (b) the undertakings herein, as proposed to be amended or waived, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the primary offering of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and
- (c) the proposed amendment or waiver either (i) is approved by holders of the Bonds in the manner provided in the Bond Resolution for amendments to the Bond Resolution with the consent of holders, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the holders or beneficial owners of the Bonds.

If the annual financial information or operating data to be provided in the Annual Report is amended pursuant to the provisions hereof, the first annual financial information filed pursuant hereto containing the amended operating data or financial information shall explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided.

If an amendment is made to the undertaking specifying the accounting principles to be followed in preparing financial statements, the annual financial information for the year in which the change is made shall present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. The comparison shall include a qualitative discussion of the differences in the accounting principles and the impact of the change in the accounting principles on the presentation of the financial information, in order to provide information to investors to enable them to evaluate the ability of the City to meet its obligations. To the extent reasonably feasible, the comparison shall be quantitative. A notice of the change in the accounting principles shall be filed in the same manner as for a Listed Event under Section 5(b).

**Section 10. 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.** If the City fails to comply with any provision of this Disclosure Certificate, the Participating Underwriter or any holder or beneficial owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the City to comply with its obligations under this Disclosure Certificate. A default under this Disclosure Certificate shall not be deemed an Event of Default under the Bond Resolution, and the sole remedy under this Disclosure Certificate in

the event of any failure of the City to comply with this Disclosure Certificate shall be an action to compel performance.

**Section 12. Duties, Immunities and Liabilities of Dissemination Agent.**

(a) The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which they may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The Dissemination Agent shall have no duty or obligation to review any information provided to it by the City hereunder, and shall not be deemed to be acting in any fiduciary capacity for the City, the Bond holders or any other party. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

(b) The Dissemination Agent shall be paid compensation by the City for its services provided hereunder in accordance with its schedule of fees as amended from time to time, and shall be reimbursed for all expenses, legal fees and advances made or incurred by the Dissemination Agent in the performance of its duties hereunder.

**Section 13. Notices.** Any notice or communications to be among any of the parties to this Disclosure Certificate may be given as follows:

To the City:	City of Berkeley 2180 Milvia Street Berkeley, California 94704 (510) 981-7000
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Any person may, by written notice to the other persons listed above, designate a different address or telephone number(s) to which subsequent notices or communications should be sent.

**Section 14. Beneficiaries.** This Disclosure Certificate shall inure solely to the benefit of the City, the Dissemination Agent, the Participating Underwriter and holders and beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity.

**Section 15. 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: \_\_\_\_\_, 2013

**CITY OF BERKELEY**

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

**EXHIBIT A**

**NOTICE OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: City of Berkeley (the "City")

Name of Bond Issue: City of Berkeley 2013 General Obligation Bonds  
(Street and Integrated Watershed Improvements)

Date of Issuance: \_\_\_\_\_, 2013

NOTICE IS HEREBY GIVEN that the City has not provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Certificate, dated as of \_\_\_\_\_, 2013. The City anticipates that the Annual Report will be filed by \_\_\_\_\_.

Date: [DISSEMINATION AGENT]

By: \_\_\_\_\_  
Name:  
Title:

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Note: Publication governed by Gov. Code §53692:**

53692. In addition to any other requirement imposed by law, at least 15 days prior to the sale of any public securities that exceed one million dollars (\$1,000,000) but do not exceed ten million dollars (\$10,000,000) at a public sale and at least five days prior to the sale of any public securities that exceed ten million dollars (\$10,000,000) at a public sale, an issuer shall publish notice of the intention to sell the securities in a financial publication generally circulated throughout the state or reasonably expected to be disseminated among prospective bidders for the securities. The notice shall include the date, time, and place of the intended sale and the amount of the securities to be sold.

**NOTICE OF INTENTION TO SELL BONDS**

**APPROXIMATELY \$15,000,000**

**CITY OF BERKELEY**  
(Alameda County, California)

**2014 GENERAL OBLIGATION BONDS  
(STREET AND INTEGRATED WATERSHED IMPROVEMENTS)**

NOTICE IS HEREBY GIVEN by the City Council of the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of approximately \$15,000,000 principal amount of bonds of the City designated the "City of Berkeley 2014 General Obligation Bonds (Street and Integrated Watershed Improvements)" (the "Bonds"). Bids will be received in electronic form on BiDCOMP™/Parity® ("Parity") on:

**TUESDAY, JANUARY 7, 2014**

at 8:30 a.m. Pacific Time. The City reserves the right to postpone or change the time or sale date upon 20 hours notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor ([www.tm3.com](http://www.tm3.com)). Further information, including copies of the preliminary Official Statement and Official Notice of Sale may be obtained from the City's financial advisor, NHA Advisors, LLC, telephone: (415) 785-2025 or [www.NHAadvisors.com](http://www.NHAadvisors.com).

GIVEN by order of the City Council of the City of Berkeley by resolutions adopted on June 11, 2013 and November 19, 2013.

**OFFICIAL NOTICE OF SALE****\$15,000,000\*****CITY OF BERKELEY**  
(Alameda County, California)**2014 GENERAL OBLIGATION BONDS  
(STREET AND INTEGRATED WATERSHED IMPROVEMENTS)**

NOTICE IS HEREBY GIVEN by the City of Berkeley (the "City"), that bids will be received by a representative of the City for the purchase of \$15,000,000\* principal amount of bonds of the City designated the "City of Berkeley 2014 General Obligation Bonds (Street and Integrated Watershed Improvements)" (the "Bonds"). Bids will be received in electronic form on BiDCOMP™/Parity® ("Parity") on:

**TUESDAY, JANUARY 7, 2014**

at 8:30 a.m. Pacific Time. The City reserves the right to postpone or change the time or sale date upon 20 hours notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor ([www.tm3.com](http://www.tm3.com)). The Bonds will be issued under the provisions of resolutions adopted by the City Council of the City on June 11, 2013 and November 19, 2013 (collectively, the "Bond Resolution"), and under the laws of the State of California. The Bonds are more particularly described in the proposed form of the Bond Resolution on file with the City (which is incorporated herein by reference) and copies thereof will be furnished to the bidder upon request.

**DESCRIPTION OF THE BONDS**

**PURPOSE:** The proceeds of the Bonds will be applied by the City for the purpose of financing street and integrated watershed improvements in accordance with the ballot proposition under which the issuance of the Bonds has been authorized.

**ISSUE; BOOK-ENTRY FORM:** The Bonds will be issued in the aggregate principal amount of \$15,000,000\* in the form of fully registered Bonds without coupons. The Bonds will be dated as of as of their original delivery, and will be issued in minimum denominations of \$5,000. The Bonds will be issued in a book entry only system with no physical distribution of the Bonds made to the public. The Depository Trust Company, New York, New York ("DTC"), will act as depository for the Bonds which will be immobilized in its custody. The Bonds will be registered in the name of Cede & Co., as nominee for DTC, on behalf of the participants in the DTC system and the subsequent beneficial owners of the Bonds.

**MATURITIES:** The Bonds will mature, or be subject to mandatory sinking fund redemption, on September 1 in each of the years, and in the amounts, as set forth in the following table. The final principal amount of the Bonds, and the final amount of each maturity of the Bonds, is subject to increase or reduction as described below under the heading "Adjustment of Principal Maturities". *Each bidder must specify in its bid whether, for any particular year, the Bonds will mature or, alternately, be subject to mandatory sinking fund redemption in such year.*

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\* Subject to adjustment as described herein under "Adjustment of Principal Maturities"

<u>Maturity Date</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Maturity Date</u> <u>(September 1)</u>	<u>Principal</u> <u>Amount</u>
2014		2029	
2015		2030	
2016		2031	
2017		2032	
2018		2033	
2019		2034	
2020		2035	
2021		2036	
2022		2037	
2023		2038	
2024		2039	
2025		2040	
2026		2041	
2027		2042	
2028		2043	

**PAYMENT PROVISIONS:** Interest on the Bonds will be payable on September 1, 2014, and on succeeding March 1 and September 1 (the “Interest Payment Dates”), to the registered owners by check or draft of The Bank of New York Mellon Trust Company, N.A., as paying agent (the “Paying Agent”) or, in the case of the owner of Bonds in an aggregate principal amount of at least \$1,000,000, at the written request of such owner by wire transfer. Principal of and premium (if any) on any Bond will be paid upon presentation and surrender thereof at the office of the Paying Agent. Principal, interest and premium (if any) on the Bonds are payable in lawful money of the United States of America.

**OPTIONAL REDEMPTION:** The Bonds maturing on or before September 1, 2022, are not subject to redemption prior to their respective stated maturities. The Bonds maturing on or after September 1, 2023, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2022, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

**SINKING FUND REDEMPTION:** Any bidder may, at its option, specify that one or more maturities of the Bonds will consist of term Bonds which are subject to mandatory sinking fund redemption in consecutive years immediately preceding the maturity thereof, as designated in the bid of such bidder. If the bid of the winning bidder specifies that any maturity of Bonds will be term Bonds, such term Bonds will be subject to mandatory sinking fund redemption on September 1 in each year so designated in the bid, in the respective amounts for such years as set forth above under the heading “MATURITIES”, at a redemption price equal to the principal amount thereof to be redeemed together with accrued interest to the redemption date, without premium.

**SECURITY:** The Bonds are general obligations of the City, and the City will direct the appropriate officials of Santa Clara County to levy ad valorem taxes for the payment

of the Bonds and the interest thereon without limitation as to rate or amount for the payment of the Bonds and the interest thereon.

**TAX-EXEMPT STATUS:** In the opinion of Jones Hall, A Professional Law Corporation, bond counsel to the City, interest on the Bonds is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal individual and corporate alternative minimum taxes, although it is included in certain income and earnings in computing the alternative minimum tax imposed on certain corporations. Bidders are referred to the Preliminary Official Statement for a description of the proposed opinion of Bond Counsel. In the further opinion of Bond Counsel, such interest is exempt from California personal income taxes. If prior to the delivery of the Bonds either (a) the interest on other obligations of the same type and character shall be declared to be taxable (either at the time of such declaration or at any future date) under any federal income tax laws, either by the terms of such laws or by ruling of a federal income tax authority or official which is followed by the Internal Revenue Service, or by decision of any federal court, or (b) any federal income tax law is adopted which will have a substantial adverse effect upon owners of the Bonds as such, the winning bidder for the Bonds may, at its option, prior to the tender of the Bonds, be relieved of its obligation under the contract to purchase the Bonds, and in such case the deposit accompanying its proposal will be returned.

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

**FURTHER INFORMATION:** A copy of the Preliminary Official Statement describing the Bonds, and any other information concerning the proposed financing, will be furnished upon request to the financial advisor to the City as follows: NHA Advisors, LLC, 4040 Civic Center Drive, Suite 200, San Rafael, California 94903, telephone: (415) 785-2025, website: [www.NHAadvisors.com](http://www.NHAadvisors.com). The Official Notice of Sale and Preliminary Official Statement are available from financial advisor.

**MUNICIPAL BOND INSURANCE; BIDDER'S OPTION:** The City has applied to certain bond insurance companies to qualify the Bonds for municipal bond insurance. Information concerning the availability of municipal bond insurance will be made available to bidders prior to the time set for receipt of bids. If the Bonds are qualified for municipal bond insurance, each bidder has the option to elect whether such insurance will be issued. If the winning bidder elects to obtain any policy of municipal bond insurance, the premium for such insurance and the costs of any related ratings will be the sole responsibility of the winning bidder.

## **TERMS OF SALE**

**RIGHT TO CANCEL, POSTPONE OR RESCHEDULE SALE:** The City reserves the right to postpone or change the time or sale date upon 20 hours notice delivered via Bloomberg News Service or Thomson Municipal Market Monitor ([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

cancelled, 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.

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

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

**VERIFICATION:** All bids are subject to verification and approval by the City. The City has the right to deem each final bid reported on by Ipreo immediately after the deadline for receipt of bids to be accurate and binding on the bidder. Information or calculations provided by Ipreo other than the information required to be provided by the bidder in accordance with this Official Notice of Sale is for information purposes only and is not binding on either the bidder or the City. If two or more bidders offer bids for the same Bonds at the same lowest TIC, the winning bid will be the first bid received in the determination of the City, whose determination is final.

**FORM OF BID; MINIMUM PURCHASE PRICE:** Each proposal must be for not less than all of the Bonds hereby offered for sale. The purchase price to be paid for the Bonds may not be less than the par value thereof **and must include original issue premium of at least \$100,000**. No bid will be entertained which provides for original issue premium of less than \$100,000.

**DESIGNATION OF INTEREST RATES:** Each bidder must specify the rate or rates of interest which the Bonds will bear. The maximum rate bid on any Bonds may not exceed 8.00% per annum. A bidder will be permitted to bid different rates of interest for each maturity of Bonds, but:

- each interest rate specified must be in a multiple of 1/20% or 1/8%;
- no Bond may bear more than one rate of interest;
- interest on each Bond will be computed from the date of original delivery to its stated maturity at the interest rate specified in the proposal, payable on the Interest Payment Dates as set forth above; and
- all Bonds maturing at any one time will bear the same rate of interest.

***DETERMINATION OF BEST BID:*** The Bonds will be awarded to the responsible bidder whose bid produces the lowest true interest cost on the Bonds. The true interest cost specified in any bid will be that rate which, when used in computing the present worth of all payments of principal and interest to be paid on all Bonds from the date of original delivery (which is assumed to be January 21, 2014) to their respective maturity dates or mandatory sinking fund redemption dates, produces an amount equal to the purchase price specified in such bid. For purposes of computing the true interest cost represented by any proposal, the purchase price specified in such proposal shall be equal to the par amount of the Bonds plus any premium specified in such proposal, and the true interest cost shall be calculated by the use of a semiannual interval of compounding interest based on the Interest Payment Dates for the Bonds. **Each proposal should include at least \$100,000 of premium.**

***ADJUSTMENT OF PRINCIPAL MATURITIES:*** In order to achieve the financial goals of the City, the City may need to adjust the schedule of principal maturities for the Bonds based on the bids that are received. Therefore, the City reserves the right to increase or decrease the principal amount of any maturity of the Bonds (or, in the case of the term Bonds, the principal amount thereof which is subject to mandatory sinking fund redemption on September 1 in any year). The aggregate principal amount of the Bonds may be reduced as a result of such adjustment, in an amount not exceeding 10% of the amount of Bonds hereby offered for sale. Notice of such increase or decrease shall be given to the winning bidder as soon as practicable following the notification of award, as described below. The City will attempt to maintain total underwriter compensation when adjusting maturities. No such adjustment will have the effect of altering the basis upon which the best bid is determined.

***RIGHT OF REJECTION:*** The City reserves the right, in its discretion, to reject any and all bids and to the extent not prohibited by law to waive any irregularity or informality in any bid.

***PROMPT AWARD:*** An authorized representative of the City will accept the best responsible bid for the purchase of the Bonds by notice to the winning bidder. If two or more bids setting forth identical interest rates and premium, if any, are received, such officer may exercise discretion and judgment in making the award and may award the Bonds on a pro rata basis in such denominations as he or she determines. Such authorized representative of the City may also reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds will be awarded or all bids will be rejected not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the winning bidder; provided, that

the award may be made after the expiration of the specified time if the bidder does not notify the City in writing of the withdrawal of its proposal.

**PLACE OF DELIVERY; CANCELLATION FOR LATE DELIVERY:** It is expected that the Bonds will be delivered to DTC for the account of the winning bidder on January 21, 2014. The winning bidder has the right, at the winning bidder's option, to cancel the contract of purchase if the Bonds are not tendered for delivery within 60 days from the date of the sale thereof, and in such event the winning bidder shall be entitled to the return of the deposit accompanying its bid.

**NO GOOD FAITH DEPOSIT:** The City does not require a good faith deposit to be submitted in connection with bids for the Bonds.

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

**STATEMENT OF TRUE INTEREST COST:** Each bidder is requested, but not required, to state in its proposal the percentage true interest cost represented by its proposal, determined as described above, which will be considered as informative only and not binding on either the bidder or the City.

**CERTIFICATION OF REOFFERING PRICE:** Upon notification of award of the bid, the successful bidder for the Bonds shall provide initial offering prices for each maturity of the Bonds. Prior to delivery of the Bonds, the successful bidder shall provide to the City a reoffering price certification in form and substance substantially identical to the certificate attached hereto as Exhibit A.

**NO LITIGATION:** There is no litigation pending concerning the validity of the Bonds, the corporate existence of the City or the entitlement of the officers thereof to their respective offices, and the purchaser will be furnished a no-litigation certificate certifying to the foregoing as of and at the delivery of the Bonds.

**CUSIP NUMBERS:** It is anticipated that CUSIP numbers will be printed on the Bonds, but neither the failure to print such numbers on any Bonds nor any error with respect thereto will constitute cause for a failure or refusal by the purchaser to accept delivery of and pay for the Bonds in accordance with the terms hereof. All expenses in relation to the printing of CUSIP numbers on the Bonds will be paid for by the City, except that the CUSIP Service Bureau charge for the assignment of said numbers will be the responsibility of and shall be paid for by the purchaser.

**CALIFORNIA DEBT AND INVESTMENT ADVISORY COMMISSION FEES:** All fees payable to the California Debt and Investment Advisory Commission in connection with the issuance of the Bonds are the sole responsibility of the purchaser of the Bonds.

**OFFICIAL STATEMENT:** The City has approved a preliminary Official Statement relating to the Bonds. Copies of such preliminary Official Statement will be distributed to any bidder, upon request, prior to the sale in a form "deemed final" by the City for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule"). Within seven business days from the sale date, the City will deliver to the purchaser copies of the final Official Statement, executed by an authorized representative of the

City and the City and dated the date of delivery thereof to the purchaser, in sufficient number to allow the purchaser to comply with paragraph (b)(4) of the Rule and to satisfy the Municipal Securities Rulemaking Board (the "MSRB") Rule G-32 or any other rules adopted by the MSRB, which shall include information permitted to be omitted by paragraph (b)(1) of the Rule and such other amendments or supplements as are been approved by the City (the "Final Official Statement"). The purchaser agrees that it will not confirm the sale of any Bonds unless the confirmation of sale is accompanied or preceded by the delivery of a copy of the Final Official Statement. The City will furnish to the winning bidder, at no charge, not in excess of 50 copies of the Official Statement for use in connection with any resale of the Bonds.

***CERTIFICATE REGARDING OFFICIAL STATEMENT:*** A responsible officer of the City will certify to the original purchaser of the Bonds, as a condition of closing, that based on such officer's participation in the preparation of the Official Statement, nothing has come to his or her attention to lead him or her to believe that the Official Statement (except for certain financial statements, statistical data and other information) contains any untrue statement of a material fact or omits to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

***CONTINUING DISCLOSURE.*** In order to assist bidders in complying with S.E.C. Rule 15c2-12(b)(5), the City will execute and deliver a Continuing Disclosure Certificate, under which the City undertakes to provide certain annual financial information and notices of the occurrence of certain events, if material. A description of this undertaking is set forth in the preliminary Official Statement and will also be set forth in the final Official Statement. Such Continuing Disclosure Certificate will be a document required to be delivered at closing by the City, and the failure by the City to deliver such document in form and substance acceptable to Bond Counsel and the winning bidder will relieve the winning bidder of its obligation to purchase the Bonds.

GIVEN by order of the City Council of the City of Berkeley by resolutions adopted on June 11, 2013 and November 19, 2013.

**EXHIBIT A**

**FORM OF REOFFERING PRICE CERTIFICATE\***

\$ \_\_\_\_\_

**CITY OF BERKELEY**  
(Alameda County, California)

**2014 GENERAL OBLIGATION BONDS  
(STREET AND INTEGRATED WATERSHED IMPROVEMENTS)**

The undersigned, on behalf of \_\_\_\_\_, as purchaser (the "Purchaser") of the above-captioned bonds (the "Bonds"), hereby confirms our advice:

(i) Based upon reasonable expectations and actual facts that existed on \_\_\_\_\_, being the date upon which the City of Berkeley (the "Issuer") sold the Bonds to the Purchaser (the "Sale Date"), the Purchaser reasonably expected that the first prices at which a substantial amount of each maturity of the Bonds (being at least 10% of each maturity) would be offered and sold to the general public (excluding bond houses, brokers or similar persons or organizations acting in the capacity of underwriters or wholesalers) (the "General Public") in a bona fide public offering at the prices, or in the case of obligations sold on a yield basis, at the respective yields set forth in Schedule A attached hereto and by this reference incorporated herein and shown on the cover or inside cover of the Official Statement (together the "Initial Offering Prices").

(ii) The aggregate of the Initial Offering Prices is \$\_\_\_\_\_.

(iii) The Initial Offering Prices of the Bonds of each maturity (and stated interest rate) reflected the assessment by the Purchaser of not more than the fair market prices of the Bonds as of the Sale Date and such offering prices were established by a bona fide public offering by the Purchaser to the General Public.

(iv) As of the date hereof, 100% of the Bonds of each maturity were actually offered to the general public in a bona fide public offering for the Initial Offering Prices.

(v) As of the Sale Date, the Purchaser, taking into account market conditions, had no reason to believe any of the Bonds would be initially sold to the general public at prices greater than the Initial Offering Prices.

(vii) As of the Sale Date, at least 10% of the principal amount of each maturity of the Bonds initially was sold at the respective Initial Offering Price for that maturity shown in Exhibit A except for the Bonds with the following maturities and stated interest rates.

Maturity

Rate

The Purchaser understands that Bond Counsel will rely upon this certificate, among other things, in reaching its conclusion that the Bonds do not constitute “arbitrage bonds” within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, provided, however, that nothing herein represents our interpretation of any laws, and in particular, regulations under Section 148 of the Internal Revenue Code.

Dated: January \_\_, 2013

\_\_\_\_\_

as Purchaser

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

**SCHEDULE A**

<u>Maturity Date (September 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Reoffering Price*</u>
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\*Stated as a Percentage of Par.

**\$15,000,000**  
**CITY OF BERKELEY**  
(Alameda County, California)  
**2014 GENERAL OBLIGATION BONDS**  
**(STREET AND INTEGRATED WATERSHED IMPROVEMENTS)**

**COSTS OF ISSUANCE CUSTODIAN AGREEMENT**

This Agreement dated as of January 1, 2014 is entered into between the City of Berkeley (the "City") and The Bank of New York Mellon Trust Company, N.A. (the "Custodian"). The City has appointed the Custodian to act as custodian for the Costs of Issuance Fund which has been established for the 2014 General Obligation Bonds (Street and Integrated Watershed Improvements) (the "Bonds"). This Agreement sets out the terms and conditions of said appointment.

The City and the Custodian agree as follows:

1. The Custodian shall also deposit the amount of \$100,000, constituting premium from the sale of the Bonds and received from the City, in a custody account (the "Costs of Issuance Fund") established with the Custodian in the name of the Bonds.
2. The Custodian will pay costs of issuance of the Bonds as directed by the City from time to time via a written order of the City. The Custodian is not responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such written order on behalf of the City or responsible for whether or not any payment so directed to be paid is an authorized cost of issuance.
3. Funds held hereunder shall be the property of the City, subject only to the claims for payment of authorized Costs of Issuance of the Bonds as provided in paragraph 2 hereof. The Custodian shall hold and invest the funds in \_\_\_\_\_ and the City acknowledges that the Custodian may receive compensation from such mutual fund or its distributor. Any balances remaining in the Costs of Issuance Fund (including any earnings) on the earlier of March 1, 2014 or as set forth in Section 4 below, will be disbursed to the City and deposited by the City in the Debt Service Fund established for the Bonds.
4. This Agreement will terminate on June 30, 2014.
5. The duties and responsibilities of Custodian shall be limited to those expressly set forth in this Agreement. In no event shall the Custodian be liable for any special, indirect or consequential damages. The Custodian will not be liable for any action taken or neglected to be taken by it in good faith in any exercise of reasonable care and believed by it to be within the discretion of

power conferred upon it by this Agreement. Custodian shall receive compensation for its services as agreed between Custodian and City. The City agrees to indemnify and hold Custodian harmless from all loss, cost, damages, expenses, liabilities, judgments and attorneys' fees (including without limitation, allocated costs of in-house counsel) suffered or incurred by Custodian arising out of or in connection with this Agreement, except that this indemnity obligation shall not apply in the event of the negligence or willful misconduct of the Indemnified Parties or any of them. This indemnity obligation shall survive termination of this Agreement.

Executed as of the date first above written.

**CITY OF BERKELEY**

By: \_\_\_\_\_  
Finance Director/City Treasurer

Custodian:

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

By: \_\_\_\_\_  
Authorized Representative