

RESOLUTION NO. 69,306-N.S.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BERKELEY AUTHORIZING THE ISSUANCE AND SALE OF NOT TO EXCEED \$38,000,000 PRINCIPAL AMOUNT OF GENERAL OBLIGATION BONDS TO FINANCE ACQUISITION AND IMPROVEMENT OF AFFORDABLE HOUSING, AND AUTHORIZING ACTIONS RELATED THERETO

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

WHEREAS, more than two-thirds of the electors voting at an election held on November 6, 2018, voted for a proposition (the "Ballot Proposition") authorizing the issuance by the City of general obligation bonds in the aggregate principal amount of \$135,000,000 for the purpose of providing funds for the acquisition and improvement of affordable housing; and

WHEREAS, the City Council wishes at this time to authorize the issuance and sale of its general obligation bonds under such authority in the aggregate principal amount of not to exceed \$38,000,000 (the "Bonds") under this Resolution and in conformity with the Bond Law; and

WHEREAS, further, as required by Government Code Section 5852.1 enacted January 1, 2018 by Senate Bill 450, attached hereto as Appendix B is the information relating to the Bonds that has been obtained by the City Council and is hereby disclosed and made public; and

WHEREAS, pursuant to Resolution No. 67,871-N.S. (March 24, 2017), this City Council previously approved a Debt Management and Disclosure Policy which complies with Government Code Section 8855, and the delivery of the Bonds will be in compliance with said policy.

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

**ARTICLE I**

**DEFINITIONS; AUTHORITY**

SECTION 1.01. *Definitions.* The terms defined in this Section 1.01, as used and capitalized herein, shall, for all purposes of this Resolution, have the meanings given them below, unless the context clearly requires some other meaning.

“Bond Counsel” means (a) Jones Hall, A Professional Law Corporation, and (b) any other attorney or firm of attorneys nationally recognized for expertise in rendering opinions as to the legality and tax exempt status of securities issued by public entities.

“Bond Law” means Article 4.5 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, commencing with Section 53506 of said Code, as in effect on the date of adoption hereof and as amended hereafter.

“Bond Proposition” means the proposition submitted to and approved by more than two-thirds of the voters on November 6, 2018, under which the issuance of the Bonds has been authorized.

“Bond Purchase Agreement” means the Bond Purchase Agreement for the Bonds, which is approved under Section 3.02.

“Bond Sale Documentation” means (a) if the Bonds are sold by competitive bidding in accordance with Section 3.01(a), the Official Notice of Sale and the winning bid of the Original Purchaser, or (b) if the Bonds are sold by negotiation in accordance with Section 3.01(b), the Bond Purchase Agreement between the City and the Original Purchaser.

“Bonds” means the City of Berkeley 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable) authorized to be issued under this Resolution.

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

“City Representative” means the Mayor, the City Manager, the Finance Director and any other officer of the City authorized by resolution of the City Council of the City to act on behalf of the City with respect to this Resolution and the Bonds.

“Closing Date” means the date upon which there is a physical delivery of the Bonds in exchange for the amount representing the purchase price of the Bonds by the Original Purchaser.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the City and related to the authorization, issuance, sale and delivery of the Bonds, including but not limited to the costs of preparation and reproduction of documents, printing expenses, filing and recording fees, initial fees and charges of the Paying Agent and its counsel, legal fees and charges, fees and disbursements of consultants and professionals, rating agency fees, fees and charges for preparation, execution and safekeeping of the Bonds and any other cost, charge or fee in connection with the original issuance of the Bonds.

“County” means the County of Alameda, a political subdivision of the State of California, duly organized and existing under the Constitution and laws of the State of California.

“Debt Service Fund” means the account established and held by the City under Section 4.03.

“Depository” means (a) initially, DTC, and (b) any other Securities Depository acting as Depository under Section 2.09.

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

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

“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.

“Interest Payment Date” means September 1, 2020, and the first day of each succeeding March and September, or such other dates determined by a City Representative in connection with the pricing of the Bonds.

“Official Notice of Sale” means the Official Notice of Sale for the Bonds, which is approved under Section 3.01.

“Original Purchaser” means the original purchaser of the Bonds at the public or negotiated sale thereof.

“Outstanding,” when used as of any particular time with reference to Bonds, means all Bonds except: (a) Bonds theretofore canceled by the Paying Agent or surrendered to the Paying Agent for cancellation; (b) Bonds paid or deemed to have been paid within the meaning of Section 9.02; and (c) Bonds in lieu of or in substitution for which other Bonds shall have been authorized, executed, issued and delivered by the City under this Resolution.

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

“Paying Agent” means the Paying Agent appointed by the City and acting as paying agent, registrar and authenticating agent for the Bonds, its successors and assigns, and any other corporation or association which may at any time be substituted in its place, as provided in Section 6.01.

“Principal Office” means the office or offices of the Paying Agent for the payment of the Bonds and the administration of its duties hereunder, as such office or offices shall be identified in a written notice filed with the City by the Paying Agent.

“Project Fund” means the fund established and held by the City under Section 4.02.

“Record Date” means the 15<sup>th</sup> day of the month preceding an Interest Payment Date, whether or not such day is a business day.

“Registration Books” means the records maintained by the Paying Agent for the registration of ownership and registration of transfer of the Bonds under Section 2.08.

“Resolution” means this Resolution, as originally adopted by the City Council on February 25, 2020, and including all amendments hereto and supplements hereof which are duly adopted by the City Council from time to time in accordance herewith.

“Securities Depositories” means DTC; and, in accordance with then current guidelines of the Securities and Exchange Commission, such other securities depositories as the City may designate.

“Supplemental Resolution” means any resolution supplemental to or amendatory of this Resolution, adopted by the City in accordance with Article VIII.

“Tax Code” means the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable, temporary and final regulations promulgated, and applicable official public guidance published, under said Code.

“Written Request of the City” means an instrument in writing signed by a City Representative or by any other officer of the City duly authorized to act on behalf of the City under a written certificate of a City Representative.

SECTION 1.02. *Interpretation.*

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of articles and sections herein and the table of contents hereof are solely for convenience of reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof.

(c) All references herein to “Articles,” “Sections” and other subdivisions are to the corresponding Articles, Sections or subdivisions of this Resolution; the words “herein,” “hereof,” “hereby,” “hereunder” and other words of similar import refer to this Resolution as a whole and not to any particular Article, Section or subdivision hereof.

SECTION 1.03. *Authority for this Resolution; Findings.* This Resolution is entered into under the provisions of the Bond Law. It is hereby certified that all of the things, conditions

and acts required to exist, to have happened or to have been performed precedent to and in the issuance of the Bonds do exist, have happened or have been performed in due and regular time and manner as required by the laws of the State of California, and that the amount of the Bonds, together with all other indebtedness of the City, does not exceed any limit prescribed by any laws of the State of California.

## ARTICLE II

### THE BONDS

SECTION 2.01. *Authorization.* Bonds in the aggregate original principal amount of not to exceed \$38,000,000 are hereby authorized by the City to be issued by the City under and subject to the terms of the Bond Law and this Resolution, for the purpose of raising money to finance the acquisition and improvement of affordable housing, as provided in the Ballot Proposition, and to pay the Costs of Issuance incurred in connection therewith. This Resolution constitutes a continuing agreement between the City and the Owners of all of the Bonds issued or to be issued hereunder and then Outstanding to secure the full and final payment of principal of and interest and premium, if any, on all Bonds which may be Outstanding hereunder, subject to the covenants, agreements, provisions and conditions herein contained. The Bonds are designated the “City of Berkeley 2020 General Obligation Bonds (2018 Election Measure O: Affordable Housing) (Federally Taxable).”

SECTION 2.02. *Terms of Bonds.*

(a) Principal Amount of Bonds. The Bonds are authorized to be issued in the aggregate principal amount of not to exceed \$38,000,000.

(b) Form; Numbering. The Bonds will be issued in fully registered form, without coupons, in authorized denominations of \$5,000 each or any integral multiple thereof. The Bonds will be lettered and numbered as the Paying Agent prescribes.

(c) Date of Bonds. The Bonds will be dated as of the Closing Date.

(d) CUSIP Identification Numbers. “CUSIP” identification numbers will be imprinted on the Bonds, but such numbers do not constitute a part of the contract evidenced by the Bonds and no error or omission with respect thereto will constitute cause for refusal of the Original Purchaser to accept delivery of and pay for the Bonds. In addition, failure on the part of the City to use such CUSIP numbers in any notice to Owners of the Bonds will not constitute an event of default or any violation of the City’s contract with such Owners and will not impair the effectiveness of any such notice.

(e) Determination of Maturities and Interest Rates. The Bonds shall mature (or, alternatively, be subject to mandatory sinking fund redemption as hereinafter provided) on September 1 in each year commencing September 1, 2021 and continuing to and including September 1, 2050. The exact principal amount of the Bonds maturing on

September 1 in each year shall be determined upon the sale of the Bonds, in accordance with the Bond Sale Documentation.

Each Bond will bear interest at the respective rates to be determined upon the sale of the Bonds in accordance with Article III. Interest on the Bonds is payable from the Interest Payment Date next preceding the date of authentication thereof unless:

- a Bond is authenticated as of an Interest Payment Date, in which event it will bear interest from such date,
- a Bond is authenticated prior to an Interest Payment Date and after the close of business on the preceding Record Date, in which event it will bear interest from such Interest Payment Date,
- a Bond is authenticated on or before the first Record Date, in which event it shall bear interest from the Closing Date, or
- at the time of authentication of a Bond, interest is in default thereon, in which event it will bear interest from the Interest Payment Date to which interest has previously been paid or made available for payment thereon.

(f) Manner of 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 at the close of business on the preceding Record Date; except that at the written request of the Owner of at least \$1,000,000 aggregate principal amount of the Bonds, which written request is on file with the Paying Agent as of any Record Date, interest on such Bonds shall be paid by wire transfer on the succeeding Interest Payment Date to an account in the United States of America as shall be specified in such written request. Principal of and premium (if any) on the Bonds is payable in lawful money of the United States of America upon presentation and surrender at the Principal Office of the Paying Agent.

#### SECTION 2.03. *Redemption.*

(a) Optional Redemption. The Bonds shall be subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on the dates and upon payment of a redemption price (equal to the principal amount of Bonds to be redeemed together with a redemption premium, if any) as determined upon the sale of the Bonds in accordance with the Bond Sale Documentation.

(b) Mandatory Sinking Fund Redemption. If and to the extent specified in the Bond Sale Documentation, any maturity of the Bonds will be designated as "Term Bonds" which are subject to mandatory sinking fund redemption on September 1 in each of the years and in the respective principal amounts set forth in such bid, at a redemption price

equal to 100% of the principal amount of the Bonds to be redeemed, in each case without premium, together with interest accrued thereon to the redemption date. If some but not all of the Term Bonds have been redeemed under the preceding subsection (a) of this Section, the aggregate principal amount of Term Bonds to be redeemed in each year under this subsection (b) shall be reduced on a pro rata basis in integral multiples of \$5,000, as designated in written notice filed by the City with the Paying Agent.

(c) Selection of Bonds for Redemption. Whenever less than all of the Outstanding Bonds of any one maturity are designated for redemption, the Paying Agent shall select the Outstanding Bonds of such maturity to be redeemed by lot in any manner deemed fair by the Paying Agent. For purposes of such selection, each Bond shall be deemed to consist of individual Bonds of \$5,000 denominations which may be separately redeemed.

(d) Redemption Procedure. The Paying Agent shall cause notice of any redemption to be mailed, first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, (i) to the Securities Depositories and the Municipal Securities Rulemaking Board, and (ii) to the respective Owners of any Bonds designated for redemption, at their addresses appearing on the Registration Books. Such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of Bonds. The City is entitled to send a redemption notice that declares that the redemption is conditional upon the availability of moneys to accomplish the redemption, and the City may rescind any notice of optional redemption of the Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption was sent under this section. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent shall have no liability to the Owners or any other party related to or arising from such rescission.

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

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

From and after the date fixed for redemption, if notice of such redemption has been duly given and funds available for the payment of the principal of and interest (and premium,

if any) on the Bonds so called for redemption have been duly provided, such Bonds so called will cease to be entitled to any benefit under this Resolution other than the right to receive payment of the redemption price, and no interest will accrue thereon on or after the redemption date specified in such notice. The Paying Agent shall cancel all Bonds redeemed under this Section 2.03, and shall submit to the City a certificate of cancellation.

SECTION 2.04. *Form of Bonds.* The form of the Bonds, including the form of the Paying Agent's Certificate of Authentication and the form of Assignment to appear thereon, with necessary or appropriate variations, omissions and insertions, as permitted or required by this Resolution, are set forth in Appendix A attached hereto.

SECTION 2.05. *Execution of Bonds.* The Bonds shall be executed on behalf of the City by the facsimile signatures of its Mayor and City Clerk who are in office on the date of adoption of this Resolution or at any time thereafter, and the seal of the City shall be impressed, imprinted or reproduced by facsimile thereon. If any officer whose signature appears on any Bond ceases to be such officer before delivery of the Bonds to the Original Purchaser, such signature will nevertheless be as effective as if the officer had remained in office until the delivery of the Bonds to the Original Purchaser. Any Bond may be signed and attested on behalf of the City by such persons as at the actual date of the execution of such Bond are the proper officers of the City although at the nominal date of such Bond any such person does not serve as such officer of the City.

Only those Bonds bearing a Certificate of Authentication in the form set forth in Appendix A attached hereto, executed and dated by the Paying Agent, will be valid or obligatory for any purpose or entitled to the benefits of this Resolution, and such Certificate of Authentication of the Paying Agent constitutes conclusive evidence that the Bonds so registered have been duly authenticated, registered and delivered hereunder and are entitled to the benefits of this Resolution.

SECTION 2.06. *Transfer of Bonds.* Any Bond may, in accordance with its terms, be transferred, upon the Registration Books, by the person in whose name it is registered, in person or by his duly authorized attorney, upon surrender of such Bond for cancellation at the Principal Office at the Paying Agent, accompanied by delivery of a written instrument of transfer in a form approved by the Paying Agent, duly executed. The City may charge a reasonable sum for each new Bond issued upon any transfer.

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

SECTION 2.07. *Exchange of Bonds.* Bonds may be exchanged at the Principal Office of the Paying Agent for a like aggregate principal amount of Bonds of authorized denominations and of the same maturity. The City may charge a reasonable sum for each new Bond issued upon any exchange.



SECTION 2.08. *Registration Books.* The Paying Agent shall keep or cause to be kept sufficient books for the registration and transfer of the Bonds, which shall at all times be open to inspection by the City upon reasonable notice; and, upon presentation for such purpose, the Paying Agent shall, under such reasonable regulations as it may prescribe, register or transfer or cause to be registered or transferred, on said books, Bonds as herein before provided.

SECTION 2.09. *Book-Entry System.* Except as provided below, DTC will be the Owner of all of the Bonds, and the Bonds will be registered in the name of Cede & Co. as nominee for DTC. The Bonds shall be initially executed and delivered in the form of a single fully registered Bond for each maturity date of the Bonds in the full aggregate principal amount of the Bonds maturing on such date. The Paying Agent and the City may treat DTC (or its nominee) as the sole and exclusive owner of the Bonds registered in its name for all purposes of this Resolution, and neither the Paying Agent nor the City shall be affected by any notice to the contrary. The Paying Agent and the City shall not have any responsibility or obligation to any Depository System Participant, any person claiming a beneficial ownership interest in the Bonds under or through DTC or a Depository System Participant, or any other person which is not shown on the register of the City as being an owner, with respect to the accuracy of any records maintained by DTC or any Depository System Participant or the payment by DTC or any Depository System Participant by DTC or any Depository System Participant of any amount in respect of the principal or interest with respect to the Bonds. The City shall cause to be paid all principal and interest with respect to the Bonds only to DTC, and all such payments shall be valid and effective to fully satisfy and discharge the City's obligations with respect to the principal and interest with respect to the Bonds to the extent of the sum or sums so paid. Except under the conditions noted below, no person other than DTC shall receive a Bond. Upon delivery by DTC to the City of written notice to the effect that DTC has determined to substitute a new nominee in place of Cede & Co., the term "Cede & Co." in this Resolution shall refer to such new nominee of DTC.

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

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

SECTION 2.10. *Bonds Mutilated, Lost, Destroyed or Stolen.* If any Bond becomes mutilated the City, at the expense of the Owner of said Bond, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in exchange and substitution for the Bond so mutilated, but only upon surrender to the Paying Agent of the Bond so mutilated. The Paying Agent shall cancel every mutilated Bond so surrendered to it. If any Bond is lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the City and, if such evidence is satisfactory to the City and the City receives satisfactory indemnity, the City, at the expense of the Owner, shall execute, and the Paying Agent shall thereupon authenticate and deliver, a new Bond of like maturity and principal amount in lieu of and in substitution for the Bond so lost, destroyed or stolen.

The City may require payment of a sum not exceeding the actual cost of preparing each new Bond issued under this Section and of the expenses which may be incurred by the City and the Paying Agent. Any Bond issued under the provisions of this Section 2.10 in lieu of any Bond alleged to be lost, destroyed or stolen will constitute an original additional contractual obligation of the City whether or not the Bond so alleged to be lost, destroyed or stolen is at any time enforceable by anyone, and such Bond will be equally and proportionately entitled to the benefits of this Resolution with all other Bonds issued under this Resolution.

Notwithstanding any other provision of this Section 2.10, in lieu of delivering a new Bond for which principal has or is about to become due for a Bond which has been mutilated, lost, destroyed or stolen, the Paying Agent may make payment of such Bond in accordance with its terms.

### **ARTICLE III**

#### **SALE OF BONDS**

SECTION 3.01. *Competitive Sale of Bonds*

(a) Approval of Official Notice of Sale; Competitive Sale Procedures. The Bonds shall be offered for sale by competitive bid in accordance with the provisions of the Official Notice of Sale in substantially the form on file with the City Clerk together with such additions thereto and changes therein as may be approved by a City Representative. The City Council hereby authorizes and directs a City Representative to accept the best responsible bid for the Bonds, to be determined in accordance with the related Official Notice of Sale. A City Representative, on behalf of the City, may exercise his or her own

discretion and judgment in awarding the sale of the Bonds, and may, in his or her discretion, reject any and all bids and waive any irregularity or informality in any bid. Sale of the Bonds shall be awarded, or all bids shall be rejected, not later than 24 hours after the expiration of the time prescribed for the receipt of proposals unless such time of award is waived by the successful bidder.

(b) Publication of Notice of Intention. The City Council hereby approves and authorizes the publication by Bond Counsel of a notice of the City's intention to sell the Bonds, in form and substance acceptable to Bond Counsel, in accordance with applicable law.

(c) Furnishing of Documents. The municipal advisor to the City, NHA Advisors, LLC is hereby authorized and directed by the City to cause to be furnished to prospective bidders a reasonable number of copies of said Official Notice of Sale and a reasonable number of copies of the Preliminary Official Statement relating to the Bonds.

SECTION 3.02. *Negotiated Sale of Bonds.* The Bonds are authorized to be sold by negotiated sale if either (a) no bids are received when the Bonds are offered for public sale under Section 3.01, or (b) bids are received but such bids are not satisfactory as to price or responsibility of the bidders as determined by a City Representative, as a result of which all bids are rejected. In such event, the Bonds are authorized to be sold by negotiation with an underwriter or investment bank which is designated by a City Representative upon consultation with NHA Advisors, LLC as municipal adviser to the City. The Bonds shall be sold to such underwriter or investment bank under the Bond Purchase Agreement in a form deemed advisable by a City Representative, whose execution shall be conclusive evidence of the City Council's approval of such Bond Purchase Agreement. A City Representative is hereby authorized to accept a bid from such underwriter or investment bank to purchase the Bonds, and to execute the Bond Purchase Agreement on behalf of the City; provided that the rate of interest on the Bonds shall not exceed 8.00% and the underwriter's discount shall not exceed 1.50% of the principal amount of the Bonds. If it is determined to sell the Bonds by negotiation, a City Representative shall disclose the identity of the underwriter at the public meeting first occurring after the bond underwriter has been selected, along with the estimated costs associated with the bond issuance and the circumstances that led to the negotiated sale.

SECTION 3.03. *Official Statement.* The Board hereby approves, and hereby deems final within the meaning of Rule 15c2-12 of the Securities Exchange Act of 1934 ("Rule"), the Preliminary Official Statement describing the Bonds in substantially the form on file with the City Clerk. A City Representative is hereby authorized to execute an appropriate certificate stating the City Council's determination that the Preliminary Official Statement has been deemed final within the meaning of such Rule. Distribution of the Preliminary Official Statement in connection with the sale of the Bonds is hereby approved. Each City Representative is hereby authorized and directed to approve any changes in or additions to a final form of said Official Statement, and the execution thereof by a City Representative shall be conclusive evidence of the approval of any such changes and additions. The City Council hereby authorizes the distribution of the final Official

Statement. The final Official Statement shall be executed in the name and on behalf of the City by a City Representative.

SECTION 3.04. *Costs of Issuance Custodian Agreement.* The City shall pay the costs of issuing the Bonds from original issue premium received from the Original Purchaser of the Bonds. The City Council hereby authorizes a City Representative to execute on behalf of the City a Costs of Issuance Custodian Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, amounts provided for payment of the costs of issuing the Bonds shall be deposited thereunder and the payment of costs shall be requisitioned by a City Representative in accordance with said agreement.

SECTION 3.05. *Paying Agency Agreement.* The City Council hereby authorizes a City Representative to execute on behalf of the City a Paying Agency Agreement with The Bank of New York Mellon Trust Company, N.A. in substantially the form on file with the City Clerk. As provided in said agreement, The Bank of New York Mellon Trust Company, N.A. will act as Paying Agent as described in this Resolution.

Section 3.06. *Professional Services.* The City Council hereby approves and confirms the engagement of NHA Advisors, LLC to act as the City's municipal advisor in connection with the issuance and sale of the Bonds, and the engagement of Jones Hall, A Professional Law Corporation, to act as the City's bond counsel and disclosure counsel in connection with the issuance of the Bonds.

## ARTICLE IV

### FUNDS AND ACCOUNTS

SECTION 4.01. *Application of Proceeds of Sale of Bonds.* On the Closing Date, the proceeds of sale of the Bonds shall be paid by the Original Purchaser to the City, and shall be applied on the Closing Date as follows: (a) the City shall transfer or cause to be transferred an amount required to pay the estimated Costs of Issuance to The Bank of New York Mellon Trust Company, N.A., to be held and administered in accordance with the agreement which is approved under Section 3.04; (b) after making the transfer described in the preceding clause (a), the City shall deposit in the Debt Service Fund any remaining original issue premium received by the City on the sale of the Bonds; and (c) the City shall deposit the remainder of such proceeds in the Project Fund.

SECTION 4.02. *Project Fund.* The City Council hereby establishes a special fund to be held by the City separate and apart from all other funds of the City, to be known as the Project Fund. The proceeds from the sale of the Bonds, to the extent required under Section 4.01(b), shall be deposited by the City in the Project Fund, and shall be expended by the City solely for the payment of the costs of acquisition or improvement of real property for which the Bond proceeds are authorized to be expended under the Bond Proposition. All interest and other gain arising from the investment of amounts deposited

to the Project Fund shall be retained in the Project Fund and used for the purposes thereof. Any amounts remaining on deposit in the Project Fund and not needed for the purposes thereof shall be withdrawn from the Project Fund and transferred to the Debt Service Fund, to be applied to pay the principal of and interest and premium (if any) on the Bonds.

**SECTION 4.03. *Debt Service Fund.*** The City Council hereby establishes a special fund to be held by the City separate and apart from all other funds of the City, to be known as the Debt Service Fund. All taxes levied by the County, as directed by the City herein, for the payment of the principal of and interest and premium (if any) on the Bonds in accordance with Section 5.03 shall be deposited in the Debt Service Fund by the City promptly upon the receipt thereof from the County. The Debt Service Fund is hereby pledged for the payment of the principal of and interest and premium (if any) on the Bonds when and as the same become due. The City shall transfer amounts in the Debt Service Fund, to the extent necessary to pay the principal of and interest on the Bonds as the same become due and payable, to the Paying Agent as required to pay the principal of and interest and premium (if any) on the Bonds. Alternatively, the City may direct the County to transfer such taxes, in whole or in part, directly to the Paying Agent for the purpose of making payments of principal of and interest and premium (if any) on the Bonds.

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

**SECTION 4.04. *Investments.*** The City shall invest all moneys held in any of the funds or accounts established with it hereunder in accordance with the investment policies of the City, as such policies shall exist at the time of investment, and in accordance with Section 53601 of the California Government Code.

## **ARTICLE V**

### **OTHER COVENANTS OF THE CITY; SECURITY FOR THE BONDS**

**SECTION 5.01. *Punctual Payment.*** The City shall punctually pay, or cause to be paid, the principal of and interest on the Bonds, in strict conformity with the terms of the Bonds and of this Resolution, and shall faithfully observe and perform all of the conditions, covenants and requirements of this Resolution and of the Bonds. Nothing herein contained prevents the City from making advances of its own moneys howsoever derived to any of the uses or purposes permitted by law.

**SECTION 5.02. *Extension of Time for Payment.*** In order to prevent any accumulation of claims for interest after maturity, the City will not, directly or indirectly, extend or consent to the extension of the time for the payment of any claim for interest on any of the Bonds

and will not, directly or indirectly, approve any such arrangement by purchasing or funding said claims for interest or in any other manner.

SECTION 5.03. *Security for the Bonds.* The Bonds are general obligations of the City and the City has the power, is obligated and hereby covenants to levy ad valorem taxes upon all property within the City subject to taxation by the City, without limitation of rate or amount, for the payment of the Bonds and the interest thereon, in accordance with the Bond Law and Section 43632 of the of the Government Code of the State of California. Amounts in the General Fund of the City are not pledged to the payment of the Bonds. However, nothing herein limits the ability of the City to provide for payment of the principal of and interest and premium (if any) on the Bonds from any source of legally available funds of the City. Any amounts so advanced by the City from legally available funds may be reimbursed from ad valorem property taxes subsequently collected under this Section 5.03.

SECTION 5.04. *Books and Accounts; Financial Statement.* The City will keep, or cause to be kept, proper books of record and accounts, separate from all other records and accounts of the City in which complete and correct entries are made of all transactions relating to the Bonds. Such books of record and accounts shall at all times during business hours be subject to the inspection of the Paying Agent and the Owners of not less than 10% in aggregate principal amount of the Bonds then Outstanding, or their representatives authorized in writing.

SECTION 5.05. *Protection of Security and Rights of Bond Owners.* The City will preserve and protect the security of the Bonds and the rights of the Bond Owners, and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any of the Bonds by the City, the City may not contest the authorization, issuance, sale or repayment of the Bonds.

SECTION 5.06. *Tax Treatment of the Bonds.* The City Council hereby determines that it does not intend for the interest on the Bond to be excluded from gross income of the Owners of the Bonds for federal income tax purposes.

SECTION 5.07. *Continuing Disclosure.* The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate, which a City Representative is hereby authorized and directed to execute and deliver on the Closing Date. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate will not be considered a default by the City hereunder or under the Bonds; however, any Participating Original Purchaser (as such term is defined in the Continuing Disclosure Certificate) or any holder or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to compel performance, including seeking mandate or specific performance by court order.

SECTION 5.08. *Further Assurances.* The City will adopt, make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably

necessary or proper to carry out the intention or to facilitate the performance of this Resolution, and for the better assuring and confirming unto the Owners of the Bonds of the rights and benefits provided in this Resolution.

## ARTICLE VI

### THE PAYING AGENT

SECTION 6.01. *Appointment of Paying Agent.* The Bank of New York Mellon Trust Company, N.A. is hereby appointed to act as Paying Agent for the Bonds. The Paying Agent undertakes to perform such duties, and only such duties, as are specifically set forth in this Resolution, and even during the continuance of an event of default with respect to the Bonds, no implied covenants or obligations shall be read into this Resolution against the Paying Agent. The Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Resolution by executing and delivering to the City a certificate to that effect.

The City may remove the Paying Agent initially appointed, and any successor thereto, and may appoint a successor or successors thereto, but any such successor shall be a bank or trust company doing business and having an office in the State of California, having a combined capital (exclusive of borrowed capital) and surplus of at least \$50,000,000, and subject to supervision or examination by federal or state authority. If such bank or trust company publishes a report of condition at least annually, under law or under the requirements of any supervising or examining authority above referred to, then for the purposes of this Section 6.01 the combined capital and surplus of such bank or trust company shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

The Paying Agent may at any time resign by giving written notice to the City and the Bond Owners of such resignation. Upon receiving notice of such resignation, the City shall promptly appoint a successor Paying Agent by an instrument in writing. Any resignation or removal of the Paying Agent and appointment of a successor Paying Agent becomes effective upon acceptance of appointment by the successor Paying Agent.

SECTION 6.02. *Paying Agent May Hold Bonds.* The Paying Agent may become the Owner of any of the Bonds in its own or any other capacity with the same rights it would have if it were not Paying Agent.

SECTION 6.03. *Liability of Paying Agent.* The recitals of facts, covenants and agreements herein and in the Bonds contained shall be taken as statements, covenants and agreements of the City, and the Paying Agent assumes no responsibility for the correctness of the same, nor makes any representations as to the validity or sufficiency of this Resolution or of the Bonds, nor shall incur any responsibility in respect thereof, other than as set forth in this Resolution. The Paying Agent is not liable in connection

with the performance of its duties hereunder, except for its own negligence or willful default.

In the absence of bad faith, the Paying Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Paying Agent and conforming to the requirements of this Resolution.

The Paying Agent has no liability for any error of judgment made in good faith by a responsible officer of its corporate trust department in the absence of the negligence of the Paying Agent.

No provision of this Resolution requires the Paying Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

The Paying Agent may execute any of the powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Paying Agent is not responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder.

**SECTION 6.04. *Notice to Paying Agent.*** The Paying Agent may rely and shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, warrant, bond or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or proper parties. The Paying Agent may consult with counsel, who may be of counsel to the City, with regard to legal questions, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance therewith.

Whenever in the administration of its duties under this Resolution the Paying Agent deems it necessary or desirable that a matter be proved or established prior to taking or suffering any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Paying Agent, be deemed to be conclusively proved and established by a certificate of the City, and such certificate will be full warrant to the Paying Agent for any action taken or suffered under the provisions of this Resolution upon the faith thereof, but in its discretion the Paying Agent may, in lieu thereof, accept other evidence of such matter or may require such additional evidence as to it may seem reasonable.

**SECTION 6.05. *Compensation; Indemnification.*** The City will pay to the Paying Agent from time to time reasonable compensation for all services rendered under this Resolution, and also all reasonable expenses, charges, counsel fees and other disbursements, including those of their attorneys, agents and employees, incurred in and about the



performance of their powers and duties under this Resolution. The City further agrees to indemnify the Paying Agent against any liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or bad faith.

## **ARTICLE VII**

### **REMEDIES OF BOND OWNERS**

SECTION 7.01. *Remedies of Bond Owners.* Upon the happening and continuation of any default by the City hereunder or under the Bonds, any Bond Owner has the right, for the equal benefit and protection of all Bond Owners similarly situated:

- (a) by mandamus, suit, action or proceeding, to compel the City and its members, officers, agents or employees to perform each and every term, provision and covenant contained in this Resolution and in the Bonds, and to require the carrying out of any or all such covenants and agreements of the City and the fulfillment of all duties imposed upon it;
- (b) by suit, action or proceeding in equity, to enjoin any acts or things which are unlawful, or the violation of any of the Bond Owners' rights; or
- (c) by suit, action or proceeding in any court of competent jurisdiction, to require the City and its members and employees to account as if it and they were the trustees of an express trust.

SECTION 7.02. *Remedies Not Exclusive.* No remedy herein conferred upon the Owners of Bonds is exclusive of any other remedy. Each remedy is cumulative and shall be in addition to every other remedy given hereunder or thereafter conferred on the Bond Owners.

## **ARTICLE VIII**

### **AMENDMENT OF THIS RESOLUTION**

SECTION 8.01. *Amendments Effective Without Consent of the Owners.* For any one or more of the following purposes and at any time or from time to time, the City Council may by Supplemental Resolution amend this Resolution in whole or in part, without the consent of any of the Bond Owners:

- (a) to add to the covenants and agreements of the City in this Resolution, other covenants and agreements to be observed by the City which are

not contrary to or inconsistent with this Resolution as theretofore in effect;

- (b) to confirm, as further assurance, any pledge under, and to subject to any lien or pledge created or to be created by, this Resolution, of any moneys, securities or funds, or to establish any additional funds or accounts to be held under this Resolution;
- (c) to cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in this Resolution, which in any event does not materially adversely affect the interests of the Bond Owners, in the opinion of Bond Counsel filed with the City; or
- (d) if applicable, to make such additions, deletions or modifications as may be necessary to assure compliance with the applicable provisions of the Tax Code relating to the rebate of excess investment earnings to the United States or otherwise as may be necessary to assure that the interest on the Bonds remains excludable from gross income of the Owners thereof for federal income tax purposes, in the opinion of Bond Counsel filed with the City.

SECTION 8.02. *Amendments Effective With Consent to the Owners.* Any modification or amendment of this Resolution and of the rights and obligations of the City and of the Owners of the Bonds, in any particular, may be made by a Supplemental Resolution, with the written consent of the Owners of a majority in aggregate principal amount of the Bonds Outstanding at the time such consent is given. Without the consent of the Owners of all affected Bonds, no such modification or amendment may (a) change the maturity of the principal of any Bonds or any interest payable thereon, (b) reduce the principal amount of the Bonds or the rate of interest thereon, (c) reduce the percentage of Bonds the consent of the Owners of which is required to effect any such modification or amendment, (d) change any of the provisions in Section 7.01 relating to a default by the City hereunder or under the Bonds, (e) reduce the amount of moneys pledged for the repayment of the Bonds. Without the consent of the Paying Agent, no such modification or amendment may change or modify any of the rights or obligations of the Paying Agent.

## ARTICLE IX

### MISCELLANEOUS

SECTION 9.01. *Benefits of Resolution Limited to Parties.* Nothing in this Resolution, expressed or implied, is intended to give to any person other than the City, the Paying Agent and the Owners of the Bonds, any right, remedy, claim under or by reason of this Resolution. Any covenants, stipulations, promises or agreements in this Resolution contained by and on behalf of the City shall be for the sole and exclusive benefit of the Owners of the Bonds.

SECTION 9.02. *Defeasance.*

(a) Discharge of Resolution. Bonds may be paid by the City, in whole or in part, in any of the following ways provided that the City also pays or causes to be paid any other sums payable hereunder by the City:

- (i) by paying or causing to be paid the principal of and interest on such Bonds, as and when the same become due and payable;
- (ii) by irrevocably depositing, in trust, at or before maturity, money or securities in the necessary amount to pay such Bonds as provided in Section 9.02(c); or
- (iii) by delivering such Bonds to the Paying Agent for cancellation by it.

If the City pays all Outstanding Bonds and also pays or causes to be paid all other sums payable hereunder by the City, then and in that case, at the election of the City (evidenced by a certificate of a City Representative filed with the Paying Agent, signifying the intention of the City to discharge all such indebtedness and this Resolution), and notwithstanding that any Bonds have not been surrendered for payment, this Resolution, all taxes and other assets pledged under this Resolution and all covenants, agreements and other obligations of the City under this Resolution shall cease, terminate, become void and be completely discharged and satisfied, except only as provided in Section 9.02(b). In such event, upon request of the City, the Paying Agent shall cause an accounting for such period or periods as may be requested by the City to be prepared and filed with the City and shall execute and deliver to the City all such instruments as may be necessary to evidence such discharge and satisfaction, and the Paying Agent shall pay over, transfer, assign or deliver to the City all moneys or securities or other property held by it under this Resolution which are not required for the payment of Bonds not theretofore surrendered for such payment.

(b) Discharge of Liability on Bonds. Upon the deposit, in trust, at or before maturity, of money or securities in the necessary amount to pay any Outstanding Bond Bonds as provided in Section 9.02(c), then all liability of the City in respect of such Bond will cease and be completely discharged, except only that thereafter the Owner thereof is

entitled only to payment of the principal of and interest on such Bond by the City, and the City remains liable for such payment, but only out of such money or securities deposited with the Paying Agent as aforesaid for such payment, provided further, however, that the provisions of Section 9.02(d) apply in all events.

The City may at any time surrender to the Paying Agent for cancellation by it any Bonds previously issued and delivered, which the City acquires in any manner whatsoever, and such Bonds, upon such surrender and cancellation, will be deemed paid and retired.

(c) Deposit of Money or Securities with Paying Agent. Whenever in this Resolution it is provided or permitted that there be deposited with or held in trust by the Paying Agent money or securities in the necessary amount to pay any Bonds, the money or securities so to be deposited or held may include money or securities held by the Paying Agent in the funds and accounts established under this Resolution and must be:

- (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 the principal of and interest on which when due, in the opinion of a certified public accountant delivered to the City, will provide money sufficient to pay the principal of and all unpaid interest to maturity on the Bonds to be paid, as such principal and interest become due.

(d) Payment of Bonds After Discharge of Resolution. Notwithstanding any provisions of this Resolution, any moneys held by the Paying Agent in trust for the payment of the principal of, or interest on, any Bonds and remaining unclaimed for two years after the principal of all of the Bonds has become due and payable, if such moneys were so held at such date, or two years after the date of deposit of such moneys if deposited after said date when all of the Bonds became due and payable, shall, upon request of the City, be repaid to the City free from the trusts created by this Resolution, and all liability of the Paying Agent with respect to such moneys shall thereupon cease. Before the repayment of such moneys to the City as aforesaid, the Paying Agent may (at the cost of the City) first mail to the Owners of all Bonds which have not been paid at the addresses shown on the Registration Books a notice in such form as may be deemed appropriate by the Paying Agent, with respect to the Bonds so payable and not presented and with respect to the provisions relating to the repayment to the City of the moneys held for the payment thereof.

SECTION 9.03. *Execution of Documents and Proof of Ownership by Bond Owners.* Any request, declaration or other instrument which this Resolution may require or permit to be executed by Bond Owners may be in one or more instruments of similar tenor, and shall be executed by Bond Owners in person or by their attorneys appointed in writing.

Except as otherwise herein expressly provided, the fact and date of the execution by any Bond Owner or his attorney of such request, declaration or other instrument, or of such writing appointing such attorney, may be proved by the certificate of any notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he purports to act, that the person signing such request, declaration or other instrument or writing acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer.

Except as otherwise herein expressly provided, the ownership of registered Bonds and the amount, maturity, number and date of holding the same are proved by the Registration Books.

Any request, declaration or other instrument or writing of the Owner of any Bond binds all future Owners of such Bond in respect of anything done or suffered to be done by the City or the Paying Agent in good faith and in accordance therewith.

SECTION 9.04. *Waiver of Personal Liability.* No City Council member, officer, agent or employee of the City has any individual or personal liability for the payment of the principal of or interest on the Bonds. Nothing herein contained relieves any City Council member, officer, agent or employee from the performance of any official duty provided by law.

SECTION 9.05. *Destruction of Canceled Bonds.* Whenever in this Resolution provision is made for the surrender to the City of any Bonds which have been paid or canceled under the provisions of this Resolution, a certificate of destruction duly executed by the Paying Agent constitutes the equivalent of the surrender of such canceled Bonds and the City is entitled to rely upon any statement of fact contained in any certificate with respect to the destruction of any such Bonds therein referred to.

SECTION 9.06. *Partial Invalidity.* If any section, paragraph, sentence, clause or phrase of this Resolution is for any reason held illegal or unenforceable, such holding will not affect the validity of the remaining portions of this Resolution. The City hereby declares that it would have adopted this Resolution and each and every other section, paragraph, sentence, clause or phrase hereof and authorized the issue of the Bonds pursuant hereto irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Resolution may be held illegal, invalid or unenforceable.

SECTION 9.07. *Execution of Documents.* Each City Representative, and any and all other officers of the City, are each authorized and directed in the name and on behalf of the City to make any and all certificates, requisitions, agreements, notices, consents, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful issuance, sale and delivery of the Bonds, including an agreement for paying agent services. Whenever in this Resolution any officer of the City is authorized to execute or countersign any document or take any action, such execution, countersigning or action may be taken on behalf of such officer by any person designated by such officer to act on his or her behalf in the case such officer shall be absent or unavailable.


SECTION 9.08. *Effective Date of Resolution.* This Resolution becomes effective upon the date of its passage and adoption.

The foregoing Resolution was adopted by the Berkeley City Council on February 25, 2020 by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

  
\_\_\_\_\_  
Jesse Arreguin, Mayor

Attest:   
\_\_\_\_\_  
Rose Thomsen, Deputy City Clerk

**APPENDIX A**  
**FORM OF BOND**

REGISTERED BOND NO. R-\_\_\_\_

\*\*\*\$\*\*\*

**CITY OF BERKELEY**  
**2020 GENERAL OBLIGATION BOND**  
**(2018 Election Measure O: Affordable Housing) (Federally Taxable)**

<b>INTEREST RATE:</b>	<b>MATURITY DATE:</b>	<b>DATED DATE:</b>	<b>CUSIP</b>
% per annum	September 1,	_____, 2020	[ ]

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT: THOUSAND DOLLARS

The CITY OF BERKELEY, a charter city and municipal corporation duly organized and existing under the Constitution and laws of the State of California (the "City"), for value received, hereby promises to pay to the Registered Owner named above, or registered assigns, the Principal Amount set forth above on the Maturity Date set forth above, together with interest thereon at the Interest Rate set forth above, calculated on a 30/360 day basis, until the Principal Amount hereof is paid or provided for, such interest to be paid on March 1 and September 1 of each year, commencing September 1, 2020 (the "Interest Payment Dates"). This Bond will bear interest from the Interest Payment Date next preceding the date of authentication hereof, unless (a) it is authenticated as of a business day following the 15th day of the month immediately preceding any Interest Payment Date and on or before such Interest Payment Date, in which event it shall bear interest from such Interest Payment Date, or (b) it is authenticated on or before February 15, 2021, in which event it shall bear interest from the Dated Date set forth above.

Principal, interest and redemption premium (if any) are payable in lawful money of the United States of America to the person in whose name this Bond is registered (the "Registered Owner") on the Bond registration books maintained by the Paying Agent, initially The Bank of New York Mellon Trust Company, N.A., Dallas, Texas. Principal hereof and any redemption premium hereon are payable upon presentation and surrender of this Bond at the principal corporate trust office of the Paying Agent. Interest hereon is payable by check mailed by the Paying Agent on each Interest Payment Date to the Registered Owner of this

Bond by first-class mail at the address appearing on the Bond registration books at the close of business on the 15<sup>th</sup> day of the calendar month next preceding such Interest Payment Date (the "Record Date"); *provided, however*, that at the written request of the registered owner of Bonds in an aggregate principal amount of at least \$1,000,000, which written request is on file with the Paying Agent prior to any Record Date, interest on such Bonds shall be paid on each succeeding Interest Payment Date by wire transfer in immediately available funds to such account of a financial institution within the United States of America as shall be specified in such written request.

This Bond is one of a series of \$\_\_\_\_\_ aggregate principal amount of bonds (collectively, the "2020 Bonds") issued for the purpose of raising money to finance the acquisition and improvement of affordable housing, and to pay all necessary legal, financial, engineering and contingent costs in connection therewith. The 2020 Bonds have been issued under authority of and under the laws of the State of California, and the requisite two-thirds vote of the electors of the City cast at an election held on November 6, 2018, upon the question of issuing bonds in the aggregate principal amount of \$135,000,000, and under a resolution of the City Council of the City adopted on February 25, 2020 (the "Bond Resolution"). The 2020 Bonds are payable as to both principal and interest from the proceeds of the levy of ad valorem taxes on all property subject to such taxes in the City, which taxes are unlimited as to rate or amount.

The principal of and interest and redemption premium, if any, on this Bond do not constitute a debt of the County, the State of California, or any of its political subdivisions other than the City, or any of the officers, agents and employees thereof, and neither the County, the State of California, any of its political subdivisions other than the City, nor any of the officers, agents and employees thereof shall be liable hereon. In no event shall the principal of and interest and redemption premium, if any, on this Bond be payable out of any funds or properties of the City other than ad valorem taxes levied upon all taxable property in the City.

The 2020 Bonds are issuable only as fully registered bonds in the denominations of \$5,000 or any integral multiple thereof. This Bond is exchangeable and transferable for bonds of other authorized denominations at the principal corporate trust office of the Paying Agent, by the Registered Owner or by a person legally empowered to do so, upon presentation and surrender hereof to the Paying Agent, together with a request for exchange or an assignment signed by the Registered Owner or by a person legally empowered to do so, in a form satisfactory to the Paying Agent, all subject to the terms, limitations and conditions provided in the Bond Resolution. Any tax or governmental charges shall be paid by the transferor. The City and the Paying Agent may deem and treat the Registered Owner as the absolute owner of this Bond for the purpose of receiving payment of or on account of principal or interest and for all other



purposes, and neither the City nor the Paying Agent shall be affected by any notice to the contrary.

The 2020 Bonds maturing on or before September 1, 2029, are not subject to redemption prior to their respective stated maturities. The 2020 Bonds maturing on or after September 1, 2030, are subject to redemption prior to maturity, at the option of the City, in whole or in part among maturities on such basis as designated by the City and by lot within a maturity, from any available source of funds, on September 1, 2029, and on any date thereafter, at a redemption price equal to 100% of the principal amount of Bonds to be redeemed together with accrued interest thereon to the date fixed for redemption, without premium.

The 2020 Bonds maturing on September 1, 20\_\_, September 1, 20\_\_ and September 1, 20\_\_ (the "Term Bonds") are subject to redemption prior to their stated maturity date, without a redemption premium, in part by lot, from mandatory sinking fund payments on each September 1, on and after September 1, 20\_\_ in the principal amounts as set forth in the following tables:

**\$ \_\_\_\_\_ Term Bond Due September 1, 20\_\_**

<u>Payment Date</u> <u>(September 1)</u>	<u>Payment</u> <u>Amount</u>
---------------------------------------------	---------------------------------

**\$ \_\_\_\_\_ Term Bond Due September 1, 20\_\_**

<u>Payment Date</u> <u>(September 1)</u>	<u>Payment</u> <u>Amount</u>
---------------------------------------------	---------------------------------

**\$ \_\_\_\_\_ Term Bond Due September 1, 20\_\_**

<u>Payment Date</u> <u>(September 1)</u>	<u>Payment</u> <u>Amount</u>
---------------------------------------------	---------------------------------

The Paying Agent shall give notice of the redemption of the 2020 Bonds at the expense of the City. Such notice shall specify: (a) that the 2020 Bonds or a designated portion thereof are to be redeemed, (b) the numbers and CUSIP numbers of the 2020 Bonds to be redeemed, (c) the date of notice and the date of redemption, (d) the place or places where the redemption will be made, and (e) descriptive information regarding the 2020 Bonds including the dated date, interest rate and stated maturity date. Such notice shall further state that on the specified date there shall become due and payable upon each 2020 Bond to be redeemed, the portion of the principal amount of such 2020 Bond to be redeemed, together with interest accrued to said date, the redemption premium, if any, and that from and after such date interest with respect thereto shall cease to accrue and be payable.

Notice of any redemption of 2020 Bonds shall be mailed by first class mail, postage prepaid, at least 20 days but not more than 60 days prior to the date fixed for redemption, to the respective Owners of any 2020 Bonds designated for redemption, at their addresses appearing on the bond registration books maintained by the Paying Agent; but such mailing shall not be a condition precedent to such redemption and failure to mail or to receive any such notice shall not affect the validity of the proceedings for the redemption of such 2020 Bonds or the cessation of accrual of interest thereon from and after the redemption date.

The City may provide conditional notices of optional redemption, and the City is entitled to rescind any notice of optional redemption of the 2020 Bonds by written notice to the Paying Agent on or prior to the date fixed for redemption, and the Paying Agent shall mail notice of such rescission of redemption in the same manner as the original notice of redemption. Any notice of redemption shall be cancelled and annulled if for any reason funds will not be or are not available on the date fixed for redemption. The City and the Paying Agent have no liability to the Owners or any other party related to or arising from such rescission.

Neither the City nor the Paying Agent will be required: (a) to issue or transfer any Bond during a period beginning with the opening of business on the 15<sup>th</sup> calendar day next preceding either any Interest Payment Date or any date of selection of any 2020 Bond to be redeemed and ending with the close of business on the Interest Payment Date or a day on which the applicable notice of redemption is given, or (b) to transfer any Bond which has been selected or called for redemption in whole or in part.

Reference is made to the Bond Resolution for a more complete description of the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the City, the Paying Agent and the Registered Owners, and the terms and conditions upon which the 2020 Bonds are issued and secured. The owner of this Bond assents, by acceptance hereof, to all of the provisions of the Bond Resolution.

It is certified, recited and declared that all acts and conditions required by the Constitution and laws of the State of California to exist, to be performed or to have been met precedent to and in the issuing of the 2020 Bonds in order to make them legal, valid and binding general obligations of the City, have been performed and have been met in regular and due form as required by law; that payment in full for the 2020 Bonds has been received; that no statutory or constitutional limitation on indebtedness or taxation has been exceeded in issuing the 2020 Bonds; and that due provision has been made for levying and collecting ad valorem property taxes on all of the taxable property within the City in an amount sufficient to pay principal and interest when due, and for levying and collecting such taxes the full faith and credit of the City are hereby pledged.

This Bond shall not be valid or obligatory for any purpose and shall not be entitled to any security or benefit under the Bond Resolution until the Certificate of Authentication below has been manually signed by the Paying Agent.

Unless this Bond is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the City or the Paying Agent for registration of transfer, exchange, or payment, and any Bond issued is registered in the name of Cede & Co. or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

IN WITNESS WHEREOF, the City of Berkeley has caused this Bond to be executed by the facsimile signature of its Mayor and attested by the facsimile signature of its City Clerk, all as of the date stated above.

**CITY OF BERKELEY**

By \_\_\_\_\_  
Mayor

Attest:

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

**CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the Bond Resolution referred to herein.

Date of Authentication: \_\_\_\_\_, 2020

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

By \_\_\_\_\_  
Authorized Signatory

**ASSIGNMENT**

For value received, the undersigned do(es) hereby sell, assign and transfer unto

\_\_\_\_\_  
\_\_\_\_\_

(Name, Address and Tax Identification or Social Security Number of Assignee)

the within Bond and do(es) hereby irrevocably constitute and appoint

\_\_\_\_\_ attorney, to transfer the same on the registration books of the Bond Registrar, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
Note: Signature(s) must be guaranteed by an eligible guarantor institution.

\_\_\_\_\_  
Note: The signature(s) on this Assignment must correspond with the name(s) as written on the face of the within Bond in every particular without alteration or enlargement or any change whatsoever.

## APPENDIX B

### REQUIRED DISCLOSURES PURSUANT TO GOVERNMENT CODE SECTION 5852.1

1. Estimated True Interest Cost of the Bonds: 3.60%
2. Estimated finance charge of the Bonds, being the sum of all fees and charges paid to third parties, in the amount of approximately \$600,000. Such amount consists of costs of issuing the Bonds in the amount of approximately \$220,000 together with estimated underwriter's compensation in the amount of \$380,000.
3. Estimated proceeds of the Bonds expected to be received by the City for deposit to the Project Fund, net of proceeds for Costs of Issuance in (2) above to paid, capitalized interest and reserves (if any) from the principal amount of the Bonds: \$38,000,000.
4. Estimated Total Payment Amount for the Bonds, being the sum of all debt service to be paid on the Bonds to final maturity: \$63,000,000.

---

*\*All amounts and percentages are estimates, and are made in good faith by the City based on information available as of the date of adoption of this Resolution. Estimates include certain assumptions regarding federally taxable interest rates available in the bond market at the time of pricing the Bonds.*