

PRELIMINARY OFFICIAL STATEMENT DATED October \_\_, 2005

NEW ISSUE BOOK-ENTRY ONLY

RATING  
Moody's: MIG-  
(see "RATING" herein)

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however to certain qualifications described herein, under existing law, the interest on the Notes is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations, although, for the purpose of computing the alternative minimum tax imposed on certain 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 "TAX MATTERS" herein.



\$25,000,000  
CITY OF BERKELEY  
2005-06 TAX AND REVENUE ANTICIPATION NOTES

Dated: Date of Delivery

Due: November \_\_, 2006

The Notes will be issued in denominations of \$1,000 or any integral multiple thereof. Principal of and interest on the Notes will be payable upon maturity. The Notes are to be delivered as fully registered Notes, without coupons and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York (as described herein under "THE NOTES - Book-Entry Only System"). DTC will act as securities depository of the Notes. Purchases will be made in book-entry form only, in the principal amount of \$1,000 or any integral multiple thereof. **The Notes are not subject to redemption prior to maturity.**

The Notes are by statute general obligations of the City of Berkeley, California (the "City"), payable solely from taxes, income, revenues, cash receipts and other moneys of the City attributable to the fiscal year 2005-2006 and lawfully available for payment thereof. The Notes are secured by a pledge of certain taxes, income, revenues, cash receipts and other moneys intended as receipts for the General Fund of the City and which are generally available for the payment of current expenses and other obligations of the City (the "Unrestricted Moneys"). The City will pledge, as security for the Notes, (i) an amount equal to fifty percent (50%) of the principal amount of the Notes from the first Unrestricted Moneys to be received by the City in the month ending January 31, 2006; (ii) an amount equal to fifty percent (50%) of the principal amount of the Notes from the first Unrestricted Moneys to be received by the City in the month ending May 31, 2006; and (iii) an amount sufficient to pay interest on the Notes (net of earnings on deposit in the Special Account, as defined below) from the first Unrestricted Moneys to be received by the City in the month ending June 30, 2006 (such pledged amounts being hereinafter called the "Pledged Revenues"). The Pledged Revenues shall be deposited and held by the City, in a special fund designated "City of Berkeley, California, 2005 Tax and Revenue Anticipation Notes Special Account", as defined in the City's Resolution adopted October 25, 2005.

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

The Notes are general obligations of the City and, to the extent set forth herein, are legal investments for commercial banks in California and are eligible to secure deposits of public moneys in California.

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

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



MATURITY SCHEDULE

<u>Principal</u>	<u>Interest Rate</u>	<u>Reoffering Yield</u>
\$25,000,000		

The Notes are offered when, as and if issued and received by the Underwriter, subject to the approval of legality by Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel. Certain legal matters will be passed upon for the City by the City Attorney. It is anticipated that the Notes, in definitive form, will be available for delivery through DTC in New York, New York on or about November \_\_, 2005

Dated: October \_\_, 2005

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

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

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

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

The information and expressions of opinions herein are subject to change without notice and neither delivery of this Official Statement nor any sale made hereunder shall, under any circumstances, create any implication that there has been no change in the affairs of the City since the date hereof. This Official Statement is submitted with respect to the sale of the Notes referred to herein and may not be reproduced or used, in whole or in part, for any other purpose, unless authorized in writing by the City. All summaries of the documents and laws are made subject to the provisions thereof and do not purport to be complete statements of any or all such provisions.

# **CITY OF BERKELEY, CALIFORNIA**

## **ELECTED OFFICIALS**

Tom Bates, /Mayor  
Linda Maio, Councilmember District 1  
Darryl Moore, Councilmember District 2  
Maxwell Anderson, Councilmember District 3  
Dona Spring, Councilmember District 4  
Laurie Capitelli, Councilmember District 5  
Betty Olds, Councilmember District 6  
Kriss Worthington, Councilmember District 7  
Gordon Wozniak, Councilmember District 8

## **CITY OFFICIALS**

Phil Kamlarz  
*City Manager*

Lisa Caronna  
*Deputy City Manager*

Manuela Albuquerque, Esq.  
*City Attorney*

Fran David  
*Director of Finance*

Ann-Marie Hogan  
*Auditor*

## **PROFESSIONAL SERVICES**

### **Financial Advisor**

Northcross, Hill & Ach, Inc.  
*Petaluma, California*

### **Bond Counsel**

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

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# OFFICIAL STATEMENT

**\$25,000,000**

## **CITY OF BERKELEY 2005 TAX AND REVENUE ANTICIPATION NOTES**

### INTRODUCTORY STATEMENT

This Official Statement, which includes the cover page, appendices hereto and this Introductory Statement, is provided to furnish information in connection with the sale by the City of Berkeley, California (the "City") of its 2005 Tax and Revenue Anticipation Notes (the "Notes") issued by the City in the principal amount of \$25,000,000.

The Notes are issued in full conformity with the Constitution and laws of the State of California (the "State"), including Article 7.6, Chapter 4, Part 1, Division 2, Title 5 (commencing with Section 53850 of the Government Code of the State), (the "Law") and under the Law are general obligations of the City payable solely from those taxes, income, revenues, cash receipts and other moneys intended as receipts for the City's General Fund for fiscal year 2005-06 and which are generally available for the payment of current expenses and other obligations of the City (the "Unrestricted Moneys"). The Notes are authorized by a resolution adopted by the City Council on October 25, 2004 (the "Resolution"). The City may, under the Law, issue the Notes only if the principal of and interest on the Notes will not exceed 85 percent of the estimated amount of the uncollected Unrestricted Moneys which will be available for the payment of said Notes. Proceeds from the sale of the Notes will be used for current General Fund expenditures, including current expenses, capital expenditures and the discharge of other obligations of the City for the fiscal year 2005-06.

### THE NOTES

#### **Description of the Notes**

The Notes will be issued in the principal amount of \$25,000,000 and at the interest rate shown on the cover page of this Official Statement. Principal of and interest on the Notes are payable in lawful moneys of the United States of America upon maturity, and interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months and accrues from the date of delivery.

Principal of and interest on the Notes are payable at maturity upon surrender thereof at the office of the Director of Finance of the City (the "Paying Agent"). The Notes will be dated the date of delivery and will mature on December 1, 2006. The Notes are to be delivered as fully registered Notes, without coupons, and, when delivered, will be registered in the name of Cede & Co., as nominee of The Depository Trust Company ("DTC"), New York, New York. DTC will act as securities depository of the Notes. Purchases will be made in book-entry form only, in the principal amount of \$1,000 or any integral multiple thereof.

#### **Purpose of Issue**

Proceeds of the Notes will provide moneys to meet the City's General Fund cash flow requirements during the 2005-06 fiscal year commencing July 1, 2005 and ending June 30, 2006, including current expenses, capital expenditures, and the discharge of other obligations or indebtedness.

#### **Authority for Issuance**

The Notes are issued under the authority of the Law and pursuant to the Resolution.

## **Book-Entry Only System**

DTC will act as securities depository for the Notes. The ownership of one fully registered Note for the maturity as set forth on the cover page of this Official Statement, in the aggregate principal amount of the maturity, will be registered in the name of Cede & Co., as nominee for DTC.

DTC is a limited-purpose trust company organized under the laws of the State of New York, 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, as amended. DTC was created to hold securities of its Participants (the "Participants") and to facilitate the clearance and settlement of securities transactions among Participants in such securities transactions through electronic book-entry changes in accounts of the Participants, thereby eliminating the need of physical movement of securities certificates. Participants include securities brokers and dealers, banks, trust companies, clearing corporations and certain other organizations, some of whom (and/or their representatives) own DTC. Access to the DTC system is also available to others such as banks, brokers, dealers and trust companies that clear through or maintain a custodial relationship with a Participant, either directly or indirectly (the "Indirect Participants").

The DTC Participants shall receive a credit balance in the records of DTC. The ownership interest of each actual purchaser of each Note (the "Beneficial Owner") will be recorded through the records of the DTC Participant. Beneficial Owners are expected to receive a written confirmation of their purchase providing details of the Note acquired. Transfers of ownership interest in the Notes will be accomplished by book entries made by DTC and, in turn, by the DTC Participants who act on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Notes, except as specifically provided in the Resolution.

So long as Cede & Co. is the registered owner of the Notes, as nominee of DTC, references to registered owners of the Notes shall mean Cede & Co. and shall not mean the Beneficial Owners of the Notes.

DTC may determine to discontinue providing its service with respect to the Notes at any time by giving notice to the City and discharging its responsibilities with respect thereto under applicable law. Under certain circumstances, Note certificates are required to be delivered as described in the Resolution. The Beneficial Owner, upon registration of certificates held in the Beneficial Owner's name, will become the registered owner of the Notes.

The City may determine that continuation of the system of book-entry transfers through DTC (or a successor securities depository) is not in the best interests of the Beneficial Owners. In such event, Note certificates will be delivered as described in the Resolution.

The City will recognize DTC or its nominee as the owner of the Notes for all purposes, including notices and voting. Conveyance of notices and other communications by DTC to DTC Participants, by DTC Participants to Indirect Participants, and by DTC Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory and regulatory requirements as may be in effect from time to time.

Principal and interest payments on the Notes will be made to DTC or its nominee, Cede & Co., as registered owner of the Notes. Upon receipt of moneys, DTC's current practice is to immediately credit the accounts of the DTC Participants in accordance with their respective holdings shown on the records of DTC. Payments by DTC Participants and Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is now the case with municipal securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such DTC Participant or Indirect Participant and not of DTC or the City, subject to any statutory and regulatory requirements as may be in effect from time to time.

NEITHER THE PAYING AGENT NOR THE CITY WILL HAVE ANY RESPONSIBILITY OR OBLIGATION, INCLUDING ANY OBLIGATION FOR THE PAYMENT OF PRINCIPAL AND INTEREST AND THE PROVISION OF NOTICE WITH RESPECT TO THE NOTES, TO SUCH DTC PARTICIPANTS OR TO THE PERSONS FOR WHOM THEY ACT AS NOMINEES WITH RESPECT TO THE NOTES. SO LONG AS CEDE & CO., OR A SUCCESSOR AS NOMINEE, IS THE REGISTERED OWNER OF THE NOTES, REFERENCES HEREIN TO THE NOTE OWNERS OR THE REGISTERED OWNERS OF NOTES SHALL MEAN THE NOMINEE AND NOT THE BENEFICIAL OWNERS OF THE NOTES.

## **Security for the Notes**

The principal amount of the Notes, together with the interest thereon, is payable from Unrestricted Moneys. Estimated Unrestricted Moneys exceed estimated payment requirements by more than five to one. See "THE NOTES – Available Sources of Payment."

As security for the repayment of principal of and interest on the Notes, the City has pledged to deposit in a special fund designated as the "City of Berkeley, California 2005 Tax and Revenue Anticipation Notes Special Account" (the "Special Account") (a) an amount equal to 50% of the principal amount of the Notes from the first Unrestricted Moneys to be received by the City in the month ending January 31, 2006; (b) an amount equal to 50% of the principal amount of the Notes from the first Unrestricted Moneys to be received by the City in the month ending May 31, 2006; and (c) an amount sufficient to pay interest on the Notes (net of earnings on deposit in the Special Account) from the first Unrestricted Moneys to be received by the City in the month ending June 30, 2006 (such pledged amounts, the "Pledged Revenues."). The Notes are equally and ratably secured by the City's pledge of the Pledged Revenues.

The principal of the Notes and the interest thereon shall constitute a first lien and charge against and shall be paid from the first moneys received by the City from such Pledged Revenues, and to the extent not so paid shall be paid from any other moneys of the City lawfully available therefor. In the event there are insufficient Unrestricted Moneys received by the City to permit the deposits in the Special Account of the full amount of the Pledged Revenues to be deposited in the applicable month, by the last business day of such month, then the amount of such deficiency shall be satisfied and made up from any other moneys of the City lawfully available for the payment of the Notes and the interest thereon.

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

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

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

## Available Sources of Repayment

The Notes, in accordance with State law, are general obligations of the City, but are payable only out of Unrestricted Moneys, which include the taxes, income, revenues, cash receipts and other moneys intended as receipts for the General Fund for fiscal year 2005-06 and which are generally available for payment of current expenses and other obligations of the City. The Constitution of the State substantially limits the City's ability to levy ad valorem taxes. See "**CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS.**" The City may, under existing law, issue the Notes only if the principal of, and interest on, the Notes will not exceed 85 percent of the estimated uncollected Unrestricted Moneys which will be available for the repayment of the Notes.

The Note coverage ratio is the ratio of estimated Unrestricted Moneys to the amount of Unrestricted Moneys needed to pay principal of and interest on the Notes. The City expects to receive a projected \$ \_\_\_\_\_ in Unrestricted Moneys on a cash basis (including carry-over balances and transfers, and proceeds of the Notes). The amount needed to repay the Notes and the interest thereon is estimated to be \$25,500,000. Based on an amount of Unrestricted Moneys needed to pay principal of and interest on the Notes, the Note coverage ratio is over \_\_\_\_:1.

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

<b>CITY OF BERKELEY</b>	
<b>Estimated Unrestricted Moneys</b>	
<u>Source</u>	<u>Amount</u>
Available Cash Balance, July 1, 2004	\$ _____
Taxes (including property tax, sales tax and other taxes)	\$ _____
Other Revenue	_____
Transfers from other City funds	_____
<b>TOTAL UNRESTRICTED MONEYS</b>	<b>\$ _____</b>
<b>ESTIMATED PRINCIPAL PLUS INTEREST NEEDED FOR NOTE REPAYMENT</b>	<b>\$25,500,000</b>
<b>NOTE COVERAGE RATIO</b>	<b>____:1</b>

**Source:** City of Berkeley Finance Department.

## Monthly Cash Flows

The City's General Fund expenditures tend to flow evenly during the fiscal year. However, receipts follow an uneven pattern primarily as a result of secured tax installment payment dates in December and April.

The City has prepared exhibits for use in this Official Statement showing actual cash receipts and disbursements through June 30, 2005 for fiscal year 2004-05 and a projected receipts and disbursements for fiscal year 2005-06 when the Notes will be outstanding. Projected 2005-06 revenues and expenses include the proceeds and repayment of the Notes.

Insert Cash Flows Here 2004-05

Insert Cash Flows Here 2005-06

## CITY INVESTMENT POLICY AND PORTFOLIO

The City adopted its "Socially Responsible Investments Policy" in October 1988. The City's primary objective is security, liquidity and social responsibility as mandated by prior ordinances of the City. In general, it is the City policy to prefer investments in United States Agency securities, because of their generally higher yields and generally socially preferable uses, such as housing loans or students loans and to avoid investments in Treasury securities, because of their generally lower yields and their association with nuclear weapons.

The City's investment instrument options are as follows: U.S. Treasury Bills, Notes and Bonds, United States Government Agency securities, repurchase agreements (seven day maximum limit), reverse repurchase agreements (seven day maximum limit), certificates of deposit, bankers acceptances, interest bearing checking accounts, money market accounts, passbook savings, commercial paper and other local investments with the City or Alameda County. There are currently no derivative instruments held with the City's Investment Pool.

The City Treasurer provides an investment report on a monthly basis to the Mayor, City Council, City Manager and City Auditor. Any investment with a maturity over two years (except for debt proceeds, debt service reserve funds and retirement medical trust funds) requires City Council approval. The following is a list of investments held by the City:

### CITY OF BERKELEY City Pooled Investments (As of June 30, 2005)

<u>Security</u>	<u>Market Value</u>	<u>% of Total Portfolio</u>
Medium Term Notes	\$ 1,007,898	0.9%
Federal Agency Coupon Notes	93,059,271	62.2%
Treasury Coupon Notes	1,310,988	0.9%
Federal Agency Discount Notes	44,095,976	29.5%
Money Market Fund and Loans	1,121,115	0.7%
Commercial Paper	<u>8,999,100</u>	<u>6.0%</u>
TOTAL:	\$149,594,348	100.0%

Source: City of Berkeley Finance Department

## SPECIAL RISK FACTORS

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

### Limitations on Remedies

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

# CONSTITUTIONAL AND STATUTORY PROVISIONS AFFECTING CITY REVENUES AND APPROPRIATIONS

## Limitations on Revenues

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

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

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

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

Article XIII C and Article XIII D of the California Constitution. On November 5, 1996, the voters of the State approved Proposition 218, the so-called “Right to Vote on Taxes Act.” Proposition 218 added Articles XIII C and XIII D to the State Constitution, which contain a number of provisions affecting the ability of local agencies, including school districts, to levy and collect both existing and future taxes, assessments, fees and charges. Among other things, Article XIII C establishes that every tax is either a “general tax” (imposed for general governmental purposes) or a “special tax” (imposed for specific purposes); prohibits special purpose government agencies such as school districts from levying general taxes; and prohibits any local agency from imposing, extending or increasing any special tax beyond its maximum authorized rate without a two-thirds vote. Article XIII C also provides that no tax may be assessed on property other than ad valorem property taxes imposed in accordance with Articles XIII and XIII A of the California Constitution and special taxes approved by a two-thirds vote under Article XIII A, Section 4.

Article XIII C also provides that the initiative power shall not be limited in matters of reducing or repealing local taxes, assessments, fees and charges. The State Constitution and the laws of the State impose a duty on the County to levy the 1% ad valorem property tax and to distribute proceeds of the tax to local agencies in the County, including school districts. The initiative power cannot be used to reduce or repeal the authority and obligation to levy such taxes or to otherwise interfere with performance of the duty of the County with respect to such taxes. Legislation adopted in 1997 provides that Article XIII C shall not be construed to mean that any owner or beneficial owner of a municipal security assumes the risk of or consents to any initiative measure which would constitute an impairment of contractual rights under the contracts clause of the U.S. Constitution.

Article XIID deals with assessments and property-related fees and charges. Article XIID explicitly provides that nothing in Article XIIC or XIID shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development; however it is not clear whether the initiative power is therefore unavailable to repeal or reduce developer and mitigation fees imposed by the District. Developer fees imposed by the District are restricted as to use and are generally unavailable for repayment for the Notes.

The interpretation and application of Proposition 218 will ultimately be determined by the courts with respect to a number of the matters discussed above, and it is not possible at this time to predict with certainty the outcome of such determination.

## Expenditures and Appropriations

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

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

The State and each local government entity 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. Each school district is required to establish an appropriations limit each year. In the event that a school district’s revenues exceed its spending limit, the district may increase its appropriations limit to equal its spending by taking appropriations limit from the State.

Proposition 111 requires that each agency’s actual appropriations be tested against its limit every two years. If the aggregate “proceeds of taxes” for the preceding two-year period exceed the aggregate limit, the excess must be returned to the agency’s taxpayers through tax rate or fee reductions over the following two years. If the State’s aggregate “proceeds of taxes” for the preceding two-year period exceed the aggregate limit, 50% of the excess is transferred to fund the State’s contribution to school and college districts.

Future initiatives. Articles XIII A, XIII V, XIIC, and XIID, and Propositions 98 and 111 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 City revenues or the City’s ability to expend revenues.

### Appropriations Limit and Appropriations Subject to Limitation

	Fiscal Year	
	2004-05	2005-06
Appropriations Limit	\$ 135,178,801	\$ 142,774,956
Appropriations Subject to Limit	\$ 117,320,391	\$ 121,306,017

Source: City of Berkeley Finance Department

## **Future Initiatives**

Article XIII A, Article XIII B, Article XIII C, Article XIII D and Propositions 62 and 111 were each adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiative measures could be adopted, further affecting City revenues or the City's ability to expend revenues. The nature and impact of these measures cannot be anticipated by the City.

## **LEGAL OPINION**

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

## **TAX MATTERS**

In the opinion of Jones Hall, A Professional Law Corporation, San Francisco, California, Bond Counsel, subject, however, to the qualifications set forth below, under existing law, the interest on the Notes is excluded from gross income for federal income tax purposes and such interest is not an item of tax preference for purposes of the federal alternative minimum tax 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 paragraph are subject to the condition that the City comply with all requirements of the Internal Revenue Code of 1986 (the "Code") that must be satisfied subsequent to the issuance of the Notes 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 Notes.

Purchasers should be aware that the Internal Revenue Service has issued Notice 94-84 which may have federal income tax consequences with respect to the Notes. This Notice provides generally that, in the case of short-term tax-exempt obligations (such as the Notes), the Service is studying whether interest payable at maturity on the obligations should, or should not, be included in stated redemption price at maturity, for purposes of the rule that original issue discount represents the excess of stated redemption price at maturity over issue price.

Notice 94-84 states that until the Internal Revenue Service provides further guidance, taxpayers may treat stated interest on certain short-term obligations, such as the Notes, either as includible in stated redemption price at maturity or as not included in stated redemption price at maturity. A taxpayer, however, must treat stated interest payable at maturity on all short-term tax-exempt bonds in a consistent manner. A short-term tax-exempt bond is defined as a tax-exempt bond with a term that is not more than 1 year from the date of issue.

Purchasers of the Notes are cautioned that the opinion of Bond Counsel does not identify the amount of interest that is excluded from gross income for federal income tax purposes.

Purchasers of the Notes should consult their tax advisors regarding effects of Notice 94-84 upon individual tax circumstances.

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

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

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 Notes to provide notices, during the time the Notes are outstanding, of the occurrence of certain enumerated events, if deemed by the City to be material. The notices of material events will be filed by the City with the Municipal Securities Rulemaking Board, and the appropriate State information depository, if any. These covenants will be made in order to assist the Underwriters in complying with S.E.C. Rule 15c2-12(b)(5). The City has never failed to comply in any material respect with any previous undertaking with regard to said Rule to provide annual reports or notices of material events. See “**APPENDIX D - FORM OF CONTINUING DISCLOSURE CERTIFICATE**”.

## **LEGALITY FOR INVESTMENT IN CALIFORNIA**

Under the provisions of the Financial Code of the State, the Notes are legal investments for commercial banks in the State to the extent that the Notes, in the informed opinion of the investor bank, are prudent for the investment of funds of its depositors, and under provisions of the Government Code of the State are eligible to secure deposits of public moneys in the State.

### **Absence of Material Litigation**

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

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

## **UNDERWRITING**

The Notes were purchased by \_\_\_\_\_ (the "Underwriter") at a price of \$ \_\_\_\_\_ (representing \$25,000,000 aggregate principal amount of Notes plus an original issue premium of \$ \_\_\_\_\_, less Underwriter's discount of \$ \_\_\_\_\_). The Purchase Contract provides that the Underwriter will purchase all of the Notes if any are purchased, the obligation to make such purchase being subject to certain terms and conditions set forth in the Purchase Contract, the approval of certain legal matters by counsel and certain other conditions.

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

## **FINANCIAL ADVISOR**

The City has retained Northcross, Hill & Ach, Inc., Petaluma, California, as financial advisor (the “Financial Advisor”) in connection with the preparation of this Official Statement and with respect to the issuance of the Notes. The Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. Northcross, Hill & Ach, Inc. is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities. Financial Advisor's compensation is contingent upon the delivery of the Notes.

## RATING

Moody's Investors Service has assigned a rating to the Notes as shown on the cover to this Official Statement. Certain information was supplied by the City to said rating agency to be considered in evaluating the Notes. The rating issued reflects only the views of such rating agency, and any explanation of the significance of such rating should be obtained from the rating agency. There is no assurance that the rating will be retained for any given period of time or that the same will not be revised downward or withdrawn entirely by such rating agency if, in its judgment, circumstances so warrant. The City undertakes no responsibility either to bring to the attention of the holders of the Notes any downward revision or withdrawal of any rating obtained or to oppose any such revision or withdrawal. Any such downward revision or withdrawal of the rating obtained may have an adverse effect on the market price of the Notes.

## ADDITIONAL INFORMATION

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

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

CITY OF BERKELEY, CALIFORNIA

By: /s/ Phil Kamlarz  
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, 2005 population of 104,534, giving it the highest population density of any city in the East Bay. The City is defined to a large degree, both culturally and economically, by the presence of the University of California campus located on the eastern side of the City. The University of California is a major component of the City's economy, employing more than 10,000 full and part-time workers.

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

## **City Government**

The City operates under a Council-Manager form of government. The City is governed by a nine-member City Council, eight of whom are elected by district plus the Mayor who is elected on a city-wide basis. The Mayor and the City Council members serve four-year terms. The Council appoints a City Manager who is responsible for daily administration of City affairs, 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.

## **PROPERTY TAX INFORMATION**

### **General**

Taxable property located in the City has a 2005-06 assessed value of approximately \$ 9,959,171,642. All taxable property is assessed using full cash value as defined by Article XIII A of the State Constitution. State law provides exemptions from ad valorem property taxation for certain classes of property such as churches, colleges, non-profit hospitals, and charitable institutions. State law also exempts from taxation \$7,000 of the full cash value of an owner-occupied dwelling provided that the owner files for such exemption. This exemption does not result in any loss of revenue to local agencies, since the State reimburses local agencies for the value of the exemptions.

The assessment of all property and levy and collection of local property taxes is required to be performed for the City by the County. City property taxes are assessed and collected by the County at the same time and on the same rolls as county, special district, and city property taxes. The valuation of secured property and a statutory tax lien is established as of January 1 and is subsequently equalized in August of each year. The resulting secured property tax is payable in two equal installments due November 1 and February 1, and payments become delinquent on December 10 and April 10, respectively. Taxes on unsecured property (personal property and leasehold) are due on August 31 of each year. Taxes on unsecured property are levied at the preceding fiscal year's tax rate and become delinquent on October 31.

Future assessed valuation growth allowed under Article XIII A (as a result of new construction, certain changes of ownership, and increases in the cost of living of up to 2% per year) will be allocated on the basis of "situs" among the jurisdictions that serve the tax rate area within which the growth occurs. Local agencies will share the growth of "base" revenues from the tax rate area. Each year's growth allocation becomes part of each agency's allocation in the following year. The availability of revenue from growth in an agency tax bases is affected by the existence or establishment of redevelopment agencies which, under certain circumstances, may be entitled to such revenues.

For assessment and collection purposes, property is classified as either “secured” or “unsecured” and is listed accordingly on separate parts of the assessment roll. The “secured roll” is that part of the assessment roll containing State-assessed property and real property having a tax lien which is sufficient, in the opinion of the assessor, to secure payment of the taxes. Unsecured property comprises all property not attached to land such as personal property, business inventories, boats and airplanes. Unsecured property is assessed on the “unsecured roll.”

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

A portion of property tax revenue of the City is derived from utility property subject to assessment by the State Board of Equalization (“SBE”). State-assessed property, or “unitary property,” is property of a utility system with components located in many taxing jurisdictions assessed as part of a “going concern” rather than as individual parcels of real or personal property. Unitary and certain other state-assessed property is allocated to the counties by the SBE, taxed at special county-wide rates, and the tax revenues distributed to taxing jurisdictions according to statutory formulae generally based on the distribution of taxes in the prior year.

Recent changes in the California electric utility industry structure and in the way in which components of the industry are regulated, including the sale of electric generation assets to largely unregulated, nonutility companies, may affect how utility assets are assessed in the future, and which local agencies are to receive the property taxes. The City is unable to predict the impact of these changes on its utility property tax revenues, or whether future legislation or litigation may affect the State’s methods of assessing utility property and allocating tax revenues to local taxing agencies.

### **Tax Levies, Collections and Delinquencies**

A 10% penalty attaches to any delinquent payment for secured roll taxes. In addition, property on the secured roll with respect to which taxes are delinquent becomes tax-defaulted. Such property may thereafter be redeemed by payment of the delinquent taxes and the delinquency penalty, plus a redemption penalty to the time of redemption. If taxes are unpaid for a period of five years or more, the property is subject to auction sale by the County Tax Collector.

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

The following is a table summarizing the historical and current assessed valuation of the City.

**CITY OF BERKELEY**  
**Assessed Valuation**

Fiscal Year	Local Secured	Utility	Unsecured	Total Assessed Valuation
1995-96	\$5,073,323,182	\$8,140,154	\$303,740,381	\$5,385,203,717
1996-97	5,244,826,431	3,424,327	287,030,491	5,535,281,249
1997-98	5,361,809,315	4,047,790	306,875,197	5,705,950,670
1998-99	5,615,630,799	4,333,802	330,102,429	5,950,067,030
1999-00	6,041,217,058	4,016,481	343,244,408	6,388,477,946
2000-01	6,494,200,455	2,639,989	370,967,675	6,867,808,119
2001-02	6,990,750,147	2,522,621	399,694,699	7,392,967,437
2002-03	7,646,957,900	2,463,388	391,087,713	8,040,509,001
2003-04	8,251,039,596	4,526,768	402,174,941	8,655,741,305
2004-05	8,687,909,495	3,075,097	571,603,260	9,262,587,852
2005-06	9,382,514,077	2,520,396	574,137,169	9,959,171,642

Source: California Municipal Statistics, Inc. and County of Alameda

Property tax levies and collections for the City for 1994-95 through 2004-05 are shown in the following table:

**CITY OF BERKELEY**  
**Property Tax Levies and Collections**  
(Dollar amounts in thousands)

Fiscal Year	Total Taxes Levied <sup>(1)</sup>	Total Taxes Collected	Percentage of Levy Uncollected
1994-95	\$17,599	\$16,982	3.49%
1995-96	18,300	17,787	2.81
1996-97	19,439	18,863	2.96
1997-98	22,608	22,023	2.59
1998-99	20,382	19,873	2.50
1999-00	21,633	21,193	2.03
2000-01	23,339	22,854	2.08
2001-02	24,936	24,304	2.53
2002-03	26,792	26,076	2.67
2003-04	28,034	27,397	2.31
2004-05	29,970	29,384	1.95

<sup>(1)</sup> Levies include secured and unsecured property.

Source: Alameda County Office of the Auditor-Controller.

## Tax Rates

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

### CITY OF BERKELEY Historical Property Tax Rates (TRA 13-000)

	<u>Fiscal Year 1999-00</u>	<u>Fiscal Year 2000-01</u>	<u>Fiscal Year 2001-02</u>	<u>Fiscal Year 2002-03</u>	<u>Fiscal Year 2003-04</u>	<u>Fiscal Year 2004-05</u>
County-wide Rate	1.0000%	1.0000%	1.0000%	1.0000%	1.0000%	1.0000%
Other Districts <sup>(1)</sup>	0.0175	0.0150	0.0310	0.0149	.0136%	.0133%
Schools	0.1478	0.1327	0.1335	0.1576	.1887%	.1873%
City (exclusive of schools)	<u>0.0942</u>	<u>0.0867</u>	<u>0.0850</u>	<u>0.0750</u>	<u>.0725%</u>	<u>.0725%</u>
TOTAL	<u>1.2595%</u>	<u>1.2344%</u>	<u>1.2495%</u>	<u>1.2475%</u>	<u>1.2748%</u>	<u>1.2731%</u>

<sup>(1)</sup> Other Districts include East Bay Regional Park District and Bay Area Rapid Transit District.

Source: California Municipal Statistics, Inc

### CITY OF BERKELEY Typical Total Tax Rate TRA 13-000

	<u>2005-06</u>
1% General Fund Levy <sup>(1)</sup>	1.0000
City of Berkeley	.
Berkeley Unified School Bonds	.
Peralta Community College District	.
East Bay Regional Park	.
East Bay Municipal Utility District, Special District No. 1	<u>..</u>
Total Tax Rate	<u>. %</u>

(1) Maximum rate for purposes other than paying debt service in accordance with Article XIII A of the State Constitution.

Source: California Municipal Statistics, Inc.

## Labor Relations

As of October 1, 2004, the City employed 1,583 salaried employees. There are seven employee associations as shown below. In addition, the City employs approximately fifty management employees who are not represented by a formal bargaining unit. 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>
United Public Employees Local 790	566	June 28, 2008
Service Employees Local 535	384	June 28, 2008
Public Employees Local 1	149	June 28, 2008
I.B.E.W Local 1245	20	June 28, 2008
Part-Time Recreational Leaders Association/SEIU Local 1245	40	June 28, 2008
Berkeley Fire Fighters Association/I.A.F.F. Local 1227	120	July 1, 2006
Berkeley Police Association	207	June 30, 2007

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Source: City of Berkeley

## Retirement Programs

The City contributes to the Public Employees' Retirement System ("PERS") of the State of California, a defined benefit plan. All full-time and part-time benefited employees are eligible to participate in PERS. The total covered payroll for employees participating in PERS for the year ended June 30, 2003 was \$97,772,955.

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. As of June 30, 2004, the date of the last actuarial study, there are 5 retired members. 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.

## 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.

As part of its Risk Management Program, the City has excess coverage insurance for Workers' Compensation claims in excess of \$250,000 per occurrence; Medical/Dental claims in excess of \$75,000 per participant and Public Liability claims with a maximum of \$10,000,000.

The City requires pre-employment physical examinations for all employees as well as annual examination for all uniformed officers. As part of its Medical Care Management Program, copies of all injured employee medical reports are monitored by a third party agent to insure that injured employees receive proper care.

## Population

The following table sets forth population figures for the City and the County for 1960, 1970, 1980, and 1990 and the annual estimates for 1996 through 2005.

### CITY OF BERKELEY AND ALAMEDA COUNTY Population

<u>Year</u>	<u>City of Berkeley</u>	<u>Alameda County</u>
1960	111,268	908,209
1970	116,716	1,071,446
1980	103,328	1,105,379
1990	102,724	1,279,182
1996	100,100	1,340,400
1997	100,800	1,361,200
1998	101,800	1,388,800
1999	102,200	1,412,100
2000	102,743	1,443,939
2001	103,518	1,465,508
2002	104,254	1,483,311
2003	104,192	1,491,209
2004	104,210	1,496,968
2005	104,534	1,507,500

Source: The 1960, 1970, 1980 and 1990 totals are U.S. Census figures. The 1996 through 2005 figures are based upon annual estimates provided by the State Department of Finance as of January 1.

The University of California at Berkeley contributes significantly to the population of the City. The following table lists the fall enrollment of the University of California at Berkeley from 1980 through 2004.

### UNIVERSITY OF CALIFORNIA AT BERKELEY Fall Enrollment

<u>Year</u>	<u>Fall Enrollment</u>
1980	30,587
1985	31,286
1990	30,401
1991	30,145
1992	30,357
1993	30,100
1994	29,435
1995	29,411
1996	29,552
1997	30,022
1998	30,692
1999	31,015
2000	31,277
2001	32,128
2002	33,145
2003	33,076
2004	32,814

Source: University of California, Berkeley, Office of Student Research.

## Employment

For 2004, the EDD reports that within the County the average annual civilian labor force numbered \_\_\_\_, \_\_\_\_, employment numbered \_\_\_\_, \_\_\_\_, unemployment numbered \_\_\_\_, \_\_\_\_, and the unemployment rate was 6.2%. Related employment statistics for Alameda County for the period 1998 through 2004 are shown in the following table.

**ALAMEDA COUNTY**  
**Civilian Labor Force, Employment and Unemployment**  
**Annual Averages<sup>(1)</sup>**  
**(Amounts in Thousands)**

	1998	1999	2000	2001	2002	2003	2004
Civilian Labor Force	701,500	712,700	734,300	748,500	756,600	750,300	
Civilian Employment	672,500	688,100	712,600	714,400	705,000	699,300	
Civilian Unemployment	29,000	24,600	21,700	34,100	51,600	51,000	
Civilian Unemployment Rate	4.1%	3.5%	3.0%	4.6%	6.8%	6.8%	
<b>Wage and Salary Employment</b>							
Total, All Industries	660,500	683,600	711,000	719,600	699,600	691,100	
Agriculture	1,000	900	800	900	800	600	
Mining & Construction	31,400	36,000	39,000	41,300	39,700	40,400	
Manufacturing	91,800	89,600	93,100	90,400	81,700	76,700	
Transportation & Public Utilities	31,600	33,300	32,900	32,200	30,200	28,100	
Wholesale Trade	40,200	42,500	44,500	45,800	43,000	41,800	
Retail Trade	65,200	67,900	69,500	70,100	68,700	67,700	
Finance, Insurance & Real Estate	21,500	20,900	20,000	25,400	27,400	31,400	
Services	186,900	197,200	209,200	207,400	200,100	199,500	
Government	123,300	125,800	128,400	129,200	133,600	131,500	

<sup>(1)</sup> Civilian Labor Force uses March 2003 Benchmark, Wage and Salary Employment uses March 2003 Benchmark  
Source: California Employment Development Department.

The unemployment rate in the County was 6.0% in 2004. For the same period, the unemployment rate was 6.2% for the State of California and 5.5% for the United States.

The following table lists the major manufacturing and non-manufacturing employers in the City:

**CITY OF BERKELEY  
Major Employers  
(As Of June 30, 2004)**

<u>Company</u>	<u>Type of Business</u>	<u>Employees</u>
University of California at Berkeley	Education	13,635
Lawrence Berkeley National Laboratory	Research	3,900
Alta Bates Medical Center	Health Care	2,065
City of Berkeley	Government	1,516
Bayer Corporation	Pharmaceutical	1,262
Berkeley Unified School District	Education	1,200
Kaiser Permanente Medical Group	Health Care	700
California Department of Health Services	Public Health	600
Andronico's Market	Grocer	342
Pacific Steel Casting Company	Manufacturing	340

Source: City of Berkeley, Office of Economic Development.

**Commercial Activity**

The following table reflects the taxable retail sales in the City and the County from 1994 through 2003:

**CITY OF BERKELEY AND ALAMEDA COUNTY  
Taxable Sales  
1994-2003  
(Dollars in Thousands)**

	<u>City of Berkeley</u>	<u>Alameda County</u>
1994	\$1,006,624	\$14,164,148
1995	996,669	15,476,364
1996	1,042,545	17,087,375
1997	1,102,957	18,505,619
1998	1,173,318	19,221,688
1999	1,254,176	20,672,287
2000	1,359,434	23,763,516
2001	1,347,567	22,758,085
2002	1,279,942	21,264,629
2003	1,248,889	21,375,029

Source: State Board of Equalization.

## Comparative Financial Statements

The following table reflects the City's General Fund financial statements for fiscal years 2000-01 through 2003-04, estimated actual figures for 2004-05 and the City's adopted budget for fiscal year 2005-06.

**CITY OF BERKELEY**  
**General Fund**  
**Fiscal Years 2000-01 through 2005-06**  
**(\$ in Thousands)**

	Actual	Actual	Actual	Actual	Preliminary	Adopted
	<u>2000-01</u>	<u>2001-02</u>	<u>2002-03</u>	<u>2003-04</u>	<u>2004-05</u>	<u>2005-06</u>
<b>REVENUES:</b>						
Taxes	\$74,952	\$73,867	\$77,225	\$79,894	\$87,793	\$87,226
Licenses and Permits	139	183	158	164	240	192
Fines and Forfeitures	6,511	6,503	6,948	8,109	8,981	9,703
Franchises	1,389	1,333	1,218	1,393	1,437	1,464
Rents	160	133	134	140	131	125
Interest	4,998	3,557	3,010	1,458	2,980	3,300
Subvention and Grants	7,033	6,672	6,861	5,224	7,141	5,030
Service Fees	4,353	4,473	4,780	6,261	5,279	5,300
Transfers In/Other	<u>7,427</u>	<u>7,579</u>	<u>7,767</u>	<u>7,716</u>	<u>8,670</u>	<u>11,3338</u>
<b>TOTAL REVENUES</b>	<b>\$106,962</b>	<b>\$104,300</b>	<b>\$108,101</b>	<b>\$110,359</b>	<b>\$122,652</b>	<b>\$123,673</b>
<b>EXPENDITURES:</b>						
General Government	\$18,061	\$19,885	\$20,753	\$21,529	\$21,337	\$30,109
Highways and Streets	72	457	627	581	561	551
Public Safety	44,857	47,625	53,554	53,903	58,120	63,453
Community Development	7,673	5,810	5,922	5,410	5,588	2,358
Health and Human Services	12,375	7,994	8,573	8,709	8,683	8,988
Economic Development	1,362	1,527	1,610	1,519	1,238	1,496
Culture-Recreation	306	5,896	4,778	4,807	4,692	3,979
Non-departmental	617	1,910	0	0	0	0
Debt Service	1,235	432	438	567	559	1,003
Transfers Out/Other	<u>13,293</u>	<u>14,048</u>	<u>12,942</u>	<u>12,177</u>	<u>13,342</u>	<u>17,343</u>
<b>TOTAL EXPENDITURES</b>	<b>\$99,851</b>	<b>\$105,585</b>	<b>\$109,197</b>	<b>\$109,202</b>	<b>114,120</b>	<b>\$129,280</b>
<b>EXCESS REVENUES OVER (UNDER) EXPENDITURES</b>	<b>7,111</b>	<b>(1,285)</b>	<b>(1,096)</b>	<b>1,157</b>	<b>8,532</b>	<b>(5,607)</b>
<b>EQUITY TRANSFER IN/(OUT)</b>	<b>(682)</b>					
<b>PRIOR PERIOD ADJUSTMENT</b>	<b>(293)</b>	<b>(723)</b>		<b>1,436</b>		
<b>FUND BALANCE, JUNE 30</b>	<b><u>\$28,463</u></b>	<b><u>\$26,455</u></b>	<b><u>\$25,359</u></b>	<b><u>\$27,952</u></b>	<b><u>\$36,484</u></b>	<b><u>\$30,877</u></b>

Source: City of Berkeley.

## City Debt

**Short-Term Debt.** On November 30, 2004, the City issued \$25,000,000 2004 Tax and Revenue Anticipation Notes (the "2004 Notes"). The 2004 Notes mature on November 29, 2005.

**Long-Term Debt.** As of June 30, 2005, long-term obligations of the City were as follows:

**CITY OF BERKELEY  
Long-Term Obligations  
Balance As of June 30, 2005**

Payments Due Year Ending (June 30)	<u>Loans</u>	Tax Allocation <u>Bonds</u>	Certificates Of <u>Participation</u>	Capital <u>Leases</u>	Lease Revenue <u>Bonds</u>	Pension Obligation <u>Bonds</u>	<u>G.O. Bonds</u>
2006	403,514	938,823	1,243,346	498,512	1,088,675	1,078,100	5,381,790
2007	408,596	941,925	1,508,346	498,512	1,088,438	964,313	5,377,975
2008	412,184	931,777	1,511,721	498,512	1,086,719	853,925	5,383,119
2009	376,730	934,143	1,884,847	498,512	1,088,524	756,938	5,383,877
2010	<u>379,731</u>	<u>933,577</u>	<u>1,885,196</u>	<u>0</u>	<u>1,083,888</u>	<u>672,275</u>	<u>5,383,877</u>
Subtotal	\$1,980,755	\$4,680,245	\$8,033,456	\$1,994,050	\$5,436,244	\$4,325,551	26,910,638
Thereafter	6,665,051	2,776,367	43,391,025	0	16,459,577	3,307,410	88,821,334
Less: Interest	<u>(964,524)</u>	<u>(1,416,612)</u>	<u>(23,474,481)</u>	<u>(250,406)</u>	<u>(9,155,821)</u>	<u>(1,657,961)</u>	<u>(45,791,972)</u>
Total <sup>(2)</sup>	\$7,681,281	\$6,040,000	\$27,950,000	\$1,743,644	\$12,740,000	\$5,975,000	\$69,940,000

Source: City of Berkeley Finance Department.

**Loans.** The City currently has three outstanding Harbor Construction Loans with the California Department of Navigation and Ocean Development for the purpose of marina berthing rehabilitation. The City also has an outstanding Street Light Conversion Loan with the California Energy Commission for lighting efficiency improvements.

**Tax Allocation Bonds.** In August 1986, the City of Berkeley Redevelopment Agency issued its West Berkeley Redevelopment Project Tax Allocation Bonds to defease its outstanding 1977 Redevelopment Bonds and finance additional housing, rehabilitation, construction and site acquisition. The City of Berkeley Redevelopment Agency refinanced the 1986 tax allocation bonds in May 1996, in order to reduce the amount of debt service due during the term of the outstanding bonds. Final maturity of the refunding bonds is December 2012.

In December 1997, the City of Berkeley Redevelopment Agency issued its West Berkeley Redevelopment Project Subordinate Tax Allocation Bonds for \$5,450,000 to provide funds for the continued improvement of the project area. The City of Berkeley Redevelopment Agency also issued \$1,000,000 in subordinate tax allocation bonds to provide funds for a housing project that was purchased by the City.

The City of Berkeley Redevelopment Agency issued in December 2001 \$600,000 tax allocation bonds secured by tax increment in the Savo Island Project Area. Final maturity of the bonds is September 1, 2025, with interest and principal paid semi-annually each March 1 and September 1.

**Certificates of Participation.** In March, 2003, the City issued its \$27,950,000, 2003 Certificates of Participation (Building Acquisition and Improvement Projects). The 2003 Certificates mature in 2033.

**Revenue Bonds.** Berkeley Joint Powers Financing Authority issued lease revenue bonds dated February 1, 1994, in the aggregate principal amount of \$5,950,000 to refund City of Berkeley Off-Street Parking Revenue Bonds, Series B and C, and Sather Gate Garage Corporation Debentures, and to finance construction for seismic improvement to the Sather Gate Garage and Center Street Garage.

In May 1996 the Berkeley Joint Powers Financing Authority issued lease revenue bonds to refund, on June 1, 1996 the City's \$31,535,000 of certificates of participation, dated June 1986 originally issued to refund the City's 1985 certificates of participation originally issued to acquire land and existing improvements for public purposes. The final maturity of the refunding bonds is June 2015.

In October 1999, the Berkeley Joint Powers Financing Authority issued \$9,125,000 in lease revenue bonds to fund two projects. The proceeds are anticipated to be used to acquire a park property and make improvements and to acquire the Berkeley Repertory Theater upon completion in 2001. The final maturity for the bonds is October 1, 2029.

On May 28, 1998, the City issued \$12,415,000 in pension refunding bonds to refund the City's outstanding \$27,320,000 certificates of participation originally issued on February 1, 1989 to finance the Safety Members Pension Fund. The final maturity for the bonds is June 1, 2018.

**General Obligation Bonds.** In 1992, the City received authorization to issue \$55 million in bonded indebtedness. In 1993, the City issued \$8,000,000 in general obligation bonds for seismic retrofitting and general construction at four of the City's fire stations and various water system improvements, in 1995, issued \$14,000,000 in general obligation bonds and in 1997 issued \$10,500,000 for improvements to and seismic retrofitting of buildings, fixtures and equipment used in connection with the City's fire protection system. The 1993 and 1995 bonds are being refunded with proceeds of the Bonds. No other bonds will be issued under this authorization.

In 1996, the City received authorization to issue \$49 million in bonded indebtedness. The first series, Series A, was issued in 1997 for \$10,000,000 for seismic retrofitting to the City's main library, the civic center and downtown improvements. The second series, Series B, was issued in 1998 for \$25,000,000 for seismic retrofitting to the City's main library. The third and final series was issued in August 1999 for \$14,000,000.

**Special Tax Bonds.** In 2000, the City received voter authorization to issue \$9,750,000 in special tax bonds secured a community facilities district encompassing all parcels located within the City boundaries. The bonds were issued in June 2002 with proceeds used to purchase disaster fire protection equipment and a storage facility for the equipment. Final maturity of the bonds is September 2021. As part of the voter authorization for the special tax bonds, the City terminated the balance of the general obligation bond authorization remaining on the 1992 authorization.

## **Statement of Direct and Overlapping Debt**

Set forth below is a direct and overlapping debt report (the "Debt Report") prepared by California Municipal Statistics, Inc. and dated June 30, 2005. 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 representations 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.

**CITY OF BERKELEY**  
**Statement of Direct and Overlapping Debt**

2004-05 Assessed Valuation: \$9,262,587,852  
 Redevelopment Incremental Valuation: 215,120,566  
 Adjusted Assessed Valuation: \$9,047,467,286

<u>DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT:</u>	<u>% Applicable</u>	<u>Debt 6/30/05</u>
Bay Area Rapid Transit District	2.700%	\$ 2,700,000
East Bay Municipal Utility District	7.661	233,661
East Bay Municipal Utility District, Special District No. 1	19.4	707,491,083
Peralta Community College District	21.184	32,499,434
Berkeley Unified School District	99.995	187,455,774
<b>City of Berkeley</b>	<b>100.</b>	<b>69,940,000</b>
City of Berkeley Community Facilities District No. 1	100.	9,085,000
East Bay Regional Park District	4.008	<u>5,801,602</u>
<b>TOTAL GROSS DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$316,696,551</b>
Less: East Bay Municipal Utility District (100% self-supporting)		<u>233,661</u>
<b>TOTAL NET DIRECT AND OVERLAPPING TAX AND ASSESSMENT DEBT</b>		<b>\$316,462,893</b>

<u>DIRECT AND OVERLAPPING GENERAL FUND OBLIGATION DEBT:</u>		
Alameda County and Coliseum Obligations	6.782%	\$ 43,223,246
Alameda County Pension Obligations	6.782	20,811,461
Alameda County Board of Education Certificates of Participation	6.782	138,353,439
Alameda-Contra Costa Transit District Certificates of Participation	8.087	1,676,839
<b>City of Berkeley Lease Revenue Bonds and Certificates of Participation</b>	<b>100.</b>	<b>40,640,000</b>
<b>City of Berkeley Pension Obligations</b>	<b>100.</b>	<b><u>5,975,000</u></b>
<b>TOTAL DIRECT AND OVERLAPPING GENERAL FUND OBLIGATION DEBT</b>		<b>\$112,464,899</b>

GROSS COMBINED TOTAL DEBT	\$429,161,453 (1)
NET COMBINED TOTAL DEBT	\$428,927,792

Ratios to 2004-05 Assessed Valuation:

**Direct Debt (\$69,940,000) ..... 0.76%**  
**Combined Direct Debt (\$70,025,000) (2) ..... .085%**  
 Total Gross Direct and Overlapping Tax and Assessment Debt .. 3.42%  
 Total Net Direct and Overlapping Tax and Assessment Debt..... 3.42%

Ratios to Adjusted Assessed Valuation:

**Combined Direct Debt (\$125,640,000) (2) ..... 1.39%**  
 Gross Combined Total Debt ..... 4.74%  
 Net Combined Total Debt..... 4.74%

- (1) Excludes tax and revenue anticipation notes, enterprise revenue, mortgage revenue and tax allocation bonds and non-bonded capital lease obligations.  
 (2) Includes Community Facilities District No. 1 (boundaries are coterminous with the city).

STATE SCHOOL BUILDING AID REPAYABLE AS OF 6/30/04: \$21,740

Source: California Municipal Statistics, Inc.

**APPENDIX B - EXCERPTS FROM THE CITY'S COMPREHENSIVE  
ANNUAL FINANCIAL REPORT FOR YEAR ENDED JUNE 30, 2005**

**APPENDIX C - FORM OF BOND COUNSEL OPINION**

[LETTERHEAD OF JONES HALL]

November \_\_, 2005

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

*OPINION:*      \$25,000,000 City of Berkeley, California 2005-06 Tax and Revenue Anticipation  
Notes

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Members of the City Council:

We have acted as bond counsel in connection with the issuance by the City of Berkeley, California (the "City"), of \$25,000,000 City of Berkeley, California 2005-06 Tax and Revenue Anticipation Notes, dated November \_\_, 2005 (the "Notes"), pursuant to Article 7.6 (commencing with Section 53850) of Chapter 4, Part 1, Division 2, Title 5 of the California Government Code (the "Act"), and a Resolution of the City, adopted on October 25, 2005 (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 of public officials and others furnished to us, without undertaking to verify such facts by independent investigation.

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

1. The City is a duly created and validly existing municipal corporation with the power to adopt the Resolution, perform the agreements on its part contained therein and to issue the Notes.
2. The Resolution has been duly adopted by the City and constitutes a valid and binding obligation of the City enforceable upon the City.

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

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

5. The interest on the Notes is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that, for the purpose of computing the alternative minimum tax imposed on such 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 that must be satisfied subsequent to the issuance of the Notes in order that interest thereon 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 interest on the Notes in gross income for federal income tax purposes to be retroactive to the date of issuance of the Notes. We express no opinion regarding other federal tax consequences arising with respect to the Notes.

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

The rights of the owners of the Notes and the enforceability of the Notes and the Resolution 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**

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## CONTINUING DISCLOSURE CERTIFICATE

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This Continuing Disclosure Certificate (the “Disclosure Certificate”) is executed and delivered by the City of Berkeley (the “City”) in connection with the issuance by the City, of \$25,000,000 City of Berkeley, California 2005 Tax and Revenue Anticipation Notes (the “Notes”). The Notes are being issued pursuant to a resolution adopted by the City Council of the City on October 25, 2005 (the “Resolution”). The City covenants and agrees as follows:

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

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

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

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

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

“*Repository*” shall mean each State Repository.

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

“*State Repository*” shall mean any public or private repository or entity designated by the State of California as a state repository for the purpose of the Rule and recognized as such by the Securities and Exchange Commission. As of the date of this Disclosure Certificate, there is no State Repository.

Section 3. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 3, the City shall give, or cause to be given, notice of the occurrence of any of the following events with respect to the Notes, 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 or events affecting the tax-exempt status of the security.
- (7) Modifications to rights of security holders.
- (8) Contingent or unscheduled bond calls.
- (9) Defeasances.
- (10) Release, substitution, or sale of property securing repayment of the securities.
- (11) Rating changes.

(b) Whenever the City obtains knowledge of the occurrence of a Listed Event, the City shall as soon as possible determine if such event would be material under applicable Federal securities law.

(c) If the City determines that knowledge of the occurrence of a Listed Event would be material under applicable Federal securities law, the City shall promptly file a notice of such occurrence with the Municipal Securities Rulemaking Board and each State Repository. Notwithstanding the foregoing, notice of Listed Events described in subsections (a)(8) and (9) 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 pursuant to the Resolution.

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

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

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

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

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

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

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

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

Section 9. Duties, Immunities and Liabilities of Dissemination Agent. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Certificate, and the City agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents, harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder,

including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the City under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Notes.

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

Date: November \_\_, 2005

CITY OF BERKELEY

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