



**BOARD OF DIRECTORS  
EAST BAY MUNICIPAL UTILITY DISTRICT**

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375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

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**AGENDA  
Tuesday, September 24, 2013**

**REGULAR CLOSED SESSION  
11:00 a.m., Board Room**

**ROLL CALL:**

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the agenda.

**ANNOUNCEMENT OF CLOSED SESSION AGENDA:**

1. Existing litigation pursuant to Government Code section 54956.9(a):
  - a. *Gregory Tarbet v. East Bay Municipal Utility District*  
Alameda County Superior Court, Case No. RG12615347
2. Conference with Labor Negotiators Bruce Heid and Glenn Berkheimer from the Industrial Employers Distributors Association (I.E.D.A.), Alexander R. Coate, Carol Nishita, Eric Sandler, Delores Turner, Michael Rich and Lisa Sorani pursuant to Government Code Section 54957.6: Employee Organizations International Federation of Professional and Technical Engineers AFL-CIO, Local 21; International Union of Operating Engineers, Local 39; and American Federation of State, County and Municipal Employees, Locals 444 and 2019.

*(The Board will hold Closed Session in Conference Room 8A/B)*

**REGULAR BUSINESS MEETING  
1:15 p.m., Board Room**

**ROLL CALL:**

**BOARD OF DIRECTORS:**

- Pledge of Allegiance

**ANNOUNCEMENTS FROM CLOSED SESSION:**

**PRESENTATION:**

- WaterSmart Business Certification Awards

**PUBLIC COMMENT:** The Board of Directors is limited by State law to providing a brief response, asking questions for clarification, or referring a matter to staff when responding to items that are not listed on the Agenda.

**CONSENT CALENDAR:** (Single motion and vote approving 8 recommendations, including 1 resolution)

1. Approve the Regular Meeting Minutes of September 10, 2013.
2. File correspondence with the Board.
3. Award a contract to the lowest responsive/responsible bidder Monterey Mechanical Co., in the amount of \$539,992 for construction of Bryant No. 2 Pumping Plant Electrical Rehabilitation under Specification 2072.
4. Authorize an agreement with Jaspersoft Corporation in an amount not to exceed \$89,500 for software subscription renewal which provides licensing and technical support for Jasper Server which includes Jasper Reports and Jasper Analysis software during the five-year period October 13, 2013 to October 12, 2018.
5. Authorize agreements with A1 Truck Driving School and Western Pacific Truck School in an aggregate amount not to exceed \$41,000 annually for Commercial Driver License Training at the Pipeline Training Academy during the period of October 1, 2013 to October 1, 2014, with four options to renew for an additional one-year period for a total cost of \$205,000.
6. Authorize the General Manager to enter into a Memorandum of Agreement with San Joaquin County Flood Control and Water Conservation District to develop a groundwater banking demonstration project.
7. Authorize the Office of General Counsel to continue the employment of the law firm of Best, Best & Krieger LLP for specialized legal services related to federal water law, rates, charges, taxes, liens, and litigation involving such matters.
8. Approve revisions to the following District policies: Policy 4.01 – Employee Earnings and Payroll Determination; Policy 4.12 – Purchasing and Materials Management; Policy 4.15 – Reimbursement of Employee Expenses; Policy 4.19 – Travel; Policy 4.24 – Internal Audit; and Policy 7.03 – Emergency Preparedness/Business Continuity. (Resolution)

**DETERMINATION AND DISCUSSION:**

9. Legislative Update:
  - Receive Legislative Report No. 09-13 and consider position on the following bill: S Amendment 1913 (Paul) Amendment to Repeal National Plumbing Efficiency Product Standards
  - Update on Legislative Issues of Interest to EBMUD
10. Authorize and approve four resolutions all covering the issuance and sale of one or more Series of Water and Wastewater System Revenue Refunding Bonds in connection with the potential refunding of outstanding variable and fixed rate bonds. (Resolutions)

**DETERMINATION AND DISCUSSION (Continued):**

11. Transfer the remarketing agent assignment for the Water Series 2008A-1 Variable Rate Demand Bonds (VRDBs) from Royal Bank of Canada to Wells Fargo Bank and transfer the remarketing agent assignment for the Water Series 2008A-2 and 2008A-3 VRDBs from Barclays Bank to U. S. Bank. Approve the following documents to execute the transfer: First Amendment to the 13<sup>th</sup> Supplemental Indenture, Remarketing Agreement for Wells Fargo Bank and Remarketing Agreement for U.S. Bank. (Resolution)
12. General Manager's Report:
  - Work in the Streets – Leak Repairs

**REPORTS AND DIRECTOR COMMENTS:**

13. Committee Reports:
  - Planning
14. Director Comments.

**ADJOURNMENT:**

***The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, October 8, 2013 in the Administration Center Board Room, 375 Eleventh Street, Oakland, California.***

**Disability Notice**

*If you require a disability-related modification or accommodation to participate in an EBMUD public meeting please call the Office of the Secretary (510) 287-0404. We will make reasonable arrangements to ensure accessibility. Some special equipment arrangements may require 48 hours advance notice.*

**Document Availability**

*Materials related to an item on this Agenda that have been submitted to the EBMUD Board of Directors within 72 hours prior to this meeting are available for public inspection in EBMUD's Office of the Secretary at 375 11th Street, Oakland, California, during normal business hours.*

## BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, September 24	<b>Finance/Administration Committee</b> Coleman (Chair), Linney, Patterson	9:30 a.m. Training Resource Center	<ul style="list-style-type: none"> <li>• Annual Audit and Management Letter and Financial Trends Report</li> <li>• Key Performance Indicators Report for FY 13</li> <li>• FY13 Annual Budget Performance Report</li> <li>• FY14 Insurance Summary</li> <li>• Water and Wastewater Financings for Variable and Fixed Rate Refundings</li> <li>• Replacement of Remarketing Agent</li> <li>• Revised Energy Policy</li> <li>• Review of Revisions to District Policies</li> </ul>
	<b>Board of Directors</b>	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
Tuesday, October 8	<b>Planning Committee</b> Foulkes (Chair), Linney, McIntosh	TBD Training Resource Center	
	<b>Legislative/Human Resources Committee</b> McIntosh (Chair), Coleman, Mellon	TBD Training Resource Center	
	<b>Board of Directors</b>	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>
Tuesday, October 22	<b>Sustainability/Energy Committee</b> Linney (Chair), Foulkes, Katz	TBD Training Resource Center	
	<b>Finance/Administration Committee</b> Coleman (Chair), Linney, Patterson	TBD Training Resource Center	
	<b>Board of Directors</b>	11:00 a.m. 1:15 p.m.	<ul style="list-style-type: none"> <li>• Closed Session</li> <li>• Regular Meeting</li> </ul>



## MINUTES

**Tuesday, September 10, 2013**

**East Bay Municipal Utility District  
Board of Directors  
375 Eleventh Street  
Oakland, California**

### Regular Closed Session Meeting

President Andy Katz called to order the Regular Closed Session Meeting of the Board of Directors at 11:04 a.m. in the Administration Center Board Room.

### ROLL CALL

Directors John A. Coleman, Katy Foulkes, Doug Linney, Lesa R. McIntosh, Frank Mellon, and President Andy Katz were present at roll call. Director William B. Patterson arrived at 11:10 a.m.

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, Attorney Xanthe Berry (Item 1a), Director of Engineering and Construction Xavier J. Irias (Item 1a), Attorney Jonathan D. Salmon (Item 1b), Director of Wastewater Bennett K. Horenstein (Item 1b), Director of Finance Eric L. Sandler (Item 2), Director of Administration Carol Y. Nishita (Item 2), Manager of Human Resources Delores A. Turner (Item 2), Manager of Employee Relations Michael K. Rich (Item 2), and I.E.D.A. Representative Glenn Berkheimer (Item 2).

### PUBLIC COMMENT

The following persons addressed the Board: 1) Felicia Collier, resident of Oakland, asked the Board to review documents pertaining to her termination of employment; 2) Kenneth Gerstman, representing AFSCME Local 2019, commented that the union is disappointed with contract negotiations and urged the Board to direct the negotiating team to rethink the health care proposal and authority issues; 3) Antonio Martinez, President, IFTPE Local 21, commented that the Board should break ties with the current negotiators and said the union is opposed to the health care and holiday take away proposals; 4) Eric Larsen, representing AFSCME Local 444, commented that the new contract should offer a cost of living benefit and pointed out that employee commitment has helped the District meet or exceed its key performance indicators over the past year; 5) John M. Briceno, President, AFSCME Local 444, urged the Board to direct negotiators to offer a fair and equitable contract; 6) Cheryl Franklin, Chief Steward, AFSCME Local 444, said that the current proposal is an attempt to strip employees of their current benefits and she urged the Board to send negotiators back to the table; 7) M. Rosa Merced, representing AFSCME Local 2019, commented that promotional opportunities are non-existent and said that internal recruitment efforts must be improved; 8) Gerald Hunter, 1<sup>st</sup> Vice-President AFSCME Local 444, urged the Board to send a message to the negotiators to offer a fair and equitable contract; and 9) Jay Morgan, representing AFSCME Local 2019, asked the Board to have negotiators respond to the union's on equity adjustment proposals.

### **Regular Business Meeting**

President Andy Katz called to order the Regular Business Meeting of the Board of Directors at 1:30 p.m. in the Administration Center Board Room.

### **ROLL CALL**

Directors John A. Coleman, Katy Foulkes, Doug Linney, Lesa R. McIntosh, Frank Mellon, William B. Patterson, and President Andy Katz were present at roll call.

### **BOARD OF DIRECTORS**

President Katz led the Pledge of Allegiance.

### **PRESENTATION**

General Manager Coate announced that the District received the 2012 Outstanding Small Project Award from the American Society of Civil Engineers (Region 9) for the Mokelumne Watershed Headquarters Replacement Project. The project team from the Engineering and Construction and Water and Natural Resources Departments were recognized for their contribution to developing a sustainable building.

On behalf of the Board, Director Coleman presented the award to the following team members who contributed to the success of the project: Director of Engineering and Construction Xavier J. Irias, Director of Water and Natural Resources Richard G. Sykes, Engineering Manager Elizabeth Z. Bialek, Senior Civil Engineer Dean A. DiGiovanni, Associate Civil Engineer Bill Jeng, Associate Architect Agnes Y. Wan, Manager of Mokelumne Watershed and Recreation Division Kent W. Lambert, Ranger Supervisor Christopher R. Swann, and Contractor Jeff Luchetti (not present). The Board and staff congratulated the team for its outstanding achievement.

### **ANNOUNCEMENTS FROM CLOSED SESSION**

There were no announcements required from closed session.

### **PUBLIC COMMENT**

The following persons addressed the Board: 1) Felicia Collier, resident of Oakland, asked the Board to review documents pertaining to her termination of employment; 2) Sara Cleveland, retired employee, commented that her retirement base pay was impacted by the wage freeze and said that EBMUD can afford to offer a fair contract; 3) Eric West, representing AFSCME Local 2019, commented that the wage freeze helped EBMUD through its financial challenges but the hiring freeze caused employees to do more work with less pay; and he urged the District to make a decent offer; 4) M. Rosa Merced, representing AFSCME Local 2019, commented on the lack of internal promotions and the need for career development; 5) Mark Foley, President, AFSCME Local 2019, commented that the latest contract offer is an insult to employees who have taken a wage freeze

and he urged the Board to take control of negotiations; 6) Cheryl Franklin, Chief Steward, AFSCME Local 444, commented that the wage freeze helped stabilized EBMUD during lean years and said that retroactive pay, holidays, and affordable health care should be part of the new contract; 7) Kenneth Gerstman, representing AFSCME Local 2019, commented that contract issues regarding wages, health care, and retirement need to be settled soon; 8) Brian Mulhern, representing AFSCME Local 2019, commented that the union is frustrated with contract negotiations while employees must continue to provide good customer service for the District; and 9) Vinella Garcia, representing AFSCME Local 2019, commented that internal promotional opportunities are not available.

### **CONSENT CALENDAR**

- Motion by Director Coleman, seconded by Director Patterson, to approve Items 1-11 on the Consent Calendar, carried (7-0) by voice vote.
1. **Motion No. 125-13** -- Approved the Regular Meeting Minutes of August 13, 2013.
  2. The following correspondence was filed with the Board: 1) Proof of Publication, Oakland Tribune, Legal No. 0004927638, regarding Summary of East Bay Municipal Utility District Ordinance No. 358-13 Entitled "An Ordinance Amending Ordinance No. 355-11, Establishing Regulations for the Interception, Treatment, and Disposal of Wastewater and Industrial Wastes and the Control of Wastewater, Requiring Charges to be Made Therefor, and Fixing Penalties for the Violation of Said Regulations"; 2) Proof of Publication, Oakland Tribune, Legal No. 0004945649, regarding Summary of East Bay Municipal Utility District Ordinance No. 359-13 Entitled "An Ordinance Establishing Regulations for Private Sewer Laterals and Authorizing Charges to be Made Therefor", published July 31 and August 7, 2013; 3) Proof of Publication, Oakland Tribune, Legal No. 0004945691, regarding Summary of East Bay Municipal Utility District Ordinance No. 360-13, "An Ordinance Amending Subsections 2(dd), 11(b), and 36(f)(3) of Ordinance No. 40, Which is the Employees' Retirement System Ordinance," published August 20 and 27, 2013; and 4) Slide presentation entitled "Proposed Financings for FY14," dated September 10, 2013.
  3. **Motion No. 126-13** -- Authorized an amendment to the contract with Jim Myers & Sons, Inc., in the amount of \$115,540, for a new not to exceed amount of \$1,070,217, for supplying replacement horizontal flocculator equipment for Upper San Leandro Water Treatment Plant and Sobrante Water Treatment Plant awarded under Proposal 1402.
  4. **Motion No. 127-13** -- Awarded a contract to the lowest responsive/responsible bidder Aramark Uniform Services, a division of Aramark Uniform and Career Apparel, LLC, in the estimated annual amount of \$74,460.96 for rental and laundry service of garments and for miscellaneous items used throughout the District for the period beginning September 10, 2013, and ending September 9, 2016, with two options to renew for an additional one-year period for a total estimated cost of \$372,304.80 under Proposal No. 1403.
  5. **Motion No. 128-13** -- Awarded a contract to the lowest responsive/responsible bidder, Aramark Uniform Services, a division of Aramark Uniform & Career Apparel, LLC, in the estimated annual amount of \$20,989.76 for supplying rental and laundry service of flame

resistant garments used throughout the District during the period of September 10, 2013 through September 9, 2016, with two options to extend the contract for an additional one-year period, for a total estimated amount of \$104,948.80 under Proposal No. 1405.

6. **Motion No. 129-13** -- Approved the assignment of the contract for the Interceptor Cleaning Phase 2B Services, previously awarded under Board Motion No. 078-12, from Proven Management, Inc. to Pipe and Plant Solutions, Inc.
7. **Motion No. 130-13** -- Authorized the General Manager to enter into a wheeling agreement with Contra Costa Water District (CCWD) to facilitate the delivery of 2,000 acre-feet of water from the Woodbridge Irrigation District to CCWD.
8. **Resolution No. 33940-13** -- Supporting Yuba County Water Agency's Change Petition To Add The Freeport Project Intake As A Point Of Rediversion.
9. **Motion No. 131-13** -- Authorized the Office of General Counsel to continue the employment of the law firm of Foster Employment Law in an additional amount not to exceed \$80,000 for specialized legal services related to labor and employment law and litigation matters.
10. **Motion No. 132-13** -- Authorized the Office of General Counsel to continue the employment of the law office of Ginn & Crosby, LLP, in an additional amount not to exceed \$140,000 for specialized legal services related to construction, contract, claims and litigation matters.
11. **Motion No. 133-13** -- Authorized the Office of General Counsel to continue the employment of the law office of Hanson Bridgett, LLP, in an additional amount not to exceed \$600,000 for specialized legal services related to construction, contract, claims and litigation matters.

#### **DETERMINATION AND DISCUSSION**

12. **Legislative Update.**

Special Assistant to the General Manager Marlaine K. Dumaine reported that the state has identified funding for a proposal that would move prisoners from state to county facilities. Property tax revenues from special enterprise districts are no longer being considered for this proposal, but Ms. Dumaine said that she would keep the Board apprised of any new developments. Next, she reported that the water bond measure will be placed on the November 2014 ballot and that AB 145 (Perea) related to transfer of various duties to the State Water Resources Control Board been amended. Ms. Dumaine said staff will keep the Board apprised on legislative matters as more information becomes available.

13. **Approve the Proposed Financing Schedule for Fiscal Year 2014.**

Director of Finance Eric L. Sandler presented an overview of proposed financings for Fiscal Year 2014. He reported that over the next several months, the District will be undertaking

a significant number of debt-related transactions. The proposed financings fall into the following three basic categories:

- **Market Opportunities**—Changes in the interest rate markets may afford the District a number of opportunities to achieve debt service savings and/or reduce certain risks of the portfolio.
- **Administration of Existing Debt Portfolio**—The District’s debt portfolio requires periodic refinancing/remarketing transactions, and renewal or replacement of existing liquidity facilities.
- **New Money Needs**—The District finances its capital plan through a combination of cash and the issuance of debt. Periodically the District enters the debt markets to raise funds for “new money” capital needs.

Next, he highlighted the schedule of the financing transactions that are proposed for FY14. These actions will come to the Board for consideration over the next 6-8 months. The Board raised no questions.

- Motion by Director Foulkes, seconded by Director Mellon, to approve the recommended action in Item 13, carried (7-0) by voice vote.

**Motion No. 134-13** -- Approved the proposed financing schedule for Fiscal Year 2014.

14. **General Manager’s Report.**

General Manager Coate noted that the August 2013 Monthly Report was included in the Board’s packet.

**REPORTS AND DIRECTOR COMMENTS**

15. **Committee Reports.**

- Filed with the Board were the Minutes of the August 13, 2013 Planning Committee.

16. **Director Comments.**

- Director Coleman reported attending/participating in the following events: ACWA Regulatory Summit on August 14 in Oxnard, CA; ACWA Executive Committee meeting on August 16 in Sacramento; ACWA Executive Committee teleconference meeting on August 16 in Oakland; Cal Shakes event on August 20 in Orinda; meeting with Luc Aribaud and touring the water and wastewater treatment plants on August 29 in Cannes, France; ACWA Executive Committee teleconference meeting on September 9 in Oakland; Mt. Diablo Silverado-Boy Scouts Executive Committee meeting on September 9 in Pleasant Hill; and UMRWA Executive Committee teleconference meeting on September 10. He reported on

plans to attend/participate in the following upcoming events: ACWA State Water Action Plan meeting on September 13 in Sacramento; ACWA Nominations Committee interview on September 18 in Sacramento; ACWA JPIA Executive Committee teleconference meeting on September 19 in Oakland; the Lafayette Art & Wine Festival on September 21; and ACWA Executive Committee teleconference meeting on September 23 in Oakland.

- Director Foulkes had no comment.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Mellon reported attending the Cal Shakes event on August 20 in Orinda; Guiding Eyes Charity event on August 23; the Castro Valley Sports Foundation fundraiser on August 26; and the Christian Church Homes fundraiser dinner on September 6.
- Director Patterson had no comment.
- President Katz had no comment.

#### **ADJOURNMENT**

President Katz adjourned the meeting at 2:22 p.m.

SUBMITTED BY:

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Lynelle M. Lewis, Secretary of the District

APPROVED: September 24, 2013

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Andy Katz, President of the Board



AGENDA NO.

3.

MEETING DATE

September 24, 2013TITLE BRYANT NO. 2 PUMPING PLANT ELECTRICAL REHABILITATION☒ MOTION ☐ RESOLUTION ☐ ORDINANCE**RECOMMENDED ACTION**

Award a contract to the lowest responsive/responsible bidder, Monterey Mechanical Co., in the amount of \$539,992 for construction of Bryant No. 2 Pumping Plant Electrical Rehabilitation under Specification 2072.

**SUMMARY**

Work includes demolition and rehabilitation of electrical equipment at Bryant No. 2 Pumping Plant including replacement of an electric motor and obsolete electrical components and installation of new area lighting.

**DISCUSSION**

The Bryant No. 2 Pumping Plant is located at the Lafayette Water Treatment Plant. This facility serves portions of the cities of Lafayette, Moraga, Orinda, Pleasant Hill, and Walnut Creek as well as unincorporated areas in Contra Costa County. The pumping plant has safety, reliability, and maintenance issues. The rehabilitation work will be completed during a planned winter outage at the Lafayette Water Treatment Plant this winter. See attached map for location.

**BID RESULTS**

Bids Received:	3
Documents Issued:	53
Range of Bids:	\$598,000 - \$677,975
Engineer's Estimate:	\$539,992

The District sent bid documents to 29 resource organizations and to 17 potential bidders. The range of bids was higher than the engineer's estimate. The major reasons for the difference are higher electrical subcontract quotes and a higher contingency in the contractor's bid to account for unforeseen conditions

Funds Available: FY14-15; CIP #001252; Page 36		Budget Code: WSC\570\7999\5561\2007808:25
DEPARTMENT SUBMITTING Engineering and Construction	DEPARTMENT MANAGER or DIRECTOR  Xavier J. Irias	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

in performing demolition and construction within an existing facility. See attached Bid Summary for additional information.

### **CONTRACT EQUITY PROGRAM EFFORTS**

The completed P-035 and P-061 forms are attached.

### **FISCAL IMPACT**

This item is included in the FY14-15 Capital Improvement Program for the Pumping Plant Rehabilitation Project under the Pumping Plant Rehabilitation Program.

### **PREVAILING WAGE**

Work under this contract is subject to the payment of current prevailing wages according to determinations for each craft as established by the Director of Industrial Relations of the State of California.

### **UNION NOTIFICATION**

Local 444 AFSCME was notified of this contract on October 19, 2012. Local 444 did not raise any specific issues related to this contract.

### **CEQA/ENVIRONMENTAL COMPLIANCE**

A Notice of Exemption was posted with the Contra Costa County Clerk on October 23, 2012.

### **ALTERNATIVES**

**Do not award the bid.** This alternative is not recommended because the electrical equipment at the pumping plant is at the end of its useful life and is unreliable. Failure of the Bryant No. 2 Pumping Plant could result in water rationing for the customers in the cities of Lafayette, Moraga, Orinda, Pleasant Hill, and Walnut Creek as well as unincorporated areas in Contra Costa County.

**Reject all bids and re-bid.** This alternative is not recommended because the bids are reasonable for the scope of work involved. Re-bidding the contract will delay the installation of the equipment for a full calendar year.

Attachments: Location Map  
Bid Summary  
Contract Equity Program Summary (P-035)  
Affirmative Action Summary (P-061)





# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

TITLE					DATE:						
SPECIFICATION NO.: 2072					September 4, 2013						
Bryant No. 2 Pumping Plant Electrical Rehabilitation											
CONTRACTOR:			PERCENTAGE OF CONTRACT DOLLARS								
Monterey Mechanical Co. Oakland, CA			Local Business		Availability Group	Contracting Objectives	Participation				
BID/PROPOSER'S PRICE:	FIRM'S OWNERSHIP		White Men		25%	100.0%					
	Ethnicity	Gender	White Women		9%	0.0%					
	\$598,000	White	Men	Ethnic Minorities		25%	0.0%				
CONTRACT EQUITY PARTICIPATION											
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION						
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign
PRIME:											
Monterey Mechanical Co.	\$275,960	White	X		46.1%	---	---	---	---	---	---
SUBS:											
Z-Con Specialty Services	\$28,500	White	X		4.8%	---	---	---	---	---	---
Jeffco Painting	\$40,120	White	X		6.7%	---	---	---	---	---	---
Cal West Concrete Cutting	\$4,640	White	X		0.8%	---	---	---	---	---	---
HGH Electric, Inc.	\$248,000	White	X		41.5%	---	---	---	---	---	---
Camblin Steel	\$780	White	X		0.1%	---	---	---	---	---	---
					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
TOTAL	\$598,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)											
	White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:	118		9		34		161				
Percent of Total Employees:	73.3%		5.6%		21.1%						
MSA Labor Market %:	32.3%		27.8%		39.9%						
MSA Labor Market Location:	9 Bay Area Counties										
COMMENTS											
Contract Equity Participation - 100% White Men participation.											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval (Recommended)			
NA				YES							



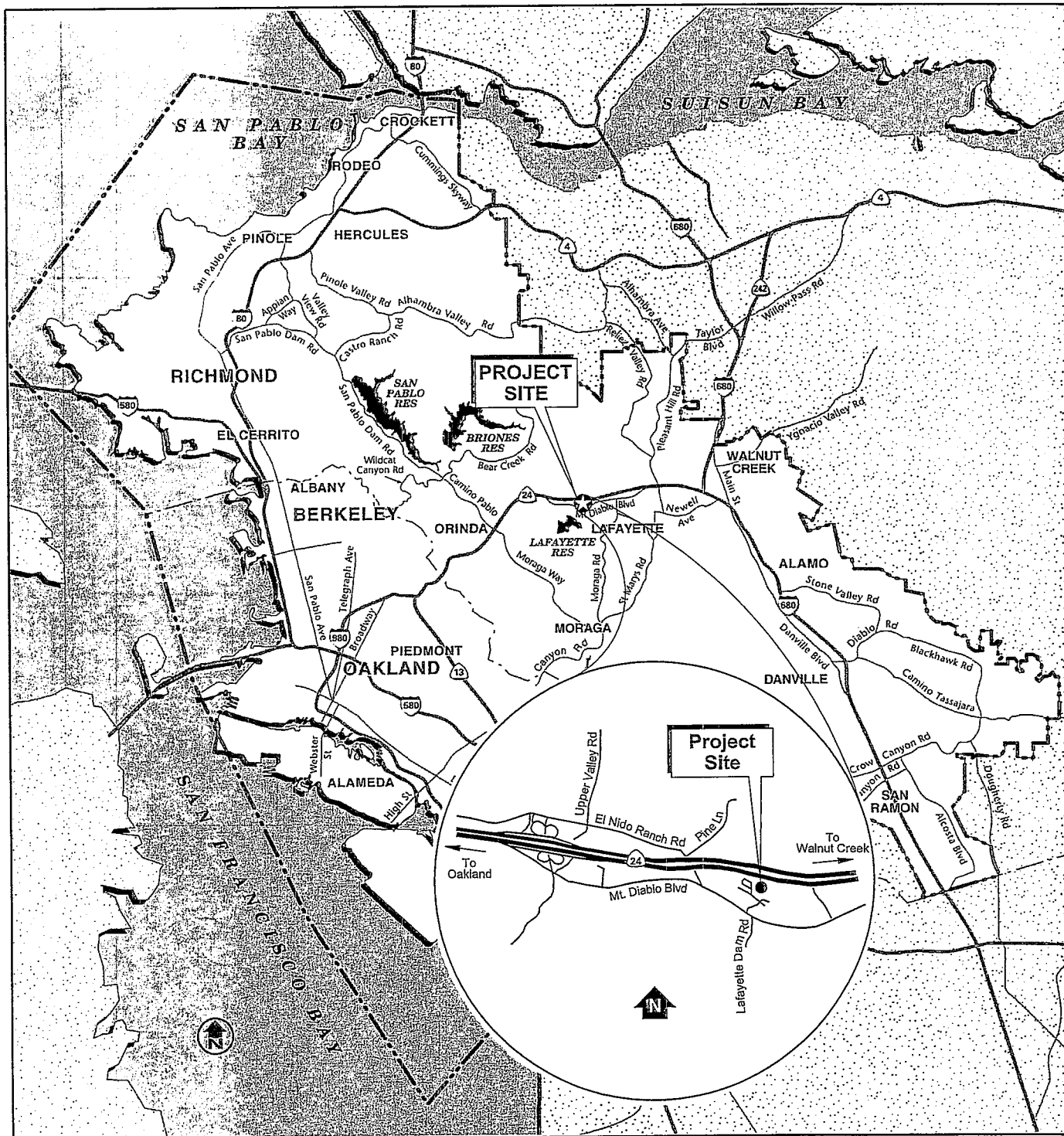
# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title:		Ethnic Minority Percentages From U.S. Census Data							
Bryant No. 2 Pumping Plant Electrical Rehabilitation			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
Spec. No.: 2072		DATE:	9/4/2013	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9
				Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2
R=Recommnd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM - LBE	Company Wide	5	22	6	1	34	21.1%	39.9%
Monterey Mechanical Co. Richard Hamilton 8275 San Leandro Street Oakland, CA 94621  510-632-3173		Manager/Prof	-	2	2	1	5	19.2%	
		Technical/Sales	-	-	1	-	1	50.0%	
		Clerical/Skilled	5	15	3	-	23	19.7%	
		Semi/Unskilled	-	5	-	-	5	31.3%	
		Bay Area	5	22	6	1	34	21.1%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		10/4/2012		
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		161 Bay Area: 161		
S	WM - LBE	Company Wide	-	3	-	-	3	20.0%	47.8%
HGH Electric, Inc. Douglas Hicks 3032 Market Street Oakland, CA 94608  510-923-1859		Manager/Prof	-	-	-	-	0	0.0%	
		Technical/Sales	-	-	-	-	-	NA	
		Clerical/Skilled	-	3	-	-	3	25.0%	
		Semi/Unskilled	-	-	-	-	-	NA	
		Bay Area	-	3	-	-	3	27.3%	39.9%
		Co. Wide MSA:	Oakland, CA		# Employees-Co. Wide:		15 Bay Area: 11		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
P	EMM:H - L/SBE	Company Wide	1	9	-	-	10	47.6%	48.4%
Aztec Consultants, Inc. E. Frank Duarte 2021 Omega Road, Suite 200 San Ramon, CA 94583  925-837-1050		Manager/Prof	1	2	-	-	3	37.5%	
		Technical/Sales	-	-	-	-	-	NA	
		Clerical/Skilled	-	1	-	-	1	50.0%	
		Semi/Unskilled	-	6	-	-	6	54.5%	
		Bay Area	1	5	-	-	6	35.3%	39.9%
		Co. Wide MSA:	California		# Employees-Co. Wide:		21 Bay Area: 17		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
P	WM - LBE	Company Wide	3	9	6	-	18	27.7%	48.4%
Blocka Construction, Inc. Robert Blocka 4455 Enterprise Street Fremont, CA 94538  510-657-3686		Manager/Prof	-	-	-	-	0	0.0%	
		Technical/Sales	-	-	-	-	0	0.0%	
		Clerical/Skilled	3	8	6	-	17	34.7%	
		Semi/Unskilled	-	1	-	-	1	50.0%	
		Bay Area	3	9	6	-	18	29.0%	39.9%
		Co. Wide MSA:	California		# Employees-Co. Wide:		65 Bay Area: 62		

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



## PROJECT SITE LOCATION MAP

NOT TO SCALE

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**BRYANT NO. 2 PUMPING PLANT  
ELECTRICAL REHABILITATION**

**SPECIFICATION 2072**

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**SPECIFICATION 2072**  
**BRYANT NO. 2 PUMPING PLANT ELECTRICAL REHABILITATION**  
**Bids Opened August 28, 2013**

	<b>BIDDER</b>	<b>TOTAL AMOUNT BID</b>
1.	Monterey Mechanical, Co. 8275 San Leandro St. Oakland, CA 94621 (510) 632-3173	\$598,000
2.	Aztec Consultants, Inc. (SBE) 2021 Omega Rd., Suite 200 San Ramon, CA 94583 (925) 837-1050	\$667,000
3.	Blocka Construction, Inc. 4455 Enterprise St. Fremont, CA 94538 (510) 657-3686	\$677,975

SBE – Small Business Enterprise

**Engineer's Estimate:           \$539,992**



AGENDA NO.  
MEETING DATE

4.  
September 24, 2013

TITLE **JASPERSOFT SOFTWARE SUBSCRIPTION RENEWAL - LICENSE & TECHNICAL SUPPORT**

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

### RECOMMENDED ACTION

Authorize an agreement with Jaspersoft Corporation (Jaspersoft) in an amount not to exceed \$89,500 for software subscription renewal which provides licensing and technical support for the Jasper Server which includes Jasper Reports and Jasper Analysis software during the five-year period October 13, 2013 to October 12, 2018.

### SUMMARY

The District uses Jasper Reports infrastructure for a variety of reporting and data analysis. The Customer Information System (CIS) and other significant applications rely on this technology. This software subscription renewal agreement maintains the license and support for Jasper Reports and Jasper Analysis.

### SERVICE PROVIDER SELECTION

Jaspersoft is a leader in providing open source business intelligence products. No other organization can provide licensing and support on the Jaspersoft report writing and analysis tools. There are no similar competing products. Jaspersoft is thus the sole source of this product.

### CONTRACT EQUITY PROGRAM EFFORTS

The completed P-035 and P-061 forms are attached.

### FISCAL IMPACT

Funds are available for this work in the Information Systems Department operating budget.

Funds Available: FY14		Budget Code: WSO/251/8547/5243
DEPARTMENT SUBMITTING  Information Systems	DEPARTMENT MANAGER or DIRECTOR   Nicholas J. Irias	APPROVED   General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

## **ALTERNATIVE**

**Do not renew the software subscription.** This alternative is not recommended as the District would not be able to use or expand the reporting and business intelligence capabilities that staff has developed for CIS and other significant applications and we would no longer receive maintenance and support for the product.

Attachments

W:\Board Documents\2013\BD-1s\ISD - Jasper SW Maintenance Support v2.docx



# CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

<b>TITLE</b> <b>Professional Services Agreement</b> Jaspersoft Software Subscription Renewal - License & Technical Support - Five-Year Contract						<b>DATE:</b> September 11, 2013						
<b>CONTRACTOR:</b> Jaspersoft Corporation San Francisco						<b>PERCENTAGE OF CONTRACT DOLLARS</b>						
<b>Sole Source</b>						<b>Availability Group</b>		<b>Contracting Objectives</b>		<b>Participation</b>		
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>				<b>White Men</b>		<b>25%</b>		<b>100.0%</b>		
		<b>Ethnicity</b>		<b>Gender</b>		<b>White Women</b>		<b>6%</b>		<b>0.0%</b>		
\$89,500		White		Men		<b>Ethnic Minorities</b>		<b>25%</b>		<b>0.0%</b>		
<b>CONTRACT EQUITY PARTICIPATION</b>												
<b>COMPANY NAME</b>		<b>ESTIMATED AMOUNT</b>	<b>ETHNICITY</b>	<b>GENDER</b>		<b>CONTRACTING PARTICIPATION</b>						
				<b>M</b>	<b>F</b>	<b>White-Men</b>	<b>White-Women</b>	<b>Ethnic Minorities</b>	<b>Unclassified</b>	<b>Publicly Held Corp.</b>	<b>Gov't/Non Profit</b>	<b>Foreign</b>
<b>PRIME:</b> Jaspersoft Corporation		\$89,500	White			100.0%	--	--	--	--	--	--
<b>SUBS:</b> None						--	--	--	--	--	--	--
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<b>TOTAL</b>		\$89,500				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)</b>												
		<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>				
<b>No. of Employees:</b>		62		16		23		101				
<b>Percent of Total Employees:</b>		61.4%		15.8%		22.8%						
<b>MSA Labor Market %:</b>		39.0%		33.7%		27.3%						
<b>MSA Labor Market Location:</b>		USA										
<b>COMMENTS</b>												
Contract Equity Participation - 100% White Men participation.												
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>				
NA				NA								



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

<b>Title: Jaspersoft Software Subscription Renewal License &amp; Technical Support - Five-Year Contract</b>		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
<b>Professional Services Agreement</b>		DATE: 9/11/2013	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2	
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
RP	WM	Company Wide	2	5	15	-	22	21.8%	27.3%
Jaspersoft Corporation James Johnson 350 Rhode Island Street, Suite 250 San Francisco, CA 94103  415-348-2310		Manager/Prof	-	1	1	-	2	11.1%	
		Technical/Sales	-	1	1	-	2	16.7%	
		Clerical/Skilled	2	3	13	-	18	25.4%	
		Semi/Unskilled	-	-	-	-	-	NA	
		Bay Area	1	3	11	-	15	20.3%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		10/13/2008		
		Co. Wide MSA:	USA		# Employees-Co. Wide:		101		Bay Area: 74
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)





AGENDA NO.  
MEETING DATE

5.  
September 24, 2013

TITLE COMMERCIAL DRIVER LICENSE TRAINING

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

### RECOMMENDED ACTION

Authorize agreements with A1 Truck Driving School and Western Pacific Truck School in an aggregate amount not to exceed \$41,000 annually for Commercial Driver License Training at the Pipeline Training Academy during the period of October 1, 2013 to October 1, 2014, with four options to renew for an additional one-year period for a total cost of \$205,000.

### SUMMARY

The commercial driver license training provided by A1 Truck Driving School and Western Pacific Truck School will be utilized to train approximately 20 newly hired Water Distribution Plumber I (WDP I) employees annually. Services include classroom training, behind-the-wheel experience, and Department of Motor Vehicle testing and associated fees.

### DISCUSSION


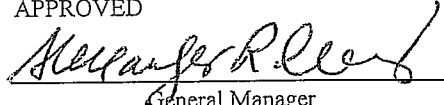
The District requires WDP I's to obtain a commercial truck driver license within six months of employment. The proposed agreements will provide a structured commercial driver training program as part of the Pipeline Training Academy and an efficient means to train new WDP I's to meet the job requirements. The District does not employ any commercial truck driving trainers.

### SERVICE PROVIDER SELECTION

Request for proposals were sent to seven local driver training organizations and three submitted bids. A1 Truck Driving School and Western Pacific Truck School were the lowest bidders.

### CONTRACT EQUITY PROGRAM EFFORTS

The completed P-035 and P-061 forms are attached.

Funds Available: FY14		Budget Code: 5312
DEPARTMENT SUBMITTING  Operations & Maintenance	DEPARTMENT MANAGER or DIRECTOR   Michael J. Wallis	APPROVED   General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

## **FISCAL IMPACT**

Funding for these agreements is included in the FY14 budget.

## **UNION NOTIFICATION**

This type of work is not performed by District forces and consequently union notification is not required.

## **ALTERNATIVE**

**Perform driver training with District staff and utilize District equipment to provide equivalent training.** This alternative is not recommended as the District does not employ any commercial truck driver trainers.

## **ATTACHMENTS**

P-035 – Contract Equity Program Summary  
P-061 – Affirmative Action Summary

## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

<b>TITLE</b> <i>General Services Agreement</i>							<b>DATE:</b> August 30, 2013					
Commercial Driver License Training - One-Year Contract with 4 One-Year Renewal Options												
<b>CONTRACTOR:</b>  See Below for Names					<b>PERCENTAGE OF CONTRACT DOLLARS</b>							
					Availability Group		Contracting Objectives		Participation			
<b>BID/PROPOSER'S PRICE:</b>		<b>FIRM'S OWNERSHIP</b>			White Men		25%		50.0%			
		Ethnicity	Gender		White Women		6%		0.0%			
\$41,000 /year		See Below			Ethnic Minorities		25%		50.0%			
<b>CONTRACT EQUITY PARTICIPATION</b>												
COMPANY NAME	ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION							
			M	W	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit	Foreign	
<b>PRIME:</b>												
A-1 Truck Driving School, Inc.	\$20,500	Asian	X		--	--	50.0%	--	--	--	--	
Nordic Enterprises, Inc. dba Western Pacific Truck School	\$20,500	White	X		50.0%	--	--	--	--	--	--	
<b>SUBS:</b>												
None					--	--	--	--	--	--	--	
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<b>TOTAL</b>		\$41,000			50.0%	0.0%	50.0%	0.0%	0.0%	0.0%	0.0%	
<b>CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)</b>												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		See P-61 Form										
Percent of Total Employees:												
MSA Labor Market %:												
MSA Labor Market Location:												
<b>COMMENTS</b>												
Contract Equity Participation - 50% White Men participation and 50% Ethnic Minority participation.												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: <b>Commercial Driver License Training - One-Year Contract with 4 One-Year Renewal Options</b>		Ethnic Minority Percentages From U.S. Census Data						
			B	H	A/PI	AI/AN	TOTAL	
		National	10.5	10.7	3.7	0.7	27.3	
		9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9	
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2	
General Services Agreement		DATE: 8/30/2013						
R=Recmmd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees						
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT MSA %
RP	EMM:A/PI - L/SBE	Company Wide	-	3	-	-	3	100.0% 0.0%
A-1 Truck Driving School, Inc. Moe Janda 2977 Baumberg Avenue Hayward, CA 94545  510-755-3765		Manager/Prof	-	-	-	-	-	NA
		Technical/Sales	-	3	-	-	3	100.0%
		Clerical/Skilled	-	-	-	-	-	NA
		Semi/Unskilled	-	-	-	-	-	NA
		Bay Area	-	-	-	-	0	0.0% 39.9%
		AA Plan on File:	NA		Date of last contract with District:		11/3/2011	
		Co. Wide MSA:	Oakland		# Employees-Co. Wide:		3 Bay Area: 3	
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:	
RP	WM - L/SBE	Company Wide	1	12	-	1	14	42.4% 47.4%
Nordic Enterprises, Inc. dba Western Pacific Truck School Bob Schauer 4609 Quail Lakes Drive, Suite 2 Stockton, CA 95207  209-472-1500		Manager/Prof	1	6	-	1	8	40.0%
		Technical/Sales	-	2	-	-	2	33.3%
		Clerical/Skilled	-	4	-	-	4	57.1%
		Semi/Unskilled	-	-	-	-	-	NA
		Bay Area	1	12	-	-	13	39.4% 39.9%
		AA Plan on File:	NA		Date of last contract with District:		NA	
		Co. Wide MSA:	Stockton-Lodi		# Employees-Co. Wide:		33 Bay Area: 33	
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:	
P	EMM:B - SBE	Company Wide						
MTS Training Academy Keith Judkins 140 Yolano Dirve Vallejo, CA 94589  707-652-2562		Manager/Prof	P-25 Form Not Provided					
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:	
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:	

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AGENDA NO.

6.

MEETING DATE

September 24, 2013

**TITLE AUTHORIZE A MEMORANDUM OF AGREEMENT WITH SAN JOAQUIN COUNTY  
TO DEVELOP A GROUNDWATER BANKING DEMONSTRATION PROJECT**☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_**RECOMMENDED ACTION**

Authorize the General Manager to enter into a Memorandum of Agreement with San Joaquin County Flood Control and Water Conservation District (County District) to develop a groundwater banking demonstration project.

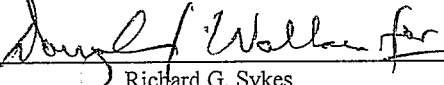
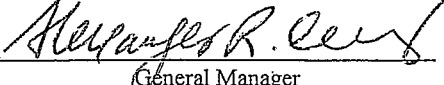
**SUMMARY**

The County District approached EBMUD in the spring of 2012 regarding development of a groundwater banking demonstration project in eastern San Joaquin County. A Memorandum of Agreement (MOA) has been prepared to initiate the engineering, permitting, and environmental review leading up to a future agreement to construct and operate. Future cost share agreements will be developed for Board consideration to fund engineering, construction, and operation.

**DISCUSSION**

In the spring of 2012, EBMUD was approached by the County District to develop a small-scale demonstration project to test groundwater banking and extraction in the eastern section of San Joaquin County. Testing would reveal how the Eastern San Joaquin Groundwater Basin functions with the addition of water and subsequent export of water pursuant to an export permit issued under San Joaquin County's groundwater export ordinance. The project concept and initial project outline state that for the demonstration project to prove successful, the following must be achieved:

- Aquifer levels should show net improvement, even after permitted withdrawals are made.
- Extraction must take place both for in-county and outside the county purposes.
- Parties must be assured that they have use of stored water when they need it.
- Project operation must prove acceptable to the local community and other stakeholders.
- The project must have an ability to scale up and provide a sound basis for a larger water banking effort.

Funds Available: FY14		Budget Code: WSC/WNR/455/1011934
DEPARTMENT SUBMITTING Water and Natural Resources	DEPARTMENT MANAGER or DIRECTOR  Richard G. Sykes	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

The proposed MOA includes the following elements:

- Tasks and schedule for the development of the demonstration project.
- A division of work roles and responsibilities.
- A commitment to prepare a final report at the conclusion of the effort.
- Key project development activities and the project outline.

The County District received feedback from local water interests including water district managers, farm bureau representatives, and elected officials regarding MOA language. Both San Joaquin County's Groundwater Banking Authority and Advisory Water Commission passed resolutions supporting the MOA. The San Joaquin County Board of Supervisors will consider approval of the MOA at their September 24, 2013 meeting.

## **FISCAL IMPACT**

The MOA stipulates that the costs of the development of the demonstration project will be shared by the County District and EBMUD in a manner to be documented in a future cost share agreement to be considered by the respective Boards. Funds to participate have been included in the District's FY14 and FY15 Operating Budget. The MOA does not obligate either party to proceed, if the costs to participate exceed the budget established.

## **NEXT STEPS:**

Key project milestones include consideration of the following:

- Approval of a cost share agreement for project development in January 2014.
- Issuance of a County groundwater export ordinance in September 2014.
- Approval of a construction/operation/finance cost share agreement in October 2014.

A summary of the MOA development effort was provided to the EBMUD Planning Committee on June 11, 2013.

## **ALTERNATIVE**

**Do not authorize the General Manager to enter into the MOA.** This alternative is not recommended because EBMUD has included a long-term groundwater banking project in San Joaquin County as a component of Water Supply Management Program 2040. In addition, participation offers an opportunity to exhibit a collaborative approach towards regional water supply along the Mokelumne River.

RGS:MTT:TBF



AGENDA NO.  
MEETING DATE

7.  
September 24, 2013

TITLE AUTHORIZE CONTINUED EMPLOYMENT OF BEST, BEST & KRIEGER, LLP

☒ MOTION \_\_\_\_\_ ☐ RESOLUTION \_\_\_\_\_ ☐ ORDINANCE \_\_\_\_\_

### RECOMMENDED ACTION

Authorize the Office of General Counsel to continue the employment of the law firm of Best, Best & Krieger, LLP in an additional amount not to exceed \$75,000 for specialized legal services related to federal water law, rates, charges, taxes, liens, and litigation involving such matters.

### DISCUSSION

The firm of Best Best & Krieger, LLP has been retained to assist the Office of General Counsel in matters related to federal water law, rates, charges, taxes, liens, and litigation involving such matters. The Office of General Counsel is now requesting authorization for additional funds for services described in a separate confidential memorandum to the Board of Directors.

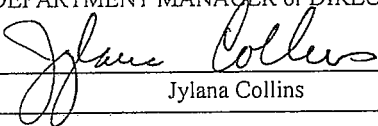
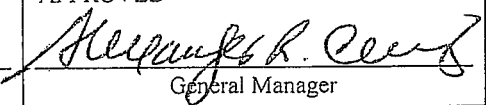
### CONTRACT EQUITY PROGRAM EFFORTS

The completed P-035 and P-061 forms are attached.

### FISCAL IMPACT

Sufficient monetary funds have been budgeted to the OGC budget for fiscal year 2014 for this request for specialized legal assistance.

Attachments

Funds Available: FY 2014		Budget Code: WSO B130 8511 5231
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	APPROVED
Office of General Counsel	 Jylana Collins	 General Manager

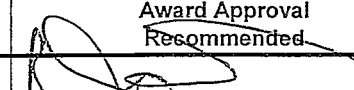
Contact the Office of the District Secretary with questions about completing or submitting this form.





## CONTRACT EQUITY PROGRAM SUMMARY (P-035)

This summary contains information on the contractor's workforce and contract equity participation. (Completed by District)

<b>TITLE</b> <b>Amendment to Professional Services Agreement</b> Authorize Continued Employment of Best, Best & Krieger, LLP				<b>DATE:</b> August 12, 2013													
<b>CONTRACTOR:</b> Best, Best & Krieger, LLP Sacramento, CA				<b>PERCENTAGE OF CONTRACT DOLLARS</b>													
Local Business		Availability Group		Contracting Objectives		Participation											
<b>BID/PROPOSER'S PRICE:</b> \$75,000		<b>FIRM'S OWNERSHIP</b>		White Men		25%											
Ethnicity		Gender		White Women		6%											
White		Men		Ethnic Minorities		25%											
100.0%		0.0%		0.0%		0.0%											
<b>CONTRACT EQUITY PARTICIPATION</b>																	
COMPANY NAME		ESTIMATED AMOUNT		ETHNICITY		GENDER		CONTRACTING PARTICIPATION									
M		F		White-Men		White-Women		Ethnic Minorities		Unclassified		Publicly Held Corp.		Gov't/Non Profit		Foreign	
<b>PRIME:</b> Best, Best & Krieger, LLP		\$75,000		White		100.0%		---		---		---		---		---	
<b>SUBS:</b> None		---		---		---		---		---		---		---		---	
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<b>TOTAL</b>		\$75,000		100.0%		0.0%		0.0%		0.0%		0.0%		0.0%		0.0%	
<b>CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)</b>																	
<b>White Men</b>		<b>White Women</b>		<b>Ethnic Minorities</b>		<b>Total Employees</b>											
No. of Employees:		76		130		64		270									
Percent of Total Employees:		28.1%		48.1%		23.7%											
MSA Labor Market %:		36.1%		32.3%		31.6%											
MSA Labor Market Location:		Sacramento, CA															
<b>COMMENTS</b>																	
Contract Equity Participation - 100% White Men participation.																	
<b>Workforce Profile &amp; Statement of Nondiscrimination Submitted</b>				<b>Good Faith Outreach Efforts Requirement Satisfied</b>				<b>Award Approval Recommended</b>									
NA				NA													



# AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

This summarizes information provided by the contractor(s)' P-025 Form regarding their workforce.

Title: <b>Authorize Continued Employment of Best, Best &amp; Krieger, LLP</b>		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
		National	10.5	10.7	3.7	0.7	27.3		
		9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9		
		Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
Professional Services Agreement	DATE: 8/12/2013	Number of Ethnic Minority Employees							
R=Recmmd P=Prime S=Sub	Composition of Ownership								
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT.	MSA %
RP	WM - LBE	Company Wide	11	30	23	-	64	23.7%	31.6%
Best, Best & Krieger, LLP Eric L. Garner 500 Capitol Mall, Suite 1700 Sacramento, CA 95814  961-325-4000		Manager/Prof	4	13	13	-	30	17.2%	
		Technical/Sales	1	4	4	-	9	69.2%	
		Clerical/Skilled	6	13	6	-	25	30.1%	
		Semi/Unskilled	-	-	-	-	-	NA	
		Bay Area	-	-	-	-	-	NA	39.9%
		AA Plan on File:	NA		Date of last contract with District:		6/11/1996		
		Co. Wide MSA:	Sacramento, CA		# Employees-Co. Wide:		270 Bay Area: 0		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:			# Employees-Co. Wide:		Bay Area:		

WM=White Male, WW=White Women, EM=Ethnic Minority (Ethnicities: B=Black, H=Hispanic, A/PI=Asian/Pacific Islander, and AI/AN=American Indian/Alaskan Native)



AGENDA NO. 8.  
MEETING DATE September 24, 2013

TITLE REVISIONS TO SEVERAL DISTRICT POLICIES

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Approve revisions to the following District policies:

- Policy 4.01 – Employee Earnings and Payroll Determination
- Policy 4.12 – Purchasing and Materials Management
- Policy 4.15 – Reimbursement of Employee Expenses
- Policy 4.19 – Travel
- Policy 4.24 – Internal Audit
- Policy 7.03 – Emergency Preparedness/Business Continuity

### DISCUSSION

Staff conducts bi-annual reviews of District policies and procedures to consider whether any organizational, regulatory, or other changes in operations would necessitate their modification. Policies which are identified as requiring modification are forwarded to the Board for consideration and approval. Attached are six policies with modifications that are proposed by staff. These policy changes were reviewed with the Finance/Administration Committee on September 24, 2013.


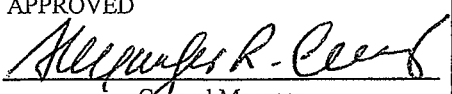
### POLICIES RECOMMENDED FOR REVISION

#### 1. Policy 4.01 – Employee Earnings and Payroll Determination

Policy was modified to incorporate a fixed time interval (monthly) for verification of payroll accuracy and authorization.

#### 2. Policy 4.12 – Purchasing and Materials Management

Policy was modified to include adherence to principles of sustainability as prescribed in District Policy 7.05 (Sustainability).

Funds Available FY:		Budget Code:
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR	
Finance Department	 Barry N. Gardin	APPROVED  General Manager

Contact the Office of the District Secretary with questions about completing or submitting this form.

**3. Policy 4.15 - Reimbursement of Employee Expenses**

Policy was modified to note the District operates under an accountable plan as defined in the Internal Revenue Service Publication 463.

**4. Policy 4.19 – Travel**

Policy was modified to require prior authorization from the General Manager for travel outside the State of California.

**5. Policy 4.24 – Internal Audit**

Policy was modified to clarify Board approval of the annual Audit Plan and describe the information provided in semi-annual audit reports.

**6. Policy 7.03 - Emergency Preparedness/Business Continuity**

Policy was revised to clarify the definition of an emergency; modify reporting requirements during an emergency; and stipulate that Board action is required to end an emergency declaration.

**UNION NOTIFICATION**

Policies and procedures affecting wages, hours and working conditions are reviewed with the unions. Employee Relations has reviewed all policies to determine the necessity for union review. The revised policies have no union impact.

**FISCAL IMPACT**

The policy changes do not have a fiscal impact.

**ALTERNATIVE**

**Do not update these policies.** This alternative is not recommended because it would leave policies in place that do not reflect current operating practices, are not consistent with Board directives, and/or are not in compliance with California law.

Attachments



# Policy 4.01R

EFFECTIVE 28-MAR-06

24-SEP-13

SUPERSEDES 09-DEC-03

28-MAR-06

## EMPLOYEE EARNINGS AND PAYROLL DETERMINATION

---

IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Establish salary rates for District employees on a monthly basis.

---

### Payroll Period

A payroll period is two consecutive workweeks in duration.

Payroll checks for each payroll period shall be issued on or before the Friday following the end of the payroll period.

---

### Calculation of Pay

Pay due an employee for a payroll period shall be based on the following formula, less required and authorized deductions, and plus any special pay additions:

$$\text{Hourly Rate} = \frac{\text{Employee's monthly rate} \times 12 \text{ months}}{52 \text{ weeks} \times 40 \text{ hours/week}}$$

For purposes of calculating pay, the hourly rate for an employee is determined by the above formula.

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### Payroll Verification and Issuance

The Manager of Human Resources, as a designee for the General Manager shall verify monthly that there are systems and procedures in place to ensure the accuracy of individual salaries, the existence of Board authorized positions, and the accuracy of the indicated status of all leaves of absences as being with or without pay.

The Director of Finance, as a designee for the General Manager shall approve monthly the issuance of all payroll compensation to District employees and verifies that payroll systems and procedures are in place to ensure that expenditures do not exceed the authorized amount of compensation.

Payroll disbursement amounts will be reported on a quarterly basis to the Board of Directors and the Payroll System and Procedures are audited annually by independent outside auditors.

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### Authority

Adopted by Resolution No. 33028-97, January 28, 1997  
Amended by Resolution No. 33209-00, June 27, 2000.  
Amended by Resolution No. 33389-03, December 9, 2003  
Amended by Resolution No. 33523-06, March 28, 2006  
Amended by Resolution No. XXXXX-13, September 24, 2013

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### Reference

Electronic Timesheet System (ETS) User Guide

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# Policy 4.01

EFFECTIVE 24 SEP 13

SUPERSEDES 28 MAR 06

## EMPLOYEE EARNINGS AND PAYROLL DETERMINATION

---

### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Establish salary rates for District employees on a monthly basis.

---

<b>Payroll Period</b>	<p>A payroll period is two consecutive workweeks in duration.</p> <p>Payroll checks for each payroll period shall be issued on or before the Friday following the end of the payroll period.</p>
<b>Calculation of Pay</b>	<p>Pay due an employee for a payroll period shall be based on the following formula, less required and authorized deductions, and plus any special pay additions:</p> $\text{Hourly Rate} = \frac{\text{Employee's monthly rate} \times 12 \text{ months}}{52 \text{ weeks} \times 40 \text{ hours/week}}$ <p>For purposes of calculating pay, the hourly rate for an employee is determined by the above formula.</p>
<b>Payroll Verification and Issuance</b>	<p>The Manager of Human Resources, as a designee for the General Manager shall verify monthly that there are systems and procedures in place to ensure the accuracy of individual salaries, the existence of Board authorized positions, and the accuracy of the indicated status of all leaves of absences as being with or without pay.</p> <p>The Director of Finance, as a designee for the General Manager shall approve monthly the issuance of all payroll compensation to District employees and verifies that payroll systems and procedures are in place to ensure that expenditures do not exceed the authorized amount of compensation.</p> <p>Payroll disbursement amounts will be reported on a quarterly basis to the Board of Directors and the Payroll System and Procedures are audited annually by independent outside auditors.</p>
<b>Authority</b>	<p>Adopted by Resolution No. 33028-97, January 28, 1997 Amended by Resolution No. 33209-00, June 27, 2000. Amended by Resolution No. 33389-03, December 9, 2003 Amended by Resolution No. 33523-06, March 28, 2006 Amended by Resolution No. XXXXX-13, September 24, 2013</p>
<b>Reference</b>	<p>Electronic Timesheet System (ETS) User Guide</p>



# Policy 4.12R

EFFECTIVE

28-MAR-06

24-SEP-13

SUPERSEDES

23-NOV-99

28-MAR-06

## PURCHASING AND MATERIALS MANAGEMENT

---

### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

1. Purchase, rent or lease all materials, supplies, equipment and secure general services for the District's use so as to receive maximum value for each dollar expended consistent with ultimate use, product quality, and supplier performance. In doing so:
    - a. Provide a fair and impartial competitive environment.
    - b. Provide equal opportunity, in its purchases of materials and/or general services, to all qualified suppliers ~~regardless of race, color, national origin, sex, age or physical handicap~~ in accordance with applicable law and District Policy 1.01 (Equal Employment Opportunity).
    - c. Take affirmative action to locate and encourage equitable participation by all businesses in the competitive bidding processes of the District.
    - d. Seek a reasonable and attainable percent of participation by Small Business Enterprises in the District's annual purchasing expenditures.
    - d.e. Endeavor to adhere to the principles of sustainability in the acquisition of materials and supplies, as prescribed in District Policy 7.05 (Sustainability).
  2. Balance the need for material availability with the fiscal responsibility to effectively and responsibly manage inventory investment.
  3. Dispose of surplus, damaged, scrap, excess, and obsolete material, equipment, and supplies to the greatest possible advantage to the District.
  4. Provide uniform methods and procedures for receiving and opening bids for materials, supplies, equipment, services or construction projects.
  5. Place the authority and responsibility with the Manager of Purchasing to administer and coordinate all of the above.
- 

#### Authority

Adopted by Resolution No. 27809, July 27, 1976  
Amended by Resolution No. 33178-99, November 23, 1999  
Amended by Resolution No. 33523-06, March 28, 2006  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 4.12

EFFECTIVE

24 SEP 13

SUPERSEDES

28 MAR 06

## PURCHASING AND MATERIALS MANAGEMENT

---

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1. Purchase, rent or lease all materials, supplies, equipment and secure general services for the District's use so as to receive maximum value for each dollar expended consistent with ultimate use, product quality, and supplier performance. In doing so:
    - a. Provide a fair and impartial competitive environment.
    - b. Provide equal opportunity, in its purchases of materials and/or general services, to all qualified suppliers in accordance with applicable law and District Policy 1.01 (Equal Employment Opportunity).
    - c. Take affirmative action to locate and encourage equitable participation by all businesses in the competitive bidding processes of the District.
    - d. Seek a reasonable and attainable percent of participation by Small Business Enterprises in the District's annual purchasing expenditures.
    - e. Endeavor to adhere to the principles of sustainability in the acquisition of materials and supplies, as prescribed in District Policy 7.05 (Sustainability).
  2. Balance the need for material availability with the fiscal responsibility to effectively and responsibly manage inventory investment.
  3. Dispose of surplus, damaged, scrap, excess, and obsolete material, equipment, and supplies to the greatest possible advantage to the District.
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- 

### Authority

Adopted by Resolution No. 27809, July 27, 1976  
Amended by Resolution No. 33178-99, November 23, 1999  
Amended by Resolution No. 33523-06, March 28, 2006  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 4.15R

EFFECTIVE 27 OCT 09  
24 SEP 13

SUPERSEDES 28 FEB 95  
27 OCT 09

## REIMBURSEMENT OF EMPLOYEE EXPENSES

---

### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Reimburse employees for actual expenses or at the District approved per diem rate for expenses which are necessary and were directly incurred in the course, scope, and discharge of the employee's authorized duties.

---

#### **Expenditure Control and Authorization**

The District shall control such expenditures by requiring employees to obtain prior authorization from management to make the expenditure before it is incurred. The District will not reimburse employees for expenses incurred by an employee engaged in activities outside the course and scope of District employment, such as activities which are unauthorized, unnecessary, gratuitous, or clearly personal.

The District operates under an accountable plan as defined in the Internal Revenue Service Publication 463.

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#### **Authority**

Resolution 32911-95, February 28, 1995.  
As amended by Resolution No. 33732-09, October 27, 2009  
As amended by Resolution No. XXXXX-13, September 24, 2013

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#### **Reference**

Procedure 438 - Reimbursement of Employee Expenses  
IRS Publication 463 – Travel, Entertainment, Gift, and Car Expenses  
IRS Publication 535 – Business Expenses

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# Policy 4.15

EFFECTIVE 24 SEP 13

SUPERSEDES 27 OCT 09

## REIMBURSEMENT OF EMPLOYEE EXPENSES

---

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#### **Authority**

Resolution 32911-95, February 28, 1995.  
As amended by Resolution No. 33732-09, October 27, 2009  
As amended by Resolution No. XXXXX-13, September 24, 2013

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#### **Reference**

Procedure 438 - Reimbursement of Employee Expenses  
IRS Publication 463 – Travel, Entertainment, Gift, and Car Expenses  
IRS Publication 535 – Business Expenses

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# Policy 4.19R

## TRAVEL

EFFECTIVE 23 MAR 04

24 SEP 13

SUPERSEDES 01 OCT 84

23 MAR 04

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### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Limit travel outside the boundaries of the District (or the employee's regular headquarters) to those cases which are necessary for the effective performance of public business, and require that travel be performed by the most direct and economical means consistent with the effective performance of public business.

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#### Travel Approval

- Advance approval of the ~~Director of Finance~~ General Manager or designee is required for travel performed by an employee to points outside the State of California.
  - Advance approval by a department director or division manager is required for travel performed by an employee outside the boundaries of the District (or the employee's regular headquarters), but within the State of California.
- 

#### Reimbursement

Reimburse employees for actual expenses or District approved per diem rate incurred while in travel status in accordance with the applicable procedures.

---

#### Authority

Motion No. 020-94, January 25, 1994  
As amended by Resolution 33414-04, March 23, 2004  
As amended by Resolution XXXXX-13, September 24, 2013

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#### Reference

Procedure 438 - Reimbursement of Employee Business Expenses

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# Policy 4.19

EFFECTIVE 24 SEP 13

SUPERSEDES 23 MAR 04

## TRAVEL

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### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

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#### Reimbursement

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---

#### Authority

Motion No. 020-94, January 25, 1994  
As amended by Resolution 33414-04, March 23, 2004  
As amended by Resolution XXXXX-13, September 24, 2013

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#### Reference

Procedure 438 - Reimbursement of Employee Business Expenses

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# Policy 4.24R

EFFECTIVE ~~09 OCT 07~~

24 SEP 13

SUPERSEDES ~~08 FEB 96~~

09 OCT 07

## INTERNAL AUDIT

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### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Maintain and support an Internal Audit Section as an independent appraisal function to examine and evaluate the activities of the District.

---

#### Authorization

In carrying out their duties and responsibilities, the Internal Audit Section ~~internal auditors~~ shall have full, free, and unrestricted access to all District activities, records, and property, except personnel, medical, or similar records, the disclosure of which would result in an unwarranted invasion of personal privacy, and except for records otherwise confidential under the law. Internal Audit shall also have such access to any employee of the District, as well as persons working with or on behalf of the District as the result of subcontract, contract, consultant agreement, or proposal effort. Internal Audit review of communications protected by the attorney-client privilege shall not occur unless and until the Board of Directors waives that privilege.

In order to ensure independence, promote comprehensive audit coverage, and assure adequate consideration of audit findings and recommendations, Internal Audit will submit its final reports to the General Manager.

---

#### Responsibilities

Internal Audit's primary objective is to assist management and the Board of Directors in the effective and efficient operation of the District. Fulfillment of this objective entails performance of various tasks which include but are not limited to:

- Reviewing organizations within the District to ascertain whether they are efficiently and effectively performing their duties in accordance with management instruction, policies, procedures, and in a manner that is consonant with District objectives and high standards of ethical and business practices.
- Determining the adequacy and effectiveness of the District's system of accounting and internal controls.
- Ascertaining the adequacy of controls for safeguarding District assets, and when appropriate, verifying the existence of such assets.
- Appraising the economy and efficiency with which resources are employed.
- Evaluating the District's compliance with policies, procedures, laws, and regulations.
- Evaluating plans and actions taken to address reported conditions for satisfactory disposition of audit findings.
- Coordinating audit efforts with external auditors.
- Performing special reviews and investigations requested by management or the Board of Directors.

Internal audit is a staff function that has no direct authority over the activities audited. Performance of audits does not relieve management or staff of their assigned responsibilities.

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**Reporting**

To the extent permitted by law, Internal Audit will report audit results promptly to all appropriate management and staff (auditees) who are responsible for taking corrective action. Subsequent to initial review and discussion with auditees, final audit reports shall be distributed to the General Manager, and to the General Manager's staff and General Counsel as appropriate. The Internal Audit Supervisor will submit the annual internal audit work plan to the Board of Directors, via the Finance/Administration Committee, for approval. Additionally the Internal Audit Supervisor will present semi-annual reports on the results of the audits completed during the fiscal year, including a discussion of a report on Internal Audit activities to the Board of Directors on a semi-annual basis. The report will include a review of the Internal Audit Plan; a discussion of the the resulting findings and recommendations from audits that as well as the status of any corrective action(s) taken to address issues that have been raised, have been completed in the previous six months; and a discussion of the status of findings and recommendations that have previously been reported but have not been resolved or have been resolved during the current reporting period.

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**Ethics and Standards**

As is mandated in California Government Code 1236 Internal Audit will comply with The Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

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**Authority**

Resolution No. 32912-95 - February 28, 1995.  
Amended by Resolution No. 33634-07- October 9, 2007  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 4.24

EFFECTIVE 24 SEP 13

SUPERSEDES 09 OCT 07

## INTERNAL AUDIT

---

### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Maintain and support an Internal Audit Section as an independent appraisal function to examine and evaluate the activities of the District.

---

#### **Authorization**

In carrying out their duties and responsibilities, the Internal Audit Section shall have full, free, and unrestricted access to all District activities, records, and property, except personnel, medical, or similar records, the disclosure of which would result in an unwarranted invasion of personal privacy, and except for records otherwise confidential under the law. Internal Audit shall also have such access to any employee of the District, as well as persons working with or on behalf of the District as the result of subcontract, contract, consultant agreement, or proposal effort. Internal Audit review of communications protected by the attorney-client privilege shall not occur unless and until the Board of Directors waives that privilege.

In order to ensure independence, promote comprehensive audit coverage, and assure adequate consideration of audit findings and recommendations, Internal Audit will submit its final reports to the General Manager.

---

#### **Responsibilities**

Internal Audit's primary objective is to assist management and the Board of Directors in the effective and efficient operation of the District. Fulfillment of this objective entails performance of various tasks which include but are not limited to:

- Reviewing organizations within the District to ascertain whether they are efficiently and effectively performing their duties in accordance with management instruction, policies, procedures, and in a manner that is consonant with District objectives and high standards of ethical and business practices.
- Determining the adequacy and effectiveness of the District's system of accounting and internal controls.
- Ascertaining the adequacy of controls for safeguarding District assets, and when appropriate, verifying the existence of such assets.
- Appraising the economy and efficiency with which resources are employed.
- Evaluating the District's compliance with policies, procedures, laws, and regulations.
- Evaluating plans and actions taken to address reported conditions for satisfactory disposition of audit findings.
- Coordinating audit efforts with external auditors.
- Performing special reviews and investigations requested by management or the Board of Directors.

Internal audit is a staff function that has no direct authority over the activities audited. Performance of audits does not relieve management or staff of their assigned responsibilities.

---

**Reporting**

To the extent permitted by law, Internal Audit will report audit results promptly to all appropriate management and staff (auditees) who are responsible for taking corrective action. Subsequent to initial review and discussion with auditees, final audit reports shall be distributed to the General Manager, and to the General Manager's staff and General Counsel as appropriate. The Internal Audit Supervisor will submit the annual internal audit work plan to the Board of Directors, via the Finance/Administration Committee, for approval. Additionally the Internal Audit Supervisor will present semi-annual reports on the results of the audits completed during the fiscal year, including a discussion of the resulting findings and recommendations as well as the status of any corrective action(s) taken to address issues that have been raised.

---

**Ethics and Standards**

As is mandated in California Government Code 1236 Internal Audit will comply with The Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

---

**Authority**

Resolution No. 32912-95 - February 28, 1995.  
Amended by Resolution No. 33634-07- October 9, 2007  
Amended by Resolution No. XXXXX-13, September 24, 2013

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EFFECTIVE 27-NOV-12  
24-SEP-13

SUPERSEDES 23-NOV-10  
27-NOV-12

## EMERGENCY PREPAREDNESS/BUSINESS CONTINUITY

### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Ensure the District can respond to and recover from emergencies and disruptive incidents. The District will create and maintain an active Emergency Preparedness Program that includes an Emergency Operations Plan (EOP) written and administered to help manage the District's critical operations during any emergency and protect people, property, and the environment. The District will coordinate the EOP function and response with federal, state, and local agencies and private entities charged with emergency duties. The District will also create and maintain a Business Continuity Program Plan (BCPP) to minimize impacts to critical business functions and enhance its capability to recover operations expediently and successfully following a disruptive incident.

Programs and plans will:

- Make employee and community life safety the highest priority,
- Anticipate, prevent, reduce, and mitigate risks to the extent practicable,
- Be periodically reviewed and updated to incorporate lessons learned from exercises, incidents, and industry for continuous improvement, and
- Comply with all applicable legal requirements and be consistent with state and federal guidance.

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#### Emergency

An emergency includes actual or threatened existence of conditions of disaster or extreme peril to critical District operations, its infrastructure, and/or the health and safety of staff or the public. These conditions may be caused by an earthquake, power outage, dam failure, freeze, water supply contamination, national security incident, storm event, and other conditions that may be beyond the capability of District forces and may require support from other political subdivisions, other agencies, volunteer and non-profit organizations, or the private sector.

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#### Emergency Preparedness Program

The District's Emergency Preparedness Program shall include an EOP written and administered in accordance with the guidelines of the National Response Framework (NRF), the National Incident Management System (NIMS), and the California Standardized Emergency Management System (SEMS). In accordance with NIMS and SEMS, the Emergency Preparedness Program will consist of four phases of emergency management: mitigation, preparedness/planning, response, and recovery. The EOP will include guidelines for identifying and training District staff in the NIMS, designate District staff to critical positions identified in the EOP, and designate staff to represent the District in negotiations or consultations with public and private agencies on matters pertaining to response to the emergency and recovery of damaged systems and financial costs. The Regulatory Compliance Office will facilitate progress on this program.

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#### Authorization During District Emergencies

When an emergency condition arises that necessitates immediate action to minimize damage and inconvenience resulting from such condition, the General Manager or successor, in consultation with the President of the Board of Directors, or successor, may declare a District emergency. The Board may also declare a District emergency under the Municipal Utilities District Act (Public Utilities Code) Section 12753. The General Manager, or successor, is authorized, after a District-declared emergency, to enter into emergency contracts not to exceed \$350,000, per contract, without bids or notice. The Board shall meet to ratify the declaration of emergency by the General Manager as soon as possible after the declaration, but no later than 14 days following such declaration.

At the next regular or special meeting of the Board of Directors following such emergency, a report shall be made to the Board of Directors summarizing all expenditures made and contracts executed in response to said emergency. Periodic reports on the status of response and additional contracts and expenditures shall be provided generated at the direction of to the Board of Directors until the emergency is concluded. The emergency declaration will remain in effect until formal Board action is taken to conclude.

The Emergency Operations Director (EOD) or designee is authorized to take all necessary action to apply for incoming state or federal resources and to represent the District in requesting/negotiating for the needed resources.

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**Emergency  
Operations  
Director**

The District's EOP will identify a District manager to serve as the EOD who will have the authority for developing plans, training staff and activating the EOP. In consultation with the General Manager, the EOD will identify staff to fulfill the planning and response duties listed in the EOP. As the need arises, the EOD may direct all staff or material resources of the District to combat the effects of a threatened, declared or actual emergency.

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**Mutual Aid/  
Assistance**

The California Master Mutual Aid Agreement (Government Code Sections 8561, 8615 and 8617) allows for the implementation of mutual aid during threatened, actual, or declared emergencies. The General Manager, EOD, and their successors, in accordance with the EOP, may request mutual aid/assistance from other local government and public agencies, or commit District resources to other agencies requesting aid. The General Manager may sign appropriate documents to implement mutual aid/assistance, emergency interties, and other emergency response agreements.

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**Business  
Continuity  
Program**

The District provides products and services that support the economic, human, and environmental health of the East Bay. Therefore, the District must have a program that facilitates the performance of essential functions during an emergency situation that disrupts normal operations and/or the timely resumption of normal operations once the emergency has ended. The District will maintain a BCPP consistent with federal, state, and industry guidance that provides the overall framework for the program and outlines the basic priorities for recovery of business functions in individual departmental Business Continuity Plans (BCPs). The Regulatory Compliance Office will manage the program and maintain the BCPP. Individual departments will create BCPs that outline: the critical functions, that must be performed before, during and after an event; the personnel responsible for completing the necessary actions; and the vital records, equipment, supplies, tools and systems required to accomplish the identified tasks. The departments are responsible to ensure that their BCPs are maintained, employees trained, plans tested, and their vital records necessary to maintain operations are available. Vital records include all information and records that if lost, would place significant financial, operational, or legal restrictions on the continuation of District services.

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**Continuity of  
Management**

All the District's BCPs, including for the Office of the General Manager, will list at least three successors to critical staff identified in each plan, including the General Manager with a clear process and criteria when succession is to occur. In the event the primary person is unable to respond to an emergency, each successor, in order, may assume all the duties and powers of the primary staff.

**Status Reports**

The General Manager will provide periodic Emergency Preparedness and Business Continuity Program progress reports to the Board of Directors, as necessary, and the District's response to a declared District emergency, when applicable.

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**Authority**

Resolution No. 33014-96, November 12, 1996  
As amended by Resolution No. 33027-02, September 24, 2002  
As amended by Resolution No. 33460-05, February 8, 2005  
As amended by Resolution No. 33564-06, November 14, 2006  
As amended by Resolution No. 33703-09, February 24, 2009  
As amended by Resolution No. 33793-10, November 23, 2010  
As amended by Resolution No. 33904-12, November 27, 2012  
As amended by Resolution No. XXXXX-13, September 24, 2013

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**References**

District Emergency Operations Plan  
Business Continuity Program Plan  
Procedure 415 - Emergency Purchases  
Policy 7.13 – Security  
Municipal Utility District Act – Section 12753  
California Master Mutual Aid Agreement  
Standardized Emergency Management System  
National Response Framework  
National Incident Management System

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## EMERGENCY PREPAREDNESS/BUSINESS CONTINUITY

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### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Ensure the District can respond to and recover from emergencies and disruptive incidents. The District will create and maintain an active Emergency Preparedness Program that includes an Emergency Operations Plan (EOP) written and administered to help manage the District's critical operations during any emergency and protect people, property, and the environment. The District will coordinate the EOP function and response with federal, state, and local agencies and private entities charged with emergency duties. The District will also create and maintain a Business Continuity Program Plan (BCPP) to minimize impacts to critical business functions and enhance its capability to recover operations expediently and successfully following a disruptive incident.

Programs and plans will:

- Make employee and community life safety the highest priority,
  - Anticipate, prevent, reduce, and mitigate risks to the extent practicable,
  - Be periodically reviewed and updated to incorporate lessons learned from exercises, incidents, and industry for continuous improvement, and
  - Comply with all applicable legal requirements and be consistent with state and federal guidance.
- 

#### **Emergency**

An emergency includes actual or threatened existence of conditions of disaster or extreme peril to critical District operations, its infrastructure, and/or the health and safety of staff or the public. These conditions may be caused by an earthquake, power outage, dam failure, freeze, water supply contamination, national security incident, storm event, and other conditions that may be beyond the capability of District forces and may require support from other political subdivisions, other agencies, volunteer and non-profit organizations, or the private sector.

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#### **Emergency Preparedness Program**

The District's Emergency Preparedness Program shall include an EOP written and administered in accordance with the guidelines of the National Response Framework (NRF), the National Incident Management System (NIMS), and the California Standardized Emergency Management System (SEMS). In accordance with NIMS and SEMS, the Emergency Preparedness Program will consist of four phases of emergency management: mitigation, preparedness/planning, response, and recovery. The EOP will include guidelines for identifying and training District staff in the NIMS, designate District staff to critical positions identified in the EOP, and designate staff to represent the District in negotiations or consultations with public and private agencies on matters pertaining to response to the emergency and recovery of damaged systems and financial costs. The Regulatory Compliance Office will facilitate progress on this program.

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#### **Authorization During District Emergencies**

When an emergency condition arises that necessitates immediate action to minimize damage and inconvenience resulting from such condition, the General Manager or successor, in consultation with the President of the Board of Directors, or successor, may declare a District emergency. The Board may also declare a District emergency under the Municipal Utilities District Act (Public Utilities Code) Section 12753. The General Manager, or successor, is authorized, after a District-declared emergency, to enter into emergency contracts not to exceed \$350,000, per contract, without bids or notice. The Board shall meet to ratify the declaration of emergency by the General Manager as soon as possible after the declaration, but no later than 14 days following such declaration.

At the next regular or special meeting of the Board of Directors following such emergency, a report shall be made to the Board of Directors summarizing all expenditures made and contracts executed in response to said emergency. Periodic reports on the status of response and additional contracts and expenditures shall be provided to the Board of Directors until the emergency is concluded. The emergency declaration will remain in effect until formal Board action is taken to conclude.

The Emergency Operations Director (EOD) or designee is authorized to take all necessary action to apply for incoming state or federal resources and to represent the District in requesting/negotiating for the needed resources.

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**Emergency  
Operations  
Director**

The District's EOP will identify a District manager to serve as the EOD who will have the authority for developing plans, training staff and activating the EOP. In consultation with the General Manager, the EOD will identify staff to fulfill the planning and response duties listed in the EOP. As the need arises, the EOD may direct all staff or material resources of the District to combat the effects of a threatened, declared or actual emergency.

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**Business  
Continuity  
Program**

The District provides products and services that support the economic, human, and environmental health of the East Bay. Therefore, the District must have a program that facilitates the performance of essential functions during an emergency situation that disrupts normal operations and/or the timely resumption of normal operations once the emergency has ended. The District will maintain a BCPP consistent with federal, state, and industry guidance that provides the overall framework for the program and outlines the basic priorities for recovery of business functions in individual departmental Business Continuity Plans (BCPs). The Regulatory Compliance Office will manage the program and maintain the BCPP. Individual departments will create BCPs that outline: the critical functions that must be performed before, during and after an event; the personnel responsible for completing the necessary actions; and the vital records, equipment, supplies, tools and systems required to accomplish the identified tasks. The departments are responsible to ensure that their BCPs are maintained, employees trained, plans tested, and their vital records necessary to maintain operations are available. Vital records include all information and records that if lost, would place significant financial, operational, or legal restrictions on the continuation of District services.

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Management**

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**Status Reports** The General Manager will provide periodic Emergency Preparedness and Business Continuity Program progress reports to the Board of Directors, as necessary, and the District's response to a declared District emergency, when applicable.

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**Authority** Resolution No. 33014-96, November 12, 1996  
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As amended by Resolution No. XXXXX-13, September 24, 2013

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**References** District Emergency Operations Plan  
Business Continuity Program Plan  
Procedure 415 - Emergency Purchases  
Policy 7.13 – Security  
Municipal Utility District Act – Section 12753  
California Master Mutual Aid Agreement  
Standardized Emergency Management System  
National Response Framework  
National Incident Management System

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Office of General Counsel

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

ADOPTING REVISED POLICY 4.01, EMPLOYEE EARNINGS AND PAYROLL  
DETERMINATION; POLICY 4.12, PURCHASING AND MATERIALS MANAGEMENT;  
POLICY 4.15, REIMBURSEMENT OF EMPLOYEE EXPENSES; POLICY 4.19, TRAVEL;  
POLICY 4.24, INTERNAL AUDIT; AND POLICY 7.03, EMERGENCY  
PREPAREDNESS/BUSINESS CONTINUITY

Introduced by Director

; Seconded by Director

WHEREAS, it is the desire and intention of the Board of Directors to update and revise Policy 4.01, entitled "Employee Earnings and Payroll Determination;" Policy 4.12, entitled "Purchasing and Materials Management;" Policy 4.15, entitled "Reimbursement of Employee Expenses;" Policy 4.19, entitled "Travel;" Policy 4.24, entitled "Internal Audit;" and Policy 7.03, entitled "Emergency Preparedness/Business Continuity;"

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that Revised Policy 4.01, Revised Policy 4.12, Revised Policy 4.15, Revised Policy 4.19, Revised Policy 4.24 and Revised Policy 7.03, attached hereto as Exhibits A through F, are hereby adopted.

ADOPTED this 24<sup>th</sup> day of September, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE

\_\_\_\_\_  
General Counsel





# Policy 4.01<sup>R</sup>

EFFECTIVE 28 MAR 06

24 SEP 13

SUPERSEDES 09 DEC 03

28 MAR 06

## EMPLOYEE EARNINGS AND PAYROLL DETERMINATION

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### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Establish salary rates for District employees on a monthly basis.

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<b>Payroll Period</b>	<p>A payroll period is two consecutive workweeks in duration.</p> <p>Payroll checks for each payroll period shall be issued on or before the Friday following the end of the payroll period.</p>
<b>Calculation of Pay</b>	<p>Pay due an employee for a payroll period shall be based on the following formula, less required and authorized deductions, and plus any special pay additions:</p> $\text{Hourly Rate} = \frac{\text{Employee's monthly rate} \times 12 \text{ months}}{52 \text{ weeks} \times 40 \text{ hours/week}}$ <p>For purposes of calculating pay, the hourly rate for an employee is determined by the above formula.</p>
<b>Payroll Verification and Issuance</b>	<p>The Manager of Human Resources, as a designee for the General Manager shall verify <u>monthly</u> that there are systems and procedures in place to ensure the accuracy of individual salaries, the existence of Board authorized positions, and the accuracy of the indicated status of all leaves of absences as being with or without pay.</p> <p>The Director of Finance, as a designee for the General Manager shall approve <u>monthly</u> the issuance of all payroll compensation to District employees and verifies that payroll systems and procedures are in place to ensure that expenditures do not exceed the authorized amount of compensation.</p> <p>Payroll disbursement amounts will be reported on a quarterly basis to the Board of Directors and the Payroll System and Procedures are audited annually by independent outside auditors.</p>
<b>Authority</b>	<p>Adopted by Resolution No. 33028-97, January 28, 1997 Amended by Resolution No. 33209-00, June 27, 2000. Amended by Resolution No. 33389-03, December 9, 2003 Amended by Resolution No. 33523-06, March 28, 2006 <u>Amended by Resolution No. XXXXX-13, September 24, 2013</u></p>
<b>Reference</b>	<p>Electronic Timesheet System (ETS) User Guide</p>

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# Policy 4.01

EFFECTIVE 24 SEP 13

SUPERSEDES 28 MAR 06

## EMPLOYEE EARNINGS AND PAYROLL DETERMINATION

---

### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Establish salary rates for District employees on a monthly basis.

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<b>Payroll Verification and Issuance</b>	<p>The Manager of Human Resources, as a designee for the General Manager shall verify monthly that there are systems and procedures in place to ensure the accuracy of individual salaries, the existence of Board authorized positions, and the accuracy of the indicated status of all leaves of absences as being with or without pay.</p> <p>The Director of Finance, as a designee for the General Manager shall approve monthly the issuance of all payroll compensation to District employees and verifies that payroll systems and procedures are in place to ensure that expenditures do not exceed the authorized amount of compensation.</p> <p>Payroll disbursement amounts will be reported on a quarterly basis to the Board of Directors and the Payroll System and Procedures are audited annually by independent outside auditors.</p>
<b>Authority</b>	<p>Adopted by Resolution No. 33028-97, January 28, 1997 Amended by Resolution No. 33209-00, June 27, 2000. Amended by Resolution No. 33389-03, December 9, 2003 Amended by Resolution No. 33523-06, March 28, 2006 Amended by Resolution No. XXXXX-13, September 24, 2013</p>
<b>Reference</b>	<p>Electronic Timesheet System (ETS) User Guide</p>



# Policy 4.12R

EFFECTIVE

28 MAR 06

24 SEP 13

SUPERSEDES

23 NOV 99

28 MAR 06

## PURCHASING AND MATERIALS MANAGEMENT

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### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

1. Purchase, rent or lease all materials, supplies, equipment and secure general services for the District's use so as to receive maximum value for each dollar expended consistent with ultimate use, product quality, and supplier performance. In doing so:
    - a. Provide a fair and impartial competitive environment.
    - b. Provide equal opportunity, in its purchases of materials and/or general services, to all qualified suppliers regardless of race, color, national origin, sex, age or physical handicap in accordance with applicable law and District Policy 1.01 (Equal Employment Opportunity).
    - c. Take affirmative action to locate and encourage equitable participation by all businesses in the competitive bidding processes of the District.
    - d. Seek a reasonable and attainable percent of participation by Small Business Enterprises in the District's annual purchasing expenditures.
    - d.e. Endeavor to adhere to the principles of sustainability in the acquisition of materials and supplies, as prescribed in District Policy 7.05 (Sustainability).
  2. Balance the need for material availability with the fiscal responsibility to effectively and responsibly manage inventory investment.
  3. Dispose of surplus, damaged, scrap, excess, and obsolete material, equipment, and supplies to the greatest possible advantage to the District.
  4. Provide uniform methods and procedures for receiving and opening bids for materials, supplies, equipment, services or construction projects.
  5. Place the authority and responsibility with the Manager of Purchasing to administer and coordinate all of the above.
- 

#### Authority

Adopted by Resolution No. 27809, July 27, 1976  
Amended by Resolution No. 33178-99, November 23, 1999  
Amended by Resolution No. 33523-06, March 28, 2006  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 4.12

EFFECTIVE

24 SEP 13

SUPERSEDES

28 MAR 06

## PURCHASING AND MATERIALS MANAGEMENT

---

### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

1. Purchase, rent or lease all materials, supplies, equipment and secure general services for the District's use so as to receive maximum value for each dollar expended consistent with ultimate use, product quality, and supplier performance. In doing so:
    - a. Provide a fair and impartial competitive environment.
    - b. Provide equal opportunity, in its purchases of materials and/or general services, to all qualified suppliers in accordance with applicable law and District Policy 1.01 (Equal Employment Opportunity).
    - c. Take affirmative action to locate and encourage equitable participation by all businesses in the competitive bidding processes of the District.
    - d. Seek a reasonable and attainable percent of participation by Small Business Enterprises in the District's annual purchasing expenditures.
    - e. Endeavor to adhere to the principles of sustainability in the acquisition of materials and supplies, as prescribed in District Policy 7.05 (Sustainability).
  2. Balance the need for material availability with the fiscal responsibility to effectively and responsibly manage inventory investment.
  3. Dispose of surplus, damaged, scrap, excess, and obsolete material, equipment, and supplies to the greatest possible advantage to the District.
  4. Provide uniform methods and procedures for receiving and opening bids for materials, supplies, equipment, services or construction projects.
  5. Place the authority and responsibility with the Manager of Purchasing to administer and coordinate all of the above.
- 

#### Authority

Adopted by Resolution No. 27809, July 27, 1976  
Amended by Resolution No. 33178-99, November 23, 1999  
Amended by Resolution No. 33523-06, March 28, 2006  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 4.15R

EFFECTIVE 27 OCT 09

24 SEP 13

SUPERSEDES 28 FEB 96

27 OCT 09

## REIMBURSEMENT OF EMPLOYEE \_EXPENSES

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### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Reimburse employees for actual expenses or at the District approved per diem rate for expenses which are necessary and were directly incurred in the course, scope, and discharge of the employee's authorized duties.

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#### **Expenditure Control and Authorization**

The District shall control such expenditures by requiring employees to obtain prior authorization from management to make the expenditure before it is incurred. The District will not reimburse employees for expenses incurred by an employee engaged in activities outside the course and scope of District employment, such as activities which are unauthorized, unnecessary, gratuitous, or clearly personal.

The District operates under an accountable plan as defined in the Internal Revenue Service Publication 463.

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#### **Authority**

Resolution 32911-95, February 28, 1995.  
As amended by Resolution No. 33732-09, October 27, 2009  
As amended by Resolution No. XXXXX-13, September 24, 2013

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#### **Reference**

Procedure 438 - Reimbursement of Employee Expenses  
IRS Publication 463 – Travel, Entertainment, Gift, and Car Expenses  
IRS Publication 535 – Business Expenses

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# Policy 4.15

EFFECTIVE 24 SEP 13

SUPERSEDES 27 OCT 09

## REIMBURSEMENT OF EMPLOYEE EXPENSES

---

### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Reimburse employees for actual expenses or at the District approved per diem rate for expenses which are necessary and were directly incurred in the course, scope, and discharge of the employee's authorized duties.

---

#### **Expenditure Control and Authorization**

The District shall control such expenditures by requiring employees to obtain authorization from management to make the expenditure before it is incurred. The District will not reimburse employees for expenses incurred by an employee engaged in activities outside the course and scope of District employment, such as activities which are unauthorized, unnecessary, gratuitous, or clearly personal.

The District operates under an accountable plan as defined in the Internal Revenue Service Publication 463.

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#### **Authority**

Resolution 32911-95, February 28, 1995.  
As amended by Resolution No. 33732-09, October 27, 2009  
As amended by Resolution No. XXXXX-13, September 24, 2013

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#### **Reference**

Procedure 438 - Reimbursement of Employee Expenses  
IRS Publication 463 – Travel, Entertainment, Gift, and Car Expenses  
IRS Publication 535 – Business Expenses

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# Policy 4.19R

EFFECTIVE 23-MAR-04

24-SEP-13

SUPERSEDES 01-OCT-84

23-MAR-04

## TRAVEL

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### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Limit travel outside the boundaries of the District (or the employee's regular headquarters) to those cases which are necessary for the effective performance of public business, and require that travel be performed by the most direct and economical means consistent with the effective performance of public business.

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#### Travel Approval

- Advance approval of the ~~Director of Finance~~ General Manager or designee is required for travel performed by an employee to points outside the State of California.
  - Advance approval by a department director or division manager is required for travel performed by an employee outside the boundaries of the District (or the employee's regular headquarters), but within the State of California.
- 

#### Reimbursement

Reimburse employees for actual expenses or District approved per diem rate incurred while in travel status in accordance with the applicable procedures.

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#### Authority

Motion No. 020-94, January 25, 1994  
As amended by Resolution 33414-04, March 23, 2004  
As amended by Resolution XXXXX-13, September 24, 2013

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#### Reference

Procedure 438 - Reimbursement of Employee Business Expenses

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# Policy 4.19

EFFECTIVE 24 SEP 13

SUPERSEDES 23 MAR 04

## TRAVEL

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### IT IS THE POLICY OF THE EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Limit travel outside the boundaries of the District (or the employee's regular headquarters) to those cases which are necessary for the effective performance of public business, and require that travel be performed by the most direct and economical means consistent with the effective performance of public business.

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<b>Travel Approval</b>	<ul style="list-style-type: none"><li>• Advance approval of the General Manager or designee is required for travel performed by an employee to points outside the State of California.</li><li>• Advance approval by a department director or division manager is required for travel performed by an employee outside the boundaries of the District (or the employee's regular headquarters), but within the State of California.</li></ul>
<b>Reimbursement</b>	Reimburse employees for actual expenses or District approved per diem rate incurred while in travel status in accordance with the applicable procedures.
<b>Authority</b>	Motion No. 020-94, January 25, 1994 As amended by Resolution 33414-04, March 23, 2004 As amended by Resolution XXXXX-13, September 24, 2013
<b>Reference</b>	Procedure 438 - Reimbursement of Employee Business Expenses

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# Policy 4.24R

## INTERNAL AUDIT

EFFECTIVE 09 OCT 07

24 SEP 13

SUPERSEDES 08 FEB 95

09 OCT 07

### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Maintain and support an Internal Audit Section as an independent appraisal function to examine and evaluate the activities of the District.

#### Authorization

In carrying out their duties and responsibilities, the Internal Audit Section internal auditors shall have full, free, and unrestricted access to all District activities, records, and property, except personnel, medical, or similar records, the disclosure of which would result in an unwarranted invasion of personal privacy, and except for records otherwise confidential under the law. Internal Audit shall also have such access to any employee of the District, as well as persons working with or on behalf of the District as the result of subcontract, contract, consultant agreement, or proposal effort. Internal Audit review of communications protected by the attorney-client privilege shall not occur unless and until the Board of Directors waives that privilege.

In order to ensure independence, promote comprehensive audit coverage, and assure adequate consideration of audit findings and recommendations, Internal Audit will submit its final reports to the General Manager.

#### Responsibilities

Internal Audit's primary objective is to assist management and the Board of Directors in the effective and efficient operation of the District. Fulfillment of this objective entails performance of various tasks which include but are not limited to:

- Reviewing organizations within the District to ascertain whether they are efficiently and effectively performing their duties in accordance with management instruction, policies, procedures, and in a manner that is consonant with District objectives and high standards of ethical and business practices.
- Determining the adequacy and effectiveness of the District's system of accounting and internal controls.
- Ascertaining the adequacy of controls for safeguarding District assets, and when appropriate, verifying the existence of such assets.
- Appraising the economy and efficiency with which resources are employed.
- Evaluating the District's compliance with policies, procedures, laws, and regulations.
- Evaluating plans and actions taken to address reported conditions for satisfactory disposition of audit findings.
- Coordinating audit efforts with external auditors.
- Performing special reviews and investigations requested by management or the Board of Directors.

Internal audit is a staff function that has no direct authority over the activities audited. Performance of audits does not relieve management or staff of their assigned responsibilities.

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**Reporting**

To the extent permitted by law, Internal Audit will report audit results promptly to all appropriate management and staff (auditees) who are responsible for taking corrective action. Subsequent to initial review and discussion with auditees, final audit reports shall be distributed to the General Manager, and to the General Manager's staff and General Counsel as appropriate. The Internal Audit Supervisor will submit the annual internal audit work plan to the Board of Directors, via the Finance/Administration Committee, for approval. Additionally the Internal Audit Supervisor will present semi-annual reports on the results of the audits completed during the fiscal year, including a discussion of a report on Internal Audit activities to the Board of Directors on a semi-annual basis. The report will include a review of the Internal Audit Plan; a discussion of the the resulting findings and recommendations from audits that as well as the status of any corrective action(s) taken to address issues that have been raised, have been completed in the previous six months; and a discussion of the status of findings and recommendations that have previously been reported but have not been resolved or have been resolved during the current reporting period.

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**Ethics and Standards**

As is mandated in California Government Code 1236 Internal Audit will comply with The Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

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**Authority**

Resolution No. 32912-95 - February 28, 1995.  
Amended by Resolution No. 33634-07- October 9, 2007  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 4.24

EFFECTIVE 24 SEP 13

SUPERSEDES 09 OCT 07

## INTERNAL AUDIT

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### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Maintain and support an Internal Audit Section as an independent appraisal function to examine and evaluate the activities of the District.

---

#### Authorization

In carrying out their duties and responsibilities, the Internal Audit Section shall have full, free, and unrestricted access to all District activities, records, and property, except personnel, medical, or similar records, the disclosure of which would result in an unwarranted invasion of personal privacy, and except for records otherwise confidential under the law. Internal Audit shall also have such access to any employee of the District, as well as persons working with or on behalf of the District as the result of subcontract, contract, consultant agreement, or proposal effort. Internal Audit review of communications protected by the attorney-client privilege shall not occur unless and until the Board of Directors waives that privilege.

In order to ensure independence, promote comprehensive audit coverage, and assure adequate consideration of audit findings and recommendations, Internal Audit will submit its final reports to the General Manager.

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#### Responsibilities

Internal Audit's primary objective is to assist management and the Board of Directors in the effective and efficient operation of the District. Fulfillment of this objective entails performance of various tasks which include but are not limited to:

- Reviewing organizations within the District to ascertain whether they are efficiently and effectively performing their duties in accordance with management instruction, policies, procedures, and in a manner that is consonant with District objectives and high standards of ethical and business practices.
- Determining the adequacy and effectiveness of the District's system of accounting and internal controls.
- Ascertaining the adequacy of controls for safeguarding District assets, and when appropriate, verifying the existence of such assets.
- Appraising the economy and efficiency with which resources are employed.
- Evaluating the District's compliance with policies, procedures, laws, and regulations.
- Evaluating plans and actions taken to address reported conditions for satisfactory disposition of audit findings.
- Coordinating audit efforts with external auditors.
- Performing special reviews and investigations requested by management or the Board of Directors.

## Internal Audit

NUMBER 4.24

PAGE NO.: 2

EFFECTIVE DATE 24 SEP 13

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Internal audit is a staff function that has no direct authority over the activities audited. Performance of audits does not relieve management or staff of their assigned responsibilities.

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### Reporting

To the extent permitted by law, Internal Audit will report audit results promptly to all appropriate management and staff (auditees) who are responsible for taking corrective action. Subsequent to initial review and discussion with auditees, final audit reports shall be distributed to the General Manager, and to the General Manager's staff and General Counsel as appropriate. The Internal Audit Supervisor will submit the annual internal audit work plan to the Board of Directors, via the Finance/Administration Committee, for approval. Additionally the Internal Audit Supervisor will present semi-annual reports on the results of the audits completed during the fiscal year, including a discussion of the resulting findings and recommendations as well as the status of any corrective action(s) taken to address issues that have been raised.

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### Ethics and Standards

As is mandated in California Government Code 1236 Internal Audit will comply with The Standards for the Professional Practice of Internal Auditing established by the Institute of Internal Auditors.

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### Authority

Resolution No. 32912-95 - February 28, 1995.  
Amended by Resolution No. 33634-07- October 9, 2007  
Amended by Resolution No. XXXXX-13, September 24, 2013

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# Policy 7.03<sup>R</sup>

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24 SEP 13  
SUPERSEDES 23 NOV 40  
27 NOV 12

## EMERGENCY PREPAREDNESS/BUSINESS CONTINUITY

### IT IS THE POLICY OF EAST BAY MUNICIPAL UTILITY DISTRICT TO:

Ensure the District can respond to and recover from emergencies and disruptive incidents. The District will create and maintain an active Emergency Preparedness Program that includes an Emergency Operations Plan (EOP) written and administered to help manage the District's critical operations during any emergency and protect people, property, and the environment. The District will coordinate the EOP function and response with federal, state, and local agencies and private entities charged with emergency duties. The District will also create and maintain a Business Continuity Program Plan (BCPP) to minimize impacts to critical business functions and enhance its capability to recover operations expediently and successfully following a disruptive incident.

Programs and plans will:

- Make employee and community life safety the highest priority,
- Anticipate, prevent, reduce, and mitigate risks to the extent practicable,
- Be periodically reviewed and updated to incorporate lessons learned from exercises, incidents, and industry for continuous improvement, and
- Comply with all applicable legal requirements and be consistent with state and federal guidance.

<b>Emergency</b>	An emergency includes actual or threatened existence of conditions of disaster or extreme peril to critical District operations, <u>its infrastructure</u> , and/or the health and safety of staff or the public. These conditions may be caused by an earthquake, power outage, dam failure, freeze, water supply contamination, national security incident, <u>storm event</u> , and other conditions that may be beyond the capability of District forces and may require support from other political subdivisions, other agencies, volunteer and non-profit organizations, or the private sector.
<b>Emergency Preparedness Program</b>	The District's Emergency Preparedness Program shall include an EOP written and administered in accordance with the guidelines of the National Response Framework (NRF), the National Incident Management System (NIMS), and the California Standardized Emergency Management System (SEMS). In accordance with NIMS and SEMS, the Emergency Preparedness Program will consist of four phases of emergency management: mitigation, preparedness/planning, response, and recovery. The EOP will include guidelines for identifying and training District staff in the NIMS, designate District staff to critical positions identified in the EOP, and designate staff to represent the District in negotiations or consultations with public and private agencies on matters pertaining to response to the emergency and recovery of damaged systems and financial costs. The Regulatory Compliance Office will facilitate progress on this program.
<b>Authorization During District Emergencies</b>	When an emergency condition arises that necessitates immediate action to minimize damage and inconvenience resulting from such condition, the General Manager or successor, in consultation with the President of the Board of Directors, or successor, may declare a District emergency. The Board may also declare a District emergency under the Municipal Utilities District Act (Public Utilities Code) Section 12753. The General Manager, or successor, is authorized, after a District-declared emergency, to enter into emergency contracts not to exceed \$350,000, per contract, without bids or notice. The Board shall meet to ratify the declaration of emergency by the General Manager as soon as possible after the declaration, but no later than 14 days following such declaration.

## Internal Audit

NUMBER 4.24

PAGE NO.: 2

EFFECTIVE DATE 24 SEP 13

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# Emergency Preparedness/Business Continuity

NUMBER 7.03

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At the next regular or special meeting of the Board of Directors following such emergency, a report shall be made to the Board of Directors summarizing all expenditures made and contracts executed in response to said emergency. Periodic reports on the status of response and additional contracts and expenditures shall be provided generated at the direction of to the Board of Directors until the emergency is concluded. The emergency declaration will remain in effect until formal Board action is taken to conclude.

The Emergency Operations Director (EOD) or designee is authorized to take all necessary action to apply for incoming state or federal resources and to represent the District in requesting/negotiating for the needed resources.

## Emergency Operations Director

The District's EOP will identify a District manager to serve as the EOD who will have the authority for developing plans, training staff and activating the EOP. In consultation with the General Manager, the EOD will identify staff to fulfill the planning and response duties listed in the EOP. As the need arises, the EOD may direct all staff or material resources of the District to combat the effects of a threatened, declared or actual emergency.

## Mutual Aid/ Assistance

The California Master Mutual Aid Agreement (Government Code Sections 8561, 8615 and 8617) allows for the implementation of mutual aid during threatened, actual, or declared emergencies. The General Manager, EOD, and their successors, in accordance with the EOP, may request mutual aid/assistance from other local government and public agencies, or commit District resources to other agencies requesting aid. The General Manager may sign appropriate documents to implement mutual aid/assistance, emergency interties, and other emergency response agreements.

## Business Continuity Program

The District provides products and services that support the economic, human, and environmental health of the East Bay. Therefore, the District must have a program that facilitates the performance of essential functions during an emergency situation that disrupts normal operations and/or the timely resumption of normal operations once the emergency has ended. The District will maintain a BCPP consistent with federal, state, and industry guidance that provides the overall framework for the program and outlines the basic priorities for recovery of business functions in individual departmental Business Continuity Plans (BCPs). The Regulatory Compliance Office will manage the program and maintain the BCPP. Individual departments will create BCPs that outline: the critical functions, that must be performed before, during and after an event; the personnel responsible for completing the necessary actions; and the vital records, equipment, supplies, tools and systems required to accomplish the identified tasks. The departments are responsible to ensure that their BCPs are maintained, employees trained, plans tested, and their vital records necessary to maintain operations are available. Vital records include all information and records that if lost, would place significant financial, operational, or legal restrictions on the continuation of District services.

## Continuity of Management

All of the District's BCPs, including for the Office of the General Manager, will list at least three successors to critical staff identified in each plan, including the General Manager with a clear process and criteria when succession is to occur. In the event the primary person is unable to respond to an emergency, each successor, in order, may assume all the duties and powers of the primary staff.

# Emergency Preparedness/Business Continuity

NUMBER 7.03

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## Status Reports

The General Manager will provide periodic Emergency Preparedness and Business Continuity Program progress reports to the Board of Directors, as necessary, and the District's response to a declared District emergency, when applicable.

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## Authority

Resolution No. 33014-96, November 12, 1996  
As amended by Resolution No. 33027-02, September 24, 2002  
As amended by Resolution No. 33460-05, February 8, 2005  
As amended by Resolution No. 33564-06, November 14, 2006  
As amended by Resolution No. 33703-09, February 24, 2009  
As amended by Resolution No. 33793-10, November 23, 2010  
As amended by Resolution No. 33904-12, November 27, 2012  
As amended by Resolution No. XXXXX-13, September 24, 2013

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## References

District Emergency Operations Plan  
Business Continuity Program Plan  
Procedure 415 - Emergency Purchases  
Policy 7.13 – Security  
Municipal Utility District Act – Section 12753  
California Master Mutual Aid Agreement  
Standardized Emergency Management System  
National Response Framework  
National Incident Management System

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# Policy 7.03

EFFECTIVE

24 SEP 13

SUPERSEDES

27 NOV 12

## EMERGENCY PREPAREDNESS/BUSINESS CONTINUITY

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**Emergency Preparedness/Business  
Continuity**

NUMBER 7.03

PAGE NO.: 3

EFFECTIVE DATE 24 SEP 13

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**Status Reports** The General Manager will provide periodic Emergency Preparedness and Business Continuity Program progress reports to the Board of Directors, as necessary, and the District's response to a declared District emergency, when applicable.

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**Authority** Resolution No. 33014-96, November 12, 1996  
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National Incident Management System

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# EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: September 19, 2013

MEMO TO: Board of Directors

FROM: Alexander R. Coate, General Manager *ARC*

SUBJECT: Legislative Report No. 09-13

The following issue is being referred to the Board of Directors for action, as appropriate.

## FEDERAL LEGISLATION

## RECOMMENDED POSITION

**S. AMENDMENT 1913  
(Paul)**

**AMENDMENT TO REPEAL  
NATIONAL PLUMBING EFFICIENCY  
PRODUCT STANDARDS**

**OPPOSE**

Existing federal law, the Energy Policy and Conservation Act, sets forth minimum energy and water efficiency standards for more than 50 appliances, including residential, commercial, and industrial lighting and plumbing products. Current law specifies the maximum water flow allowed for faucets, showerheads, water closets (toilets), and urinals and provides uniform standards for the manufacture of these fixtures to promote water conservation.

A proposed amendment by Senator Rand Paul, S. Amendment 1913 (Paul), would repeal the national plumbing efficiency product standards by eliminating maximum water flow standards for faucets, showerheads, toilets, and urinals and eliminating the current testing and labeling requirements for these fixtures. By abolishing national standards for these plumbing fixtures and allowing the manufacture of less efficient plumbing fixtures, this measure would undermine state water conservation laws and regulations, including those governing the sale and use of water efficient plumbing fixtures. Though S. Amendment 1913 would not preclude the state, or local governments in California, from enforcing their own water conservation requirements, this measure would add confusion to the marketplace and could undermine water conservation efforts throughout the nation. As water resources become increasingly scarce it is important that successful water conservation efforts be continued, not eliminated. A vehicle has not yet been identified for this amendment.

The use of water efficient plumbing fixtures is a proven way to reduce water consumption. According to a 2001 American Water Works Association report, retaining the national plumbing efficiency standards will reduce water consumption by about 8 percent by 2020, or 3.5 billion gallons per day, and repealing the standards would increase the amount of water that utilities would need to supply to customers. Repealing the national standards for plumbing fixtures would allow for a patchwork of regulations throughout the nation, increase confusion over which products may be manufactured and used, and undercut water conservation efforts.

EBMUD has been a pioneer in its water conservation efforts since the 1970s. In 1994, EBMUD adopted its first Water Conservation Master Plan (WCMP) and since that time EBMUD and its customers have saved an estimated 26 million gallons per day (mgd). In the 2011 WCMP update, EBMUD adopted a conservation target to achieve a cumulative savings of 43 mgd by 2020 and 62 mgd by 2040. EBMUD's Water Conservation program has implemented a wide array of measures that go beyond the 14 Best Management Practices adopted by the California Urban Water Conservation Council, and includes water management services to provide customers information they need to manage their water use, conservation incentives including loans and rebates to promote use of more efficient fixtures and appliances, as well as education and outreach. To support water conservation goals, EBMUD also requires specific water-efficiency measures be met as a condition of new or expanded water service, including the installation of water efficient plumbing fixtures and appliances.

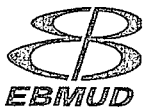
S. Amendment 1913 is directly contrary to EBMUD's established practices and the trend to increase water conservation throughout the nation. Though this amendment has not yet been included in a federal bill, staff will communicate EBMUD's opposition to this proposed amendment that would repeal the national plumbing efficiency product standards.

EBMUD has historically opposed similar measures to repeal the national plumbing efficiency product standards. EBMUD opposed H.R. 1479 (Knollenberg) in 2001, H.R. 623 (Knollenberg) in 1999, and H.R. 859 (Knollenberg) in 1997, all of which were intended to repeal the national plumbing efficiency product standards. These measures failed to advance out of congress.

A list of entities in support and opposition to S. Amendment 1913 is not available.

ARC:MD:JF





AGENDA NO.  
MEETING DATE

10.  
September 24, 2013

TITLE **EBMUD WATER AND WASTEWATER FINANCINGS FOR VARIABLE AND FIXED RATE REFUNDINGS**

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE


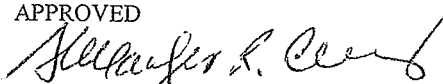
#### RECOMMENDED ACTION

Authorize and approve four resolutions all covering the issuance and sale of one or more Series of Water and Wastewater System Revenue Refunding Bonds in connection with the potential refunding of outstanding variable and fixed rate bonds.

#### SUMMARY

**Potential Refundings of Variable Rate Bonds** - The District's outstanding Revenue Bond variable rate debt is in the form of both Variable Rate Demand Bonds (VRDBs) and Floating Rate Notes (FRNs or SIFMA Index Bonds). Although current market conditions do not offer attractive refunding opportunities, given market volatility and the potential for significant changes in the relationship between bond yields and swap rates, staff is seeking authority to take advantage of any opportunities that may arise to refund outstanding variable rate bonds with fixed rate bonds and terminate the associated portions of the related interest rate swaps on an approximately cost-neutral basis (similar to the Series 2012B Water Bonds restructuring transaction undertaken by the District in October 2012). The termination payments on the swaps would be offset by debt service savings achieved by issuing refunding bonds at yields lower than the current all-in cost of the swapped VRDBs or FRNs. For the purposes of the programmatic authorization the term cost-neutral is defined as a net present value cost of no more than 0.75% of the par amount of refunded bonds in order to provide a small degree of flexibility to accommodate changing market conditions at the time of pricing.

**Potential Refundings of Fixed Rate Bonds** - Currently, market conditions do not allow outstanding traditional fixed rate bonds to be refunded for debt service savings. However, if medium- and longer-term tax-exempt interest rates fall significantly, certain outstanding Water and/or Wastewater System fixed rate bonds could potentially be refunded to generate debt service savings. Therefore, staff will seek authority to undertake opportunistic fixed rate refundings of its outstanding portfolio of fixed rate bonds (currently approximately \$1.8 billion for the Water System and approximately \$317.6 million for the Wastewater System) when market conditions and existing bond terms allow for such refundings to achieve debt

Funds Available: FY 14 - 15		Budget Code: VAR.	
DEPARTMENT SUBMITTING	DEPARTMENT MANAGER or DIRECTOR		APPROVED
Finance	 Eric L. Sandler		 General Manager

service savings, provided the District is able to realize aggregate net present value savings of at least 3% of refunded par.

## DISCUSSION

**Potential Refundings of Variable Rate Bonds** - The proposed restructurings of variable rate bonds would allow the District to reduce the risks associated with VRDBs and SIFMA Index Bonds, as well as swap-related risks such as counterparty risk and basis risk, further de-risking the portfolio. Any such de-risking would reduce the size of the District's synthetic fixed rate debt portfolio (currently approximately \$445.9 million for the Water System and approximately \$112.5 million for the Wastewater System). This will be part of the District's ongoing efforts to reduce risk and increase stability within the debt portfolio without significant cost to rate payers.

Potential candidates for future Water System and Wastewater System variable rate de-risking restructuring transactions are set forth in the following tables. The information in the tables assumes that municipal bond yield v. U.S. Treasury yield relationships improve from current levels (e.g., about 91% in 5 years and about 102% in 10 years), to ratios approaching the lowest ratios seen over the last 12 months (e.g., 83% in 5 years and 88% in 10 years). There is no assurance that market conditions will change sufficiently for municipal yield v. U.S. Treasury yield ratios to reach these lower levels of between 80% to 90% in the near future.

As shown in the table below, a substantial improvement in market conditions could enable the Water System to reduce notional swap exposure by approximately 15% - 20% on a cost-neutral basis. This would be in addition to the substantial reduction in notional swap exposure already achieved in FY 2013. The District will monitor these potential risk reduction opportunities for the Water System over the next 12 months.

### WATER SYSTEM DE-RISKING POTENTIAL FUTURE CANDIDATES

	2008A	2008B-3	2009A	2011A	Total
	VRBDs	VRDBs	FRNs	FRNs	
<b>Current Outstanding Maturities</b>	2024 - 2038	2024 - 2026	2023 - 2026	2014 - 2025	
<b>Current Outstanding Par Amount</b>	200,550,000	15,100,000	82,075,000	148,170,000	445,895,000
<b>Potential Unwound Maturities</b>	None	2024 - 2026	2023 - 2024	2014 - 2020	
<b>Potential Notional Reduction (\$)</b>	None	15,100,000	31,650,000	36,940,000	83,690,000
<b>Potential Notional Reduction (%)</b>	None	100%	39%	25%	19%
<b>Swap Unwind Payment</b>	None	(1,510,000)	(3,325,000)	(4,806,596)	(9,641,596)
<b>Net PV Impact</b>	None	(225,000)	(210,000)	(200,000)	(635,000)

Cost-neutral de-risking could also be achieved for the Wastewater System if market conditions improve. A substantial improvement in market conditions could enable the Wastewater System to reduce the notional swap exposure and its variable rate debt portfolio by approximately 50% - 60% on a cost-neutral basis, as shown in the table below. The District will monitor these potential risk reduction opportunities for the Wastewater System.

#### WASTEWATER SYSTEM DE-RISKING POTENTIAL FUTURE CANDIDATES

	2008C	2011A	Total
	VRBDs	FRNs	
Current Outstanding Maturities	2014 - 2027	2014 - 2038	
Current Outstanding Par Amount	51,690,000	60,845,000	112,535,000
Potential Unwound Maturities	2014 - 2025	2014 - 2023	
Potential Notional Reduction (\$)	41,900,000	24,500,000	66,400,000
Potential Notional Reduction (%)	81%	40%	59%
Swap Unwind Payment	(4,845,447)	(2,154,849)	(7,000,296)
Net PV Impact	(145,000)	(200,000)	(345,000)

**Potential Refundings of Fixed Rate Bonds** - The table below shows near term refunding candidates for the Water and Wastewater Systems that could potentially be refunded to achieve debt service savings if interest rates fall substantially:

Maturity	Water		Water		Wastewater	
	Series 2005A	Coupon	Series 2007A	Coupon	Series 2007A	Coupon
06/01/26	-		28,270,000	5.000%	-	
06/01/27	27,205,000	5.000%	29,685,000	5.000%	1,680,000	5.000%
06/01/28	28,570,000	5.000%	22,120,000	5.000%	1,735,000	5.000%
06/01/29	29,995,000	5.000%	23,230,000	5.000%	1,835,000	5.000%
06/01/30	21,495,000	5.000%	24,390,000	5.000%	1,935,000	5.000%
06/01/31	21,895,000	5.000%	25,605,000	5.000%	2,015,000	5.000%
06/01/32	22,990,000	5.000%	26,885,000	5.000%	2,125,000	5.000%
06/01/33	24,140,000	5.000%	27,110,000	5.000%	2,220,000	5.000%
06/01/34	25,350,000	5.000%	28,470,000	5.000%	10,930,000	5.000%
06/01/35	26,610,000	5.000%	29,895,000	5.000%	11,470,000	5.000%
06/01/36	-		31,385,000	5.000%	12,040,000	5.000%
06/01/37	-		32,955,000	5.000%	12,645,000	5.000%
<b>Total Par:</b>	<b>228,250,000</b>		<b>330,000,000</b>		<b>60,630,000</b>	
<b>Call Date:</b>	6/1/2015 @ Par		6/1/2017 @ Par		6/1/2017 @ Par	

## **Bond Resolutions**

The Bond Resolutions with respect to variable rate de-risking restructuring transactions (one for the Water System and the other for the Wastewater System) approve the forms of the supplemental indentures, bond purchase contracts, escrow agreements, continuing disclosure agreements, swap termination documents and the preliminary official statements, and delegate authority to the General Manager, the Finance Director or the Treasury Manager to execute the same and any other agreements and take actions necessary to complete these transactions.

The Bond Resolutions with respect to fixed rate refunding transactions (one for the Water System and the other for the Wastewater System) approve the forms of the supplemental indentures, bond purchase contracts, escrow agreements, continuing disclosure agreements and the preliminary official statements, and delegate authority to the General Manager, the Finance Director or the Treasury Manager to execute the same and any other agreements and take actions necessary to complete these transactions.

Copies of the Bond Resolutions are attached. The related bond documents have been provided on the attached CD and paper copies are available from the Office of the Secretary upon request.

## **Key Bond Documents**

A summary of the key bond documents is as follows:

- Authorizing Resolutions—authorize the issuance of refunding bonds in one or more series from time to time through September 2014 (unless otherwise rescinded by the Board) and approve forms of related bond documents.
- Supplemental Indentures—supplement the Water/Wastewater System Bond Indenture and provide the terms of the Additional Water/Wastewater Refunding Bonds, including the principal and interest payment dates and the interest rates on the Additional Water/Wastewater Refunding Bonds.
- Bond Purchase Contract—provides the terms and conditions under which the underwriters will purchase the Additional Water/Wastewater Refunding Bonds from the District for reoffering to the public. Pursuant to the Bond Resolutions, the underwriters' discount (compensation for fees and expenses) in connection with the Additional Water/Wastewater Refunding Bonds will not exceed 0.75% of the par amount of bonds being sold.
- Escrow Agreements—relate to the refunding and defeasance of the variable/fixed rate Water/Wastewater System Bonds to be refunded by the Additional Water/Wastewater Refunding Bonds and/or from funds contributed by the District for such purpose. The escrow agreements provide for the deposit and application of proceeds of the Additional Water/Wastewater Refunding

Bonds to refund and retire the outstanding variable/fixed rate Water/Wastewater System bonds to be refunded.

- Swap Termination Documents—provide for the termination (in whole or in part) of the interest rate swap agreements related to any variable rate Water/Wastewater System Bonds to be refunded by the Additional Water/Wastewater Refunding Bonds authorized by the resolution. Each Swap Termination Document may provide for reinstatement of the interest rate swap agreement in the unlikely event the issuance of the Additional Water/Wastewater Refunding Bonds is delayed after the pricing of the refunding bonds and the trade date of the swap termination or the related Additional Water/Wastewater Refunding Bonds are not delivered for any reason. The reinstatement of an interest rate swap agreement may require an adjustment in the fixed rate that was previously payable by the District under such interest rate swap agreement (or, at the District's option, the payment of an equivalent amount) to reflect intervening market movements between the termination trade date and the reinstatement date.
- Preliminary Official Statements—(including Appendix A) are the disclosure documents prepared by the District that provide information about the District and the Water/Wastewater System (primarily in Appendix A) and the terms of the bond sale to potential investors. A final Official Statement will be prepared after the sale of the bonds for distribution to actual purchasers of the Additional Water/Wastewater Refunding Bonds. Under the federal securities laws, these disclosure documents are required to contain all information that would be material to investors in making their decision whether to purchase the District's bonds.
- Continuing Disclosure Agreements—obligate the District to provide certain annual reports and notices of certain events in connection with the Additional Water/Wastewater Refunding Bonds in the secondary market. Under the securities laws, the underwriters are required to obtain this commitment to provide ongoing disclosure from the District in connection with the District's bonds.

## FISCAL IMPACT

The authorizations for Water and Wastewater System variable rate and fixed rate bonds would only be exercised when market conditions allow for the District to achieve its identified objectives. For refundings of variable rate bonds, such refundings would be expected to be “cost neutral” (*i.e.*, have a net present value cost of no more than 0.75% of the par amount of the refunded bonds) and for refundings of fixed rate bonds, such refundings would be expected to result in debt service savings (*i.e.*, result in not less than net present value savings of at least 3% of the par amount of the refunded bonds). The issuance costs of the District for the refundings would be expected to be funded from bond proceeds.

**ALTERNATIVE**

Do not authorize refunding opportunities. This is not recommended because of rapidly changing market conditions they District could forgo the opportunity to quickly access the market to improve the risk profile of the District's bond portfolio and/or achieve debt service savings.

**Attachments**

I:\SEC\09-24-13 Agenda Items\ FIN - BD1 Auth De-Risk Portfolio & Fixed Rate Refunding 092413

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

AUTHORIZE AND APPROVE THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF WATER SYSTEM REVENUE REFUNDING BONDS IN CONNECTION WITH THE POTENTIAL REFUNDING OF OUTSTANDING VARIABLE RATE BONDS; APPROVE THE FORM OF, AND AUTHORIZE, CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND APPROVE CERTAIN ACTIONS RELATING THERETO

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the "District") is authorized by Section 12850 *et. seq.* of the Public Utilities Code of the State of California (the "Act") to issue revenue bonds; and

WHEREAS, the District is authorized by Section 53580 *et. seq.* of the Government Code of the State of California (the "Refunding Act") to issue refunding bonds; and

WHEREAS, pursuant to authority granted under the Act, the District has entered into a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990 (the "Bond Indenture"), by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as amended and supplemented; and

WHEREAS, the Bond Indenture provides that the District may issue additional water system revenue bonds as well as refunding bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, the District has heretofore authorized and issued multiple series of water system revenue bonds under and pursuant to the Act, the Refunding Act and the Bond Indenture, including a number of series of variable rate bonds, interest rate changes with respect to which have been hedged through interest rate swap agreements heretofore entered into by the District in connection therewith (the "Water Bonds Interest Rate Swap Agreements"), including the following outstanding series of variable rate water system revenue bonds of the District: its Water System Revenue Refunding Bonds, Series 2008A currently outstanding in the aggregate principal amount of \$220,550,000 (the "Series 2008A Bonds"); its Water System Revenue Refunding Bonds, Series 2008B-3 currently outstanding in the aggregate principal amount of \$15,100,000 (the "Series 2008B-3 Bonds"); its Water System Revenue Refunding Bonds, Series 2009A currently outstanding in the aggregate principal amount of \$82,075,000 (the "Series 2009A Bonds"); and its Water System Revenue Refunding Bonds, Series 2011A currently outstanding in the aggregate principal amount of \$148,170,000 (the "Series 2011A Bonds" and collectively with the outstanding Series 2008A Bonds, Series 2008B-3 Bonds and Series 2009A Bonds, the "Outstanding Variable Rate Bonds"); and

WHEREAS, the Board has determined that it best serves the financing and debt management needs of the District to authorize the issuance, from time to time, of one or more series of its

water system revenue refunding bonds (the “Additional Refunding Bonds”), if such issuance is determined by a Designated Officer (as hereinafter defined) to be in the best interests of the District by reducing various financial risks to the District, including swap counterparty exposure, swap termination risk, liquidity facility renewal risk and/or interest rate basis risk associated with Outstanding Variable Rate Bonds and the related Water Bonds Interest Rate Swap Agreements, and subject to the parameters set forth in this Resolution, for the purposes of refunding (in whole or in part) any Outstanding Variable Rate Bonds, financing all or a portion of the costs of terminating (in whole or in part), or otherwise assigning or novating the applicable portion of the District’s obligations under, the related Water Bonds Interest Rate Swap Agreements, funding or making provision for any bond reserve fund for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds; and

WHEREAS, in order to provide for the issuance of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more supplemental indentures in connection therewith (each, an “Additional Supplemental Indenture”); and

WHEREAS, in order to provide for the refunding of any Outstanding Variable Rate Bonds to be refunded by Additional Refunding Bonds, the District may enter into one or more escrow agreements in connection therewith (each, an “Additional Escrow Agreement”); and

WHEREAS, in order to provide for the termination (in whole or in part) of the related Water Bonds Interest Rate Swap Agreements in connection with the issuance of any Additional Refunding Bonds and the refunding of all or a portion of any series of the District’s Outstanding Variable Rate Bonds, the District intends to enter into one or more amendments to, or novations or assignments or terminations of, such Water Bonds Interest Rate Swap Agreements, including, without limitation, amended confirmations or transactions, amended and restated confirmations or transactions, novation confirmations or transactions, termination confirmations or termination agreements or other similar documents providing for such termination (in whole or in part) of such Water Bonds Interest Rate Swap Agreements (“Swap Termination Documents”); and

WHEREAS, in order to provide a continuing disclosure undertaking pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more additional continuing disclosure undertakings in connection therewith (each, an “Additional Continuing Disclosure Agreement”); and

WHEREAS, in order to provide for the sale by the District and the purchase by an underwriter or underwriters of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more bond purchase contracts in connection therewith (each, an “Additional Bond Purchase Contract”); and

WHEREAS, the underwriters of any Additional Refunding Bonds will distribute a preliminary and final official statement (including any supplements or amendments thereto) relating to such Additional Refunding Bonds to prospective and actual purchasers of such Additional Refunding Bonds; and

WHEREAS, it is desirable that the Board provide for the issuance, securing and sale of the Additional Refunding Bonds authorized by this Resolution at this time; and



WHEREAS, there has been presented to this Board meeting one or more forms of financing documents that will be used in connection with the issuance, sale and delivery of any Additional Refunding Bonds authorized by this Resolution (with such changes to such financing documents as may be appropriate to reflect the terms of any such Additional Refunding Bonds);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of East Bay Municipal Utility District, as follows:

Section 1. Recitals True and Correct. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Additional Board Findings. Pursuant to Section 5922(a) of the Government Code of the State of California, the Board hereby finds and determines that the Water Bonds Interest Rate Swap Agreements as modified by the Swap Termination Documents and the related financing arrangements (including the financing arrangements in the Bond Indenture) are designed to reduce the amount and duration of interest rate risk in connection with the District's Outstanding Variable Rate Bonds.

Section 3. Authorization of Additional Refunding Bonds. For the purposes of refunding all or any portion of the District's then Outstanding Variable Rate Bonds, financing all or a portion of the costs of terminating (in whole or in part) the related Water Bonds Interest Rate Swap Agreements, funding or making provision for any bond reserve fund for such Additional Refunding Bonds (if necessary) and/or paying costs of issuance of such Additional Refunding Bonds, the issuance, from time to time, of one or more series of Additional Refunding Bonds is hereby authorized. The Additional Refunding Bonds shall be designated as "East Bay Municipal Utility District Water System Revenue Refunding Bonds," and include the further applicable year and alphabetical letter series designation (and with such additional or other designations as may be determined by a Designated Officer). The total aggregate principal amount of Additional Refunding Bonds issued by the District shall not exceed an amount sufficient (taking into account any original issue discount or premium) to refund all or any portion of the then Outstanding Variable Rate Bonds, to fund the costs of terminating (in whole or in part) the related Water Bonds Interest Rate Swap Agreements, to fund or make provision for one or more bond reserve funds (if necessary) and to pay certain costs related to the issuance of the Additional Refunding Bonds (including, but not limited to, underwriters' discount). No series of the Additional Refunding Bonds shall mature later than June 1, 2038 and the True Interest Cost of any series of the Additional Refunding Bonds shall not exceed 7.00%. The net present value cost to the District of (a) refunding all or a portion of the Outstanding Variable Rate Bonds with such Additional Refunding Bonds and (b) terminating the related Water Bonds Interest Rate Swap Agreements shall not exceed 0.75% of the par amount of the Outstanding Variable Rate Bonds to be refunded by such Additional Refunding Bonds. The net present value cost to the District shall be determined by the District's Financial Advisor based on reasonable assumptions and methodologies consistent with standard industry practice.

The Additional Refunding Bonds may be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended. The General Manager of the District, the Director of Finance of the District, the Treasury Manager of the District or any such officer serving in an acting or interim capacity as such, and any written

designee of any of them (each a "Designated Officer"), acting in accordance with this Section 3, are each hereby authorized to determine the actual aggregate principal amount of each series of Additional Refunding Bonds to be issued (not in excess of the maximum amount set forth above), to determine if the Additional Refunding Bonds are to be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended, and to direct the execution and authentication of the Additional Refunding Bonds in such amount. Such direction shall be conclusive as to the principal amounts hereby authorized. The Additional Refunding Bonds shall be in fully registered form and shall be issued as book-entry bonds as provided in each applicable Additional Supplemental Indenture. Payment of principal of, interest on and premium, if any, on the Additional Refunding Bonds shall be made at the place or places and in the manner provided in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds of each series shall be issued as current interest bonds. The Additional Refunding Bonds of each series shall be available in denominations of not less than \$5,000 and integral multiples thereof. The Additional Refunding Bonds of each series shall, when issued, be in the aggregate principal amounts and shall be dated as shall be provided in the final form of each applicable Additional Supplemental Indenture. The Additional Refunding Bonds may be issued as serial bonds or as term bonds or as both serial bonds and term bonds, all as set forth in each applicable Additional Supplemental Indenture. Interest on the Additional Refunding Bonds shall be paid at the rates and on the dates set forth in each applicable Additional Supplemental Indenture. No Additional Refunding Bond shall bear interest at a coupon rate in excess of 7.00% per annum. The Additional Refunding Bonds may be subject to redemption at the option of the District on such terms and conditions as shall be set forth in each applicable Additional Supplemental Indenture. The Additional Refunding Bonds issued as term bonds also shall be subject to mandatory sinking account redemption as shall be set forth in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds and the Trustee's Certificate of Authentication to appear thereon shall be in substantially the form set forth in Exhibit A to the Additional Supplemental Indenture now before this meeting, with such necessary or appropriate variations, omissions and insertions as permitted or required by the Bond Indenture or each applicable Additional Supplemental Indenture or as appropriate to adequately reflect the applicable designation and terms of such Additional Refunding Bonds and the obligation represented thereby.

Each of the Additional Refunding Bonds shall be executed on behalf of the District by the President of the Board of Directors of the District and shall be attested thereto by the Secretary of the District and any such execution may be by manual or facsimile signature, and each bond shall be authenticated by the endorsement of the Trustee or an agent of the Trustee. Any facsimile signature of the President of the Board of Directors of the District or the Secretary of the District shall have the same force and effect as if such officer had manually signed each of such Additional Refunding Bonds.

As used herein, the term "True Interest Cost" shall be the rate necessary, when using a 360-day year and semi-annual compounding, to discount the debt service payments from their respective payment dates to the initial delivery date of the applicable series of Additional

Refunding Bonds and to the purchase price of the applicable series of Additional Refunding Bonds. For the purpose of calculating the True Interest Cost, the principal amount of the applicable series of Additional Refunding Bonds scheduled for mandatory sinking fund redemption as part of a term bond shall be treated as a serial maturity for such year. The True Interest Cost shall be calculated by the District's Financial Advisor as of the date of delivery of each series of the Additional Refunding Bonds. Such calculation of the True Interest Cost may include such other reasonable assumptions and methods as determined by the Financial Advisor of the District.

Section 4. Approval of Additional Supplemental Indentures. The form, terms and provisions of each Additional Supplemental Indenture within the parameters set forth in this Resolution are in all respects approved, and each Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Supplemental Indentures, including counterparts thereof. Each Additional Supplemental Indenture, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Fulbright & Jaworski LLP and Curls Bartling P.C., the District's Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof). Execution and delivery of each Additional Supplemental Indenture, which document(s) will contain the maturities, interest rates and the fixed interest payment obligations of the District within parameters set forth in this Resolution, shall constitute conclusive evidence of the District's approval of such maturities, interest rates and payment obligations.

Section 5. Selection of Underwriters; Approval of Additional Bond Purchase Contracts. If a Designated Officer determines that it will be advantageous to the District to issue one or more series of Additional Refunding Bonds, for the purposes of refunding (in whole or in part) additional Outstanding Variable Rate Bonds, financing the costs of terminating (in whole or in part), or otherwise assigning or novating the applicable portion of the District's obligations under, the related Water Bonds Interest Rate Swap Agreements, funding or making provision for any bond reserve fund (if necessary) for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds, the Board hereby approves the initial sale of each such series of Additional Refunding Bonds through a private, negotiated sale to any one or more of the municipal broker-dealers, banking and financial institutions and/or other persons or entities heretofore selected to serve as part of the District's underwriting pool as shall be determined by the Director of Finance in connection with each such issuance of Additional Refunding Bonds. The Additional Refunding Bonds of each series shall be sold subject to an underwriters' discount (excluding original issue discount and premium) not to exceed \$7.50 per \$1,000 of the principal amount of such series of the Additional Refunding Bonds and subject to the terms and conditions set forth in the form of the applicable Additional Bond Purchase Contract as herein approved. The form, terms and provisions of each Additional Bond Purchase Contract, within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized empowered and directed to execute, acknowledge and deliver from time to time an Additional Bond Purchase Contract, including counterparts thereof, in the name of and on behalf of the District. Each Additional Bond Purchase Contract, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the

applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 6. Approval of Additional Escrow Agreements. The form, terms and provisions of each Additional Escrow Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Escrow Agreements, including counterparts thereof. Each Additional Escrow Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 7. Approval of Additional Continuing Disclosure Agreements. The form, terms and provisions of each Additional Continuing Disclosure Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Continuing Disclosure Agreements, including counterparts thereof. Each Additional Continuing Disclosure Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 8. Swap Termination Documents. Each Designated Officer, acting singly, is hereby authorized and directed to enter into and execute for and on behalf of the District such Swap Termination Documents as may be necessary or advisable in connection with the termination (or novation or assignment) in whole or in part of any Water Bonds Interest Rate Swap Agreements relating to Outstanding Variable Rate Bonds to be cash defeased or refunded by any Additional Refunding Bonds as authorized hereby.

Each Swap Termination Document may provide for reinstatement substantially in the form of the reinstatement provisions attached hereto as Exhibit A, with such changes as approved by a Designated Officer, which may include an adjustment in the fixed rate payable by the District under the related Water Bonds Interest Rate Swap Agreement (or, at the District's option, the payment of an equivalent amount thereto) to reflect intervening market movements between the trade date of such termination and the date of reinstatement, in the unlikely event the issuance of any Additional Refunding Bonds is delayed after the date of pricing of such Additional Refunding Bonds and the trade date of the termination of the related Water Bonds Interest Rate Swap Agreement(s) or in the event the related Additional Refunding Bonds are not delivered for any reason.

Section 9. Approval of Preliminary Official Statements and Official Statements. Each of the Designated Officers is hereby authorized to cause to be prepared a preliminary official statement in connection with any Additional Refunding Bonds. Each preliminary official statement shall be substantially in the form as presented to this meeting with such additions thereto and changes therein (including such changes and additions to reflect the terms of the

Additional Refunding Bonds and to comply with applicable federal securities laws) as are approved by the Designated Officers after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be conclusively evidenced by the execution and delivery of the certificate referenced in the following sentence), including such changes as to reflect any updated information or to conform as applicable to the information contained in any future official statement, reoffering circular, remarketing memorandum or other offering document of the District hereafter presented to and approved by this Board in connection with the District's water system revenue bonds or other water system obligations during the term of the authorization of this Resolution, as are approved by a Designated Officer after consultation with the District's General Counsel and Co-Bond Counsel. Each preliminary official statement shall be circulated, from time to time, for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer (after consultation with the District's General Counsel and Co-Bond Counsel) shall determine, and the Designated Officers are hereby authorized to so determine, that such preliminary official statement is substantially final within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, said determination to be conclusively evidenced by a certificate signed by the Designated Officer to such effect. The Director of Finance or the Treasury Manager is hereby authorized to authorize the underwriters to distribute (via written format and/or through electronic means) such preliminary official statement in connection with the marketing of the Additional Refunding Bonds.

Upon the execution and delivery of each Additional Bond Purchase Contract, from time to time, the Designated Officers shall provide for the preparation, publication, execution and delivery of one or more final official statements in substantially the form of the preliminary official statement deemed final by a Designated Officer with such changes as any Designated Officer approves, such approval to be conclusively evidenced by the execution of such final official statement. Any Designated Officer is hereby authorized and directed to execute and deliver one or more final official statements (including any amendments or supplements thereto) in the name and on behalf of the District. Each final official statement shall be circulated (via written format and/or through electronic means) for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer deems appropriate after consultation with underwriters of the Additional Refunding Bonds, the District's Financial Advisor and Co-Bond Counsel and such other advisors as the Designated Officer believes to be useful. The Director of Finance or the Treasury Manager is hereby authorized to authorize the applicable underwriters of the Additional Refunding Bonds to distribute (via written format and/or through electronic means) the final official statement, any supplement to the final official statement and any revised final official statement, as the case may be, in connection with the sale and delivery of the Additional Refunding Bonds.

Section 10. Additional Actions. The Designated Officers and all such other proper officers of the District be and they hereby are authorized, individually and collectively, to take all actions and execute any and all documents necessary: to engage The Bank of New York Mellon Trust Company, N.A. as trustee and paying agent under any Additional Supplemental Indenture and as escrow agent under any Additional Escrow Agreement; to arrange for the funding of any bond reserve fund (if any) for any Additional Refunding Bonds with a letter of credit, surety bond or insurance policy pursuant to the terms of the Bond Indenture, as so supplemented if, upon the advice of the District's Financial Advisor, the funding of such bond reserve fund (if any) with a letter of credit, surety bond or insurance policy will be economically beneficial to the District; to effect the sale and delivery of any Additional Refunding Bonds

pursuant to the applicable Additional Bond Purchase Contract and the Bond Indenture as supplemented, and the termination (or novation or assignment) of a portion of the Water Bonds Interest Rate Swap Agreements; and to do any and all things and to execute and deliver such other agreements, documents and certificates, including (without limitation) tax certificates relating to any Additional Refunding Bonds and any investment agreements relating to the investment of the bond proceeds, and to provide for the giving of written directions and notices, and the securing of any necessary third party approvals in connection with the defeasance, refunding and/or redemption of any Outstanding Variable Rate Bonds and/or the issuance of any Additional Refunding Bonds and/or the termination (or novation or assignment) of any Water Bonds Interest Rate Swap Agreements, as may be necessary, convenient, or advisable in order to consummate the sale, execution and delivery of any Additional Refunding Bonds and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Additional Refunding Bonds, the Bond Indenture, any Additional Supplemental Indenture, the Swap Termination Documents, any Additional Bond Purchase Contract, any Additional Escrow Agreements, any Additional Continuing Disclosure Agreements, the preliminary official statement(s) and the final official statement(s) and the transactions herein authorized. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

Section 11. Term of Authority. A Designated Officer's authority to approve the final terms of the sale of Additional Refunding Bonds and to execute or to direct the execution of Additional Supplemental Indentures, Additional Escrow Agreements, Additional Bond Purchase Contracts, Swap Termination Documents and official statements relating to Additional Refunding Bonds shall commence upon the date of adoption of this Resolution and shall continue for twelve calendar months thereafter unless rescinded or modified by subsequent action of the Board prior to the time that an Additional Bond Purchase Contract has been duly signed and delivered or except as such authorization period is hereafter extended by subsequent action of the Board.

ADOPTED this 24<sup>th</sup> day of September, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel





## EXHIBIT A

### FORM OF REINSTATEMENT PROVISIONS

#### **X. Reinstatement of Original Transaction.**

(a) This Confirmation shall have no force or effect unless the District's \$[ ] aggregate principal amount of Water System Revenue Refunding Bonds, Series \_\_\_\_\_ (the "Bonds") are issued on or prior to \_\_\_\_\_, 201\_\_ (the "Expected Issuance Date"). In the event that the Bonds are not issued on or prior to the Expected Issuance Date, the terms of the Original Transaction shall remain in effect and the Swap Counterparty will determine, in good faith on the Expected Issuance Date, the Reinstatement Value, if any, in connection with reinstating the terms of the Original Transaction as set forth in the Confirmation dated \_\_\_\_\_ (the "Original Confirmation"). The Swap Counterparty shall notify the District of the Reinstatement Value no later than 12:00 p.m., New York time, one (1) Business Day following the Expected Issuance Date (the "Reinstatement Election Date"). By 5:00 p.m., New York time, on the Reinstatement Election Date, the District shall notify Swap Counterparty of whether it elects for the Reinstatement Value to be paid by: (i) the payment of a lump sum ("Option 1"); or (ii) an adjustment of the Fixed Rate of the Original Transaction ("Option 2").

(b) If the District elects Option 1, then: (i) if the Reinstatement Value is a positive number, an amount equal to the Reinstatement Value will be payable by Swap Counterparty to the District on the Reinstatement Value Payment Date; and (ii) if the Reinstatement Value is a negative number, an amount equal to the absolute value of the Reinstatement Value will be payable by the District to Swap Counterparty on the Reinstatement Value Payment Date.

(c) If the District elects Option 2, then the Fixed Rate payable by the District to Swap Counterparty under the Original Transaction shall be increased (in the event that the Reinstatement Value is a negative number) or decreased (in the event that the Reinstatement Value is a positive number) accordingly for the period from and including the Expected Issuance Date to but excluding the Termination Date (the Original Transaction, as modified by an adjustment to the Fixed Rate as described in this Paragraph X(c), the "Adjusted Transaction"). Promptly following the Expected Issuance Date, Swap Counterparty shall deliver an amended and restated Confirmation to the District reflecting the adjusted Fixed Rate and the terms of the Adjusted Transaction. Each of the parties hereby agrees to deliver to the other party all documentation related to such revised Confirmation as reasonably requested by the other party.

(d) As used in this Paragraph X:

(i) "Reinstatement Value" shall mean an amount that Swap Counterparty reasonably determines in good faith, in consultation with the District and its swap advisor, to be its total losses and costs (expressed as a negative number) or gain (expressed as a positive number) in connection with continuing the terms of the Original Transaction evidenced by the Original Confirmation, including any loss of bargain, cost of funding or, at the election of Swap Counterparty but without duplication, loss or cost (including without limitation reasonable attorney's fees) incurred by Swap Counterparty as a result of its terminating, liquidating,

obtaining or reestablishing any hedge or related trading position (or any gain resulting therefrom); and

(ii) "Reinstatement Value Payment Date" shall mean the [second (2nd)] Business Day following the Expected Issuance Date.

The parties agree that the failure of either party to perform any of its obligations in this Paragraph X shall be deemed to be an Event of Default under the Agreement with respect to such party as the Defaulting Party.

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\_\_\_\_\_ SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

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

\_\_\_\_\_  
Dated as of \_\_\_\_\_  
\_\_\_\_\_

(Supplemental to the Water System Subordinated Revenue Bond  
Indenture dated as of April 1, 1990)

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Authorizing the Issuance of  
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East Bay Municipal Utility District  
Water System Revenue Refunding Bonds,  
Series [Designation]

\_\_\_\_\_  
This \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (the “\_\_\_\_\_ Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”);

W I T N E S S E T H :

WHEREAS, this \_\_\_\_\_ Supplemental Indenture is supplemental to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented (the “Indenture”), between the District and the Trustee, providing for the issuance of bonds initially designated as “Water System Subordinated Revenue Bonds” and subsequent to the execution and delivery of the Eighteenth Supplemental Indenture designated as “Water System Revenue Bonds” (the “Bonds”);

WHEREAS, in accordance with the Indenture there has been issued, *inter alia*, [(i) \$322,525,000 aggregate principal amount of Water System Revenue Refunding Bonds, Series 2008A (the “Series 2008A Bonds”), comprised of subseries Series 2008A-1, Series 2008A-2, Series 2008A-3 and Series 2008A-4, pursuant to the Thirteenth Supplemental Indenture, dated as of March 1, 2008, between the District and the Trustee, of which \$200,550,000 principal amount is Outstanding as of the date hereof; (ii) \$160,000,000 aggregate principal amount of Water System Revenue Refunding Bonds, Series 2008B (the “Series 2008B Bonds”), comprised of subseries Series 2008B-1, Series 2008B-2 and Series 2008B-3, pursuant to the Fourteenth Supplemental Indenture, dated as of April 1, 2008, between the District and the Trustee, of which \$15,100,000 principal amount of Series 2008B-3 Bonds is Outstanding as of the date hereof; (iii) \$331,155,000 aggregate principal amount of Water System Revenue Refunding Bonds, Series 2009A (the “Series 2009A Bonds”), comprised of subseries Series 2009A-1 and Series 2009A-2, pursuant to the Fifteenth Supplemental Indenture, dated as of March 1, 2009, between the District and the Trustee, of which \$82,075,000 principal amount is Outstanding as of the date hereof; and (iv) \$159,210,000 aggregate principal amount of Water System Revenue Refunding Bonds, Series 2011A (the “Series 2011A Bonds”), comprised of subseries Series 2011A-1 and Series 2011A-2, pursuant to the Nineteenth Supplemental Indenture, dated as of December 1, 2011, between the District and the Trustee, of which \$148,170,000 principal amount is Outstanding as of the date hereof];

WHEREAS, the Indenture provides that the District may issue additional Bonds as well as refunding Bonds from time to time as authorized by a Supplemental Indenture;

WHEREAS, the District has determined to issue its Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) in the aggregate principal amount of \$\_\_\_\_\_, pursuant to this \_\_\_\_\_ Supplemental Indenture in order to provide moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund a portion of the Outstanding [Series 2008A Bonds, a portion of the Outstanding Series 2008B-3 Bonds, a portion of the Outstanding Series 2009A Bonds and a portion of the Outstanding Series 2011A Bonds]; (ii) to fund the costs of terminating in part certain interest rate swap agreements of the District; and (iii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds; and

WHEREAS, the Indenture creates a valid and binding pledge and assignment of and security interest in the Subordinated Water Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) for the payment of the Bonds as and to the extent provided therein in accordance with the terms thereof without the need for any physical delivery, recordation, filing or further act, in accordance with Section 5451 of the Government Code of the State of California;

NOW, THEREFORE, the parties hereto agree, as follows:

#### ARTICLE \_\_\_\_\_

#### SERIES [DESIGNATION] BONDS

SECTION \_\_.01. Definitions. The terms defined in this Section shall, for all purposes of this \_\_\_\_\_ Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series [Designation] Bond (including any Person holding a Series [Designation] Bond through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series [Designation] Bond for federal income tax purposes.

“Book-Entry System” means the system maintained by the Securities Depository and described in Section \_\_.03 hereof.

“Closing Date” means the date of delivery of the Series [Designation] Bonds to the Representative of the Underwriters, against payment therefor, such date being \_\_\_\_\_.

“Continuing Disclosure Agreement” means any continuing disclosure agreement entered into by the District and the Trustee in connection with the Series [Designation] Bonds in order to comply with the continuing disclosure requirements promulgated under S.E.C. Rule 15c2-12.

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

“Escrow Agreement” means the Escrow Agreement relating to the defeasance of a portion of the East Bay Municipal Utility District Water System Revenue Refunding Bonds, [Series 2008A, Series 2008B-3, Series 2009A and Series 2011A], dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent and as trustee for the [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds and Series 2011A Bonds].

“Representation Letter” means the Letter of Representations from the District to DTC relating to the Book-Entry System for the Series [Designation] Bonds.

“Representative” means \_\_\_\_\_, as representative of the Underwriters of the Series [Designation] Bonds.

“Securities Depository” means DTC or, if applicable, any successor securities depository appointed pursuant to Section \_\_\_\_\_.03 hereof.

“Securities Depository Participant” means any broker-dealer, bank or other financial institution for which a Securities Depository holds Series [Designation] Bonds as Securities Depository from time to time.

“Series [Designation] Bonds” means the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation].

“Series [Designation] Costs of Issuance Fund” means the fund by that name established pursuant to Section \_\_\_\_\_.12 hereof.

#### SECTION \_\_\_\_\_.02. Authorization.

(A) Designation of Bonds. A twenty-\_\_\_\_\_ Series of Bonds to be issued under the Indenture is hereby created. Such Series of Bonds shall be known as the “East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation]” (herein referred to as the “Series [Designation] Bonds”). The Series [Designation] Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_.

The Series [Designation] Bonds shall be issued in accordance with the Act and pursuant to Resolution No. \_\_\_\_\_, adopted by the Board on September 24, 2013, and this \_\_\_\_\_ Supplemental Indenture. The Series [Designation] Bonds shall be issued for the purpose of providing moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund a portion of the outstanding [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds and Series 2011A Bonds]; (ii) to fund the costs of terminating a portion of the interest rate swap agreements of the District relating thereto; and (iii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds.

The Series [Designation] Bonds shall be Current Interest Indebtedness.

(B) Registered Form. The Series [Designation] Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.,” as nominee of DTC in accordance with Section \_\_\_\_\_.03 hereof. The Series [Designation] Bonds shall be evidenced

by one bond maturing on each of the maturity dates of the Series [Designation] Bonds as set forth in Section \_\_\_\_\_.02(C) hereof. The Series [Designation] Bonds may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series [Designation] Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section \_\_\_\_\_.03 hereof.

(C) Maturities; Interest Rates; Denominations. The Series [Designation] Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum, and shall mature on June 1 in the following years in the following amounts:

Maturity Date (June 1)	Principal Amount	Interest Rate
_____	_____	_____

Interest on the Series [Designation] Bonds shall be payable commencing on \_\_\_\_\_ and semiannually thereafter on June 1 and December 1 of each year by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. Interest on the Series [Designation] Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and



premium, if any, on the Series [Designation] Bonds are payable when due upon presentation thereof at the corporate trust office of the Trustee in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

So long as the Series [Designation] Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer in accordance with mutually satisfactory arrangements between the Trustee and the Securities Depository.

The Trustee shall provide CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

SECTION \_\_.03. Book-Entry System. The Series [Designation] Bonds shall be initially issued registered in the name of “Cede & Co.,” as nominee for DTC and registered Owner of the Series [Designation] Bonds, and held in the custody of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of the Series [Designation] Bonds, and the Beneficial Owners will not receive physical delivery of Series [Designation] Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series [Designation] Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series [Designation] Bonds will receive, hold or deliver any Series [Designation] Bond certificate.

At the written direction of the District, with notice to the Trustee, but without the consent of the Owners of the Series [Designation] Bonds or the Trustee, the District, may appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book-Entry System for the Series [Designation] Bonds not inconsistent with the provisions of the Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The District and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Securities Depository Participants in the Book-Entry System with respect to the Series [Designation] Bonds and (ii) a certificate of any such Securities Depository Participant as to the identity of, and the respective principal amount of the Series [Designation] Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series [Designation] Bonds, the beneficial ownership thereof is determined by a book-entry at the Securities Depository, the requirements in the Indenture of holding, delivering or transferring the Series [Designation] Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Series [Designation] Bonds shall, while the Series [Designation] Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in the Indenture and the Series [Designation] Bonds with respect to the rights of Securities Depository Participants and Beneficial Owners, when a Book-Entry System is in effect, the District and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series [Designation] Bonds registered in its name for the purposes of payment of the principal of and interest on the Series [Designation] Bonds or portion thereof to be redeemed or purchased, and of giving any notice permitted or required to be given to the Owners of Series [Designation] Bonds under the Indenture, and neither the District nor the Trustee shall be affected by any notice to the contrary. Neither the District nor the Trustee will have any responsibility or obligations to the Securities Depository, any Securities Depository Participant, any Beneficial Owner or any other Person which is not shown on the registration books required to be maintained by the Trustee, with respect to (i) the accuracy of any records maintained by the Securities Depository or any Securities Depository Participant; (ii) the payment by the Securities Depository or by any Securities Depository Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or purchase price of, or interest on, any Series [Designation] Bonds; (iii) the delivery of any notice by the Securities Depository or any Securities Depository Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series [Designation] Bonds; or (v) any other action taken by the Securities Depository or any Securities Depository Participant. The Trustee shall pay all principal of and interest on the Series [Designation] Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository, and all such payments shall be valid and effective to fully satisfy and discharge the District’s obligations with respect to the principal of and interest on such Series [Designation] Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the District, at the direction and expense of the District, and the District and the Trustee will cause the delivery of Series [Designation] Bond certificates to such Beneficial Owners of the Series [Designation] Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(1) The Securities Depository determines to discontinue providing its service with respect to the Series [Designation] Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving thirty (30) days’ notice to the District and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(2) The District determines not to continue the Book-Entry System through a Securities Depository, upon not less than forty-five (45) days’ prior written notice to the Trustee.

When the Book-Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect.

So long as any Series [Designation] Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Series [Designation] Bond and all notices with respect to such Series [Designation] Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

In the event of a redemption or any other transaction necessitating a reduction in aggregate principal amount of Series [Designation] Bonds Outstanding, DTC in its discretion: (a) may request the District and the Trustee to issue and authenticate a new Series [Designation] Bond certificate, or (b) shall make an appropriate notation on the Series [Designation] Bond certificate indicating the date and amounts of such reduction in principal, except in the case of final maturity, in which case the certificate must be presented to the Trustee prior to payment.

SECTION \_\_.04. Redemption of Series [Designation] Bonds.

(A) Optional Redemption. The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(B) Mandatory Sinking Account Redemption. The Series [Designation] Bonds maturing on June 1, \_\_\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section \_\_.09, commencing on June 1, \_\_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

SECTION \_\_.05. Selection of Series [Designation] Bonds for Redemption. Whenever provision is made in this \_\_\_\_\_ Supplemental Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee shall select the Series [Designation] Bonds of such maturity to be redeemed, from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion shall deem appropriate and fair. The Trustee shall promptly notify the District in writing of the Series [Designation] Bonds so selected for redemption.

SECTION \_\_.06. Notice of Redemption of Series [Designation] Bonds. The District shall notify the Trustee at least twenty-five (25) days prior to the redemption date for any Series [Designation] Bonds pursuant to Section \_\_.04(A) (or such shorter time as may be agreed to by the Trustee). Notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series [Designation] Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first class mail, (ii) to the Securities Depository by facsimile or other electronic means of communications and by first class mail, and (iii) to the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at [www.emma.msrb.org](http://www.emma.msrb.org), by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Notice of redemption shall be given in the form

and otherwise in accordance with the terms of the Indenture and this \_\_\_\_\_ Supplemental Indenture.

In the event of an optional redemption of Series [Designation] Bonds, in the event that the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

SECTION \_\_.07. Partial Redemption of Series [Designation] Bonds. Upon surrender of any Series [Designation] Bond redeemed in part only, the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Series [Designation] Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series [Designation] Bond surrendered.

SECTION \_\_.08. Effect of Redemption of Series [Designation] Bonds. If notice of redemption has been duly given pursuant to Section \_\_.06, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the date fixed for redemption, interest on the Series [Designation] Bonds so called for redemption shall cease to accrue, the Series [Designation] Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of the Series [Designation] Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price and accrued interest.

All Series [Designation] Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION \_\_.09. Series [Designation] Sinking Accounts. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the "Series [Designation] Sinking Account." On each Business Day prior to the following payment dates, the District shall transfer from the Principal Fund to the Series [Designation] Sinking Account an amount equal to the payment due on such date as set forth below:

\$\_\_\_\_\_ Term Series [Designation] Bonds Due June 1, \_\_\_\_\_

Mandatory Sinking Account

Payment Dates  
(June 1)

Mandatory Sinking  
Account Payments

†

† Final Maturity.

Upon an optional redemption of a portion of any Term Series [Designation] Bonds pursuant to Section \_\_.04(A), the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments.

Moneys in the Series [Designation] Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

SECTION \_\_.10. Form of Series [Designation] Bonds. The Series [Designation] Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series [Designation] Bond letters and numbers, maturity dates, principal amounts and interest rates shall be inserted therein in conformity with Section \_\_.02.

SECTION \_\_.11. Issuance of Series [Designation] Bonds. Upon the execution and delivery of this \_\_\_\_\_ Supplemental Indenture, the District may execute and the Trustee shall authenticate and deliver the Series [Designation] Bonds in the aggregate principal amount of \$\_\_\_\_\_ on the Closing Date therefor upon an Order of the District.

SECTION \_\_.12. Application of Proceeds of Series [Designation] Bonds. The net proceeds of the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds [plus/less \$\_\_\_\_\_ original issue premium/discount], less \$\_\_\_\_\_ of Underwriter's discount), [together with \$\_\_\_\_\_ transferred from the Series 2008A Bond Reserve Account of the Series 2008 Bond Reserve Fund relating to the refunded Series 2008A Bonds, \$\_\_\_\_\_ transferred from the Series 2008B Bond Reserve Fund relating to the refunded Series 2008B-3 Bonds, and \$\_\_\_\_\_ transferred from the Series 2009A Bond Reserve Fund relating to the refunded Series 2009A Bonds, and \$\_\_\_\_\_ contributed by the District], or a total of \$\_\_\_\_\_, shall be received by the Trustee on behalf of the District and held in trust and set aside as follows:

(i) \$\_\_\_\_\_ of the proceeds from the sale of the Series [Designation] Bonds, [together with (a) the \$\_\_\_\_\_ transferred from the Series 2008A Bond Reserve Account of the Series 2008 Bond Reserve Fund for

the refunded Series 2008A Bonds, (b) the \$\_\_\_\_\_ transferred from the Series 2008B Bond Reserve Fund for the refunded Series 2008B-3 Bonds, (c) the \$\_\_\_\_\_ transferred from the Series 2009A Bond Reserve Fund for the refunded Series 2009A Bonds and (d) \$\_\_\_\_\_ contributed by the District, or a total of \$\_\_\_\_\_, shall be transferred by the Trustee to The Bank of New York Mellon Trust Company, N.A., as escrow agent pursuant to the Escrow Agreement for deposit in the respective escrow accounts in the escrow fund created pursuant to the Escrow Agreement, all as specified in the Escrow Agreement;

(ii) \$\_\_\_\_\_ of the proceeds from the sale of the Series [Designation] Bonds, [together with \$\_\_\_\_\_ contributed by the District], or a total of \$\_\_\_\_\_, shall be transferred on the date of delivery of the Series [Designation] Bonds in accordance with a Written Request of the District to fund the costs of terminating a portion of certain outstanding interest rate swap agreements of the District; and

(iii) The remaining proceeds from the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ shall be transferred by the Trustee to the District for deposit in the Costs of Issuance Account of the Series [Designation] Costs of Issuance Fund to be applied in accordance with Section \_\_\_\_\_.13.

SECTION \_\_\_\_\_.13. Establishment and Application of Series [Designation] Costs of Issuance Fund. The District shall establish, maintain and hold in trust a separate fund designated as the “Series [Designation] Costs of Issuance Fund.” The moneys on deposit in the Series [Designation] Costs of Issuance Fund shall be used and withdrawn by the District to pay Costs of Issuance of the Series [Designation] Bonds.

SECTION \_\_\_\_\_.14. Continuing Disclosure. The District and the Trustee hereby covenant and agree that they will comply with and carry out all of their respective obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the District or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Series [Designation] Bondholder or Beneficial Owner or the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% of the aggregate principal amount of Outstanding Series [Designation] Bonds and upon provision of indemnification satisfactory to the Trustee, shall) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Trustee, as the case may be, to comply with its obligations under this Section \_\_\_\_\_.14. For purposes of this Section \_\_\_\_\_.14, “Beneficial Owner” means any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series [Designation] Bonds (including persons holding Series [Designation] Bonds through nominees, depositories or other intermediaries).

SECTION \_\_\_\_\_.15. Revised [Series 2008A, Series 2008B-3, Series 2009A and Series 2011A] Sinking Account Payment Schedules. In accordance with Section 5.05 of the Indenture, the portion of the [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds and Series

2011A Bonds] (such [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds and Series 2011A Bonds] being Term Bonds) being refunded and redeemed in connection with the issuance of the Series [Designation] Bonds shall be allocated to Mandatory Sinking Account Payments for the applicable Term Bonds as may be specified by the District to the Trustee. The revised schedule of Mandatory Sinking Account Payments for each subseries of the [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds and Series 2011A Bonds] which are Term Bonds that will remain Outstanding following the issuance of the Series [Designation] Bonds and the retirement of the [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds and Series 2011A Bonds] being partially refunded thereby are set forth in Exhibit B hereto.

SECTION \_\_.16. Terms of Series [Designation] Bonds Subject to the Indenture. Except as in this \_\_\_\_\_ Supplemental Indenture expressly provided, every term and condition contained in the Indenture shall apply to this \_\_\_\_\_ Supplemental Indenture and to the Series [Designation] Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this \_\_\_\_\_ Supplemental Indenture.

This \_\_\_\_\_ Supplemental Indenture and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

SECTION \_\_.17. Effective Date of \_\_\_\_\_ Supplemental Indenture. This \_\_\_\_\_ Supplemental Indenture shall take effect upon its execution and delivery.

SECTION \_\_.18. Execution in Counterparts. This \_\_\_\_\_ Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed the \_\_\_\_\_  
Supplemental Indenture by their officers thereunto duly authorized as of the day and year first  
written above.

EAST BAY MUNICIPAL UTILITY  
DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

ATTEST:

By: \_\_\_\_\_  
Lynelle M. Lewis  
Secretary of the District

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

By: \_\_\_\_\_  
Milly Canessa  
Authorized Officer



EXHIBIT A

(FORM OF SERIES [DESIGNATION] BOND)

No. R-\_\_\_\_

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

EAST BAY MUNICIPAL UTILITY DISTRICT  
(ALAMEDA AND CONTRA COSTA COUNTIES, CALIFORNIA)  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]

Unless this certificate is presented by an authorized representative of The Depository Trust Company a New York corporation (“DTC”), to the District or its agent for registration of transfer, exchange, or payment, and any certificate 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.

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
June 1, ____	_____, 20____	____%	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Subordinated Water Revenues and funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal amount specified above together with interest thereon from its Dated Date until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on \_\_\_\_\_, and semiannually thereafter on December 1 and June 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of the hereinafter described Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made

(which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as successor trustee (together with any successor as trustee under said Indenture, the "Trustee"), in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

This Bond is one of a duly authorized issue (of the series and designation indicated on the face hereof) of Water System Revenue Bonds of the District issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, between the Trustee and the District, providing for the issuance of said bonds (the "Bonds"). Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Water System Subordinated Revenue Bond Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Water System Subordinated Revenue Bond Indenture provided, all issued and to be issued pursuant to the provisions of the Act (as defined in the Water System Subordinated Revenue Bond Indenture). This Bond is issued pursuant to the Water System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, between the Trustee and the District, authorizing the issuance of the series of bonds of which this Bond is one, such series being herein referred to as the "Series [Designation] Bonds" (the Water System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, being herein collectively referred to as the "Indenture"). Reference is hereby made to the Indenture and to the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Subordinated Water Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the interest thereon (to the extent set forth in the Indenture), together with the Parity Debt (as defined in the Indenture) issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the "Subordinated Water Revenues" (as more particularly defined in the Indenture). All of the Bonds and Parity Debt are equally secured by a pledge of, and charge and lien upon, all of the Subordinated Water Revenues, and the Subordinated Water Revenues constitute a trust fund for the security and payment of the interest on and principal of the Bonds; but nevertheless out of Subordinated Water Revenues certain amounts may be applied for other purposes as provided in the Indenture.

The Bonds are limited obligations of the District and are payable, both as to principal and interest, and as to any premiums upon the redemption thereof, out of the Subordinated Water Revenues and certain funds held under the Indenture. The general fund of the District is not

liable, and the credit or taxing power of the District is not pledged, for the payment of the Bonds or the interest thereon. The Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the District or any of its income or receipts, except the Subordinated Water Revenues and the funds held under the Indenture. No registered owner of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to each date on which the Bonds are stated to mature, registered in the name of the Cede & Co, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository Participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such Securities Depository Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Securities Depository Participants pursuant to rules and procedures established by the Securities Depository and its Securities Depository Participants. The District and the Trustee will recognize Cede & Co., while the registered owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on this Bond and (ii) notices. Transfer of principal, interest and any redemption premium payments to Securities Depository Participants, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by Securities Depository Participants will be the responsibility of such Securities Depository Participants and other nominees of such beneficial owners. The District will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, Cede & Co., its Securities Depository Participants or persons acting through such Securities Depository Participants. While Cede & Co. is the owner of this Bond, notwithstanding any other provision hereof, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements between the Trustee or its successors under the Indenture and the Securities Depository.

[The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series [Designation] Bonds maturing on June 1, \_\_\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, \_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate trust office of the Trustee in San Francisco, California, but only in the manner, subject to the

limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange hereof.

The District, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the District and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the District pertaining to the Subordinated Water Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or the Act.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, EAST BAY MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the President of the Board of Directors and attested by its Secretary, and this Bond to be dated as of the \_\_\_\_ day of \_\_\_\_\_.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

Attested:

By: \_\_\_\_\_  
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

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

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

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

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

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

Signature Guaranteed by:

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NOTE: Signature must be guaranteed by an eligible guarantor institution.

## EXHIBIT B

### REVISED [SERIES 2008A, SERIES 2008B-3, SERIES 2009A AND SERIES 2011A] MANDATORY SINKING ACCOUNT PAYMENT SCHEDULES

A. Following the defeasance and retirement of the \$\_\_\_\_\_ principal amount of the Series [2008A][2008B-3][2009A][2011A] Bonds being refunded in connection with the issuance of the Series [Designation] Bonds, the Mandatory Sinking Account Payment schedule set forth in [Section 29.29(1) of the Thirteenth Supplemental Indenture] [30.29 of the Fourteenth Supplemental Indenture] [Section 30.29 of the Fifteenth Supplemental Indenture] [Section 34.28 of the Nineteenth Supplemental Indenture] shall be revised as follows for the Series [2008A][2008B-3][2009A][2011A] Bonds to remain Outstanding upon the issuance of the Series [Designation] Bonds:

#### **Series [2008A][2008B-3][2009A][2011A] Bonds**

\$\_\_\_\_\_ Term Series \_\_\_\_\_ Bonds Due June 1, 20\_\_\_\_

Mandatory  
Sinking Account  
Payment Dates  
(June 1)

Mandatory  
Sinking Account  
Payments

Mandatory  
Sinking Account  
Payment Dates  
(June 1)

Mandatory  
Sinking Account  
Payments

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† Final Maturity.



EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]  
PURCHASE CONTRACT

[Date]

Board of Directors  
East Bay Municipal Utility District  
375 -11th Street  
Oakland, California 94607

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, as representative (the “Representative”) of itself, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, the “Underwriters”), hereby offers to enter into this Purchase Contract (the “Purchase Contract”) with you, the East Bay Municipal Utility District (the “District”), which, upon the District’s acceptance of this offer, will be binding upon the District and the Underwriters. This offer is made subject to acceptance by you prior to 5:00 p.m., California time, on the date hereof. If this offer is not so accepted, this offer will be subject to withdrawal by the Underwriters upon notice delivered to you at any time prior to acceptance. Upon acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the District and the Underwriters. All capitalized terms used herein not otherwise defined herein shall have the respective meanings ascribed thereto in the Official Statement (as hereinafter defined). The Representative has been duly authorized to execute this Purchase Contract and to take any action hereunder by and on behalf of the Underwriters.

The District acknowledges and agrees that (i) the purchase and sale of the Series [Designation] Bonds (defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the District and the Underwriters, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principals and are not acting as advisors to or fiduciaries of the District, (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the District with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether an Underwriter has provided other services or is currently providing other services to the District on other matters), (iv) the Underwriters have financial and other interests that differ from those of the District, and (v) the District has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

1. Purchase, Sale and Delivery of the Series [Designation] Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters, jointly and severally, hereby agree to

purchase and the District agrees to sell and deliver to the Underwriters all (but not less than all) of the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation] (the "Series [Designation] Bonds") in the aggregate principal amount of \$\_\_\_\_\_.

(b) The Series [Designation] Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the "Act") and the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the "Indenture"). The Series [Designation] Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series [Designation] Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series [Designation] Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Water Revenues of the District. The Series [Designation] Bonds shall be dated the Closing Date (defined below), shall bear interest payable June 1 and December 1 of each year, commencing on \_\_\_\_\_, and shall mature on June 1 in each year, subject to earlier redemption, as set forth in Exhibit A.

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [\$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2008A, \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2008B, \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2009A and \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2011A] (collectively, the "Refunded Bonds"), (ii) funding the cost of terminating a portion of interest rate swaps relating to the Refunded Bonds and (iii) paying costs of issuance of the Series [Designation] Bonds.

(c) The aggregate purchase price for the Series [Designation] Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ [plus/less original issuance premium/discount of \$\_\_\_\_\_] less \$\_\_\_\_\_ of Underwriters' discount).

If this offer shall be accepted by the District, then the Underwriters, shall, immediately upon the acceptance by the District of this offer (or as soon thereafter as practicable), deliver or cause to be delivered to the District a wire or cashier's check made payable to the order of the District, in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of their obligations to accept delivery of and pay for the Series [Designation] Bonds on the Closing Date in accordance with the provisions of this Purchase Contract (such deposit is herein referred to as the "Good Faith Deposit"). Such deposit shall not be expended by the District pending the Closing except as provided below. On the Closing Date, the Good Faith Deposit will be applied towards the purchase price stated above. If the District fails to deliver the Series [Designation] Bonds on the Closing Date, or if the conditions to the obligations of the Underwriters to purchase, accept delivery of and pay for the Series [Designation] Bonds as set forth in this Purchase Contract shall be unsatisfied (unless waived by the Underwriters), or if such obligations of the Underwriters shall be terminated by the

Underwriters for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and the Good Faith Deposit with interest calculated at the prevailing 1-month LIBOR rate shall be immediately returned to the Underwriters. In the event that the Underwriters fail (other than for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the Series [Designation] Bonds on the Closing Date as herein provided, the Good Faith Deposit shall be retained by the District and shall constitute full liquidated damages for such failure and for any and all defaults hereunder on the part of the Underwriters, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriters with respect to such failure.

(d) At 8:00 a.m., California time, on \_\_\_\_\_, or at such other time or on such other date as the District and the Representative mutually agree upon (the "Closing Date"), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriters, the Series [Designation] Bonds, in fully registered book-entry eligible form, through the facilities of The Depository Trust Company ("DTC") in New York, New York, duly executed, and at the offices of Curls Bartling P.C., Lake Merritt Plaza, 1999 Harrison Street, Suite 610, Oakland, California 94612, or at such other place as shall have been mutually agreed upon by the District and the Representative, and the other documents mentioned herein. The Underwriters will accept such delivery and pay the purchase price of the Series [Designation] Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the "Closing") to the order of the Trustee in an amount equal to the purchase price.

(e) The Underwriters agree to make a bona fide public offering of the Series [Designation] Bonds at the initial offering prices set forth in the Official Statement, which prices may be changed from time to time by the Underwriters after such initial offering.

## 2. Use and Preparation of Official Statement.

The District hereby ratifies, confirms and approves of the distribution and use by the Underwriters prior to the date hereof of the preliminary official statement dated \_\_\_\_\_ relating to the Series [Designation] Bonds (the "Preliminary Official Statement") and the making available of the Preliminary Official Statement to investors prior to the date hereof on the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriters, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the final Official Statement relating to the Series [Designation] Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the Representative (including the appendices thereto and any amendments or supplements as have been approved by the District and the Underwriters, the "Official Statement"), in such quantity as the Underwriters shall reasonably request. The District hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series [Designation] Bonds. The Representative hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.

3. Representations, Warranties and Agreements of the District.

The District hereby represents, warrants and agrees with the Underwriters as follows:

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State of California with full legal right, power and authority to issue the Series [Designation] Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract, the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agreement”), and the Continuing Disclosure Agreement, dated \_\_\_\_\_, between the District and the Trustee, (the “Disclosure Agreement” and together with the Indenture, the Escrow Agreement and this Purchase Contract, the “District Documents”);

(b) By all necessary official action of the District prior to or concurrently with the acceptance hereof, the District has duly approved, ratified and confirmed distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, and has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents and the consummation by it of all other transactions contemplated by the Official Statement and the District Documents and the District is and will be in compliance in all material respects with the provisions thereof; the District Documents are or as of the Closing Date will be in full force and effect in substantially the form heretofore submitted to the Underwriters with only such changes as shall have been agreed to in writing by the Underwriters; and the District Documents constitute valid and legally binding agreements of the District enforceable against the District in accordance with their terms; provided, however, that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights and to the limitations on legal remedies against public agencies in the State of California;

(c) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not in Material Breach or Default under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement, and compliance with the provisions on the District’s part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term “Material Breach or Default” means any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Water System);

(d) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, deliver or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Water System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series [Designation] Bonds;

(f) Under the laws of the State of California, the authority of the District to determine, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System is not presently subject to the regulatory jurisdiction of the California Public Utilities Commission, or other local, regional or state regulatory authority, and, except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not aware of any legislation proposed or pending to limit or restrict such rates, fees and charges;

(g) The Series [Designation] Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriters as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series [Designation] Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Water Revenues (as defined in the Indenture) and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series [Designation] Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Official Statement;

(i) The financial statements of the District contained in the Official Statement do and will fairly present the financial position and results of operations of the District as of the dates and

for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Water System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order (i) to qualify the Series [Designation] Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Series [Designation] Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series [Designation] Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject;

(k) The Preliminary Official Statement (except for information relating to offering prices, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the securities depending on such matters, and the identity of the underwriters) did not as of the date thereof and, as supplemented or amended through the date hereof, does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect (except for information relating to DTC and its book-entry only system, as to which no opinion or view is expressed);

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined below) for the Series [Designation] Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the District will notify the Underwriters, and, if in the opinion of the District, the Underwriters or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriters (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and their counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the District will furnish such information with respect to itself as the Underwriters may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series [Designation] Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Representative on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series [Designation] Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series [Designation] Bonds the date specified as such in a notice from the Representative stating the date which is the End of the Underwriting Period;

(p) After the Closing, the District will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriters shall reasonably object in writing;

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District will apply, or cause the application of, the proceeds of the Series [Designation] Bonds in accordance with the Indenture;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriters in connection with the execution and delivery of the Series [Designation] Bonds, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(t) Except as disclosed in the Official Statement, the District has never failed within the last five years to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of enumerated events.

#### 4. Conditions to the Obligations of the Underwriters.

The Underwriters hereby enter into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters’ obligations under this Purchase Contract to purchase, to accept

delivery of and to pay for the Series [Designation] Bonds shall be subject, at the option of the Underwriters, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(a) The Underwriters shall receive, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the Official Statement (including all information previously permitted to have been omitted by Rule 15c2-12 and any amendments or supplements as have been approved by the Underwriters), in such reasonable quantity as the Underwriters shall have requested;

(b) The representations and warranties of the District contained herein shall be true and correct in all material respects on the date hereof and on the Closing Date, as if made on and at the Closing Date;

(c) At the Closing, the District Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the District, all in substantially the forms heretofore submitted to the Underwriters, with only such changes as shall have been agreed to in writing by the Underwriters (which consent shall not be unreasonably withheld), and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the Board of Directors of the District as, in the opinion of Fulbright & Jaworski LLP, Los Angeles, California, and Curls Bartling P.C., Oakland, California ("Co-Bond Counsel"), and Orrick, Herrington & Sutcliffe LLP, San Francisco, California, counsel to the Underwriters (hereinafter, "Underwriters' Counsel"), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Series [Designation] Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriters (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and make any payment for the Series [Designation] Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been proposed for consideration by either such Committee by any member thereof or presented as an option for consideration by either such Committee by the staff of such Committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation



has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series [Designation] Bonds which, in the reasonable judgment of the Underwriters, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series [Designation] Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series [Designation] Bonds, or the Series [Designation] Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(3) the declaration of war or the escalation of, or engagement in, military hostilities by the United States or the occurrence of any other national or international emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(4) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series [Designation] Bonds or obligations of the general character of the Series [Designation] Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriters;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series [Designation] Bonds, or the issuance, offering or sale of the Series [Designation] Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series [Designation] Bonds or the underlying rating of any of the District's Water System Revenue Bonds by a national rating agency then rating the Series [Designation] Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriters, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriters, to materially adversely affect the market for the Series [Designation] Bonds or the sale of the Series [Designation] Bonds, at the contemplated offering prices (or yields).

(e) At or prior to the Closing Date, the Underwriters shall have received the following documents, in each case satisfactory in form and substance to the Underwriters and Underwriters' Counsel:

(1) Counterparts of the District Documents, duly executed and delivered by the respective parties thereto;

(2) The approving opinion of Co-Bond Counsel, dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(3) The supplemental opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit B;

(4) The opinion of the Office of General Counsel of the District, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit C;

(5) The opinion of counsel to the Trustee, dated the Closing Date and addressed to the District and the Representative, in substantially the form attached hereto as Exhibit D;

(6) The defeasance opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit E;

(7) The opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriters ("Special Tax Counsel"), dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(8) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Representative, to the effect that (a) the Series [Designation] Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine

independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriters, nothing has come to their attention which would cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through F thereto, and information regarding DTC and its book-entry only system;

(9) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriters, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official's knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 20\_\_, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Water System, in any case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series [Designation] Bonds; and (d) the projected operating results and debt service coverage contained in Table [19] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

(10) A certificate, dated the Closing Date, signed by a duly authorized official of the Trustee, satisfactory in form and substance to the Underwriters, to the effect that: (a) the Trustee is a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having the full power and being qualified to enter into and perform its duties under the Indenture, the Escrow Agreement and the Disclosure Agreement (collectively, the "Trustee Documents"); (b) the execution and delivery of the Trustee Documents and compliance with the provisions on the Trustee's part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject; and (c) the Trustee has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action, to the best of such official's knowledge after reasonable investigation, threatened against the Trustee, as such but not in its individual capacity, affecting the existence of the Trustee, or the titles of its officers to their respective offices, or contesting or affecting the validity or enforceability of the Trustee Documents, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Trustee Documents;

(11) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Trustee Documents;

(12) a copy of the Preliminary Official Statement;

(13) A copy of the Official Statement, executed on behalf of the District by authorized representatives of the District;

(14) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series [Designation] Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

(15) Evidence that any ratings described in the Official Statement are in full force and effect as of the Closing Date;

(16) A copy of the Blue Sky Memorandum with respect to the Series [Designation] Bonds, prepared by Underwriters' Counsel;

(17) A Tax Certificate signed by the District relating to the Series [Designation] Bonds, in form and substance satisfactory to Special Tax Counsel;

(18) A copy of the Blanket Letter of Representations to DTC relating to the Series [Designation] Bonds signed by the District;

(19) A Verification Report of [Grant Thornton LLP], addressed to the Representative and dated the Closing Date, in form and substance acceptable to Co-Bond Counsel and Underwriters' Counsel; and

(20) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters, Underwriters' Counsel or Co-Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the District herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the District Documents and the Official Statement.

If the District shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Purchase Contract or if the Underwriters' obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District and neither the Underwriters nor the District shall have any further obligations hereunder.

## 5. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series [Designation] Bonds to the Underwriter, including the costs of printing of the Series [Designation] Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series [Designation]

Bonds and the fees and expenses of Co-Bond Counsel and Underwriters' Counsel shall be paid either from the proceeds of the Series [Designation] Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriters' discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract, including, but not limited to, meals, transportation, lodging and entertainment, of those employees. The District shall pay the reasonable out-of-pocket expenses of the Underwriters (included in the expense component of the Underwriters' Discount), including travel and other expenses and the California Debt and Investment Advisory Commission fee.

6. Notices.

Any notice or other communication to be given under this Purchase Contract may be given by delivering the same in writing to the respective parties at the following address:

District: East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607  
Attention: Director of Finance

Representative: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

7. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Series [Designation] Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series [Designation] Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

8. Effectiveness and Counterpart Signatures.

This Purchase Contract shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by duly authorized officials of the District and shall be valid and enforceable as of the time of such acceptance. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9. Parties in Interest.

This Purchase Contract is made solely for the benefit of the District and the Underwriters (including the successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof.

10. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriters with respect to the purchase of the Series [Designation] Bonds.

11. Headings.

The headings of the sections of this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

12. Governing Law.

This Purchase Contract shall be construed in accordance with the laws of the State of California.

Very truly yours,

\_\_\_\_\_, as Representative of the  
Underwriters

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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

EXHIBIT A

MATURITY SCHEDULE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE  
REFUNDING BONDS, SERIES [DESIGNATION]

Dated Date: Date of Delivery

Maturity Date <u>(June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
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EXHIBIT B

FORM OF SUPPLEMENTAL OPINION OF  
CO-BOND COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the "District") in connection with the issuance, sale and delivery of the District's Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds"), issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Bonds (collectively, the "Indenture").

The Bonds are being sold on the date hereof by the District to \_\_\_\_\_, as Representative of itself and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, as Underwriters, pursuant to a Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract").

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated \_\_\_\_\_, relating to the Bonds (the "Official Statement").

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of the District and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary to render this opinion, we are of the opinion that:

1. The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE SERIES [Designation] BONDS," and "SECURITY FOR THE SERIES [DESIGNATION] BONDS," and in "APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," and "APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT" (excluding the statements under each such caption relating to The Depository Trust Company ("DTC"), Cede & Co. and the book-entry system, as to all of which we



express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Water Interest Rate Swap Agreements and the Extendable Municipal Commercial Paper Notes (Water Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

2. The Official Statement and the execution and delivery thereof have been duly approved by the District, and the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement have been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the District, enforceable against the District in accordance with their respective terms. We call attention to the fact that the rights and obligations under the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement and the enforceability thereof are subject to and may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver (including, without limitation, waiver of jury trial or consent to nonjury trial) provisions contained in the foregoing documents.

3. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

4. The issuance of the Bonds, the execution and delivery of the \_\_\_\_\_ Supplemental Indenture, the Escrow Agreement, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or Resolution No. 33705-09 of the District, adopted on March 10, 2009, authorizing the District's extendable commercial paper program or, to the best of our knowledge, any loan agreement with any State governmental agency to which the District is a party or to which the District or any of its property or assets are otherwise subject.

Based upon our participation in the preparation of the Preliminary Official Statement, dated \_\_\_\_\_, relating to the Bonds, and the Official Statement as co-bond counsel and on the basis of the information made available to us in the course of the foregoing, but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement (except to the extent expressly set forth in paragraph 1 above), as of the date hereof no facts have come to the attention of the personnel in our respective firms directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement or the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of this Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the

discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, underwriters' discount and CUSIP numbers, or (b) the Official Statement as of its date or as of the hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view).

During the period from the date of the Official Statement to the date of this opinion, except for our review of the certificates and opinions regarding the Official Statement delivered on the date hereof, we have not undertaken any procedures or taken any actions which were intended to or were likely to elicit information concerning the accuracy, completeness or fairness of any of the statements contained in the Official Statement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

We are furnishing you this letter at the request of the District and solely for the information of, and assistance to, you in conducting and documenting your investigation of the affairs of the District in connection with the offering of the Bonds and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, including but not limited to the purchase or sale of the Bonds, nor is it to be referred to in whole or in part in the Official Statement or any other document, except that it may be included in, and reference may be made to it in any list of, the closing documents pertaining to the delivery of the Bonds. The provision of this opinion to you shall not create any attorney-client relationship between either of our firms and you. This opinion may not be relied upon by any other person, firm, corporation or other entity without our prior written consent.

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the "District"), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 4(e)(4) of the Purchase Contract (the "Purchase Contract") dated \_\_\_\_\_ between the District and \_\_\_\_\_, as representative of the underwriters (the "Underwriters") listed therein, and relating to the sale of \$ \_\_\_\_\_ aggregate principal amount of District's Water System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

In rendering this opinion, I have examined the following documents: (i) the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture dated as of \_\_\_\_\_, by and between the District and the Trustee (collectively, the "Indenture"); (ii) the Continuing Disclosure Agreement, dated \_\_\_\_\_, by and between the District and the Trustee; (iii) the Official Statement; (iv) the Series [Designation] Bonds; (v) the Escrow Agreement; and (vi) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement, the Escrow Agreement and the Purchase Contract are collectively referred to herein as the "District Documents." In addition, I call attention to the fact that the rights and obligations under the District Documents, the Series [Designation] Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.

Based on the foregoing, I am of the opinion that:

(1) The District is, and was at all relevant times, a municipal utility district duly organized and validly existing under the laws of the State of California.

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series [Designation] Bonds (the “Resolutions”), the District Documents and the Official Statement were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Official Statement by the District to the Underwriters on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series [Designation] Bonds, the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) which contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Water System.

(4) The issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate, to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the

valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement and based upon the information made available to me during the preparation of the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that the information contained in the Official Statement under the captions “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A thereto (excluding therefrom the financial statements and the statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and the Closing Date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) The Subordinated Water Revenues are free and clear of and from any and all liens and encumbrances other than as set forth in the Official Statement.

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by the Water System and is not presently subject to the regulatory jurisdiction of any state, regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series [Designation] Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

This opinion is delivered to you as the representatives of the Underwriters and is solely for the benefit of the Underwriters and is not to be used by any other person or for any other purpose.

Very truly yours,

Jylana Collins  
General Counsel

EXHIBIT D

FORM OF TRUSTEE COUNSEL'S OPINION

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, Series [Designation]

Ladies and Gentlemen:

We have acted as counsel to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), in connection with the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the "District") and the Trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture") in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation]. This opinion is rendered pursuant to Section 4(e)(5) of the Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract"), between the District and \_\_\_\_\_, as Representative of the Underwriters listed therein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In connection therewith, we have examined and reviewed such documents and certificates of public officials, officers of the Trustee and others as we have deemed necessary for the purposes of this opinion. In all such examinations, we have assumed the genuineness of all signatures (other than those of the Trustee), the authenticity of all documents submitted to us as originals, the conformity to original and certified documents of all copies submitted to us as conformed or photostatic copies, and the authenticity of the originals of all such latter documents. As to various questions of fact material to this opinion, we have relied, to the extent that we deemed such reliance proper, upon such certificates of officers of the Trustee. We have examined an executed counterpart of the Indenture and have assumed the power, municipal or corporate, as the case may be, and the legal authority to execute and deliver the same of the District and the due authorization, execution and delivery thereof by the District.

Based upon the foregoing, we are of the opinion under the laws of the State of California:

1. The Trustee is a national banking association duly organized and validly existing under and by virtue of the laws of the United States of America, having full power and being qualified to enter into and perform its duties under the Trustee Documents.

2. The Trustee has taken all corporate action necessary to assume the duties and obligations of Trustee under the Trustee Documents and to authorize in such capacity the execution and delivery of the Trustee Documents and the acceptance of the duties as Trustee does not and will

not contravene any law of governmental regulation or order presently binding on the Trustee or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which the Trustee is a party or by which the Trustee is or may be bound.

3. The Trustee has duly executed and delivered the Trustee Documents and the Trustee Documents constitute the legal, valid and binding obligations of the Trustee, enforceable in accordance with their terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought.

4. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of any of its duties and obligations under the Trustee Documents (insofar as it has the obligation to obtain any such approval, consent or order) have been obtained and are in full force and effect.

Respectfully submitted,

EXHIBIT E

FORM OF DEFEASANCE OPINION

[Closing Date]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Water System Revenue Refunding Bonds,  
Series [Designation]

Ladies and Gentlemen:

We have acted as co-bond counsel in connection with the issuance by the East Bay Municipal Utility District (the “District”) of its Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (collectively, the “Act”) and a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California (which has been succeeded by The Bank of New York Mellon Trust Company, N.A.), as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

The Series [Designation] Bonds are being issued primarily for the purpose of refunding [\$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2008A, \$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2008B, \$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2009A and \$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2011A] (the “Refunded Bonds”).

In our capacity as co-bond counsel, we have examined a certified copy of the proceedings relating to the issuance of the Refunded Bonds and the Series [Designation] Bonds and such other documents and instruments as we deemed necessary to render the opinions set forth herein, including the Indenture, data and computations prepared by \_\_\_\_\_, a verification report relating to the Refunded Bonds, dated the date hereof and prepared by [Grant Thornton LLP] (the “Verification



Report”) and the Escrow Agreement relating to the Refunded Bonds, dated as of \_\_\_\_\_ (the “Escrow Agreement”), by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”). As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of District officers and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based on and subject to the foregoing, we are of the opinion that:

1. The defeasance of the Refunded Bonds and the deposit of moneys with the Escrow Agent pursuant to the Escrow Agreement are authorized by and comply with the conditions and terms of the Indenture.

2. Provision has been made to pay the principal of and interest on the Refunded Bonds upon the redemption thereof, on \_\_\_\_\_, all in accordance with the conditions and terms of the Indenture. Accordingly, the Refunded Bonds have been deemed to have been paid within the meaning expressed in the Indenture, the owners of the Refunded Bonds have ceased to be entitled to the pledge of and charge and lien established by the Indenture, and all agreements, covenants and other obligations of the District to the owners of the Refunded Bonds under the Indenture have ceased, terminated and become void and have been discharged and satisfied.

In rendering the opinions above, we have relied on the Verification Report and the Escrow Agreement as to matters contained therein. We note that [Grant Thornton LLP] has made certain assumptions in the Verification Report which we have not independently verified. We have also assumed that all other sums payable by the District under the Indenture with respect to the Refunded Bonds have been paid and that provision has been made by the District for the mailing of a notice to the respective owners of the Refunded Bonds that the moneys described in the preceding paragraph are so available for payment.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is addressed to you and it is not to be quoted, used, circulated or otherwise referred to for any other purpose without our written consent. No attorney-client relationship has existed or exists between us and your firms in connection with the Series [Designation] Bonds or by virtue of this opinion.

Respectfully submitted,

Respectfully submitted,

ESCROW AGREEMENT  
RELATING TO THE DEFEASANCE OF A PORTION OF THE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
[SERIES 2008A, SERIES 2008B-3, SERIES 2009A [AND] SERIES 2011A]

THIS ESCROW AGREEMENT (the “Escrow Agreement”), dated as of \_\_\_\_\_, is by and between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as escrow agent hereunder (the “Escrow Agent”) and as trustee with respect to the [Series 2008A Bonds, Series 2008B-3 Bonds, Series 2009A Bonds [and Series 2011A Bonds] referred to below (the “Trustee”),

W I T N E S S E T H:

[WHEREAS, the District has previously authorized and issued its \$322,525,000 aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2008A, comprised of (i) \$99,250,000 principal amount of subseries Series 2008A-1 Bonds, of which \$61,725,000 principal amount remains outstanding (the “Series 2008A-1 Bonds”), (ii) \$74,425,000 principal amount of subseries Series 2008A-2 Bonds, of which \$46,275,000 principal amount remains outstanding (the “Series 2008A-2 Bonds”), (iii) \$74,425,000 principal amount of subseries Series 2008A-3 Bonds, of which \$46,275,000 principal amount remains outstanding (the “Series 2008A-3 Bonds”) and (iv) \$74,425,000 principal amount of subseries Series 2008A-4 Bonds, of which \$46,275,000 principal amount remains outstanding (the “Series 2008A-4 Bonds” and collectively with the Series 2008A-1 Bonds, the Series 2008A-2 Bonds and the Series 2008A-3 Bonds, the “Series 2008A Bonds”), pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented (the “Indenture”), including as amended and supplemented by the Thirteenth Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee, relating to the Series 2008A Bonds;]

[WHEREAS, the District has previously authorized and issued its \$160,000,000 aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2008B, comprised of subseries Series 2008B-1 Bonds, Series 2008B-2 Bonds and Series 2008B-3 Bonds, of which \$15,100,000 aggregate principal amount of Series 2008B-3 Bonds remains outstanding (the “Series 2008B-3 Bonds”), pursuant to the Indenture, including as amended and supplemented by the Fourteenth Supplemental Indenture, dated as of April 1, 2008, by and between the District and the Trustee, relating to the Series 2008B-3 Bonds;]

[WHEREAS, the District has previously authorized and issued its \$331,155,000 aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2009A, comprised of (i) \$165,580,000 principal amount of subseries Series 2009A-1 Bonds, of which \$41,040,000 principal amount remains outstanding (the “Series 2009A-1 Bonds”) and (ii) \$165,575,000 principal amount of subseries Series 2009A-2 Bonds, of

which \$41,035,000 principal amount remains outstanding (the “Series 2009A-2 Bonds” and collectively with the Series 2009A-1 Bonds, the “Series 2009A Bonds”), pursuant to the Indenture, as amended and supplemented, including as amended and supplemented by the Fifteenth Supplemental Indenture, dated as of March 1, 2009, by and between the District and the Trustee, relating to the Series 2009A Bonds;]

[WHEREAS, the District has previously authorized and issued its \$159,210,000 aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2011A, comprised of (i) \$79,605,000 principal amount of subseries Series 2011A-1 Bonds, of which \$74,085,000 principal amount remains outstanding (the “Series 2011A-1 Bonds”) and (ii) \$79,605,000 principal amount of subseries Series 2011A-2 Bonds, of which \$79,085,000 principal amount remains outstanding (the “Series 2011A-2 Bonds” and collectively with the Series 2011A-1 Bonds, the “Series 2011A Bonds”), pursuant to the Indenture, as amended and supplemented, including as amended and supplemented by the Nineteenth Supplemental Indenture, dated as of December 1, 2011, by and between the District and the Trustee, relating to the Series 2011A Bonds;]

WHEREAS, the District has determined to issue \$\_\_\_\_\_ aggregate principal amount of its East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”), pursuant to the Indenture, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, by and between the District and the Trustee, providing for the issuance of the Series [Designation] Bonds, for the purpose, among others, of refunding [(i) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2008A-1 Bonds (hereinafter, the “Refunded Series 2008A-1 Bonds”), (ii) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2008A-2 Bonds (hereinafter the “Refunded Series 2008A-2 Bonds”), (iii) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2008A-3 Bonds (hereinafter the “Refunded Series 2008A-3 Bonds”), (iv) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2008A-4 Bonds (hereinafter, the “Refunded Series 2008A-4 Bonds,” and collectively with the Refunded Series 2008A-1 Bonds, the Refunded Series 2008A-2 Bonds and the Refunded Series 2008A-3 Bonds, the “Refunded Series 2008A Bonds”), (v) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2008B-3 Bonds (hereinafter, the “Refunded Series 2008B-3 Bonds”), (vi) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2009A-1 Bonds (hereinafter, the “Refunded Series 2009A-1 Bonds”), (vii) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2009A-2 Bonds (viii) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2011A-1 Bonds (hereinafter, the “Refunded Series 2011A-1 Bonds”), and (ix) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2011A-2 Bonds (hereinafter, the “Refunded Series 2011A-2 Bonds,” and together with the Refunded Series 2011A-1 Bonds, the “Refunded Series 2011A Bonds;” and the Refunded Series 2008A Bonds, the Refunded 2008B-3 Bonds, the Refunded Series 2009A Bonds and the Refunded Series 2011A Bonds] being hereinafter sometimes collectively referred to as, the “Refunded Bonds”];

WHEREAS, by irrevocably depositing with the Escrow Agent a specified amount of the proceeds from the sale of the Series [Designation] Bonds, together with certain other available

funds, and directing the Escrow Agent to invest such amounts in certain investments satisfying the criteria set forth in Section 10.03 of the Indenture (herein, the “Federal Securities”), if any, the Escrow Agent will have money sufficient to pay on \_\_\_\_\_ (the “Redemption Date”) the redemption price of the Refunded Bonds and accrued interest thereon to the Redemption Date;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District and the Escrow Agent agree as follows:

**SECTION 1. Deposit of Moneys.** The District hereby deposits with the Escrow Agent \$\_\_\_\_\_, representing \$\_\_\_\_\_ of proceeds of the sale of the Series [Designation] Bonds, [\$\_\_\_\_\_ of amounts released from the Series 2008A Bond Reserve Account of the Series 2008 Bond Reserve Fund for the Refunded Series 2008A Bonds, \$\_\_\_\_\_ of amounts released from the Series 2008B Bond Reserve Fund for the Refunded Series 2008B-3 Bonds, \$\_\_\_\_\_ of amounts released from the Series 2009A Bond Reserve Fund for the Refunded Series 2009A Bonds and \$\_\_\_\_\_ contributed by the District]; all to be held in irrevocable escrow by the Escrow Agent, separate and apart from other funds and accounts of the District and the Escrow Agent, in a fund hereby created and established to be known as the “Escrow Fund,” to be applied solely as provided in this Escrow Agreement. The Escrow Fund shall constitute an account of the Redemption Fund established pursuant to Section 5.05 of the Indenture.

Within the Escrow Fund, the Escrow Agent shall create \_\_\_\_\_ separate accounts: [(i) one relating exclusively to the Refunded Series 2008A-1 Bonds (the “Refunded Series 2008A-1 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; (ii) one relating exclusively to the Refunded Series 2008A-2 Bonds (the “Refunded Series 2008A-2 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; (iii) one relating exclusively to the Refunded Series 2008A-3 Bonds (the “Refunded Series 2008A-3 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; (iv) one relating exclusively to the Refunded Series 2008A-4 Bonds (the “Refunded Series 2008A-4 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; (v) one relating exclusively to the Refunded Series 2008B-3 Bonds (the “Refunded Series 2008B-3 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; (vi) one relating exclusively to the Refunded Series 2009A-1 Bonds (the “Refunded Series 2009A-1 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; (vii) one relating exclusively to the Refunded Series 2009A-2 Bonds (the “Refunded Series 2009A-2 Bonds Escrow Account”), (viii) one relating exclusively to the Refunded Series 2011A-1 Bonds (the “Refunded Series 2011A-1 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; and (ix) one relating exclusively to the Refunded Series 2011A-2 Bonds (the “Refunded Series 2011A-2 Bonds Escrow Account”), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated]. Amounts on deposit in the Escrow Fund shall be used and applied from the [nine] accounts within the Escrow Fund as provided in Section 5 hereof.

The deposit to the Escrow Fund is in a total amount which has been calculated by \_\_\_\_\_ and verified by [Grant Thornton LLP] (the “Verification Agent”) to be sufficient to pay on the Redemption Date for the Refunded Bonds (*i.e.*, \_\_\_\_\_), the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) and accrued interest thereon.

The Escrow Agent hereby acknowledges receipt of such calculations prepared by \_\_\_\_\_, the mathematical accuracy of which has been verified by the Verification Agent in its report relating to the Refunded Bonds (the “Verification Report”), a copy of which has been provided to the Escrow Agent, and the Escrow Agent may rely upon the conclusion of such report to the effect that the deposit described in this Section 1 shall be sufficient to pay on the Redemption Date for the Refunded Bonds (*i.e.*, \_\_\_\_\_), the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) and accrued interest thereon (at an assumed interest rate of 12% per annum for any period for which the interest rate has not been determined to the Redemption Date).

SECTION 2. Investment of Moneys. The Escrow Agent acknowledges receipt of the moneys described in Section 1 hereof and agrees to immediately invest such moneys in the Federal Securities (if any) set forth in Schedule A hereto and to deposit such Federal Securities (if any) in the applicable account of the Escrow Fund. All other amounts in the Escrow Fund, or if no Federal Securities are set forth in Schedule A hereto, all amounts, not so invested shall be held as cash.

SECTION 3. [Reserved.]

SECTION 4. [Reserved.]

SECTION 5. Payment of Refunded Bonds.

(a) Payment. From the maturing principal of the Federal Securities (if any) and the investment income and other earnings thereon, if any, and the moneys on deposit in the Escrow Fund, the Escrow Agent shall apply the amounts on deposit in the Escrow Fund as follows:

(i) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2008A-1 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2008A-1 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2008A-1 Bonds on the Redemption Date are shown on Schedule B-1 hereto. The Escrow Agent as Tender Agent for the Refunded Series 2008A-1 Bonds shall pay the applicable purchase price for any Tendered Bonds in accordance with the applicable provisions of the Indenture from amounts on deposit in the Escrow Fund in accordance herewith. For purposes of this Section 5(a)(i), “Tendered Bonds” means, as of any date on and after \_\_\_\_\_ and prior to the Redemption Date, the Refunded Series 2008A-1 Bonds, or any principal amount thereof, that have been tendered by the holders thereof for purchase pursuant to the applicable provisions of the Indenture, other than Refunded Series 2008A-1 Bonds

that have been remarketed. Any Tendered Bonds so purchased shall be immediately cancelled, and the interest thereon shall cease to accrue from and after the relevant purchase date. The Escrow Agent shall transfer the amount of the purchase price for any Tendered Bonds to the Tender Agent from moneys held in the Refunded Series 2008A-1 Escrow Account by 2:40 p.m. (New York time) in immediately available funds.]

(ii) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2008A-2 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2008A-2 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2008A-2 Bonds on the Redemption Date are shown on Schedule B-2 hereto. The Escrow Agent as Tender Agent for the Refunded Series 2008A-2 Bonds shall pay the applicable purchase price for any Tendered Bonds in accordance with the applicable provisions of the Indenture from amounts on deposit in the Escrow Fund in accordance herewith. For purposes of this Section 5(a)(ii), “Tendered Bonds” means, as of any date on and after \_\_\_\_\_ and prior to the Redemption Date, the Refunded Series 2008A-2 Bonds, or any principal amount thereof, that have been tendered by the holders thereof for purchase pursuant to the applicable provisions of the Indenture, other than Refunded Series 2008A-2 Bonds that have been remarketed. Any Tendered Bonds so purchased shall be immediately cancelled, and the interest thereon shall cease to accrue from and after the relevant purchase date. The Escrow Agent shall transfer the amount of the purchase price for any Tendered Bonds to the Tender Agent from moneys held in the Refunded Series 2008A-2 Escrow Account by 2:40 p.m. (New York time) in immediately available funds.]

(iii) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2008A-3 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2008A-3 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2008A-3 Bonds on the Redemption Date are shown on Schedule B-3 hereto. The Escrow Agent as Tender Agent for the Refunded Series 2008A-3 Bonds shall pay the applicable purchase price for any Tendered Bonds in accordance with the applicable provisions of the Indenture from amounts on deposit in the Escrow Fund in accordance herewith. For purposes of this Section 5(a)(iii), “Tendered Bonds” means, as of any date on and after \_\_\_\_\_ and prior to the Redemption Date, the Refunded Series 2008A-3 Bonds, or any principal amount thereof, that have been tendered by the holders thereof for purchase pursuant to the applicable provisions of the Indenture, other than Refunded Series 2008A-3 Bonds that have been remarketed. Any Tendered Bonds so purchased shall be immediately cancelled, and the interest thereon shall cease to accrue from and after the relevant purchase date. The Escrow Agent shall transfer the amount of the purchase price for any Tendered Bonds to the Tender Agent from moneys held in the Refunded Series 2008A-3 Escrow Account by 2:40 p.m. (New York time) in immediately available funds.]

(iv) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2008A-4 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2008A-4 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2008A-4 Bonds on the Redemption Date are shown on Schedule B-4 hereto. The Escrow Agent as Tender Agent for the Refunded Series 2008A-4 Bonds shall pay the applicable purchase price for any Tendered Bonds in accordance with the applicable provisions of the Indenture from amounts on deposit in the Escrow Fund in accordance herewith. For purposes of this Section 5(a)(iv), “Tendered Bonds” means, as of any date on and after \_\_\_\_\_ and prior to the Redemption Date, the Refunded Series 2008A-4 Bonds, or any principal amount thereof, that have been tendered by the holders thereof for purchase pursuant to the applicable provisions of the Indenture, other than Refunded Series 2008A-4 Bonds that have been remarketed. Any Tendered Bonds so purchased shall be immediately cancelled, and the interest thereon shall cease to accrue from and after the relevant purchase date. The Escrow Agent shall transfer the amount of the purchase price for any Tendered Bonds to the Tender Agent from moneys held in the Refunded Series 2008A-4 Escrow Account by 2:40 p.m. (New York time) in immediately available funds.]

(v) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2008B-3 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2008B-3 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2008B-3 Bonds on the Redemption Date are shown on Schedule B-5 hereto. The Escrow Agent as Tender Agent for the Refunded Series 2008B-3 Bonds shall pay the applicable purchase price for any Tendered Bonds in accordance with the applicable provisions of the Indenture from amounts on deposit in the Escrow Fund in accordance herewith. For purposes of this Section 5(a)(v), “Tendered Bonds” means, as of any date on and after \_\_\_\_\_ and prior to the Redemption Date, the Refunded Series 2008B-3 Bonds, or any principal amount thereof, that have been tendered by the holders thereof for purchase pursuant to the applicable provisions of the Indenture, other than Refunded Series 2008B-3 Bonds that have been remarketed. Any Tendered Bonds so purchased shall be immediately cancelled, and the interest thereon shall cease to accrue from and after the relevant purchase date. The Escrow Agent shall transfer the amount of the purchase price for any Tendered Bonds to the Tender Agent from moneys held in the Refunded Series 2008B-3 Escrow Account by 2:40 p.m. (New York time) in immediately available funds.]

(vi) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2009A-1 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2009A-1 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2009A-1 Bonds on the Redemption Date are shown on Schedule B-6 hereto.]

(vii) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2009A-2 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2009A-2 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2009A-2 Bonds on the Redemption Date are shown on Schedule B-7 hereto.]

(viii) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2011A-1 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2011A-1 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2011A-1 Bonds on the Redemption Date are shown on Schedule B-8 hereto.]

(ix) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2011A-2 Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2011A-2 Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2011A-2 Bonds on the Redemption Date are shown on Schedule B-9 hereto.]

Any moneys remaining in the Escrow Fund after payment of the Refunded Bonds in full as provided in this Section 5(a) shall be remitted by the Escrow Agent to the District.

(b) Irrevocable Instructions to Provide Notice. (1) The District acknowledges that it has heretofore provided directions to the Escrow Agent (as Trustee for the Refunded Bonds) to provide notice at least thirty (30) days prior to the Redemption Date of the redemption of each series of the Refunded Bonds (i) by first-class mail to the registered owners of the respective series of the Refunded Bonds, (ii) by first-class mail to the Information Services (as defined in the Indenture) and by electronic means of communication to the Municipal Securities Rulemaking Board (MSRB) through the Electronic Municipal Market Access System (referred to as "EMMA"), at [www.emma.msrb.org](http://www.emma.msrb.org), and (iii) by facsimile and by first-class mail to the Securities Depositories (as defined in the Indenture) such redemption notices in substantially the forms set forth in Exhibit A hereto, all in accordance with the Indenture, and with a copy of the respective notice to the applicable Liquidity Facility Provider (if any), the applicable Remarketing Agents and Moody's and Standard & Poor's (each as defined in the Indenture). The Escrow Agent acknowledges that such notices have been given.

(2) The District hereby irrevocably instructs the Escrow Agent (as Trustee for the Refunded Bonds) to provide notice to the Municipal Securities Rulemaking Board (MSRB) through the Electronic Municipal Market Access System (referred to as "EMMA"), at [www.emma.msrb.org](http://www.emma.msrb.org), substantially in the forms set forth in Exhibit B hereto that an irrevocable deposit has been made with the Escrow Agent and that the respective series of the Refunded Bonds have been deemed to be paid in accordance with the Indenture.



(c) Unclaimed Moneys. Any moneys which remain unclaimed for two years after the date such moneys have become due and payable hereunder shall be repaid by the Escrow Agent to the District, and the Escrow Agent shall thereupon be released and discharged with respect thereto, and the holders of the Refunded Bonds shall look only to the District for the payment on the Refunded Bonds; provided, however, that before making such repayment to the District, the Escrow Agent shall, at the expense of the District, cause to be mailed to the holders of any unredeemed Refunded Bonds, a notice that such money remains unclaimed and that, after a date set forth in the notice, which date shall not be less than thirty (30) days after the date of mailing of the notice, the balance of the money then unclaimed will be returned to the District.

(d) Priority of Payments. The owners of the Refunded Bonds shall have a lien on moneys and securities, if any, in the Escrow Fund which are allocable and sufficient to repay the Refunded Bonds, in accordance with this Escrow Agreement, as verified by the Verification Report, until such moneys and such securities, if any, are used and applied as provided in this Escrow Agreement.

(e) Termination of Obligation. As provided in the Indenture, upon deposit of moneys with the Escrow Agent in the Escrow Fund as set forth in Section 1 hereof and the purchase of the various Federal Securities as provided in Section 2 hereof (if any), and notice of, or provision for notice of redemption having been given as set forth in Section 5(b) hereof, upon the election of the District, which the District hereby makes, the pledge of the Subordinated Water Revenues and other assets under the Indenture and other obligations of the District under the Indenture in respect of the Refunded Bonds shall cease, terminate, and be completely discharged and satisfied.

SECTION 6. Performance of Duties. The Escrow Agent agrees to perform only the duties set forth herein and shall have no responsibility to take any action or omit to take any action not set forth herein.

SECTION 7. Escrow Agent's Authority to Make Investments. Except as provided in Section 2 hereof, the Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement or to sell, transfer or otherwise dispose of the cash or the Federal Securities (if any) held hereunder.

SECTION 8. Indemnity. The District hereby assumes liability for, and agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, officers, directors, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the District or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the cash and securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any) or the proceeds thereof, if any, and any payment, transfer or other application of moneys or securities by the Escrow Agent in

accordance with the provisions of this Escrow Agreement; provided, however, that the District shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's employees or the willful breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the District or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

SECTION 9. Responsibilities of Escrow Agent. The Escrow Agent shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the acceptance of the moneys or securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any) or the proceeds thereof, the sufficiency of the Federal Securities (if any) or cash deposit to pay the Refunded Bonds or any payment, transfer or other application of moneys or obligations by the Escrow Agent in accordance with the provisions of this Escrow Agreement, or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall not be liable for any special, indirect or consequential damages. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the District, and the Escrow Agent assumes no responsibility for the correctness thereof or the correctness of any recitals or statements contained in the Refunded Bonds. The Escrow Agent makes no representation as to the validity of this Escrow Agreement as to the District and, except as otherwise provided herein, the Escrow Agent shall incur no liability with respect thereto. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct or willful breach, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall be under no obligation to inquire into or be in any way responsible for the performance or nonperformance by the District of its obligations. The Escrow Agent may consult with counsel, who may or may not be counsel to the District, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an officer of the District. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to the provisions of this Escrow Agreement.

SECTION 10. Resignation of Escrow Agent. The Escrow Agent may at any time resign by giving thirty (30) days prior written notice to the District of such resignation. The District shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the District does not appoint a successor, the Escrow Agent may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the District may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the District appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the District shall immediately and without further action be superseded by the successor Escrow Agent so appointed.

SECTION 11. Amendments. This Escrow Agreement is made for the benefit of the District and the owners of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such owners, the Escrow Agent and the District; provided, however, that the District and the Escrow Agent may, without the consent of, or notice to, such owners, amend this Escrow Agreement or enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Escrow Agreement or the Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Escrow Agreement; (ii) to grant to, or confer upon the Escrow Agent for the benefit of the owners of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such owners or the Escrow Agent; and (iii) to include under this Escrow Agreement additional funds, securities or properties. The Escrow Agent shall be entitled to rely conclusively upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the owners of the Refunded Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 12. Term. This Escrow Agreement shall commence upon its execution and delivery and terminate on the later to occur of either (i) the date upon which the Refunded Bonds have been paid in accordance with this Escrow Agreement or (ii) the date upon which no unclaimed moneys remain on deposit with the Escrow Agent pursuant to Section 5(c) of this Escrow Agreement.

SECTION 13. Compensation. The Escrow Agent shall receive its reasonable fees and expenses as previously agreed to by the Escrow Agent and the District; provided, however, that under no circumstances shall the Escrow Agent be entitled to any lien whatsoever on any moneys or obligations in the Escrow Fund for the payment of fees and expenses for services rendered or expenses incurred by the Escrow Agent under this Escrow Agreement until payment or provision for payment in full of the Refunded Bonds.

SECTION 14. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the District or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or

agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

SECTION 15. Counterparts. This Escrow Agreement may be executed in counterparts, any of which shall be regarded for all purposes as an original but all of which shall constitute and be but one and the same instrument.

SECTION 16. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 17. Insufficient Funds. If at any time the moneys and investments in the Escrow Fund, including the anticipated proceeds of and earnings thereon, if any, will not be sufficient to make all payments required by this Escrow Agreement, the Escrow Agent shall notify the District, in writing, immediately upon becoming aware of such deficiency, the amount thereof, and, if known to it, the reason therefor. Upon receipt of such notice, the District shall promptly deposit with the Escrow Agent for deposit in the Escrow Fund the amount necessary to cure any such deficiency. The Escrow Agent shall have no further responsibility regarding any such deficiency.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Escrow Agent and as  
Trustee under the Indenture

By: \_\_\_\_\_  
Milly Canessa  
Vice President

SCHEDULE A  
FEDERAL SECURITIES

ESCROW ACCOUNT	TYPE OF SLGS	MATURITY DATE	PAR AMOUNT	COUPON
[Series 2008A-1]				
[Series 2008A-2]				
[Series 2008A-3]				
[Series 2008A-4]				
[Series 2008B-3]				
[Series 2009A-1]				
[Series 2009A-2]				
[Series 2011A-1]				
[Series 2011A-2]				

SCHEDULE B-1

REQUIREMENTS OF THE REFUNDED SERIES 2008A-1 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-2

REQUIREMENTS OF THE REFUNDED SERIES 2008A-2 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.



SCHEDULE B-3

REQUIREMENTS OF THE REFUNDED SERIES 2008A-3 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-4

REQUIREMENTS OF THE REFUNDED SERIES 2008A-4 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-5

REQUIREMENTS OF THE REFUNDED SERIES 2008B-3 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-6

REQUIREMENTS OF THE REFUNDED SERIES 2009A-1 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-7

REQUIREMENTS OF THE REFUNDED SERIES 2009A-2 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-7

REQUIREMENTS OF THE REFUNDED SERIES 2011A-1 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

SCHEDULE B-8

REQUIREMENTS OF THE REFUNDED SERIES 2011A-2 BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

**EXHIBIT A**  
**FORM OF REDEMPTION NOTICES DELIVERED**



**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-1**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated March 20, 2008 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Thirteenth Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2038, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2008A-1	03/20/08	06/01/38				271014UC4

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

**First Class/Registered/Certified:**

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-2**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated March 20, 2008 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Thirteenth Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2038, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2008A-2	03/20/08	06/01/38				271014TW2

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-3**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated March 20, 2008 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Thirteenth Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2038, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2008A-3	03/20/08	06/01/38				271014TX0

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-4**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated March 20, 2008 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Thirteenth Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2038, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2008A-4	03/20/08	06/01/38				271014UA8

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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



**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008B-3**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated April 24, 2008 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Fourteenth Supplemental Indenture, dated as of April 1, 2008, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2026, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2008B-3	04/24/08	06/01/26				271014UB6

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2009A-1**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated March 12, 2009 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Fifteenth Supplemental Indenture, dated as of March 1, 2009, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2026, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2009A-1	03/12/09	06/01/26				271014UQ3

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_\_ to \_\_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2009A-2**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated March 12, 2009 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Fifteenth Supplemental Indenture, dated as of March 1, 2009, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2026, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2009A-2	03/12/09	06/01/26				271014UT7

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

**First Class/Registered/Certified:**

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2011A-1**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated December 27, 2011 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Nineteenth Supplemental Indenture, dated as of December 1, 2011, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2025, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2011A-1	12/27/11	06/01/25				271014UR1

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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



**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2011A-2**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated December 27, 2011 (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Nineteenth Supplemental Indenture, dated as of December 1, 2011, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2025, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2011A-2	12/27/11	06/01/25				271014US9

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

**First Class/Registered/Certified:**

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**EXHIBIT B**  
**FORM OF DEFEASANCE NOTICES TO BE DELIVERED**

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-1**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2008A-1 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2008A-1 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Thirteenth Supplemental Indenture, dated as of March 1, 2008 (collectively, the “Indenture”), cash in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2008A-1 Bonds maturing on June 1, 2038 (the “Refunded Series 2008A-1 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. Sufficient funds will also be available to pay the purchase price of and accrued interest on any Refunded Series 2008A-1 Bonds tendered prior to the Redemption Date. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2008A-1 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2008A-1 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2008A-1 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

<u>Maturity Date</u>	<u>CUSIP</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount Refunded</u>	<u>Mandatory Sinking Account Payment Date (June 1)</u>	<u>Mandatory Sinking Account Payment Amount</u>	<u>Mandatory Sinking Payment Amount Defeased</u>
June 1, 2038*	271014UC4	_____	_____			

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-2**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2008A-2 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2008A-2 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Thirteenth Supplemental Indenture, dated as of March 1, 2008 (collectively, the “Indenture”), cash in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2008A-2 Bonds maturing on June 1, 2038 (the “Refunded Series 2008A-2 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. Sufficient funds will also be available to pay the purchase price of and accrued interest on any Refunded Series 2008A-2 Bonds tendered prior to the Redemption Date. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2008A-2 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2008A-2 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2008A-2 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

		Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
Maturity Date	CUSIP					
June 1, 2038*	271014TW2					

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_\_ through \_\_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-3**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the "Series 2008A-3 Bonds") that the East Bay Municipal Utility District (the "District") has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2008A-3 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Thirteenth Supplemental Indenture, dated as of March 1, 2008 (collectively, the "Indenture"), cash in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2008A-3 Bonds maturing on June 1, 2038 (the "Refunded Series 2008A-3 Bonds"), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. Sufficient funds will also be available to pay the purchase price of and accrued interest on any Refunded Series 2008A-3 Bonds tendered prior to the Redemption Date. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2008A-3 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2008A-3 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2008A-3 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
June 1, 2038*	271014TX0	_____	_____			

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_\_ through \_\_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008A-4**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2008A-4 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2008A-4 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Thirteenth Supplemental Indenture, dated as of March 1, 2008 (collectively, the “Indenture”), cash in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2008A-4 Bonds maturing on June 1, 2038 (the “Refunded Series 2008A-4 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. Sufficient funds will also be available to pay the purchase price of and accrued interest on any Refunded Series 2008A-4 Bonds tendered prior to the Redemption Date. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2008A-4 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2008A-4 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2008A-4 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

		Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
Maturity Date	CUSIP					
June 1, 2038*	271014UA8					

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008B-3**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2008B-3 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2008B-3 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Fourteenth Supplemental Indenture, dated as of April 1, 2008 (collectively, the “Indenture”), cash in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2008B-3 Bonds maturing on June 1, 2026 (the “Refunded Series 2008B-3 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. Sufficient funds will also be available to pay the purchase price of and accrued interest on any Refunded Series 2008B-3 Bonds tendered prior to the Redemption Date. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2008B-3 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2008B-3 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2008B-3 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

		Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
Maturity Date	CUSIP					
June 1, 2026*	271014UB6					

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_\_ through \_\_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_\_.

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



**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2009A-1**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2009A-1 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2009A-1 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Fifteenth Supplemental Indenture, dated as of March 1, 2009 (collectively, the “Indenture”), cash and federal securities (if any) in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2009A-1 Bonds maturing on June 1, 2026 (the “Refunded Series 2009A-1 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2009A-1 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2009A-1 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2009A-1 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
June 1, 2026*	271014UQ3	_____	_____			

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2009A-2**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2009A-2 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2009A-2 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Fifteenth Supplemental Indenture, dated as of March 1, 2009 (collectively, the “Indenture”), cash and federal securities (if any) in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2009A-2 Bonds maturing on June 1, 2026 (the “Refunded Series 2009A-2 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2009A-2 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2009A-2 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2009A-2 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
June 1, 2026*	271014UT7	_____	_____	_____	_____	_____

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2011A-1**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2011A-1 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2011A-1 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Nineteenth Supplemental Indenture, dated as of December 1, 2011 (collectively, the “Indenture”), cash and federal securities (if any) in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2011A-1 Bonds maturing on June 1, 2025 (the “Refunded Series 2011A-1 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2011A-1 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2011A-1 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2011A-1 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
June 1, 2025*	271014UR1	_____	_____			

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2011A-2**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2011A-2 Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2011A-2 Bonds under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Nineteenth Supplemental Indenture, dated as of December 1, 2011 (collectively, the “Indenture”), cash and federal securities (if any) in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2011A-2 Bonds maturing on June 1, 2026 (the “Refunded Series 2011A-2 Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2011A-2 Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2011A-2 Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2011A-2 Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
June 1, 2025*	271014US9	_____	_____			

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

purchase and the District agrees to sell and deliver to the Underwriters all (but not less than all) of the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation] (the "Series [Designation] Bonds") in the aggregate principal amount of \$\_\_\_\_\_.

(b) The Series [Designation] Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the "Act") and the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the "Indenture"). The Series [Designation] Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series [Designation] Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series [Designation] Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Water Revenues of the District. The Series [Designation] Bonds shall be dated the Closing Date (defined below), shall bear interest payable June 1 and December 1 of each year, commencing on \_\_\_\_\_, and shall mature on June 1 in each year, subject to earlier redemption, as set forth in Exhibit A.

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [\$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2008A, \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2008B, \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2009A and \$\_\_\_\_\_ aggregate principal amount of the District's Water System Revenue Refunding Bonds, Series 2011A] (collectively, the "Refunded Bonds"), (ii) funding the cost of terminating a portion of interest rate swaps relating to the Refunded Bonds and (iii) paying costs of issuance of the Series [Designation] Bonds.

(c) The aggregate purchase price for the Series [Designation] Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ [plus/less original issuance premium/discount of \$\_\_\_\_\_] less \$\_\_\_\_\_ of Underwriters' discount).

If this offer shall be accepted by the District, then the Underwriters, shall, immediately upon the acceptance by the District of this offer (or as soon thereafter as practicable), deliver or cause to be delivered to the District a wire or cashier's check made payable to the order of the District, in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of their obligations to accept delivery of and pay for the Series [Designation] Bonds on the Closing Date in accordance with the provisions of this Purchase Contract (such deposit is herein referred to as the "Good Faith Deposit"). Such deposit shall not be expended by the District pending the Closing except as provided below. On the Closing Date, the Good Faith Deposit will be applied towards the purchase price stated above. If the District fails to deliver the Series [Designation] Bonds on the Closing Date, or if the conditions to the obligations of the Underwriters to purchase, accept delivery of and pay for the Series [Designation] Bonds as set forth in this Purchase Contract shall be unsatisfied (unless waived by the Underwriters), or if such obligations of the Underwriters shall be terminated by the

Underwriters for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and the Good Faith Deposit with interest calculated at the prevailing 1-month LIBOR rate shall be immediately returned to the Underwriters. In the event that the Underwriters fail (other than for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the Series [Designation] Bonds on the Closing Date as herein provided, the Good Faith Deposit shall be retained by the District and shall constitute full liquidated damages for such failure and for any and all defaults hereunder on the part of the Underwriters, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriters with respect to such failure.

(d) At 8:00 a.m., California time, on \_\_\_\_\_, or at such other time or on such other date as the District and the Representative mutually agree upon (the "Closing Date"), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriters, the Series [Designation] Bonds, in fully registered book-entry eligible form, through the facilities of The Depository Trust Company ("DTC") in New York, New York, duly executed, and at the offices of Curls Bartling P.C., Lake Merritt Plaza, 1999 Harrison Street, Suite 610, Oakland, California 94612, or at such other place as shall have been mutually agreed upon by the District and the Representative, and the other documents mentioned herein. The Underwriters will accept such delivery and pay the purchase price of the Series [Designation] Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the "Closing") to the order of the Trustee in an amount equal to the purchase price.

(e) The Underwriters agree to make a bona fide public offering of the Series [Designation] Bonds at the initial offering prices set forth in the Official Statement, which prices may be changed from time to time by the Underwriters after such initial offering.

## 2. Use and Preparation of Official Statement.

The District hereby ratifies, confirms and approves of the distribution and use by the Underwriters prior to the date hereof of the preliminary official statement dated \_\_\_\_\_ relating to the Series [Designation] Bonds (the "Preliminary Official Statement") and the making available of the Preliminary Official Statement to investors prior to the date hereof on the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriters, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the final Official Statement relating to the Series [Designation] Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the Representative (including the appendices thereto and any amendments or supplements as have been approved by the District and the Underwriters, the "Official Statement"), in such quantity as the Underwriters shall reasonably request. The District hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series [Designation] Bonds. The Representative hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.

3. Representations, Warranties and Agreements of the District.

The District hereby represents, warrants and agrees with the Underwriters as follows:

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State of California with full legal right, power and authority to issue the Series [Designation] Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract, the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agreement”), and the Continuing Disclosure Agreement, dated \_\_\_\_\_, between the District and the Trustee, (the “Disclosure Agreement” and together with the Indenture, the Escrow Agreement and this Purchase Contract, the “District Documents”);

(b) By all necessary official action of the District prior to or concurrently with the acceptance hereof, the District has duly approved, ratified and confirmed distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, and has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents and the consummation by it of all other transactions contemplated by the Official Statement and the District Documents and the District is and will be in compliance in all material respects with the provisions thereof; the District Documents are or as of the Closing Date will be in full force and effect in substantially the form heretofore submitted to the Underwriters with only such changes as shall have been agreed to in writing by the Underwriters; and the District Documents constitute valid and legally binding agreements of the District enforceable against the District in accordance with their terms; provided, however, that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights and to the limitations on legal remedies against public agencies in the State of California;

(c) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not in Material Breach or Default under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement, and compliance with the provisions on the District’s part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term “Material Breach or Default” means any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Water System);

(d) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, deliver or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Water System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series [Designation] Bonds;

(f) Under the laws of the State of California, the authority of the District to determine, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System is not presently subject to the regulatory jurisdiction of the California Public Utilities Commission, or other local, regional or state regulatory authority, and, except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not aware of any legislation proposed or pending to limit or restrict such rates, fees and charges;

(g) The Series [Designation] Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriters as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series [Designation] Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Water Revenues (as defined in the Indenture) and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series [Designation] Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Official Statement;

(i) The financial statements of the District contained in the Official Statement do and will fairly present the financial position and results of operations of the District as of the dates and



for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Water System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order (i) to qualify the Series [Designation] Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Series [Designation] Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series [Designation] Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject;

(k) The Preliminary Official Statement (except for information relating to offering prices, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the securities depending on such matters, and the identity of the underwriters) did not as of the date thereof and, as supplemented or amended through the date hereof, does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect (except for information relating to DTC and its book-entry only system, as to which no opinion or view is expressed);

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined below) for the Series [Designation] Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the District will notify the Underwriters, and, if in the opinion of the District, the Underwriters or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriters (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and their counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the District will furnish such information with respect to itself as the Underwriters may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series [Designation] Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Representative on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series [Designation] Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series [Designation] Bonds the date specified as such in a notice from the Representative stating the date which is the End of the Underwriting Period;

(p) After the Closing, the District will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriters shall reasonably object in writing;

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District will apply, or cause the application of, the proceeds of the Series [Designation] Bonds in accordance with the Indenture;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriters in connection with the execution and delivery of the Series [Designation] Bonds, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(t) Except as disclosed in the Official Statement, the District has never failed within the last five years to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of enumerated events.

#### 4. Conditions to the Obligations of the Underwriters.

The Underwriters hereby enter into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters’ obligations under this Purchase Contract to purchase, to accept

delivery of and to pay for the Series [Designation] Bonds shall be subject, at the option of the Underwriters, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(a) The Underwriters shall receive, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the Official Statement (including all information previously permitted to have been omitted by Rule 15c2-12 and any amendments or supplements as have been approved by the Underwriters), in such reasonable quantity as the Underwriters shall have requested;

(b) The representations and warranties of the District contained herein shall be true and correct in all material respects on the date hereof and on the Closing Date, as if made on and at the Closing Date;

(c) At the Closing, the District Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the District, all in substantially the forms heretofore submitted to the Underwriters, with only such changes as shall have been agreed to in writing by the Underwriters (which consent shall not be unreasonably withheld), and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the Board of Directors of the District as, in the opinion of Fulbright & Jaworski LLP, Los Angeles, California, and Curls Bartling P.C., Oakland, California ("Co-Bond Counsel"), and Orrick, Herrington & Sutcliffe LLP, San Francisco, California, counsel to the Underwriters (hereinafter, "Underwriters' Counsel"), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Series [Designation] Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriters (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and make any payment for the Series [Designation] Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been proposed for consideration by either such Committee by any member thereof or presented as an option for consideration by either such Committee by the staff of such Committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation

has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series [Designation] Bonds which, in the reasonable judgment of the Underwriters, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series [Designation] Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series [Designation] Bonds, or the Series [Designation] Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(3) the declaration of war or the escalation of, or engagement in, military hostilities by the United States or the occurrence of any other national or international emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(4) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series [Designation] Bonds or obligations of the general character of the Series [Designation] Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriters;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series [Designation] Bonds, or the issuance, offering or sale of the Series [Designation] Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series [Designation] Bonds or the underlying rating of any of the District's Water System Revenue Bonds by a national rating agency then rating the Series [Designation] Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriters, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriters, to materially adversely affect the market for the Series [Designation] Bonds or the sale of the Series [Designation] Bonds, at the contemplated offering prices (or yields).

(e) At or prior to the Closing Date, the Underwriters shall have received the following documents, in each case satisfactory in form and substance to the Underwriters and Underwriters' Counsel:

(1) Counterparts of the District Documents, duly executed and delivered by the respective parties thereto;

(2) The approving opinion of Co-Bond Counsel, dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(3) The supplemental opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit B;

(4) The opinion of the Office of General Counsel of the District, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit C;

(5) The opinion of counsel to the Trustee, dated the Closing Date and addressed to the District and the Representative, in substantially the form attached hereto as Exhibit D;

(6) The defeasance opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit E;

(7) The opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriters ("Special Tax Counsel"), dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(8) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Representative, to the effect that (a) the Series [Designation] Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine

independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriters, nothing has come to their attention which would cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through F thereto, and information regarding DTC and its book-entry only system;

(9) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriters, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official's knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 20\_\_, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Water System, in any case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series [Designation] Bonds; and (d) the projected operating results and debt service coverage contained in Table [19] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

(10) A certificate, dated the Closing Date, signed by a duly authorized official of the Trustee, satisfactory in form and substance to the Underwriters, to the effect that: (a) the Trustee is a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having the full power and being qualified to enter into and perform its duties under the Indenture, the Escrow Agreement and the Disclosure Agreement (collectively, the "Trustee Documents"); (b) the execution and delivery of the Trustee Documents and compliance with the provisions on the Trustee's part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject; and (c) the Trustee has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action, to the best of such official's knowledge after reasonable investigation, threatened against the Trustee, as such but not in its individual capacity, affecting the existence of the Trustee, or the titles of its officers to their respective offices, or contesting or affecting the validity or enforceability of the Trustee Documents, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Trustee Documents;

(11) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Trustee Documents;

(12) a copy of the Preliminary Official Statement;

(13) A copy of the Official Statement, executed on behalf of the District by authorized representatives of the District;

(14) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series [Designation] Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

(15) Evidence that any ratings described in the Official Statement are in full force and effect as of the Closing Date;

(16) A copy of the Blue Sky Memorandum with respect to the Series [Designation] Bonds, prepared by Underwriters' Counsel;

(17) A Tax Certificate signed by the District relating to the Series [Designation] Bonds, in form and substance satisfactory to Special Tax Counsel;

(18) A copy of the Blanket Letter of Representations to DTC relating to the Series [Designation] Bonds signed by the District;

(19) A Verification Report of [Grant Thornton LLP], addressed to the Representative and dated the Closing Date, in form and substance acceptable to Co-Bond Counsel and Underwriters' Counsel; and

(20) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters, Underwriters' Counsel or Co-Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the District herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the District Documents and the Official Statement.

If the District shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Purchase Contract or if the Underwriters' obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District and neither the Underwriters nor the District shall have any further obligations hereunder.

## 5. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series [Designation] Bonds to the Underwriter, including the costs of printing of the Series [Designation] Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series [Designation]

Bonds and the fees and expenses of Co-Bond Counsel and Underwriters' Counsel shall be paid either from the proceeds of the Series [Designation] Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriters' discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract, including, but not limited to, meals, transportation, lodging and entertainment, of those employees. The District shall pay the reasonable out-of-pocket expenses of the Underwriters (included in the expense component of the Underwriters' Discount), including travel and other expenses and the California Debt and Investment Advisory Commission fee.

6. Notices.

Any notice or other communication to be given under this Purchase Contract may be given by delivering the same in writing to the respective parties at the following address:

District: East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607  
Attention: Director of Finance

Representative: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

7. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Series [Designation] Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series [Designation] Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

8. Effectiveness and Counterpart Signatures.

This Purchase Contract shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by duly authorized officials of the District and shall be valid and enforceable as of the time of such acceptance. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9. Parties in Interest.

This Purchase Contract is made solely for the benefit of the District and the Underwriters (including the successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof.



10. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriters with respect to the purchase of the Series [Designation] Bonds.

11. Headings.

The headings of the sections of this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

12. Governing Law.

This Purchase Contract shall be construed in accordance with the laws of the State of California.

Very truly yours,

\_\_\_\_\_, as Representative of the  
Underwriters

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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

EXHIBIT A

MATURITY SCHEDULE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE  
REFUNDING BONDS, SERIES [DESIGNATION]

Dated Date: Date of Delivery

Maturity Date <u>(June 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
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EXHIBIT B

FORM OF SUPPLEMENTAL OPINION OF  
CO-BOND COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the "District") in connection with the issuance, sale and delivery of the District's Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Bonds (collectively, the "Indenture").

The Bonds are being sold on the date hereof by the District to \_\_\_\_\_, as Representative of itself and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, as Underwriters, pursuant to a Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract").

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated \_\_\_\_\_, relating to the Bonds (the "Official Statement").

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of the District and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary to render this opinion, we are of the opinion that:

1. The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE SERIES [Designation] BONDS," and "SECURITY FOR THE SERIES [DESIGNATION] BONDS," and in "APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," and "APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT" (excluding the statements under each such caption relating to The Depository Trust Company ("DTC"), Cede & Co. and the book-entry system, as to all of which we

express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Water Interest Rate Swap Agreements and the Extendable Municipal Commercial Paper Notes (Water Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

2. The Official Statement and the execution and delivery thereof have been duly approved by the District, and the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement have been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the District, enforceable against the District in accordance with their respective terms. We call attention to the fact that the rights and obligations under the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement and the enforceability thereof are subject to and may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver (including, without limitation, waiver of jury trial or consent to nonjury trial) provisions contained in the foregoing documents.

3. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

4. The issuance of the Bonds, the execution and delivery of the \_\_\_\_\_ Supplemental Indenture, the Escrow Agreement, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or Resolution No. 33705-09 of the District, adopted on March 10, 2009, authorizing the District's extendable commercial paper program or, to the best of our knowledge, any loan agreement with any State governmental agency to which the District is a party or to which the District or any of its property or assets are otherwise subject.

Based upon our participation in the preparation of the Preliminary Official Statement, dated \_\_\_\_\_, relating to the Bonds, and the Official Statement as co-bond counsel and on the basis of the information made available to us in the course of the foregoing, but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement (except to the extent expressly set forth in paragraph 1 above), as of the date hereof no facts have come to the attention of the personnel in our respective firms directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement or the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of this Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the

discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, underwriters' discount and CUSIP numbers, or (b) the Official Statement as of its date or as of the hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view).

During the period from the date of the Official Statement to the date of this opinion, except for our review of the certificates and opinions regarding the Official Statement delivered on the date hereof, we have not undertaken any procedures or taken any actions which were intended to or were likely to elicit information concerning the accuracy, completeness or fairness of any of the statements contained in the Official Statement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

We are furnishing you this letter at the request of the District and solely for the information of, and assistance to, you in conducting and documenting your investigation of the affairs of the District in connection with the offering of the Bonds and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, including but not limited to the purchase or sale of the Bonds, nor is it to be referred to in whole or in part in the Official Statement or any other document, except that it may be included in, and reference may be made to it in any list of, the closing documents pertaining to the delivery of the Bonds. The provision of this opinion to you shall not create any attorney-client relationship between either of our firms and you. This opinion may not be relied upon by any other person, firm, corporation or other entity without our prior written consent.

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the "District"), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 4(e)(4) of the Purchase Contract (the "Purchase Contract") dated \_\_\_\_\_ between the District and \_\_\_\_\_, as representative of the underwriters (the "Underwriters") listed therein, and relating to the sale of \$ \_\_\_\_\_ aggregate principal amount of District's Water System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

In rendering this opinion, I have examined the following documents: (i) the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture dated as of \_\_\_\_\_, by and between the District and the Trustee (collectively, the "Indenture"); (ii) the Continuing Disclosure Agreement, dated \_\_\_\_\_, by and between the District and the Trustee; (iii) the Official Statement; (iv) the Series [Designation] Bonds; (v) the Escrow Agreement; and (vi) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement, the Escrow Agreement and the Purchase Contract are collectively referred to herein as the "District Documents." In addition, I call attention to the fact that the rights and obligations under the District Documents, the Series [Designation] Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.

Based on the foregoing, I am of the opinion that:

(1) The District is, and was at all relevant times, a municipal utility district duly organized and validly existing under the laws of the State of California.

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series [Designation] Bonds (the “Resolutions”), the District Documents and the Official Statement were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Official Statement by the District to the Underwriters on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series [Designation] Bonds, the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) which contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Water System.

(4) The issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate, to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the

valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement and based upon the information made available to me during the preparation of the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that the information contained in the Official Statement under the captions “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A thereto (excluding therefrom the financial statements and the statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and the Closing Date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) The Subordinated Water Revenues are free and clear of and from any and all liens and encumbrances other than as set forth in the Official Statement.

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by the Water System and is not presently subject to the regulatory jurisdiction of any state, regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series [Designation] Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

This opinion is delivered to you as the representatives of the Underwriters and is solely for the benefit of the Underwriters and is not to be used by any other person or for any other purpose.

Very truly yours,

Jylana Collins  
General Counsel



EXHIBIT D

FORM OF TRUSTEE COUNSEL'S OPINION

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, Series [Designation]

Ladies and Gentlemen:

We have acted as counsel to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), in connection with the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the "District") and the Trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture") in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation]. This opinion is rendered pursuant to Section 4(e)(5) of the Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract"), between the District and \_\_\_\_\_, as Representative of the Underwriters listed therein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In connection therewith, we have examined and reviewed such documents and certificates of public officials, officers of the Trustee and others as we have deemed necessary for the purposes of this opinion. In all such examinations, we have assumed the genuineness of all signatures (other than those of the Trustee), the authenticity of all documents submitted to us as originals, the conformity to original and certified documents of all copies submitted to us as conformed or photostatic copies, and the authenticity of the originals of all such latter documents. As to various questions of fact material to this opinion, we have relied, to the extent that we deemed such reliance proper, upon such certificates of officers of the Trustee. We have examined an executed counterpart of the Indenture and have assumed the power, municipal or corporate, as the case may be, and the legal authority to execute and deliver the same of the District and the due authorization, execution and delivery thereof by the District.

Based upon the foregoing, we are of the opinion under the laws of the State of California:

1. The Trustee is a national banking association duly organized and validly existing under and by virtue of the laws of the United States of America, having full power and being qualified to enter into and perform its duties under the Trustee Documents.

2. The Trustee has taken all corporate action necessary to assume the duties and obligations of Trustee under the Trustee Documents and to authorize in such capacity the execution and delivery of the Trustee Documents and the acceptance of the duties as Trustee does not and will

not contravene any law of governmental regulation or order presently binding on the Trustee or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which the Trustee is a party or by which the Trustee is or may be bound.

3. The Trustee has duly executed and delivered the Trustee Documents and the Trustee Documents constitute the legal, valid and binding obligations of the Trustee, enforceable in accordance with their terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought.

4. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of any of its duties and obligations under the Trustee Documents (insofar as it has the obligation to obtain any such approval, consent or order) have been obtained and are in full force and effect.

Respectfully submitted,

EXHIBIT E

FORM OF DEFEASANCE OPINION

[Closing Date]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Water System Revenue Refunding Bonds,  
Series [Designation]

Ladies and Gentlemen:

We have acted as co-bond counsel in connection with the issuance by the East Bay Municipal Utility District (the “District”) of its Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (collectively, the “Act”) and a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California (which has been succeeded by The Bank of New York Mellon Trust Company, N.A.), as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

The Series [Designation] Bonds are being issued primarily for the purpose of refunding [\$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2008A, \$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2008B, \$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2009A and \$\_\_\_\_\_ principal amount of the District’s outstanding Water System Revenue Refunding Bonds, Series 2011A] (the “Refunded Bonds”).

In our capacity as co-bond counsel, we have examined a certified copy of the proceedings relating to the issuance of the Refunded Bonds and the Series [Designation] Bonds and such other documents and instruments as we deemed necessary to render the opinions set forth herein, including the Indenture, data and computations prepared by \_\_\_\_\_, a verification report relating to the Refunded Bonds, dated the date hereof and prepared by [Grant Thornton LLP] (the “Verification

Report”) and the Escrow Agreement relating to the Refunded Bonds, dated as of \_\_\_\_\_ (the “Escrow Agreement”), by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”). As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of District officers and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based on and subject to the foregoing, we are of the opinion that:

1. The defeasance of the Refunded Bonds and the deposit of moneys with the Escrow Agent pursuant to the Escrow Agreement are authorized by and comply with the conditions and terms of the Indenture.

2. Provision has been made to pay the principal of and interest on the Refunded Bonds upon the redemption thereof, on \_\_\_\_\_, all in accordance with the conditions and terms of the Indenture. Accordingly, the Refunded Bonds have been deemed to have been paid within the meaning expressed in the Indenture, the owners of the Refunded Bonds have ceased to be entitled to the pledge of and charge and lien established by the Indenture, and all agreements, covenants and other obligations of the District to the owners of the Refunded Bonds under the Indenture have ceased, terminated and become void and have been discharged and satisfied.

In rendering the opinions above, we have relied on the Verification Report and the Escrow Agreement as to matters contained therein. We note that [Grant Thornton LLP] has made certain assumptions in the Verification Report which we have not independently verified. We have also assumed that all other sums payable by the District under the Indenture with respect to the Refunded Bonds have been paid and that provision has been made by the District for the mailing of a notice to the respective owners of the Refunded Bonds that the moneys described in the preceding paragraph are so available for payment.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is addressed to you and it is not to be quoted, used, circulated or otherwise referred to for any other purpose without our written consent. No attorney-client relationship has existed or exists between us and your firms in connection with the Series [Designation] Bonds or by virtue of this opinion.

Respectfully submitted,

Respectfully submitted,

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated **[Closing Date]**, is executed and delivered by the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”) in connection with the issuance of \$**[Par Amount]** aggregate principal amount of Water System Revenue Refunding Bonds, **[Name of Series]** (the “Bonds”). The Bonds are being issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as supplemented and amended, including as supplemented and amended by the **[Number of the Supplemental Indenture]** Supplemental Indenture, dated as of **[Supplemental Indenture Date]**, providing for the issuance of the Bonds (collectively, the “Indenture”). In connection therewith the District and the Trustee covenant and agree as follows:

Section 1. Purpose of this Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the District and the Trustee for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter (as defined herein) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

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

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Director of Finance or the Treasury Manager of the District or a designee of the Director of Finance, or such other officer or employee as the District shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the District and which has filed with the Trustee a written acceptance of such designation.

“Holder” shall mean either the registered owners of the Bonds or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the Official Statement for the Bonds dated *[Sale Date]*, as may be updated prior to the delivery of the Bonds.

“Participating Underwriter” shall mean any underwriter of the Bonds listed on the cover page of the Official Statement required to comply with the Rule in connection with offering of the Bonds.

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

“SEC” shall mean the United States Securities and Exchange Commission.

### Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the District’s Fiscal Year (presently June 30), commencing with the report for the 2012-13 Fiscal Year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that if the audited financial statements of the District are not available by the date required above for the filing of the Annual Report, the District shall submit the audited financial statements as soon thereafter as available. If the District’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) If the District is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the District shall send to the MSRB a notice in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

- (i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

- (ii) file a report with the District and (if the Dissemination Agent is not the Trustee, the Trustee) certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement, and stating the date it was provided.

Section 4. Content of Annual Reports. The District's Annual Report shall contain or include by reference the following categories or similar categories of information updated to incorporate information for the most recent fiscal or calendar year, as applicable (the tables referred to below are those appearing in the Official Statement relating to the Bonds):

- (a) The audited financial statements of the District for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;
- (b) A table showing the Number of Accounts and Metered Annual Consumption (by customer type) for the preceding Fiscal Year;
- (c) A table showing Water Sales Revenues, Consumption and Number of Connections by Customer Type for the preceding Fiscal Year;
- (d) A table showing Water System Sources of Funds by Source;
- (e) A table showing Water System Rates and Charges for the preceding Fiscal Year (as well as average rate increases);
- (f) A table showing Outstanding Water System Debt as of the preceding Fiscal Year;
- (g) A table showing water revenues, operating and maintenance expenses, debt service on water revenue bonds and debt service coverage for the water revenue bonds for the most recent Fiscal Year; and
- (h) Any material changes in the water supply.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the MSRB or the SEC. If any document included by reference is a final official statement, it must be available from the MSRB. The District shall clearly identify each such other document so included by reference.

Section 5.     Reporting of Significant Events.

(a)     Pursuant to the provisions of this section, upon the occurrence of any of the following events (in each case to the extent applicable) with respect to the Bonds, the District shall give, or cause to be given by so notifying the Dissemination Agent in writing and instructing the Dissemination Agent to give, notice of the occurrence of such event, in each case, pursuant to Section 5(c) hereof:

1.     principal or interest payment delinquencies;
2.     non-payment related defaults, if material;
3.     modifications to the rights of the Bondholders, if material;
4.     optional, contingent or unscheduled calls, if material, and tender offers;
5.     defeasances;
6.     rating changes;
7.     adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
8.     unscheduled draws on the debt service reserves reflecting financial difficulties;
9.     unscheduled draws on the credit enhancements reflecting financial difficulties;
10.    substitution of the credit or liquidity providers or their failure to perform;
11.    release, substitution or sale of property securing repayment of the Bonds, if material;
12.    bankruptcy, insolvency, receivership or similar proceedings of the District, which shall occur as described below;
13.    appointment of a successor or additional trustee or the change of name of a trustee, if material, or;
14.    the consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the Water System of the District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the



termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

For these purposes, any event described in item 12 of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District.

(b) Upon receipt of notice from the District and instruction by the District to report the occurrence of any Listed Event, the Dissemination Agent shall provide notice thereof to the MSRB in accordance with Section 5(c) hereof. In the event the Dissemination Agent shall obtain actual knowledge of the occurrence of any of the Listed Events, the Dissemination Agent shall, immediately after obtaining such knowledge, contact the Disclosure Representative, inform such person of the event, and request that the District promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to Section 5(c). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Event shall mean actual knowledge by the Dissemination Agent, if other than the Trustee, and if the Dissemination Agent is the Trustee, then by the officer at the corporate trust office of the Trustee with regular responsibility for the administration of matters related to the Indenture. The Dissemination Agent shall have no responsibility to determine the materiality, if applicable, of any of the Listed Events.

(c) The District, or the Dissemination Agent, if the Dissemination Agent has been instructed by the District to report the occurrence of a Listed Event, shall file a notice of such occurrence with the MSRB in a timely manner not more than ten business days after the occurrence of the event.

Section 6. Termination of Reporting Obligation. The District’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee, upon notice from the District, shall be the Dissemination Agent. The initial Dissemination Agent shall be the Trustee. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this

Disclosure Agreement. The Dissemination Agent shall receive compensation for the services provided pursuant to this Disclosure Agreement.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the District and the Dissemination Agent may amend this Disclosure Agreement (and, to the extent that any such amendment does not materially change or increase its obligations hereunder, the Dissemination Agent shall agree to any amendment so requested by the District), and any provision of this Disclosure Agreement may be waived; *provided*, that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Section 3(a), Section 4 or Section 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Filings with the MSRB. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in

addition to that which is specifically required by this Disclosure Agreement, the District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds and upon provision of indemnification satisfactory to the Trustee, shall), or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the District or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance hereunder.

Section 12. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if the Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations on liability afforded to the Trustee thereunder. The Dissemination Agent (if other than the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the District 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 any loss, expense and liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

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

To the District:

East Bay Municipal Utility District  
375 Eleventh Street, MS 801  
Oakland, California 94607-4240  
Attention: Treasury Manager  
Phone: 510-287-0231  
Fax: 510-287-0293

To the Dissemination Agent:

The Bank of New York Mellon  
Trust Company, N.A.  
100 Pine Street, Suite 3100  
San Francisco, California 94111  
Phone: 415-263-2420  
Fax: 415-399-1647

Section 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the District, the Trustee, the Dissemination Agent, the Participating Underwriters and the Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Disclosure Agreement has been executed on behalf of the District and the Trustee by their duly authorized representatives.

Dated: *[Closing Date]*

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

Dated: *[Closing Date]*

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

By: \_\_\_\_\_  
Milly Canessa  
Vice President

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of District: EAST BAY MUNICIPAL UTILITY DISTRICT

Name of Bond Issue: \$[*Par Amount*] East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, [*Name of Series*]  
(the “Bonds”)

Date of Issuance: [*Closing Date*]

NOTICE IS HEREBY GIVEN that the East Bay Municipal Utility District (the “District”) has not provided an Annual Report with respect to the above-named Bonds as required by Section 3(a) of the Continuing Disclosure Agreement, dated [*Closing Date*], (and effective as of the Date of Issuance) by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and in accordance with Section [*insert section number*] of the [*Number of the Supplemental Indenture*] Supplemental Indenture, dated as of [*Supplemental Indenture Date*], by and between the District and the Trustee, supplementing the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented and amended, by and between the District and the Trustee, providing for the issuance of the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

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

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee on behalf of the  
District

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

cc: East Bay Municipal Utility District

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_****NEW ISSUE – BOOK ENTRY ONLY****See “RATINGS” herein.**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Tax Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds. See “TAX MATTERS.”*

**[DISTRICT LOGO]****\$ \_\_\_\_\_ \*****EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)****WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]****Dated: Date of Delivery****Due: June 1, as shown on inside cover**

*This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.*

The East Bay Municipal Utility District (the “District”) is issuing its Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”). The Series [Designation] Bonds will be issued in fully-registered form, without coupons, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series [Designation] Bonds. Beneficial ownership interests in the Series [Designation] Bonds may be purchased in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Interest on the Series [Designation] Bonds is payable semiannually on June 1 and December 1 of each year, commencing \_\_\_\_\_. Principal is payable on June 1 of the years set forth on the inside front cover. The principal of or redemption price of, and interest on, the Series [Designation] Bonds are payable by the Trustee to DTC, which is obligated in turn to remit such principal or redemption price and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

*The Series [Designation] Bonds are subject to redemption prior to maturity as more fully described herein. See “THE SERIES [DESIGNATION] BONDS – Redemption.”*

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of a portion of the District’s outstanding variable rate Water System Revenue Bonds, funding the costs of terminating a portion of certain interest rate swap agreements relating thereto and paying the costs of issuance in connection with the Series [Designation] Bonds, as described herein. See “PLAN OF FINANCE.”

The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Water Revenues as more fully described herein. Subordinated Water Revenues generally consist of the District’s Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of all Water Operation and Maintenance Costs. The Series [Designation] Bonds have been issued on a parity with the District’s Water System Revenue Bonds and Parity Debt heretofore or hereafter issued, as more fully described herein, including certain payment obligations of the District under interest rate swap agreements entered into by the District in connection therewith. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.

**MATURITY SCHEDULE  
(SEE INSIDE COVER)**

*The Series [Designation] Bonds will be offered when, as and if issued, subject to the approval of validity by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. It is anticipated that the Series [Designation] Bonds will be available for delivery through the facilities of DTC in New York, New York by Fast Automated Securities Transfer (FAST) on or about \_\_\_\_\_.*

**[UNDERWRITER(S)]**

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

\* Preliminary; subject to change.

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

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

**MATURITY SCHEDULE**

<i><b>Maturity Date</b></i> <i><b>(June 1)</b></i>	<i><b>Principal</b></i> <i><b>Amount</b></i>	<i><b>Interest</b></i> <i><b>Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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<sup>†</sup> CUSIP is a registered trademark of The American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. Neither the District nor the Underwriter(s) assume any responsibility for the accuracy of the CUSIP data.

\* Preliminary; subject to change.

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
Alameda and Contra Costa Counties, California  
375 - 11th Street  
Oakland, California 94607  
(866) 403-2683

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**Board of Directors**

Andy Katz, *President*  
Katy H. Foulkes, *Vice President*  
John A. Coleman  
Doug A. Linney  
Lesa R. McIntosh  
Frank G. Mellon  
William B. Patterson

**Management**

Alexander R. Coate, *General Manager*  
Jylana D. Collins, *General Counsel*  
Eric L. Sandler, *Director of Finance*  
Bennett K. Horenstein, *Director of Wastewater*  
Xavier J. Irias, *Director of Engineering and Construction*  
Carol K. Nishita, *Director of Administration*  
Richard G. Sykes, *Director of Water and Natural Resources*  
Michael J. Wallis, *Director of Operations and Maintenance*  
Lynelle M. Lewis, *Secretary of the District*  
Wanda B. Hendrix, *Treasury Manager*

**Co-Bond Counsel**

Fulbright & Jaworski LLP  
Los Angeles, California,  
a member of Norton Rose Fulbright

Curls Bartling P.C.  
Oakland, California

**Financial Advisor**

Montague DeRose and Associates, LLC  
Walnut Creek, California

**Trustee**

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

**Verification Agent**

[Grant Thornton LLP  
Minneapolis, Minnesota]



No dealer, broker, salesperson or other person has been authorized by the District or the Underwriter(s) to give any information or to make any representation other than as set forth herein and, if given or made, such other information or representation must not be relied upon as having been authorized by the District or the Underwriter(s). 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 Series [Designation] Bonds 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 Series [Designation] Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts.

The Underwriter(s) have provided the following sentence for inclusion in this Official Statement:

The Underwriter(s) have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter(s) do not guarantee the accuracy or completeness of such information.

The information set forth in this Official Statement has been obtained from official sources and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter(s). The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District since the date hereof.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The District also maintains a website. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Series [Designation] Bonds.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER(S) MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES [Designation] BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND “FORWARD-LOOKING STATEMENTS.” NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS “ESTIMATE”, “PROJECT”, “ANTICIPATE”, “EXPECT”, “INTEND”, “BELIEVE” AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.**

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## OFFICIAL STATEMENT

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**East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Water System Revenue Refunding Bonds, Series [Designation]**

### INTRODUCTION

*This Introduction is not a summary of this Official Statement, and is qualified by more complete and detailed information contained in the entire Official Statement. A full review should be made of the entire Official Statement, including the cover page and attached appendices. The offering of Series [Designation] Bonds to potential investors is made only by means of the entire Official Statement. Certain definitions of capitalized terms used and not defined herein are set forth in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”*

#### **Purpose**

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning the East Bay Municipal Utility District (the “District”), the water supply, treatment and distribution system owned by the District (the “Water System” or the “System”), and System finances, in connection with the sale of the District’s \$ \_\_\_\_\_\* Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, by and between the District and the Trustee, relating to the Series [Designation] Bonds (as so amended and supplemented, the “Indenture”).

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of a portion of the District’s outstanding variable rate Water System Revenue Bonds (as hereinafter defined), funding the costs of terminating a portion of certain interest rate swap agreements relating thereto and paying the costs of issuance in connection with the Series [Designation] Bonds, as more fully described under “PLAN OF FINANCE” and “ESTIMATED SOURCES AND USES OF FUNDS.”

#### **The District**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California (the “State”). The District is formed under the authority of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State, commencing with Section 11501 (the “Municipal Utility District Act”). Pursuant to the Municipal Utility District Act, the District is empowered to own and operate the Water System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM).” The District also operates a wastewater system. The District’s wastewater system treats and disposes of sewage from a portion of the area within the District, which is designated as Special District No. 1.

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\* Preliminary; subject to change.

The Series [Designation] Bonds are not payable from or secured by the revenues of the wastewater system of the District.

### **Security for the Series [Designation] Bonds**

The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of the Subordinated Water Revenues of the District, as defined in the Indenture. Subordinated Water Revenues generally consist of the District's Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of (a) all Water Operation and Maintenance Costs and (b) all amounts required to be paid under the District's Senior Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Water Bonds. **There are no Senior Water Bonds currently outstanding and the District has covenanted pursuant to the Eighteenth Supplemental Indenture, dated as of September 15, 2010 (the "Eighteenth Supplemental Indenture") that it will not issue any Senior Water Bonds in the future.** Prior to the date of execution and delivery of the Eighteenth Supplemental Indenture, all Water System revenue bonds of the District issued under the Indenture were designated "Water System Subordinated Revenue Bonds." Pursuant to the Eighteenth Supplemental Indenture, any Water System revenue bonds of the District issued (or remarketed or otherwise reoffered) under the Indenture following the execution and delivery of the Eighteenth Supplemental Indenture are designated "Water System Revenue Bonds" in order to reflect that the lien of the Senior Water Bonds has been closed. All Outstanding Water System revenue bonds issued under the Indenture (howsoever designated), together with any additional Water System revenue bonds hereafter issued under the Indenture are secured on a parity from Subordinated Water Revenues and are collectively referred to herein as the "Water System Revenue Bonds." See "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Pledge of Subordinated Water Revenues."

The Series [Designation] Bonds are secured on a parity with the District's other Water System Revenue Bonds to be Outstanding upon the delivery thereof, together with any additional Water System Revenue Bonds thereafter issued, with certain scheduled payments which are payable by the District with respect to certain interest rate swap agreements as described under "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Outstanding Water System Revenue Obligations – *Interest Rate Swap Agreements*" and with certain outstanding State Loans as described in APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt," and with any other Parity Debt heretofore or hereafter incurred in accordance with the Indenture. See "SECURITY FOR THE SERIES [Designation] BONDS – Outstanding Water System Revenue Obligations," and "– Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations." As of \_\_\_\_\_, the District had Outstanding \$\_\_\_\_\_ aggregate principal amount of Water System Revenue Bonds (including the \$\_\_\_\_\_ aggregate principal amount of Outstanding Water System Revenue Bonds to be refunded with proceeds of the Series [Designation] Bonds). See also "PLAN OF FINANCE."

The Sixteenth Supplemental Indenture dated as of February 1, 2010 (the "Sixteenth Supplemental Indenture") includes a number of amendments to the Indenture in the manner and effective as of the date described under "AMENDMENTS TO THE INDENTURE."

**NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE DISTRICT IS PLEDGED TO THE PAYMENT OF THE SERIES [Designation] BONDS OR THE INTEREST THEREON.**

## **Rate Covenant**

The District covenants under the Indenture that it will at all times, while any of the Water System Revenue Bonds (including the Series [Designation] Bonds) remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Water System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Covenants.” See also “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”

## **Continuing Disclosure**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide certain financial information and operating data relating to the District and the Water System by not later than 180 days following the end of the District’s Fiscal Year (which currently begins on July 1 and ends on June 30 of each year) (the “Annual Report”), commencing with the Annual Report for Fiscal Year [2012-13], and to provide notices of the occurrence of certain specified events. See “CONTINUING DISCLOSURE.” These covenants have been made in order to assist the Underwriter(s) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). See also APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District’s complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District’s complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Water System and the Wastewater System was unintentionally omitted from the District’s filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District’s audited financial statements and such information was also routinely made available in the District’s official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District’s Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

## **Professionals Involved in the Issue**

The Bank of New York Mellon Trust Company, N.A. serves as Trustee under the Indenture. Certain legal matters incident to the authorization, issuance and sale of the Series [Designation] Bonds are subject to the approval of Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel, and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. Montague DeRose and Associates, LLC, Walnut Creek, California, is serving as Financial Advisor to the District in connection with the issuance of the Series [Designation] Bonds. [Grant Thornton LLP, Minneapolis, Minnesota] is serving as Verification Agent in connection with the issuance of the Series [Designation] Bonds.

## **Summaries Not Definitive**

The summaries and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary or reference is qualified in its entirety by reference to each such document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in the Indenture and, as used herein, has the meaning given to it in the Indenture. Unless otherwise indicated, all financial and statistical information herein has been provided by the District.

All references to and summaries of the Indenture, the Escrow Agreement and all documents, statutes, reports and other instruments referred to herein are qualified in their entirety by reference to the full Indenture, the Escrow Agreement and each such document, statute, report or instrument, respectively, copies of which are available for inspection at the offices of the District in Oakland, California, and will be available from the Trustee upon request and payment of duplication costs. Forward looking statements in this Official Statement are subject to risks and uncertainties. Actual results may vary from forecasts or projections contained herein if events and circumstances do not occur as expected, and such variances may be material.

## **Additional Information**

The District regularly prepares a variety of publicly available reports, including audits, budgets and related documents. Any Series [Designation] Bondholder may obtain a copy of any such report, as available, from the Trustee or the District. Additional information regarding this Official Statement may be obtained by contacting the Trustee or Eric L. Sandler, Director of Finance, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607, (510) 287-0310.

## **THE DISTRICT**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California. The District is formed under the authority of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal, and power generation through its wastewater system, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the wastewater system.

For information on the District, the Water System and its finances and operations, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM);” and APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

## **PLAN OF FINANCE**

### **General; Restructuring Plan**

The District is restructuring a portion of its outstanding Water System Revenue Bonds in order to reduce the principal amount of its outstanding variable rate bonds and the notional amount of its related interest rate swap agreements the aggregate effect of which is expected to achieve an improved debt service structure and net present value savings.

The issuance of the Series [Designation] Bonds is expected to result in the refunding of \$\_\_\_\_\_ million in principal amount of variable rate Outstanding Water System Revenue Bonds with fixed rate Water System Revenue Bonds and the reduction of \$\_\_\_\_\_ million in notional amount of the associated interest rate swap agreements. The portion of the interest rate swap agreements expected to be terminated represents approximately \_\_\_\_% of the approximately [\$445.8] million notional amount of Water System interest rate swap agreements to which the District was a party as of \_\_\_\_\_. Affiliates to certain of the Underwriter(s) of the Series [Designation] Bonds are also parties to the interest rate swap agreements expected to be terminated in part in connection with the issuance of the Series [Designation] Bonds. See also “SECURITY FOR THE SERIES [DESIGNATION] BONDS – Outstanding Water System Revenue Obligations” and APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt” and “– Variable Rate and Swap Obligations.”

### **Refunding of Variable Rate Water System Revenue Bonds**

The proceeds of the Series [Designation] Bonds will be applied, together with certain other available funds, to: (i) refund portions of certain series of the District’s outstanding variable rate Water System Revenue Bonds; (ii) fund the costs of termination of portions of certain interest rate swap agreements related thereto; and (iii) fund costs of issuance of the Series [Designation] Bonds.

The following table details the series, maturity dates and principal amounts of the variable rate Water System Revenue Bonds to be refunded.



## Refunded Bonds

<b>Water System Revenue Bonds Series Designation</b>	<b>Issue Date</b>	<b>Maturity Date</b>	<b>CUSIP</b>	<b>Principal Amount Outstanding</b>	<b>Principal Amount to be Redeemed</b>
[Series 2008A-1]	March 20, 2008	June 1, 2038 <sup>(1)</sup>	271014UC4	\$ 61,725,000	
[Series 2008A-2]	March 20, 2008	June 1, 2038 <sup>(2)</sup>	271014TW2	46,275,000	
[Series 2008A-3]	March 20, 2008	June 1, 2038 <sup>(3)</sup>	271014TX0	46,275,000	
[Series 2008A-4]	March 20, 2008	June 1, 2038 <sup>(4)</sup>	271014UA8	46,275,000	
[Series 2008B-3]	April 24, 2008	June 1, 2026 <sup>(5)</sup>	271014UB6	15,100,000	
[Series 2009A-1]	March 12, 2009	June 1, 2026 <sup>(6)</sup>	271014UQ3	41,040,000	
[Series 2009A-2]	March 12, 2009	June 1, 2026 <sup>(7)</sup>	271014UT7	41,035,000	
[Series 2011A-1]	December 27, 2011	June 1, 2025 <sup>(8)</sup>	271014UR1	74,085,000	
[Series 2011A-2]	December 27, 2011	June 1, 2025 <sup>(9)</sup>	271014US9	<u>74,085,000</u>	
<b>Total</b>				<b>\$445,895,000</b>	

- (1) Portion of the Series 2008A-1 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (2) Portion of the Series 2008A-2 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (3) Portion of the Series 2008A-3 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (4) Portion of the Series 2008A-4 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (5) Portion of the Series 2008B-3 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (6) Portion of the Series 2009A-1 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (7) Portion of the Series 2009A-2 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (8) Portion of the Series 2009A-2 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.
- (9) Portion of the Series 2009A-2 Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

The Refunded Bonds identified in the table above are expected to be redeemed on or about \_\_\_\_\_ (the "Redemption Date") at a redemption price of 100% of the principal amount thereof, without premium.

Pursuant to the terms of the Indenture, the refunding of the Refunded Bonds will be effected by depositing a portion of the proceeds of the Series [Designation] Bonds, together with other available monies, in the respective escrow accounts in the escrow fund (the "Escrow Fund") created and established under the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent, for the Refunded Bonds. Such proceeds and other available monies deposited by the District in the Escrow Fund will be invested in federal securities (the "Escrow Securities") or held by the Escrow Agent in cash and will be an amount sufficient to pay the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) on the Redemption

Date therefor, plus any interest accrued and unpaid thereon. See “ESTIMATED SOURCES AND USES OF FUNDS” and “– Verification” below.

Upon such deposit and investment and compliance with or provision for compliance with certain notice requirements set forth in the Indenture, the liability of the District with respect to the Refunded Bonds will cease and the Refunded Bonds will no longer be Outstanding under the Indenture except that the Owners of the Refunded Bonds will be entitled to payment thereof solely from the amounts on deposit in the Escrow Fund held by the Escrow Agent.

**Verification.** [Grant Thornton LLP], independent certified public accountants, will verify, from the information provided to them, the mathematical accuracy as of the date of the closing of the Series [Designation] Bonds of computations relating to the adequacy of the cash deposited and held in the Escrow Fund under the Escrow Agreement for the Refunded Bonds, together with the maturing principal amounts of and interest earned on the Escrow Securities, if any, to pay the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) on the Redemption Date therefor, plus any interest accrued and unpaid thereon. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS.”

## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Series [Designation] Bonds are as follows:

### **Sources**

Principal Amount	
[Original Issue Premium/Discount]	
Transfer from Refunded Bonds	
Reserve Fund Releases	
[District Contribution]	
Total	<hr/>

### **Uses**

Deposit to Escrow Fund	
Swap Termination Payments <sup>(1)</sup>	
Underwriter(s)' Discount	
Costs of Issuance <sup>(2)</sup>	
Total	<hr/>

<sup>(1)</sup> Includes accrued amounts payable to the swap termination date.

<sup>(2)</sup> Includes legal, financing and consulting fees, rating agency fees, printing costs and other miscellaneous expenses.

## THE SERIES [DESIGNATION] BONDS

### **General Description**

The Series [Designation] Bonds will be issued in the aggregate principal amounts, will bear interest at the rates and will mature in the years and amounts all as set forth on the inside cover page of this Official Statement. The Series [Designation] Bonds will be issued in denominations of \$5,000 principal amount or any integral multiple thereof. The Series [Designation] Bonds will be dated, and shall bear interest from, their date of delivery. Interest on the Series [Designation] Bonds is payable on each June 1 and December 1, commencing on \_\_\_\_\_, and will be computed on the basis of a 360-

day year of twelve 30-day months. The Series [Designation] Bonds will be issued as fully registered bonds in book-entry form only and when delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Series [Designation] Bonds. So long as DTC, or its nominee, Cede & Co., is the registered owner of the Series [Designation] Bonds, all payments of principal of or redemption price of, and interest on, the Series [Designation] Bonds will be made directly to DTC, which is obligated in turn to remit such principal or redemption price and interest to its DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

## Redemption

**Optional Redemption.** The Series [Designation] Bonds maturing on or before June 1, 20\_\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

**Mandatory Redemption.** The Series [Designation] Bonds are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below at the principal amount of each Series [Designation] Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

<i>Mandatory Sinking Account Payment Dates (June 1)</i>	<i>Mandatory Sinking Account Payments</i>	<i>Mandatory Sinking Account Payment Dates (June 1)</i>	<i>Mandatory Sinking Account Payments</i>
	\$		\$

†

† Final Maturity.

**Notice of Redemption.** Notice of redemption of the Series [Designation] Bonds shall be mailed by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to DTC or, if the book-entry system as described in Appendix E has been discontinued, by first-class mail, to the respective Owners of any Series [Designation] Bonds designated for redemption in the manner and under the terms and conditions provided in the Indenture. Failure by any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

In the event of an optional redemption of Series [Designation] Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

***Selection of Bonds for Redemption.*** Whenever provision is made in the Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee will select the Series [Designation] Bonds of such maturity to be redeemed from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion deems appropriate and fair.

***Effect of Redemption.*** If notice of redemption is given as provided in the Indenture, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, then on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption will become due and payable at the Redemption Price specified in the notice of redemption, together with interest accrued thereon to the date fixed for redemption, interest on such Series [Designation] Bonds so called for redemption will cease to accrue, the Series [Designation] Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture and the owners of the Series [Designation] Bonds (or portions thereof) will have no rights in respect thereof except to receive payment of the Redemption Price plus accrued interest.

## **SECURITY FOR THE SERIES [DESIGNATION] BONDS**

### **General**

***Authority for Issuance.*** The Series [Designation] Bonds are authorized for issuance pursuant to the Municipal Utility District Act and all laws of the State amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), resolutions adopted by the District and the Indenture. By Resolution No. 33606-07, adopted by the Board of Directors of the District on June 12, 2007, the Board declared its intention to issue up to \$1,100,000,000 of Water System revenue bonds. Upon the issuance of the Series [Designation] Bonds, [\$602,300,000] of such authorized amount will remain unissued. The District has heretofore and may from time to time hereafter adopt other resolutions authorizing the issuance of additional Water System revenue bonds or other Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. The issuance of revenue bonds by the District is not subject to prior voter approval, although such bond resolutions are subject to a 60-day referendum period (which, with respect to bonds to be issued pursuant to Resolution No. 33606-07, expired without challenge). See “– Outstanding Water System Revenue Obligations” below.

***Amendments to the Indenture.*** The Sixteenth Supplemental Indenture includes a number of amendments to the Indenture in the manner and effective as of the date described under “AMENDMENTS TO THE INDENTURE.” See also APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

## **Pledge of Subordinated Water Revenues**

Pursuant to the Indenture, the District has irrevocably pledged to the payment of the principal or redemption price of and interest on the Water System Revenue Bonds, including the Series [Designation] Bonds and any Parity Debt, all Subordinated Water Revenues (as hereinafter defined) and amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

“Subordinated Water Revenues” is generally defined in the Indenture to mean, for any fiscal period, the sum of (a) all charges received for, and all other income and receipts derived by the District from, the operation of the Water System or arising from the Water System, together with income from the investment of any monies in any fund or account established under the Senior Water Bond Resolution relating to the District’s Senior Water Bonds or under the Indenture (collectively, the “Water Revenues”) for such fiscal period, plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund established under the Senior Water Bond Resolution for treatment as Water Revenues for such fiscal period, less the sum of (c) all Water Operation and Maintenance Costs (as hereinafter defined) for such fiscal period and (d) the amounts, if any, withdrawn by the District from Water Revenues for such fiscal period for deposit in the Rate Stabilization Fund, and (e) all amounts required to be paid under the Senior Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Water Bonds as the same become due and payable. **There are no Senior Water Bonds currently outstanding and the District has covenanted pursuant to the Eighteenth Supplemental Indenture that it will not issue any Senior Water Bonds in the future.** See “– Outstanding Water System Revenue Obligations – *No Senior Water Bonds*” below.

The District may deposit into, or withdraw amounts from time to time held in, the Rate Stabilization Fund within 120 days after the end of the applicable Fiscal Year. Amounts deposited into the Rate Stabilization Fund shall be deducted from Water Revenues for such Fiscal Year. Amounts withdrawn from the Rate Stabilization Fund shall be included in Water Revenues for such Fiscal Year and may be applied for any purposes for which Water Revenues generally are available. All interest and earnings upon deposits in the Rate Stabilization Fund will not be held therein, but will be treated and accounted for as Water Revenues. The amount on deposit in the Rate Stabilization Fund as of [June 30, 2013] was \$50,000,000.

“Water Operation and Maintenance Costs” is generally defined in the Indenture to mean the reasonable and necessary costs of maintaining and operating the Water System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Water Revenues and therefore payable on a parity with the Water System Revenue Bonds (whether or not any Water System Revenue Bonds are Outstanding).

The Series [Designation] Bonds are not payable from or secured by the revenues of the wastewater system of the District.

**The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Water Revenues. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.**

#### **Allocation of Subordinated Water Revenues Under the Indenture**

In accordance with the Indenture, all Subordinated Water Revenues, when and as received by the District, shall be deposited into a fund to be established and maintained by the District designated as the "Revenue Fund." So long as any Water System Revenue Bonds are Outstanding, the District will transfer the monies in the Revenue Fund into the following respective funds (established, maintained and held by the Trustee in trust for the benefit of the Owners of the Water System Revenue Bonds) in the following order of priority; provided, that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which deposits shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Water System Revenue Bonds and such Parity Debt):

***Interest Fund.*** The District will transfer to the Trustee to be set aside in the Interest Fund on or before the Business Day prior to each interest payment date an amount equal to the interest becoming due and payable on the Outstanding Water System Revenue Bonds (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any series of Water System Revenue Bonds or other source to pay such interest).

***Principal Fund; Sinking Accounts.*** The District shall transfer to the Trustee to be set aside in the Principal Fund on or before the Business Day prior to each principal or sinking account payment date an amount equal to the amount of Bond Obligation (as defined in the Indenture) plus the Mandatory Sinking Account Payments becoming due and payable on such date. All Mandatory Sinking Account Payments shall be made without priority of any payment into any one such sinking account over any other such payment.

***Bond Reserve Funds.*** Upon the occurrence of any deficiency in any bond reserve fund established pursuant to the Indenture for any Series of Water System Revenue Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such bond reserve fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from such bond reserve fund until there is on deposit in such bond reserve fund an amount equal to the respective reserve requirement for such bond reserve fund. There is no bond reserve fund being established in connection with the Series [Designation] Bonds and amounts on deposit in any bond reserve fund for any other Series of Water System Revenue Bonds are not available for the payment of, and do not in any manner secure, the Series [Designation] Bonds.

The requirements of each such fund (including the making up of any deficiencies in any such fund resulting from a lack of Subordinated Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any other fund subsequent in priority. The Indenture provides that any Subordinated Water Revenues remaining in the Revenue Fund after the foregoing transfers, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of the Indenture by the District. The District may use and apply such Subordinated Water Revenues for any lawful purpose of the District, including the redemption of Water System Revenue Bonds upon the terms and conditions set forth in a Supplemental Indenture relating to such Water System Revenue Bonds and the purchase of Water System Revenue Bonds as and when and at such prices as it may determine.

Under the Indenture the District may enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Water System Revenue Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such an interest rate swap agreement may be applied to the deposits required under the Indenture. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Water Revenues and other assets pledged under the Indenture to the Water System Revenue Bonds on a parity basis therewith.

For further information regarding the allocation of Subordinated Water Revenues with respect to the Water System Revenue Bonds, see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Allocation of Subordinated Water Revenues.”

### **Investment of Monies in Funds and Accounts Under the Indenture**

All monies held in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District, solely in Investment Securities (see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Investment Securities under the Indenture). If and to the extent the Trustee does not receive investment instructions from the District with respect to the monies in such funds and accounts, such monies shall be invested in a cash sweep or similar account arrangement of or available to the Trustee described in clause (xi) of the definition of Investment Securities.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of monies in any fund or account other than the Rebate Fund shall be transferred to the Revenue Fund when received; provided, however, that an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

### **Rate Covenant**

The District has covenanted under the Indenture that it will, at all times while any of the Water System Revenue Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Water System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Debt Service under the Indenture. See also “AMENDMENTS TO THE INDENTURE.”

### **Outstanding Water System Revenue Obligations**

**No Senior Water Bonds.** Pursuant to Resolution No. 30050 adopted by the Board of Directors of the District on January 26, 1982 (as amended and supplemented, the “Senior Water Bond Resolution”), the District authorized the issuance, from time to time, of bonds of the District designated as “East Bay Municipal Utility District Water System Revenue Bonds” (the “Senior Water Bonds”) and secured by a pledge of, and first lien on, the Net Revenues (as defined in the Senior Water Bond Resolution) of the District’s Water System, generally being all of the Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) after payment of Water Operation and Maintenance Costs thereof, all on the terms and conditions set forth in the Senior Water Bond Resolution. At the time of the initial execution and delivery of the Indenture in 1990, the Indenture did not preclude the District from

issuing additional Senior Water Bonds pursuant to the Senior Water Bond Resolution. The District last issued Senior Water Bonds in 1986 and all outstanding Senior Water Bonds were retired in 1997. **There are currently no Senior Water Bonds outstanding. Pursuant to the Eighteenth Supplemental Indenture, the District has covenanted and agreed that it will not issue any Senior Water Bonds in the future pursuant to the Senior Water Bond Resolution.**

***Outstanding Water System Revenue Bonds and Parity Debt.*** As of [June 30, 2013], the District had Outstanding [\$2,210,830,000] aggregate principal amount of Water System Revenue Bonds, including the variable rate Water System Revenue Bonds to be refunded with proceeds of the Series [Designation] Bonds (collectively, the “Outstanding Water System Revenue Bonds”), issued under and pursuant to the Indenture. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt.”

Approximately [\$445,895,000] principal amount of the District’s Outstanding Water System Revenue Bonds are variable rate obligations which are subject to tender prior to maturity in accordance with their terms (\$\_\_\_\_\_ principal amount of which is being refunded by the Series [Designation] Bonds). In connection with [\$82,075,000] principal amount of such variable rate Outstanding Water System Revenue Bonds (being the District’s Water System Revenue Refunding Bonds, Series 2009A (\$\_\_\_\_\_ principal amount of which is being refunded by the Series [Designation] Bonds)), the District is solely obligated to provide funds (which may include remarketing or refunding proceeds) for the payment upon the mandatory tender thereof and failure of the District to provide such funds will constitute an Event of Default under the Indenture. In connection with [\$148,170,000] principal amount of such variable rate Outstanding Water System Revenue Bonds (being the District’s Water System Revenue Refunding Bonds, Series 2011A (the “Series 2011A Bonds”)), the failure of the District to pay the purchase price thereof upon the mandatory tender on certain scheduled mandatory purchase dates will not constitute an Event of Default under the Indenture; however, in the event sufficient remarketing proceeds are not available for the purchase of such Series 2011A Bonds upon such mandatory tender, such Series 2011A Bonds will go into a term-out period and will bear interest at an interest rate which is substantially higher than the current variable interest rate on the Series 2011A Bonds, and during such term-out period, the Series 2011A Bonds will be subject to special mandatory redemption over an approximately five-year period, which will result in an acceleration in the repayment of the principal of the Series 2011A Bonds from the principal payments that would otherwise be due on such Series 2011A Bonds.

In connection with [\$215,650,000] principal amount of the District’s variable rate Outstanding Water System Revenue Bonds (\$\_\_\_\_\_ principal amount of which is being refunded by the Series [Designation] Bonds), the District has entered into liquidity agreements with various banks to provide liquidity facilities for such variable rate Outstanding Water System Revenue Bonds upon tender thereof. The obligation of the District to repay any draws on such liquidity facilities is payable on a parity with the Outstanding Water System Revenue Bonds to the extent such repayment is not thereafter provided from remarketing proceeds of the related Outstanding Water System Revenue Bonds. Unreimbursed draws under liquidity facilities supporting such variable rate Outstanding Water System Revenue Bonds bear interest at a maximum rate that may be substantially in excess of the current interest rate on the related variable rate Outstanding Water System Revenue Bonds. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity facilities may result in the acceleration of the scheduled payment of principal on such variable rate Outstanding Water System Revenue Bonds. See Table 14 in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES” for additional information regarding the liquidity providers, the expiration date of the related liquidity facilities and the principal amount of Outstanding Water System Revenue Bonds covered under each such liquidity facility.



In addition to the Outstanding Water System Revenue Bonds, the District has outstanding loans with the State of California's State Water Resources Control Board and the Department of Water Resources and certain interest rate swap agreements the scheduled payments under which are payable from Subordinated Water Revenues on a parity with the Water System Revenue Bonds, as described below. See "*Interest Rate Swap Agreements*" and "*State Loans*." The Outstanding Water System Revenue Bonds, together with any additional Water System Revenue Bonds issued under the Indenture (including the Series [Designation] Bonds), and any Parity Debt heretofore or hereafter issued or incurred in accordance with the Indenture, are on a parity as to the pledge of and lien on Subordinated Water Revenues.

***Interest Rate Swap Agreements.*** As of [June 30, 2013], the District had outstanding interest rate swap agreements relating to variable rate Outstanding Water System Revenue Bonds (hereinafter collectively, the "Water Interest Rate Swap Agreements") with various counterparties (collectively, the "Swap Providers") in the aggregate notional amount of [\$445,795,000] (of which \$\_\_\_\_\_ in notional amount is expected to be terminated in connection with the issuance of the Series [Designation] Bonds). The Water Interest Rate Swap Agreements were entered into to hedge the interest rate exposure on the related variable rate Water System Revenue Bonds by synthetically converting the variable interest rate payments that the District is obligated to make with respect to the related Water System Revenue Bonds into substantially fixed payments. In general, the terms of the Water Interest Rate Swap Agreements provide that, on a same-day net-payment basis determined by reference to a notional amount, the District will pay a fixed interest rate on the respective notional amount. In return, the applicable Swap Counterparty will pay a variable rate of interest (determined as a specified percentage of an interest rate index) on a like notional amount.

There is no guarantee that the floating rate payable to the District pursuant to each of the Water Interest Rate Swap Agreements will match the variable interest rate on the associated Water System Revenue Bonds to which the respective Water Interest Rate Swap Agreement relates at all times or at any time. Since the respective effective dates of the Water Interest Rate Swap Agreements, the floating rates payable to the District pursuant to the Water Interest Rate Swap Agreements have generally not matched the variable interest rates on the associated Water System Revenue Bonds. To the extent that the Swap Providers are obligated to make a payment to the District under their respective Water Interest Rate Swap Agreement that is less than the interest due on the associated Water System Revenue Bonds to which such Water Interest Rate Swap Agreement relates, the District is obligated to pay such insufficiency from Subordinated Water Revenues.

The obligation of the District to make regularly scheduled payments to the Swap Providers under the respective Water Interest Rate Swap Agreements is on a parity with the District's obligation to make payments on the Water System Revenue Bonds, including the Series [Designation] Bonds. Under certain circumstances, the Water Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the respective Swap Providers. Pursuant to the Water Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Series [Designation] Bonds but prior to the District's Extendable Municipal Commercial Paper Notes (Water Series).

Pursuant to the terms of certain of the Water Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District's total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement.

See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Variable Rate and Swap Obligations" for additional

information regarding the Water Interest Rate Swap Agreements, including the District's collateral posting obligations in connection therewith.

The District may, from time-to-time, enter into additional interest rate swap agreements with security and payment provisions as determined by the District and subject to any conditions contained in the Indenture.

***Parity State Loans.*** The District participates in the California State Water Resources Control Board (the "SWRCB") and the Safe Drinking Water State Revolving Fund low interest rate loan programs, which were established to provide below-market rate financing for qualified water resource projects in the State. Under these programs, as of [June 30, 2013], the District had outstanding loan contracts with the State (the "State Loans") in the aggregate outstanding principal amount of [\$17,002,717]. All such State Loans were entered into subsequent to January 1993 and provide that such State Loans shall be either senior to or on a parity with all future debt of the District. For purposes of calculating debt service coverage ratios, the District has treated all such State Loans as Parity Debt. Any future State Loans would likely constitute Parity Debt under the Indenture.

***Subordinate Commercial Paper.*** The District has maintained a commercial paper note program since 1988. In March 2009, the District implemented an extendable municipal commercial paper note program for the purpose of retiring its then existing commercial paper note program. As of [June 30, 2013], the District had outstanding \$372,900,000 aggregate principal amount of tax-exempt Extendable Municipal Commercial Paper Notes (Water Series). See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt" for a description of the District's extendable municipal commercial paper note program.

### **Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations**

The Indenture provides conditions under which additional series of Water System Revenue Bonds or other Parity Debt payable from Subordinated Water Revenues may be issued on a parity with the Outstanding Water System Revenue Bonds. Among other conditions, the Indenture requires that the District shall have placed on file with the Trustee a certificate of the District certifying that the sum of: (1) the Subordinated Water Revenues for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Water System Revenue Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Water Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Water Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Water System Revenue Bonds due to improvements to the Water System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Water System Revenue Bonds, shall have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt then Outstanding and the additional Water System Revenue Bonds or Parity Debt then proposed to be issued. See APPENDIX C – "SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions."

Refunding Water System Revenue Bonds may be authorized and issued by the District without compliance with the provisions described above, subject to the terms and conditions of the Indenture, including the condition that Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt outstanding following the issuance of such refunding Water System Revenue Bonds is less

than or equal to Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt outstanding prior to the issuance of such refunding Water System Revenue Bonds. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Refunding Bonds.”

Pursuant to the Indenture, the District may incur obligations which are junior and subordinate to the payment of the principal, redemption price, interest and reserve fund requirements for the Water System Revenue Bonds and all Parity Debt and which subordinated obligations are payable as to principal, redemption price, interest and reserve fund requirements, if any, only out of Subordinated Water Revenues after the prior payment of all amounts then required to be paid under the Indenture from Subordinated Water Revenues for principal, redemption price, interest and reserve fund requirements for the Water System Revenue Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in the Indenture or the instrument authorizing such Parity Debt, as applicable.

### **Limitations on Remedies**

The ability of the District to comply with its covenants under the Indenture and to generate Water Revenues sufficient to pay the principal of and interest on the Series [Designation] Bonds may be adversely affected by actions and events outside of the control of the District. Furthermore, any remedies available to the owners of the Series [Designation] Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition, enforceability of the rights and remedies of the Owners of the Series [Designation] Bonds, and the obligations incurred by the District under the Series [Designation] Bonds and the Indenture, 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 Series [Designation] Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

### **AMENDMENTS TO THE INDENTURE**

The Sixteenth Supplemental Indenture includes a number of amendments to the Indenture which will become effective upon the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2001 Bonds, Series 2002 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2007A Bonds, Series 2007B Bonds, Series 2008A Bonds, Series 2008B Bonds and Series 2009A Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture (all of which Series 2001 Bonds, Series 2002 Bonds and Series 2003 Bonds have been retired) and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Sixteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by

the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

As modified, the term “Annual Debt Service” shall mean, for any Fiscal Year, the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

As modified, the term “Assumed Debt Service” shall mean for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

As modified, the term “Debt Service” shall mean the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, that for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Water Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net

economic effect expected by the District to be produced by the terms of such Water Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Water Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest rate on such Water Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Water Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest on such Water Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Water Revenues on parity with the lien of the Water Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Water Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Water Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby

bond purchase agreement or other liquidity facility, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Water Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Water Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

As modified, the term “Maximum Annual Debt Service” shall mean the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

The term “SIFMA Municipal Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

As modified, the term “Water Revenues” shall mean all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Senior Water Bond Resolution or this Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code or any future similar program.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS**

### **Tax Limitations – Proposition 13**

Article XIII A of the State Constitution, 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 1% of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State statutes. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to *ad valorem* taxes levied to pay interest or redemption charges on (1) indebtedness approved by the voters prior to July 1, 1978, and (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the 1975-76 Fiscal Year 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 2% per year, or to reflect a reduction in the consumer price index or comparable data for the 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 to pay debt service on indebtedness approved by the voters as described above. Such legislation further provides that each county will levy the maximum tax permitted by Article XIII A, which is \$1.00 per \$100 of assessed market value. The legislation further establishes the method for allocating the taxes collected by each county among the

taxing agencies in the county. Special districts, such as the District, receive an allocation that is based primarily upon their tax levies in certain years prior to the amendment's effective date relative to the tax levies of other congruent agencies. The District receives approximately 1.25% of the non-debt service property taxes collected within its jurisdiction from Alameda and Contra Costa counties. See, however, APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Tax Revenues" for a discussion of the borrowing by the State of certain property tax revenues of local jurisdictions for Fiscal Year 2009-10.

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.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the 2% annual adjustment are allocated among the various jurisdictions in the "taxing area" based upon their respective "situation." Any such allocation made to a local agency continues as part of its allocation in future years.

The effect of Article XIII A on the District's finances has been to restrict *ad valorem* tax revenues for general purposes to the statutory allocation of the 1% levy while leaving intact the power to levy *ad valorem* taxes in whatever rate or amount may be required to pay debt service on its outstanding general obligation bonds and unissued bonds authorized prior to July 1, 1978. Since Fiscal Year 1978-79 tax revenues have consisted exclusively of the District's allocated share of the 1% county levy.

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

For a description of the property tax collection procedure and certain statistical information concerning tax collections and delinquencies, see APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – Tax Revenues."

## **Spending Limitations**

At the statewide special election of November 6, 1979, the voters approved an initiative entitled "Limitation of Government Appropriations" which added Article XIII B to the California Constitution. Under Article XIII B, State and local governmental entities have an annual "appropriations limit" which limits the ability to spend certain monies which are called "appropriations subject to limitation" (consisting of tax revenues, state subventions and certain other funds) in an amount higher than the "appropriations." Article XIII B does not affect the appropriation of monies which are excluded from the definition of "appropriations subject to limitation." Among the exclusions is an "appropriation of any special district which existed on January 1, 1978, and which did not as of the 1977-78 Fiscal Year levy an *ad valorem* tax on property in excess of 12.5 cents per \$100 of assessed value." In the opinion of the District's General Counsel, the appropriations of the District are excluded from the limitations of Article XIII B under this clause.

## **Proposition 62**

A statutory initiative (“Proposition 62”) was adopted by the voters voting in the State at the November 4, 1986 General Election which (1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity, (2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction, (3) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (4) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIII A, (5) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities and (6) requires that any tax imposed by a local governmental entity on or after March 1, 1985 be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

## **Proposition 218**

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 governments to levy and collect both existing and future taxes, assessments, fees and charges.

Article XIII D established procedural requirements for imposition of assessments, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the assessment, with each ballot weighted according to the proportional financial obligation of the affected parcel. The District does not currently impose standby charges or assessments for its Water System.

Article XIII D conditions the imposition or increase of any “fee” or “charge” upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIII D defines “fee” or “charge” to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIII D is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and mailed notice sent to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

In Opinion No. 97-302, dated July 14, 1997, the California Attorney General concluded that Article XIII D is inapplicable to the District’s tiered water rate structure. The opinion makes a distinction between a water rate structure based upon the amount of water used, which is not subject to Article XIII D, and fees or assessments that are levied against a parcel of land on a per-parcel or per-acre basis, which are subject to Article XIII D. The Attorney General concluded that fees for water that are based upon metered amounts used are not imposed as an incident of property ownership and do not have a direct relationship to property ownership and, consequently, such fees would not be governed by Article XIII D. On December 1, 2000, the Court of Appeal for the Second Appellate District of the State



of California published an opinion regarding Proposition 218's definition of property-related fees that is consistent with Opinion No. 97-302. In *Howard Jarvis Taxpayers Association v. City of Los Angeles*, the Court of Appeal held that fees for water that are based upon metered amounts used are charges for a commodity and not related to property ownership and, consequently, Article XIID does not apply to such fees. However, in a decision rendered in February 2004, the California Supreme Court in *Richmond et al. v. Shasta Community Services District*, 32 Cal. 4th 409, upheld a Court of Appeals decision that water connection fees were not property-related fees or charges subject to Article XIID, while at the same time stating in dicta that fees for ongoing water service through an existing connection were property-related fees and charges. In October 2004, the California Supreme Court granted review of the decision of the Fourth District Court of Appeal in *Bighorn-Desert View Water Agency v. Beringson*, 120 Cal. App. 4th 891 (2004), in which the appellate court had relied on *Howard Jarvis Taxpayers Association v. City of Los Angeles* and rejected the California Supreme Court's dicta in *Richmond et al. v. Shasta Community Services District*. On March 23, 2005, the California Fifth District Court of Appeal published *Howard Jarvis Taxpayers Association v. City of Fresno*, 127 Cal.App.4th 914 (5th Dist. 2005), holding that an "in lieu" fee which is payable to the City of Fresno's general fund from its water utility and which is included in the city's water rate structure was invalid. In reaching its decision, the court concluded that the city's water rates were "property related" fees, governed by the limitations of Article XIID. The City of Fresno requested a review of this decision by the California Supreme Court, which denied review. On July 24, 2006, the California Supreme Court ruled in *Bighorn-Desert View Water Agency v. Verjil*. In dicta, the California Supreme Court repeated its previous dicta in *Richmond et al. v. Shasta Community Services District* that fees and charges for ongoing water service through an existing connection were property related fees and charges under Article XIID. Prior to 2007, the District did not comply with the notice, hearing and protest procedures in Article XIII with respect to water rate increases based on the decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles* and Opinion No. 97-302. However, the District has followed the notice, hearing and protest procedures in Article XIID in connection with water rate increases since the Fiscal Year 2008 rate increases and plans to follow such notice, hearing and protest procedures in connection with future rate increases.

In addition to the procedural requirements of Article XIID, under Article XIID all property-related fees and charges, including those which were in existence prior to the passage of Proposition 218 in November 1996, must meet the following substantive standards:

- (1) Revenues derived from the fee or charge cannot exceed the funds required to provide the property-related service.
- (2) Revenues derived from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, must be classified as assessments and cannot be imposed without compliance with Section 4 of Article XIID (relating to assessments).
- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

The District believes that its rates comply with the foregoing standards.

Article XIID provides that nothing in Proposition 218 shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development. The District believes that Proposition 218 does not apply to the District's System Capacity Charge, although there can be no assurance that a court would not determine otherwise. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – System Capacity Charge."

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms "local tax," "assessment," "fee" or "charge." On July 24, 2006, the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil* that the provisions of Article XIIC applied to rates and fees charged for domestic water use. In the decision, the Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District and its General Counsel do not believe that Article XIIC grants to the voters within the District the power to repeal or reduce rates and charges in a manner that would be inconsistent with the contractual obligations of the District. No assurance can be given that the voters of the District will not, in the future, approve initiatives which seek to repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the District's water service fees and charges, which are the source of Water Revenues pledged to the payment of debt service on the Series [Designation] Bonds.

The interpretation and application of Proposition 218 will likely be subject to further judicial determinations, and it is not possible at this time to predict with certainty the outcome of such determinations.

## **Proposition 26**

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIII A and XIIC. The proposition imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes. Proposition 26, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIII A, XIIC and XIID pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the State or local government of providing the service or product to the payor. The District believes that the initiative is not intended to and would not apply to fees for utility services charged by special districts such as the District. The District, however, is unable to predict whether Proposition 26 will be interpreted by the courts to apply to the provision of utility services by local governments such as the District.

## **Other Initiatives**

Articles XIII A, XIII B, XIIC and XIID and Propositions 62 and 26 were adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiatives have been and could be proposed and adopted affecting the District's revenues or ability to increase

revenues. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by the District.

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide in an annual report certain financial information and operating data relating to the District (the “Annual Report”) by not later than 180 days following the end of the District’s fiscal year (which currently is June 30 of each year), commencing with the Annual Report for Fiscal Year \_\_\_\_\_, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Trustee on behalf of the District with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The Municipal Securities Rulemaking Board has made such information available to the public without charge through such internet portal. The specific nature of the information to be contained in the Annual Report and the notices of specified events is set forth in APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District’s complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District’s complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Water System and the Wastewater System was unintentionally omitted from the District’s filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District’s audited financial statements and such information was also routinely made available in the District’s official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District’s Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

### **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

[Grant Thornton LLP, Minneapolis, Minnesota,] a firm of independent certified public accountants, will verify the accuracy of the mathematical computations concerning the adequacy of the cash deposited and held in the Escrow Fund for the Refunded Bonds, together with the maturing principal amounts of and interest earned on the Escrow Securities, if any, to pay the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) on the Redemption Date therefor, plus any interested accrued and unpaid thereon.

The report of [Grant Thornton LLP] will include the statement that the scope of their engagement was limited to verifying the mathematical accuracy of the computations contained in such schedules provided to them and that they have no obligation to update their report because of events occurring, or data or information coming to their attention, subsequent to the date of their report.

### **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the District in the execution or delivery of, or in any way contesting or affecting the validity of, the Series

[Designation] Bonds. There is no litigation known to be pending, or to the knowledge of the District, threatened, questioning the existence of the District or the title of the officers of the District to their respective offices.

There exist lawsuits and claims against the District, which are incidental to the ordinary course of operations of the Water System. In the view of the District's management and General Counsel, there is no litigation, present or pending, which will individually or in the aggregate materially impair the District's ability to service its indebtedness or to expend the proceeds for the purposes for which the Series [Designation] Bonds are authorized or which will have a material adverse effect on the business operations of the District. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)" for a discussion of certain pending litigation.

## **RATINGS**

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P"), Fitch Ratings, Inc. ("Fitch") and Moody's Investors Service, Inc. ("Moody's") have assigned the Series [Designation] Bonds the ratings of "\_\_\_\_\_", "\_\_\_\_\_" and "\_\_\_\_\_", respectively. No application has been made to any other rating agency for the purpose of obtaining any additional rating on the Series [Designation] Bonds. Any desired explanation of such ratings should be obtained from the rating agency furnishing the same. Generally, rating agencies base their ratings on information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. There is no assurance that any rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in the judgment of such rating agency, circumstances so warrant. Any such change in or withdrawal of such ratings may have an adverse effect on the market price of the Series [Designation] Bonds.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s) ("Special Tax Counsel"), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Special Tax Counsel is set forth in APPENDIX D.

To the extent the issue price of any maturity of the Series [Designation] Bonds is less than the amount to be paid at maturity of such Series [Designation] Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series [Designation] Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each beneficial owners thereof, is treated as interest on the Series [Designation] Bonds which is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series [Designation] Bonds is the first price at which a substantial amount of such maturity of the Series [Designation] Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of Underwriter(s), placement agents or wholesalers). The original issue discount with respect to any maturity of the Series [Designation] Bonds accrues daily over the term to maturity of such Series

[Designation] Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series [Designation] Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series [Designation] Bonds. Beneficial owners of the Series [Designation] Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series [Designation] Bonds with original issue discount, including the treatment of beneficial owners who do not purchase such Series [Designation] Bonds in the original offering to the public at the first price at which a substantial amount of such Series [Designation] Bonds is sold to the public.

Series [Designation] Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (the “Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of Series [Designation] Bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a beneficial owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such beneficial owner. Beneficial owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series [Designation] Bonds. The District has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series [Designation] Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series [Designation] Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Series [Designation] Bonds. The opinion of Special Tax Counsel assumes the accuracy of these representations and compliance with these covenants. Special Tax Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Special Tax Counsel’s attention after the date of issuance of the Series [Designation] Bonds may adversely affect the value of, or the tax status of interest on, the Series [Designation] Bonds. Accordingly, the opinion of Special Tax Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Special Tax Counsel is of the opinion that interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds may otherwise affect a beneficial owner’s federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the beneficial owner or the beneficial owner’s other items of income or deduction. Special Tax Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series [Designation] Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. As one example, the Obama Administration recently announced a legislative proposal which, for tax years beginning on or after January 1, 2013, generally would limit the exclusion from gross income of interest on obligations like the Series [Designation] Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. Other proposals have been made that could

significantly reduce the benefit of, or otherwise affect, the exclusion from gross income of interest on obligations like the Series [Designation] Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series [Designation] Bonds. Prospective purchasers of the Series [Designation] Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, and regarding the impact of future legislation, regulations or litigation, as to which Special Tax Counsel expresses no opinion

The opinion of Special Tax Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Special Tax Counsel's judgment as to the proper treatment of the Series [Designation] Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Special Tax Counsel cannot give and has not given any opinion or assurance about the future activities of the District, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The District has covenanted, however, to comply with the requirements of the Code.

Special Tax Counsel's engagement with respect to the Series [Designation] Bonds ends with the issuance of the Series [Designation] Bonds, and, unless separately engaged, Special Tax Counsel is not obligated to defend the District or the beneficial owners regarding the tax-exempt status of the Series [Designation] Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the District and their appointed counsel, including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the District legitimately disagree, may not be practicable. Any action of the IRS, including but not limited to selection of the Series [Designation] Bonds for audit, or the course or result of such audit, or an audit of Series [Designation] Bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series [Designation] Bonds, and may cause the District or the beneficial owners to incur significant expense.

## UNDERWRITING

The Series [Designation] Bonds will be purchased by \_\_\_\_\_, [as representative of itself and the other underwriters of the Series [Designation] Bonds listed on the cover page hereof] (the "Underwriter(s)"), pursuant to and subject to the conditions set forth in the bond purchase contract between the District and the Underwriter(s), at a purchase price of \$\_\_\_\_\_ (equal to the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds, less an Underwriter(s)' discount of \$\_\_\_\_\_, [plus/less original issue premium/discount of \$\_\_\_\_\_]). The bond purchase contract provides that the Underwriter(s) will purchase all of the Series [Designation] Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the bond purchase contract.

The Underwriter(s) may offer and sell the Series [Designation] Bonds to certain dealers (including dealers depositing Series [Designation] Bonds into investment trusts) and others at prices lower than the respective public offering prices stated or derived from information stated on the inside cover page hereof. The initial public offering prices may be changed from time to time by the Underwriter(s).

Certain of the Underwriter(s) have entered into distribution agreements with other broker-dealers (that have not been designated by the District as Underwriter(s)) for the distribution of the Series [Designation] Bonds at the original public offering prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation with such broker-dealers.

## **APPROVAL OF LEGAL PROCEEDINGS**

All legal matters incident to the offering of the Series [Designation] Bonds are subject to the approval of legality by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by their counsel, Orrick, Herrington & Sutcliffe LLP, San Francisco, California. The form of approving opinion of Co-Bond Counsel and the form of opinion to be delivered by Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), in connection with the issuance of the Series [Designation] Bonds are included as APPENDIX D to this Official Statement.

## **FINANCIAL ADVISOR**

The District has retained Montague DeRose and Associates, LLC, Walnut Creek, California, as financial advisor (the “Financial Advisor”) in connection with the issuance and delivery of the Series [Designation] Bonds. 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. The Financial Advisor is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

## **INDEPENDENT ACCOUNTANTS**

Included as APPENDIX B to this Official Statement are the audited financial statements of the District for the Fiscal Years ended June 30, 2013 and 2012. The District’s financial statements for the Fiscal Years ended June 30, 2013 and 2012, included in APPENDIX B, have been audited by Maze & Associates Accountancy Corporation, certified public accountants. Maze & Associates has not been requested to consent to the inclusion of its report in APPENDIX B and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Maze & Associates with respect to any event subsequent to the date of its report.

It is District policy to competitively select and retain independent accountants on a periodic basis. Maze & Associates began serving as the District’s independent accountants in Fiscal Year 2005. In 2012, following a request for proposals and competitive selection process, Maze and Associates was retained to serve as independent accountants for the three additional fiscal years ending June 30, 2012 through 2014.

## **CERTAIN RELATIONSHIPS**

The Underwriter(s) and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriter(s) and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the District, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of sales, trading, brokerage and financing activities, certain of the Underwriter(s) may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities and financial instruments or bank loans, as applicable, of the District and other governmental entities and utilities. In connection with these activities and the provision of other services, certain of the Underwriter(s) may be or become creditors of such entities. In addition, many of the Underwriter(s), or their affiliates, currently serve as remarketing agents or providers of credit enhancement or liquidity facilities for variable rate obligations issued by, or as interest rate swap providers to, governmental entities and utilities, including the District. Certain of the Underwriter(s) or their affiliates serve as remarketing agent with respect to the Water System Revenue Bonds of the District that are expected to be partially refunded by the Series [Designation] Bonds and serve as interest rate swap providers with respect to certain of the Water Interest Rate Swap Agreements that are expected to be partially terminated in connection therewith.

### **MISCELLANEOUS**

References made herein to certain documents and reports are brief summaries thereof and do not purport to be complete or definitive and reference is hereby made to such documents and reports for a full and complete statement of the contents thereof.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or registered owners of any of the Series [Designation] Bonds. The delivery and distribution of this Official Statement have been duly authorized by the District.

### **EAST BAY MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
General Manager



## **APPENDIX A**

### **THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)**

**APPENDIX B**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
AUDITED FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2013 AND 2012**

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Official Statement have the respective meanings set forth in the Indenture.*

*There are no senior Water Bonds outstanding, and the District has covenanted in the Indenture not to issue any additional senior Water Bonds. Therefore, all references hereto to “Water Bonds” may be disregarded.*

#### **Certain Definitions**

**“Accreted Value”** means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified in the Subordinated Water Bond Indenture.

**“Act”** means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**“Annual Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Maximum Annual Debt Service; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Assumed Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered

to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

**“Bond Obligation”** means, as of any given date of calculation, (1) with respect to any Outstanding Bond or Water Bond which is Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Outstanding Bond or Water Bond which is Capital Appreciation Indebtedness, the Accreted Value thereof.

**“Bonds”** means the East Bay Municipal Utility District Water System Subordinated Revenue Bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**“Business Day”** means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions related to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

**“Capital Appreciation Indebtedness”** means Water Bonds, Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

**“Code”** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, as amended from time to time.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the District and related to the authorization, execution, sale and delivery of the Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meeting and other meeting concerning the Bonds, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds surety, insurance and credit enhancement costs, and any other cost, charge or fee in connection with the delivery of the Bonds.

**“Current Interest Indebtedness”** means the Water Bonds, Bonds and Parity Debt on which interest is paid at least annually.

**“Debt Service”** (I) prior to the Effective Date, means, the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, that for the purposes of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are

to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such Water Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest rate swap agreement are greater than the interest payable on the Water Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Water Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Water Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Water Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Water Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Water Bonds, Bonds or Parity Debt are in one of the two highest Rating Categories by Moody's and by Standard & Poor's or such Water Bonds, Bonds or Parity Debt are rated in the highest short-term, note or commercial paper Rating Categories by Moody's and by Standard & Poor's and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be

assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Water Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Water Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Water Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest rate on such Water Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Water Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but

only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest on such Water Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Water Revenues on parity with the lien of the Water Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Water Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Water Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Water Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Water Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

**“Effective Date”** means the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2001 Bonds, Series 2002 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2007A Bonds, Series 2007B Bonds, Series 2008A Bonds, Series 2008B Bonds and Series 2009A Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Sixteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

**“Excluded Principal Payments”** means each payment of principal (or the principal component of lease or installment purchase payments) of Water Bonds, Bonds or Parity Debt which the District

determines on a date not later than the date of issuance thereof that the District intends to pay with monies which are not Water Revenues or Subordinated Water Revenues but from the proceeds of future debt obligations of the District and the Trustee may rely conclusively on such determination of the District.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official fiscal year period of the District, which designation shall be provided to the Trustee in a certificate of the District.

**“Indenture”** means the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the Trustee and the District, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions thereof.

**“Investment Securities”** means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies and Federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or their obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been



rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or government bond dealer reporting to, trading with, and recognized as a primary

dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) a guaranteed investment contract with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than five years experience investing in such securities and obligations and with assets under management in excess of \$500,000,000; and

(xiv) any investment approved by the Board for which confirmation is received from each rating agency then rating any of the Bonds that such investment will not adversely affect such agency's rating on such Bonds.

**"Mandatory Sinking Account Payment"** means the amount required to be deposited by the District in a sinking account for the payment of Term Bonds.

**"Maximum Annual Debt Service"** (I) prior to the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Maximum Annual Debt Service unless the sum of (i) interest payable on such Water Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest swap agreement are greater than the interest payable on the Water Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Water Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Water Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Water Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Water Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Water Bonds, Bonds or Parity Debt are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) or such Water Bonds, Bonds or Parity Debt are rated in the highest short-term note or commercial paper Rating Categories by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Opinion of Bond Counsel”** means a written opinion of a law firm of national standing in the field of public finance selected by the District and not objected to by the Trustee.

**“Outstanding,”** when used at any particular time with reference to Bonds, means (subject to the provisions relating to disqualified bonds) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged under the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**“Owner” or “Bondholder” or “Bondowner,”** whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**“Parity Debt”** means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Water Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**“Person”** means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means with respect to any Bond (or portion thereof) the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

**“Revenue Fund”** means the fund held in trust by the District to which the Subordinated Water Revenues are required to be deposited.

**“Series”** whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.

**“SIFMA Municipal Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

**“Standard & Poor’s”** means Standard & Poor’s Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Subordinated Water Revenues”** for any fiscal period means the sum of (a) the Water Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund created in the Water Bond Resolution for treatment as Water Revenues for such fiscal period, less the sum of (c) all Water Operation and Maintenance Costs for such fiscal period, (d) the amounts, if any, withdrawn by the District from Water Revenues for such fiscal period for deposit in such Rate Stabilization Fund, and (e) all amounts required to be paid under the Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Water Bonds as the same become due and payable.

**“Variable Rate Indebtedness”** means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

**“Water Bond Resolution”** means Resolution No. 30050 of the District, adopted on January 26, 1982, as amended and supplemented from time to time.

**“Water Bonds”** means all bonds and other obligations of the District issued pursuant to the Water Bond Resolution.

**“Water Operation and Maintenance Costs”** means the reasonable and necessary costs of maintaining and operating the Water System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

**“Water Revenues”** (I) prior to the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any monies in any fund or account established under the Water Bond Resolution or the Indenture; and

(II) from and after the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Water Bond Resolution or this Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program.

**“Water System”** means the entire water system of the District and all of the facilities thereof, including all facilities for the storage, transmission or distribution of water or the generation or transmission of hydroelectric power, together with all additions, betterments, extensions and improvements to said system or any part thereof. The term “Water System” does not include the sewage disposal system or facilities of Special District No. 1 of the District (including any power generation facilities constituting a part of said system).

### **Pledge of Revenues**

The Bonds are revenue obligations of the District and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Subordinated Water Revenues and other amounts held by the Trustee (except for amounts held in the Rebate Fund). The Subordinated Water Revenues are pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other. Said pledge constitutes a first lien on the Subordinated Water Revenues and such other amounts referred to in this paragraph.

### **Allocation of Subordinated Water Revenues**

The District is to transfer the monies in the Revenue Fund, into the following respective funds, in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinated Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

(1) **Interest Fund.** The District shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds which are Current Interest Indebtedness (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) **Principal Fund; Sinking Accounts.** The District shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the Business Day prior to each principal or Sinking Account payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the Mandatory Sinking Account Payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in a bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) **Bond Reserve Funds.** Upon the occurrence of any deficiency in any Bond Reserve Fund established under the Indenture for any Series of Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such Bond Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund until there is on deposit in such Bond Reserve Fund an amount equal to the respective reserve requirement.

Any Subordinated Water Revenues remaining after the foregoing transfers shall be held free and clear of the Indenture by the District and it may use and apply such Subordinated Water Revenues for any lawful purpose of the District, including the redemption and purchase of Bonds.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein are insufficient to make such payments, the Trustee shall immediately notify the District of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District covenants and agrees to transfer to the Trustee from any Subordinated Water Revenues in its possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

### **Investments**

All monies in any of the funds and accounts held by the Trustee shall be invested, as directed by the District, solely in Investment Securities.

The District may and the Trustee shall, upon the Request of the District, enter into a financial futures or financial option contract with an entity the debt securities of which are rated in their respective highest short-term Rating Categories by Moody's and Standard & Poor's.

The District may and the Trustee shall, upon the Request of the District, and provided that the Trustee is supplied with an Opinion of Bond Counsel to the effect that such action is permitted under the laws of the State of California, enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such a swap agreement may be applied to the deposits required hereunder; in which case, the entity with which the District or the Trustee may contract for an interest rate swap is limited to entities the debt securities of which are rated in their respective highest short-term debt Rating Categories by Moody's and Standard & Poor's. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Water Revenues and other assets pledged hereunder to the Bonds on a parity basis therewith and, in such event, the District shall pay to the Trustee for deposit in the Interest Fund, at the times and in the manner provided in the Indenture, the amounts to be paid under such interest rate swap agreement, as if such amounts were additional interest due on the Bonds to which such interest rate swap agreement relates, and the Trustee shall pay to the other party to the interest rate swap agreement, to the extent required thereunder, amounts deposited in the Interest Fund for the payment of interest on the Bonds with respect to which such agreement was entered into.

### **Additional Bonds; Parity Debt**

The issuance of additional Water Bonds is not limited by the Indenture. The District may issue Bonds and Parity Debt payable from Subordinated Water Revenues and secured equally and ratably with Bonds previously issued, subject to the following specific conditions precedent to the issuance of any such additional Bonds or Parity Debt:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Bonds or Parity Debt shall not exceed any limitation imposed by law or by any Supplemental Indenture.

(c) The District shall have placed on file with the Trustee a Certificate of the District certifying that the sum of: (1) the Subordinated Water Revenues plus all amounts required to be paid under the Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Water Bonds for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Water Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Water Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Bonds due to improvements to the Water System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Bonds, shall (4) have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt then Outstanding and the additional Bonds or Parity Debt then proposed to be issued.

### **Refunding Bonds**

Refunding Bonds may be authorized and issued by the District without compliance with the provisions described above under "Additional Bonds; Parity Debt", provided that Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding following the issuance of such refunding Bonds is less than or equal to Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding prior to the issuance of such refunding Bonds.

### **Covenants**

Among other covenants the District has agreed as follows:

The District will not create any pledge, lien or charge upon any of the Subordinated Water Revenues having priority over or having parity with the lien of the Bonds except only as described above. The District will not amend or change the Water Bond Resolution in any manner which would permit the issuance of additional Water Bonds in a greater principal amount than would have been permitted thereunder prior to such amendment or change or reduce the debt service percentage or coverage requirements contained therein. The District will not issue Water Bonds pursuant to the Water Bond Resolution in such amount as would cause the District to fail to be in compliance with the rate covenant described in the second succeeding paragraph hereof.

The District will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code. The District will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code. To that end, the District will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds.

The District will, at all times while any of the Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year plus all amounts required to be paid under the Water Bond Resolution for such year for principal, interest, reserve fund and any other debt service requirements on the Water Bonds shall be at least equal to 1.1 times the amount of Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding for such Fiscal Year.



The District will maintain and preserve the Water System in good repair and working order at all times, and will operate the Water System in an efficient and economical manner. Subject in each case to the condition that insurance is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District, the District will procure and maintain at all times: (a) insurance on the Water System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities, and (b) public liability insurance in such amounts as the District deems prudent taking into account insurance coverage for similar utilities.

### **Events of Default; Remedies**

The following events are Events of Default under the Indenture:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in this Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the District has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(e) if any default shall exist under the Water Bond Resolution and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(f) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or Federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; and

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Subordinated Water Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

In addition, pursuant to the Fifteenth Supplemental Indenture, with respect to the Series 2009A Bonds while bearing interest in a SIFMA-Based Term Interest Rate Period pursuant to such Fifteenth Supplemental Indenture, in the event sufficient funds are not available for the purchase of all Series 2009A Bonds tendered or deemed tendered and required to be purchased on any purchase date therefor pursuant to the Indenture, notwithstanding any other provision of the Indenture, in such event, such failed purchase shall constitute an Event of Default.

If an Event of Default shall occur and be continuing, the District is to immediately transfer to the Trustee all Subordinated Water Revenues held by it and received thereafter and the Trustee shall apply all Subordinated Water Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accrued Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the District, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the District shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made

therefor, then, and in every such case, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, by written notice to the District and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

The Trustee is appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) to represent the Owners in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon any default or other occasion, giving rise to a right in the Trustee to represent the Bondholders, the Trustee may take such action as may seem appropriate and, upon the request in writing of Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Owners by such appropriate actions as it shall deem most effectual to protect and enforce any such right.

No remedy conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

### **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bonds then Outstanding. No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Subordinated Water Revenues and other assets pledged under the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Subordinated Water Revenues and other assets, without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture may also be modified or amended at any time with the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, rated not lower than the respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) or Standard & Poor's (if Standard & Poor's is then rating the Bonds).

The Indenture and the rights and obligations of the District, of the Trustee and the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the District or to surrender any right or power reserved to or conferred upon the District;
- (2) to make such provisions for the purpose of curing any omission or ambiguity, or of curing or correcting any defective provision contained in the Indenture, or in regard to questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (3) to modify the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statutes and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (4) to make modifications or adjustments necessary or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt, with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture;
- (5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that such provisions shall not materially and adversely affect the interest of the Owners of the Bonds;
- (6) if the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;
- (7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture; and
- (8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

## **Defeasance**

Bonds may be paid by the District in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem such Outstanding Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond

shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payments.

The District may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities described in clauses (i), (ii) or (v) of the definition thereof the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as required by the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

## APPENDIX D

### PROPOSED FORMS OF CO-BOND COUNSEL OPINION AND SPECIAL TAX COUNSEL OPINION

#### PROPOSED FORM OF CO-BOND COUNSEL OPINION

*Upon the delivery of the Series [Designation] Bonds, Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, propose to render their final approving opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$ \_\_\_\_\_  
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance of its Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”), and a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

In our capacity as co-bond counsel, we have reviewed the Act, the Indenture, certifications of the District, the Trustee, and others, opinions of counsel to the District and the Trustee, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture. In addition, we call attention to the fact that the rights and obligations under the Series [Designation] Bonds and the Indenture are subject to bankruptcy, insolvency,

reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. Furthermore, the imposition of fees and charges by the District relating to the Water System may be subject to the provisions of Articles XIII C and XIII D of the California Constitution.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Series [Designation] Bonds constitute the valid and binding special limited obligations of the District.

2. The Indenture has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the District. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Series [Designation] Bonds, of the Subordinated Water Revenues of the District, and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

3. The Series [Designation] Bonds are special limited obligations of the District and are payable exclusively from and are secured by a pledge of Subordinated Water Revenues and certain amounts held under the Indenture. The general fund of the District is not liable, and neither the credit nor taxing power of the District is pledged, for the payment of the Series [Designation] Bonds or the interest thereon.

4. Other bonds and parity debt of the District have been and may from time to time hereafter be issued under the Indenture which are payable from Subordinated Water Revenues on a parity basis with the Series [Designation] Bonds.

We express no opinion as to any federal, state or local tax consequences of the ownership or disposition of the Series [Designation] Bonds or the receipt of interest thereon.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Series [Designation] Bonds.

Respectfully submitted,

Respectfully submitted,

## PROPOSED FORM OF OPINION OF SPECIAL TAX COUNSEL

*Upon the delivery of the Series [Designation] Bonds, Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), proposes to render its tax opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$\_\_\_\_\_ East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, Series [Designation]  
(Special Tax Opinion)

Ladies and Gentlemen:

We have acted as special tax counsel in connection with the issuance by the East Bay Municipal Utility District (the "District") of \$\_\_\_\_\_ aggregate principal amount of its Water System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). The Bonds are being issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented by supplemental indentures, including a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture"), between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

In such connection, we have reviewed the Indenture, the Tax Certificate of the District, dated the date hereof and relating to the Bonds (the "Tax Certificate"), opinions of counsel to the Trustee and the District, certificates of the District, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. In particular, we have relied on the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C., co-bond counsel to the District (the "Bond Counsel Opinion"), regarding, among other matters, the validity of the Bonds. In rendering the opinions expressed herein, we expressly have relied on the Bond Counsel Opinion that, among other matters, the Bonds are valid, binding and enforceable in accordance with their terms. We call attention to the fact that the interest on the Bonds may not be excluded from gross income for federal income tax purposes or exempt from State of California personal income taxes if the Bonds are not valid, binding and enforceable in accordance with their terms.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or copies) and the due and legal execution thereof by, and validity against, all parties. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or



certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause the interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the Indenture, or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of such interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E concerning The Depository Trust Company, New York, New York (“DTC”), and DTC’s book-entry system has been obtained from DTC and the District and the Trustee take no responsibility for the completeness or accuracy thereof. The District and the Trustee cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Series [Designation] Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Series [Designation] Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series [Designation] Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The District and the Trustee are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Series [Designation] Bonds or an error or delay relating thereto. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC’s Direct and Indirect Participants are on file with DTC.

DTC acts as securities depository for the Series [Designation] Bonds. The Series [Designation] Bonds will be reissued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Series [Designation] Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of Series [Designation] Bonds under the DTC book-entry system must be made by or through Direct Participants, which will receive a credit for the Series [Designation] Bonds on DTC’s

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

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

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

Redemption notices shall be sent to DTC. If less than all of the Series [Designation] Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series [Designation] Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series [Designation] Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Series [Designation] Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the District or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such

Participant and not of DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Series [Designation] Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series [Designation] Bonds at any time by giving notice to the Trustee and the District. Under certain circumstances, in the event that a successor depository is not obtained, Series [Designation] Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers for the Series [Designation] Bonds through DTC (or a successor securities depository). In that event, Series [Designation] Bond certificates will be printed and delivered as provided in the Indenture. In addition, the following provisions would apply: the principal or redemption price of the Series [Designation] Bonds will be payable upon presentation thereof, at the principal corporate trust office of the Trustee, in San Francisco, California; interest on the Series [Designation] Bonds will be payable by check mailed on each interest payment date to the registered owners thereof as shown on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the calendar month immediately preceding the applicable interest payment date (the “record date”), except that in the case of an owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date; and the Series [Designation] Bonds will be transferable and exchangeable on the terms and conditions provided in the Indenture.

The information in this Appendix E concerning DTC and DTC’s book-entry system has been obtained from sources the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.

## **APPENDIX F**

### **FORM OF CONTINUING DISCLOSURE AGREEMENT**

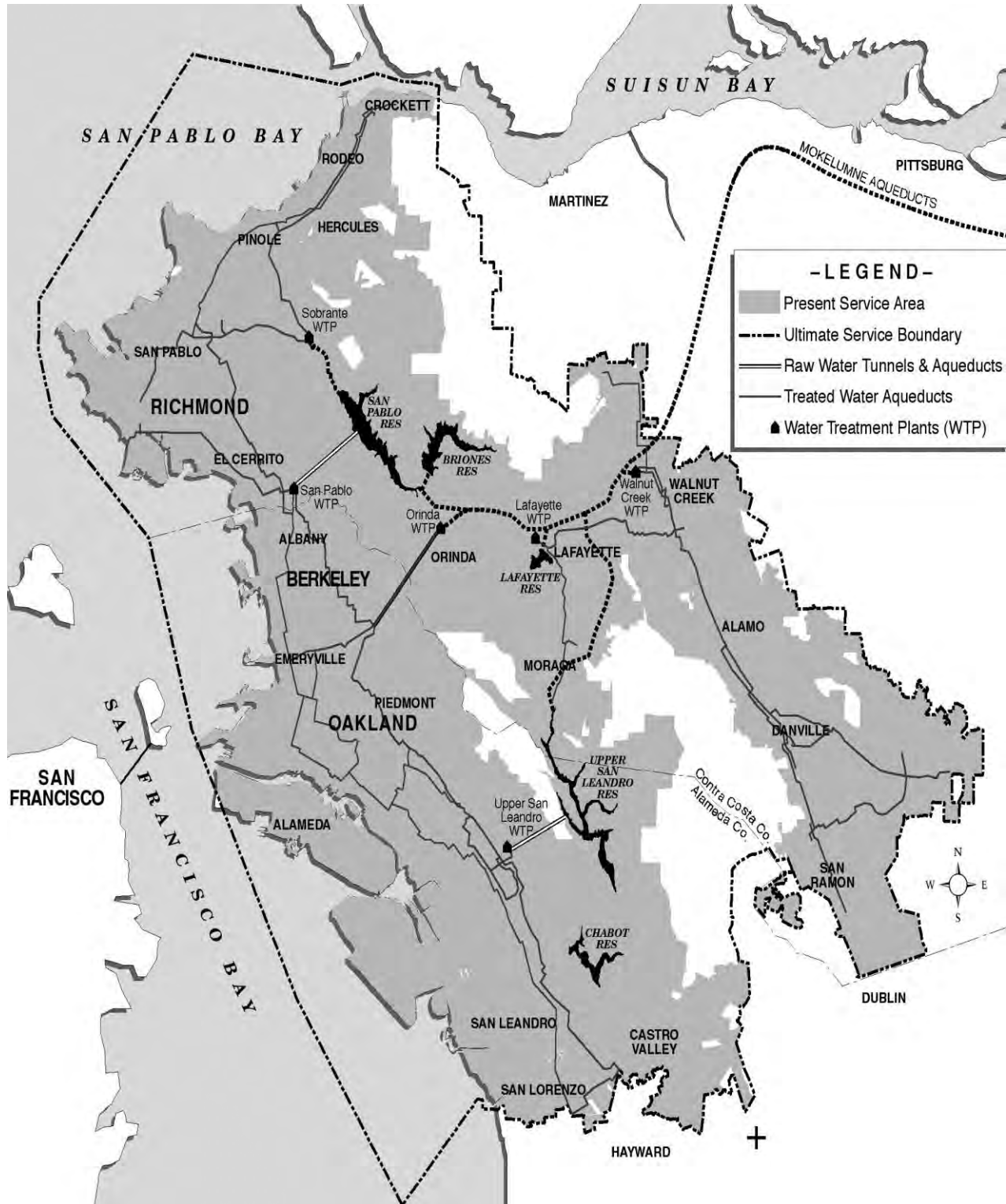
**APPENDIX A**

**THE EAST BAY MUNICIPAL UTILITY DISTRICT  
(THE WATER SYSTEM)**



The East Bay Municipal Utility District occupies 332 square miles of the San Francisco – Oakland metropolitan region. The Water System serves approximately 1.3 million people, or approximately 53% of the population of Alameda and Contra Costa Counties.

### EAST BAY MUNICIPAL UTILITY DISTRICT WATER SYSTEM



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## THE DISTRICT

### Organization

In May 1923, voters in cities along the eastern shore of the San Francisco Bay located in portions of Alameda and Contra Costa Counties (known throughout the San Francisco Bay Area as the “East Bay”) elected to create the East Bay Municipal Utility District (the “District”) under the provisions of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the territory of the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

### District Board

The District, a public agency, is governed by an elected seven-member Board of Directors (the “Board”) which determines such matters as rates and charges for services, approval of contracts, and District policy. Voters elect directors by ward to four-year terms. There are seven wards which together cover the entire service area of the District. Each year, the Board elects from among its members persons to serve as Board officers (President and Vice President). With an average service tenure of almost 15 years, each of the Board members has served one or more years as an officer of the Board of Directors and has chaired one or more of the Board’s standing committees that review financial, long-range planning, and legislative matters. The following persons currently serve on the Board:

**Andy Katz** has been a Board member since 2006 and represents Ward 4, which includes Albany, Berkeley, El Cerrito, Emeryville, Kensington and North Oakland. Mr. Katz is currently President of the Board and Chair of the Board’s Finance and Administration Committee. He is employed as an attorney and public health advocate for Breathe California. Mr. Katz has a Bachelor of Arts degree and a Master of City Planning degree from the University of California, Berkeley, and a law degree from Santa Clara University. His current term expires on December 31, 2014.

**Katy H. Foulkes** has been a Board member since 1994 and represents Ward 3, which includes the City of Piedmont and a portion of Oakland, in Alameda County, the Contra Costa County cities of Orinda and El Sobrante, the Town of Moraga, and portions of Pinole and Richmond. Ms. Foulkes is currently Vice President of the Board, and she represents the District on the governing boards of the Upper Mokelumne River Watershed Authority and the Freeport Regional Water Authority. Ms. Foulkes served multiple terms as an officer for Region 5 of the Association of California Water Agencies (“ACWA”) and as a member of ACWA’s Board of Directors. She is Vice-President of the Alameda Chapter of the California Special Districts Association and Co-Chair of the Bay Area Water Forum. Ms. Foulkes has a Bachelor of Arts degree in English from the University of California, Berkeley. Her current term expires on December 31, 2014.

**John A. Coleman** has been a Board member since 1990 and represents Ward 2, which includes Alamo, Lafayette, Walnut Creek, the Town of Danville, the communities of Blackhawk and Diablo, and portions of Pleasant Hill and San Ramon. Mr. Coleman represents the District on the

governing boards of the joint powers authorities in which the District participates that manage the provision of recycled water service (the DSRSD/EBMUD Recycled Water Authority (DERWA)), Sierra Nevada watershed management and protection (the Upper Mokelumne River Watershed Authority) and supplemental water supplies for dry years (the Freeport Regional Water Authority). Mr. Coleman is Vice President of ACWA, a board member of the National Water Resources Association and a board member of the WaterReuse Association. He is also a past president of the California Association of Sanitation Agencies. Mr. Coleman is employed as the Executive Director of the Bay Planning Coalition. He has a Bachelor of Science degree in Natural Resources from the University of California, Berkeley and a certificate in management from the University of Pacific School of Business and Public Administration. His current term expires on December 31, 2014.

**Doug A. Linney** has served on the Board since 2000 and represents Ward 5, which includes the Alameda County cities of Alameda and San Lorenzo, the West Oakland and Oakland Airport Area, and a portion of San Leandro. Mr. Linney is currently chair of the Board's Planning Committee. He is employed as President of The Next Generation, a public relations firm providing services that emphasize achieving environmental protection. Mr. Linney has a Bachelor of Science degree in environmental science and public policy from the University of California, Davis. His current term expires on December 31, 2016.

**Lesa R. McIntosh** has served on the Board since 1999 and represents Ward 1, which includes the Contra Costa County cities of Crockett, Hercules, Rodeo and San Pablo; portions of Richmond and Pinole, and the communities of North Richmond and Selby. Ms. McIntosh is currently chair of the Legislative/Human Resources Committee. Ms. McIntosh is employed as a lawyer specializing in business, land use and estate planning. She has a Bachelor of Science degree in political science from the University of California, Berkeley and a law degree from John F. Kennedy University. Ms. McIntosh's current term expires on December 31, 2016.

**Frank G. Mellon** has served on the Board since 1994 and represents Ward 7, which includes the areas of Castro Valley, communities of Cherryland and Fairview; portions of San Leandro and Hayward in Alameda County, and a portion of San Ramon in Contra Costa County. Mr. Mellon currently serves on the District's Retirement Board and on the Legislative/Human Resources Committee. He also represents the District on the governing board of DERWA. Mr. Mellon is employed as a consultant specializing in human resources and labor relations and he teaches labor law in the California State University East Bay Human Resources Certificate Program. Mr. Mellon has a Bachelor of Arts degree in Management from the University of Hawaii and a Master's Degree in Business Administration from St. Mary's College in Moraga. His current term expires on December 31, 2014.

**William B. Patterson** has served on the Board since 1997 and represents Ward 6, which includes Alameda County's East Oakland Hills and south of Lake Merritt to the San Leandro city boundary. Mr. Patterson is currently Vice-President of the District's Retirement Board. He retired several years ago, after working for many years as the City of Oakland Manager of Parks and Recreation. He has Bachelor's and Master's degrees in Parks and Recreation Administration from San Francisco State University and a Social Services Certificate from the University of California, Berkeley. Mr. Patterson's current term expires on December 31, 2016.

## **District Management**

**Alexander R. Coate** joined the District in 1993 and was appointed General Manager in 2011. Prior to his appointment as General Manager, he was Director of Water and Natural Resources with responsibility for water supply planning, water rights, and watershed management including

recreation and fisheries. He has more than 29 years of experience with public agencies, engineering consulting firms, research and law. Mr. Coate is a member of the American Water Works Association and the Association of California Water Agencies. He currently serves on the Board of Directors of the Central Valley Project Water Association and California Urban Water Agencies. Mr. Coate has a Bachelor's degree in Neurobiology and a Master's degree in Civil Engineering, both from the University of California, Berkeley.

**Jylana D. Collins** joined the District in 1994 and was appointed General Counsel in 2006. Prior to her appointment as General Counsel, she was Assistant General Counsel. Before joining the District, she was Deputy City Attorney for the City of Berkeley. She has over 29 years of experience in public law. Ms. Collins has a Bachelor's degree in Psychology from Antioch University West and a law degree from the University of San Francisco School of Law.

**Eric L. Sandler** was appointed Director of Finance in 2012. He has over 24 years of experience in municipal and infrastructure financing. Prior to joining the District, he was Director of Finance/Treasurer at the San Diego County Water Authority. He also served as Director of Financial Planning and Acting Director of Finance for the San Francisco Public Utilities Commission. Previously, he was employed by Lehman Brothers in the municipal investment banking group in San Francisco. He has a Bachelor's degree in Biology from Stanford University and a Master's degree in Business Administration from the University of California, Berkeley.

**Bennett K. Horenstein** joined the District in 1991 and was appointed Director of Wastewater effective May 20, 2013. During his 22 years with the District, Mr. Horenstein has worked in various capacities in the District's Wastewater Department, including most recently as Manager of Environmental Services, with responsibility for a range of technical and regulatory activities, including the long-term approach to regional wet weather flow management and associated private lateral sewer program, and the development of the District's resource recovery program. He has over 25 years of experience in the engineering field. Mr. Horenstein has a Bachelor of Science degree in Environmental Engineering from the University of Florida.

**Xavier J. Irias** joined the District in 1986 and was appointed Director of Engineering and Construction in 2006. Prior to that appointment, he held progressively more responsible positions managing engineering design and engineering services, and he has over 28 years of experience in the engineering field. Mr. Irias has a Bachelor of Science degree in Civil Engineering from the University of California, Berkeley.

**Carol K. Nishita** joined the District in 1989 and was appointed Director of Administration in 2007. Prior to that appointment, she held progressively more responsible positions, including ten years as the Manager of Budget and Rates. Before joining the District, Ms. Nishita worked as a manager in non-profit and county agencies and as a policy analyst for the Governor's Office of Planning and Research in Sacramento. Ms. Nishita has a Bachelor of Arts degree in Sociology from the University of California, Berkeley and a Master's degree in Social Service Administration from the University of Chicago.

**Richard G. Sykes** joined the District in 1989 and was appointed Director of Water and Natural Resources in 2011. Mr. Sykes has held progressively more responsible positions over that time; he has broad knowledge of the District's operations and is very experienced in water quality and regulatory issues. He has a Bachelor's degree in Conservation of Natural Resources and English and a Master's degree in Environmental Engineering from the University of California, Berkeley.

**Michael J. Wallis** joined the District in 1985 and was appointed Director of Operations and Maintenance in 1996. Prior to his current appointment Mr. Wallis held progressively more

responsible positions in the District's Wastewater Department, and served as Director of Wastewater for several years. Mr. Wallis has over 35 years of water and wastewater related experience. He serves on the Board of Directors for the Association of Metropolitan Water Agencies and currently holds the position of Secretary. He has a Bachelor of Science degree and a Master's degree in Civil Engineering from North Carolina State University.

**Lynelle M. Lewis** joined the District in 1993 and was appointed Secretary of the District in 1995. She is a Certified Municipal Clerk and a member of the City Clerks Association of California and the International Institute of Municipal Clerks. Ms. Lewis received her Bachelor of Science degree in Business Administration from San Jose State University.

**Wanda B. Hendrix** joined the District in 1994 and was appointed Treasury Manager in 2006. She served as Principal Management Analyst for the Finance Department of the District prior to her appointment. Before joining the District, Ms. Hendrix worked for the City of Hayward as the Budget Administrator for eight years. Ms. Hendrix has a Bachelor's degree in Sociology and a Master's degree in Public Administration from San Jose State University.

### **Employees and Employee Relations**

As of August 31, 2013, the District has 1,461 regular (full-time equivalent) employees in the Water System and 250 regular (full-time equivalent) employees in the Wastewater System.

The District has four unions representing approximately 1,565 workers out of a total full-time equivalent workforce of 1,711 employees: Local 2019 of the American Federation of State, County and Municipal Employees ("AFSCME") represents white collar workers including professionals; Local 444 of AFSCME represents blue collar workers; Local 21, International Federation of Professional and Technical Engineers represents supervisory employees; and Local 39, International Union of Operating Engineers represents water treatment/distribution workers.

Locals 2019, 444, 21 and 39 are operating under Memoranda of Understanding ("MOUs"), first approved by the District Board in 2008, and extended by mutual agreement in 2011 for an additional two years. Each of the current MOUs expired on April 21, 2013. Negotiations for successor MOUs are ongoing. The MOUs are comprehensive in scope and provide for binding arbitration for the resolution of grievances. The District has not had a strike or work stoppage since 1985.

For a discussion of the District Employees' Retirement System, see "WATER SYSTEM FINANCES – Employees' Retirement System."

### **Service Area**

Originally formed to include nine cities covering 92.6 square miles, the District has grown by more than 450 separate annexations to a present area of 332 square miles in 20 incorporated and 15 unincorporated communities in both Alameda and Contra Costa Counties. It covers the eastern shore of San Francisco Bay from Carquinez Strait on the north to and including San Lorenzo on the south and it extends approximately 20 miles east, beyond the Oakland-Berkeley hills, into Contra Costa County.

The District's Water System serves this entire area, reaching 53% of the combined population of Alameda County and Contra Costa County. Approximately two-thirds of the population within the District service area resides in the cities of Alameda, Berkeley, Oakland, San Leandro, Richmond and Walnut Creek.

The land area between the present service area boundary and the ultimate service area boundary, approximately 69 square miles, includes some areas of potential development. However, a large part of this land area is parklands and other undeveloped lands that are not anticipated to be developed in the foreseeable future. Another 81 square miles within the ultimate service area boundary outside the District's present service area boundary is under the waters of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the west and north by the shorelines of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the south and northeast by adjoining water agencies which have sources of supply independent of the District. There is limited potential for new development at the southern end of the San Ramon Valley, now in the early stages of land use planning and environmental documentation, which is located just outside the ultimate service area boundary. The District service area population, currently 1.3 million, is projected to grow by 2035 to a population of 1.75 million, with much of that growth expected to come from infill development within the urbanized parts of the service area.

The Municipal Utility District Act was amended in 1941 to enable formation of special districts for wastewater service provision. In 1944, voters elected to form the District's Special District No. 1 to treat wastewater released into the San Francisco Bay. The District's wastewater treatment system (the "Wastewater System") presently serves approximately 650,000 people in an 88-square-mile area of the two counties along the east shore of the San Francisco Bay, extending from Richmond on the north, southward to San Leandro. Domestic, commercial and industrial wastewater is treated for the six cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and for the Stege Sanitary District, which includes El Cerrito, Kensington and part of Richmond. Each of these entities operates a sewer collection system that discharges into the District's intercepting sewers. At the request of the City of Richmond, the District is presently participating in a study to explore the possibility of the District accepting waste from sewers in that city. In addition to treating waste received through the sewer collection system, the District accepts high-organic waste streams delivered in trucks. The wastes include domestic waste from septic tanks, fat, oil and grease from restaurants and other food and drink wastes.

### **Taxation of the District**

All property of the District within the District's boundaries generally is exempt from property taxation. District-owned land outside of the District's boundaries is taxable, but improvements constructed on that land by the District are not taxable. As a public agency, the District is exempt from the payment of State of California (the "State") and federal income taxes.

## THE WATER SYSTEM

### General

The District supplies water for major parts of Alameda and Contra Costa Counties. Approximately 1.3 million people are served by the District's Water System in an approximately 332 square-mile area extending from Crockett on the north, southward to and including San Lorenzo, encompassing the major cities of Oakland and Berkeley, and eastward from San Francisco Bay to Walnut Creek.

The District's Water System currently serves the incorporated communities of Alameda, Albany, Berkeley, Danville, El Cerrito, Emeryville, part of Hayward, Hercules, Lafayette, Moraga, Oakland, Orinda, Piedmont, Pinole, part of Pleasant Hill, Richmond, San Leandro, San Pablo, San Ramon, and part of Walnut Creek, and the unincorporated communities of Alamo, Ashland, Blackhawk, Castro Valley, Cherryland, Crockett, Diablo, El Sobrante, Fairview, Kensington, North Richmond, Olmsted, Rodeo, San Lorenzo and Selby.

Table 1 shows the population trends for the six largest cities in the District, Alameda and Contra Costa Counties and the State for the current and last five years.

**Table 1**  
**SIX LARGEST DISTRICT CITIES**  
**ALAMEDA, CONTRA COSTA COUNTIES AND CALIFORNIA**  
**Population Trends<sup>(1)</sup>**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Six Largest District Cities:					
Oakland	419,095	390,757	392,333	394,832	399,326
Berkeley	106,697	112,621	113,925	114,688	115,716
Richmond	103,577	103,661	104,382	105,004	105,562
San Leandro	81,851	84,977	85,364	85,941	86,666
Alameda	74,015	73,835	74,052	74,544	75,126
Walnut Creek	65,306	64,140	64,710	65,306	65,684
Total Six Cities	850,541	829,991	834,766	840,315	848,080
Alameda County	1,557,749	1,509,240	1,517,756	1,530,176	1,548,681
Contra Costa County	1,061,325	1,047,948	1,056,306	1,066,602	1,074,702
California	37,883,992	37,223,900	37,427,948	37,668,804	37,966,471

<sup>(1)</sup> As of January 1 of each year.

Source: 2009-2010: State of California, Department of Finance, E-8 Historical Population and Housing Estimates, 2000-2012 Report, by Year, Sacramento, California, November 2012 (Revised Estimates).

2011-2013: State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change – January 1, 2011 and 2012, Sacramento, California, May 2012 and – January 1 2012 and 2013, Sacramento, California, May 2013.

## Water Supply

During wet and normal rainfall years, the District's water supply is obtained from three sources: the 627-square mile Mokelumne River watershed in the Sierra Nevada mountains, runoff from streams within the District, and recycled water produced at various locations in the service area. During drought times, the District has substantial additional supplies from the Sacramento River via the Freeport Regional Water Project as described below. The District can also utilize water stored within a local aquifer through its Bayside Groundwater Project.

***Mokelumne River Watershed.*** The District holds permits and licenses issued by the State Water Resources Control Board (the "SWRCB") which enable the District to utilize waters of the Mokelumne River as the primary source of the water supply for the District's service area. The average annual runoff of the Mokelumne River is about 745,000 acre-feet. (An acre-foot is the amount of water that will cover one acre to a depth of one foot and equals approximately 326,000 gallons, which represents the needs of two average families in and around the home for one year.) As described below under "– Water Rights and Related Proceedings," the District's water rights permit the total diversion of approximately 364,000 acre-feet per year from the Mokelumne River, subject to certain prior water rights. Annual water production in the District to serve its customers has not exceeded 252,000 acre-feet. Water production includes the total water produced at the District's water treatment plants and water moved through the distribution system that was delivered to customers, as well as water lost through leaks in the transmission system, water used in the treatment process, evaporation, water used for fighting fires and other miscellaneous causes.

Annual water production in the District since Fiscal Year 2003 is shown in Table 2 below.

**Table 2**  
**WATER PRODUCTION BY FISCAL YEAR<sup>(1)</sup>**

<b><i>Fiscal Year</i></b>	<b><i>Annual Production (Acre-Feet)</i></b>	<b><i>Annual Production (Thousands of Ccf)</i></b>	<b><i>Annual Production (Million Gallons)</i></b>	<b><i>Average Production Per Day (Million Gallons per Day)</i></b>
2003	238,721	103,987	77,782	213
2004	251,935	109,743	82,088	224
2005	229,155	99,820	74,666	205
2006	236,866	103,179	77,174	211
2007	236,111	102,850	76,932	211
2008	230,363	100,346	75,059	205
2009	203,423 <sup>(2)</sup>	88,611 <sup>(2)</sup>	66,281 <sup>(2)</sup>	182 <sup>(2)</sup>
2010	195,158 <sup>(2)</sup>	85,011 <sup>(2)</sup>	63,588 <sup>(2)</sup>	174 <sup>(2)</sup>
2011	194,642 <sup>(2)</sup>	84,786 <sup>(2)</sup>	63,420 <sup>(2)</sup>	174 <sup>(2)</sup>
2012	200,220 <sup>(2)</sup>	87,216 <sup>(2)</sup>	65,242 <sup>(2)</sup>	178 <sup>(2)</sup>
2013	210,587 <sup>(3)</sup>	91,732 <sup>(3)</sup>	68,620 <sup>(3)</sup>	188 <sup>(3)</sup>

<sup>(1)</sup> Water production includes water lost through leaks in the transmission system, used in the treatment process, evaporation, fighting fires and other miscellaneous causes, which approximates 10.0% of gross production.

<sup>(2)</sup> Reflects implementation of conservation measures as a result of drought conditions and reduced post-drought consumption.

<sup>(3)</sup> Preliminary

Source: The District.

See also "– Water Supply Operations" below.

During the ten-year period from 2004 to 2013, the annual Mokelumne River runoff has ranged from a low of just over 400,000 acre-feet in Water Year 2008 to a high of over 1.45 million acre-feet in Water Year 2006. (A Water Year begins on October 1 and ends of the following September 30). In 1977, the lowest year of record since records have been kept, the annual runoff from the Mokelumne River was 129,000 acre-feet. Faced with fluctuating runoff volumes and periodic drought conditions, the District has developed a comprehensive approach to ensuring reliable water supply. That approach, its Water Supply Management Plan, utilizes demand management and multiple supply options to meet long-term water needs. The plan is discussed below under “– Water Supply Management Plan” below.

The Mokelumne River watershed also serves municipal, industrial and agricultural water needs in three Sierra Nevada foothill counties (Amador, Calaveras and San Joaquin), in addition to the municipal and industrial needs of the District’s service area. The agencies and individual diverters on the Mokelumne River each operate and divert water under separate entitlements, permits and licenses, along with a number of contracts and agreements among various agencies and under certain court decrees.

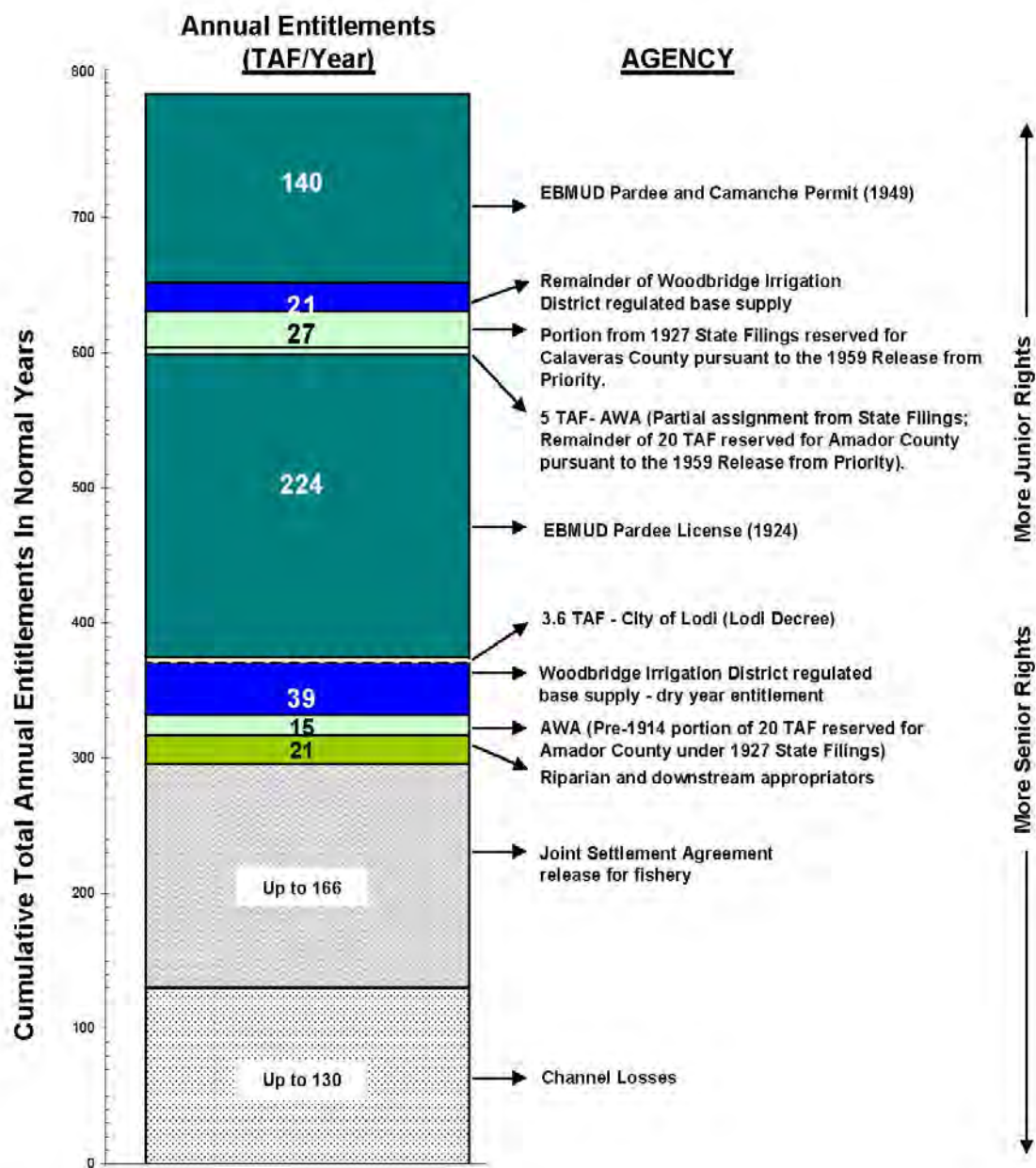
Entities with water rights in the Mokelumne River watershed senior to those of the District include Pacific Gas and Electric Company (“PG&E”) (which rights are essentially non-consumptive other than for project uses), Amador Water Agency and Jackson Valley Irrigation District (referred to collectively in the graphic on the next page as “AWA”) (for a total potential consumptive diversion of 20,000 acre-feet per year in Amador County); Calaveras County Water District and Calaveras Public Utility District (for a total potential consumptive diversion of 27,000 acre-feet per year in Calaveras County); and Woodbridge Irrigation District and the City of Lodi (for a total potential consumptive diversion of 63,600 acre-feet in normal and wet years and 42,600 acre-feet in dry years in San Joaquin County). In addition, adjacent property owners retain certain historical riparian and appropriative rights to water from the river. See “– Water Supply Management Plan” for discussion of potential effects of projected increased use of senior water rights holders on District water supplies and the District’s efforts to increase future supply through multiple water supply projects. In addition, the District’s water rights from the State for the Camanche Reservoir, including the District’s obligations under a 1998 Joint Settlement Agreement among the District, the U.S. Fish and Wildlife Service and the California Department of Fish and Game incorporated therein (the “1998 Joint Settlement Agreement”), requires that minimum releases be made from Camanche Reservoir for the protection of downstream fisheries. See also “– Water Rights and Related Proceedings” below.

The following graphic summarizes the priorities of Mokelumne River water rights and other flow commitments with respect to the Mokelumne River water supply in a normal Water Year. “TAF” as used in the graphic refers to thousand acre-feet.

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## Hierarchy Of Mokelumne River Water Rights And Other Flow Commitments



*Note: Total does not include storage rights or power rights which are non-consumptive (e.g. PG&E).*

**Local runoff.** In normal Water Years, District reservoirs in the East Bay receive an additional 30,000 acre-feet of water from local watershed runoff. Much of the local runoff is stored in the East Bay reservoirs for system use. In dry years, evaporation and other reservoir losses can total more than the runoff. Thus, there is no firm yield from local watersheds.

**United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project.** In December 1970, the District entered into its original Central Valley Project Contract (“CVP Contract”) with the United States Bureau of Reclamation (the “Bureau”), entitling the District to take up to a specified quantity of American River water from the Folsom-South Canal Unit of the Bureau’s Central Valley Project (“CVP”) annually. The CVP Contract was superseded on July 20, 2001 by an Amendatory Contract, which, in turn, was superseded on April 10, 2006 by a Long-Term Renewal Contract (“Long-Term Renewal CVP Contract”). The Long-Term Renewal CVP Contract has a term of 40 years, with a right of renewal for an additional 40 years available to the District. Historically, the District did not have permanent infrastructure in place to receive CVP contract water. The Freeport Regional Water Project (hereinafter, the “FRWP”), which was placed in commercial operation on November 15, 2011, provides the permanent infrastructure to allow the District to receive water deliveries pursuant to the Long-Term Renewal CVP Contract. Under the Long-Term Renewal CVP Contract, the District is entitled to receive deliveries of up to 133,000 acre-feet per year (119 million gallons per day (hereinafter, “MGD”)) of CVP water in a single dry year, and no more than 165,000 acre-feet over the course of any three consecutive dry-years. The FRWP can provide up to 100 MGD (112,000 acre-feet per year) of supplemental water supplies to the District in dry years which helps meet projected drought year needs.

The FRWP is a regional water supply project undertaken by the District in partnership with the Sacramento County Water Agency (“SCWA”). In February 2002, with the support of the Bureau, the District and SCWA formed the Freeport Regional Water Authority (“FRWA”) under a joint powers agreement to develop the FRWP. The FRWP provides the permanent infrastructure to allow the District to receive water deliveries pursuant to the Long-Term Renewal CVP Contract at a new point of diversion along the Sacramento River. In addition to providing the District up to 100 MGD of supplemental water in dry years as described above, the FRWP can provide up to 85 MGD to SCWA in all years.

In 2007, the District entered into a Dedicated Capacity Purchase Agreement, dated as of May 1, 2007, by and between FRWA and the District (the “Dedicated Capacity Purchase Agreement”). Pursuant to the Dedicated Capacity Purchase Agreement, FRWA sells to the District and the District agrees to acquire 100 MGD of capacity in the FRWP (“Dedicated Capacity”) in accordance with the Second Amended Joint Exercise of Powers Agreement Concerning the Freeport Regional Water Authority dated as of November 20, 2006 (the “FRWA JPA Agreement”). The purchase price of the Dedicated Capacity has been paid by the District in accordance with the FRWA JPA Agreement as a portion of the District’s capital cost of the FRWP pursuant to the FRWA JPA Agreement. In the event of future capital improvements to the FRWP, the District may be required to make additional capital contributions for its share of such costs pursuant to the FRWA JPA Agreement.

The FRWP diverts water from the Sacramento River near the community of Freeport and conveys this water through new pipelines and the existing Folsom South Canal (“FSC”) to the District’s Mokelumne Aqueduct near Camanche Reservoir. A turnout in the pipe within central Sacramento County delivers water to SCWA. Water is delivered to the District pursuant to its Long-Term Renewal CVP Contract. CVP water received by the District will be treated at existing District treatment facilities prior to delivery to customers. Short-term storage, if needed, will be provided at the District’s San Pablo terminal reservoir or Upper San Leandro reservoir. See “– Water Facilities” below.

The FRWP includes a number of significant components. Chiefly, the components consist of an intake and pumping plant, approximately 16 miles of pipeline and a communications system. The capacity of the intake and pumping plant is 185 MGD. The pipeline includes a 7-foot diameter segment

which runs from the intake to the SCWA turnout, a 5-foot, 6-inch diameter pipeline segment which feeds a new SCWA Treatment Plant and a 6-foot diameter pipeline segment which discharges to the FSC. Fiber optic and radio systems link project facilities and key outside agencies.

Water flows within the FSC for 14 miles and, in turn, is recaptured by the District and directed via pipeline along a route which leads to the District's Mokelumne Aqueducts. That southern system (known as the FSC Connection or the "FSCC") is a District-only element, and includes two 100 MGD pumping plants (an intake and a pumping plant at the terminus of the FSC and a high head pumping plant near Camanche Reservoir) and approximately 18 miles of 6-foot diameter pipeline.

The combined FRWP/FSCC system underwent a successful integrated operational test and, following such test was placed into commercial operation on November 15, 2011, and can be utilized by the District during dry years when the District's contractual right to CVP water is made available.

The District has adopted a supplemental supply charge of 14% of total water flow charges which may be added to customers' water bills during droughts when the Board declares a need to take deliveries of its CVP water under the Long-Term Renewal CVP Contract. The supplemental supply charge is designed to cover the costs of operating the Freeport Regional Water Project and the costs of CVP water during dry year periods when the District takes deliveries of CVP water. See "WATER SYSTEM FINANCES – Supplemental Supply Charge."

***Bayside Groundwater Project.*** In December 2009, the District completed another supplemental supply project, the Bayside Groundwater Project Phase 1. The Bayside Groundwater Project consists of facilities designed to provide a means of storing treated drinking water in a deep underground aquifer during wet years for future recovery, re-treatment and distribution to customers during times of drought. Implementation of the project is planned in two phases. The Bayside Groundwater Project Phase 1, completed in December 2009, provides a modest, locally available supplemental water supply that helps reduce the need for rationing in the event of a prolonged drought. Phase 1 is used to store an annual average of one MGD (1,120 acre-feet per year) of water within a deep aquifer that extends beneath the community of San Lorenzo. Storage operations will take place when water can be made available (during wet years). The District stored (injected) water for an eight week period beginning on June 2, 2011 and ending at the end of July 2011. The estimated volume of water stored is in the range of 30-40 million gallons (92-123 acre-feet). A volume equal to the total stored can be supplied to customers during dry years (at a delivery rate that does not exceed one MGD), helping to reduce the need for rationing. Primary Phase 1 facilities as constructed include an injection/extraction well (and pump), a treatment plant, a groundwater monitoring network and instruments used to measure minute changes (if any) in ground surface elevation (subsidence) during Phase 1 operations. The District intends to continue to operate Phase 1 facilities in either a storage mode or possibly an extraction mode (as based on water supply available for storage and/or drought conditions coupled with the need for water). Information gathered from Phase 1 operations will be used in part to determine the feasibility of Phase 2 and inform its future determinations on how to proceed with Phase 2 (which could provide an additional 9 MGD of supply). Significant planning activities for Phase 2 are not expected to begin for several years.

## **Water Recycling**

The District has undertaken a Water Recycling Program to develop and implement projects that reduce demands on potable water supplies. Recycled water has been used for landscape irrigation, cooling, equipment washdown and construction purposes at the District's Main Wastewater Treatment Plant since the early 1970s, as well as at a number of golf courses in the District's service area, beginning in 1984. Since 1993, the District has implemented various other recycled water projects that are designed to produce in the aggregate 9.3 MGD of additional supply. The program currently includes six operating recycled water projects. In 1996, the District began providing recycled water to the Richmond Chevron Oil Refinery for use in recirculating cooling towers. In 2006, the District began providing recycled water

to a number of sites in San Ramon for irrigation purposes through the San Ramon Valley Recycled Water Program described below. In 2008, the District began providing recycled water to a number of sites in Oakland primarily for irrigation purposes.

On April 9, 1996, the District's Board adopted the Nonpotable Water Policy which requires customers of the District to use nonpotable water (recycled water and other nonpotable water sources) for nondomestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant life, fish and wildlife. The District has undertaken or will undertake in the future several water recycling project expansions in accordance with the long-term water recycling goal of 20 MGD by the year 2040. See "– Water Supply Management Plan" below. The District has entered into a Joint Exercise of Powers Agreement with the Dublin San Ramon Services District ("DSRSD") creating the DSRSD/EBMUD Recycled Water Authority ("DERWA") for the purpose of implementing a recycled water program to make available reliable supplies of recycled water to be provided to the District and DSRSD for their distribution within portions of their existing and future service areas. The first phase of the DERWA recycled water program, the San Ramon Valley Recycled Water Program, which provides recycled water supplies to a number of sites in San Ramon, was completed and became operational in 2006. The costs of such initial phase of facilities were financed from commercial paper notes issued by DERWA, State loan and grant moneys and capital contributions made by the District and DSRSD. The DERWA commercial paper notes were fully retired in January 2011 through the refinancing by each of DSRSD and the District of their respective obligations under the DERWA commercial paper program. The second phase of the DERWA recycled water program has also been completed. The District's share of the costs of the second phase of facilities was financed from federal grant funding and District capital contributions for the District's local share portion. The District has also completed additional distribution systems which were also financed by federal grants and District capital contributions for the local share match. The District and DSRSD have entered into an agreement for the sale of recycled water by DERWA to the District and DSRSD pursuant to which each of the District and DSRSD are responsible for paying their respective share of the costs incurred by DERWA in implementing the DERWA recycled water program (including among other things, administrative costs, construction costs, operation and maintenance costs and costs of debt service on any obligations issued by DERWA for the purposes of the recycled water program). Payments to be made by the District under such recycled water sales agreement for the purchase of recycled water are payable as a Water Operation and Maintenance Cost regardless of whether any recycled water is made available to the District from such facilities.

Another key water recycling project that is part of the District's Water Recycling Program is the Richmond Advanced Recycled Expansion ("RARE") Water Project. Construction of the RARE Water Project began in Fiscal Year 2009 and the first phase of the project was completed in Fiscal Year 2011. It initially provides 3.5 MGD of high quality recycled water to the Chevron refinery for use in industrial boilers (recycled water has been provided by the District to the Chevron refinery for use in recirculating cooling towers since 1996 as noted above). The project consists of a new high-purity recycled water treatment plant at the refinery, an influent pump station, flow equalization and a standby generator. In total, Chevron reimbursed the District approximately \$55 million for capital costs of the RARE Water Project. The Chevron Oil Refinery is currently the largest single user of recycled water in the District's service area.

## **Water Rights and Related Proceedings**

***Mokelumne River Rights.*** The District's appropriative rights to its Mokelumne River water supply include a license, which has a priority date of 1924, entitling the District to divert up to 200 MGD (approximately 224,000 acre-feet per year) to its service area from the Mokelumne River, and a permit, which has a 1949 priority, entitling the District to divert up to an additional 125 MGD (approximately 140,000 acre-feet per year) to the service area. The permit by its terms required that application of the

water to the proposed use be made by December 1, 2000. The District has completed construction of water diversion and storage facilities authorized by the permit for the diversion of up to the additional 125 MGD and in 2000, petitioned the SWRCB to extend the time to complete the application of water under the permit beyond the initial permit term of December 1, 2000 to allow additional time to put the entitlement to full beneficial use. The SWRCB posted a public notice of the petition in January 2007, commencing a formal proceeding which included an opportunity for other entities to protest the District's petition. The protest period ended on February 9, 2007, resulting in seven protests. The District had 180 days within which to resolve the protests from the date which the SWRCB accepted the protests as valid. The SWRCB accepted portions of the protests as valid in November 2007. Since all of the protests were not dismissed, a hearing before the SWRCB on the petition is likely to commence at some point in 2013 or later. [UPDATES?] Although the District is unable to predict the final outcome of these proceedings at this time, the District does not expect that such proceedings will materially adversely affect its water supply or operations. In accordance with the California Environmental Quality Act ("CEQA"), the District issued a Notice of Preparation of an Environmental Impact Report ("EIR") for the permit extension in November 2008. The comment period for the Notice of Preparation closed on December 11, 2008, and the District received seven comment letters. The District will consider the comments in preparing the draft EIR which is anticipated to be released for public review and comment in 2013. [UPDATES?] In addition to the water rights described above, the District also has a series of rights for the production of hydroelectric power at Pardee and Camanche Dams. The District also holds rights associated with its local reservoirs.

As previously noted, the State has placed conditions on operations in the District's Mokelumne River water rights requiring that minimum releases be made from Camanche Reservoir for the protection of anadromous fisheries. The District has entered into a series of agreements with State and federal agencies which are incorporated into its water rights and implemented through the annual Water System operations plan. Notably, the 1998 Joint Settlement Agreement is a multi-party agreement that provides for mitigation of the impact of the construction of Camanche Dam and Reservoir on historical spawning grounds for anadromous fish. Pursuant to the 1998 Joint Settlement Agreement, the District's required minimum releases from Camanche Dam are adjusted to reflect the time of year and type of Water Year (e.g., Normal/Above Normal, Below Normal, Dry and Critically Dry). In critically dry and dry years, a minimum average of from 22,500 to 65,000 acre-feet per year must be released downstream by the District to satisfy its obligations for the protection of fisheries resources. See "Water Supply – *Mokelumne River Watershed*" above.

***Central Valley Project Improvement Act.*** In 1992, Congress enacted the Central Valley Project Improvement Act ("CVPIA") which provides environmental protections for fish and wildlife in the operation of the CVP. In 2000, the Bureau issued a Record of Decision on the CVPIA Programmatic Environmental Impact Statement ("PEIS"). The PEIS identified the impacts to CVP contract water supplies as a result of implementing the new fish and wildlife protection provisions of the CVPIA. All CVP contractors will be subject to shortages in CVP supply during dry years. The CVPIA requires that all CVP contracts contain provisions consistent with the CVPIA, including provisions for conservation and tiered prices. The District has executed the Long-Term Renewal CVP Contract consistent with the CVPIA provisions. See "– Water Supply – *United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project*" above.

## **Water Supply Management Plan**

The District recently updated its long range planning with the Water Supply Management Plan, extending the planning horizon from 2020 to 2040 ("WSMP 2040"). WSMP 2040 serves as the plan to ensure an adequate supply of water through the year 2040 for District customers. The primary objectives of WSMP 2040 are to maintain and improve the District's water supply reliability to its customers and help meet the growing need for water in the future. WSMP 2040 also guides adaption of the District's

water planning approach to circumstances that have changed since its prior Water Supply Management Plan, WSMP 2020, was adopted, such as competing and changing demands for water, the availability of water from the completed FRWP and Bayside Groundwater Project Phase 1, and long-term climate change. Further, the goal of the WSMP 2040 continues to be to examine what the District has done historically and what it can do in the future to ensure optimal use of the District's water resources.

WSMP 2040 assesses the supplemental supplies that are expected to be needed to serve a projected increase in water demand in the District's service area of approximately 0.8% per year between 2010 and 2040 (an additional 60 MGD from 2010 to 2040). WSMP 2040 also addresses the potential for additional constraints on the water supply available to the District arising from increased demand of the senior water rights holders along the Mokelumne River.

The WSMP 2040 provides for the District to meet its future drought year needs for water through 2040 by:

- increasing water conservation by an additional 39 MGD beyond current savings of 23 MGD (the savings achieved from 1993 to 2008) for a total 2040 savings of 62 MGD;
- increasing water recycling from 9 to 20 MGD;
- continued rationing during times of drought by up to 15%; and
- securing an additional 115,000 acre-feet (35 MGD annual average) of supplemental water supplies.

WSMP 2040 addresses the uncertainties posed by future climate change through its multi-element approach of demand management and a wide array of potential future supply options. In 2008, the District incorporated climate change into its strategic plan and issued its first Climate Change Monitoring and Response Plan. Both documents were updated in 2010. An interdisciplinary staff committee is reviewing the evolving science of climate change, assessing potential water supply impacts and vulnerabilities, and developing strategies for adaptation and mitigation. This information will continuously inform the implementation process for projects and programs under the WSMP 2040. See also "– Climate Change" below.

As a result of the completion of WSMP 2040 as described above, the District is undertaking efforts to identify and secure sources of supplemental water supply. For example, during the next several years, the District will be working to identify water transfer opportunities with various entities within Northern California, and specifically within the Sacramento River watershed, with a view toward utilizing the FRWP to move supplies secured via water transfers. As part of WSMP 2040, the District identified a possible contractual relationship and/or partnership opportunity with Contra Costa Water District ("CCWD"), an adjacent water agency, to secure from 20,000 to 30,000 acre-feet of storage in CCWD's Los Vaqueros Reservoir (the expansion of which was completed in 2012 to increase its total storage from 100,000 acre-feet to 160,000 acre-feet). The District initiated discussions with CCWD this year regarding the storage sharing opportunity. Within the next five to ten years approximately, the District will also review the operation of the Bayside Groundwater Project Phase 1, to determine the possibility for a Phase 2 expansion (which could provide an additional 9 MGD of supply).

Beyond those efforts, the District will also be reviewing other regional partnership opportunities. The District will work with Sacramento County water providers to evaluate the possibility of developing a regional groundwater banking operation. Further, the District will work with San Joaquin County water providers to evaluate the possibility of developing a conjunctive use/groundwater banking operation. Also, the District will continue to work with foothill water agencies to evaluate the possibility of expanding the storage in Lower Bear Reservoir (located on an upper tributary to the Mokelumne River). Finally, the District will work to assess the potential to develop a regional desalination project in

partnership with other Bay Area water agencies. Regional groundwater banking and desalination planning efforts are described below.

*Groundwater Banking Options.* The District has been exploring groundwater resource development in San Joaquin County. The District began negotiating with San Joaquin County water interests for a groundwater banking and conjunctive-use program in 1992. The overdrafted aquifer within San Joaquin County, which is traversed by the Mokelumne River and the District's Mokelumne aqueducts, presented an opportunity for a joint project of mutual benefit. However, lack of consensus among local water users and the absence of a legal framework to assure that a portion of the stored water could be exported to serve District customers during droughts has prevented a project from being developed. The District will continue to seek opportunities to develop a banking project within San Joaquin County, but no project has currently been identified.

*Bay Area Regional Desalination Project.* Since 2003, the District has been working with other Bay Area water agencies, specifically the San Francisco Public Utilities Commission ("SFPUC"), CCWD and Santa Clara Valley Water District, and since 2010, the Zone 7 Water Agency, to explore the development of regional desalination facilities that could (1) provide additional source(s) of water during emergencies, (2) provide an alternative water supply that would allow major facilities to be taken out of service for an extended period of time for inspection, maintenance or repairs, and (3) provide a supplemental supply during drought periods.

In the spring of 2010, the District and its partners finalized a report on the completed pilot testing of a desalination facility concept. The test was conducted in 2009 within the CCWD service area along Mallard Slough. In 2012, a study was conducted to review the mechanisms by which water would be conveyed from a regional plant to the various water supply agencies. Further studies may occur in the coming years. Test results will be used to help evaluate the technical feasibility of developing and operating the above-mentioned regional desalination facilities in the form of a full scale project.

## **Water Conservation**

The District has developed a Water Conservation Master Plan, most recently updated in 2011 (the "WCMP"), which directs the District's comprehensive water conservation strategies and initiatives to promote water conservation and reduce demand for water. The WCMP serves as a blueprint for implementation strategies, goals and objectives for achieving additional water savings consistent with the targets identified in the District's 2010 Urban Water Management Plan ("UWMP"). The District provides technical and financial assistance to encourage customers to help assure an adequate water supply by using water efficiently. The District advises customers on selecting water-efficient products, implementing best management practices, and designing/maintaining *WaterSmart* landscaping and efficient irrigation methods. Water conservation services include water use surveys, incentives for high-efficiency plumbing fixtures, appliances, process equipment and irrigation systems, and free distribution of conservation self-survey kits and water efficient devices (*i.e.*, showerhead, faucet aerators) that reduce water use. The District is also very active in new water conservation technology research and the development of education and demonstration projects.

The WCMP incorporates elements of the State Water Conservation Act of 2009 (Senate Bill X7-7) toward a statewide goal of a 20% reduction in urban per capita water use by the year 2020. All urban water agencies in the State were required to report their baseline per capita water use and reduction targets in their 2010 UWMP. The District has determined its base daily per capita use utilizing a State-approved methodology which applies a 5% reduction from the District's 2003 to 2007 baseline usage. The resulting District target for the year 2020 is 150 gallons per capita per day with an interim target for the year 2015 of 158 gallons per capita per day. The District is on track to meet these targets. The District currently assesses that with the implementation of the planning programs outlined in its 2010 UWMP, a

more aggressive and lower year 2020 demand level can be achieved (estimated at 144 gallons per capita per day). The District's 2015 UWMP will identify the District's final target for the year 2020 and its progress toward meeting that goal.

## **Water Facilities**

***Pardee Reservoir.*** The District's Mokelumne River water is collected and stored at Pardee Reservoir, located in the Sierra Nevada foothills approximately 90 miles east of the District and 38 miles northeast of Stockton. Pardee Reservoir has a storage capacity of 197,950 acre-feet.

***Camanche Reservoir.*** Camanche Reservoir is located ten miles below Pardee Reservoir on the Mokelumne River. Camanche Reservoir has a capacity of 417,120 acre-feet and serves to control floods and to regulate the river flow in order to satisfy downstream water rights.

***Terminal Reservoirs.*** Five terminal reservoirs are located within the District's service area: San Pablo (with a capacity of 38,600 acre-feet), Briones (with a capacity of 60,510 acre-feet), Lafayette (with a capacity of 4,250 acre-feet), Upper San Leandro (with a capacity of 37,960 acre-feet) and Chabot (with a capacity of 10,350 acre-feet), provide usable storage of approximately 151,670 acre-feet.

***Aqueducts.*** Raw untreated water is transported 91.5 miles from Pardee Reservoir, through the Pardee Tunnel, the Mokelumne Aqueducts and the Lafayette Aqueducts, to the District's service area, where it is stored in terminal reservoirs or delivered directly to treatment plants prior to distribution. The Pardee Tunnel is an 8-foot high horseshoe structure 2.2 miles long. The three Mokelumne Aqueducts have a combined capacity of 200 MGD under gravity flow, and approximately 325 MGD with existing pumping facilities. The first Mokelumne Aqueduct is 5-feet, 5-inches in diameter, the second is 5-feet, 7-inches in diameter, and the third is 7-feet, 3-inches in diameter. All are steel pipelines extending 81 miles from the Pardee Tunnel to the east end of the two Lafayette Aqueducts in Walnut Creek. Approximately nine miles of pipeline is above-ground and the balance is below-ground.

Lafayette Aqueduct No. 1 is a 9-foot in diameter circular concrete pipe and three tunnels that extend 7.1 miles from Walnut Creek to the Orinda Filter Plant. Lafayette Aqueduct No. 2 is a 9-foot in diameter concrete pipe with seven tunnels extending 7.3 miles from the Walnut Creek Water Treatment Plant to the Briones Diversion Works near Orinda. The supply is then pumped (or diverted) through the 7-foot, 6-inch diameter steel Briones Aqueduct into Briones Reservoir, discharged into San Pablo Reservoir, or diverted through the 7-foot, 6-inch diameter steel Orinda Raw Water Line to Orinda Filter Plant. Either or both Lafayette Aqueducts can be used to divert Mokelumne River water from Pardee directly or indirectly to all of the District's water treatment plants.

The Mokelumne Aqueducts cross the Sacramento-San Joaquin Delta for about fifteen miles and are protected by 51 miles of levees maintained by five reclamation districts governing Lower Roberts and Woodward Islands, Orwood and Palm, Upper Jones, and Lower Jones Tracts. The District has established a multi-pronged approach to protect the aqueducts from flooding and to recover from failures. These strategies include levee strengthening, aqueduct interconnections, and standby materials and supplies to respond to an emergency.

The District worked with the five reclamation districts to obtain \$33.5 million in funding for levee strengthening and to purchase emergency supplies and the District provided the \$6 million local cost share. This funding is being used to bring forty-one miles of levees, adjacent to the Mokelumne Aqueducts, up to the U.S. Army Corps of Engineers standards and to purchase materials and supplies to facilitate emergency response. These levee improvements substantially improve the stability of the levees and help protect the District's water supply and the region's agriculture, cultural, and historical resources, as well as the ecosystems in the Delta.



At a cost of \$14 million, the District is also constructing interconnections to the three Mokelumne Aqueducts on each side of the Delta. This will allow the District to restore 77% of the raw water system capacity with only one pipe in operation across the Delta. The District has six months of storage locally to serve its customers during an outage of the raw water system resulting from a failure in the Delta. This will bolster the resilience of the District's water supply system by enabling a rapid return to service after a failure with sufficient capacity to meet customer needs and begin to recover local storage.

**Tunnels.** Untreated water from San Pablo Reservoir is delivered to Sobrante Treatment Plant through a 5-foot, 6-inch diameter steel pipe; water from the Upper San Leandro Reservoir is delivered to the Upper San Leandro Treatment Plant through a 1.35 mile, 6-foot, 6-inch diameter horseshoe tunnel. The San Pablo Tunnel is 5-feet in diameter and can carry water 2.57 miles from the San Pablo Reservoir to the standby San Pablo Water Treatment Plant.

**Raw Water Pumping Plants.** The majority of the Water System is gravity-fed, with seasonal pumping. Walnut Creek No. 1, No. 2 and No. 3 Pumping Plants increase the capacities of the Mokelumne Aqueducts. When operating, these three pumping plants increase the combined capacity of the aqueducts to approximately 325 MGD. The Moraga Pumping Plant and Aqueduct supply water from the Lafayette Aqueducts to Upper San Leandro Reservoir. The plant's four pumps have a combined delivery capacity of 105 MGD; however, the configuration of the existing outlet works limits delivery to a maximum rate of 58 MGD. The Moraga aqueduct is six miles of 5.5-foot, 5-foot and 4-foot diameter steel and concrete pipe between Lafayette and the Upper San Leandro Reservoir near Moraga. The Briones Pumping Plant and Aqueduct were placed in service following completion of Briones Reservoir. These facilities supply Briones Reservoir with Mokelumne River water. The four pumps in the Briones No. 2 Pumping Plant can deliver up to a total of 60 MGD.

**Treatment Plants.** Water delivered to the District's customers is first treated at one of six treatment plants. The six water treatment plants in the District's Water System are capable of filtering and processing a combined total of approximately 415 MGD. The water treatment plants are Upper San Leandro in Oakland, San Pablo in Kensington (standby only), Sobrante in El Sobrante, and plants located in and named for Orinda, Lafayette and Walnut Creek. Orinda Water Treatment Plant is the largest, with a peak capacity of 200 MGD.

**Distribution Facilities.** From the Orinda Water Treatment Plant treated water is carried 3.41 miles through the Claremont Tunnel, a 9-foot diameter horseshoe bore to three distribution aqueducts. The water distribution network includes over 4,100 miles of pipe, 132 pumping plants and 171 neighborhood reservoirs (including approximately 143 above-ground concrete or steel reservoirs), having an operating capacity of 636 million gallons. The District's service area is divided into 124 pressure zones, ranging in elevation from sea level to 1,450 feet. About 60% of treated water is distributed to customers by gravity flow.

**Pardee and Camanche Power Plants.** The District operates hydropower plants at Pardee and Camanche Reservoirs pursuant to a Federal Energy Regulatory Commission ("FERC") license. The District's Pardee and Camanche hydropower plants are licensed as one project, the Lower Mokelumne River Hydroelectric Project No. 2916. The current FERC license for these hydropower plants expires on March 31, 2031. These plants generate 185 million kilowatt hours of electricity in normal rainfall years. Other than a small amount of power being used at the District facilities at Pardee and Camanche, the power produced is currently being sold by the District to the Sacramento Municipal Utility District. See "WATER SYSTEM FINANCES – Sources of Funds."

**Regional Intertie.** In 2007, the District, the City of Hayward ("Hayward") and SFPUC completed an intertie to allow for 30 MGD of water to be conveyed between the District and SFPUC water systems via Hayward's distribution system. This project, which was funded by the participating agencies and the

State of California through a Proposition 50 grant, provides the District and neighboring agencies increased flexibility to provide water throughout the region during an emergency. The intertie allows sharing of water among the parties during emergencies or planned critical work on facilities that would be difficult to remove from service without an alternative water source. The project consisted primarily of improvements within Hayward's water system, although there were associated minor improvements in the District and SFPUC systems.

### **Water Supply Operations**

**General.** As described above, the District's water supply system consists of an integrated network of reservoirs, aqueducts, raw water pumping plants, treatment plants, and distribution facilities that extend from its principal water source, the Mokelumne River watershed basin in the Sierra Nevada range, across the San Francisco Bay – San Joaquin Delta, to the East San Francisco Bay Area. Set forth below is a location map depicting the District's water supply system facilities.

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Streamflow from the Mokelumne River is collected and stored in the District's Pardee and Camanche Reservoirs, located in the Sierra foothills. Raw water from Pardee Reservoir is transported to the East Bay terminal reservoirs and treatment plants through the Pardee Tunnel, the three Mokelumne Aqueducts, and the Lafayette Aqueducts. The raw water is treated at one of the District's treatment plants before being delivered to customers.

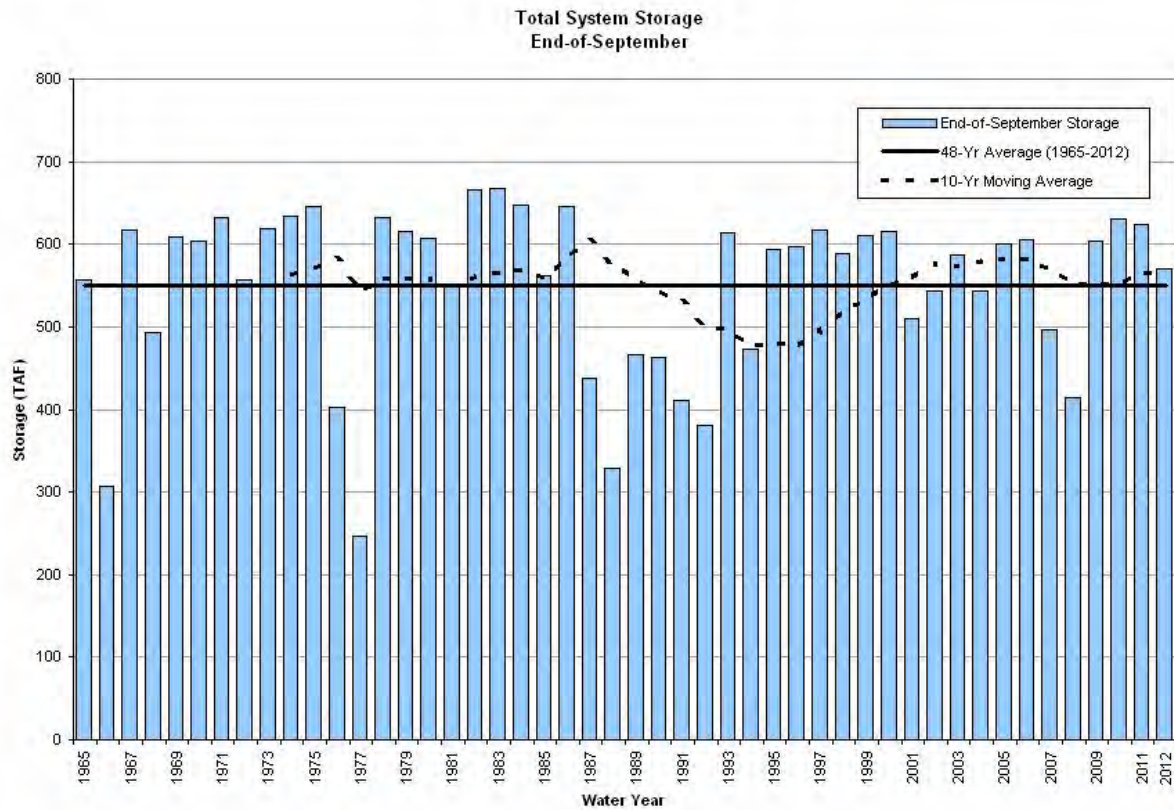
The District operates the water system to achieve multiple objectives. These objectives are to provide municipal water supply benefits, stream flow regulation, fishery/public trust interests, flood control, temperature management and obligations to downstream diverters. All of the components of the system, including Pardee and Camanche Reservoirs, the Mokelumne Aqueducts, and the East Bay terminal reservoirs are interdependent; for this reason, the District develops an annual operations plan for the entire water supply system. The annual water supply operations plan includes scheduled operations from April through September and identifies all District requirements.

The District plans its operations according to three projections: the California Department of Water Resources ("CDWR") April 1st Water Supply Forecast, the District's End of September (the end of the Water Year) projected total system storage, and the District's projected November 5th combined storage for Pardee and Camanche Reservoirs. Reservoir storage levels are required to be reduced by November 5th of each year to maintain the minimum level of available capacity necessary for flood control purposes. The projected November 5th combined storage for Pardee and Camanche is also utilized in determining the required releases for fish flows for the October through March period each year. The District monitors projections throughout the year and adjusts reservoir operations, as conditions change, to meet its goals, objectives and requirements.

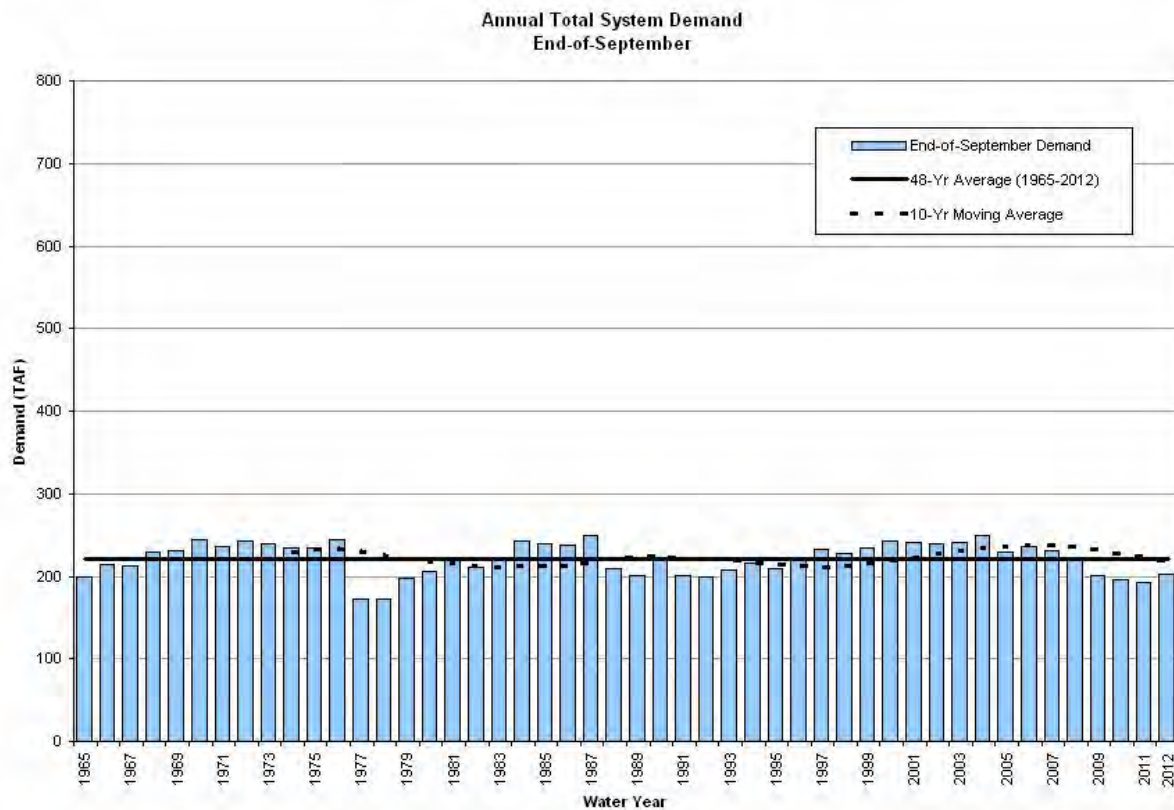
The District begins the Water Year by committing to provide the required minimum fish flows, associated with the projected November 5th storage levels for Pardee and Camanche Reservoirs, for the period October through March. Through fall and winter, the District continues to track rainfall, runoff, storage and demand to reassess reservoir operations as needed. By April, the District has a good indication of projected storage conditions for End-of-September total system storage, and November 5th Pardee and Camanche reservoir storage.

On April 1<sup>st</sup> of each year, CDWR publishes its snow survey water supply forecast of runoff for the Mokelumne River. The District uses the forecast to develop its Annual Water Supply Operations Plan, in which it schedules operations to meet all requirements according to the forecast for the period April through September. Scheduled operations include Camanche Reservoir releases in accordance with the prescribed flow requirements. As required by the District's Water Supply Availability and Deficiency Policy, the District Board is informed of the forecasted water supply condition for the end of the Water Year on September 30th. The September 30th storage forecast is used to determine if drought management measures will need to be implemented to reduce demand to ensure sufficient carryover storage for the following year. If dry year conditions exist (*i.e.*, projected total system storage on September 30th is less than 500,000 acre-feet), the Board will typically consider implementing demand management measures for the rest of the Water Year if the projected storage is significantly below 500,000 acre-feet. Projected end of September storage is required to be less than 500,000 acre-feet for the District to be able to utilize the supplemental supply made available under the Long-Term Renewal CVP Contract.

The following graph shows historical end of September storage from 1965 to 2012. As shown on the below graph, the driest period for the District was 1976 to 1977. The longest dry period during such time frame was the extended drought from 1987 to 1992.



Set forth below is a graph depicting the total Water System demand for each Water Year from 1965 to 2012.



In dry periods, the District first relies on storage to meet demands. The District was able to provide water to its customers during the 1976-1977 drought, and during the extended five year drought from 1987 to 1992 without supplemental supply, by relying on available storage. In future dry periods, the District will first rely on storage to meet demands. If there are two dry years in a row, then the District would rely on its supplemental supply from the FRWP, which was completed in 2011. With the completion of the FRWP, the District can take up to 165,000 acre-feet of water under its Long-Term Renewal CVP Contract over a three-year period as described herein. See “– Water Supply – *United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project.*”

**Current Water Conditions.** The District began Water Year 2013, which commenced on October 1, 2012, with 570,900 acre-feet in storage. Following a dry Water Year 2012 season, the combined Pardee and Camanche Reservoir storage on November 5, 2012 was 439,540 acre-feet, which is 20,700 acre-feet below the maximum allowable level.

Mokelumne River runoff for Water Year 2012, which ended on September 30, 2012, was approximately 414,300 acre-feet or 56% of the long-term average of 745,000 acre-feet. Although Water Year 2012 was the tenth driest on record for precipitation, total Water System storage, as of October 1, 2012, the start of Water Year 2013, was 74% of capacity or 99% of average.

The table below sets forth the capacity and water storage levels at the District’s water reservoirs as of September 10, 2013.

**Table 3**  
**DISTRICT WATER RESERVOIRS**  
**Current Capacity and Storage Levels**

<b>Data as of September 10, 2013</b>	<b>Capacity (acre-feet)</b>	<b>Current Storage (acre-feet)</b>	<b>% of Capacity</b>	<b>% of Average</b>
<b>Mokelumne</b>				
Pardee	197,950	191,480	97%	102%
Camanche	<u>417,120</u>	<u>262,590</u>	63	95
Total Mokelumne	<b>615,070</b>	<b>454,070</b>	<b>74</b>	<b>98</b>
<b>Terminal Reservoirs</b>				
Briones	60,510	42,570	70	80
Upper San Leandro	37,960	28,790	76	104
San Pablo	38,600	18,910	49	67
Chabot	10,350	7,760	75	90
Lafayette	<u>4,250</u>	<u>3,730</u>	88	103
Total Terminal Reservoirs	<b>151,670</b>	<b>101,760</b>	<b>67</b>	<b>84</b>
Total System Storage	<b>766,740</b>	<b>555,830</b>	<b>72</b>	<b>95</b>

Source: District Water Operations Department.

## **Water Quality and Treatment**

Federal and State regulatory agencies continually monitor and establish new water quality standards. New water quality standards could affect availability of water and impose compliance costs on the District. The federal Safe Drinking Water Act (“SDWA”) establishes drinking water quality standards, monitoring, public notification and enforcement requirements for public water systems. To achieve these objectives, the United States Environmental Protection Agency (the “EPA”), as the lead regulatory authority, promulgates national drinking water regulations and develops the mechanism for individual states to assume primary enforcement responsibilities. The California Department of Public Health (“CDPH”), formerly known as the Department of Health Services, has lead authority over California water agencies.

Currently, the State and the federal government regulate over 100 potential contaminants. Because the District’s water supply comes primarily from a remote, semi-protected watershed, the raw water requires minimal treatment to meet or surpass all health and aesthetic standards. The District’s drinking water is sampled and tested on an ongoing basis from all parts of the Water System to ensure that it meets or surpasses all primary (health related) and secondary (aesthetic) regulatory standards established by the EPA and the CDPH. Test results on the District’s water consistently show that regulated constituents of drinking water either are not detected at all, or they are present in amounts far below limits permitted by State and federal drinking water standards.

The District is actively involved with professional organizations at the federal and State levels related to water quality, including the American Water Works Association, the Association of California Water Agencies and the Association of Metropolitan Water Agencies. The District serves on technical advisory committees that interact with the Environmental Protection Agency during regulatory development or alteration, and recently worked with the EPA on updates to the Total Coliform Rule. In addition to working with the EPA, the District has developed its own water quality initiatives, including developing state and federal legislation to limit lead levels in household plumbing fixtures. The District also sits on national standards organizations which set standards for all aspects of water quality. The District was a founding member of the Water Research Foundation (“WRF”) and actively participates in research projects; with the WRF, the District participates on numerous project advisory committees and carries out funded research.

## **Statewide Water Issues**

There has been substantial attention at the State and federal level on restoring the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (the “Bay Delta”). Processes to achieve this end and the recommendations of agencies charged with this “Delta Fix” have been very controversial. The two primary proceedings are the Delta Plan and the Bay Delta Conservation Plan (the “BDCP”).

CDWR is leading the development of the BDCP to meet the requirements of the federal and State Endangered Species Acts in the operation of the export projects in the Delta. The BDCP is best known as the process through which new water conveyance would be built to divert Sacramento River water into a tunnel system or canal that would bypass the Delta (previously proposed as the “Peripheral Canal” and most recently as twin tunnels that would follow a fairly direct alignment between several intake facilities on the Sacramento River and south to the Clifton Court Forebay, a reservoir on the Delta in Contra Costa County, approximately 17 miles southwest of Stockton). Numerous export water users are seeking permits through this process, which will also incorporate ecosystem restoration measures among the permit conditions. Governor Jerry Brown proposed a redesigned, downsized facility (from 15,000 cfs to 9,000 cfs) in July 2012. The State later revised the schedule for completion of the draft BDCP. The administrative draft BDCP has been released in stages, beginning March 14, 2013 and concluding May 29, 2013. Release of the consultant administrative draft environmental impact report/statement

documents occurred on May 10, 2013. The public draft environmental impact report/statement is currently expected in October 2013, and the State plans to release a final environmental impact report/statement in the summer of 2014.

The Sacramento-San Joaquin Delta Reform Act of 2009 (the “Delta Reform Act”), which became law on November 12, 2009, established the Delta Stewardship Council tasked with developing a comprehensive, long-term management plan for the Delta, known as the “Delta Plan.” The Delta Plan is intended to implement the State’s co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. Pursuant to the Delta Reform Act, the Delta Stewardship Council was tasked with the development of the Delta Plan. The Delta Stewardship Council finalized the Delta Plan in May 2013, and the associated regulations became effective September 1, 2013. Seven different lawsuits are pending against the Delta Plan (including the EIR/EIS and associated regulations), filed by interest groups across the stakeholder spectrum, but the potential impact of the litigation on future Delta Plan implementation is unknown.

The District’s water rights are not directly affected by these proceedings but the District has actively followed and commented on these plans for several reasons:

- the District’s fishery restoration efforts on the Mokelumne could be impacted by restoration and or conveyance components of the BDCP;
- the District’s aqueducts cross the Delta and are protected by miles of levees which the District believes should continue to be maintained as part of any “Delta Fix”;
- the BDCP process will likely result in new flow requirements for the State and federal pumping facilities and the District believes that upstream water users should remain unharmed by any mitigations required to maintain Delta outflows; and
- the District is interested in ensuring that its ratepayers are not required to subsidize BDCP conveyance and mitigation costs which only benefit the State and federal water contractors who receive water pumped from the South Delta.

Another proceeding of significance to the Delta is the update to be conducted by the SWRCB on its Water Quality Control Plan. On January 24, 2012, the SWRCB published a Supplemental Notice of Preparation announcing its intention to review the 2006 WQCP for the Bay Delta. The WQCP sets flow standards and other water quality objectives that must be met to protect beneficial uses. The Notice of Preparation also provided that the SWRCB will prepare a substitute environmental document to evaluate potential modifications to current, and the establishment of new, objectives for the WQCP. The SWRCB also plans to approve a program of implementation that would modify water rights to help meet WQCP objectives. The new or revised objectives and program of implementation will have regulatory effect when implemented. The program of implementation, which will occur over a series of years, may address flow requirements for the Mokelumne River, Sacramento River, and San Joaquin River and tributaries thereto. The SWRCB is expected to provide additional details during the summer of 2013 on how the process to update the 2006 WQCP will be carried out. [UPDATES?]

## **Climate Change**

Global climate change is expected to create greater uncertainty in water supplies and demands in the future. The District has developed mitigation and adaptation strategies to deal with the changing climate and its effect on water resources. In 2008, the District incorporated climate change into its Strategic Plan, and has developed and implemented a climate change monitoring and response plan to inform future water supply, water quality, and infrastructure planning.



The District's response to climate change focuses on:

- keeping current with science and assessing potential effects of climate change in the Mokelumne and East Bay watersheds;
- determining water supply and infrastructure vulnerabilities;
- monitoring and reducing greenhouse gas emissions caused by the District's operations;
- integrating climate change in strategic planning and budgeting decisions;
- advocating for new legislation and regulations that help water and wastewater agencies better respond to climate change; and
- developing adaptation and mitigation strategies as part of a water supply management program.

## **Seismic Matters**

The District's service area is in a seismically active region of the State. The Hayward Fault runs through the entire western portion of the District and the Calaveras Fault runs through the southeastern portion of the District's service area. The Concord and Mt. Diablo Thrust Faults are located close to the east side of the District's service area and the San Andreas Fault is located to the west. The Pardee and Camanche Dams and the District's three aqueducts which carry water from Pardee Reservoir to the District's service area are in other active earthquake fault areas. Although the District has not experienced significant earthquake-related damage to its facilities, the District's Water System and/or its water supply could be adversely affected by a major local earthquake impacting the District's service area, or by earthquake damage to the Pardee or the Camanche Dams or the aqueducts delivering water to the District's service area.

A magnitude 6.8 to 7.0 earthquake on the Hayward Fault is likely within the next few decades according to the United States Geological Survey. A 1994 seismic study prepared for the District examined the likely effects on the District's existing local water system at that time of earthquakes on the Hayward Fault, the Calaveras Fault and the Concord Fault. The study concluded that, in the event of a magnitude 7.0 earthquake on the Hayward Fault, the District would likely experience major damage to the water transmission tunnels, substantial damage to distribution pipes, damage to potable water reservoirs and operational disruptions of the District's pumping plants, rate control stations and water treatment plants. The District also would likely experience significant damage in connection with a lesser magnitude earthquake on the Hayward Fault or an earthquake on the Calaveras or Concord Faults. If damage to the Claremont tunnel made it unusable, severe water rationing would be required in the western portion of the District during the estimated 26-week repair period. Further, in the event of severe earthquake damage to the District's Mokelumne Aqueducts, which carry water from Pardee Reservoir to the District's service area, it was determined repair efforts could take up to one year before water could be transported again to the District's terminal reservoirs. This would necessitate stringent customer conservation, as the District's terminal reservoirs store roughly six months' supply under normal consumption patterns. A major earthquake could also have a severe adverse impact on the economy of the District's service area.

In response to the 1994 seismic study, the District initiated a multi-year Water System Seismic Improvement Program and by 2007, the District substantially completed a \$200 million Seismic Improvement Program (the "SIP"), which focused on improving seismic performance of the distribution systems and facilities and better enabling the District to provide post-earthquake water service. The SIP included upgrades to 70 reservoirs, 130 pumping plants, six water treatment plants, three maintenance yards, the Administration Building and various electrical equipment anchorages throughout the District, as well as the completion of an alternate transmission pipeline, the Southern Loop; the completion of a

fault-line by-pass for the primary transmission line, the Claremont Tunnel; and seismic upgrades of Mokelumne Aqueduct No. 3, which is the aqueduct most relied on by the District to carry water across 15 miles of the Sacramento-San Joaquin Delta.

Key projects within the SIP include:

***Southern Loop Pipeline.*** The Oakland-Berkeley hills divide the District's service area into two water distribution areas, west-of-hills and east-of-hills. The Southern Loop Pipeline is an 11-mile long emergency transmission pipeline that provides an alternate water supply route after a major earthquake. The Southern Loop connects San Ramon and Castro Valley to create a loop at the southern ends of the water distribution system. This benefits customers by providing increased system redundancy, flexibility and reliability in the District's transmission system across the Hayward Fault.

***Claremont Tunnel Seismic Improvement Project.*** This project upgraded the Claremont Tunnel, a vital transmission facility providing service to 800,000 customers west of the Oakland-Berkeley Hills. This tunnel crosses the Hayward Fault and seismic analysis had suggested that in a magnitude 7.0 earthquake the tunnel would be damaged and most likely be out of service for up to six months for tunnel repairs, resulting in severe water rationing and reduced supplies for firefighting. The facility upgrade, completed in March 2007, consisted of a new 1,501-foot bypass tunnel to replace a vulnerable portion of the tunnel through the Hayward Fault zone as well as repair and reinforcement of other areas. The upgraded tunnel affords District customers substantially enhanced post-earthquake reliability.

***Mokelumne Aqueduct No. 3 Seismic Upgrade Project.*** This project involved seismically retrofitting Mokelumne Aqueduct No. 3, the District's largest aqueduct, at a cost of approximately \$40 million, to improve its ability to withstand a maximum credible seismic event.

***Building Structure Seismic Improvement Project.*** The Building Structure Seismic Improvement Project retrofitted occupied District buildings, including, but not limited to, the upgrade of the Administration Building to meet life safety performance goals and to ensure availability of facilities for post-earthquake operation.

***Reservoir Seismic Upgrades Project.*** The Reservoir Seismic Upgrades Project addressed seismic risks to 70 distribution tanks to assure continued water storage following an earthquake and mitigate the risks to life safety that would result from tank failure. Other accomplishments include the completion of landslide mitigations and the installation of seismic isolation valves at reservoirs and valve pit roof anchorages.

The SIP improvements collectively will allow the District to meet its service restoration goal of providing water service to 70% of its customers within ten days after a major seismic event. The District continues to enhance seismic safety as part of its comprehensive capital improvement project planning process (discussed under "– Capital Improvement Program" below). That process has to date resulted in major seismic upgrades, such as a \$76 million seismic upgrade to the dam at the largest of the local water storage reservoirs, San Pablo Reservoir, which was completed in 2010, and the integration of seismic upgrades into ongoing facility renewal work.

Despite the completed and continuing seismic work, in the event of significant earthquake damage to the Water System and/or the District's service area, there can be no assurance that Subordinated Water Revenues would be sufficient to pay the principal of and interest on any outstanding Water System Revenue Bonds.

## **Security and Emergency Preparedness**

The District has implemented a security and emergency preparedness program that includes a Security Operations Control Center (the “SOCC”) that is staffed seven days a week, 24 hours a day. The SOCC houses a proprietary centralized security system to monitor access controls, digital video cameras and recorders, and security alarms; which include supervisory control and data acquisition (“SCADA”) alarms related to entry points and critical water distribution system hatches. The dispatchers at the SOCC monitor alarms, assess conditions using a closed circuit television system, and dispatch security and law enforcement response as needed for alarms and reports of suspicious circumstances or crimes at District facilities. In addition, the District maintains access controls for its water and wastewater treatment, administrative and maintenance facilities, its storage yards and service centers, and the reservoirs and pumping plants in its water distribution system. District security includes an internal security staff and security contracts, and both units patrol the District’s critical infrastructure and key resource facilities from the foothills in the Sierra Mountains to the San Francisco Bay. Contract security officers are also used to supplement automated access controls at certain key facilities.

In order to address emergency response by the District, the District has an established Emergency Operations Plan. Pursuant to the District’s Emergency Operations Plan, District employees are sworn disaster services workers, and staff is trained to use the State Office of Emergency Services Standardized Emergency Management System (SEMS) in response to emergencies and security incidents. As part of its Emergency Operations Plan, the District maintains two strategically located emergency operations centers and a mobile emergency command center, and has in place an emergency operations team to lead emergency response activities. The District also has adopted business continuity plans to ensure the District’s ability to respond to, work through and recover from any emergency or other event that disrupts its normal business functions.

## **Insurance**

The District uses a combination of self-funding/self-insuring and insurance coverage in the District’s risk management program. The program provides protection for the District’s buildings and facilities, including their contents and equipment, from fire, explosion and related perils, including flood. The District’s insurance program does not currently include earthquake coverage. The District self-insures for liability claims up to \$10 million for bodily injury and property damage that may arise from the District’s operations, including but not limited to use of its property, facilities, or vehicles. The District also maintains fidelity protection against fraudulent acts of employees.

The District maintains a reserve of approximately \$10 million that is earmarked to pay both liability and workers’ compensation claims. Selected insurance coverages include the following:

- \$90 million of commercial general and automobile liability insurance, subject to a \$10 million self-insured retention for the Water System and the Wastewater System;
- Statutory limits of excess workers’ compensation coverage, subject to a \$5 million self-insured retention for the Water System and the Wastewater System;
- \$200 million in coverage for District all risk property insurance, subject to a \$500,000 deductible, excluding coverage for all underground property and pipelines, earthquake and flood;
- \$25 million in coverage for flood perils (except for areas within the FEMA-designated 100-year floodplain in which a \$10 million limit is applicable), subject to a \$1.5 million

deductible per occurrence, excluding coverage for all underground property and pipelines;

- \$10 million in coverage for boiler and machinery insurance, subject to a \$25,000 deductible (except for Pardee Dam, Camanche Dam and the Main Wastewater Treatment Plant, for which a \$50,000 deductible applies); and
- \$10 million in coverage for crime insurance, subject to a \$25,000 deductible.

### **Capital Improvement Program**

The District's biennial planning process includes an update of facilities needs for the ensuing five fiscal years. A series of master plans document needs by specific asset classes (such as pipes, reservoirs and other assets). The master plans include assessments of key facilities, considering engineering condition assessments as well as operational performance and maintenance histories. Facilities in need of rehabilitation or replacement are identified and prioritized. Project scopes are also defined (for example, replacement of aging mechanical or electrical gear, seismic upgrades, or other defined scopes).

The results of the master plans are considered during the biennial update to the Capital Improvement Program (the "CIP"). The last CIP update was completed in 2013 and included a five-year capital expenditure forecast for Fiscal Years 2014 through 2018.

Based upon the District's five-year capital expenditures forecast for Fiscal Years 2014 through 2018, the District's cash expenditures for capital improvements to the Water System for Fiscal Years 2014 through 2018 are estimated to aggregate approximately \$1,036.3 million. Included in such five-year capital plan are the major programs and projects described below:

***System Extensions and Improvements.*** System extensions and improvements further the District's objectives to improve the infrastructure to ensure reliable, high quality service, and update and enhance the District's system modeling capabilities. The majority of work under this strategy focuses on making improvements to various components of pressure zones such as pipelines, reservoirs, pumping plants and water treatment plants to improve system reliability for existing customers, and to provide service to new customers within the Ultimate Service Boundary. The programs include:

*The Pressure Zone Improvements Program* which addresses systematic improvements to the District's 123 pressure zones. It includes studying the highest priority zones for improvements due to the need to rehabilitate and upgrade facilities. Improvements include upgrading or replacing reservoirs, pumping plants and transmission systems to increase storage capacity and improve water quality. The following pressure zone work is planned in Fiscal Years 2014 through 2018:

- Almond/Fire Trail in Castro Valley – planning of storage improvements in Fiscal Years 2013 and 2014, and design and construction in Fiscal Years 2015 through 2018;
- Central Oakland Hills Cascade in Oakland – construction of the Estates Reservoir replacement in Fiscal Years 2012 through 2014, and design and construction of the 39th Avenue/Redwood Pumping Plant rehabilitation project in Fiscal Years 2013 and 2014.
- Leland in Lafayette/Walnut Creek – completion of a facilities plan, environmental documentation and design of the Leland Reservoir in Fiscal Years 2014 through 2018;

- Maloney in El Sobrante - design and construction of the improvements to the Maloney Pumping Plant and Selby Reservoir in Fiscal Years 2015 through 2018;
- Summit in Berkeley – design and construction of Summit Reservoir, Woods Pumping Plant and Shasta Pumping Plant replacement in Fiscal Years 2014 through 2017; and
- West of Hills Transmission Improvements – planning and environmental documentation for 23 recommended projects under the Master Plan in Fiscal Years 2014 through 2018; and design of North and South Wildcat Aqueduct pipe improvements and South 30 pipeline improvements in Fiscal Years 2016 through 2019. The first phase of water treatment plant upgrades will be performed under the Water Treatment and Transmission Improvements Program beginning in Fiscal Year 2016.

*The Water Treatment and Transmission Improvements Program (“WTTIP”)* which includes additions of new facilities and upgrades of existing facilities to meet current and projected water demands. WTTIP will more efficiently meet current and future regulatory standards related to both source water and treated water quality; comply with environmental permit conditions; and replace and upgrade aging infrastructure.

The program includes distribution improvements in the Lafayette, Orinda, Moraga and western Walnut Creek area including: a new Happy Valley Pumping Plant and associated pipeline in Orinda in Fiscal Years 2014 through 2016; a new Sunnyside Pumping Plant in Lafayette in Fiscal Years 2015 through 2017; and a new Ardith Reservoir and Donald Pumping Plant in Orinda in Fiscal Years 2015 through 2017. The project also includes: a 3.0 million gallon per day (MGD) Withers Pumping Plant (PP) in Lafayette in Fiscal Years 2017 through 2018; upgrades to the Fay Hill PP in Moraga which includes replacing 500 feet of 12-inch pipeline in Rheem Boulevard and replacing or relining the 2.5 MG Fay Hill Reservoir in Fiscal Years 2015 through 2018; constructing 1,525 feet of 12-inch pipeline in Glen Road and Nordstrom Lane in Lafayette in Fiscal Years 2017 through 2018, which allows decommissioning of the Glen Reservoir; and replacing or relining the 11.5 MG Moraga Reservoir in Fiscal Years 2016 through 2018.

The program will also include new facilities and upgrades to the District’s Water Treatment Plants (WTPs) including: ozone upgrades at Sobrante WTP in El Sobrante and Upper San Leandro WTP in Oakland starting in Fiscal Year 2014; backwash water system improvements and a chlorine contact basin at the Sobrante WTP starting in Fiscal Year 2017; and rebuilding the filters starting at the Walnut Creek WTP in Fiscal Year 2018.

WTTIP is projected to be one of the District’s most significant programs in the Fiscal Year 2019-23 timeframe. Planned projects include a new filter-to-waste equalization basin at the Upper San Leandro WTP in Oakland, a membrane filtration pilot plant at the Lafayette WTP, and the design of upgrades to the entire Lafayette WTP.

***Facilities, Services & Equipment.*** The facilities, services, and equipment projects further the District’s objectives to ensure the security of the water supply and the water system; to evaluate facilities and implement corrective maintenance programs; to implement changes in technology; and to maintain a safe, well equipped workplace. Work associated with this strategy includes making security improvements at various facilities, implementing new computer systems, and replacing old vehicles and equipment. The programs includes:

*The Area Service Center/Building Program* which is comprised of various projects that upgrade and make improvements to various District buildings such as service centers and administrative buildings. In Fiscal Years 2014 through 2018, the focus will be on the Oakland Administration Building.

Fiscal Years 2014 through 2018 work includes replacement of the Fire Alarm and Life Safety System; replacement of the roofing and waterproofing on the terraces and roof; upgrades to the boilers for greater energy efficiency; replacement of the Data Center power distribution unit; replacement of audio visual equipment in the board room; replacement of the uninterrupted power supply unit in the data center; replacement of the air conditioners in the computer server rooms; replacement of the chiller systems on the 10th floor; upgrades to the elevator controls; replacement of the cooling tower; and space planning to reconfigure underutilized areas. Future work includes power feed and distribution improvements; energy efficiency projects such as replacing the light fixtures; and replacing building system controls.

*The Communications Program* which is comprised of projects that replace and upgrade computer and communication systems. In Fiscal Years 2013 and 2014, the 25 year old Materials Management Information System (MMIS) that is used for purchasing and accounting purposes will be evaluated for replacement, along with the PeopleSoft Human Resources Information System (HRIS). Selecting a replacement for MMIS and HRIS is scheduled for Fiscal Year 2014, followed by implementation of the new systems. Replacing the PeopleSoft Financial Information System (FIS) will be considered in Fiscal Year 2016. In Fiscal Year 2014, the Contact Center call management system will be replaced, and an updated IVR (Interactive Voice Response) system developed. In Fiscal Years 2016 through 2019, upgrade will begin to the networking cables and equipment at locations outside of the Administration building in preparation for implementation of Voice over IP (VoIP) phone system.

*The Security Program* which includes the Vulnerability Assessment Security System Improvements Project that will implement critical security improvements to water supply, transmission, treatment, distribution, maintenance and administration facilities. The project provides for improvements to numerous facilities including fencing, lighting, alarms, video monitors and card readers. Work in Fiscal Years 2014 through 2018 includes: security improvements for Claremont Center in Oakland; planning and design of security improvements for Pardee and Camanche Powerhouse Warehouses; new access control gates for the Oakport Storage facility in Oakland and Castenada Service Area in San Ramon; and miscellaneous security improvements to various facilities as needed to address regulatory requirements and personnel safety concerns. Future work includes security improvements at the aqueduct facilities and at the six water treatment plants.

*The Vehicle Replacements Project* is ongoing and involves the replacement of construction equipment and vehicles. In Fiscal Years 2014 through 2018, the program includes replacing vehicles and construction equipment as needed; upgrading the District's fuel facilities to enhanced vapor recovery for the above ground storage tanks and prevent fuel from entering storm drains; upgrading the fuel management system to improve the District's ability to track vehicle fuel usage and mileage readings; and retrofit or replace diesel engines and equipment to meet fleet emissions averages established by new regulations.

***Maintaining Infrastructure.*** These programs further the District's objectives to implement preventative and corrective maintenance programs, and to maintain and improve the infrastructure to ensure delivery of reliable, high quality water service now and in the future. The majority of work under this strategy focuses on pipeline projects to enable the District to improve system reliability for existing customers, and to provide service to new customers within the Ultimate Service Boundary. The programs include:

*The Pipelines/Appurtenances Program* which will maintain efficient pipeline operations by replacing appurtenances such as valves, lead service connections, hydrants and meters at the end of their useful lives. The New Service Installations Project is an ongoing project to install services for new customers, and to replace old services at the end of their useful lives. The Meter Replacement Project is an ongoing project to replace water meters and boxes at the end of their useful lives, and to replace meters that are believed to be reading low. In Fiscal Year 2012, 11,404 residential meters, 129 small commercial meters and 26 large commercial meters were replaced. This level of replacement is expected to continue. 200 large commercial meters remain to be replaced at a rate of 30 annually through Fiscal Year 2017 to improve accuracy.

*The Pipelines/Regulators Program* is an ongoing program to meet the pipeline replacement and expansion needs of the distribution system. Pipeline System Improvements is an ongoing project to enhance the distribution system primarily for existing customers by improving water quality, system performance, capacity and reliability. In Fiscal Year 2014-15, planned work includes 1.5 miles of pipeline improvements per year, including 0.5 miles per year to replace 4-inch diameter mains throughout the District. The planned work includes improvements in Keith and Euclid Avenue in Berkeley, El Portal Drive in Richmond, Fontaine Street in Oakland and 173rd/174th Avenue in Castro Valley. In Fiscal Years 2016 through 2018, work includes 1.0 miles per year of pipeline system improvements and 0.5 miles per year of 4-inch replacements.

*The Pipeline System Extensions Project* is an ongoing project to serve new customers via Applicant Extension Agreements. Annual workload is estimated from projections of land development activity and trends in water service estimate activity in the New Business Office. The District averaged 12 miles of system extension per year with 2 miles installed by District Forces. However, demand has been reduced due to the current economic downturn. In Fiscal Years 2014 through 2016, system extensions is expected to include 6 miles per year, increasing to 8 miles in Fiscal Year 2018, with District forces installing 2 miles each year. The remaining system extensions are installed by applicants.

*The Pipeline Infrastructure Renewals Project* is an ongoing project to replace deteriorating water distribution pipelines. Pipelines for renewal are identified primarily through the evaluation of maintenance histories. In Fiscal Year 2012-13, approximately 8 miles per year of pipeline replacements were made. In Fiscal Year 2014-15, work will include construction of 10 miles of pipeline replacements per year and development of an asbestos cement (AC) pipeline replacement plan. In Fiscal Years 2016 through 2018, the project will include 11 miles of pipeline replacements per year. This project also includes an AC Pipe Study and Replacement program which will implement a testing program and investigate alternative AC pipe rehabilitation methods to identify cost effective replacement strategies. The study will also address water quality optimization to extend the service life of AC pipe. The District is collaborating with the Water Research Foundation to complete this study. In Fiscal Year 2014, the AC Pipe Study will be completed and starting in Fiscal Year 2015 the District will begin the replacement/rehabilitation of AC Pipes based on the study's recommendations.

*The Large Diameter Pipelines Project* is an ongoing project to replace the large pipes that form the backbone of the distribution system, and to conduct condition assessments. In Fiscal Year 2014-15, planned work includes the design and construction of the remaining portion of Lincoln Avenue Pipeline in Alameda, MacArthur/Davenport pipelines and Grand Ave. in Oakland; construction of the Dingee Pipeline and part of Aqueducts at Claremont Center in Oakland; final planning and design for the Webster/Alice Estuary Crossing in Alameda/Oakland and R/W 778/Mario Way in Lafayette; pre-design for East 15th Street and International Blvd. in Oakland; and completion of the master plan. In Fiscal Years 2016 through 2018, work includes the final construction of MacArthur/Davenport in Oakland, Aqueducts at Claremont Center in Oakland, Webster/Alice Estuary Crossing in Alameda/Oakland, and R/W 778/Mario Way in Lafayette; planning, design, and construction for East 15th Street in Oakland,

International Blvd. in Oakland, Judy Lane in Lafayette, D Street in Oakland and Dwight Way/UC Field in Berkeley/Oakland.

*The Polybutylene Lateral Replacement Program* was established to manage the cost-effective replacement of defective polybutylene service laterals. Litigation associated with the recovery of repair costs was completed in 2009. This project includes emergency replacements of broken laterals, planned pre-emptive replacements of laterals in areas suffering high failure rates, and opportunistic replacements when laterals are uncovered during the course of other pipeline repair work. Approximately 1,879 polybutylene laterals were replaced by District crews in Fiscal Year 2012. The current strategy is to continue replacing laterals when failures occur and to pre-emptively replace laterals on a planned basis where cost-effective opportunities arise.

*The Pumping Plant Rehabilitation Program* will upgrade and repair the facilities that have the most critical rehabilitation needs. The program was updated in 2012 and identifies the 44 highest priority facilities for rehabilitation, and six facilities for pit piping repair. In Fiscal Years 2014 through 2018, work includes design and construction at 25 pumping plant facilities and ongoing Arc Flash Mitigation. In Fiscal Year 2014-15, design and rehabilitation of pumping plants includes: Almond in Castro Valley, Danville No. 1 & 2 in Walnut Creek/Danville, Diablo Vista in Lafayette, Redwood in Oakland, Skyline in Oakland and Encinal in Orinda. Future work will include design and construction of the remaining priority rehabilitation projects, as well as on new projects added to the program priority list.

*The Reservoir Rehabilitation Program* maintains the integrity of the District's distribution reservoirs by preventing and mitigating corrosion, improving water quality and extending the useful lives of the reservoirs. The program seeks to extend the service lives of the District's 83 steel and 59 reinforced concrete distribution tanks by replacing coating systems, installing and/or repairing cathodic protection systems, repairing or replacing roof systems, and performing structural upgrades. In Fiscal Years 2014 through 2018, the program will rehabilitate three to four steel reservoirs each year. A reservoir roof safety program will also continue in Fiscal Years 2014 through 2018. Beyond Fiscal Year 2018, steel reservoir rehabilitations will continue at a rate of three per year and additional concrete reservoirs will be rehabilitated based on the priorities identified in the reservoir infrastructure rehabilitation plan.

*The Open Cut Reservoir Rehabilitation Project* develops outage plans and rehabilitates the 19 open-cut reservoirs in the District's system. Projects will address structural integrity, worker safety, operational reliability, regulatory requirements and water quality issues. In Fiscal Years 2014 through 2018, planning and design will begin for the replacement of the San Pablo Clearwell in Kensington, Central Reservoir in Oakland, and North Reservoir in Richmond. Beyond Fiscal Year 2018, rehabilitation projects are planned for Claremont Reservoir in Berkeley and Upper San Leandro Clearwell in Oakland. Additional open-cut reservoir projects such as Summit in Berkeley/Kensington, Almond in Castro Valley, Leland in Lafayette, and 39th Avenue in Oakland are funded through the Pressure Zone Improvement and WTTIP Projects.

*The Seismic Improvement Program.* The objective of this program is to strengthen and upgrade the District's water treatment and distribution system to ensure post earthquake water service. The program included upgrades to more than 250 critical facilities including reservoirs, pipelines, pumping plants, water treatment plants, etc. throughout the District. The program also included the Southern Loop Pipeline which connects the water systems between San Ramon and Castro Valley to provide operational redundancy, and improvements to the Claremont Tunnel which crosses over the Hayward Fault. While the program has been substantially completed, seismic work continues to strengthen and protect the water delivery system. In Fiscal Year 2013, seismic upgrades to the Berryman South Reservoir in Oakland were completed. In Fiscal Year 2014 through 2015, isolation valves will be installed at two reservoirs using prior appropriations. Seismic work is also included in other programs.



***Regulatory Compliance.*** Regulatory compliance projects will further the District's objectives to operate and maintain facilities to meet all air, land and water discharge requirements; implement preventative and corrective maintenance programs; and improve the infrastructure to ensure delivery of reliable, high quality service now and in the future. The work focuses on dam safety improvements and modifications to reservoir towers.

*The Dam Safety Program* upgrades dams, outlet towers, clearwells and spillways to meet earthquake and flood safety requirements. The Dam Seismic Upgrades Project includes seismic evaluations and dam freeboard increases to improve seismic safety. In Fiscal Years 2012-13, evaluations were completed for the 39th Avenue Dam and Pardee Dam and Spillway. Evaluations are planned for Moraga Reservoir, Dunsmuir Reservoir in Oakland, Leland Reservoir in Lafayette, and Sobrante Clearwell.

As part of this program, dam freeboard was increased by making structural modifications to the spillways at North Dam in Richmond, Estates Dam in Oakland, and Danville Dam; and operational modifications at Maloney Dam in Pinole, Moraga Dam, San Pablo Clearwell in Kensington and Estates Dam in Oakland. Operating levels were lowered at Maloney and Leland Reservoirs in Lafayette to achieve adequate freeboard until they can be removed from service to construct spillway modifications. Seismic upgrade of Chabot Dam in San Leandro is expected to be completed in Fiscal Year 2016. Upgrades are planned at Camanche Dam in Fiscal Years 2016 through 2019.

*The Reservoir Tower Modifications Project* provides for evaluating and retrofitting six reservoir towers to withstand the effect of seismic events. A stability analysis has been conducted for the Upper San Leandro Tower, and upgrades to the tower and access road are planned for Fiscal Years 2014 through 2016. Work at the Lafayette Reservoir Tower will include seismic and gate control upgrades, and modification of the tower to act as a spillway capable of handling the revised Probable Maximum Flood. Design flows. Construction is planned for Fiscal Years 2014 and 2015. A recent analysis of the Briones Reservoir Tower concluded that it will require upgrades which are planned to take place in Fiscal Years 2015 through 2018. Design and construction of retrofits to Chabot Reservoir Tower are planned to start in Fiscal Year 2015 as part of the Chabot Dam seismic upgrade. The Pardee Reservoir outlet tower was evaluated in Fiscal Year 2013.

*The Remediation Program* includes wastewater treatment improvements upgrades to the wastewater collection, treatment and disposal systems serving Pardee Center, Pardee Recreation Area and Camanche South and North Shore Recreation Areas. Fiscal Years 2014 through 2018 priorities include sewer collection system improvements at the Pardee Recreation Area RV Park, and rehabilitation of the Camanche South Shore Mobile Home Park sewer collection system. Additional sewer system improvements will be made outside the five year window.

***Resource Management.*** Resource management projects further the District's objectives to manage the Mokelumne and East Bay watersheds to ensure a high quality water supply; protect natural resources; provide public access and recreational opportunities compatible with water quality and natural resource protection; and prepare master plans to protect natural resources and ensure drinking water quality. Work will focus on making improvements to recreational facilities at Camanche and Pardee Reservoirs, and updating habitat conservation and watershed management plans. The projects include:

*The Recreation Area Program* which will upgrade four campgrounds to improve site drainage and storm water management; rehabilitate roads with recycled asphalt grindings; install new signage and striping for traffic control; and install new picnic tables and fire rings. In Fiscal Year 2014, design will be initiated for the South Shore campground improvements and day use roads, with construction to be completed in Fiscal Year 2015.

*The Pardee/Camanche Recreation Area Improvements Project* will upgrade the water, electrical, and wastewater utilities; and the roads and parking spurs at the Pardee RV campground in Fiscal Years 2014 through 15 to meet regulatory requirements. This project will be coordinated with sewer improvements under the Upcountry Wastewater Improvements project to achieve cost efficiencies. The fueling facilities will be upgraded in Fiscal Year 2016, and road repairs at Camanche will be addressed in Fiscal Year 2017.

*The Watershed Recreation Program* will provide funds to purchase, protect, and enhance the District's watershed lands including trails and recreation facilities in support of visitors, water quality and the environment. In Fiscal Years 2014 through 2018, recreation area projects will include parking lot and trail staging area improvements around the Orinda watershed; completion of the parking lot, visitor center and dock upgrades at the Lafayette recreation area; and improvements at the San Pablo recreation area including water and sewer system upgrades, roadway improvements, replace sections of the boat rental docks, and improvements to the visitor center cafe.

In Fiscal Years 2014 through 2018, watershed projects include habitat restoration under the East Bay Habitat Conservation Plan; replace or upgrade the sewer lift station infrastructure at the Lafayette Recreation Area; replace as needed old fire pumps used for fire prevention and suppression to maintain a fleet of fire ready engines; identify and remove hazardous trees; replace sections of the Mokelumne watershed boundary fencing; infrastructure upgrades at the Orinda Watershed Headquarters; and Division of Safety of Dams required upgrades at Upper San Leandro and San Pablo Reservoir dams.

**Water Quality.** Water quality projects further the District's objectives to operate and maintain facilities to surpass federal and state drinking water regulations, and to make system improvements that meet or surpass regulatory requirements. The majority of work under this strategy focuses on making improvements to reservoirs and water treatment plants to improve water quality.

*The Water Treatment Upgrade Program* which addresses the need to rehabilitate and modernize the District's water treatment plants ("WTPs"). In Fiscal Years 2014 through 2018, work is planned at five WTPs. At Lafayette WTP work includes a new clearwell and filter backwash system, electrical upgrades, backwash pump improvements, filters underdrain repair, air scour and particle counter installation and design of a new control system. At Orinda WTP work includes construction of a new filter backwash tank, installation of chemical feed lines, control system upgrade, retrofit of the sodium hypochlorite room, emergency power supply improvements, installation of a permanent emergency generator at the Briones Remote Disinfection Facility, design of an air scour system, and storm drain and ventilation system improvements. At Sobrante WTP work includes electrical upgrades, filter underdrain repair, control system upgrade, drainage improvements, sludge pipeline replacement, design of a new flocculation system, installation of a potassium permanganate feed system, and automation of the hydrogen peroxide feed system. At Upper San Leandro WTP work includes sludge detention tanks recoating, flocculation system repair, automation of the hydrogen peroxide feed system, property improvements at the West Portal Raw Water Valve, and clearwell roof replacement. At Walnut Creek WTP work includes a project to thicken the sludge by installing a hydrocyclone to save energy and reduce sludge trucking.

**Water Supply.** Water supply projects further the District's objectives to ensure a reliable, high quality water supply for the future; to preserve current entitlements and obtain additional supplemental supplies; and through conservation and recycling reduce the demand for potable water. Major projects that have recently been completed are the Freeport Regional Water Project (which will provide the District with a supplemental dry-year water supply) and the Richmond Advanced Recycled Expansion Water Project. The immediate focus of water supply projects will now be on maintaining the raw water aqueducts. The programs include:

*The Aqueduct Program* which consists of evaluating and improving the raw water aqueduct system to reliably meet operational requirements. Ongoing work to remove lead-based paint and recoat portions of the ten miles of above-ground pipe of the Mokelumne Aqueducts is projected to be completed in Fiscal Year 2018. The program also includes replacing the deteriorated cement lining in the Mokelumne Aqueducts that protects the steel pipeline from corrosion. In Fiscal Years 2014 through 2016, work includes an assessment of relining technologies and interior inspections of the elevated Delta reaches of the No. 2 and No. 3 Aqueducts. Relining the aqueducts is planned to begin in Fiscal Year 2017.

In Fiscal Years 2012 and 2013, 20 isolation bearings on Aqueduct No 3 were inspected and repaired, and 3 temperature anchors were rebuilt on Aqueduct No. 1. In Fiscal Years 2014 through 2015, a study and design for the remaining 220 isolation bearings and rebuilding 4 temperature anchors will be completed. In Fiscal Years 2016 through 2017, the isolation bearings will be repaired and the temperature anchors will start to be rebuilt at a rate of 2 per year.

Much of the work on the Aqueduct Interconnections Project has been done, and the project is expected to be completed in Fiscal Year 2015. Work on the project includes inspection and emergency planning for Lafayette Aqueduct No. 2; inspection of the Upper San Leandro tunnel; annual settlement surveys of Aqueduct No. 1; and electrical and geotechnical studies for work at the Moraga Raw Water Pumping Plant. In Fiscal Years 2016 through 2018, work will include stocking repair material for Lafayette No. 2 Aqueduct; completion of electrical upgrades at Briones Center; final design of a river bypass turnout for Aqueduct No. 3; preliminary studies for a cross-Delta tunnel; and inspection of the Pardee tunnel.

Beyond Fiscal Year 2018, planned work includes completing the temperature anchor retrofit, installing river bypass turnouts on Aqueduct No. 3, and installing a liner in Lafayette No. 1 Aqueduct.

*The Water Recycling Program.* In 2009, the Board of Directors adopted the revised Water Supply Management Program (“WSMP”) to help guide decisions for providing a reliable, high quality water supply and meet growing demand through the year 2040. The WSMP 2040 includes recycled water as a key element to offset demand for potable water. The Water Recycling Program includes projects to provide a total of 11 MGD of recycled water by the year 2040.

*The East Bayshore Project* began recycled water service in Fiscal Year 2008 and will ultimately supply up to 2.5 MGD of recycled water to portions of Alameda, Albany, Berkeley, Emeryville and Oakland for irrigation, industrial, commercial and environmental uses. The remainder of the Phase 1A project (I-80 pipeline, distribution pipelines in Berkeley and Albany, and customer retrofits) could be completed by Fiscal Year 2016 pending funding availability, and will provide roughly 0.5 MGD of recycled water. The Phase 1A project received a \$4.4 million grant and a \$20.1 million low-interest loan funding from the State Water Resources Control Board in Fiscal Year 2009. Phase 1B of the project will provide an estimated 1.2 MGD of recycled water to Alameda and will be implemented in Fiscal Years 2015 through 2019, pending funding assistance.

*The San Ramon Valley Recycled Water Program* is a joint program with the Dublin San Ramon Services District to ultimately supply 2.4 MGD of recycled water to portions of San Ramon, Danville, Blackhawk and surrounding areas. Portions of the project to extend recycled water service to northern San Ramon/Bishop Ranch, and work in Danville and Blackhawk began in FY11 with federal funding. Efforts in Fiscal Years 2014 through 2018 will focus on completing customer retrofits, completing a portion of the Phase 2 pipelines in Bishop Ranch, and planning and determining a site for Pump Station 3. Funds for future phases are pending federal funding availability. Expansion of the tertiary treatment facilities is anticipated by Fiscal Year 2019.

Planning studies are being conducted with the Diablo Country Club and other golf courses to evaluate potential satellite treatment plants. Diablo Country Club has completed a feasibility study and is interested in helping to fund a pilot plant to be implemented by Fiscal Year 2018. Additional satellite treatment projects at other sites will be pursued.

Long-term water recycling projects that may take place in Fiscal Year 2018 and beyond include expansion of the San Leandro project to expand recycled water delivery to large street medians near the Oakland Airport by an additional 0.5 MGD, and the ConocoPhillips High-Purity Recycled Water Project that could provide 3.7 MGD of recycled water for boiler and cooling tower applications.

*The Water Supply Management Program.* Based on the WSMP 2040 preferred portfolio, the District will pursue supplemental water supply efforts that include Mokelumne Regional Projects, Sacramento Basin Ground Water Banking, Regional Desalination, Water Transfers, and partnering on the Expand Los Vaqueros Reservoir.

A water transfers implementation plan has been completed which lays the groundwork for future transfers by establishing criteria and recommending water transfers to pursue. Work has begun with other Bay Area water agencies to plan and review the feasibility of a potential Regional Desalination Project. In Fiscal Years 2014 through 2018, the District will work to secure agreements for long-term water transfers with the goal of completing one or more negotiations with the most promising sellers. In addition, the District will begin negotiations with the Contra Costa Water District for a share of the storage in their expanded Los Vaqueros Reservoir, and will continue preliminary planning efforts to develop other supplemental supply elements of the WSMP 2040.

***Non-Program Specific.*** Non-program specific projects further the District's objective to maintain a strong financial position to meet short and long-term needs by making funds available for unanticipated needs, and for projects that are seeking grants to pay for a majority of the project's costs.

*The Contingency Project* provides funding for unanticipated needs which arises before the next budget preparation cycle, such as replacement or repairs to facilities and equipment as a result of failures or safety deficiencies, as well as funding for new projects or acceleration of planned projects requiring funding before the next budget cycle. Funds will also be set aside for projects where grants are being sought. Most grants require the District to fund the project and then apply for reimbursement of allowable costs. Funding for possible grant supported projects include: East Bayshore Recycled Water Project; Delta interties and design of pipeline river crossings; and extending recycled water service to northern San Ramon/Bishop Ranch. Funds are also being set aside for moving forward with the replacement of computer systems once comprehensive evaluations have been completed.

Table 4 below summarizes the District's Fiscal Years 2014 through 2018 projected CIP cash expenditures by major category.

**Table 4**  
**Fiscal Years 2014-2018**  
**Capital Improvement Program**  
**Forecast – Cash Expenditures**  
**(Thousands)**

	<i>Fiscal Year ended June 30</i>					
	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total</i>
Extensions/Improvements	\$ 17,977	\$ 19,427	\$ 32,366	\$ 48,283	\$ 48,419	\$ 166,473
Facilities	12,142	9,102	6,158	7,229	6,359	40,990
Maintaining Infrastructure	81,767	87,297	101,125	98,190	83,395	451,774
Regulatory Compliance	6,711	17,043	10,640	10,150	16,553	61,097
Resource Management & Seismic	2,942	4,659	1,994	1,347	708	11,650
Water Quality	8,518	6,117	2,180	3,624	6,951	27,390
Water Supply	21,008	17,266	21,029	20,895	21,670	101,868
Admin. & General Expense <sup>(1)</sup>	<u>35,000</u>	<u>35,000</u>	<u>35,000</u>	<u>35,000</u>	<u>35,000</u>	<u>175,000</u>
Total	\$186,064	\$195,910	\$210,492	\$224,718	\$219,056	\$1,036,241

<sup>(1)</sup> Includes overhead, construction management and other administrative costs which are allocated to individual projects upon their completion.

Source: The District.

The cost estimates are adjusted periodically and represent preliminary estimates at the time of development of the capital plan for planning purposes only. The District's estimated funding sources for its CIP for Fiscal Years 2014 through 2018 is set forth below:

**Table 5**  
**Fiscal Years 2014-2018**  
**Sources of Funds for Capital**  
**Improvement Program Expenditures**

<i>Funding Sources</i>	<i>(Millions)</i>
Commercial Paper Proceeds	\$ 0
Bond Proceeds	440.5
Advances, Contributions and Grants	94.3
Revenues	<u>501.5</u>
Total	<u>\$1,036.3</u>

Source: The District.

## WATER SYSTEM FINANCES

### Basis of Accounting

The District reports operations on a Fiscal Year basis (currently July 1 through June 30). Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the costs of providing goods and services to the general public are financed or recovered primarily through user charges. Enterprise funds are accounted for using the accrual basis of accounting. The accounting policies of the District conform to generally accepted

accounting principles for municipal water utilities. The accounts are maintained substantially in accordance with the Uniform System of Accounts for Water Utilities prescribed for investor-owned and major municipally-owned water utilities.

### **Sources of Funds**

The Water System's principal source of revenues is water sales. In Fiscal Year 2013, approximately 77% of the Water System's \$438.2 million in total sources of funds was provided from water sales. Sources of funds other than water sales include taxes, income from the sale of energy from the District's hydroelectric power plants, investment income, and grants and contributions in aid of construction. The District's share of the county 1% property tax levy contributed approximately 6%, or \$26.4 million of the total sources of funds. In Fiscal Year 2013, the Water System's hydroelectric power plants produced power revenues of approximately \$3.6 million and the District's income on investments was approximately \$3.7 million. Contributions in aid of construction totaled \$55.7 million, including \$20.5 million of seismic surcharge collections, \$22.7 million of system capacity charges collected during such year (which excludes accumulated system capacity charge funds available to offset debt service costs for such Fiscal Year), \$4.5 million of contributions for facility relocations, main extensions and service installations, and \$8.0 million of grants and other reimbursements.

The following Table 6 sets forth the District's Water System sources of funds for the five most recent Fiscal Years ended June 30, 2013. The sources of funds in the table below include certain funds which do not constitute Subordinated Water Revenues for purposes of the Indenture. Subordinated Water Revenues include all charges received for, and all other income and receipts derived by the District from, the operation of the Water System or arising from the Water System, which includes, without limitation, the District's water rates, system capacity charge and seismic surcharge, as well as investment income. Property taxes are applied to reduce Operation and Maintenance Costs and are not pledged to the repayment of the Water System Revenue Bonds. See "– Tax Revenues." Contributions received for facility relocations, main extensions and service installations, and grants and other reimbursements, which are restricted to use for the specified purposes are not included in Subordinated Water Revenues for purposes of the Indenture. Only Subordinated Water Revenues are pledged to the payment of the Water System Revenue Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Pledge of Subordinated Water Revenues." Comparative summaries of the Water System's historical operating results and debt service coverage ratio for each of the last five Fiscal Years appear in Table 18.

**Table 6**  
**WATER SYSTEM SOURCES OF FUNDS**  
**Five Fiscal Years Ended June 30, 2013**  
**(Millions)**

	<i>Fiscal Year Ending June 30</i>				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Operating Revenue and Other Income:					
Water sales	\$287.3	\$271.0	\$283.6	\$306.2	\$336.0
Power sales	4.3	6.2	8.1	4.6	3.6
Interest <sup>(1)</sup>	24.5	9.6	5.7	5.5	3.7
Taxes	23.4	22.9	22.2	23.4	26.4
Other <sup>(2)</sup>	<u>6.1</u>	<u>7.7</u>	<u>13.4</u> <sup>(6)</sup>	<u>16.2</u> <sup>(6)</sup>	<u>12.8</u> <sup>(6)</sup>
Total Operating Revenue and Other Income	<u>\$345.6</u>	<u>\$317.4</u>	<u>\$333.0</u>	<u>\$355.9</u>	<u>\$382.5</u>
Capital Contributions:					
Seismic Surcharge	\$ 15.5	\$ 16.7	\$ 18.1	\$ 19.2	\$ 20.5
System Capacity Charge <sup>(3)</sup>	10.9	12.5	17.6	16.1	22.7
Earned contributions on construction <sup>(4)</sup>	10.8	6.0	6.5	5.8	4.5
Grants and reimbursements	<u>1.2</u>	<u>4.7</u>	<u>3.6</u>	<u>4.1</u>	<u>8.0</u>
Total Contributions	<u>\$ 38.4</u>	<u>\$ 39.9</u>	<u>\$ 45.8</u>	<u>\$ 45.2</u>	<u>\$ 55.7</u>
 Total	 <u>\$384.0</u>	 <u>\$357.3</u>	 <u>\$378.8</u>	 <u>\$401.1</u>	 <u>\$438.2</u>

<sup>(1)</sup> Includes interest earnings on Water System Fund, including earnings on proceeds of the District's Water System Revenue Bonds.

<sup>(2)</sup> Other Revenues include receipts from property sales, rental of District property, fees for use of District recreational facilities and other miscellaneous receipts. Excludes reimbursements and other receipts applied directly to operating expenses.

<sup>(3)</sup> System capacity charge collections presented in the table above include the "buy in" portion and the "future water supply" portion of SCC charges when collected. Does not include the "future water supply" portion of SCC charges applied from the Future Water Supply Fund to offset debt service costs. See " – System Capacity Charge" below.

<sup>(4)</sup> Includes contributions for facility relocations, main extensions and service installations.

<sup>(5)</sup> Includes approximately \$23.7 million of non-recurring litigation and insurance proceeds.

<sup>(6)</sup> In Fiscal Years 2011 through 2013, includes approximately \$8.2 million of interest subsidy payments in each year received by the District in connection with its Series 2010B Bonds which were Build America Bonds.

Source: The District.

## Water Sales Revenues

Water sales to residential accounts provide approximately 62% of the District's water sales revenues. Approximately 92% of the District's accounts are residential, but because residential consumption per account is lower than for other customer types, residential sales account for only 60% of consumption. The District's five largest customers are Chevron U.S.A. Inc. and its subsidiaries, Phillips 66 Company, the University of California, Golden Rain Foundation (Rossmoor retirement community) and the C&H Sugar Company. In Fiscal Year 2013, the five largest customers consumed approximately 9.6% of the District's water; Chevron U.S.A. Inc. and its subsidiaries alone consumed 4.2%.

The following Table 7 sets forth water sales revenues, consumption and number of connections by customer type.

**Table 7**  
**WATER SALES REVENUES, CONSUMPTION AND NUMBER**  
**OF CONNECTIONS BY CUSTOMER TYPE**  
**Fiscal Year Ended June 30, 2013**

<i>Type of Customer</i>	<i>Sales Revenues <sup>(1)</sup></i>	<i>Percent of Revenues</i>	<i>Consumption (MGD)</i>	<i>Percent of Consumption</i>	<i>Number of Connections</i>	<i>Percent of Connections</i>
Residential	208,500,630	62.0%	90.6	53.8%	345,169	89.0%
Commercial	85,701,930	25.5	53.9	32.0	37,788	10.0
Industrial	20,795,921	6.2	16.0	9.5	1,490	0.4
Other <sup>(2)</sup>	<u>21,067,035</u>	<u>.3</u>	<u>7.9</u>	<u>4.7</u>	<u>2,423</u>	<u>0.6</u>
Total	<u>336,065,516</u>	<u>100.0%</u>	<u>168.4</u>	<u>100.0%</u>	<u>386,870</u>	<u>100.0%</u>

<sup>(1)</sup> Excludes proceeds from the seismic surcharge which the District capitalizes in its audited financial statements in accordance with Generally Accepted Accounting Principles. Seismic surcharge revenues are Water Revenues for purposes of the Indenture. Does not include account establishment fees, recycled water fees and certain other miscellaneous charges.

<sup>(2)</sup> Includes public agencies, recycled water customers and late charges.

Source: The District.

### **Rates and Charges**

The District's rates and rate structure are established by its Board of Directors after a public hearing process, and are not subject to regulation by any other agency. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Proposition 218" for a discussion of the notice, hearing and protest procedures to which the District's proposed rate increases are subject.

From Fiscal Year 2009 through Fiscal Year 2015, residential rates have increased by an average of 7.5% per Fiscal Year. The District's most recent rate increase included the adoption on June 11, 2013 of a 9.75% and 9.50% system-wide rate increase for Fiscal Years 2014 and 2015, respectively. The average residential rate increases enacted by the District for the future, current, and five preceding Fiscal Years are as follows:

**Table 8**  
**WATER RATE INCREASES**

<i>Fiscal Year</i>	<i>Average Rate Increase (Residential)</i>
2009	5.10%
2010	8.70 <sup>(1)</sup>
2011	7.50
2012	6.00
2013	6.00
2014	9.75
2015	9.50

<sup>(1)</sup> Residential customers accounted for a higher portion of the 7.5% system-wide rate increase in Fiscal Year 2010 to reflect the results of a cost allocation study conducted by the District in 2009. The average rate increase for commercial and industrial users for Fiscal Year 2010 were 5.2% and 4.9%, respectively.

Source: The District.



The District's water rate structure is based on a cost of service methodology by customer class.

The rate structure consists of two elements: a monthly service charge and a commodity charge for water delivered. With the exception of single family residential customers, commodity charges for water delivered are based on a uniform volume rate. Single family residential customers are billed on a three-tier inclining block rate structure.

Table 9 shows the rate schedule effective July 1, 2013 for Fiscal Year 2014, which represents an average increase of 9.75% for residential customers from Fiscal Year 2013 rates. The monthly water bill for a typical residential account consuming 1,000 cubic feet ([10] Ccf or 7,480 gallons) per month is \$44.41. See also Table 19 under "– Projected Operating Results" for a description of projected future rate increases.

**Table 9**  
**WATER SYSTEM RATES AND CHARGES<sup>(1)</sup>**  
**Effective July 1, 2013**

**Service Charge**

<i>Meter Size</i>	<i>Per Month</i>
5/8-inch and ¾-inch	\$13.42
1-inch	21.58
1 ½-inch	34.79
2-inch	50.83
Over 2-inch	Various

**Charge for Water Delivered**

<i>Rate Class</i>	<i>Per Hundred Cubic Feet (Ccf)</i>
Basic Rate – Single Family <sup>(2)</sup>	2.66
Basic Rate – Multi Family	3.36
Basic Rate – Other	3.48
Elevation Surcharges <sup>(3)</sup> – Pressure Zones 2 through 5	0.50
Pressure Zones 6 and higher	1.02

<sup>(1)</sup> A seismic surcharge is added to each customer's water bill. The surcharge consists of a meter charge component that varies by meter size and a volume surcharge. See "– Seismic Surcharge" below.

<sup>(2)</sup> Applies to first 172 gallons per day (7 Ccf) for single family residential customers. Additional consumption by residential customers is billed at \$3.29 per Ccf for consumption between 173 and 393 gallons per day (16 Ccf) and \$4.04 for all water used in excess of 393 gallons per day. For a household using 10 Ccf, the water usage charge for the first 7 Ccf at the first tier rate of \$2.66 per Ccf would be \$18.62 and the water usage charge for the additional 3 Ccf at the second tier rate of \$3.29 per Ccf would be \$9.87, for a total charge for water delivered of \$28.49; the monthly service charge would be \$13.42 and the seismic surcharge would include a \$1.25 monthly meter charge component and a \$1.25 water service availability component, resulting in a total monthly bill of \$44.41.

<sup>(3)</sup> The water elevation surcharge provides for the increased power and facility costs needed to pump water to locations (zones) 200 or more feet above sea level.

Source: The District.

**Seismic Surcharge**

The District's seismic surcharge is a rate surcharge designed to recover costs of the SIP. See "THE WATER SYSTEM – Seismic Matters." The basis for the charges is to: (i) provide fire flow availability for real property after a seismic event; and (ii) provide continued water service to residential,

commercial and industrial customers after a seismic event. The surcharge is collected as part of the water bill and was established for the period of May 1, 1996 through February 28, 2025. The surcharge is sized to ensure that sufficient funds are available to fund construction of recommended seismic improvements with allowance for inflation in construction costs and growth in customer base.

For a typical residential customer in Fiscal Year 2014, the seismic surcharge consists of a \$1.25/month meter charge for a typical 5/8" meter plus a charge of \$1.25/month per single-family residential customer for water service availability. Outside of single-family and multi-family residential customers, the water service availability component is based on the customer's consumption and is charged at a rate of \$0.14 per 748 gallon billing unit due to the wide variation in water use by non-residential customers. The District's Board annually reviews these charges and adjusts them as necessary to ensure the seismic surcharge collected will meet all obligations of the program.

### Comparison of Annual Water Service Charges

Table 10 shows comparative average annual water service charges by various Bay Area water agencies for a typical residential account with a 5/8-inch meter using 1,000 cubic feet of water (7,480 gallons) per month. Charges are for the minimum cost zone or area served by the agency as of June 2013.

**Table 10**  
**COMPARATIVE ANNUAL RESIDENTIAL WATER CHARGES**  
**For 10 Ccf/Month and 5/8" Meter**  
**As of June 2013**

<i><b>Water Supplier</b></i>	<i><b>Average Annual Household Water Service Charge</b></i>
City of Palo Alto	\$831
City and County of San Francisco	714
City of Hayward	630
Contra Costa Water District	603
Marin Municipal Water District	578
North Marin Water District	577
City of San Jose	562
City of Los Altos	561
Alameda County Water District	557
Dublin San Ramon Services District	556
<b>East Bay Municipal Utility District<sup>(1)</sup></b>	<b>533</b>
City of Livermore	505
City of Pleasanton	340

<sup>(1)</sup> Based on District's Fiscal Year 2014 rates effective July 1, 2013 through June 30, 2014. Includes seismic surcharge.  
Source: The District.

### Billing and Collection Procedures

All water service customers are billed directly by the District bimonthly, with the exception of approximately 1,000 accounts consisting of the largest users in the District, which are billed monthly. Billing is staggered throughout the billing cycle by geographic location within the District. Service may be discontinued if an overdue account is not paid after appropriate customer notification. The District considers its rates of payment delinquency, service discontinuance for non-payment, and write-offs for uncollectible accounts to be low by water industry standards for urban areas. The write-offs for uncollectible accounts by Fiscal Year have been:

**Table 11**  
**WATER SALES UNCOLLECTIBLE REVENUES**  
**Last Five Fiscal Years**

<i>Fiscal Year Ended June 30</i>	<i>Uncollectible Revenues</i>	<i>Percent of Gross Billings</i>
2009	\$1,876,591	0.65%
2010	1,745,358	0.64
2011	1,588,746	0.56
2012	1,377,558	0.42
2013		

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Source: The District.

### **System Capacity Charge**

The District's system capacity charge ("SCC") is designed to recover from new accounts a portion of the costs of existing facilities, as well as the costs of additional facilities (primarily water supply projects) to be constructed in the future to provide water service to new customers based on land use plans. Under the existing SCC policy, funds collected from SCCs are applied toward the costs of the District's capital program for such facilities, and in the case of future water supply projects, to reimburse the Water System for the payment of debt service on Water System Revenue Bonds issued to finance such facilities.

The SCC includes both a "buy-in" portion and a "future water supply" portion. The "buy-in" portion includes the costs of existing District storage, treatment and distribution facilities, as well as existing water supply facilities (including reservoirs and aqueducts) and administration facilities. As the "buy-in" portion of the SCC, new accounts are charged for their share of the costs of these existing District facilities (escalated to current dollars). The "future water supply" portion of SCC receipts is collected to fund the costs of additional facilities required to service new accounts. The "future water supply" portion of SCC receipts when collected are deposited in the Future Water Supply Fund, a segregated account of the Revenue Fund, to be applied in future years to offset debt service costs attributable to SCC-related capital facilities. In Fiscal Year 2013, SCCs collected totaled \$22.673 million (the "buy in" portion of \$16.187 million and the "future water supply portion" of \$6.486 million).

For purposes of the Indenture, the District has included in the SCC Revenues as shown in Table 18 for Fiscal Years 2009 through 2013, the "buy in" portion of SCC charges when collected and the debt service repayment component of the "future water supply" portion of SCC charges when applied from the Future Water Supply Fund to offset debt service costs attributable to SCC-related capital facilities. For Fiscal Year 2013, the District recognized SCC Revenues of \$22.673 million.

For financial statement purposes, however, the District has elected to account for both the "buy in" portion of SCC charges when collected and the debt service repayment component of the SCC when applied as part of capital contributions. As a result, no SCC amounts are reflected as operating revenues in the District's financial statements.

Due to the significant capital expenditures by the District on the FRWP and other capital improvements and the associated application of SCCs to the reimbursement of debt service and other costs related thereto, the application of SCC funds to offset debt service increased significantly beginning in Fiscal Year 2010.

## **Supplemental Supply Charge**

As described under “Water Supply – *United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project*,” in connection with the FRWP, the District adopted a supplemental supply charge of 14% of total water flow charges which may be added to customers’ water bills during droughts when the Board declares a need to take deliveries of its CVP water under the Long-Term Renewal CVP Contract (which has not occurred since FRWP was completed in late 2011). The supplemental supply charge is designed to cover the costs of operating the FRWP and the costs of CVP water during dry year periods when the District takes deliveries of CVP water.

Prior to completion of the FRWP, during the 2008-09 drought, the District implemented special drought rate increases that included a 10% rate increase on water flow charges, a new surcharge for each account’s water use allocation equal to \$2.00 per Ccf of all water used in excess of the account’s water use allocation, and a new non-potable water use incentive rate. These rates were designed to encourage customers to reduce water use, to compensate for lost revenue due to reduced water use, and to fund drought management programs in the District. The drought surcharge was rescinded by the District as of July 1, 2009 as drought conditions subsided.

## **Property Tax Revenues**

The District’s share of the county 1% *ad valorem* property tax levy has provided approximately 5% to 6% of total operating revenues of the Water System in each of the past five Fiscal Years for the District. The District’s share of the county 1% *ad valorem* property tax is not pledged as a source of payment for the Water System Revenue Bonds, although such amounts are applied to pay Water Operation and Maintenance Costs in accordance with the Indenture.

Table 12 shows a five-year record of assessed valuations, secured roll levies and delinquencies for the taxable property included within the District. Assessed valuations are expressed by county assessors as “full cash value” as defined by Article XIII A of the State Constitution. The tax levy shown is the District’s allocated share of the maximum *ad valorem* tax levy by each county of 1% of full cash value. Pursuant to California Revenue and Taxation Code Sections 4701 et seq., Contra Costa County and Alameda County each maintain a reserve fund for the purpose of guaranteeing 100% of the secured levies of the electing governmental jurisdictions for which such county collects taxes (commonly referred to as “The Teeter Plan”). The District has elected to participate in Contra Costa County’s Teeter Plan program but has elected not to participate in Alameda County’s Teeter Plan program. Consequently, the District is exposed to the effect of delinquencies in collections only for property located in Alameda County.

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**Table 12**  
**TAXABLE PROPERTY WITHIN THE WATER SYSTEM**  
**Assessed Valuation and Tax Collection Record**

	<i>Fiscal Year Ending June 30</i>				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Assessed Valuation for Taxation Purposes <sup>(1)</sup>					
Alameda County	\$ 93,523,188,294	\$ 91,896,215,219	\$ 92,498,938,097	\$ 94,461,089,218	\$ 98,956,612,301
Contra Costa County	<u>82,362,321,780</u>	<u>79,539,647,643</u>	<u>79,611,319,471</u>	<u>81,232,708,213</u>	<u>83,100,933,502</u>
Total	\$175,885,510,074	\$171,435,862,862	\$172,110,257,568	\$175,693,797,431	\$182,057,545,803
District Secured Roll Tax Receipts <sup>(2)</sup>					
Alameda County	\$11,862,545	\$11,820,322	\$11,404,014	\$12,463,643	
Contra Costa County	<u>11,554,756</u>	<u>11,068,795</u>	<u>10,831,553</u>	<u>10,921,960</u>	
Total	\$23,417,301	\$22,889,117	\$22,235,567	\$23,385,603	
Delinquent June 30 <sup>(3)</sup>					
Amount	\$ 671,633	\$ 463,326	\$ 377,242	\$ 353,191	
Percent	2.87%	2.02%	1.70%	1.51%	

<sup>(1)</sup> Net of all exemptions except homeowner's exemptions, the taxes on which are paid by the State. All valuations are stated on a 100% of full cash value basis. Assessed valuations shown include redevelopment project area incremental valuations.

<sup>(2)</sup> Net basis excluding all exemptions. Levies reflect the tax reductions effected by the adoption of Article XIII A of the State Constitution in 1978, the "Jarvis-Gann Initiative." For Alameda County, receipts include District's share of prior years' delinquencies when collected.

<sup>(3)</sup> Amounts apply to Alameda County only, since Contra Costa County guarantees 100% payment of the District's secured roll levy as described above. The delinquency percentages are calculated based on the two counties' secured roll levies.

Sources: Auditor-Controller's Office, Alameda and Contra Costa Counties, as compiled by the District.

From time to time legislation has been considered as part of the State budget to shift the share of the 1% *ad valorem* property tax collected by counties from special districts to school districts or other governmental entities. The State budgets for Fiscal Years 2003-04 and 2004-05 reallocated portions of special districts' shares of the countywide 1% *ad valorem* tax, shifting a portion of the property tax revenues collected by the counties from special districts to school districts. The District has historically, since the 1970's, applied its share of property tax revenues to fund the maintenance of fire protection capacity. As a result of legislation providing for an exemption from the property tax shift for funding fire protection services and facilities, the District did not lose any property tax revenues allocable to the Water System in Fiscal Years 2004 and 2005. Additionally, on November 2, 2004 voters within the State approved Proposition 1A, which prevents the State from reducing local government's share of the 1% *ad valorem* property tax below current levels, except in the case of fiscal emergency. Proposition 1A provides that in the case of fiscal emergency, the State could borrow up to 8% of local property tax revenues to be repaid within three years.

The 2009-10 State budget provided for the borrowing of 8% of property taxes from local jurisdictions, including the District, under Proposition 1A. This borrowing resulted in a reduction of approximately \$1.85 million from property tax revenues allocable to the Water System. As noted above, under Proposition 1A, the State was required to repay the property taxes with interest within three years. State legislation allowed the District to sell its right to receive this repayment to a joint powers authority, which sold bonds payable from the receivables it purchased from participating local jurisdictions. The District participated in this program in order to replace the lost property taxes at no cost to the District, and treated amounts received under the program as it would have treated the State borrowed property tax revenues replaced thereby.

There can be no assurances that future legislation or voter initiatives will not reduce or eliminate the District's share of the 1% county-wide ad valorem property tax revenues. See also "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

The tax rolls for property located within the District Water System service area for the Fiscal Year ended June 30, 2013, aggregated a total assessed valuation of approximately \$182.1 billion, including redevelopment project areas incremental valuations of which the taxes payable were due to the redevelopment agency. In 2011, the State of California enacted legislation commonly referred to as "AB1X 26," which required the dissolution of California redevelopment agencies and the dissolution and winding up of the operations of those agencies, which dissolution occurred on February 1, 2012. AB1X 26 provides a framework for the management of the remaining obligations of the dissolved redevelopment agencies by their respective successor agencies and oversight boards to oversee those successor agencies. Pursuant to AB1X 26, tax increment will continue to flow to the payment of "enforceable obligations" (such as tax allocation bonds) of the dissolved redevelopment agencies.

### **Power Sales Revenues**

The District operates hydropower plants at Pardee and Camanche Reservoirs. These plants generate 185 million kilowatt hours of electricity in normal rainfall years. The power is sold to the Sacramento Municipal Utility District under a 10-year power purchase agreement which expires in July 2015. This power purchase agreement includes the sale of hydroelectric power, available capacity during summer months, and environmental attributes (*i.e.*, credits, benefits, offsets, reductions or allowances resulting from the generation of renewable energy). Annual revenues to the District from power sales have ranged from approximately \$3.6 million to \$8.1 million over the last five fiscal years. Revenues from power sales vary depending on power prices and the volume of water available for release from the reservoirs. The District currently budgets \$5.7 million annually in hydropower revenue.

### **Developer Contributions**

Cash contributions for main extension and other facilities to serve new customers depend on the level of development. In addition to collection of its SCC (as described under "System Capacity Charge" above), District policy requires new applicants for service to pay direct charges for mains, hydrants, and services necessary to serve them. In Fiscal Year 2013, developer contributions collected for facility relocation charges, mains and hydrants and service installations totaled \$4.5 million. These developer contributions are treated as capital contributions and are not included in Subordinated Water Revenues for purposes of the Indenture.

### **Grants**

Grants are received for specific projects. In Fiscal Year 2013, \$7.992 million was collected. The District also received \$54,944 in federal and State Disaster Relief funds in Fiscal Year 2013 primarily to reimburse the District for damages resulting from a levee break in the Sacramento-San Joaquin Delta that occurred in 2006 causing damage to the District's Mokelumne Aqueducts. An aggregate amount of \$2.9 million in grants and reimbursements is budgeted for Fiscal Years 2014 through 2018. Grants and reimbursements are treated as capital contributions and are not included in Subordinated Water Revenues for purposes of the Indenture.

## **Operation and Maintenance Costs**

The primary component of the District's Operation and Maintenance Costs is labor costs, including wages, salaries and benefits. Operation and Maintenance Costs also include materials, supplies and services such as costs of chemicals for water treatment and electrical power, and other general and administrative expenses.

## **Outstanding Debt**

Table 13 shows the District's Water System debt outstanding as of June 30, 2013. By Resolution No. 33606-07 adopted June 12, 2007, the Board declared its intention to issue up to \$1,100,000,000 of Water System revenue bonds, of which \$602,330,000 of such authorized amount remained unissued as of July 1, 2013. The District may from time to time in the future adopt other resolutions authorizing the issuance of additional Water System Revenue Bonds and Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. See "SECURITY FOR THE SERIES \_\_\_\_ BONDS – Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations."

Low-interest loans were made by the SWRCB and the CDWR to the District to finance certain water reclamation and reuse facilities within the District to conserve fresh water supplies. See "SECURITY FOR THE SERIES \_\_\_\_ BONDS – Outstanding Water System Revenue Obligations – *State Loans*."

Tax-exempt Extendable Municipal Commercial Paper Notes (Water Series) ("Water System CP Notes") are issued by the District from time to time pursuant to Resolution No. 33705-09, which authorizes, as provided in the Municipal Utility District Act, a maximum outstanding principal amount of notes not exceeding the lesser of (1) the annual average of the District's total revenue for the three preceding years or (2) 25% of the District's total outstanding bonds issued pursuant to Chapters 6, 7 and 8 of the Municipal Utility District Act. As of May 31, 2013, the District determined the maximum authorized principal amount of Extendable Commercial Paper Notes (Water Series) and Extendable Commercial Paper Notes (Wastewater Series) pursuant to the above limit to be an amount not to exceed \$475,000,000. As of June 30, 2013, \$372,900,000 principal amount of Extendable Commercial Paper Notes (Water Series) were outstanding. The Extendable Commercial Paper Notes (Water Series) are payable from and secured by a pledge of Water Revenues on a basis subordinate to the Water System Revenue Bonds.

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**Table 13**  
**OUTSTANDING WATER SYSTEM DEBT**  
**As of June 30, 2013**

<i>Issue</i>	<i>Date of Issue</i>	<i>Last Maturity</i>	<i>Amount Issued</i>	<i>Outstanding June 30, 2013</i>
<b>Water System Revenue Bonds</b>				
Revenue Bonds, Series 2005A	6/02/05	6/01/35	\$ 300,000,000	\$ 228,250,000
Revenue Bonds, Series 2007A	5/23/07	6/01/37	450,000,000	330,000,000
Revenue Refunding Bonds, Series 2007B	5/23/07	6/01/19	54,790,000	35,700,000
Revenue Refunding Bonds, Series 2008A	3/20/08	6/01/38	322,525,000	200,550,000
Revenue Refunding Bonds, Series 2008B-3	4/24/08	6/01/26	160,000,000	15,100,000
Revenue Refunding Bonds, Series 2009A	3/12/09	6/01/26	331,155,000	82,075,000
Revenue Refunding Bonds, Series 2010A	2/03/10	6/01/31	192,830,000	190,570,000
Revenue Bonds, Series 2010B (Build America Bonds)	2/23/10	6/01/40	400,000,000	400,000,000
Revenue Refunding Bonds, Series 2011A	12/29/11	6/01/25	159,210,000	148,170,000
Revenue Refunding Bonds, Series 2012A	10/10/12	6/01/37	191,750,000	191,750,000
Revenue Refunding Bonds, Series 2012B	11/13/12	6/01/26	358,620,000	339,995,000
Revenue Refunding Bonds, Series 2013A	03/05/13	6/01/21	<u>48,670,000</u>	<u>48,670,000</u>
Total Water System Revenue Bonds			\$2,969,550,000	\$2,210,830,000
<b>Parity Debt:</b>				
Safe Drinking Water State Revolving Fund Loan (Upper San Leandro Reservoir)	1/01/03	1/01/23	2,188,000	1,283,709
State Water Resources Control Board Loan (East Bayshore Recycled Water Project)	5/22/08	4/01/28	<u>20,100,000</u>	<u>15,719,008</u>
Total Parity State Loans			\$ 22,288,000	\$17,002,717
<b>Subordinate Debt:</b>				
Extendable Municipal Commercial Paper Notes (Water Series) <sup>(1)</sup>	Various	Various	<u>312,900,000<sup>(1)</sup></u>	<u>372,900,000</u>
Total Debt			<u>\$3,304,738,000</u>	<u>\$2,600,732,717</u>

<sup>(1)</sup> Extendable Commercial Paper Notes (Water Series) and Extendable Commercial Paper Notes (Wastewater Series) may be issued in an amount up to the statutory limit described above.

Source: The District.

### Variable Rate and Swap Obligations

As of June 30, 2013, of the District's \$2,210,830,000 aggregate principal amount of outstanding Water System Revenue Bonds, \$445,895,000 principal amount are variable rate obligations which are subject to tender prior to maturity in accordance with their terms, including the \$82,075,000 principal amount of Water System Revenue Refunding Bonds, Series 2009A (the "Series 2009A Bonds") and \$148,170,000 principal amount of District's Water System Revenue Refunding Bonds, Series 2011A (the "Series 2011A Bonds") which bear interest in a SIFMA-Based Term Interest Rate Period (the "SIFMA Index Bonds"). The SIFMA Index Bonds bear interest at a rate that fluctuates based on the weekly SIFMA Municipal Swap Index published weekly by Municipal Market Data plus a spread and are subject to mandatory tender on specified mandatory tender dates to occur at the end of each rate period. If the purchase price of the Series 2009A Bonds is not paid from proceeds of a remarketing or other funds on or prior to a scheduled mandatory tender at the end of the applicable rate period, failure of the District to provide funds for the purchase of such Series 2009A Bonds will constitute an Event of Default under the Indenture. If the purchase price of the Series 2011A Bonds is not paid from proceeds of a remarketing or other funds on or prior to a scheduled mandatory tender at the end of the applicable rate period, failure of the District to provide such funds will not constitute an Event of Default under the Indenture; however, in the event sufficient remarketing proceeds are not available for the purchase of such Series 2011A Bonds upon such mandatory tender, such Series 2011A Bonds will go into a term-out period and will bear interest at an interest rate which is substantially higher than the current variable interest rate on the Series 2011A Bonds, and during such term-out period, the Series 2011A Bonds will be subject to special mandatory redemption over an approximately five-year period, which will result in an acceleration in the



repayment of the principal of the Series 2011A Bonds from the principal payments that would otherwise be due on such Series 2011A Bonds. See also “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Water System Revenue Bonds – *Outstanding Water System Revenue Bonds and Parity Debt.*”

The interest rates for the District’s \$215,650,000 principal amount of other outstanding variable rate Water System Revenue Bonds are reset on a weekly basis. Such variable rate demand obligations are supported by Standby Bond Purchase Agreements between the District and various liquidity providers. Table 14 sets forth a listing of the liquidity providers, the expiration date of each facility and the principal amount of outstanding bonds covered under each facility as of June 30, 2013.

**Table 14**  
**LIQUIDITY FACILITIES AND EXPIRATION DATES**

<i><b>Water System Revenue Bond Issue<sup>(1)</sup></b></i>	<i><b>Outstanding Principal Amount</b></i>	<i><b>Liquidity Provider</b></i>	<i><b>Facility Expiration</b></i>
Series 2008A-1	\$ 61,725,000	Wells Fargo Bank, National Association	July 3, 2014
Series 2008A-2	46,275,000	U.S. Bank National Association	July 1, 2015
Series 2008A-3	46,275,000	U.S. Bank National Association	July 1, 2015
Series 2008A-4	46,275,000	Bank of America, N.A.	January 10, 2014
Series 2008B-3	15,100,000	JPMorgan Chase Bank, N.A.	January 10, 2014
Total	\$215,650,000		

Source: The District.

In connection with the District’s \$445,895,000 principal amount of outstanding variable rate Water System Revenue Bonds, the District has entered into various interest rate swap agreements (collectively, the “Water Interest Rate Swap Agreements”). By virtue of these Water Interest Rate Swap Agreements, the related variable rate Water System Revenue Bonds are essentially treated by the District as fixed rate debt for the purpose of calculating debt service requirements, although the variable payments that the District receives from swap counterparties do not usually equal the payments that the District makes on associated variable rate debt. There is no guarantee that the floating rate payable to the District pursuant to each of the Water Interest Rate Swap Agreements will match the variable interest rate on the associated Water System Revenue Bonds to which the respective Water Interest Rate Swap Agreement relates at all times or at any time. Under certain circumstances, the Swap Providers may be obligated to make a payment to the District under their respective Water Interest Rate Swap Agreement that is less than the interest due on the associated Water System Revenue Bonds to which such Water Interest Rate Swap Agreement relates. In such event, the District would be obligated to pay such insufficiency from Subordinated Water Revenues.

As of June 30, 2013, the District had outstanding the following Water Interest Rate Swap Agreements relating to variable rate Water System Revenue Bonds with the following counterparties (collectively, the “Swap Providers”) in the aggregate notional amount of \$445,795,000.

**Table 15**  
**WATER INTEREST RATE SWAP AGREEMENTS**

<i>Related Water System Revenue Bond Issue</i>	<i>Outstanding Notional Amount</i>	<i>Swap Provider</i>	<i>District Pays</i>	<i>District Receives</i>	<i>Scheduled Maturity/ Termination Date</i>
Series 2011A Bonds	\$ 98,780,000	The Bank of New York Mellon	3.835%	65.0% of 30-day LIBOR	06/01/2025
Series 2011A Bonds	49,390,000	JPMorgan Chase Bank, N.A.	3.835	65.0% of 30-day LIBOR	06/01/2025
Series 2008A Bonds	30,850,000	Merrill Lynch & Co., Inc.	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	70,965,000	Bank of America, N.A.	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	27,770,000	The Bank of New York Mellon	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	70,965,000 <sup>1</sup>	JPMorgan Chase Bank, N.A.	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008B-3 Bonds/ Series 2009A Bonds	61,050,000	Deutsche Bank AG	3.407	91.0% of USD- SIFMA Municipal Swap Index	06/01/2026
Series 2008B-3 Bonds/ Series 2009A Bonds	20,350,000	Merrill Lynch & Co., Inc.	3.407	91.0% of USD- SIFMA Municipal Swap Index	06/01/2026
Series 2008B-3 Bonds/ Series 2009A Bonds	15,675,000	Citibank, N.A., New York	3.407	91.0% of USD- SIFMA Municipal Swap Index	06/01/2026
	<u>\$445,795,000</u>				

Source: The District.

Under certain circumstances, the Water Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the respective Swap Providers. Pursuant to the Water Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Water System Revenue Bonds but prior to the District's Water System CP Notes.

Early termination of an interest rate swap agreement could occur due to a default by either party or the occurrence of a termination event. In the event of early termination of any of the Water Interest Rate Swap Agreements, there can be no assurance that (i) the District will receive any termination payment payable to the District by the respective Swap Providers, (ii) the District will at all times have sufficient available cash on hand to pay any termination payment payable by it to the respective Swap Providers, or (iii) the District will be able to obtain a replacement Water Interest Rate Swap Agreement with comparable terms. As of June 30, 2013, the District would have been required to pay to counterparties termination payments if its then outstanding Water Interest Rate Swap Agreements were terminated on that date. The District estimated its net exposure to its counterparties for all such termination payments at June 30, 2013 to be approximately \$74.8 million. As of June 30, 2013, the largest aggregate termination payment owed to a single counterparty was estimated by the District to be approximately \$18.7 million. The District does not presently anticipate early termination of any of its Water Interest Rate Swap Agreements due to default by either party or the occurrence of a termination event. The District routinely monitors its swap counterparties' creditworthiness and performance under the Water Interest Rate Swap Agreements and may from time to time replace existing swap counterparties and Water Interest Rate Swap Agreements with new replacement interest rate swap agreements if the District determines such action is warranted. Additional information regarding the terms of the Water Interest Rate Swap Agreements may also be found in [Note 6(F)] in APPENDIX B – "EAST BAY

MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

Pursuant to the terms of certain of the Water Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District’s total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement. The applicable collateral posting threshold amounts specified in such Water Interest Rate Swap Agreements would be lower in the event certain ratings assigned to the Water System Revenue Bonds were to be revised downward or withdrawn. In the case of a ratings withdrawal or significant downward rating revision, such decline in the applicable threshold amounts could significantly increase the District’s collateral posting obligation thereunder. If the District’s ratings are revised upward, the amount of collateral required to be posted by the District under certain of the Water Interest Rate Swap Agreements could be reduced.

Under the terms of the Water Interest Rate Swap Agreements, the counterparties are required to release collateral to the District as market conditions become favorable to the District and may be required to post collateral for the benefit of the District to the extent that such counterparty’s total exposure for termination payments to the District exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement. As of June 30, 2013, the District had \$0.00 in collateral posted in favor of the counterparties to the Water Interest Rate Swap Agreements. The highest amount of collateral the District has been required to post in connection with the Water Interest Rate Swap Agreements on any date was approximately \$24.70 million, as of November 30, 2011. The amount of collateral varies from time to time due primarily to interest rate movements and can change significantly over a short period of time. In the future, the District may be required to post additional collateral, or may be entitled to a reduction or return of the required collateral amount. Collateral deposited by the District is held by the counterparties or an agent therefor. A bankruptcy of any counterparty holding collateral posted by the District could adversely affect the return of the collateral to the District. Moreover, posting collateral limits the District’s liquidity. If collateral requirements increase significantly, the District’s liquidity may be adversely affected.

## Debt Service Requirements

Table 16 shows future payments on outstanding debt.

**Table 16**  
**WATER SYSTEM ESTIMATED DEBT SERVICE<sup>(1)</sup>**

<i>Fiscal Year Ending June 30</i>	<i>Series 2005A Through Series 2013A<sup>(2)</sup></i>	<i>State Parity Loans<sup>(3)</sup></i>	<i>Total Water System Revenue Bonds and Parity Debt</i>	<i>Water System CP Notes<sup>(4)</sup></i>	<i>Total Debt Service<sup>(5)</sup></i>
2014	\$ 124,667,336	\$ 1,400,108	\$ 126,067,444	\$ 7,458,000	\$ 133,525,444
2015	140,375,626	1,400,108	141,775,734	7,458,000	149,233,734
2016	152,721,295	1,400,108	154,121,403	7,458,000	161,579,403
2017	154,146,326	1,400,108	155,546,434	7,458,000	163,004,434
2018	157,925,859	1,400,108	159,325,967	7,458,000	166,783,967
2019	157,800,236	1,400,108	159,200,344	11,187,000	170,387,344
2020	157,665,123	1,400,108	159,065,231	11,187,000	170,252,231
2021	157,467,437	1,400,108	158,867,545	11,187,000	170,054,545
2022	157,252,046	1,400,108	158,652,154	11,187,000	169,839,154
2023	157,071,750	1,400,108	158,471,858	11,187,000	169,658,858
2024	157,359,670	1,400,108	158,759,778	11,187,000	169,946,778
2025	157,347,420	1,260,248	158,607,668	11,187,000	169,794,668
2026	157,349,511	1,260,248	158,609,759	11,187,000	169,796,759
2027	152,125,872	1,260,248	153,386,120	11,187,000	164,573,120
2028	152,112,651	1,260,248	153,372,899	11,187,000	164,559,899
2029	152,096,753	--	152,096,753	11,187,000	163,283,753
2030	153,341,093	--	153,341,093	11,187,000	164,528,093
2031	153,328,455	--	153,328,455	11,187,000	164,515,455
2032	153,310,356	--	153,310,356	11,187,000	164,497,356
2033	153,290,871	--	153,290,871	11,187,000	164,477,871
2034	153,278,211	--	153,278,211	11,187,000	164,465,211
2035	153,260,493	--	153,260,493	11,187,000	164,447,493
2036	153,240,458	--	153,240,458	11,187,000	164,427,458
2037	152,313,030	--	152,313,030	11,187,000	163,500,030
2038	150,895,280	--	150,895,280	11,187,000	162,082,280
2039	148,347,851	--	148,347,851	11,187,000	159,534,851
2040	37,542,920	--	37,542,920	11,187,000	48,729,920
Total <sup>(6)</sup>	<u>\$4,007,633,933</u>	<u>\$20,442,177</u>	<u>\$4,028,076,110</u>	<u>\$283,404,000</u>	<u>\$4,311,480,110</u>

<sup>(1)</sup> Debt service is calculated on a cash basis.

<sup>(2)</sup> Fiscal Year 2013 includes debt service on refunded Series 2008A Bonds, Series 2008B-3 Bonds and Series 2009A Bonds prior to the refunding of portions of such bonds in November 2012. Includes fees to liquidity providers. Assumes debt service on outstanding Series 2008A Bonds, Series 2008B-3 Bonds and Series 2011A Bonds has been fixed pursuant to interest rate swap agreements. Assumes debt service on hedged principal amount of Series 2009A Bonds has been fixed pursuant to interest rate swap agreements. See “– Variable Rate and Swap Obligations” above. Assumes 10-year average SIFMA Index plus 10 basis points on unhedged Series 2009A Bonds. Includes total interest before application of any cash subsidy received by the District from the United States Treasury relating to the Series 2010B Bonds (Build America Bonds) (“BABs Interest Subsidy Payments”).

<sup>(3)</sup> See “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Water System Revenue Obligations –State Loans.”

<sup>(4)</sup> Assumes \$372,900,000 principal amount outstanding at assumed interest rate of 2.00% in Fiscal Years 2014 through 2018 and 3.00% thereafter. Includes interest only (no principal amortization). While the commercial paper program is limited by statute to seven years, it is the District’s intention to reestablish the commercial paper program prior to the expiration of each seven-year period.

<sup>(5)</sup> May not add due to rounding..

Source: The District.

## **Financial Management Policies**

The District has detailed management policies that include guidelines for debt, capital planning, investments, derivatives, and formal reserves. It is the current policy of the District to seek to maintain a debt service coverage ratio of 1.6 times on its outstanding Water System Revenue Bonds and to fund approximately 35% of its capital program over each five-year planning period from revenues and sources other than debt. The debt policy also limits unhedged variable rate debt to 25% of the total debt portfolio. Derivatives use is governed by a comprehensive derivatives policy with guidelines for counterparties, termination, and risk exposure. The District budgets for a number of formal reserves, including: (i) a working capital reserve equal to three months of operation and maintenance expenses; (ii) a self-insurance reserve equal to 1.25 times the expected annual expenditure; (iii) a workers' compensation reserve of approximately \$3.2 million in Fiscal Year 2013; and (iv) a contingency/rate stabilization reserve of 20% of projected annual water volume sales revenues. The aggregate budgeted reserves level for Fiscal Year 2014 is approximately \$118.4 million, which amount the District currently maintains in accordance with its reserve policies. The current investment policy dictates investment criteria, reporting, and administrative requirements.

### **District Investment Policy**

Funds of the District are invested in accordance with the Government Code of the State, the Municipal Utility District Act and the District's investment policy. The four primary investment criteria set forth in the District's written investment policy are (in order of priority): (1) preservation of principal; (2) maintenance of liquidity; (3) yield; and (4) diversity. In order to keep funds available to meet commitments, the District's investment policy provides that the maturity date (or put provision) of individual investments shall not exceed five years and that the average maturity of the portfolio shall not exceed 720 days. Investments permitted by the District's current investment policy include U.S. Treasury notes, bonds and bills, the State of California Local Agency Investment Fund, obligations issued by federal agencies, bankers' acceptances and commercial paper rated in the highest short-term rating category, as well as collateralized repurchase agreements, certificates of time deposit with maturities not to exceed five years and negotiable certificates of deposit, with maturities not to exceed five years, medium term corporate notes with maturities not to exceed five years, California municipal bonds with maturities (or put provisions) not to exceed five years, and the California Asset Management Program ("CAMP"). Monies in the funds and accounts held by the Trustee under the Indenture may be invested only in Investment Securities, as defined therein. The District does not enter into reverse repurchase agreements or otherwise borrow for purposes of investing, and the District does not invest in derivatives. The District has, however, entered into interest rate swap transactions to hedge interest rate exposure on outstanding variable rate Water System Revenue Bonds as described herein.

Pursuant to the District's investment policy, all securities purchased from dealers and brokers are held in safekeeping by the trust department of a state or national bank on a payment vs. delivery basis. Collateral is delivered or assigned under a tri-party agreement for all repurchase agreements. Trade confirmations are reviewed for conformity to the original transaction by an individual other than the one who originated the transaction. Transactions are ratified by the General Manager and reported quarterly to the Finance/Administration Committee of the Board.

### **Cash and Investments**

The District's cash and investments are segregated by restricted and unrestricted amounts. Restricted cash and investments generally include bond proceeds and debt service reserve funds, developer advances and capital contributions, and other miscellaneous restricted amounts. At June 30, 2013, the breakdown between restricted and unrestricted amounts is as follows:

**Table 17**  
**CASH AND INVESTMENTS**  
**(Thousands)**

Cash and investments included in current assets	303,247
Cash and investments included in unrestricted assets	<u>5,067</u>
Total unrestricted cash and investments	308,314
Cash and investments included in restricted assets	<u>63,232</u>
Total cash and investments	<u>371,546</u>

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Source: The District.

Additional information regarding the District's investment portfolio may also be found in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012" [Note 2].

### **Historical Operating Results**

The District's financial statements for Fiscal Year 2013, and the Report of Maze & Associates, independent accountants, are included as Appendix B, which are incorporated by reference into this Official Statement, and should be read in their entirety. The summary of operating results for Fiscal Years 2009 through 2013 contained in Table 18 is derived from information from the audited financial statements for such Fiscal Years and is qualified in its entirety by reference to such statements, including the notes thereto.

Table 18 sets forth the historical operating results and the calculation of the debt service coverage ratio for the Water System for each of the last five Fiscal Years.

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**Table 18**  
**WATER SYSTEM**  
**Historical Operating Results and Debt Service Coverage<sup>(1)</sup>**  
**Fiscal Years 2009 through 2013**

	2009	2010	2011	2012	2013
<b>WATER REVENUES<sup>(2)</sup>:</b>					
Water Sales <sup>(3)</sup>	\$287,313,350 <sup>(10)</sup>	\$271,022,353	\$283,643,516	\$306,228,357	\$336,065,516
Power Revenue	4,319,127	6,232,524	8,081,710	4,609,259	3,595,948
Interest	24,529,822	9,567,239 <sup>(11)</sup>	5,333,109	4,551,068	3,731,406
SCC Revenue <sup>(4)</sup>	16,090,659	40,490,369	46,190,321	30,733,972	22,673,134
Seismic Rate Surcharge <sup>(5)</sup>	15,479,577	16,657,412	18,102,265	19,172,928	20,536,924
Other Revenue	6,084,034	7,726,627 <sup>(12)</sup>	13,363,139 <sup>(12)</sup>	16,159,977 <sup>(12)</sup>	12,842,012
<b>TOTAL WATER REVENUES</b>	<b><u>\$353,816,569</u></b>	<b><u>\$351,696,524</u></b>	<b><u>\$374,714,060</u></b>	<b><u>\$381,455,561</u></b>	<b><u>\$399,444,940</u></b>
<b>WATER OPERATION &amp; MAINTENANCE COSTS:</b>					
Operating Expenses	\$199,631,357	\$178,964,687	\$181,709,853	\$197,818,566	\$196,452,184
(Less Tax Receipts) <sup>(6)</sup>	<u>(23,417,301)</u>	<u>(22,889,117)</u>	<u>(22,235,567)</u>	<u>(23,385,603)</u>	<u>(25,639,060)</u>
<b>TOTAL WATER OPERATION &amp; MAINTENANCE COSTS</b>	<b><u>\$176,214,056</u></b>	<b><u>\$156,075,570</u></b>	<b><u>\$159,474,286</u></b>	<b><u>\$174,432,963</u></b>	<b><u>\$170,813,124</u></b>
<b>NET WATER REVENUES</b>	<b>\$177,602,513</b>	<b>\$195,620,954</b>	<b>\$215,239,774</b>	<b>\$207,022,598</b>	<b>\$228,631,816</b>
<b>PARITY DEBT SERVICE:</b>					
Water System Revenue Bonds <sup>(9)</sup>	\$119,879,959	\$125,218,271	\$142,284,287	\$129,330,308	\$132,270,442
Parity State Loans	<u>1,400,108</u>	<u>1,400,108</u>	<u>1,400,108</u>	<u>1,400,105</u>	<u>1,400,105</u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$121,280,067</b>	<b>\$126,618,379</b>	<b>\$143,684,395</b>	<b>\$130,730,413</b>	<b>\$133,670,547</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.46</b>	<b>1.54</b>	<b>1.50</b>	<b>1.58</b>	<b>1.71</b>
<b>SUBORDINATE WATER SYSTEM DEBT SERVICE<sup>(14)</sup></b>	<b>\$ 6,109,336</b>	<b>\$ 4,425,458</b>	<b>\$ 3,086,117</b>	<b>\$ 8,495,107</b>	<b>\$ 687,369</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$127,389,403</b>	<b>\$131,043,837</b>	<b>\$146,770,512</b>	<b>\$139,225,520</b>	<b>\$134,357,916</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.39</b>	<b>1.49</b>	<b>1.47</b>	<b>1.49</b>	<b>1.70</b>

<sup>(1)</sup> Calculated in accordance with the Indenture as footnoted.

<sup>(2)</sup> Revenues exclude grant receipts, taxes, and certain developer contributions which are treated as contributions (not Water Revenues).

<sup>(3)</sup> Reflects average daily billed consumption of 169.8 MGD in Fiscal Year 2009, 160.4 MGD in Fiscal Year 2010, 160.5 MGD in Fiscal Year 2011, 162.1 MGD in Fiscal Year 2012 and 168.4 MGD in Fiscal Year 2013.

<sup>(4)</sup> System Capacity Charge ("SCC") Revenues presented in the table above include the "buy in" portion of SCC charges when collected and the "future water supply" portion of SCC charges when applied from the Future Water Supply Fund to offset such debt service costs. See "– System Capacity Charge" above. SCC Revenues are capitalized and are not recognized as operating revenues for purposes of the District's audited financial statements.

<sup>(5)</sup> Seismic rate surcharge revenues are capitalized and are not recognized as operating revenues for purposes of the District's audited financial statements.

<sup>(6)</sup> Operation and Maintenance Costs exclude those expenses paid from District's share of countywide 1% property tax revenues. Under current District policy, District's share of countywide 1% property tax revenues are used to pay for operations allocable to maintenance of fire protection capacity.

<sup>(7)</sup> Includes interest earnings on District's Series 2007A Bond proceeds.

<sup>(8)</sup> Includes receipt of approximately \$23.7 million of nonrecurring litigation and insurance proceeds.

<sup>(9)</sup> Includes net swap payments.

<sup>(10)</sup> Reflects adoption of drought surcharge during Fiscal Year 2009. See "– Supplemental Supply Charge."

<sup>(11)</sup> Includes interest earnings on District's Series 2010B Bonds proceeds.

<sup>(12)</sup> Includes interest subsidy received in connection with the Series 2010B Bonds (Build America Bonds).

<sup>(13)</sup> Does not include payment received by the District from Chevron for reimbursement of capital costs incurred by the District for the RARE Water Project. See "THE WATER SYSTEM – Water Recycling."

<sup>(14)</sup> Includes outstanding Water System commercial paper notes and certain federal and State subordinate loans (which loans have subsequently been retired). With respect to commercial paper notes includes interest only with no principal amortization.

Source: The District.

## **District Management's Discussion of Operating Results**

As reflected in the preceding table summarizing the District's operating revenues, operating expenses and net revenues for the five Fiscal Years ended June 30, 2009 through June 30, 2013, recent Fiscal Years have been characterized by decreased water sales volumes which resulted from the impact of past conservation combined with a prolonged economic downturn. Although water sales volumes increased from 162.1 MGD in Fiscal Year 2012 to 168.4 MGD in Fiscal Year 2013, since Fiscal Year 2008, water sales volumes have declined from 191.0 MGD. Water sales revenues increased in Fiscal Year 2013 by \$29.8 million from Fiscal Year 2012 as a result of a water rate increase of 6.0% and slightly higher billed consumption compared to Fiscal Year 2012. Power revenues decreased by approximately \$1.0 million from Fiscal Year 2012 to Fiscal Year 2013 [due to a decrease in available water run-off]. SCC Revenues decreased from \$30.7 million to \$22.7 million as a result of lower application of reimbursements for debt service repayment from the Future Water Supply Fund [and lower collections from developers]. Fiscal Year 2013 interest income decreased by \$0.8 million due to a generally lower interest rate environment. In response to reduced water sales and the effects of the economic downturn, the District continued its cost containment efforts such as not filling budgeted positions, foregoing salary increases, decreasing contract services, and deferring discretionary expenses. Operating expenses for Fiscal Year 2013 decreased by approximately \$1.4 million from Fiscal Year 2012. The District's debt service coverage ratio for Fiscal Year 2013 met the Board target of 1.60 through significant expense reductions, a rate increase, and debt service savings. The decrease of approximately \$4.8 million in debt service expenses reflects [the District's debt service restructuring in connection with the issuance of its Series 2012B Bonds and debt service savings achieved through additional refundings].

See also the "Management's Discussion and Analysis" contained in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

## **Projected Operating Results**

In the preparation of the projections in this section, the District has made certain assumptions with respect to conditions that may occur in the future. While the District believes these assumptions are reasonable for the purpose of the projections, they are dependent on future events, and actual conditions may differ from those assumed. To the extent actual future factors differ from those assumed by the District or provided to the District by others, the actual results will vary from those forecasted. This projected information has not been compiled, reviewed or examined by the District's independent accountants.

Table 19 sets forth the projected operating results and calculation of the debt service coverage ratio for the Water System for the current and next four Fiscal Years. The projected results are based on the District's Biennial Budget for Fiscal Years 2014 and 2015. In the preparation of the projected operating results, the District developed forecasts of water consumption for the projection period, taking into account historical consumption levels, the continuing effects of conservation measures, limited growth in the service area, and the expectations for the future economic environment. The District is adjusting to a "new normal" without expectation that growth will significantly bolster net revenues. As such, maintaining the District's policy target of 1.60x for debt service coverage on its Water System Revenue Bonds will require annual rate increases, continued cost containment efforts, and debt service savings. The projection period reflects the 9.75% and 9.50% overall rate increases for Fiscal Years 2014 and 2015, respectively. Average annual rate increases of 8.00%, 7.00% and 5.00% are assumed for Fiscal Years 2016, 2017 and 2018, respectively. Any such future rate increases will be subject to Board approval. Operating expenses incorporate salary and benefit expectations. The District's service area is mature and significant increases in SCC revenues are not expected. A higher level of cash funded capital



spending is assumed as a result of the cash generated by higher coverage levels and in response to the nature of the District's capital plan which is largely comprised of renewal and replacement projects.

The District's Biennial Budget for Fiscal Years 2014 and 2015 includes a new budget forecast for Fiscal Years 2014 through 2018 and rate increases for Fiscal Years 2014 and 2015. The Biennial Budget for Fiscal Years 2014 and 2015 was adopted on June 11, 2013. Over the next 18 months, the District will undertake a series of planning initiatives that will be the foundation of the Biennial Budget for Fiscal Years 2016 and 2017 that will include a formal long-range financial plan and Water and Wastewater cost of services studies.

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**Table 19**  
**WATER SYSTEM**  
**Projected Operating Results and Debt Service Coverage (Millions)**  
**Fiscal Year Ending June 30**

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>WATER REVENUES<sup>(1)</sup>:</b>					
Water Sales <sup>(2)</sup>	\$354.0	\$391.8	\$429.7	\$466.9	\$498.7
Power Revenue	5.7	5.7	5.7	5.7	5.7
Interest Earnings <sup>(3)</sup>	2.3	4.0	7.0	6.4	7.3
SCC Revenue <sup>(4)</sup>	23.7	23.3	24.6	25.9	27.3
Seismic Rate Surcharge <sup>(5)</sup>	22.4	24.6	26.8	28.8	30.4
Other Revenue <sup>(6)</sup>	<u>14.8</u>	<u>15.0</u>	<u>15.1</u>	<u>15.2</u>	<u>15.4</u>
<b>TOTAL WATER REVENUES</b>	<u>\$422.9</u>	<u>\$464.4</u>	<u>\$508.9</u>	<u>\$548.9</u>	<u>\$584.8</u>
<b>WATER OPERATION &amp; MAINTENANCE COSTS:</b>					
Operating Expense	\$224.9	\$234.9	\$247.9	\$261.5	\$276.0
(Less Tax Receipts) <sup>(7)</sup>	<u>(23.4)</u>	<u>(23.8)</u>	<u>(24.3)</u>	<u>(24.8)</u>	<u>(25.3)</u>
<b>TOTAL WATER OPERATION &amp; MAINTENANCE COSTS</b>	<u>\$201.5</u>	<u>\$211.1</u>	<u>\$223.6</u>	<u>\$236.7</u>	<u>\$250.7</u>
<b>NET WATER REVENUES</b>	\$221.4	\$253.3	\$285.3	\$312.2	\$334.1
<b>PARITY DEBT SERVICE:</b>					
Water System Revenue Bonds <sup>(8)</sup>	\$134.9	\$150.7	\$171.5	\$173.0	185.3
Parity State Loans	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>
<b>TOTAL PARITY DEBT SERVICE</b>	\$136.3	\$152.1	\$172.9	\$174.4	\$186.7
<b>PARITY DEBT SERVICE COVERAGE</b>	1.62	1.67	1.65	1.79	1.79
<b>SUBORDINATE WATER SYSTEM CP NOTES DEBT SERVICE<sup>(9)</sup></b>	\$ 7.5	\$ 7.5	\$ 7.5	\$ 7.5	\$ 7.5
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	\$143.8	\$159.6	\$180.4	\$181.9	\$194.2
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	1.54	1.59	1.58	1.72	1.72

*(Table footnotes contained on following page.)*

(Footnotes are to table contained on preceding page.)

- 
- (1) Revenues exclude grant receipts, taxes, and certain developer contributions which are treated as contributions (not Water Revenues).
  - (2) Assumes projected average daily billed consumption per day of 162.1 MGD in Fiscal Year 2013, 164.0 MGD in Fiscal Year 2014, 166.0 MGD in Fiscal Year 2015, 169.0 MGD in Fiscal Year 2016, 172.0 MGD in Fiscal Year 2017, and 175.0 in Fiscal Year 2018. See “Rates and Charges” above. Average annual rate increases of 8.00%, 7.00% and 5.00% are assumed for Fiscal Years 2016, 2017 and 2018, respectively. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”
  - (3) Assumes approximately 0.50% earnings rate on fund balances for Fiscal Years 2013 and 2014, 1.00% earnings rate for Fiscal Year 2015 and 1.50% earnings rate thereafter. Excludes non-cash change in fair market value of investments. Excludes earnings on Series 2010B Water Bonds (BABs) proceeds which are applied toward construction.
  - (4) SCC Revenues presented in the table above include the projected “buy in” portion of SCC charges when collected and the “future water supply” portion of SCC charges when applied from the Future Water Supply Fund to offset such debt service costs. See “– System Capacity Charge” above. SCC Revenues are capitalized and are not recognized as operating revenues for purposes of the District’s audited financial statements.
  - (5) Seismic rate surcharge revenues are capitalized and are not recognized as operating revenues for purposes of the District’s audited financial statements.
  - (6) Anticipated receipt of BABs Interest Subsidy Payments relating to Series 2010B Bonds (subject to sequestration) has been included in Other Revenue. See “SECURITY FOR THE SERIES \_\_\_\_ BONDS – Rate Covenant Under the Indenture.”
  - (7) Water Operation and Maintenance Costs exclude those expenses paid from *ad valorem* taxes. Under current District policy, taxes are used to pay for operations allocable to maintenance of fire protection capacity.
  - (8) Assumes that interest with respect to the outstanding Series 2008A Bonds, the Series 2008B-3 Bonds, the Series 2011A Bonds and the hedged principal amount of the Series 2009A Bonds have been swapped to fixed rates. See “SECURITY FOR THE SERIES \_\_\_\_ BONDS – Outstanding Water System Revenue Obligations – Water Interest Rate Swap Agreements.” Assumes 10-year average SIFMA Index plus 10 basis points on unhedged Series 2009A Water Bonds. Includes liquidity fees. Assumes future issuance of additional Bonds of approximately \$175.0 million in Fiscal Year 2014, approximately \$180.0 million in Fiscal Year 2016 and \$170.0 million in Fiscal Year 2018. Also includes additional amount budgeted by the District (not included in Table 16) for estimated basis differential between variable rate bond interest rates and related swap receipts.
  - (9) Assumes interest only at 1.00% per annum in Fiscal Year 2013 and 2.00% per annum in Fiscal Years 2014 through 2018 with no principal amortization. Assumes \$372.9 million of CP Notes (Water Series) outstanding.

Source: The District.

[UPDATE]

## Employees' Retirement System

**General.** The District has a contributory retirement system covering substantially all of its employees (including the Water System and Wastewater System). The East Bay Municipal Utility District Employees' Retirement System ("Retirement System") was established in 1937 to administer a single-employer, contributory, defined benefit pension plan (the "Plan") to provide retirement, disability, survivorship and post-employment health insurance benefits for eligible directors, officers and employees of the District. The Plan is funded by contributions from its members and from the District, and from investment earnings on Plan assets. The payment of benefits earned by plan members of the Retirement System is an obligation of the District. Employees of the District are also covered by Social Security.

The Retirement System is administered by a Retirement Board composed of three members appointed by the District Board, two members elected by and from the active membership and one (nonvoting) member elected by and from the retired membership of the Retirement System. Ordinance No. 40 of the District, effective October 1, 1937, as amended (the "Retirement System Ordinance"), assigns the authority to establish Plan benefit provisions to the District Board.

Contributions to the Retirement System are made by the members and the District. Each member's contribution is based upon a percentage of that member's covered compensation. The employee contribution rates are prescribed in the Retirement System Ordinance and may be adjusted by the District Board solely pursuant to the terms of a negotiated collective bargaining agreement or MOU with employee bargaining units. The District employees' contribution rate has been 6.83% since April 2006. The District (employer) contributions are based upon percentages of the aggregate amount of members' covered compensation. Employer contribution percentages are established by the District Board. Such percentages are based upon actuarial valuations.

As of June 30, 2012, collectively for the Water and Wastewater Systems, there were 1,703 active plan members, 224 terminated plan members entitled to but not yet receiving benefits and 1,361 retirees and beneficiaries receiving benefits.

Table 20 below sets forth the number of active members, total plan assets, District and Member contributions and retirement allowances paid in the five Fiscal Years 2008 through 2012.

**Table 20**  
**RETIREMENT SYSTEM**  
**Active Members, Total Plan Assets, District and Member Contributions and Allowances Paid**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Active Members<sup>(2)</sup></b></i>	<i><b>Total Plan Assets<sup>(3)</sup></b></i>	<i><b>District Contribution<sup>(4)</sup></b></i>	<i><b>Member Contributions</b></i>	<i><b>Allowances Paid From Retirement Plan<sup>(5)</sup></b></i>
2008	2,029	\$838,614,000	\$44,603,000	\$10,394,000	\$50,780,000
2009	2,022	668,750,000	45,803,000	10,740,000	54,502,000
2010	1,978	769,052,000	51,756,000	10,918,000	58,109,000
2011	1,928	968,239,000	58,481,000	10,850,000	62,114,000
2012	1,927	986,972,000	59,651,000	10,723,000	66,843,000

(1) Includes Health Insurance Benefit Plan.

(2) Includes active plan members and terminated plan members entitled to but not yet receiving benefits.

(3) Market value as of June 30 of such Fiscal Year as shown in the audited financial statements of the Retirement System.

(4) The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

(5) Includes benefits paid and refunds of contributions.

Source: The District.

The Retirement System is an integral part of the District and, as noted above, the District appoints the majority of the governing body of the Retirement System and provides for its funding. Accordingly, the Retirement System's operations are reported as a Pension and Other Employee Benefit Trust Fund in the District's basic financial statements. The Retirement System also issues separately available financial statements on an annual basis. Such financial statements can be obtained from the District at 375 Eleventh Street, Oakland, California 94607.

The amounts set forth in this discussion of the Employees' Retirement System, including, for example, actuarial accrued liabilities and funded ratios, are based upon numerous demographic and economic assumptions, including investment return rates, inflation rates, salary increase rates, cost of living adjustments, postemployment mortality, active member mortality, and rates of retirement. Prospective purchasers of the District's bonds are cautioned to review and carefully assess the reasonableness of the assumptions set forth in the documents that are cited as the sources for such information. In addition, prospective purchasers of the District's bonds are cautioned that such sources and the underlying assumptions speak as of their respective dates, and are subject to change. Prospective purchasers of the District's bonds should also be aware that some of the information presented in this discussion of the Employees' Retirement System contains forward-looking statements and the actual results of the Retirement System may differ materially from the information presented herein.

**Benefits.** All regular full-time employees (as well as certain job share and intermittent employees) of the District are members of the Plan. In accordance with the Retirement System Ordinance, eligible employees become members of the Plan on the first day they are physically on the job. Retirement plan benefits are generally determined by formula based on the employee's compensation in the last two years of employment and the length of employment with the District. Benefits adopted by the District vest in part with members after five years of continuous full-time employment. Vested members who terminate employment may elect a refund of their contributions or leave them in the Plan until eligible to receive benefits.

In addition to retirement benefits, the District provides post-employment health benefits assistance, administered by the Retirement System, for employees who retire from the District or their surviving spouses. As of June 30, 2012, there were 1,256 participants receiving these healthcare benefits. For participants entering the Retirement System prior to July 1, 1996, a monthly allowance of up to \$450 (\$550 for married retirees and retirees with financially dependent registered domestic partners) is paid to retirees with at least five years of full-time service to reimburse the retiree-paid medical expenses (including any health, dental or long-term care insurance premiums paid by the retiree for his or her self, and current spouse or domestic partner, or any health, dental or long-term care insurance premiums paid by the eligible surviving spouse of a retiree). Effective July 1, 1996, a 20-year vesting schedule for full benefits was implemented for all new employees. Effective January 1, 1999, retired members who had separated from the District prior to their retirement and who had at least 5 years of service also become eligible for the post-employment healthcare benefits based on the same sliding scale.

**Actuarial Assumptions and Funding Policy.** Under the ordinance governing the Retirement System, the District is required to have an actuarial study performed at least every two years, but the District's current policy is to have an actuarial study performed each year. The most recent actuarial study of the Retirement System, including the pension and the health insurance benefit ("HIB") trusts, was performed by The Segal Company, as of June 30, 2012.

The actuarial report provides a basis for the District Board's decision regarding the rate of contributions by the District to the Retirement System, including both the pension and the HIB trusts. The District makes its contribution using rates determined by its outside actuaries.

The actuarial valuation results included in this disclosure for the pension plan have been prepared using parameters required under Governmental Accounting Standards Board (“GASB”) Statements 25 and 27. These GASB Statements will be replaced by GASB Statements 67 and 68 for financial reporting purposes effective with Fiscal Year 2014 for the Plan and Fiscal Year 2015 for the District. The new GASB Statements will require much shorter amortization periods for recognition of non-investment gains/losses and actuarial assumption changes, as well as changes in the recognition of investment gains/losses. GASB has indicated throughout their process of obtaining comments from the retirement and accounting communities that the new GASB Statements may provide for a new and complete separation between financial reporting and funding requirements for pension plans.

To calculate the required contribution for each Fiscal Year, assumptions are made about future events that affect the amount and timing of benefits to be paid and assets to be accumulated. Each year actual experience is measured against the assumptions. If overall experience is more favorable than anticipated (an actuarial gain), the contribution requirement will decrease from the previous year. On the other hand, the contribution requirement will increase if overall actuarial experience is less favorable than assumed (an actuarial loss). If assumptions are changed, the contribution requirement is adjusted to take into account a change in experience anticipated for all future years.

A summary of the funding method and assumptions utilized in the actuarial study as of June 30, 2012 are described below.

*Funding Method.* The Plan’s funding policy provides for periodic District contributions at actuarially determined amounts sufficient to accumulate the necessary assets to pay benefits when due as specified by the ordinance governing the Retirement System. The entry age normal cost method is used for this purpose. Under the entry age normal cost method, there are two components to the total contributions: (i) the normal cost, which is the amount of contributions required to fund the benefit allocated to the current year of service (associated with active employees only), and (ii) an amortization payment on any unfunded actuarial accrued liability (“UAAL”). The normal cost is calculated on an individual basis where the entry age normal cost is calculated as the sum of the individual normal costs. The UAAL (past service liability) is amortized as a level percentage of payroll on a closed basis over the amortization periods described below. The actuarial accrued liability is calculated on an individual basis and is based on costs allocated as a level percentage of compensation.

*Amortization Periods.* As of June 30, 2012, the unfunded actuarial accrued liability is currently being funded using a layered approach. Each layer of the UAAL established prior to July 1, 2011 is being funded over a separate 30-year decreasing period, starting from the date the layer was originally established. On or after July 1, 2011, changes in the UAAL attributable to plan amendments are amortized over separate decreasing 15-year periods; changes in the UAAL attributable to assumption or method changes are amortized over separate decreasing 25-year periods; and changes in the UAAL attributable to actuarial gains/losses (i.e., the extent to which actual overall experience deviates from the assumptions) are amortized over separate decreasing 20-year periods. Under the layered approach, any new UAAL layer that emerges between the prior and the current actuarial valuation (due to deviations between actual and expected actuarial experience, changes in actuarial assumptions used to measure the liabilities or other factors) will be determined and factored into the District’s contribution rates so that it will be paid off after its respective amortization period described above.

*Actuarial Assumptions.* A number of assumptions are used to calculate the costs of the Plan and to compute contribution requirements for the Plan. The principal assumptions used in preparing the actuarial study as of June 30, 2012 include:

1. Investment rate of return: 7.75%.

2. Inflation rate: 3.25%.
3. Interest credited to member contributions: 7.75%.
4. Projected salary increases: Ranges from 4.25% to 9.75% based on years of service (includes inflation at 3.25% plus across the board salary increase of 0.50% plus merit and promotional increases).
5. Cost of living adjustments: 3.15%.
6. Increase in HIB maximum monthly allowance: The Plan does not provide for an automatic increase in the HIB allowance and no such increase is assumed in the valuation.
7. Additional assumptions: Additional assumptions were used regarding rates of termination from active membership, post-retirement mortality, active member mortality, disability rates and rates of retirement.

Actuarial Value of Assets (Asset Smoothing Method). Methods used to compute District contribution requirements include a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets (with further adjustments as may be required to keep the smoothed assets within 30% of market value). The impact of this will result in a “smoothed” valuation value of assets (or “Actuarial Value of Assets”) that is higher or lower than the market value of the assets depending on whether the amount that is being smoothed is either a net gain or a net loss.

Adopted Changes in Actuarial Assumption and Amortization Periods. Under the ordinance governing the Retirement System, the District is required to have an actuarial experience study conducted during each four-year period in order to review the mortality, service and compensation experience of the members, retired members and beneficiaries of the Retirement System, over the study period. The experience study provides the factual information upon which the outside actuary makes recommendations to the District regarding the economic and demographic assumptions that provide the basis for the actuarial valuation of the assets and liabilities of the Retirement System. In November 2012, The Segal Company completed and presented to the Retirement Board, its Analysis of Actuarial Experience During the Period July 1, 2008 through June 30, 2012, for the Retirement System (the “2012 Experience Study”). The 2012 Experience Study utilized demographic data of the Plan’s members and retirees from the last four actuarial valuations and provided recommendations regarding changes to the economic and demographic actuarial assumptions to be used in the June 30, 2012 and later actuarial valuations. Pursuant to the 2012 Experience Study, the actuary recommended changes in a number of the actuarial assumptions used to calculate the costs of the Plan and to compute the future contribution requirements for the Plan, including changes in the assumptions from those used in the actuarial study of the Plan as of June 30, 2011. At its November 15, 2012 meeting, the Retirement Board approved the changes in assumptions recommended by the actuary for the actuarial valuation to be performed as of June 30, 2012. The actuarial assumptions used in the actuarial study of the Plan as of June 30, 2012 (as described under “Actuarial Assumptions” above), include the following changes in the actuarial assumptions from those used in the actuarial study of the Plan as of June 30, 2011, among others: (i) a reduction in the assumed investment rate of return from 8.00% to 7.75%; (ii) a reduction in the assumed inflation rate from 3.50% to 3.25%; (iii) a reduction in the projected salary increases from the range of 4.70% to 10.00% based on years of service (and including the 3.50% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases) to a range of 4.25% to 9.75% (including the new recommended 3.25% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases); and (iv) a reduction in the assumed long-term annual average cost of living adjustment from 3.25% to 3.15%.

In the June 30, 2012 valuation, the actuary determined the change in the actuarial accrued liability for the pension plan (not including the HIB) due to the assumption changes to be \$53.4 million.

At the November 15, 2012 meeting, the Retirement Board also adopted a change in the amortization policy for the unfunded actuarial accrued liability (UAAL), effective with the June 30, 2012 valuation. In particular, changes in the UAAL due to actuarial assumption or method changes (previously amortized on a 30-year period) on or after July 1, 2011 are to be amortized on a 25-year period. In their June 30, 2012 valuation report, The Segal Company (the actuary) determined the effect of this change in the amortization policy combined with the effect of the changes in the actuarial assumptions to be an increase in the District contribution rate for the pension plan (not including the HIB) of 2.85% of payroll.

It should also be mentioned that, at the September 20, 2012 meeting, the Retirement Board also adopted a modification from an aggregate version to an individual version of the Entry Age Normal funding method. In their June 30, 2012 valuation report, the actuary determined that this modification increased the District's normal cost rate by 0.72% of payroll.

**Contribution History.** The schedule of District contributions for each of the pension plan and the HIB plan for the last five Fiscal Years are shown in Table 21 below:

**Table 21**  
**RETIREMENT SYSTEM**  
**History of Contributions**  
**Five Fiscal Years Ended June 30, 2012**  
**(\$ in 000's)**

**Pension Plan:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed</i>
2008	24.51%	\$37,387	\$37,387	100%
2009	24.96	39,485	39,485	100
2010	27.24	44,031	44,031	100
2011	31.80	50,987	50,987	100
2012	32.91	52,156	52,156	100

**Health Insurance Benefit:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed<sup>(1)</sup></i>
2008	3.74%	\$ 9,114	\$7,216	79%
2009	3.98	9,114	6,318	69
2010	4.91	11,370	7,725	68
2011	4.78	10,496	7,494	71
2012	4.83	11,518	7,495	65

<sup>(1)</sup> Percentage contributed was less than 100% as the District does not pre-fund the implicit retiree rate subsidy required to be valued under GASB Statements Nos. 43 and 45. See "-- Schedule of Funding Progress" below.

As reflected in the actuarial study and shown in Table 22 below, the combined Actuarial Accrued Liability for pension and HIB benefits at June 30, 2012 was \$1,659,897,000 and the Actuarial Value of Assets was \$1,035,786,000, resulting in an Unfunded Actuarial Accrued Liability of \$624,111,000 and a funded ratio of the Plan under the entry age normal basis of 62.4%. As described above, the Actuarial



Value of Assets has been calculated using a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets. The liabilities for the pension benefits are calculated in compliance with GASB Statement No. 25 (“Financial Reporting for Defined Benefit Pension Plans, Note Disclosures for Defined Contribution Plans”) and Statement No. 27 (“Accounting for Pensions by State and Local Governmental Employers”), but do not reflect the parameters of GASB Statement No. 45. See also “– *Schedule of Funding Progress*” below.

Table 22 below sets forth the Actuarial Accrued Liability, Actuarial Value of Assets, the Unfunded Actuarial Accrued Liability and Funded Ratio as of June 30 of each of the Fiscal Years 2008 through 2012 (the year the most recent actuarial information is available).

**Table 22**  
**RETIREMENT SYSTEM**  
**Actuarial Accrued Liability, Actuarial Value of Assets,**  
**Unfunded Actuarial Accrued Liability and Funded Ratio**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**  
**(\$ in 000’s)**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Actuarial Accrued Liability (AAL)</b></i>	<i><b>Actuarial Value of Assets</b></i>	<i><b>Market Value of Assets</b></i>	<i><b>Unfunded Actuarial Accrued Liability (UAAL)<sup>(2)</sup></b></i>	<i><b>Funded Ratio on Actuarial Value</b></i>	<i><b>Funded Ratio on Market Value</b></i>
2008	\$1,336,676	\$ 907,927	\$838,614	\$428,749	67.92%	62.74%
2009	1,415,392	869,375	668,750	546,017	61.42	47.25
2010	1,491,885	925,907	769,052	565,978	62.06	51.55
2011	1,544,486	966,767	968,239	577,719	62.59	62.69
2012	1,659,897 <sup>(3)</sup>	1,035,786	986,972	624,111	62.40	59.46

<sup>(1)</sup> Dollars rounded to nearest thousand.

<sup>(2)</sup> The District estimates that approximately 85% of the UAAL is attributable to the Water System and approximately 15% is attributable to the Wastewater System. The UAAL is determined based on the Actuarial Value of Assets.

<sup>(3)</sup> Of this amount, \$103,201 is attributable to the HIB liabilities. The HIB liabilities as calculated for GASB reporting purposes, which include the implicit retiree rate subsidy, were \$138,240 using a discount rate of 7.00%.

Source: The Segal Company.

As of June 30, 2012, the market value of the combined pension and HIB plan’s assets was \$986,972,000 and the projected benefit obligation (“PBO”) was \$1,606,973,000, resulting in a funded ratio of the plan under the PBO basis of 61.4%. Under the plan provisions, determination of the funded ratio on a PBO basis is required and certain cost of living increases are granted when the funded ratio of the plan is 85% or higher as calculated on the PBO basis.

***Schedule of Funding Progress.*** As required by GASB 45, the District reports the schedule of funding progress for each of the pension plan and the post-employment healthcare plan (HIB). The schedule of funding progress presents multiyear trend information that shows whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

The schedule of funding progress for the pension plan is set forth in Table 23 below.

**Table 23**  
**PENSION PLAN**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 900,917	\$1,244,993	\$344,076	72.4%	\$158,499	217.1%
2009	862,021	1,323,555	461,534	65.1	161,893	285.1
2010	915,845	1,396,003	480,158	65.6	164,085	292.6
2011	954,719	1,446,039	491,320	66.0	159,505	308.0
2012	1,021,546	1,556,696	535,150	65.6	158,847	336.9

Source: The Segal Company's Actuarial Valuation and Review of Pension Plan as of June 30, 2012.

The schedule of funding progress for the post-employment healthcare plan is set forth in Table 24 below.

The retiree health liabilities reported in the actuarial study as of June 30, 2012 (and referred to in Table 22 above) will not match those required to be used for GASB reporting purposes as shown in Table 24 below. The liabilities as reflected in the actuarial study have not been adjusted to include the implicit retiree rate subsidy as required under GASB reporting requirements. (Note that when premiums for active employees are determined on a pooled basis with premiums for retirees under age 65, a significant accounting obligation may exist even though the retiree under age 65 contributes most or all of the blended premium cost of the plan. The average costs for retirees if determined on a stand-alone basis is likely to exceed the average cost for the whole group, leading to an implicit subsidy for these retirees. The GASB accounting standard requires the employer to identify and account for this implicit subsidy as well as any explicit subsidies the employer may provide.) In addition, the liabilities for GASB reporting purposes for the HIB portion of the obligations shown below were determined based upon a lower discount rate (*i.e.*, 7.00%) than the 7.75% investment rate of return used in The Segal Company prefunding study. The liabilities calculated for GASB reporting purposes shown in Table 24 below are therefore higher than those reflected in the actuarial study as of June 30, 2012 and described above.

**Table 24**  
**POST-EMPLOYMENT HEALTHCARE BENEFIT (HIB)**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 7,010	\$137,055	\$130,045	5.1%	\$158,499	82.0%
2009	7,354	130,245	122,891	5.6	161,893	75.9
2010	10,061	135,379	125,318	7.4	164,085	76.4
2011	12,047	135,360	123,312	8.9	159,505	77.3
2012	14,240	138,240	123,999	10.3	158,847	78.1

Source: The Segal Company Actuarial Valuation and Review of Other Postemployment Benefits (OPEB) as of June 30, 2012 in accordance with GASB Statements No. 43 and 45.

***Related Matters.*** In the past few years, the Internal Revenue Service (the “IRS”) has focused its auditing activities towards governmental retirement plans to determine if those plans are complying with federal tax laws. While the District has consistently amended its Retirement Ordinance to comply with changes in the federal tax code, other governmental plans failed to amend their plans to reflect changes in tax laws. The failure to include these amendments put those plans at risk of a range of consequences from being assessed significant penalties to losing its tax-qualified status, wherein all assets under the plan would become immediately taxable. Because so many governmental plans were at risk, the IRS instituted a voluntary correction program (“VCP”), which provided such plans the opportunity to voluntarily report any failures and institute corrective measures. In participating in the voluntary correction program, governmental plans would be protected from enforcement actions for such failures. Under the VCP, the IRS would review and approve the corrective measures proposed by the plan and at the end of the review, issue a letter of determination of tax qualified status. A letter of determination of tax qualified status would serve as protection against liability for prior violations of federal tax laws as well as serve as a safe harbor for future IRS audits. The District has taken advantage of this “safe harbor” opportunity by participating in the IRS’ voluntary correction program to make additional necessary corrections to its Plan while protecting itself against potential tax liability. The District’s application for a determination letter to the IRS is still under review due to the voluminous number of VCP filings. While the District is unable to predict when the IRS will ultimately act on the District’s application or what action the IRS will take in its review of such application, since the District has been amending its Retirement Ordinance to maintain compliance with the federal tax code during the past two decades and because the voluntary correction program offers a safe harbor for non-complaint plans, the District expects that the IRS will provide a statement that the District’s Plan is in compliance with the tax code and that the Plan is tax qualified.

***California Pension Reform Act.*** On August 31, 2012, the California legislature enacted Assembly Bill 340, the California Public Employees’ Pension Reform Act of 2013 (the “PEPRA”). The PEPRA was signed into law by Governor Jerry Brown on September 12, 2012 and became effective on January 1, 2013. Pursuant to the provisions of the PEPRA, as enacted, the PEPRA is intended to apply to all state and local public retirement systems, independent public retirement systems, and to individual retirement plans offered by public employers, with the exception of the University of California, and California charter cities and counties, except to the extent such entities participate in any retirement system governed by State statute. The impacts of the PEPRA primarily apply to employees first hired by a public agency or after January 1, 2013. Some of these provisions include certain limits on the amount and types of compensation that may be included by a retirement system in calculating pension benefits, the imposition of new formulas for the calculation of pension benefits for employees, certain requirements for the sharing of the costs of pension benefits by employees, and certain limitations on the adoption of new defined benefit plans. The PEPRA would prohibit certain retroactive enhancements to pension benefit formulas for all employees, impose certain limits on post-retirement employment for all employees, prohibit the purchase of non-qualified permissive service credit by all employees after January 1, 2013, and require for any employee the forfeiture of pension and retirement-related benefits for certain felony convictions.

The District Board has adopted certain amendments to the Retirement System Ordinance effective as of January 1, 2013 in order to implement applicable provisions of the PEPRA. Because the interpretation and application of the PEPRA will likely be subject to judicial determination and further implementing legislation, it is too early to assess at this time what all of the impacts of PEPRA ultimately will be on the District’s Retirement System.

Additional information concerning the Retirement System may be found in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

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

AUTHORIZE AND APPROVE THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF WASTEWATER SYSTEM REVENUE REFUNDING BONDS IN CONNECTION WITH THE POTENTIAL REFUNDING OF OUTSTANDING VARIABLE RATE BONDS; APPROVE THE FORM OF, AND AUTHORIZE, CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND APPROVE CERTAIN ACTIONS RELATING THERETO

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the "District") is authorized by Section 12850 *et. seq.* of the Public Utilities Code of the State of California (the "Act") to issue revenue bonds; and

WHEREAS, the District is authorized by Section 53580 *et. seq.* of the Government Code of the State of California (the "Refunding Act") to issue refunding bonds; and

WHEREAS, pursuant to authority granted under the Act, the District has entered into a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990 (the "Bond Indenture"), by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as amended and supplemented; and

WHEREAS, the Bond Indenture provides that the District may issue additional wastewater system revenue bonds as well as refunding bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, the District has heretofore authorized and issued multiple series of wastewater system revenue bonds under and pursuant to the Act, the Refunding Act and the Bond Indenture, including a number of series of variable rate bonds, interest rate changes with respect to which have been hedged through interest rate swap agreements heretofore entered into by the District in connection therewith (the "Wastewater Bonds Interest Rate Swap Agreements"), including the following outstanding series of variable rate wastewater system revenue bonds of the District: its Wastewater System Revenue Refunding Bonds, Series 2008C currently outstanding in the aggregate principal amount of \$51,690,000 (the "Series 2008C Bonds"); and its Wastewater System Revenue Refunding Bonds, Series 2011A currently outstanding in the aggregate principal amount of \$60,845,000 (the "Series 2011A Bonds" and collectively with the outstanding Series 2008C Bonds, the "Outstanding Variable Rate Bonds"); and

WHEREAS, the Board has determined that it best serves the financing and debt management needs of the District to authorize the issuance, from time to time, of one or more series of its wastewater system revenue refunding bonds (the "Additional Refunding Bonds"), if such issuance is determined by a Designated Officer (as hereinafter defined) to be in the best interests of the District by reducing various financial risks to the District, including swap counterparty exposure, swap termination risk, liquidity facility renewal risk and/or interest rate basis risk

associated with Outstanding Variable Rate Bonds and the related Wastewater Bonds Interest Rate Swap Agreements, and subject to the parameters set forth in this Resolution, for the purposes of refunding (in whole or in part) any Outstanding Variable Rate Bonds, financing all or a portion of the costs of terminating (in whole or in part), or otherwise assigning or novating the applicable portion of the District's obligations under, the related Wastewater Bonds Interest Rate Swap Agreements, funding or making provision for any bond reserve fund for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds; and

WHEREAS, in order to provide for the issuance of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more supplemental indentures in connection therewith (each, an "Additional Supplemental Indenture"); and

WHEREAS, in order to provide for the refunding of any Outstanding Variable Rate Bonds to be refunded by Additional Refunding Bonds, the District may enter into one or more escrow agreements in connection therewith (each, an "Additional Escrow Agreement"); and

WHEREAS, in order to provide for the termination (in whole or in part) of the related Wastewater Bonds Interest Rate Swap Agreements in connection with the issuance of any Additional Refunding Bonds and the refunding of all or a portion of any series of the District's Outstanding Variable Rate Bonds, the District intends to enter into one or more amendments to, or novations or assignments or terminations of, such Wastewater Bonds Interest Rate Swap Agreements, including, without limitation, amended confirmations or transactions, amended and restated confirmations or transactions, novation confirmations or transactions, termination confirmations or termination agreements or other similar documents providing for such termination (in whole or in part) of such Wastewater Bonds Interest Rate Swap Agreements ("Swap Termination Documents"); and

WHEREAS, in order to provide a continuing disclosure undertaking pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more additional continuing disclosure undertakings in connection therewith (each, an "Additional Continuing Disclosure Agreement"); and

WHEREAS, in order to provide for the sale by the District and the purchase by an underwriter or underwriters of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more bond purchase contracts in connection therewith (each, an "Additional Bond Purchase Contract"); and

WHEREAS, the underwriters of any Additional Refunding Bonds will distribute a preliminary and final official statement (including any supplements or amendments thereto) relating to such Additional Refunding Bonds to prospective and actual purchasers of such Additional Refunding Bonds; and

WHEREAS, it is desirable that the Board provide for the issuance, securing and sale of the Additional Refunding Bonds authorized by this Resolution at this time; and

WHEREAS, there has been presented to this Board meeting one or more forms of financing documents that will be used in connection with the issuance, sale and delivery of any Additional

Refunding Bonds authorized by this Resolution (with such changes to such financing documents as may be appropriate to reflect the terms of any such Additional Refunding Bonds);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of East Bay Municipal Utility District, as follows:

Section 1. Recitals True and Correct. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Additional Board Findings. Pursuant to Section 5922(a) of the Government Code of the State of California, the Board hereby finds and determines that the Wastewater Bonds Interest Rate Swap Agreements as modified by the Swap Termination Documents and the related financing arrangements (including the financing arrangements in the Bond Indenture) are designed to reduce the amount and duration of interest rate risk in connection with the District's Outstanding Variable Rate Bonds.

Section 3. Authorization of Additional Refunding Bonds. For the purposes of refunding all or any portion of the District's then Outstanding Variable Rate Bonds, financing all or a portion of the costs of terminating (in whole or in part) the related Wastewater Bonds Interest Rate Swap Agreements, funding or making provision for any bond reserve fund for such Additional Refunding Bonds (if necessary) and/or paying costs of issuance of such Additional Refunding Bonds, the issuance, from time to time, of one or more series of Additional Refunding Bonds is hereby authorized. The Additional Refunding Bonds shall be designated as "East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds," and include the further applicable year and alphabetical letter series designation (and with such additional or other designations as may be determined by a Designated Officer). The total aggregate principal amount of Additional Refunding Bonds issued by the District shall not exceed an amount sufficient (taking into account any original issue discount or premium) to refund all or any portion of the then Outstanding Variable Rate Bonds, to fund the costs of terminating (in whole or in part) the related Wastewater Bonds Interest Rate Swap Agreements, to fund or make provision for one or more bond reserve funds (if necessary) and to pay certain costs related to the issuance of the Additional Refunding Bonds (including, but not limited to, underwriters' discount). No series of the Additional Refunding Bonds shall mature later than June 1, 2038 and the True Interest Cost of any series of the Additional Refunding Bonds shall not exceed 7.00%. The net present value cost to the District of (a) refunding all or a portion of the Outstanding Variable Rate Bonds with such Additional Refunding Bonds and (b) terminating the related Wastewater Bonds Interest Rate Swap Agreements shall not exceed 0.75% of the par amount of the Outstanding Variable Rate Bonds to be refunded by such Additional Refunding Bonds. The net present value cost to the District shall be determined by the District's Financial Advisor based on reasonable assumptions and methodologies consistent with standard industry practice.

The Additional Refunding Bonds may be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended. The General Manager of the District, the Director of Finance of the District, the Treasury Manager of the District or any such officer serving in an acting or interim capacity as such, and any written designee of any of them (each a "Designated Officer"), acting in accordance with this Section 3, are each hereby authorized to determine the actual aggregate principal amount of each series of

Additional Refunding Bonds to be issued (not in excess of the maximum amount set forth above), to determine if the Additional Refunding Bonds are to be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended, and to direct the execution and authentication of the Additional Refunding Bonds in such amount. Such direction shall be conclusive as to the principal amounts hereby authorized. The Additional Refunding Bonds shall be in fully registered form and shall be issued as book-entry bonds as provided in each applicable Additional Supplemental Indenture. Payment of principal of, interest on and premium, if any, on the Additional Refunding Bonds shall be made at the place or places and in the manner provided in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds of each series shall be issued as current interest bonds. The Additional Refunding Bonds of each series shall be available in denominations of not less than \$5,000 and integral multiples thereof. The Additional Refunding Bonds of each series shall, when issued, be in the aggregate principal amounts and shall be dated as shall be provided in the final form of each applicable Additional Supplemental Indenture. The Additional Refunding Bonds may be issued as serial bonds or as term bonds or as both serial bonds and term bonds, all as set forth in each applicable Additional Supplemental Indenture. Interest on the Additional Refunding Bonds shall be paid at the rates and on the dates set forth in each applicable Additional Supplemental Indenture. No Additional Refunding Bond shall bear interest at a coupon rate in excess of 7.00% per annum. The Additional Refunding Bonds may be subject to redemption at the option of the District on such terms and conditions as shall be set forth in each applicable Additional Supplemental Indenture. The Additional Refunding Bonds issued as term bonds also shall be subject to mandatory sinking account redemption as shall be set forth in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds and the Trustee's Certificate of Authentication to appear thereon shall be in substantially the form set forth in Exhibit A to the Additional Supplemental Indenture now before this meeting, with such necessary or appropriate variations, omissions and insertions as permitted or required by the Bond Indenture or each applicable Additional Supplemental Indenture or as appropriate to adequately reflect the applicable designation and terms of such Additional Refunding Bonds and the obligation represented thereby.

Each of the Additional Refunding Bonds shall be executed on behalf of the District by the President of the Board of Directors of the District and shall be attested thereto by the Secretary of the District and any such execution may be by manual or facsimile signature, and each bond shall be authenticated by the endorsement of the Trustee or an agent of the Trustee. Any facsimile signature of the President of the Board of Directors of the District or the Secretary of the District shall have the same force and effect as if such officer had manually signed each of such Additional Refunding Bonds.

As used herein, the term "True Interest Cost" shall be the rate necessary, when using a 360-day year and semi-annual compounding, to discount the debt service payments from their respective payment dates to the initial delivery date of the applicable series of Additional Refunding Bonds and to the purchase price of the applicable series of Additional Refunding Bonds. For the purpose of calculating the True Interest Cost, the principal amount of the

applicable series of Additional Refunding Bonds scheduled for mandatory sinking fund redemption as part of a term bond shall be treated as a serial maturity for such year. The True Interest Cost shall be calculated by the District's Financial Advisor as of the date of delivery of each series of the Additional Refunding Bonds. Such calculation of the True Interest Cost may include such other reasonable assumptions and methods as determined by the Financial Advisor of the District.

Section 4. Approval of Additional Supplemental Indentures. The form, terms and provisions of each Additional Supplemental Indenture within the parameters set forth in this Resolution are in all respects approved, and each Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Supplemental Indentures, including counterparts thereof. Each Additional Supplemental Indenture, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Fulbright & Jaworski LLP and Curls Bartling P.C., the District's Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof). Execution and delivery of each Additional Supplemental Indenture, which document(s) will contain the maturities, interest rates and the fixed interest payment obligations of the District within parameters set forth in this Resolution, shall constitute conclusive evidence of the District's approval of such maturities, interest rates and payment obligations.

Section 5. Selection of Underwriters; Approval of Additional Bond Purchase Contracts. If a Designated Officer determines that it will be advantageous to the District to issue one or more series of Additional Refunding Bonds, for the purposes of refunding (in whole or in part) additional Outstanding Variable Rate Bonds, financing the costs of terminating (in whole or in part), or otherwise assigning or novating the applicable portion of the District's obligations under, the related Wastewater Bonds Interest Rate Swap Agreements, funding or making provision for any bond reserve fund (if necessary) for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds, the Board hereby approves the initial sale of each such series of Additional Refunding Bonds through a private, negotiated sale to any one or more of the municipal broker-dealers, banking and financial institutions and/or other persons or entities heretofore selected to serve as part of the District's underwriting pool as shall be determined by the Director of Finance in connection with each such issuance of Additional Refunding Bonds. The Additional Refunding Bonds of each series shall be sold subject to an underwriters' discount (excluding original issue discount and premium) not to exceed \$7.50 per \$1,000 of the principal amount of such series of the Additional Refunding Bonds and subject to the terms and conditions set forth in the form of the applicable Additional Bond Purchase Contract as herein approved. The form, terms and provisions of each Additional Bond Purchase Contract, within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized empowered and directed to execute, acknowledge and deliver from time to time an Additional Bond Purchase Contract, including counterparts thereof, in the name of and on behalf of the District. Each Additional Bond Purchase Contract, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's



General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 6. Approval of Additional Escrow Agreements. The form, terms and provisions of each Additional Escrow Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Escrow Agreements, including counterparts thereof. Each Additional Escrow Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 7. Approval of Additional Continuing Disclosure Agreements. The form, terms and provisions of each Additional Continuing Disclosure Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Continuing Disclosure Agreements, including counterparts thereof. Each Additional Continuing Disclosure Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 8. Swap Termination Documents. Each Designated Officer, acting singly, is hereby authorized and directed to enter into and execute for and on behalf of the District such Swap Termination Documents as may be necessary or advisable in connection with the termination (or novation or assignment) in whole or in part of any Wastewater Bonds Interest Rate Swap Agreements relating to Outstanding Variable Rate Bonds to be cash defeased or refunded by any Additional Refunding Bonds as authorized hereby.

Each Swap Termination Document may provide for reinstatement substantially in the form of the reinstatement provisions attached hereto as Exhibit A, with such changes as approved by a Designated Officer, which may include an adjustment in the fixed rate payable by the District under the related Wastewater Bonds Interest Rate Swap Agreement (or, at the District's option, the payment of an equivalent amount thereto) to reflect intervening market movements between the trade date of such termination and the date of reinstatement, in the unlikely event the issuance of any Additional Refunding Bonds is delayed after the date of pricing of such Additional Refunding Bonds and the trade date of the termination of the related Wastewater Bonds Interest Rate Swap Agreement(s) or in the event the related Additional Refunding Bonds are not delivered for any reason.

Section 9. Approval of Preliminary Official Statements and Official Statements. Each of the Designated Officers is hereby authorized to cause to be prepared a preliminary official statement in connection with any Additional Refunding Bonds. Each preliminary official statement shall be substantially in the form as presented to this meeting with such additions thereto and changes therein (including such changes and additions to reflect the terms of the Additional Refunding Bonds and to comply with applicable federal securities laws) as are

approved by the Designated Officers after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be conclusively evidenced by the execution and delivery of the certificate referenced in the following sentence), including such changes as to reflect any updated information or to conform as applicable to the information contained in any future official statement, reoffering circular, remarketing memorandum or other offering document of the District hereafter presented to and approved by this Board in connection with the District's wastewater system revenue bonds or other wastewater system obligations during the term of the authorization of this Resolution, as are approved by a Designated Officer after consultation with the District's General Counsel and Co-Bond Counsel. Each preliminary official statement shall be circulated, from time to time, for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer (after consultation with the District's General Counsel and Co-Bond Counsel) shall determine, and the Designated Officers are hereby authorized to so determine, that such preliminary official statement is substantially final within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, said determination to be conclusively evidenced by a certificate signed by the Designated Officer to such effect. The Director of Finance or the Treasury Manager is hereby authorized to authorize the underwriters to distribute (via written format and/or through electronic means) such preliminary official statement in connection with the marketing of the Additional Refunding Bonds.

Upon the execution and delivery of each Additional Bond Purchase Contract, from time to time, the Designated Officers shall provide for the preparation, publication, execution and delivery of one or more final official statements in substantially the form of the preliminary official statement deemed final by a Designated Officer with such changes as any Designated Officer approves, such approval to be conclusively evidenced by the execution of such final official statement. Any Designated Officer is hereby authorized and directed to execute and deliver one or more final official statements (including any amendments or supplements thereto) in the name and on behalf of the District. Each final official statement shall be circulated (via written format and/or through electronic means) for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer deems appropriate after consultation with underwriters of the Additional Refunding Bonds, the District's Financial Advisor and Co-Bond Counsel and such other advisors as the Designated Officer believes to be useful. The Director of Finance or the Treasury Manager is hereby authorized to authorize the applicable underwriters of the Additional Refunding Bonds to distribute (via written format and/or through electronic means) the final official statement, any supplement to the final official statement and any revised final official statement, as the case may be, in connection with the sale and delivery of the Additional Refunding Bonds.

Section 10. Additional Actions. The Designated Officers and all such other proper officers of the District be and they hereby are authorized, individually and collectively, to take all actions and execute any and all documents necessary: to engage The Bank of New York Mellon Trust Company, N.A. as trustee and paying agent under any Additional Supplemental Indenture and as escrow agent under any Additional Escrow Agreement; to arrange for the funding of any bond reserve fund (if any) for any Additional Refunding Bonds with a letter of credit, surety bond or insurance policy pursuant to the terms of the Bond Indenture, as so supplemented if, upon the advice of the District's Financial Advisor, the funding of such bond reserve fund (if any) with a letter of credit, surety bond or insurance policy will be economically beneficial to the District; to effect the sale and delivery of any Additional Refunding Bonds pursuant to the applicable Additional Bond Purchase Contract and the Bond Indenture as

supplemented, and the termination (or novation or assignment) of a portion of the Wastewater Bonds Interest Rate Swap Agreements; and to do any and all things and to execute and deliver such other agreements, documents and certificates, including (without limitation) tax certificates relating to any Additional Refunding Bonds and any investment agreements relating to the investment of the bond proceeds, and to provide for the giving of written directions and notices, and the securing of any necessary third party approvals in connection with the defeasance, refunding and/or redemption of any Outstanding Variable Rate Bonds and/or the issuance of any Additional Refunding Bonds and/or the termination (or novation or assignment) of any Wastewater Bonds Interest Rate Swap Agreements, as may be necessary, convenient, or advisable in order to consummate the sale, execution and delivery of any Additional Refunding Bonds and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Additional Refunding Bonds, the Bond Indenture, any Additional Supplemental Indenture, the Swap Termination Documents, any Additional Bond Purchase Contract, any Additional Escrow Agreements, any Additional Continuing Disclosure Agreements, the preliminary official statement(s) and the final official statement(s) and the transactions herein authorized. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

Section 11. Term of Authority. A Designated Officer's authority to approve the final terms of the sale of Additional Refunding Bonds and to execute or to direct the execution of Additional Supplemental Indentures, Additional Escrow Agreements, Additional Bond Purchase Contracts, Swap Termination Documents and official statements relating to Additional Refunding Bonds shall commence upon the date of adoption of this Resolution and shall continue for twelve calendar months thereafter unless rescinded or modified by subsequent action of the Board prior to the time that an Additional Bond Purchase Contract has been duly signed and delivered or except as such authorization period is hereafter extended by subsequent action of the Board.

ADOPTED this 24<sup>th</sup> day of September, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel



## EXHIBIT A

### FORM OF REINSTATEMENT PROVISIONS

#### **X. Reinstatement of Original Transaction.**

(a) This Confirmation shall have no force or effect unless the District's \$[ ] aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series \_\_\_\_\_ (the "Bonds") are issued on or prior to \_\_\_\_\_, 201\_\_ (the "Expected Issuance Date"). In the event that the Bonds are not issued on or prior to the Expected Issuance Date, the terms of the Original Transaction shall remain in effect and the Swap Counterparty will determine, in good faith on the Expected Issuance Date, the Reinstatement Value, if any, in connection with reinstating the terms of the Original Transaction as set forth in the Confirmation dated \_\_\_\_\_ (the "Original Confirmation"). The Swap Counterparty shall notify the District of the Reinstatement Value no later than 12:00 p.m., New York time, one (1) Business Day following the Expected Issuance Date (the "Reinstatement Election Date"). By 5:00 p.m., New York time, on the Reinstatement Election Date, the District shall notify Swap Counterparty of whether it elects for the Reinstatement Value to be paid by: (i) the payment of a lump sum ("Option 1"); or (ii) an adjustment of the Fixed Rate of the Original Transaction ("Option 2").

(b) If the District elects Option 1, then: (i) if the Reinstatement Value is a positive number, an amount equal to the Reinstatement Value will be payable by Swap Counterparty to the District on the Reinstatement Value Payment Date; and (ii) if the Reinstatement Value is a negative number, an amount equal to the absolute value of the Reinstatement Value will be payable by the District to Swap Counterparty on the Reinstatement Value Payment Date.

(c) If the District elects Option 2, then the Fixed Rate payable by the District to Swap Counterparty under the Original Transaction shall be increased (in the event that the Reinstatement Value is a negative number) or decreased (in the event that the Reinstatement Value is a positive number) accordingly for the period from and including the Expected Issuance Date to but excluding the Termination Date (the Original Transaction, as modified by an adjustment to the Fixed Rate as described in this Paragraph X(c), the "Adjusted Transaction"). Promptly following the Expected Issuance Date, Swap Counterparty shall deliver an amended and restated Confirmation to the District reflecting the adjusted Fixed Rate and the terms of the Adjusted Transaction. Each of the parties hereby agrees to deliver to the other party all documentation related to such revised Confirmation as reasonably requested by the other party.

(d) As used in this Paragraph X:

(i) "Reinstatement Value" shall mean an amount that Swap Counterparty reasonably determines in good faith, in consultation with the District and its swap advisor, to be its total losses and costs (expressed as a negative number) or gain (expressed as a positive number) in connection with continuing the terms of the Original Transaction evidenced by the Original Confirmation, including any loss of bargain, cost of funding or, at the election of Swap Counterparty but without duplication, loss or cost (including without limitation reasonable attorney's fees) incurred by Swap Counterparty as a result of its terminating, liquidating,

obtaining or reestablishing any hedge or related trading position (or any gain resulting therefrom); and

(ii) "Reinstatement Value Payment Date" shall mean the [second (2nd)] Business Day following the Expected Issuance Date.

The parties agree that the failure of either party to perform any of its obligations in this Paragraph X shall be deemed to be an Event of Default under the Agreement with respect to such party as the Defaulting Party.

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\_\_\_\_\_ SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

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

\_\_\_\_\_  
Dated as of \_\_\_\_\_  
\_\_\_\_\_

(Supplemental to the Wastewater System Subordinated Revenue Bond  
Indenture dated as of April 1, 1990)

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\_\_\_\_ Supplemental Indenture  
(Supplemental to the Wastewater System  
Subordinated Revenue Bond Indenture dated  
as of April 1, 1990)  
Authorizing the Issuance of  
\$\_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds,  
Series [Designation]

\_\_\_\_\_  
This \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (the “\_\_\_\_\_ Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”);

W I T N E S S E T H :

WHEREAS, this \_\_\_\_\_ Supplemental Indenture is supplemental to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented (the “Indenture”), between the District and the Trustee, providing for the issuance of bonds initially designated as “Wastewater System Subordinated Revenue Bonds” and subsequent to the execution and delivery of the Twelfth Supplemental Indenture designated as “Wastewater System Revenue Bonds” (the “Bonds”);

WHEREAS, in accordance with the Indenture there has been issued, *inter alia*, [(i) \$65,300,000 aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series 2008C (the “Series 2008C Bonds”), pursuant to the Eleventh Supplemental Indenture, dated as of March 1, 2008, between the District and the Trustee, of which \$51,690,000 principal amount is Outstanding as of the date hereof; and (ii) \$65,905,000 aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series 2011A (the “Series 2011A Bonds”), pursuant to the Fifteenth Supplemental Indenture, dated as of January 1, 2011, between the District and the Trustee, of which \$60,845,000 principal amount is Outstanding as of the date hereof];

WHEREAS, the Indenture provides that the District may issue additional Bonds as well as refunding Bonds from time to time as authorized by a Supplemental Indenture;

WHEREAS, the District has determined to issue its Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) in the aggregate principal amount of \$\_\_\_\_\_, pursuant to this \_\_\_\_\_ Supplemental Indenture in order to provide moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund a portion of the Outstanding [Series 2008C Bonds and a portion of the Outstanding Series 2011A Bonds]; (ii) to fund the costs of terminating in part certain interest rate swap agreements of the District; and (iii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds; and

WHEREAS, the Indenture creates a valid and binding pledge and assignment of and security interest in the Subordinated Wastewater Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) for the payment of the Bonds as and to the extent provided therein in accordance with the terms thereof without the need for any physical delivery, recordation, filing or further act, in accordance with Section 5451 of the Government Code of the State of California;

NOW, THEREFORE, the parties hereto agree, as follows:

ARTICLE \_\_\_\_\_

SERIES [DESIGNATION] BONDS

SECTION \_\_\_\_\_.01. Definitions. The terms defined in this Section shall, for all purposes of this \_\_\_\_\_ Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series [Designation] Bond (including any Person holding a Series [Designation] Bond through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series [Designation] Bond for federal income tax purposes.

“Book-Entry System” means the system maintained by the Securities Depository and described in Section \_\_\_\_\_.03 hereof.

“Closing Date” means the date of delivery of the Series [Designation] Bonds to the Representative of the Underwriters, against payment therefor, such date being \_\_\_\_\_.

“Continuing Disclosure Agreement” means any continuing disclosure agreement entered into by the District and the Trustee in connection with the Series [Designation] Bonds in order to comply with the continuing disclosure requirements promulgated under S.E.C. Rule 15c2-12.

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

“Escrow Agreement” means the Escrow Agreement relating to the defeasance of a portion of the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, [Series 2008C and Series 2011A], dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent and as trustee for the [Series 2008C Bonds and Series 2011A Bonds].

“Representation Letter” means the Letter of Representations from the District to DTC relating to the Book-Entry System for the Series [Designation] Bonds.

“Representative” means \_\_\_\_\_, as representative of the Underwriters of the Series [Designation] Bonds.

“Securities Depository” means DTC or, if applicable, any successor securities depository appointed pursuant to Section \_\_\_\_\_.03 hereof.

“Securities Depository Participant” means any broker-dealer, bank or other financial institution for which a Securities Depository holds Series [Designation] Bonds as Securities Depository from time to time.

“Series [Designation] Bonds” means the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation].

“Series [Designation] Costs of Issuance Fund” means the fund by that name established pursuant to Section \_\_\_\_\_.13 hereof.

SECTION \_\_\_\_\_.02. Authorization.

(A) Designation of Bonds. An [eighteenth] Series of Bonds to be issued under the Indenture is hereby created. Such Series of Bonds shall be known as the “East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation]” (herein referred to as the “Series [Designation] Bonds”). The Series [Designation] Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_.

The Series [Designation] Bonds shall be issued in accordance with the Act and pursuant to Resolution No. \_\_\_\_\_, adopted by the Board on September 24, 2013, and this \_\_\_\_\_ Supplemental Indenture. The Series [Designation] Bonds shall be issued for the purpose of providing moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund a portion of the outstanding [Series 2008C Bonds and Series 2011A Bonds]; (ii) to fund the costs of terminating a portion of the interest rate swap agreements of the District relating thereto; and (iii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds.

The Series [Designation] Bonds shall be Current Interest Indebtedness.

(B) Registered Form. The Series [Designation] Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.,” as nominee of DTC in accordance with Section \_\_\_\_\_.03 hereof. The Series [Designation] Bonds shall be evidenced by one bond maturing on each of the maturity dates of the Series [Designation] Bonds as set forth in Section \_\_\_\_\_.02(C) hereof. The Series [Designation] Bonds may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series [Designation] Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section \_\_\_\_\_.03 hereof.

(C) Maturities; Interest Rates; Denominations. The Series [Designation] Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the

following rates per annum, and shall mature on June 1 in the following years in the following amounts:

Maturity Date (June 1)	Principal Amount	Interest Rate
<hr/>	<hr/>	<hr/>

Interest on the Series [Designation] Bonds shall be payable commencing on \_\_\_\_\_ and semiannually thereafter on June 1 and December 1 of each year by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. Interest on the Series [Designation] Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series [Designation] Bonds are payable when due upon presentation thereof at the corporate trust office of the Trustee in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

So long as the Series [Designation] Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer in accordance with mutually satisfactory arrangements between the Trustee and the Securities Depository.

The Trustee shall provide CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

SECTION \_\_\_\_03. Book-Entry System. The Series [Designation] Bonds shall be initially issued registered in the name of “Cede & Co.,” as nominee for DTC and registered Owner of the Series [Designation] Bonds, and held in the custody of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of the Series [Designation] Bonds, and the Beneficial Owners will not receive physical delivery of Series [Designation] Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series [Designation] Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series [Designation] Bonds will receive, hold or deliver any Series [Designation] Bond certificate.

At the written direction of the District, with notice to the Trustee, but without the consent of the Owners of the Series [Designation] Bonds or the Trustee, the District, may appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book-Entry System for the Series [Designation] Bonds not inconsistent with the provisions of the Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The District and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Securities Depository Participants in the Book-Entry System with respect to the Series [Designation] Bonds and (ii) a certificate of any such Securities Depository Participant as to the identity of, and the respective principal amount of the Series [Designation] Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series [Designation] Bonds, the beneficial ownership thereof is determined by a book-entry at the Securities Depository, the requirements in the Indenture of holding, delivering or transferring the Series [Designation] Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Series [Designation] Bonds shall, while the Series [Designation] Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in the Indenture and the Series [Designation] Bonds with respect to the rights of Securities Depository Participants and Beneficial Owners, when a Book-Entry System is in effect, the District and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series [Designation] Bonds registered in its name for the purposes of payment of the principal of and interest on the Series [Designation] Bonds or portion thereof to be redeemed or purchased, and of giving any notice permitted or required to be given to the Owners of Series [Designation] Bonds under the Indenture, and neither the District nor the Trustee shall be affected by any notice to the contrary.

Neither the District nor the Trustee will have any responsibility or obligations to the Securities Depository, any Securities Depository Participant, any Beneficial Owner or any other Person which is not shown on the registration books required to be maintained by the Trustee, with respect to (i) the accuracy of any records maintained by the Securities Depository or any Securities Depository Participant; (ii) the payment by the Securities Depository or by any Securities Depository Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or purchase price of, or interest on, any Series [Designation] Bonds; (iii) the delivery of any notice by the Securities Depository or any Securities Depository Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series [Designation] Bonds; or (v) any other action taken by the Securities Depository or any Securities Depository Participant. The Trustee shall pay all principal of and interest on the Series [Designation] Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository, and all such payments shall be valid and effective to fully satisfy and discharge the District’s obligations with respect to the principal of and interest on such Series [Designation] Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the District, at the direction and expense of the District, and the District and the Trustee will cause the delivery of Series [Designation] Bond certificates to such Beneficial Owners of the Series [Designation] Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(1) The Securities Depository determines to discontinue providing its service with respect to the Series [Designation] Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving thirty (30) days’ notice to the District and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(2) The District determines not to continue the Book-Entry System through a Securities Depository, upon not less than forty-five (45) days’ prior written notice to the Trustee.

When the Book-Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect.

So long as any Series [Designation] Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Series [Designation] Bond and all notices with respect to such Series [Designation] Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

In the event of a redemption or any other transaction necessitating a reduction in aggregate principal amount of Series [Designation] Bonds Outstanding, DTC in its discretion: (a) may request the District and the Trustee to issue and authenticate a new Series [Designation] Bond certificate, or (b) shall make an appropriate notation on the Series [Designation] Bond certificate indicating the date and amounts of such reduction in principal, except in the case of final maturity, in which case the certificate must be presented to the Trustee prior to payment.

SECTION \_\_.04. Redemption of Series [Designation] Bonds.

(A) Optional Redemption. The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(B) Mandatory Sinking Account Redemption. The Series [Designation] Bonds maturing on June 1, \_\_\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section \_\_.09, commencing on June 1, \_\_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

SECTION \_\_.05. Selection of Series [Designation] Bonds for Redemption. Whenever provision is made in this \_\_\_\_\_ Supplemental Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee shall select the Series [Designation] Bonds of such maturity to be redeemed, from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion shall deem appropriate and fair. The Trustee shall promptly notify the District in writing of the Series [Designation] Bonds so selected for redemption.

SECTION \_\_.06. Notice of Redemption of Series [Designation] Bonds. The District shall notify the Trustee at least twenty-five (25) days prior to the redemption date for any Series [Designation] Bonds pursuant to Section \_\_.04(A) (or such shorter time as may be agreed to by the Trustee). Notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series [Designation] Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first class mail, (ii) to the Securities Depository by facsimile or other electronic means of communications and by first class mail, and (iii) to the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at [www.emma.msrb.org](http://www.emma.msrb.org), by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Notice of redemption shall be given in the form and otherwise in accordance with the terms of the Indenture and this \_\_\_\_\_ Supplemental Indenture.

In the event of an optional redemption of Series [Designation] Bonds, in the event that the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall



state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

SECTION \_\_.07. Partial Redemption of Series [Designation] Bonds. Upon surrender of any Series [Designation] Bond redeemed in part only, the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Series [Designation] Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series [Designation] Bond surrendered.

SECTION \_\_.08. Effect of Redemption of Series [Designation] Bonds. If notice of redemption has been duly given pursuant to Section \_\_.06, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the date fixed for redemption, interest on the Series [Designation] Bonds so called for redemption shall cease to accrue, the Series [Designation] Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of the Series [Designation] Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price and accrued interest.

All Series [Designation] Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION \_\_.09. Series [Designation] Sinking Accounts. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series [Designation] Sinking Account.” On each Business Day prior to the following payment dates, the District shall transfer from the Principal Fund to the Series [Designation] Sinking Account an amount equal to the payment due on such date as set forth below:

\$\_\_\_\_\_ Term Series [Designation] Bonds Due June 1, \_\_\_\_

Mandatory Sinking Account

Payment Dates  
(June 1)

Mandatory Sinking  
Account Payments

†

---

† Final Maturity.

Upon an optional redemption of a portion of any Term Series [Designation] Bonds pursuant to Section \_\_.04(A), the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments.

Moneys in the Series [Designation] Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

SECTION \_\_.10. Form of Series [Designation] Bonds. The Series [Designation] Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series [Designation] Bond letters and numbers, maturity dates, principal amounts and interest rates shall be inserted therein in conformity with Section \_\_.02.

SECTION \_\_.11. Issuance of Series [Designation] Bonds. Upon the execution and delivery of this \_\_\_\_\_ Supplemental Indenture, the District may execute and the Trustee shall authenticate and deliver the Series [Designation] Bonds in the aggregate principal amount of \$\_\_\_\_\_ on the Closing Date therefor upon an Order of the District.

SECTION \_\_.12. Application of Proceeds of Series [Designation] Bonds. The net proceeds of the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds [plus/less \$\_\_\_\_\_ original issue premium/discount], less \$\_\_\_\_\_ of Underwriter's discount), [together with \$\_\_\_\_\_ transferred from the Series 2008C Bond Reserve Fund relating to the refunded Series 2008C Bonds, and \$\_\_\_\_\_ contributed by the District], or a total of \$\_\_\_\_\_, shall be received by the Trustee on behalf of the District and held in trust and set aside as follows:

(i) \$\_\_\_\_\_ of the proceeds from the sale of the Series [Designation] Bonds, [together with (a) the \$\_\_\_\_\_ transferred from the Series 2008C Bond Reserve Fund for the refunded Series 2008C Bonds, and (b) \$\_\_\_\_\_ contributed by the District, or a total of \$\_\_\_\_\_], shall be transferred by the Trustee to The Bank of New York Mellon Trust Company, N.A., as escrow agent pursuant to the Escrow Agreement for deposit in the respective escrow accounts in the escrow fund created pursuant to the Escrow Agreement, all as specified in the Escrow Agreement;

(ii) \$\_\_\_\_\_ of the proceeds from the sale of the Series [Designation] Bonds, [together with \$\_\_\_\_\_ contributed by the District], or a total of \$\_\_\_\_\_, shall be transferred on the date of delivery of the Series [Designation] Bonds in accordance with a Written Request of the District to fund the costs of terminating a portion of certain outstanding interest rate swap agreements of the District; and

(iii) The remaining proceeds from the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ shall be transferred by the Trustee to the District for deposit in the Costs of Issuance Account of the Series [Designation] Costs of Issuance Fund to be applied in accordance with Section \_\_.13.

SECTION \_\_.13. Establishment and Application of Series [Designation] Costs of Issuance Fund. The District shall establish, maintain and hold in trust a separate fund designated as the “Series [Designation] Costs of Issuance Fund.” The moneys on deposit in the Series [Designation] Costs of Issuance Fund shall be used and withdrawn by the District to pay Costs of Issuance of the Series [Designation] Bonds.

SECTION \_\_.14. Continuing Disclosure. The District and the Trustee hereby covenant and agree that they will comply with and carry out all of their respective obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the District or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Series [Designation] Bondholder or Beneficial Owner or the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% of the aggregate principal amount of Outstanding Series [Designation] Bonds and upon provision of indemnification satisfactory to the Trustee, shall) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Trustee, as the case may be, to comply with its obligations under this Section \_\_.14. For purposes of this Section \_\_.14, “Beneficial Owner” means any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series [Designation] Bonds (including persons holding Series [Designation] Bonds through nominees, depositories or other intermediaries).

SECTION \_\_.15. Revised [Series 2008C and Series 2011A] Sinking Account Payment Schedules. In accordance with Section 5.05 of the Indenture, the portion of the [Series 2008C Bonds and Series 2011A Bonds (such [Series 2008C Bonds and Series 2011A Bonds] being Term Bonds) being refunded and redeemed in connection with the issuance of the Series [Designation] Bonds shall be allocated to Mandatory Sinking Account Payments for the applicable Term Bonds as may be specified by the District to the Trustee. The revised schedule of Mandatory Sinking Account Payments for each of the [Series 2008C Bonds and Series 2011A Bonds] which are Term Bonds that will remain Outstanding following the issuance of the Series [Designation] Bonds and the retirement of the [Series 2008C Bonds and Series 2011A Bonds] being partially refunded thereby are set forth in Exhibit B hereto.

SECTION \_\_.16. Terms of Series [Designation] Bonds Subject to the Indenture. Except as in this \_\_\_\_\_ Supplemental Indenture expressly provided, every term and condition contained in the Indenture shall apply to this \_\_\_\_\_ Supplemental Indenture and to the Series [Designation] Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this \_\_\_\_\_ Supplemental Indenture.

This \_\_\_\_\_ Supplemental Indenture and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

SECTION \_\_.17. Effective Date of \_\_\_\_\_ Supplemental Indenture. This  
\_\_\_\_\_ Supplemental Indenture shall take effect upon its execution and delivery.

SECTION \_\_.18. Execution in Counterparts. This \_\_\_\_\_ Supplemental  
Indenture may be executed in several counterparts, each of which shall be deemed an original,  
and all of which shall constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have executed the \_\_\_\_\_  
Supplemental Indenture by their officers thereunto duly authorized as of the day and year first  
written above.

EAST BAY MUNICIPAL UTILITY  
DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

ATTEST:

By: \_\_\_\_\_  
Lynelle M. Lewis  
Secretary of the District

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

By: \_\_\_\_\_  
Milly Canessa  
Authorized Officer

EXHIBIT A

(FORM OF SERIES [DESIGNATION] BOND)

No. R-\_\_\_\_

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

EAST BAY MUNICIPAL UTILITY DISTRICT  
(ALAMEDA AND CONTRA COSTA COUNTIES, CALIFORNIA)  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]

Unless this certificate is presented by an authorized representative of The Depository Trust Company a New York corporation (“DTC”), to the District or its agent for registration of transfer, exchange, or payment, and any certificate 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.

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
June 1, ____	_____, 20____	%	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Subordinated Wastewater Revenues and funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal amount specified above together with interest thereon from its Dated Date until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on \_\_\_\_\_, and semiannually thereafter on December 1 and June 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of the hereinafter described Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to

which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as successor trustee (together with any successor as trustee under said Indenture, the "Trustee"), in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

This Bond is one of a duly authorized issue (of the series and designation indicated on the face hereof) of Wastewater System Revenue Bonds of the District issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, between the Trustee and the District, providing for the issuance of said bonds (the "Bonds"). Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Wastewater System Subordinated Revenue Bond Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Wastewater System Subordinated Revenue Bond Indenture provided, all issued and to be issued pursuant to the provisions of the Act (as defined in the Wastewater System Subordinated Revenue Bond Indenture). This Bond is issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, between the Trustee and the District, authorizing the issuance of the series of bonds of which this Bond is one, such series being herein referred to as the "Series [Designation] Bonds" (the Wastewater System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, being herein collectively referred to as the "Indenture"). Reference is hereby made to the Indenture and to the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Subordinated Wastewater Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the interest thereon (to the extent set forth in the Indenture), together with the Parity Debt (as defined in the Indenture) issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the "Subordinated Wastewater Revenues" (as more particularly defined in the Indenture). All of the Bonds and Parity Debt are equally secured by a pledge of, and charge and lien upon, all of the Subordinated Wastewater Revenues, and the Subordinated Wastewater Revenues constitute a trust fund for the security and payment of the interest on and principal of the Bonds; but nevertheless out of Subordinated Wastewater Revenues certain amounts may be applied for other purposes as provided in the Indenture.

The Bonds are limited obligations of the District and are payable, both as to principal and interest, and as to any premiums upon the redemption thereof, out of the Subordinated

Wastewater Revenues and certain funds held under the Indenture. The general fund of the District is not liable, and the credit or taxing power of the District is not pledged, for the payment of the Bonds or the interest thereon. The Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the District or any of its income or receipts, except the Subordinated Wastewater Revenues and the funds held under the Indenture. No registered owner of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to each date on which the Bonds are stated to mature, registered in the name of the Cede & Co, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository Participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such Securities Depository Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Securities Depository Participants pursuant to rules and procedures established by the Securities Depository and its Securities Depository Participants. The District and the Trustee will recognize Cede & Co., while the registered owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on this Bond and (ii) notices. Transfer of principal, interest and any redemption premium payments to Securities Depository Participants, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by Securities Depository Participants will be the responsibility of such Securities Depository Participants and other nominees of such beneficial owners. The District will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, Cede & Co., its Securities Depository Participants or persons acting through such Securities Depository Participants. While Cede & Co. is the owner of this Bond, notwithstanding any other provision hereof, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements between the Trustee or its successors under the Indenture and the Securities Depository.

[The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series [Designation] Bonds maturing on June 1, \_\_\_\_, are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, \_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate



trust office of the Trustee in San Francisco, California, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange hereof.

The District, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the District and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the District pertaining to the Subordinated Wastewater Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or the Act.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, EAST BAY MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the President of the Board of Directors and attested by its Secretary, and this Bond to be dated as of the \_\_\_\_ day of \_\_\_\_\_.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

Attested:

By: \_\_\_\_\_  
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

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

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

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

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

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

Signature Guaranteed by:

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NOTE: Signature must be guaranteed by an eligible guarantor institution.

## EXHIBIT B

### REVISED [SERIES 2008C AND SERIES 2011A] MANDATORY SINKING ACCOUNT PAYMENT SCHEDULES

A. Following the defeasance and retirement of the \$\_\_\_\_\_ principal amount of the Series [2008C][2011A] Bonds being refunded in connection with the issuance of the Series [Designation] Bonds, the Mandatory Sinking Account Payment schedule set forth in [Section 27.29 of the Eleventh Supplemental Indenture] [Section 31.29 of the Fifteenth Supplemental Indenture] shall be revised as follows for the Series [2008C][2011A] Bonds to remain Outstanding upon the issuance of the Series [Designation] Bonds:

#### **Series [2008C][2011A] Bonds**

\$\_\_\_\_\_ Term Series \_\_\_\_\_ Bonds Due June 1, 20\_\_\_\_

Mandatory  
Sinking Account  
Payment Dates  
(June 1)

Mandatory  
Sinking Account  
Payments

Mandatory  
Sinking Account  
Payment Dates  
(June 1)

Mandatory  
Sinking Account  
Payments

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† Final Maturity.

EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]  
PURCHASE CONTRACT

[Date]

Board of Directors  
East Bay Municipal Utility District  
375 -11th Street  
Oakland, California 94607

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, as representative (the “Representative”) of itself, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, the “Underwriters”), hereby offers to enter into this Purchase Contract (the “Purchase Contract”) with you, the East Bay Municipal Utility District (the “District”), which, upon the District’s acceptance of this offer, will be binding upon the District and the Underwriters. This offer is made subject to acceptance by you prior to 5:00 p.m., California time, on the date hereof. If this offer is not so accepted, this offer will be subject to withdrawal by the Underwriters upon notice delivered to you at any time prior to acceptance. Upon acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the District and the Underwriters. All capitalized terms used herein not otherwise defined herein shall have the respective meanings ascribed thereto in the Official Statement (as hereinafter defined). The Representative has been duly authorized to execute this Purchase Contract and to take any action hereunder by and on behalf of the Underwriters.

The District acknowledges and agrees that (i) the purchase and sale of the Series [Designation] Bonds (defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the District and the Underwriters, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principals and are not acting as advisors to or fiduciaries of the District, (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the District with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether an Underwriter has provided other services or is currently providing other services to the District on other matters), (iv) the Underwriters have financial and other interests that differ from those of the District, and (v) the District has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

1. Purchase, Sale and Delivery of the Series [Designation] Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters, jointly and severally, hereby agree to

purchase and the District agrees to sell and deliver to the Underwriters all (but not less than all) of the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation] (the "Series [Designation] Bonds") in the aggregate principal amount of \$\_\_\_\_\_.

(b) The Series [Designation] Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the "Act") and the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the "Indenture"). The Series [Designation] Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series [Designation] Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series [Designation] Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Wastewater Revenues of the District. The Series [Designation] Bonds shall be dated the Closing Date (defined below), shall bear interest payable June 1 and December 1 of each year, commencing on \_\_\_\_\_, and shall mature on June 1 in each year, subject to earlier redemption, as set forth in Exhibit A.

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [\$\_\_\_\_\_ aggregate principal amount of the District's Wastewater System Revenue Refunding Bonds, Series 2008C and \$\_\_\_\_\_ aggregate principal amount of the District's Wastewater System Revenue Refunding Bonds, Series 2011A] (collectively, the "Refunded Bonds"), (ii) funding the cost of terminating a portion of interest rate swaps relating to the Refunded Bonds and (iii) paying costs of issuance of the Series [Designation] Bonds.

(c) The aggregate purchase price for the Series [Designation] Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ [plus/less original issuance premium/discount of \$\_\_\_\_\_] less \$\_\_\_\_\_ of Underwriters' discount).

If this offer shall be accepted by the District, then the Underwriters, shall, immediately upon the acceptance by the District of this offer (or as soon thereafter as practicable), deliver or cause to be delivered to the District a wire or cashier's check made payable to the order of the District, in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of their obligations to accept delivery of and pay for the Series [Designation] Bonds on the Closing Date in accordance with the provisions of this Purchase Contract (such deposit is herein referred to as the "Good Faith Deposit"). Such deposit shall not be expended by the District pending the Closing except as provided below. On the Closing Date, the Good Faith Deposit will be applied towards the purchase price stated above. If the District fails to deliver the Series [Designation] Bonds on the Closing Date, or if the conditions to the obligations of the Underwriters to purchase, accept delivery of and pay for the Series [Designation] Bonds as set forth in this Purchase Contract shall be unsatisfied (unless waived by the Underwriters), or if such obligations of the Underwriters shall be terminated by the Underwriters for any reason permitted by this Purchase Contract, this Purchase Contract shall

terminate and the Good Faith Deposit with interest calculated at the prevailing 1-month LIBOR rate shall be immediately returned to the Underwriters. In the event that the Underwriters fail (other than for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the Series [Designation] Bonds on the Closing Date as herein provided, the Good Faith Deposit shall be retained by the District and shall constitute full liquidated damages for such failure and for any and all defaults hereunder on the part of the Underwriters, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriters with respect to such failure.

(d) At 8:00 a.m., California time, on \_\_\_\_\_, or at such other time or on such other date as the District and the Representative mutually agree upon (the "Closing Date"), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriters, the Series [Designation] Bonds, in fully registered book-entry eligible form, through the facilities of The Depository Trust Company ("DTC") in New York, New York, duly executed, and at the offices of Curls Bartling P.C., Lake Merritt Plaza, 1999 Harrison Street, Suite 610, Oakland, California 94612, or at such other place as shall have been mutually agreed upon by the District and the Representative, and the other documents mentioned herein. The Underwriters will accept such delivery and pay the purchase price of the Series [Designation] Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the "Closing") to the order of the Trustee in an amount equal to the purchase price.

(e) The Underwriters agree to make a bona fide public offering of the Series [Designation] Bonds at the initial offering prices set forth in the Official Statement, which prices may be changed from time to time by the Underwriters after such initial offering.

## 2. Use and Preparation of Official Statement.

The District hereby ratifies, confirms and approves of the distribution and use by the Underwriters prior to the date hereof of the preliminary official statement dated \_\_\_\_\_ relating to the Series [Designation] Bonds (the "Preliminary Official Statement") and the making available of the Preliminary Official Statement to investors prior to the date hereof on the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriters, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the final Official Statement relating to the Series [Designation] Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the Representative (including the appendices thereto and any amendments or supplements as have been approved by the District and the Underwriters, the "Official Statement"), in such quantity as the Underwriters shall reasonably request. The District hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series [Designation] Bonds. The Representative hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.



3. Representations, Warranties and Agreements of the District.

The District hereby represents, warrants and agrees with the Underwriters as follows:

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State of California with full legal right, power and authority to issue the Series [Designation] Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract, the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agreement”), and the Continuing Disclosure Agreement, dated \_\_\_\_\_, between the District and the Trustee, (the “Disclosure Agreement” and together with the Indenture, the Escrow Agreement and this Purchase Contract, the “District Documents”);

(b) By all necessary official action of the District prior to or concurrently with the acceptance hereof, the District has duly approved, ratified and confirmed distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, and has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents and the consummation by it of all other transactions contemplated by the Official Statement and the District Documents and the District is and will be in compliance in all material respects with the provisions thereof; the District Documents are or as of the Closing Date will be in full force and effect in substantially the form heretofore submitted to the Underwriters with only such changes as shall have been agreed to in writing by the Underwriters; and the District Documents constitute valid and legally binding agreements of the District enforceable against the District in accordance with their terms; provided, however, that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights and to the limitations on legal remedies against public agencies in the State of California;

(c) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not in Material Breach or Default under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement, and compliance with the provisions on the District’s part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term “Material Breach or Default” means any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Wastewater System);

(d) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, deliver or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Wastewater System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series [Designation] Bonds;

(f) Under the laws of the State of California, the authority of the District to determine, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System is not presently subject to the regulatory jurisdiction of the California Public Utilities Commission, or other local, regional or state regulatory authority, and, except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not aware of any legislation proposed or pending to limit or restrict such rates, fees and charges;

(g) The Series [Designation] Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriters as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series [Designation] Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Wastewater Revenues (as defined in the Indenture) and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series [Designation] Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Official Statement;

(i) The financial statements of the District contained in the Official Statement do and will fairly present the financial position and results of operations of the District as of the dates and

for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Wastewater System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order (i) to qualify the Series [Designation] Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Series [Designation] Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series [Designation] Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject;

(k) The Preliminary Official Statement (except for information relating to offering prices, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the securities depending on such matters, and the identity of the underwriters) did not as of the date thereof and, as supplemented or amended through the date hereof, does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect (except for information relating to DTC and its book-entry only system, as to which no opinion or view is expressed);

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined below) for the Series [Designation] Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the District will notify the Underwriters, and, if in the opinion of the District, the Underwriters or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriters (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and their counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the District will furnish such information with respect to itself as the Underwriters may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series [Designation] Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Representative on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series [Designation] Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series [Designation] Bonds the date specified as such in a notice from the Representative stating the date which is the End of the Underwriting Period;

(p) After the Closing, the District will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriters shall reasonably object in writing;

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District will apply, or cause the application of, the proceeds of the Series [Designation] Bonds in accordance with the Indenture;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriters in connection with the execution and delivery of the Series [Designation] Bonds, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(t) Except as disclosed in the Official Statement, the District has never failed within the last five years to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of enumerated events.

#### 4. Conditions to the Obligations of the Underwriters.

The Underwriters hereby enter into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters’ obligations under this Purchase Contract to purchase, to accept

delivery of and to pay for the Series [Designation] Bonds shall be subject, at the option of the Underwriters, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(a) The Underwriters shall receive, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the Official Statement (including all information previously permitted to have been omitted by Rule 15c2-12 and any amendments or supplements as have been approved by the Underwriters), in such reasonable quantity as the Underwriters shall have requested;

(b) The representations and warranties of the District contained herein shall be true and correct in all material respects on the date hereof and on the Closing Date, as if made on and at the Closing Date;

(c) At the Closing, the District Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the District, all in substantially the forms heretofore submitted to the Underwriters, with only such changes as shall have been agreed to in writing by the Underwriters (which consent shall not be unreasonably withheld), and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the Board of Directors of the District as, in the opinion of Fulbright & Jaworski LLP, Los Angeles, California, and Curls Bartling P.C., Oakland, California ("Co-Bond Counsel"), and Orrick, Herrington & Sutcliffe LLP, San Francisco, California, counsel to the Underwriters (hereinafter, "Underwriters' Counsel"), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Series [Designation] Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriters (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and make any payment for the Series [Designation] Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been proposed for consideration by either such Committee by any member thereof or presented as an option for consideration by either such Committee by the staff of such Committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation

has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series [Designation] Bonds which, in the reasonable judgment of the Underwriters, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series [Designation] Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series [Designation] Bonds, or the Series [Designation] Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(3) the declaration of war or the escalation of, or engagement in, military hostilities by the United States or the occurrence of any other national or international emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(4) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series [Designation] Bonds or obligations of the general character of the Series [Designation] Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriters;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series [Designation] Bonds, or the issuance, offering or sale of the Series [Designation] Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series [Designation] Bonds or the underlying rating of any of the District's Wastewater System Revenue Bonds by a national rating agency then rating the Series [Designation] Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriters, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriters, to materially adversely affect the market for the Series [Designation] Bonds or the sale of the Series [Designation] Bonds, at the contemplated offering prices (or yields).

(e) At or prior to the Closing Date, the Underwriters shall have received the following documents, in each case satisfactory in form and substance to the Underwriters and Underwriters' Counsel:

(1) Counterparts of the District Documents, duly executed and delivered by the respective parties thereto;

(2) The approving opinion of Co-Bond Counsel, dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(3) The supplemental opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit B;

(4) The opinion of the Office of General Counsel of the District, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit C;

(5) The opinion of counsel to the Trustee, dated the Closing Date and addressed to the District and the Representative, in substantially the form attached hereto as Exhibit D;

(6) The defeasance opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit E;

(7) The opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriters ("Special Tax Counsel"), dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(8) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Representative, to the effect that (a) the Series [Designation] Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine

independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriters, nothing has come to their attention which would cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through F thereto, and information regarding DTC and its book-entry only system;

(9) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriters, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official's knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 20\_\_, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Wastewater System, in any case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series [Designation] Bonds; and (d) the projected operating results and debt service coverage contained in Table [16] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

(10) A certificate, dated the Closing Date, signed by a duly authorized official of the Trustee, satisfactory in form and substance to the Underwriters, to the effect that: (a) the Trustee is a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having the full power and being qualified to enter into and perform its duties under the Indenture, the Escrow Agreement and the Disclosure Agreement (collectively, the "Trustee Documents"); (b) the execution and delivery of the Trustee Documents and compliance with the provisions on the Trustee's part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject; and (c) the Trustee has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action, to the best of such official's knowledge after reasonable investigation, threatened against the Trustee, as such but not in its individual capacity, affecting the existence of the Trustee, or the titles of its officers to their respective offices, or contesting or affecting the validity or enforceability of the Trustee Documents, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Trustee Documents;



(11) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Trustee Documents;

(12) a copy of the Preliminary Official Statement;

(13) A copy of the Official Statement, executed on behalf of the District by authorized representatives of the District;

(14) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series [Designation] Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

(15) Evidence that any ratings described in the Official Statement are in full force and effect as of the Closing Date;

(16) A copy of the Blue Sky Memorandum with respect to the Series [Designation] Bonds, prepared by Underwriters' Counsel;

(17) A Tax Certificate signed by the District relating to the Series [Designation] Bonds, in form and substance satisfactory to Special Tax Counsel;

(18) A copy of the Blanket Letter of Representations to DTC relating to the Series [Designation] Bonds signed by the District;

(19) A Verification Report of [Grant Thornton LLP], addressed to the Representative and dated the Closing Date, in form and substance acceptable to Co-Bond Counsel and Underwriters' Counsel; and

(20) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters, Underwriters' Counsel or Co-Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the District herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the District Documents and the Official Statement.

If the District shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Purchase Contract or if the Underwriters' obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District and neither the Underwriters nor the District shall have any further obligations hereunder.

## 5. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series [Designation] Bonds to the Underwriter, including the costs of printing of the Series [Designation] Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series [Designation]

Bonds and the fees and expenses of Co-Bond Counsel and Underwriters' Counsel shall be paid either from the proceeds of the Series [Designation] Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriters' discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract, including, but not limited to, meals, transportation, lodging and entertainment, of those employees. The District shall pay the reasonable out-of-pocket expenses of the Underwriters (included in the expense component of the Underwriters' Discount), including travel and other expenses and the California Debt and Investment Advisory Commission fee.

6. Notices.

Any notice or other communication to be given under this Purchase Contract may be given by delivering the same in writing to the respective parties at the following address:

District: East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607  
Attention: Director of Finance

Representative: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

7. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Series [Designation] Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series [Designation] Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

8. Effectiveness and Counterpart Signatures.

This Purchase Contract shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by duly authorized officials of the District and shall be valid and enforceable as of the time of such acceptance. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9. Parties in Interest.

This Purchase Contract is made solely for the benefit of the District and the Underwriters (including the successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof.

10. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriters with respect to the purchase of the Series [Designation] Bonds.

11. Headings.

The headings of the sections of this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

12. Governing Law.

This Purchase Contract shall be construed in accordance with the laws of the State of California.

Very truly yours,

\_\_\_\_\_, as Representative of the  
Underwriters

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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

EXHIBIT A

MATURITY SCHEDULE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE  
REFUNDING BONDS, SERIES [DESIGNATION]

Dated Date: Date of Delivery

Maturity Date ( <u>June 1</u> )	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
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EXHIBIT B

FORM OF SUPPLEMENTAL OPINION OF  
CO-BOND COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the "District") in connection with the issuance, sale and delivery of the District's Wastewater System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds"), issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Bonds (collectively, the "Indenture").

The Bonds are being sold on the date hereof by the District to \_\_\_\_\_, as Representative of itself and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, as Underwriters, pursuant to a Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract").

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated \_\_\_\_\_, relating to the Bonds (the "Official Statement").

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of the District and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary to render this opinion, we are of the opinion that:

1. The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE SERIES [Designation] BONDS," and "SECURITY FOR THE SERIES [DESIGNATION] BONDS," and in "APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," and "APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT" (excluding the statements under each such caption relating to The Depository Trust Company ("DTC"), Cede & Co. and the book-entry system, as to all of which we

express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Wastewater Interest Rate Swap Agreements and the Extendable Municipal Commercial Paper Notes (Wastewater Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

2. The Official Statement and the execution and delivery thereof have been duly approved by the District, and the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement have been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the District, enforceable against the District in accordance with their respective terms. We call attention to the fact that the rights and obligations under the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement and the enforceability thereof are subject to and may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver (including, without limitation, waiver of jury trial or consent to nonjury trial) provisions contained in the foregoing documents.

3. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

4. The issuance of the Bonds, the execution and delivery of the \_\_\_\_\_ Supplemental Indenture, the Escrow Agreement, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or Resolution No. 33705-09 of the District, adopted on March 10, 2009, authorizing the District's extendable commercial paper program.

Based upon our participation in the preparation of the Preliminary Official Statement, dated \_\_\_\_\_, relating to the Bonds, and the Official Statement as co-bond counsel and on the basis of the information made available to us in the course of the foregoing, but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement (except to the extent expressly set forth in paragraph 1 above), as of the date hereof no facts have come to the attention of the personnel in our respective firms directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement or the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of this Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the

description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, underwriters' discount and CUSIP numbers, or (b) the Official Statement as of its date or as of the hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view).

During the period from the date of the Official Statement to the date of this opinion, except for our review of the certificates and opinions regarding the Official Statement delivered on the date hereof, we have not undertaken any procedures or taken any actions which were intended to or were likely to elicit information concerning the accuracy, completeness or fairness of any of the statements contained in the Official Statement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

We are furnishing you this letter at the request of the District and solely for the information of, and assistance to, you in conducting and documenting your investigation of the affairs of the District in connection with the offering of the Bonds and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, including but not limited to the purchase or sale of the Bonds, nor is it to be referred to in whole or in part in the Official Statement or any other document, except that it may be included in, and reference may be made to it in any list of, the closing documents pertaining to the delivery of the Bonds. The provision of this opinion to you shall not create any attorney-client relationship between either of our firms and you. This opinion may not be relied upon by any other person, firm, corporation or other entity without our prior written consent.

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the "District"), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 4(e)(4) of the Purchase Contract (the "Purchase Contract") dated \_\_\_\_\_ between the District and \_\_\_\_\_, as representative of the underwriters (the "Underwriters") listed therein, and relating to the sale of \$ \_\_\_\_\_ aggregate principal amount of District's Wastewater System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

In rendering this opinion, I have examined the following documents: (i) the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture dated as of \_\_\_\_\_, by and between the District and the Trustee (collectively, the "Indenture"); (ii) the Continuing Disclosure Agreement, dated \_\_\_\_\_, by and between the District and the Trustee; (iii) the Official Statement; (iv) the Series [Designation] Bonds; (v) the Escrow Agreement; and (vi) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement, the Escrow Agreement and the Purchase Contract are collectively referred to herein as the "District Documents." In addition, I call attention to the fact that the rights and obligations under the District Documents, the Series [Designation] Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.



Based on the foregoing, I am of the opinion that:

(1) The District is, and was at all relevant times, a municipal utility district duly organized and validly existing under the laws of the State of California.

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series [Designation] Bonds (the “Resolutions”), the District Documents and the Official Statement were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Official Statement by the District to the Underwriters on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series [Designation] Bonds, the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) which contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Wastewater System.

(4) The issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate, to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the

valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement and based upon the information made available to me during the preparation of the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that the information contained in the Official Statement under the captions “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A thereto (excluding therefrom the financial statements and the statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and the Closing Date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) The Subordinated Wastewater Revenues are free and clear of and from any and all liens and encumbrances other than as set forth in the Official Statement.

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System and is not presently subject to the regulatory jurisdiction of any state, regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series [Designation] Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

This opinion is delivered to you as the representatives of the Underwriters and is solely for the benefit of the Underwriters and is not to be used by any other person or for any other purpose.

Very truly yours,

Jylana Collins  
General Counsel

EXHIBIT D

FORM OF TRUSTEE COUNSEL'S OPINION

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds, Series [Designation]

Ladies and Gentlemen:

We have acted as counsel to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), in connection with the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the "District") and the Trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture") in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation]. This opinion is rendered pursuant to Section 4(e)(5) of the Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract"), between the District and \_\_\_\_\_, as Representative of the Underwriters listed therein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In connection therewith, we have examined and reviewed such documents and certificates of public officials, officers of the Trustee and others as we have deemed necessary for the purposes of this opinion. In all such examinations, we have assumed the genuineness of all signatures (other than those of the Trustee), the authenticity of all documents submitted to us as originals, the conformity to original and certified documents of all copies submitted to us as conformed or photostatic copies, and the authenticity of the originals of all such latter documents. As to various questions of fact material to this opinion, we have relied, to the extent that we deemed such reliance proper, upon such certificates of officers of the Trustee. We have examined an executed counterpart of the Indenture and have assumed the power, municipal or corporate, as the case may be, and the legal authority to execute and deliver the same of the District and the due authorization, execution and delivery thereof by the District.

Based upon the foregoing, we are of the opinion under the laws of the State of California:

1. The Trustee is a national banking association duly organized and validly existing under and by virtue of the laws of the United States of America, having full power and being qualified to enter into and perform its duties under the Trustee Documents.

2. The Trustee has taken all corporate action necessary to assume the duties and obligations of Trustee under the Trustee Documents and to authorize in such capacity the execution and delivery of the Trustee Documents and the acceptance of the duties as Trustee does not and will

not contravene any law of governmental regulation or order presently binding on the Trustee or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which the Trustee is a party or by which the Trustee is or may be bound.

3. The Trustee has duly executed and delivered the Trustee Documents and the Trustee Documents constitute the legal, valid and binding obligations of the Trustee, enforceable in accordance with their terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought.

4. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of any of its duties and obligations under the Trustee Documents (insofar as it has the obligation to obtain any such approval, consent or order) have been obtained and are in full force and effect.

Respectfully submitted,

EXHIBIT E

FORM OF DEFEASANCE OPINION

[Closing Date]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Wastewater System Revenue Refunding Bonds,  
Series [Designation]

Ladies and Gentlemen:

We have acted as co-bond counsel in connection with the issuance by the East Bay Municipal Utility District (the “District”) of its Wastewater System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (collectively, the “Act”) and a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California (which has been succeeded by The Bank of New York Mellon Trust Company, N.A.), as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

The Series [Designation] Bonds are being issued primarily for the purpose of refunding [\$\_\_\_\_\_ principal amount of the District’s outstanding Wastewater System Revenue Refunding Bonds, Series 2008C and \$\_\_\_\_\_ principal amount of the District’s outstanding Wastewater System Revenue Refunding Bonds, Series 2011A] (the “Refunded Bonds”).

In our capacity as co-bond counsel, we have examined a certified copy of the proceedings relating to the issuance of the Refunded Bonds and the Series [Designation] Bonds and such other documents and instruments as we deemed necessary to render the opinions set forth herein, including the Indenture, data and computations prepared by \_\_\_\_\_, a verification report relating to the Refunded Bonds, dated the date hereof and prepared by [Grant Thornton LLP] (the “Verification Report”) and the Escrow Agreement relating to the Refunded Bonds, dated as of \_\_\_\_\_ (the “Escrow Agreement”), by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”). As to questions of fact material to our

opinion, we have relied upon the certified proceedings and other certifications of District officers and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based on and subject to the foregoing, we are of the opinion that:

1. The defeasance of the Refunded Bonds and the deposit of moneys with the Escrow Agent pursuant to the Escrow Agreement are authorized by and comply with the conditions and terms of the Indenture.

2. Provision has been made to pay the principal of and interest on the Refunded Bonds upon the redemption thereof, on \_\_\_\_\_, all in accordance with the conditions and terms of the Indenture. Accordingly, the Refunded Bonds have been deemed to have been paid within the meaning expressed in the Indenture, the owners of the Refunded Bonds have ceased to be entitled to the pledge of and charge and lien established by the Indenture, and all agreements, covenants and other obligations of the District to the owners of the Refunded Bonds under the Indenture have ceased, terminated and become void and have been discharged and satisfied.

In rendering the opinions above, we have relied on the Verification Report and the Escrow Agreement as to matters contained therein. We note that [Grant Thornton LLP] has made certain assumptions in the Verification Report which we have not independently verified. We have also assumed that all other sums payable by the District under the Indenture with respect to the Refunded Bonds have been paid and that provision has been made by the District for the mailing of a notice to the respective owners of the Refunded Bonds that the moneys described in the preceding paragraph are so available for payment.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is addressed to you and it is not to be quoted, used, circulated or otherwise referred to for any other purpose without our written consent. No attorney-client relationship has existed or exists between us and your firms in connection with the Series [Designation] Bonds or by virtue of this opinion.

Respectfully submitted,

Respectfully submitted,

ESCROW AGREEMENT  
RELATING TO THE DEFEASANCE OF A PORTION OF THE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
[SERIES 2008C [AND] SERIES 2011A]

THIS ESCROW AGREEMENT (the “Escrow Agreement”), dated as of \_\_\_\_\_, is by and between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as escrow agent hereunder (the “Escrow Agent”) and as trustee with respect to the [Series 2008C Bonds] [and] [Series 2011A Bonds] referred to below (the “Trustee”),

W I T N E S S E T H:

[WHEREAS, the District has previously authorized and issued its \$65,300,000 aggregate principal amount of East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2008C, of which \$51,690,000 aggregate principal amount remains outstanding (the “Series 2008C Bonds”), pursuant to the Indenture, including as amended and supplemented by the Eleventh Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee, relating to the Series 2008C Bonds;]

[WHEREAS, the District has previously authorized and issued its \$65,905,000 aggregate principal amount of East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series 2011A, of which \$60,845,000 principal amount remains outstanding (the “Series 2011A Bonds”), pursuant to the Indenture, as amended and supplemented, including as amended and supplemented by the Fifteenth Supplemental Indenture, dated as of January 1, 2011, by and between the District and the Trustee, relating to the Series 2011A Bonds;]

WHEREAS, the District has determined to issue \$\_\_\_\_\_ aggregate principal amount of its East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”), pursuant to the Indenture, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, by and between the District and the Trustee, providing for the issuance of the Series [Designation] Bonds, for the purpose, among others, of refunding [(i) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2008C Bonds (hereinafter, the “Refunded Series 2008C Bonds”) and (ii) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of Series 2011A Bonds (hereinafter, the “Refunded Series 2011A Bonds,” and together with the Refunded Series 2008C Bonds, the “Refunded Bonds”);

WHEREAS, by irrevocably depositing with the Escrow Agent a specified amount of the proceeds from the sale of the Series [Designation] Bonds, together with certain other available funds, and directing the Escrow Agent to invest such amounts in certain investments satisfying the criteria set forth in Section 10.03 of the Indenture (herein, the “Federal Securities”), if any,

the Escrow Agent will have money sufficient to pay on \_\_\_\_\_ (the "Redemption Date") the redemption price of the Refunded Bonds and accrued interest thereon to the Redemption Date;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District and the Escrow Agent agree as follows:

SECTION 1. Deposit of Moneys. The District hereby deposits with the Escrow Agent \$\_\_\_\_\_, representing \$\_\_\_\_\_ of proceeds of the sale of the Series [Designation] Bonds, [\$\_\_\_\_\_ of amounts released from the Series 2008C Bond Reserve Fund for the Refunded Series 2008C Bonds and \$\_\_\_\_\_ contributed by the District]; all to be held in irrevocable escrow by the Escrow Agent, separate and apart from other funds and accounts of the District and the Escrow Agent, in a fund hereby created and established to be known as the "Escrow Fund," to be applied solely as provided in this Escrow Agreement. The Escrow Fund shall constitute an account of the Redemption Fund established pursuant to Section 5.05 of the Indenture.

Within the Escrow Fund, the Escrow Agent shall create \_\_\_\_\_ separate accounts: [(i) one relating exclusively to the Refunded Series 2008C Bonds (the "Refunded Series 2008C Bonds Escrow Account"), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated; and (ii) one relating exclusively to the Refunded Series 2011A Bonds (the "Refunded Series 2011A Bonds Escrow Account"), into which \$\_\_\_\_\_ of the total amount deposited to the Escrow Fund shall be allocated]. Amounts on deposit in the Escrow Fund shall be used and applied from the [two] accounts within the Escrow Fund as provided in Section 5 hereof.

The deposit to the Escrow Fund is in a total amount which has been calculated by \_\_\_\_\_ and verified by [Grant Thornton LLP] (the "Verification Agent") to be sufficient to pay on the Redemption Date for the Refunded Bonds (*i.e.*, \_\_\_\_\_), the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) and accrued interest thereon.

The Escrow Agent hereby acknowledges receipt of such calculations prepared by \_\_\_\_\_, the mathematical accuracy of which has been verified by the Verification Agent in its report relating to the Refunded Bonds (the "Verification Report"), a copy of which has been provided to the Escrow Agent, and the Escrow Agent may rely upon the conclusion of such report to the effect that the deposit described in this Section 1 shall be sufficient to pay on the Redemption Date for the Refunded Bonds (*i.e.*, \_\_\_\_\_), the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) and accrued interest thereon (at an assumed interest rate of 12% per annum for any period for which the interest rate has not been determined to the Redemption Date).

SECTION 2. Investment of Moneys. The Escrow Agent acknowledges receipt of the moneys described in Section 1 hereof and agrees to immediately invest such moneys in the Federal Securities (if any) set forth in Schedule A hereto and to deposit such Federal Securities (if any) in the applicable account of the Escrow Fund. All other amounts in the Escrow Fund, or



if no Federal Securities are set forth in Schedule A hereto, all amounts, not so invested shall be held as cash.

SECTION 3. [Reserved.]

SECTION 4. [Reserved.]

SECTION 5. Payment of Refunded Bonds.

(a) Payment. From the maturing principal of the Federal Securities (if any) and the investment income and other earnings thereon, if any, and the moneys on deposit in the Escrow Fund, the Escrow Agent shall apply the amounts on deposit in the Escrow Fund as follows:

(i) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2008C Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2008C Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2008C Bonds on the Redemption Date are shown on Schedule B-1 hereto. The Escrow Agent as Tender Agent for the Refunded Series 2008C Bonds shall pay the applicable purchase price for any Tendered Bonds in accordance with the applicable provisions of the Indenture from amounts on deposit in the Escrow Fund in accordance herewith. For purposes of this Section 5(a)(i), "Tendered Bonds" means, as of any date on and after \_\_\_\_\_ and prior to the Redemption Date, the Refunded Series 2008C Bonds, or any principal amount thereof, that have been tendered by the holders thereof for purchase pursuant to the applicable provisions of the Indenture, other than Refunded Series 2008C Bonds that have been remarketed. Any Tendered Bonds so purchased shall be immediately cancelled, and the interest thereon shall cease to accrue from and after the relevant purchase date. The Escrow Agent shall transfer the amount of the purchase price for any Tendered Bonds to the Tender Agent from moneys held in the Refunded Series 2008C Escrow Account by 2:40 p.m. (New York time) in immediately available funds.]

(ii) [The Escrow Agent shall apply the amounts on deposit in the Refunded Series 2011A Bonds Escrow Account to pay on the Redemption Date, the redemption price (*i.e.*, 100.0% of the principal amount thereof) of the Refunded Series 2011A Bonds plus accrued interest thereon. The amounts (based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date) required to be paid on the Refunded Series 2011A Bonds on the Redemption Date are shown on Schedule B-2 hereto.]

Any moneys remaining in the Escrow Fund after payment of the Refunded Bonds in full as provided in this Section 5(a) shall be remitted by the Escrow Agent to the District.

(b) Irrevocable Instructions to Provide Notice. (1) The District acknowledges that it has heretofore provided directions to the Escrow Agent (as Trustee for the Refunded Bonds) to provide notice at least thirty (30) days prior to the Redemption Date of the redemption of each series of the Refunded Bonds (i) by first-class mail to the registered owners of the respective

series of the Refunded Bonds, (ii) by first-class mail to the Information Services (as defined in the Indenture) and by electronic means of communication to the Municipal Securities Rulemaking Board (MSRB) through the Electronic Municipal Market Access System (referred to as "EMMA"), at [www.emma.msrb.org](http://www.emma.msrb.org), and (iii) by facsimile and by first-class mail to the Securities Depositories (as defined in the Indenture) such redemption notices in substantially the forms set forth in Exhibit A hereto, all in accordance with the Indenture, and with a copy of the respective notice to the applicable Liquidity Facility Provider (if any), the applicable Remarketing Agents and Moody's and Standard & Poor's (each as defined in the Indenture). The Escrow Agent acknowledges that such notices have been given.

(2) The District hereby irrevocably instructs the Escrow Agent (as Trustee for the Refunded Bonds) to provide notice to the Municipal Securities Rulemaking Board (MSRB) through the Electronic Municipal Market Access System (referred to as "EMMA"), at [www.emma.msrb.org](http://www.emma.msrb.org), substantially in the forms set forth in Exhibit B hereto that an irrevocable deposit has been made with the Escrow Agent and that the respective series of the Refunded Bonds have been deemed to be paid in accordance with the Indenture.

(c) Unclaimed Moneys. Any moneys which remain unclaimed for two years after the date such moneys have become due and payable hereunder shall be repaid by the Escrow Agent to the District, and the Escrow Agent shall thereupon be released and discharged with respect thereto, and the holders of the Refunded Bonds shall look only to the District for the payment on the Refunded Bonds; provided, however, that before making such repayment to the District, the Escrow Agent shall, at the expense of the District, cause to be mailed to the holders of any unredeemed Refunded Bonds, a notice that such money remains unclaimed and that, after a date set forth in the notice, which date shall not be less than thirty (30) days after the date of mailing of the notice, the balance of the money then unclaimed will be returned to the District.

(d) Priority of Payments. The owners of the Refunded Bonds shall have a lien on moneys and securities, if any, in the Escrow Fund which are allocable and sufficient to repay the Refunded Bonds, in accordance with this Escrow Agreement, as verified by the Verification Report, until such moneys and such securities, if any, are used and applied as provided in this Escrow Agreement.

(e) Termination of Obligation. As provided in the Indenture, upon deposit of moneys with the Escrow Agent in the Escrow Fund as set forth in Section 1 hereof and the purchase of the various Federal Securities as provided in Section 2 hereof (if any), and notice of, or provision for notice of redemption having been given as set forth in Section 5(b) hereof, upon the election of the District, which the District hereby makes, the pledge of the Subordinated Wastewater Revenues and other assets under the Indenture and other obligations of the District under the Indenture in respect of the Refunded Bonds shall cease, terminate, and be completely discharged and satisfied.

SECTION 6. Performance of Duties. The Escrow Agent agrees to perform only the duties set forth herein and shall have no responsibility to take any action or omit to take any action not set forth herein.

SECTION 7. Escrow Agent's Authority to Make Investments. Except as provided in Section 2 hereof, the Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement or to sell, transfer or otherwise dispose of the cash or the Federal Securities (if any) held hereunder.

SECTION 8. Indemnity. The District hereby assumes liability for, and agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, officers, directors, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the District or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Escrow Fund, the acceptance of the cash and securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any) or the proceeds thereof, if any, and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement; provided, however, that the District shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's employees or the willful breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the District or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

SECTION 9. Responsibilities of Escrow Agent. The Escrow Agent shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Escrow Fund, the acceptance of the moneys or securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any) or the proceeds thereof, the sufficiency of the Federal Securities (if any) or cash deposit to pay the Refunded Bonds or any payment, transfer or other application of moneys or obligations by the Escrow Agent in accordance with the provisions of this Escrow Agreement, or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall not be liable for any special, indirect or consequential damages. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the District, and the Escrow Agent assumes no responsibility for the correctness thereof or the correctness of any recitals or statements contained in the Refunded Bonds. The Escrow Agent makes no representation as to the validity of this Escrow Agreement as to the District and, except as otherwise provided herein, the Escrow Agent shall incur no liability with respect thereto. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct or willful breach, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or

nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall be under no obligation to inquire into or be in any way responsible for the performance or nonperformance by the District of its obligations. The Escrow Agent may consult with counsel, who may or may not be counsel to the District, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an officer of the District. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to the provisions of this Escrow Agreement.

SECTION 10. Resignation of Escrow Agent. The Escrow Agent may at any time resign by giving thirty (30) days prior written notice to the District of such resignation. The District shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the District does not appoint a successor, the Escrow Agent may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the District may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the District appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the District shall immediately and without further action be superseded by the successor Escrow Agent so appointed.

SECTION 11. Amendments. This Escrow Agreement is made for the benefit of the District and the owners of the Refunded Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such owners, the Escrow Agent and the District; provided, however, that the District and the Escrow Agent may, without the consent of, or notice to, such owners, amend this Escrow Agreement or enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Escrow Agreement or the Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Escrow Agreement; (ii) to grant to, or confer upon the Escrow Agent for the benefit of the owners of the Refunded Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such owners or the Escrow Agent; and (iii) to include under this Escrow Agreement additional funds, securities or properties. The Escrow Agent shall be entitled to rely conclusively upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the owners of the Refunded Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 12. Term. This Escrow Agreement shall commence upon its execution and delivery and terminate on the later to occur of either (i) the date upon which the Refunded Bonds have been paid in accordance with this Escrow Agreement or (ii) the date upon which no unclaimed moneys remain on deposit with the Escrow Agent pursuant to Section 5(c) of this Escrow Agreement.

SECTION 13. Compensation. The Escrow Agent shall receive its reasonable fees and expenses as previously agreed to by the Escrow Agent and the District; provided, however, that under no circumstances shall the Escrow Agent be entitled to any lien whatsoever on any moneys or obligations in the Escrow Fund for the payment of fees and expenses for services rendered or expenses incurred by the Escrow Agent under this Escrow Agreement until payment or provision for payment in full of the Refunded Bonds.

SECTION 14. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the District or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

SECTION 15. Counterparts. This Escrow Agreement may be executed in counterparts, any of which shall be regarded for all purposes as an original but all of which shall constitute and be but one and the same instrument.

SECTION 16. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 17. Insufficient Funds. If at any time the moneys and investments in the Escrow Fund, including the anticipated proceeds of and earnings thereon, if any, will not be sufficient to make all payments required by this Escrow Agreement, the Escrow Agent shall notify the District, in writing, immediately upon becoming aware of such deficiency, the amount thereof, and, if known to it, the reason therefor. Upon receipt of such notice, the District shall promptly deposit with the Escrow Agent for deposit in the Escrow Fund the amount necessary to cure any such deficiency. The Escrow Agent shall have no further responsibility regarding any such deficiency.

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Escrow Agent and as  
Trustee under the Indenture

By: \_\_\_\_\_  
Milly Canessa  
Vice President

SCHEDULE A  
FEDERAL SECURITIES

ESCROW ACCOUNT	TYPE OF SLGS	MATURITY DATE	PAR AMOUNT	COUPON
[Series 2008C]				
[Series 2011A]				

SCHEDULE B-1

REQUIREMENTS OF THE REFUNDED SERIES 2008C BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.



SCHEDULE B-2

REQUIREMENTS OF THE REFUNDED SERIES 2011A BONDS

<u>Date</u>	<u>Interest<sup>(1)</sup></u>	<u>Called Principal</u>	<u>Total Requirements</u>
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<sup>(1)</sup> Based upon an assumed 12% per annum interest rate for any period for which the interest rate has not been determined to the Redemption Date.

**EXHIBIT A**  
**FORM OF REDEMPTION NOTICES DELIVERED**

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008C**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds, originally issued March 27, 2008 (the "Bonds") that, pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Eleventh Supplemental Indenture, dated as of March 1, 2008, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2027, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2008C	03/27/08	06/01/27				271012DP8

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

**First Class/Registered/Certified:**

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**CONDITIONAL NOTICE OF PARTIAL REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2011A**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated January 19, 2011 (the "Bonds") that, pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the Fifteenth Supplemental Indenture, dated as of January 1, 2011, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption on \_\_\_\_\_ (the "Redemption Date") \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding aggregate principal amount of the Bonds maturing on June 1, 2038, as set forth below:

Series Designation	Issue Date	Maturity (June 1)	Principal Amount Outstanding	Principal Amount to be Redeemed	Redemption Date	CUSIP
Series 2011A	01/19/11	06/01/38				271012DQ6

The principal amount of the Bonds to be redeemed is to be credited to the payment of the mandatory sinking fund payments due on such Bonds on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

**First Class/Registered/Certified:**

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

On \_\_\_\_\_, the Bonds to be redeemed will be payable from the proceeds of refunding bonds issued by the District, together with other available moneys, at a redemption price of 100.0% of the principal amount, together with interest accrued thereon to (but not including) \_\_\_\_\_, the Redemption Date, subject to the conditions described below.

PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.

On \_\_\_\_\_, if the deposit of moneys has been made as provided above, there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above and from and after \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

**Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the District, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_

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

**EXHIBIT B**

**FORM OF DEFEASANCE NOTICES TO BE DELIVERED**

**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2008C**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2008C Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2008C Bonds under the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by an Eleventh Supplemental Indenture, dated as of March 1, 2008 (collectively, the “Indenture”), cash in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2008C Bonds maturing on June 1, 2027 (the “Refunded Series 2008C Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. Sufficient funds will also be available to pay the purchase price of and accrued interest on any Refunded Series 2008C Bonds tendered prior to the Redemption Date. In accordance with the Indenture, the pledge of the Subordinated Wastewater Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2008C Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2008C Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2008C Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

<u>Maturity Date</u>	<u>CUSIP</u>	<u>Principal Amount Outstanding</u>	<u>Principal Amount Refunded</u>	<u>Mandatory Sinking Account Payment Date (June 1)</u>	<u>Mandatory Sinking Account Payment Amount</u>	<u>Mandatory Sinking Payment Amount Defeased</u>
June 1, 2027*	271012DP8	_____	_____			

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\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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



**NOTICE OF PARTIAL DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES 2011A**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series 2011A Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Trust Company, N.A., the successor Trustee for the Series 2011A Bonds under the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a Fifteenth Supplemental Indenture, dated as of January 1, 2011 (collectively, the “Indenture”), cash and federal securities (if any) in an amount which shall be sufficient to redeem on \_\_\_\_\_ (the Redemption Date”) \$\_\_\_\_\_ principal amount of the \$\_\_\_\_\_ outstanding principal amount of the Term Series 2011A Bonds maturing on June 1, 2038 (the “Refunded Series 2011A Bonds”), at a redemption price equal to 100% of the principal amount thereof, together with accrued interest thereon. In accordance with the Indenture, the pledge of the Subordinated Wastewater Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such Refunded Series 2011A Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Refunded Series 2011A Bonds called for redemption shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

The Refunded Series 2011A Bonds are more fully identified in the table below. The principal amount defeased and being redeemed is being credited against the respective mandatory sinking account payments as set forth in the table below.

Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount Refunded	Mandatory Sinking Account Payment Date (June 1)	Mandatory Sinking Account Payment Amount	Mandatory Sinking Payment Amount Defeased
June 1, 2038*	271012DQ6	_____	_____			

\* Final maturity of Term Bond outstanding in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount is being redeemed to be credited against the mandatory sinking account payments therefor in the years \_\_\_\_ through \_\_\_\_ as set forth above. The sinking fund payments due on and after June 1, \_\_\_\_ remain unchanged.

None of the District, the Trustee nor the Escrow Agent shall have any responsibility for any defect in any CUSIP number that appears in this defeasance notice. The CUSIP numbers have been assigned by an independent service for convenience of reference and the District, the Trustee and the Escrow Agent shall not be liable for any inaccuracy in such numbers.

DATED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

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

## **CONTINUING DISCLOSURE AGREEMENT**

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated **[Closing Date]**, is executed and delivered by the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”) in connection with the issuance of \$**[Par Amount]** aggregate principal amount of Wastewater System Revenue Refunding Bonds, **[Name of Series]** (the “Bonds”). The Bonds are being issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as supplemented and amended, including as supplemented and amended by the **[Number of the Supplemental Indenture]** Supplemental Indenture, dated as of **[Supplemental Indenture Date]**, providing for the issuance of the Bonds (collectively, the “Indenture”). In connection therewith the District and the Trustee covenant and agree as follows:

Section 1. Purpose of this Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the District and the Trustee for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter (as defined herein) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

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

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Director of Finance or the Treasury Manager of the District or a designee of the Director of Finance, or such other officer or employee as the District shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the District and which has filed with the Trustee a written acceptance of such designation.

“Holder” shall mean either the registered owners of the Bonds or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the Official Statement for the Bonds dated *[Sale Date]*, as may be updated prior to the delivery of the Bonds.

“Participating Underwriter” shall mean any underwriter of the Bonds listed on the cover page of the Official Statement required to comply with the Rule in connection with offering of the Bonds.

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

“SEC” shall mean the United States Securities and Exchange Commission.

### Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the District’s Fiscal Year (presently June 30), commencing with the report for the 2012-13 Fiscal Year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that if the audited financial statements of the District are not available by the date required above for the filing of the Annual Report, the District shall submit the audited financial statements as soon thereafter as available. If the District’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) If the District is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the District shall send to the MSRB a notice in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

- (i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

- (ii) file a report with the District and (if the Dissemination Agent is not the Trustee, the Trustee) certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement, and stating the date it was provided.

Section 4. Content of Annual Reports. The District's Annual Report shall contain or include by reference the following categories or similar categories of information updated to incorporate information for the most recent fiscal or calendar year, as applicable (the tables referred to below are those appearing in the Official Statement relating to the Bonds):

- (a) The audited financial statements of the District for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;

- (b) A table showing the Wastewater System Summary of Revenues and Contributions by Source;

- (c) A table showing Wastewater System Rates and Charges for the preceding Fiscal Year;

- (d) A table showing Average Wastewater Flows for the preceding Fiscal Year;

- (e) A table showing outstanding Wastewater System debt as of the preceding Fiscal Year; and

- (f) A table showing revenues, operating and maintenance expense, debt service on Wastewater System revenue bonds and debt service coverage for the Wastewater System for the most recent Fiscal Year.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the MSRB or the SEC. If any document included by reference is a final official statement, it must be available from the MSRB. The District shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

- (a) Pursuant to the provisions of this section, upon the occurrence of any of the following events (in each case to the extent applicable) with respect to the Bonds, the District shall give, or cause to be given by so notifying the Dissemination Agent in writing and instructing the Dissemination Agent to give, notice of the occurrence of such event, in each case, pursuant to Section 5(c) hereof:

1. principal or interest payment delinquencies;
2. non-payment related defaults, if material;
3. modifications to the rights of the Bondholders, if material;
4. optional, contingent or unscheduled calls, if material, and tender offers;
5. defeasances;
6. rating changes;
7. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
8. unscheduled draws on the debt service reserves reflecting financial difficulties;
9. unscheduled draws on the credit enhancements reflecting financial difficulties;
10. substitution of the credit or liquidity providers or their failure to perform;
11. release, substitution or sale of property securing repayment of the Bonds, if material;
12. bankruptcy, insolvency, receivership or similar proceedings of the District, which shall occur as described below;
13. appointment of a successor or additional trustee or the change of name of a trustee, if material, or;
14. the consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the Wastewater System of the District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

For these purposes, any event described in item 12 of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession

but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District.

(b) Upon receipt of notice from the District and instruction by the District to report the occurrence of any Listed Event, the Dissemination Agent shall provide notice thereof to the MSRB in accordance with Section 5(c) hereof. In the event the Dissemination Agent shall obtain actual knowledge of the occurrence of any of the Listed Events, the Dissemination Agent shall, immediately after obtaining such knowledge, contact the Disclosure Representative, inform such person of the event, and request that the District promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to Section 5(c). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Event shall mean actual knowledge by the Dissemination Agent, if other than the Trustee, and if the Dissemination Agent is the Trustee, then by the officer at the corporate trust office of the Trustee with regular responsibility for the administration of matters related to the Indenture. The Dissemination Agent shall have no responsibility to determine the materiality, if applicable, of any of the Listed Events.

(c) The District, or the Dissemination Agent, if the Dissemination Agent has been instructed by the District to report the occurrence of a Listed Event, shall file a notice of such occurrence with the MSRB in a timely manner not more than ten business days after the occurrence of the event.

Section 6. Termination of Reporting Obligation. The District’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee, upon notice from the District, shall be the Dissemination Agent. The initial Dissemination Agent shall be the Trustee. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this Disclosure Agreement. The Dissemination Agent shall receive compensation for the services provided pursuant to this Disclosure Agreement.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the District and the Dissemination Agent may amend this Disclosure Agreement (and, to the extent that any such amendment does not materially change or increase its obligations hereunder, the Dissemination Agent shall agree to any amendment so requested by the District), and any provision of this Disclosure Agreement may be waived; *provided*, that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Section 3(a), Section 4 or Section 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Filings with the MSRB. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds and upon provision of indemnification satisfactory to the Trustee, shall), or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to

cause the District or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the District or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance hereunder.

Section 12. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if the Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations on liability afforded to the Trustee thereunder. The Dissemination Agent (if other than the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the District 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 any loss, expense and liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

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

To the District:

East Bay Municipal Utility District  
375 Eleventh Street, MS 801  
Oakland, California 94607-4240  
Attention: Treasury Manager  
Phone: 510-287-0231  
Fax: 510-287-0293

To the Dissemination Agent:

The Bank of New York Mellon  
Trust Company, N.A.  
100 Pine Street, Suite 3100  
San Francisco, California 94111  
Phone: 415-263-2420  
Fax: 415-399-1647

Section 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the District, the Trustee, the Dissemination Agent, the Participating Underwriters and the Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.



IN WITNESS WHEREOF, this Disclosure Agreement has been executed on behalf of the District and the Trustee by their duly authorized representatives.

Dated: *[Closing Date]*

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

Dated: *[Closing Date]*

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

By: \_\_\_\_\_  
Milly Canessa  
Vice President

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of District: EAST BAY MUNICIPAL UTILITY DISTRICT

Name of Bond Issue: **[\$*Par Amount*]** East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds, **[*Name of Series*]**  
(the “Bonds”)

Date of Issuance: **[*Closing Date*]**

NOTICE IS HEREBY GIVEN that the East Bay Municipal Utility District (the “District”) has not provided an Annual Report with respect to the above-named bonds as required by Section 3(a) of the Continuing Disclosure Agreement, dated **[*Closing Date*]**, (and effective as of the Date of Issuance) by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and in accordance with Section **[*insert section number*]** of the **[*Number of the Supplemental Indenture*]** Supplemental Indenture, dated as of **[*Supplemental Indenture Date*]**, by and between the District and the Trustee, supplementing the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented and amended, by and between the District and the Trustee, providing for the issuance of the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

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

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee on behalf of the  
District

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

cc: East Bay Municipal Utility District

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_****NEW ISSUE – BOOK ENTRY ONLY****See “RATINGS” herein.**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Tax Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds. See “TAX MATTERS.”*

**[DISTRICT LOGO]**

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

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**

**WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]****Dated: Date of Delivery****Due: June 1, as shown on inside cover**

*This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.*

The East Bay Municipal Utility District (the “District”) is issuing its Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”). The Series [Designation] Bonds will be issued in fully-registered form, without coupons, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series [Designation] Bonds. Beneficial ownership interests in the Series [Designation] Bonds may be purchased in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Interest on the Series [Designation] Bonds is payable semiannually on June 1 and December 1 of each year, commencing \_\_\_\_\_. Principal is payable on June 1 of the years set forth on the inside front cover. The principal of or redemption price of, and interest on, the Series [Designation] Bonds are payable by the Trustee to DTC, which is obligated in turn to remit such principal or redemption price and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

*The Series [Designation] Bonds are subject to redemption prior to maturity as more fully described herein. See “THE SERIES [DESIGNATION] BONDS – Redemption.”*

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of a portion of the District’s outstanding variable rate Wastewater System Revenue Bonds, funding the costs of terminating a portion of certain interest rate swap agreements relating thereto and paying the costs of issuance in connection with the Series [Designation] Bonds, as described herein. See “PLAN OF FINANCE.”

The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Wastewater Revenues as more fully described herein. Subordinated Wastewater Revenues generally consist of the District’s Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of all Wastewater Operation and Maintenance Costs. The Series [Designation] Bonds have been issued on a parity with the District’s Wastewater System Revenue Bonds and Parity Debt heretofore or hereafter issued, as more fully described herein, including certain payment obligations of the District under interest rate swap agreements entered into by the District in connection therewith. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.

**MATURITY SCHEDULE**  
**(SEE INSIDE COVER)**

*The Series [Designation] Bonds will be offered when, as and if issued, subject to the approval of validity by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. It is anticipated that the Series [Designation] Bonds will be available for delivery through the facilities of DTC in New York, New York by Fast Automated Securities Transfer (FAST) on or about \_\_\_\_\_.*

**[UNDERWRITER(S)]**

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

\* Preliminary; subject to change.

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

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

**MATURITY SCHEDULE**

<i><b>Maturity Date</b></i> <i><b>(June 1)</b></i>	<i><b>Principal</b></i> <i><b>Amount</b></i>	<i><b>Interest</b></i> <i><b>Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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<sup>†</sup> CUSIP is a registered trademark of The American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. Neither the District nor the Underwriter(s) assume any responsibility for the accuracy of the CUSIP data.

\* Preliminary; subject to change.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

Alameda and Contra Costa Counties, California

375 - 11th Street

Oakland, California 94607

(866) 403-2683

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**Board of Directors**

Andy Katz, *President*

Katy H. Foulkes, *Vice President*

John A. Coleman

Doug A. Linney

Lesa R. McIntosh

Frank G. Mellon

William B. Patterson

**Management**

Alexander R. Coate, *General Manager*

Jylana D. Collins, *General Counsel*

Eric L. Sandler, *Director of Finance*

Bennett K. Horenstein, *Director of Wastewater*

Xavier J. Irias, *Director of Engineering and Construction*

Carol K. Nishita, *Director of Administration*

Richard G. Sykes, *Director of Water and Natural Resources*

Michael J. Wallis, *Director of Operations and Maintenance*

Lynelle M. Lewis, *Secretary of the District*

Wanda B. Hendrix, *Treasury Manager*

**Co-Bond Counsel**

Fulbright & Jaworski LLP

Los Angeles, California,

a member of Norton Rose Fulbright

Curls Bartling P.C.

Oakland, California

**Financial Advisor**

Montague DeRose and Associates, LLC

Walnut Creek, California

**Trustee**

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

San Francisco, California

**Verification Agent**

[Grant Thornton LLP

Minneapolis, Minnesota]

No dealer, broker, salesperson or other person has been authorized by the District or the Underwriter(s) to give any information or to make any representation other than as set forth herein and, if given or made, such other information or representation must not be relied upon as having been authorized by the District or the Underwriter(s). 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 Series [Designation] Bonds 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 Series [Designation] Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts.

The Underwriter(s) have provided the following sentence for inclusion in this Official Statement:

The Underwriter(s) have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter(s) do not guarantee the accuracy or completeness of such information.

The information set forth in this Official Statement has been obtained from official sources and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter(s). The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District since the date hereof.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The District also maintains a website. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Series [Designation] Bonds.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER(S) MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES [Designation] BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND “FORWARD-LOOKING STATEMENTS.” NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS “ESTIMATE”, “PROJECT”, “ANTICIPATE”, “EXPECT”, “INTEND”, “BELIEVE” AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.**

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## OFFICIAL STATEMENT

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**East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Wastewater System Revenue Refunding Bonds, Series [Designation]**

### INTRODUCTION

*This Introduction is not a summary of this Official Statement, and is qualified by more complete and detailed information contained in the entire Official Statement. A full review should be made of the entire Official Statement, including the cover page and attached appendices. The offering of Series [Designation] Bonds to potential investors is made only by means of the entire Official Statement. Certain definitions of capitalized terms used and not defined herein are set forth in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”*

#### **Purpose**

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning the East Bay Municipal Utility District (the “District”), the wastewater interception, treatment and disposal system owned by the District (the “Wastewater System” or the “System”), and System finances, in connection with the sale of the District’s \$ \_\_\_\_\_\* Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, by and between the District and the Trustee, relating to the Series [Designation] Bonds (as so amended and supplemented, the “Indenture”).

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of a portion of the District’s outstanding variable rate Wastewater System Revenue Bonds (as hereinafter defined), funding the costs of terminating a portion of certain interest rate swap agreements relating thereto and paying the costs of issuance in connection with the Series [Designation] Bonds, as more fully described under “PLAN OF FINANCE” and “ESTIMATED SOURCES AND USES OF FUNDS.”

#### **The District**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California (the “State”). The District is formed under the authority of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State, commencing with Section 11501 (the “Municipal Utility District Act”). Pursuant to the Municipal Utility District Act, the District is empowered to own and operate the Wastewater System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM).” The District also operates a water system.

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\* Preliminary; subject to change.

The Series [Designation] Bonds are not payable from or secured by the revenues of the water system of the District.

### **Security for the Series [Designation] Bonds**

The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of the Subordinated Wastewater Revenues of the District, as defined in the Indenture. Subordinated Wastewater Revenues generally consist of the District's Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of (a) all Wastewater Operation and Maintenance Costs and (b) all amounts required to be paid under the District's Senior Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Wastewater Bonds. **There are no Senior Wastewater Bonds currently outstanding and the District has covenanted pursuant to the Twelfth Supplemental Indenture, dated as of September 15, 2010 (the "Twelfth Supplemental Indenture") that it will not issue any Senior Wastewater Bonds in the future.** Prior to the date of execution and delivery of the Twelfth Supplemental Indenture, all Wastewater System revenue bonds of the District issued under the Indenture were designated "Wastewater System Subordinated Revenue Bonds." Pursuant to the Twelfth Supplemental Indenture, any Wastewater System revenue bonds of the District issued (or remarketed or otherwise reoffered) under the Indenture following the execution and delivery of the Twelfth Supplemental Indenture are designated "Wastewater System Revenue Bonds" in order to reflect that the lien of the Senior Wastewater Bonds has been closed. All Outstanding Wastewater System revenue bonds issued under the Indenture (howsoever designated), together with any additional Wastewater System revenue bonds hereafter issued under the Indenture are secured on a parity from Subordinated Wastewater Revenues and are collectively referred to herein as the "Wastewater System Revenue Bonds." See "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Pledge of Subordinated Wastewater Revenues."

The Series [Designation] Bonds are secured on a parity with the District's other Wastewater System Revenue Bonds to be Outstanding upon the delivery thereof, together with any additional Wastewater System Revenue Bonds thereafter issued, with certain scheduled payments which are payable by the District with respect to certain interest rate swap agreements as described under "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*" and with certain outstanding State Loans as described in APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt," and with any other Parity Debt heretofore or hereafter incurred in accordance with the Indenture. See "SECURITY FOR THE SERIES [Designation] BONDS – Outstanding Wastewater System Revenue Obligations," and "– Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations." As of \_\_\_\_\_, the District had Outstanding \$\_\_\_\_\_ aggregate principal amount of Wastewater System Revenue Bonds (including the \$\_\_\_\_\_ aggregate principal amount of Outstanding Wastewater System Revenue Bonds to be refunded with proceeds of the Series [Designation] Bonds). See also "PLAN OF FINANCE."

The Thirteenth Supplemental Indenture dated as of October 1, 2010 (the "Thirteenth Supplemental Indenture") includes a number of amendments to the Indenture in the manner and effective as of the date described under "AMENDMENTS TO THE INDENTURE."

**NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE DISTRICT IS PLEDGED TO THE PAYMENT OF THE SERIES [Designation] BONDS OR THE INTEREST THEREON.**

## **Rate Covenant**

The District covenants under the Indenture that it will at all times, while any of the Wastewater System Revenue Bonds (including the Series [Designation] Bonds) remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Covenants.” See also “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”

## **Continuing Disclosure**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide certain financial information and operating data relating to the District and the Wastewater System by not later than 180 days following the end of the District’s Fiscal Year (which currently begins on July 1 and ends on June 30 of each year) (the “Annual Report”), commencing with the Annual Report for Fiscal Year [2012-13], and to provide notices of the occurrence of certain specified events. See “CONTINUING DISCLOSURE.” These covenants have been made in order to assist the Underwriter(s) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). See also APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District’s complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District’s complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Wastewater System and the Wastewastewater System was unintentionally omitted from the District’s filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District’s audited financial statements and such information was also routinely made available in the District’s official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District’s Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

## **Professionals Involved in the Issue**

The Bank of New York Mellon Trust Company, N.A. serves as Trustee under the Indenture. Certain legal matters incident to the authorization, issuance and sale of the Series [Designation] Bonds are subject to the approval of Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel, and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. Montague DeRose and Associates, LLC, Walnut Creek, California, is serving as Financial Advisor to the District in connection with the issuance of the Series

[Designation] Bonds. [Grant Thornton LLP, Minneapolis, Minnesota] is serving as Verification Agent in connection with the issuance of the Series [Designation] Bonds.

### **Summaries Not Definitive**

The summaries and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary or reference is qualified in its entirety by reference to each such document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in the Indenture and, as used herein, has the meaning given to it in the Indenture. Unless otherwise indicated, all financial and statistical information herein has been provided by the District.

All references to and summaries of the Indenture, the Escrow Agreement and all documents, statutes, reports and other instruments referred to herein are qualified in their entirety by reference to the full Indenture, the Escrow Agreement and each such document, statute, report or instrument, respectively, copies of which are available for inspection at the offices of the District in Oakland, California, and will be available from the Trustee upon request and payment of duplication costs. Forward looking statements in this Official Statement are subject to risks and uncertainties. Actual results may vary from forecasts or projections contained herein if events and circumstances do not occur as expected, and such variances may be material.

### **Additional Information**

The District regularly prepares a variety of publicly available reports, including audits, budgets and related documents. Any Series [Designation] Bondholder may obtain a copy of any such report, as available, from the Trustee or the District. Additional information regarding this Official Statement may be obtained by contacting the Trustee or Eric L. Sandler, Director of Finance, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607, (510) 287-0310.

## **THE DISTRICT**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California. The District is formed under the authority of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its water system, and sewerage and wastewater interception, treatment and disposal, and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the water system or the Wastewater System.

For information on the District, the Wastewater System and its finances and operations, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” and APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

## PLAN OF FINANCE

### General; Restructuring Plan

The District is restructuring a portion of its outstanding Wastewater System Revenue Bonds in order to reduce the principal amount of its outstanding variable rate bonds and the notional amount of its related interest rate swap agreements the aggregate effect of which is expected to achieve an improved debt service structure and net present value savings.

The issuance of the Series [Designation] Bonds is expected to result in the refunding of \$\_\_\_\_\_ million in principal amount of variable rate Outstanding Wastewater System Revenue Bonds with fixed rate Wastewater System Revenue Bonds and the reduction of \$\_\_\_\_\_ million in notional amount of the associated interest rate swap agreements. The portion of the interest rate swap agreements expected to be terminated represents approximately \_\_\_\_% of the approximately [\$113.4] million notional amount of Wastewater System interest rate swap agreements to which the District was a party as of \_\_\_\_\_. Affiliates to certain of the Underwriter(s) of the Series [Designation] Bonds are also parties to the interest rate swap agreements expected to be terminated in part in connection with the issuance of the Series [Designation] Bonds. See also “SECURITY FOR THE SERIES [DESIGNATION] BONDS – Outstanding Wastewater System Revenue Obligations” and APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt” and “– Variable Rate and Swap Obligations.”

### Refunding of Variable Rate Wastewater System Revenue Bonds

The proceeds of the Series [Designation] Bonds will be applied, together with certain other available funds, to: (i) refund portions of certain series of the District’s outstanding variable rate Wastewater System Revenue Bonds; (ii) fund the costs of termination of portions of certain interest rate swap agreements related thereto; and (iii) fund costs of issuance of the Series [Designation] Bonds.

The following table details the series, maturity dates and principal amounts of the variable rate Wastewater System Revenue Bonds to be refunded.

#### Refunded Bonds

Wastewater System Revenue Bonds Series Designation	Issue Date	Maturity Date	CUSIP	Principal Amount Outstanding	Principal Amount to be Redeemed
[Series 2008C]	March 27, 2008	June 1, 2027 <sup>(1)</sup>	271012DP8	\$ 51,690,000	
[Series 2011A]	January 19, 2011	June 1, 2038 <sup>(2)</sup>	271012DQ6	<u>60,845,000</u>	
<b>Total</b>				\$112,535,000	

<sup>(1)</sup> Portion of the Series 2008C Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

<sup>(2)</sup> Portion of the Series 2011A Term Bond being redeemed is to be credited to the payment of the mandatory sinking fund payments due on June 1 in each of the years \_\_\_\_ to \_\_\_\_.

The Refunded Bonds identified in the table above are expected to be redeemed on or about \_\_\_\_\_ (the “Redemption Date”) at a redemption price of 100% of the principal amount thereof, without premium.

Pursuant to the terms of the Indenture, the refunding of the Refunded Bonds will be effected by depositing a portion of the proceeds of the Series [Designation] Bonds, together with other available monies, in the respective escrow accounts in the escrow fund (the “Escrow Fund”) created and established under the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent, for the Refunded Bonds. Such proceeds and other available monies deposited by the District in the Escrow Fund will be invested in federal securities (the “Escrow Securities”) or held by the Escrow Agent in cash and will be an amount sufficient to pay the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) on the Redemption Date therefor, plus any interest accrued and unpaid thereon. See “ESTIMATED SOURCES AND USES OF FUNDS” and “– Verification” below.

Upon such deposit and investment and compliance with or provision for compliance with certain notice requirements set forth in the Indenture, the liability of the District with respect to the Refunded Bonds will cease and the Refunded Bonds will no longer be Outstanding under the Indenture except that the Owners of the Refunded Bonds will be entitled to payment thereof solely from the amounts on deposit in the Escrow Fund held by the Escrow Agent.

**Verification.** [Grant Thornton LLP], independent certified public accountants, will verify, from the information provided to them, the mathematical accuracy as of the date of the closing of the Series [Designation] Bonds of computations relating to the adequacy of the cash deposited and held in the Escrow Fund under the Escrow Agreement for the Refunded Bonds, together with the maturing principal amounts of and interest earned on the Escrow Securities, if any, to pay the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) on the Redemption Date therefor, plus any interest accrued and unpaid thereon. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS.”

## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Series [Designation] Bonds are as follows:

### **Sources**

Principal Amount	
[Original Issue Premium/Discount]	
Transfer from Refunded Bonds	
Reserve Fund Releases	
[District Contribution]	
Total	<hr/> <hr/>

### **Uses**

Deposit to Escrow Fund	
Swap Termination Payments <sup>(1)</sup>	
Underwriter(s)' Discount	
Costs of Issuance <sup>(2)</sup>	
Total	<hr/> <hr/>

<sup>(1)</sup> Includes accrued amounts payable to the swap termination date.

<sup>(2)</sup> Includes legal, financing and consulting fees, rating agency fees, printing costs and other miscellaneous expenses.

## THE SERIES [DESIGNATION] BONDS

### General Description

The Series [Designation] Bonds will be issued in the aggregate principal amounts, will bear interest at the rates and will mature in the years and amounts all as set forth on the inside cover page of this Official Statement. The Series [Designation] Bonds will be issued in denominations of \$5,000 principal amount or any integral multiple thereof. The Series [Designation] Bonds will be dated, and shall bear interest from, their date of delivery. Interest on the Series [Designation] Bonds is payable on each June 1 and December 1, commencing on \_\_\_\_\_, and will be computed on the basis of a 360-day year of twelve 30-day months. The Series [Designation] Bonds will be issued as fully registered bonds in book-entry form only and when delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Series [Designation] Bonds. So long as DTC, or its nominee, Cede & Co., is the registered owner of the Series [Designation] Bonds, all payments of principal of or redemption price of, and interest on, the Series [Designation] Bonds will be made directly to DTC, which is obligated in turn to remit such principal or redemption price and interest to its DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

### Redemption

**Optional Redemption.** The Series [Designation] Bonds maturing on or before June 1, 20\_\_\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

**Mandatory Redemption.** The Series [Designation] Bonds are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below at the principal amount of each Series [Designation] Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

<i>Mandatory Sinking Account Payment Dates (June 1)</i>	<i>Mandatory Sinking Account Payments</i>	<i>Mandatory Sinking Account Payment Dates (June 1)</i>	<i>Mandatory Sinking Account Payments</i>
	\$		\$

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† Final Maturity.

***Notice of Redemption.*** Notice of redemption of the Series [Designation] Bonds shall be mailed by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to DTC or, if the book-entry system as described in Appendix E has been discontinued, by first-class mail, to the respective Owners of any Series [Designation] Bonds designated for redemption in the manner and under the terms and conditions provided in the Indenture. Failure by any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

In the event of an optional redemption of Series [Designation] Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

***Selection of Bonds for Redemption.*** Whenever provision is made in the Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee will select the Series [Designation] Bonds of such maturity to be redeemed from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion deems appropriate and fair.

***Effect of Redemption.*** If notice of redemption is given as provided in the Indenture, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, then on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption will become due and payable at the Redemption Price specified in the notice of redemption, together with interest accrued thereon to the date fixed for redemption, interest on such Series [Designation] Bonds so called for redemption will cease to accrue, the Series [Designation] Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture and the owners of the Series [Designation] Bonds (or portions thereof) will have no rights in respect thereof except to receive payment of the Redemption Price plus accrued interest.

## **SECURITY FOR THE SERIES [DESIGNATION] BONDS**

### **General**

***Authority for Issuance.*** The Series [Designation] Bonds were issued pursuant to the Municipal Utility District Act and all laws of the State amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), resolutions adopted by the District and the Indenture. By Resolution No. 33607-07 adopted by the Board of Directors of the District on June 12, 2007, the Board declared its intention to issue up to \$100,000,000 of Wastewater System revenue bonds, of which [\$4,360,000] of authorization for Wastewater System revenue bonds remains unissued under Resolution No. 33607-07. By Resolution No. 33781-10, adopted by the Board of Directors of the District on September 14, 2010, the Board declared its intention to issue up to \$200,000,000 of additional future Wastewater System revenue bonds, of which [\$200,000,000] of authorization for Wastewater System revenue bonds remains unissued under Resolution No. 33781-10. The District has heretofore and may from time to time hereafter adopt other resolutions authorizing the issuance of additional Wastewater System revenue bonds or other Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. The issuance of revenue bonds by the District is not subject to prior voter approval, although such bond resolutions are



subject to a sixty (60) day referendum period (which, with respect to bonds to be issued pursuant to Resolution No. 33607-07 and/or Resolution No. 33781-10 expired without challenge). See “ – Outstanding Wastewater System Revenue Obligations” below.

***Amendments to the Indenture.*** The Thirteenth Supplemental Indenture includes a number of amendments to the Indenture in the manner and effective as of the date described under “AMENDMENTS TO THE INDENTURE.” See also APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

### **Pledge of Subordinated Wastewater Revenues**

Pursuant to the Indenture, the District has irrevocably pledged to the payment of the principal or redemption price of and interest on the Wastewater System Revenue Bonds, including the Series [Designation] Bonds and any Parity Debt, all Subordinated Wastewater Revenues (as hereinafter defined) and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

“Subordinated Wastewater Revenues” is generally defined in the Indenture to mean, for any fiscal period, the sum of (a) all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any monies in any fund or account established under the Senior Wastewater Bond Resolution relating to the District’s Senior Wastewater Bonds or under the Indenture (collectively “Wastewater Revenues”) for such fiscal period, plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund established under the Senior Wastewater Bond Resolution for treatment as Wastewater Revenues for such fiscal period, less the sum of (c) all Wastewater Operation and Maintenance Costs (as hereinafter defined) for such fiscal period, (d) the amounts, if any, withdrawn by the District from Wastewater Revenues for such fiscal period for deposit in the Rate Stabilization Fund, and (e) all amounts required to be paid under the Senior Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Wastewater Bonds as the same become due and payable. **There are no Senior Wastewater Bonds currently outstanding and the District has covenanted pursuant to the Twelfth Supplemental Indenture that it will not issue any Senior Wastewater Bonds in the future.** See “Outstanding Wastewater System Revenue Obligations – *No Senior Wastewater Bonds*” below.

The District may deposit into, or withdraw amounts from time to time held in, the Rate Stabilization Fund within 120 days after the end of the applicable Fiscal Year. Amounts deposited into the Rate Stabilization Fund shall be deducted from Wastewater Revenues for such Fiscal Year. Amounts withdrawn from the Rate Stabilization Fund shall be included in Wastewater Revenues for such Fiscal Year and may be applied for any purposes for which Wastewater Revenues generally are available. All interest and earnings upon deposits in the Rate Stabilization Fund will not be held therein, but will be treated and accounted for as Wastewater Revenues. The amount on deposit in the Rate Stabilization Fund as of [June 30, 2013] was \$15,000,000.

“Wastewater Operation and Maintenance Costs” is generally defined in the Indenture to mean the reasonable and necessary costs of maintaining and operating the Wastewater System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of

intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Wastewater Revenues and therefore payable on a parity with the Wastewater System Revenue Bonds (whether or not any Wastewater System Revenue Bonds are Outstanding).

The Series [Designation] Bonds are not payable from or secured by the revenues of the water system of the District.

**The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Wastewater Revenues. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.**

#### **Allocation of Subordinated Wastewater Revenues Under the Indenture**

In accordance with the Indenture, all Subordinated Wastewater Revenues, when and as received by the District, shall be deposited into a fund to be established and maintained by the District designated as the “Revenue Fund”. So long as any Wastewater System Revenue Bonds are Outstanding, the District will transfer the monies in the Revenue Fund into the following respective funds (established, maintained and held by the Trustee in trust for the benefit of the Owners of the Wastewater System Revenue Bonds) in the following order of priority; provided, that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which deposits shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Wastewater System Revenue Bonds and such Parity Debt):

***Interest Fund.*** The District will transfer to the Trustee to be set aside in the Interest Fund on or before the Business Day prior to each interest payment date an amount equal to the interest becoming due and payable on the Outstanding Wastewater System Revenue Bonds (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any Series of Wastewater System Revenue Bonds or other source to pay such interest).

***Principal Fund; Sinking Accounts.*** The District shall transfer to the Trustee to be set aside in the Principal Fund on or before the Business Day prior to each principal or sinking account payment date an amount equal to the amount of Bond Obligation (as defined in the Indenture) plus the Mandatory Sinking Account Payments becoming due and payable on such date. All Mandatory Sinking Account Payments shall be made without priority of any payment into any one such sinking account over any other such payment.

***Bond Reserve Funds.*** Upon the occurrence of any deficiency in any bond reserve fund established pursuant to the Indenture for any Series of Wastewater System Revenue Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such bond reserve fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from such bond reserve fund until there is on deposit in such bond reserve fund an amount equal to the respective reserve requirement for such bond reserve fund. There is no bond reserve fund being established in connection with the Series [Designation] Bonds and amounts on deposit in any bond reserve fund for any other series of Wastewater System

Revenue Bonds are not available for the payment of, and do not in any manner secure, the Series [Designation] Bonds.

The requirements of each such fund (including the making up of any deficiencies in any such fund resulting from a lack of Subordinated Wastewater Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any other fund subsequent in priority. The Indenture provides that any Subordinated Wastewater Revenues remaining in the Revenue Fund after the foregoing transfers, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of the Indenture by the District. The District may use and apply such Subordinated Wastewater Revenues for any lawful purpose of the District, including the redemption of Wastewater System Revenue Bonds upon the terms and conditions set forth in a Supplemental Indenture relating to such Wastewater System Revenue Bonds and the purchase of Wastewater System Revenue Bonds as and when and at such prices as it may determine.

Under the Indenture the District may enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Wastewater System Revenue Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such an interest rate swap agreement may be applied to the deposits required under the Indenture. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Wastewater Revenues and other assets pledged under the Indenture to the Wastewater System Revenue Bonds on a parity basis therewith.

For further information regarding the allocation of Subordinated Wastewater Revenues with respect to the Wastewater System Revenue Bonds, see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Allocation of Subordinated Wastewater Revenues.”

### **Investment of Monies in Funds and Accounts Under the Indenture**

All monies held in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District, solely in Investment Securities (see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Investment Securities under the Indenture). If and to the extent the Trustee does not receive investment instructions from the District with respect to the monies in such funds and accounts, such monies shall be invested in a cash sweep or similar account arrangement of or available to the Trustee described in clause (xi) of the definition of Investment Securities.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of monies in any fund or account other than the Rebate Fund shall be transferred to the Revenue Fund when received; provided, however, that an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

### **Rate Covenant**

The District has covenanted under the Indenture that it will, at all times while any of the Wastewater System Revenue Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF

CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Debt Service under the Indenture. See also “AMENDMENTS TO THE INDENTURE.”

### **Outstanding Wastewater System Revenue Obligations**

***No Senior Wastewater Bonds.*** Pursuant to Resolution No. 30051 adopted by the Board of Directors of the District on January 26, 1982 (as amended and supplemented, the “Senior Wastewater Bond Resolution”), the District authorized the issuance, from time to time, of bonds of the District designated as “East Bay Municipal Utility District Wastewater Treatment System Revenue Bonds” (the “Senior Wastewater Bonds”) and secured by a pledge of, and first lien on, the Net Revenues (as defined in the Senior Wastewater Bond Resolution) of the District’s Wastewater System, generally being all of the Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) after payment of Wastewater Operation and Maintenance Costs thereof, all on the terms and conditions set forth in the Senior Wastewater Bond Resolution. At the time of the initial execution and delivery of the Indenture in 1990, the Indenture did not preclude the District from issuing additional Senior Wastewater Bonds pursuant to the Senior Wastewater Bond Resolution. The District last issued Senior Wastewater Bonds in 1986 and all outstanding Senior Wastewater Bonds were retired in 1997. **There are currently no Senior Wastewater Bonds outstanding. Pursuant to the Twelfth Supplemental Indenture, the District has covenanted and agreed that it will not issue any Senior Wastewater Bonds in the future pursuant to the Senior Wastewater Bond Resolution.**

***Outstanding Wastewater System Revenue Bonds and Parity Debt.*** As of [June 30, 2013], the District had outstanding [\$430,160,000] aggregate principal amount of Wastewater System Revenue Bonds (collectively, the “Outstanding Wastewater System Revenue Bonds”) issued under and pursuant to the Indenture. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt.”

Approximately [\$112,535,000] principal amount of the Outstanding Wastewater System Revenue Bonds are variable rate obligations which are subject to tender prior to maturity in accordance with their terms (\$\_\_\_\_\_ principal amount of which is being refunded by the Series [Designation] Bonds). In connection with the [\$60,845,000] principal amount of such variable rate Outstanding Wastewater System Revenue Bonds (being the District’s Wastewater System Revenue Refunding Bonds, Series 2011A Bonds (\$\_\_\_\_\_ principal amount of which is being refunded by the Series [Designation] Bonds)), the District is solely obligated to provide funds (which may include remarketing or refunding proceeds) for the payment upon the mandatory tender thereof and failure of the District to provide such funds will constitute an Event of Default under the Indenture.

In connection with [\$51,690,000] principal amount of its variable rate Outstanding Wastewater System Revenue Bonds (being the District’s Wastewater System Revenue Refunding Bonds, Series 2008C (\$\_\_\_\_\_ principal amount of which is being refunded by the Series [Designation] Bonds)), the District has entered into a liquidity agreement with a bank to provide a liquidity facility for such variable rate Wastewater System Revenue Bonds upon tender thereof. The obligation of the District to repay any draws on such liquidity facility is payable on a parity with the Outstanding Wastewater System Revenue Bonds to the extent such repayment is not thereafter provided from remarketing proceeds of the related Wastewater System Revenue Bonds. Unreimbursed draws under the liquidity facility supporting such variable rate Wastewater System Revenue Bonds bear interest at a maximum rate that may be substantially in excess of the current interest rate on the related variable rate Wastewater System Revenue Bonds. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity facility may result in the acceleration of the scheduled payment of principal on such variable rate Wastewater System Revenue Bonds. See Table 11 in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Variable

Rate and Swap Obligations” for additional information regarding the liquidity facility provider and the expiration date of the related liquidity facility.

In addition to the Outstanding Wastewater System Revenue Bonds, the District has outstanding certain interest rate swap agreements, the scheduled payments under which are payable from Subordinated Wastewater Revenues on a parity with the Wastewater System Revenue Bonds, as described below. See “*Interest Rate Swap Agreements*.” The Outstanding Wastewater System Revenue Bonds (including the Series [Designation] Bonds), together with any additional Wastewater System Revenue Bonds issued under the Indenture, and any Parity Debt heretofore or hereafter issued or incurred in accordance with the Indenture, are on a parity with the Series [Designation] Bonds as to the pledge of and lien on Subordinated Wastewater Revenues.

***Interest Rate Swap Agreements.*** As of [June 30, 2013], the District had outstanding interest rate swap agreements relating to variable rate Outstanding Wastewater System Revenue Bonds (hereinafter collectively, the “Wastewater Interest Rate Swap Agreements”) with various counterparties (collectively, the “Swap Providers”) in the aggregate notional amount of [\$113,415,000]. The Wastewater Interest Rate Swap Agreements were entered into to hedge the interest rate exposure on the related variable rate Wastewater System Revenue Bonds by synthetically converting the variable interest rate payments that the District is obligated to make with respect to the related Wastewater System Revenue Bonds into substantially fixed payments. In general, the terms of the Wastewater Interest Rate Swap Agreements provide that, on a same-day net-payment basis determined by reference to a notional amount, the District will pay a fixed interest rate on the respective notional amount. In return, the applicable Swap Providers will pay a variable rate of interest (determined as a specified percentage of an interest rate index) on a like notional amount.

There is no guarantee that the floating rate payable to the District pursuant to each of the Wastewater Interest Rate Swap Agreements will match the variable interest rate on the associated Wastewater System Revenue Bonds to which the respective Wastewater Interest Rate Swap Agreement relates at all times or at any time. Since the respective effective dates of the Wastewater Interest Rate Swap Agreements, the floating rates payable to the District pursuant to the Wastewater Interest Rate Swap Agreements have generally not matched the variable interest rates on the associated Wastewater System Revenue Bonds. To the extent that the Swap Providers are obligated to make a payment to the District under their respective Wastewater Interest Rate Swap Agreement that is less than the interest due on the associated Wastewater System Revenue Bonds to which such Wastewater Interest Rate Swap Agreement relates, the District is obligated to pay such insufficiency from Subordinated Water Revenues.

The obligation of the District to make regularly scheduled payments to the Swap Providers under the respective Wastewater Interest Rate Swap Agreements is on a parity with the District’s obligation to make payments on the Wastewater System Revenue Bonds, including the Series [Designation] Bonds. Under certain circumstances, the Wastewater Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the Swap Providers. Pursuant to the Wastewater Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Series [Designation] Bonds but prior to the District’s Extendable Municipal Commercial Paper Notes (Wastewater Series).

Pursuant to the terms of certain of the Wastewater Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District’s total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Wastewater Interest Rate Swap Agreement.

See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Variable Rate and Swap Obligations” for additional information regarding the Wastewater Interest Rate Swap Agreements, including the District’s collateral posting obligations in connection therewith.

The District may, from time-to-time, enter into additional interest rate swap agreements with security and payment provisions as determined by the District and subject to any conditions contained in the Indenture.

***Parity State Loans.*** The District participates in the State of California’s State Water Resources Control Board (the “SWRCB”) low interest rate loan program, which was established to provide below-market rate financing for qualified water resource projects in the State. Under this program, the District has from-to-time entered into loan contracts with the SWRCB (the “State Loans”) payable from the Wastewater Revenues. The District currently has no State Loans payable from Wastewater Revenues outstanding.

State Loans entered into from and after January 1993 provide that such State Loans shall be either senior to or on a parity with all future debt of the recipient thereof. Any future State Loans received by the District would likely constitute Parity Debt under the Indenture.

***Subordinate Commercial Paper.*** The District has maintained a commercial paper note program since 1988. In March 2009, the District implemented an extendable municipal commercial paper note program for the purpose of retiring its then existing commercial paper note program. As of [June 30, 2013], the District had outstanding \$15,000,000 aggregate principal amount of tax-exempt Extendable Municipal Commercial Paper Notes (Wastewater Series). See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt” for a description of the District’s extendable municipal commercial paper note program.

### **Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations**

The Indenture provides conditions under which additional Series of Wastewater System Revenue Bonds or other Parity Debt payable from Subordinated Wastewater Revenues may be issued on a parity with the Outstanding Wastewater System Revenue Bonds. Among other conditions, the Indenture requires that the District shall have placed on file with the Trustee a certificate of the District certifying that the sum of: (1) the Subordinated Wastewater Revenues for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Wastewater System Revenue Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Wastewater Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Wastewater Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Wastewater System Revenue Bonds due to improvements to the Wastewater System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Wastewater System Revenue Bonds, shall have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt then Outstanding and the additional Wastewater System Revenue Bonds or Parity Debt then proposed to be issued. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions.”

Refunding Wastewater System Revenue Bonds may be authorized and issued by the District without compliance with the provisions described above, subject to the terms and conditions of the Indenture, including the condition that Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt outstanding following the issuance of such refunding Wastewater System Revenue Bonds is less than or equal to Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt outstanding prior to the issuance of such refunding Wastewater System Revenue Bonds. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Refunding Bonds.”

Pursuant to the Indenture, the District may incur obligations which are junior and subordinate to the payment of the principal, redemption price, interest and reserve fund requirements for the Wastewater System Revenue Bonds and all Parity Debt and which subordinated obligations are payable as to principal, redemption price, interest and reserve fund requirements, if any, only out of Subordinated Wastewater Revenues after the prior payment of all amounts then required to be paid under the Indenture from Subordinated Wastewater Revenues for principal, redemption price, interest and reserve fund requirements for the Wastewater System Revenue Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in the Indenture or the instrument authorizing such Parity Debt, as applicable.

### **Limitations on Remedies**

The ability of the District to comply with its covenants under the Indenture and to generate Wastewater Revenues sufficient to pay the principal of and interest on the Series [Designation] Bonds may be adversely affected by actions and events outside of the control of the District. Furthermore, any remedies available to the owners of the Series [Designation] Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition, enforceability of the rights and remedies of the Owners of the Series [Designation] Bonds, and the obligations incurred by the District under the Series [Designation] Bonds and the Indenture, 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 Series [Designation] Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

### **AMENDMENTS TO THE INDENTURE**

The Thirteenth Supplemental Indenture includes a number of amendments to the Indenture which will become effective upon the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2007A Bonds, Series 2007B Bonds, Series 2008B Bonds and Series 2008C Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture (all of which Series 2008B Bonds have been retired) and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Thirteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation

then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

As modified, the term “Annual Debt Service” shall mean, for any Fiscal Year, the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

As modified, the term “Assumed Debt Service” shall mean for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

As modified, the term “Debt Service” shall mean the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt provided, however, that for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Wastewater Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;



(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Wastewater Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest rate on such Wastewater Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest on such Wastewater Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Wastewater Revenues on parity with the lien of the Wastewater Bonds, Bonds or

Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Wastewater Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Wastewater Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Wastewater Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Wastewater Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

As modified, the term “Maximum Annual Debt Service” shall mean the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

The term “SIFMA Municipal Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

As modified, the term “Wastewater Revenues” shall mean all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any moneys in any fund or account established under the Senior Wastewater Bond Resolution or this Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code or any future similar program.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS**

### **Tax Limitations – Proposition 13**

Article XIII A of the State Constitution, 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 1% of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State statutes. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to *ad valorem* taxes levied to pay interest or redemption charges on (1) indebtedness approved by the voters prior to July 1, 1978, and (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the 1975-76 Fiscal Year 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 2% per year, or to reflect a reduction in the consumer price index or comparable data for the 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 to pay debt service on indebtedness approved by the voters as described above. Such legislation further provides that each county will levy the maximum tax permitted by Article XIII A, which is \$1.00 per \$100 of assessed market value. The legislation further establishes the method for allocating the taxes collected by each county among the taxing agencies in the county. Special districts, such as the District, receive an allocation that is based primarily upon their tax levies in certain years prior to the amendment's effective date relative to the tax levies of other congruent agencies. The District receives approximately 1.25% of the non-debt service property taxes collected within its jurisdiction from Alameda and Contra Costa counties. See, however, APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Property Tax Revenues" for a discussion of the borrowing by the State of certain property tax revenues of local jurisdictions for Fiscal Year 2009-10.

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.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the 2% annual adjustment are allocated among the various jurisdictions in the "taxing area" based upon their respective "situs." Any such allocation made to a local agency continues as part of its allocation in future years.

The effect of Article XIII A on the District's finances has been to restrict ad valorem tax revenues for general purposes to the statutory allocation of the 1% levy while leaving intact the power to levy ad valorem taxes in whatever rate or amount may be required to pay debt service on its outstanding general obligation bonds and unissued bonds authorized prior to July 1, 1978. Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

For a description of the property tax collection procedure and certain statistical information concerning tax collections and delinquencies, see APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Property Tax Revenues."

### **Spending Limitations**

At the statewide special election of November 6, 1979, the voters approved an initiative entitled "Limitation of Government Appropriations" which added Article XIII B to the California Constitution. Under Article XIII B, State and local governmental entities have an annual "appropriations limit" which limits the ability to spend certain monies which are called "appropriations subject to limitation" (consisting of tax revenues, state subventions and certain other funds) in an amount higher than the "appropriations." Article XIII B does not affect the appropriation of monies which are excluded from the definition of "appropriations subject to limitation." Among the exclusions is an "appropriation of any special district which existed on January 1, 1978, and which did not as of the 1977-78 Fiscal Year levy an *ad valorem* tax on property in excess of 12.5 cents per \$100 of assessed value." In the opinion of the District's General Counsel, the appropriations of the District are excluded from the limitations of Article XIII B under this clause.

## Proposition 62

A statutory initiative (“Proposition 62”) was adopted by the voters voting in the State at the November 4, 1986 General Election which (1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity, (2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction, (3) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (4) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIII A, (5) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities and (6) requires that any tax imposed by a local governmental entity on or after March 1, 1985 be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

## Proposition 218

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 governments to levy and collect both existing and future taxes, assessments, fees and charges.

**Article XIII D.** Article XIII D established procedural requirements for imposition of assessments, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the assessment, with each ballot weighted according to the proportional financial obligation of the affected parcel. The District does not currently impose standby charges or assessments for its Wastewater System.

Article XIII D conditions the imposition or increase of any “fee” or “charge” upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIII D defines “fee” or “charge” to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIII D is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and mailed notice sent to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

Based upon the California Court of Appeal’s decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles*, 85 Cal. App. 4th 79 (2000), it was generally believed that Article XIII D did not apply to wastewater rates and charges, which had been held to be commodity charges related to consumption of the service, not property ownership. In a decision rendered in February, 2004, the California Supreme Court in *Richmond et al. v. Shasta Community Services District*, 32 Cal. 4th 409, upheld a Court of Appeal decision that water connection fees were not property related fees or charges subject to Article XIII D, while at the same time stating in dicta that fees for ongoing water service through an existing connection were property related fees and charges. In October 2004, the California

Supreme Court granted review of the decision of the Fourth District Court of Appeal in *Bighorn-Desert View Water Agency v. Beringson*, 120 Cal. App. 4th 891 (2004), in which the appellate court had relied on *Howard Jarvis Taxpayers Association v. City of Los Angeles* and rejected the California Supreme Court's dicta in *Richmond et al. v. Shasta Community Services District*.

On March 23, 2005, the California Fifth District Court of Appeal published *Howard Jarvis Taxpayers Association v. City of Fresno*, 127 Cal.App.4th 914 (5th Dist. 2005), concluding that in lieu fees charged as a component of utility service charges are subject to the requirements of Proposition 218. The ruling in *City of Fresno* relies in part on the *Richmond* decision's dicta and appears to conflict with *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles*, 24 Cal.4th 830 (2001), in which the California Supreme Court ruled that the property-related fee provisions of Proposition 218 apply only to fees triggered by property ownership alone and not by voluntary conduct of the property owner, such as consuming utility services. The City of Fresno requested a review of this decision by the California Supreme Court, which denied review. On July 24, 2006, the California Supreme Court ruled in *Bighorn-Desert View Water Agency v. Verjil*. In dicta, the California Supreme Court repeated its previous dicta in *Richmond et al. v. Shasta Community Services District* that fees and charges for ongoing water service through an existing connection were property related fees and charges under Article XIID. Prior to 2007, the District did not comply with the notice, hearing and protest procedures in Article XIII with respect to wastewater rate increases based on the decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles*. However, the District has followed the notice, hearing and protest procedures in Article XIID in connection with wastewater rate increases since the Fiscal Year 2008 rate increases and plans to follow such notice, hearing and protest procedures in connection with future rate increases.

In addition to the procedural requirements of Article XIID, under Article XIID all property-related fees and charges, including those which were in existence prior to the passage of Proposition 218 in November 1996, must meet the following substantive standards:

- (1) Revenues derived from the fee or charge cannot exceed the funds required to provide the property-related service.
- (2) Revenues derived from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, must be classified as assessments and cannot be imposed without compliance with Section 4 of Article XIID (relating to assessments).
- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

The District believes that its rates comply with the foregoing standards.

Article XIID provides that nothing in Proposition 218 shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development.

**Article XIII C.** Article XIII C provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIII C does not define the terms “local tax,” “assessment,” “fee” or “charge.” On July 24, 2006, the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil* that the provisions of Article XIII C applied to rates and fees charged for domestic water use. In the decision, the Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District and its General Counsel do not believe that Article XIII C grants to the voters within the District the power to repeal or reduce rates and charges in a manner that would be inconsistent with the contractual obligations of the District. No assurance can be given that the voters of the District will not, in the future, approve initiatives which seek to repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the District’s wastewater service fees and charges, which are the source of Wastewater Revenues pledged to the payment of debt service on the Series [Designation] Bonds.

The interpretation and application of Proposition 218 will likely be subject to further judicial determinations, and it is not possible at this time to predict with certainty the outcome of such determinations.

### **Proposition 26**

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIII A and XIII C. The proposition imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes. Proposition 26, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIII A, XIII C and XIII D pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the State or local government of providing the service or product to the payor. The District believes that the initiative is not intended to and would not apply to fees for utility services charged by special districts such as the District. The District, however, is unable to predict whether Proposition 26 will be interpreted by the courts to apply to the provision of utility services by local governments such as the District.

### **Other Initiatives**

Articles XIII A, XIII B, XIII C and XIII D and Propositions 62 and 26 were adopted as measures that qualified for the ballot pursuant to California’s initiative process. From time to time other initiatives have been and could be proposed and adopted affecting the District’s revenues or ability to increase revenues. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by the District.

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide in an annual report certain financial information and operating data relating to the District (the “Annual Report”) by not later than 180 days following the end

of the District's fiscal year (which currently is June 30 of each year), commencing with the Annual Report for Fiscal Year \_\_\_\_\_, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Trustee on behalf of the District with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The Municipal Securities Rulemaking Board has made such information available to the public without charge through such internet portal. The specific nature of the information to be contained in the Annual Report and the notices of specified events is set forth in APPENDIX F – "FORM OF CONTINUING DISCLOSURE AGREEMENT."

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District's complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District's complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Wastewater System and the Wastewastewater System was unintentionally omitted from the District's filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District's audited financial statements and such information was also routinely made available in the District's official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District's Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

#### **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

[Grant Thornton LLP, Minneapolis, Minnesota,] a firm of independent certified public accountants, will verify the accuracy of the mathematical computations concerning the adequacy of the cash deposited and held in the Escrow Fund for the Refunded Bonds, together with the maturing principal amounts of and interest earned on the Escrow Securities, if any, to pay the redemption price of the Refunded Bonds (*i.e.*, 100% of the principal amount thereof) on the Redemption Date therefor, plus any interested accrued and unpaid thereon.

The report of [Grant Thornton LLP] will include the statement that the scope of their engagement was limited to verifying the mathematical accuracy of the computations contained in such schedules provided to them and that they have no obligation to update their report because of events occurring, or data or information coming to their attention, subsequent to the date of their report.

#### **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the District in the execution or delivery of, or in any way contesting or affecting the validity of, the Series [Designation] Bonds. There is no litigation known to be pending, or to the knowledge of the District, threatened, questioning the existence of the District or the title of the officers of the District to their respective offices.

There exist lawsuits and claims against the District, which are incidental to the ordinary course of operations of the Wastewater System. In the view of the District's management and General Counsel, there is no litigation, present or pending, which will individually or in the aggregate materially impair the District's ability to service its indebtedness or to expend the proceeds for the purposes for which the

Series [Designation] Bonds are authorized or which will have a material adverse effect on the business operations of the District. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” for a discussion of certain pending litigation.

## **RATINGS**

Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business (“S&P”), Fitch Ratings, Inc. (“Fitch”) and Moody’s Investors Service, Inc. (“Moody’s”) have assigned the Series [Designation] Bonds the ratings of “\_\_\_\_\_,” “\_\_\_\_\_” and “\_\_\_\_\_,” respectively. No application has been made to any other rating agency for the purpose of obtaining any additional rating on the Series [Designation] Bonds. Any desired explanation of such ratings should be obtained from the rating agency furnishing the same. Generally, rating agencies base their ratings on information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. There is no assurance that any rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in the judgment of such rating agency, circumstances so warrant. Any such change in or withdrawal of such ratings may have an adverse effect on the market price of the Series [Designation] Bonds.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s) (“Special Tax Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Special Tax Counsel is set forth in APPENDIX D.

To the extent the issue price of any maturity of the Series [Designation] Bonds is less than the amount to be paid at maturity of such Series [Designation] Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series [Designation] Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each beneficial owners thereof, is treated as interest on the Series [Designation] Bonds which is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series [Designation] Bonds is the first price at which a substantial amount of such maturity of the Series [Designation] Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of Underwriter(s), placement agents or wholesalers). The original issue discount with respect to any maturity of the Series [Designation] Bonds accrues daily over the term to maturity of such Series [Designation] Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series [Designation] Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series [Designation] Bonds. Beneficial owners of the Series [Designation] Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series [Designation] Bonds with original issue discount, including the treatment of beneficial owners who do not purchase such Series [Designation] Bonds in the original offering to the



public at the first price at which a substantial amount of such Series [Designation] Bonds is sold to the public.

Series [Designation] Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (the “Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of Series [Designation] Bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a beneficial owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such beneficial owner. Beneficial owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series [Designation] Bonds. The District has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series [Designation] Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series [Designation] Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Series [Designation] Bonds. The opinion of Special Tax Counsel assumes the accuracy of these representations and compliance with these covenants. Special Tax Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Special Tax Counsel’s attention after the date of issuance of the Series [Designation] Bonds may adversely affect the value of, or the tax status of interest on, the Series [Designation] Bonds. Accordingly, the opinion of Special Tax Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Special Tax Counsel is of the opinion that interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds may otherwise affect a beneficial owner’s federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the beneficial owner or the beneficial owner’s other items of income or deduction. Special Tax Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series [Designation] Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. As one example, the Obama Administration recently announced a legislative proposal which, for tax years beginning on or after January 1, 2013, generally would limit the exclusion from gross income of interest on obligations like the Series [Designation] Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. Other proposals have been made that could significantly reduce the benefit of, or otherwise affect, the exclusion from gross income of interest on obligations like the Series [Designation] Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series [Designation] Bonds. Prospective purchasers of the Series [Designation] Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, and regarding the impact of future legislation, regulations or litigation, as to which Special Tax Counsel expresses no opinion.

The opinion of Special Tax Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Special Tax Counsel's judgment as to the proper treatment of the Series [Designation] Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Special Tax Counsel cannot give and has not given any opinion or assurance about the future activities of the District, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The District has covenanted, however, to comply with the requirements of the Code.

Special Tax Counsel's engagement with respect to the Series [Designation] Bonds ends with the issuance of the Series [Designation] Bonds, and, unless separately engaged, Special Tax Counsel is not obligated to defend the District or the beneficial owners regarding the tax-exempt status of the Series [Designation] Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the District and their appointed counsel, including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the District legitimately disagree, may not be practicable. Any action of the IRS, including but not limited to selection of the Series [Designation] Bonds for audit, or the course or result of such audit, or an audit of Series [Designation] Bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series [Designation] Bonds, and may cause the District or the beneficial owners to incur significant expense.

## **UNDERWRITING**

The Series [Designation] Bonds will be purchased by \_\_\_\_\_, [as representative of itself and the other underwriters of the Series [Designation] Bonds listed on the cover page hereof] (the "Underwriter(s)"), pursuant to and subject to the conditions set forth in the bond purchase contract between the District and the Underwriter(s), at a purchase price of \$\_\_\_\_\_ (equal to the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds, less an Underwriter(s)' discount of \$\_\_\_\_\_, [plus/less original issue premium/discount of \$\_\_\_\_\_]). The bond purchase contract provides that the Underwriter(s) will purchase all of the Series [Designation] Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the bond purchase contract.

The Underwriter(s) may offer and sell the Series [Designation] Bonds to certain dealers (including dealers depositing Series [Designation] Bonds into investment trusts) and others at prices lower than the respective public offering prices stated or derived from information stated on the inside cover page hereof. The initial public offering prices may be changed from time to time by the Underwriter(s).

Certain of the Underwriter(s) have entered into distribution agreements with other broker-dealers (that have not been designated by the District as Underwriter(s)) for the distribution of the Series [Designation] Bonds at the original public offering prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation with such broker-dealers.

## **APPROVAL OF LEGAL PROCEEDINGS**

All legal matters incident to the offering of the Series [Designation] Bonds are subject to the approval of legality by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by their counsel, Orrick, Herrington & Sutcliffe LLP, San Francisco, California. The form of approving opinion of Co-Bond

Counsel and the form of opinion to be delivered by Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), in connection with the issuance of the Series [Designation] Bonds are included as APPENDIX D to this Official Statement.

### **FINANCIAL ADVISOR**

The District has retained Montague DeRose and Associates, LLC, Walnut Creek, California, as financial advisor (the “Financial Advisor”) in connection with the issuance and delivery of the Series [Designation] Bonds. 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. The Financial Advisor is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

### **INDEPENDENT ACCOUNTANTS**

Included as APPENDIX B to this Official Statement are the audited financial statements of the District for the Fiscal Years ended June 30, 2013 and 2012. The District’s financial statements for the Fiscal Years ended June 30, 2013 and 2012, included in APPENDIX B, have been audited by Maze & Associates Accountancy Corporation, certified public accountants. Maze & Associates has not been requested to consent to the inclusion of its report in APPENDIX B and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Maze & Associates with respect to any event subsequent to the date of its report.

It is District policy to competitively select and retain independent accountants on a periodic basis. Maze & Associates began serving as the District’s independent accountants in Fiscal Year 2005. In 2012, following a request for proposals and competitive selection process, Maze and Associates was retained to serve as independent accountants for the three additional fiscal years ending June 30, 2012 through 2014.

### **CERTAIN RELATIONSHIPS**

The Underwriter(s) and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriter(s) and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the District, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of sales, trading, brokerage and financing activities, certain of the Underwriter(s) may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities and financial instruments or bank loans, as applicable, of the District and other governmental entities and utilities. In connection with these activities and the provision of other services, certain of the Underwriter(s) may be or become creditors of such entities. In addition, many of the Underwriter(s), or their affiliates, currently serve as remarketing agents or providers of credit enhancement or liquidity facilities for variable rate obligations issued by, or as interest rate swap providers to, governmental entities and utilities, including the District. Certain of the Underwriter(s) or their affiliates serve as remarketing agent with respect to the Wastewater System Revenue Bonds of the District that are expected to be partially refunded by the Series [Designation] Bonds and serve as interest rate swap providers with respect to certain of the Wastewater Interest Rate Swap Agreements that are expected to be partially terminated in connection therewith.

## **MISCELLANEOUS**

References made herein to certain documents and reports are brief summaries thereof and do not purport to be complete or definitive and reference is hereby made to such documents and reports for a full and complete statement of the contents thereof.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or registered owners of any of the Series [Designation] Bonds. The delivery and distribution of this Official Statement have been duly authorized by the District.

## **EAST BAY MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
General Manager

## **APPENDIX A**

### **THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)**

**APPENDIX B**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
AUDITED FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2013 AND 2012**

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Reoffering Circular have the respective meanings set forth in the Indenture.*

*There are no senior Wastewater Bonds outstanding, and the District has covenanted in the Indenture not to issue any senior Wastewater Bonds in the future. Therefore, all references hereto to “Wastewater Bonds” may be disregarded.*

#### Definitions

**“Accreted Value”** means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified in the Indenture.

**“Act”** means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**“Annual Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Maximum Annual Debt Service; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Assumed Debt Service”** (I) prior to the Effective Date, means for any Fiscal Year the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds or Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the

District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

**“Bond Obligation”** means, as of any given date of calculation, (1) with respect to any Outstanding Bond or Wastewater Bond which is Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Outstanding Bond or Wastewater Bond which is Capital Appreciation Indebtedness, the Accreted Value thereof.

**“Bonds”** means the bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**“Business Day”** means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions related to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

**“Capital Appreciation Indebtedness”** means Wastewater Bonds, Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

**“Code”** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, as amended from time to time.

**“Current Interest Indebtedness”** means the Wastewater Bonds, Bonds and Parity Debt on which interest is paid at least annually.

**“Debt Service”** (I) prior to the Effective Date, means the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt; provided, however, that for the purposes of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and



interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such Wastewater Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest rate swap agreement are greater than the interest payable on the Wastewater Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Wastewater Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Wastewater Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Wastewater Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Wastewater Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Wastewater Bonds, Bonds or Parity Debt are in one of the two highest Rating Categories by Moody's and by Standard & Poor's or such Wastewater Bonds, Bonds or Parity Debt are rated in the highest short-term, note or commercial paper Rating Categories by Moody's and by Standard & Poor's and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt provided, however, for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Wastewater Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the "Assumed SIFMA-based Rate");

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such

interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Wastewater Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest rate on such Wastewater Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest on such Wastewater Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in

effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Wastewater Revenues on parity with the lien of the Wastewater Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Wastewater Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Wastewater Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Wastewater Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Wastewater Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

**“Effective Date”** means the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2007A Bonds, Series 2007B Bonds, Series 2008B Bonds and Series 2008C Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Thirteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

**“Excluded Principal Payments”** means each payment of principal (or the principal component of lease or installment purchase payments) of Wastewater Bonds, Bonds or Parity Debt which the District determines on a date not later than the date of issuance thereof that the District intends to pay with monies which are not Wastewater Revenues or Subordinated Wastewater Revenues but from the proceeds of future debt obligations of the District and the Trustee may rely conclusively on such determination of the District.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official fiscal year period of the District, which designation shall be provided to the Trustee in a certificate of the District.

**“Indenture”** means the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the Trustee and the District, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions of the Indenture.

**“Investment Securities”** means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies and Federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or their obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been rated not lower than their respective ratings on the Bonds by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody’s (if

Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as

valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) a guaranteed investment contract with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than five years experience investing in such securities and obligations and with assets under management in excess of \$500,000,000; and

(xiv) any investment approved by the Board for which confirmation is received from each rating agency then rating any of the Bonds that such investment will not adversely affect such agency's rating on such Bonds.

**"Mandatory Sinking Account Payment"** means the amount required to be deposited by the District in a sinking account for the payment of term Bonds.

**"Maximum Annual Debt Service"** (I) prior to the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest

payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Maximum Annual Debt Service unless the sum of (i) interest payable on such Wastewater Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest swap agreement are greater than the interest payable on the Wastewater Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Wastewater Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Wastewater Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Wastewater Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Wastewater Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Wastewater Bonds, Bonds or Parity Debt are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) or such Wastewater Bonds, Bonds or Parity Debt are rated in the highest short-term note or commercial paper Rating Categories by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Opinion of Bond Counsel”** means a written opinion of a law firm of national standing in the field of public finance selected by the District and not objected to by the Trustee.

**“Outstanding,”** when used at any particular time with reference to Bonds, means (subject to the provisions relating to disqualified bonds) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged under the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**“Owner” or “Bondholder” or “Bondowner,”** whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**“Parity Debt”** means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Wastewater Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**“Person”** means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means with respect to any Bond (or portion thereof) the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

**“Revenue Fund”** means the fund held in trust by the District to which the Subordinated Wastewater Revenues are required to be deposited.

**“Series”** whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.

**“SIFMA Municipal Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets



Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

**“Standard & Poor’s”** means Standard & Poor’s Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Subordinated Wastewater Revenues”** for any fiscal period means the sum of (a) the Wastewater Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund created in the Wastewater Bond Resolution for treatment as Wastewater Revenues for such fiscal period, less the sum of (c) all Wastewater Operation and Maintenance Costs for such fiscal period, (d) the amounts, if any, withdrawn by the District from Wastewater Revenues for such fiscal period for deposit in such Rate Stabilization Fund, and (e) all amounts required to be paid under the Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds as the same become due and payable.

**“Variable Rate Indebtedness”** means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

**“Wastewater Bond Resolution”** means Resolution No. 30051 of the District, adopted on January 26, 1982, as amended and supplemented from time to time. All obligations of the District under the Wastewater Bond Resolution have ceased and been discharged; provided, however, that the Rate Stabilization Fund created thereunder shall continue.

**“Wastewater Bonds”** means all bonds and other obligation of the District issued pursuant to the Wastewater Bond Resolution.

**“Wastewater Operation and Maintenance Costs”** means the reasonable and necessary costs of maintaining and operating the Wastewater System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

**“Wastewater Revenues”** (I) prior to the Effective Date, means all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any monies in any fund or account established under the Wastewater Bond Resolution or the Indenture; and

(II) from and after the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any moneys in any fund or account established under the Wastewater Bond Resolution or the Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program.

**“Wastewater System”** means the entire sewage disposal system of Special District No. 1 of the District and all of the facilities thereof, including all facilities for the disposal of sewage, sewage treatment works, wastewater disposal facilities, sludge treatment facilities, intercepting and outfall sewers, power generation facilities, and other facilities necessary or convenient for the collection, treatment or disposition of sewage and wastewater for Special District No. 1 of the District, together with all additions, betterments, extensions and improvements to said system or any part thereof.

### **Pledge of Revenues**

The Bonds are revenue obligations of the District and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Subordinated Wastewater Revenues and other amounts held by the Trustee (except for amounts held in the Rebate Fund). The Subordinated Wastewater Revenues are pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other. Said pledge constitutes a first lien on the Subordinated Wastewater Revenues and such other amounts referred to in this paragraph.

### **Allocation of Subordinated Wastewater Revenues**

The District is to transfer the monies in the Revenue Fund, into the following respective funds, in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinated Wastewater Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

(1) **Interest Fund.** The District shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds which are Current Interest Indebtedness (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) **Principal Fund; Sinking Accounts.** The District shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the Business Day prior to each principal or Sinking Account payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the Mandatory Sinking Account Payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in a bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) **Bond Reserve Funds.** Upon the occurrence of any deficiency in any Bond Reserve Fund established under the Indenture for any Series of Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such Bond Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund until there is on deposit in such Bond Reserve Fund an amount equal to the respective reserve requirement.

Any Subordinated Wastewater Revenues remaining after the foregoing transfers shall be held free and clear of the Indenture by the District and it may use and apply such Subordinated Wastewater Revenues for any lawful purpose of the District, including the redemption and purchase of Bonds.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein are insufficient to make such payments, the Trustee shall immediately notify the District of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District covenants and agrees to transfer to the Trustee from any Subordinated Wastewater Revenues in its possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

### **Investments**

All monies in any of the funds and accounts held by the Trustee shall be invested, as directed by the District, solely in Investment Securities.

The District may and the Trustee shall, upon the Request of the District, enter into a financial futures or financial option contract with an entity the debt securities of which are rated in their respective highest short-term Rating Categories by Moody's and Standard & Poor's.

The District may and the Trustee shall, upon the Request of the District, and provided that the Trustee is supplied with an Opinion of Bond Counsel to the effect that such action is permitted under the laws of the State of California, enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such a swap agreement may be applied to the deposits required hereunder; in which case, the entity with which the District or the Trustee may contract for an interest rate swap is limited to entities the debt securities of which are rated in their respective highest short-term debt Rating Categories by Moody's and Standard & Poor's. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Wastewater Revenues and other assets pledged hereunder to the Bonds on a parity basis therewith and, in such event, the District shall pay to the Trustee for deposit in the Interest Fund, at the times and in the manner provided in the Indenture, the amounts to be paid under such interest rate swap agreement, as if such amounts were additional interest due on the Bonds to which such interest rate swap agreement relates, and the Trustee shall pay to the other party to the interest rate swap agreement, to the extent required thereunder, amounts deposited in the Interest Fund for the payment of interest on the Bonds with respect to which such agreement was entered into.

### **Additional Bonds; Parity Debt**

The issuance of additional Wastewater Bonds is not limited by the Indenture. The District may issue Bonds and Parity Debt payable from Subordinated Wastewater Revenues and secured equally and ratably with Bonds previously issued, subject to the following specific conditions precedent to the issuance of any such additional Bonds or Parity Debt:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Bonds or Parity Debt shall not exceed any limitation imposed by law or by any Supplemental Indenture.

(c) The District shall have placed on file with the Trustee a Certificate of the District certifying that the sum of: (1) the Subordinated Wastewater Revenues plus all amounts required to be paid under the Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Wastewater Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Wastewater Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Bonds due to improvements to the Wastewater System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Bonds, shall (4) have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt then Outstanding and the additional Bonds or Parity Debt then proposed to be issued.

### **Refunding Bonds**

Refunding Bonds may be authorized and issued by the District without compliance with the provisions described above under "Additional Bonds; Parity Debt," provided that Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding following the issuance of such refunding Bonds is less than or equal to Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding prior to the issuance of such refunding Bonds.

### **Covenants**

Among other covenants the District has agreed as follows:

The District will not create any pledge, lien or charge upon any of the Subordinated Wastewater Revenues having priority over or having parity with the lien of the Bonds except only as described above. The District will not amend or change the Wastewater Bond Resolution in any manner which would permit the issuance of additional Wastewater Bonds in a greater principal amount than would have been permitted thereunder prior to such amendment or change or reduce the debt service percentage or coverage requirements contained therein. The District will not issue Wastewater Bonds pursuant to the Wastewater Bond Resolution in such amount as would cause the District to fail to be in compliance with the rate covenant described in the second succeeding paragraph hereof.

The District will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code, if applicable. The District will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, if applicable. To that end, the District will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds.

The District will, at all times while any of the Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year plus all amounts required to be paid under the Wastewater Bond Resolution for such year for principal, interest, reserve fund and any other debt service

requirements on the Wastewater Bonds shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding for such Fiscal Year.

The District will maintain and preserve the Wastewater System in good repair and working order at all times, and will operate the Wastewater System in an efficient and economical manner. Subject in each case to the condition that insurance is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District, the District will procure and maintain at all times: (a) insurance on the Wastewater System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities, and (b) public liability insurance in such amounts as the District deems prudent taking into account insurance coverage for similar utilities.

### **Events of Default; Remedies**

The following events are Events of Default under the Indenture:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in the Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the District has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(e) if any default shall exist under the Wastewater Bond Resolution and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(f) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or Federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District

under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; and

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Subordinated Wastewater Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

In addition, pursuant to the Fifteenth Supplemental Indenture, with respect to the Series 2011A Bonds while bearing interest in a SIFMA-Based Term Interest Rate Period pursuant to such Fifteenth Supplemental Indenture, in the event sufficient funds are not available for the purchase of all Series 2011A Bonds tendered or deemed tendered and required to be purchased on any purchase date therefor pursuant to the Indenture, notwithstanding any other provision of the Indenture, in such event, such failed purchase shall constitute an Event of Default.

If an Event of Default shall occur and be continuing, the District is to immediately transfer to the Trustee all Subordinated Wastewater Revenues held by it and received thereafter and the Trustee shall apply all Subordinated Wastewater Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the District, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the District shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all

matured installments of interest (if any) upon all the Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, by written notice to the District and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

The Trustee is appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) to represent the Owners in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon any default or other occasion, giving rise to a right in the Trustee to represent the Bondholders, the Trustee may take such action as may seem appropriate and, upon the request in writing of Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Owners by such appropriate actions as it shall deem most effectual to protect and enforce any such right.

No remedy conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

## **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bonds then Outstanding. No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Subordinated Wastewater Revenues and other assets pledged under the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Subordinated Wastewater Revenues and other assets, without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture may also be modified or amended at any time with the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, rated not lower than the respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) or Standard & Poor's (if Standard & Poor's is then rating the Bonds).

The Indenture and the rights and obligations of the District, of the Trustee and the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the District or to surrender any right or power reserved to or conferred upon the District;
- (2) to make such provisions for the purpose of curing any omission or ambiguity, or of curing or correcting any defective provision contained in the Indenture, or in regard to questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (3) to modify the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statutes and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (4) to make modifications or adjustments necessary or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt, with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture;
- (5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that such provisions shall not materially and adversely affect the interest of the Owners of the Bonds;
- (6) if the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;
- (7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture; and
- (8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

## **Defeasance**

Bonds may be paid by the District in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem such Outstanding Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.



Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payments.

The District may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities described in clauses (i), (ii) or (iv) of the definition thereof, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as required by the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

## APPENDIX D

### PROPOSED FORMS OF CO-BOND COUNSEL OPINION AND SPECIAL TAX COUNSEL OPINION

#### PROPOSED FORM OF CO-BOND COUNSEL OPINION

*Upon the delivery of the Series [Designation] Bonds, Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, propose to render their final approving opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$ \_\_\_\_\_  
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance of its Wastewater System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$ \_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”), and a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

In our capacity as co-bond counsel, we have reviewed the Act, the Indenture, certifications of the District, the Trustee, and others, opinions of counsel to the District and the Trustee, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture. In addition, we call attention to the fact that the rights and obligations under the Series [Designation] Bonds and the Indenture are subject to bankruptcy, insolvency,

reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. Furthermore, the imposition of fees and charges by the District relating to the Wastewater System may be subject to the provisions of Articles XIII C and XIII D of the California Constitution.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Series [Designation] Bonds constitute the valid and binding special limited obligations of the District.

2. The Indenture has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the District. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Series [Designation] Bonds, of the Subordinated Wastewater Revenues of the District, and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

3. The Series [Designation] Bonds are special limited obligations of the District and are payable exclusively from and are secured by a pledge of Subordinated Wastewater Revenues and certain amounts held under the Indenture. The general fund of the District is not liable, and neither the credit nor taxing power of the District is pledged, for the payment of the Series [Designation] Bonds or the interest thereon.

4. Other bonds and parity debt of the District have been and may from time to time hereafter be issued under the Indenture which are payable from Subordinated Wastewater Revenues on a parity basis with the Series [Designation] Bonds.

We express no opinion as to any federal, state or local tax consequences of the ownership or disposition of the Series [Designation] Bonds or the receipt of interest thereon.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Series [Designation] Bonds.

Respectfully submitted,

Respectfully submitted,

## PROPOSED FORM OF OPINION OF SPECIAL TAX COUNSEL

*Upon the delivery of the Series [Designation] Bonds, Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), proposes to render its tax opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$\_\_\_\_\_ East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds, Series [Designation]  
(Special Tax Opinion)

Ladies and Gentlemen:

We have acted as special tax counsel in connection with the issuance by the East Bay Municipal Utility District (the "District") of \$\_\_\_\_\_ aggregate principal amount of its Wastewater System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). The Bonds are being issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented by supplemental indentures, including a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture"), between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

In such connection, we have reviewed the Indenture, the Tax Certificate of the District, dated the date hereof and relating to the Bonds (the "Tax Certificate"), opinions of counsel to the Trustee and the District, certificates of the District, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. In particular, we have relied on the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C., co-bond counsel to the District (the "Bond Counsel Opinion"), regarding, among other matters, the validity of the Bonds. In rendering the opinions expressed herein, we expressly have relied on the Bond Counsel Opinion that, among other matters, the Bonds are valid, binding and enforceable in accordance with their terms. We call attention to the fact that the interest on the Bonds may not be excluded from gross income for federal income tax purposes or exempt from State of California personal income taxes if the Bonds are not valid, binding and enforceable in accordance with their terms.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or copies) and the due and legal execution thereof by, and validity against, all parties. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or

certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause the interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the Indenture, or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of such interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E concerning The Depository Trust Company, New York, New York (“DTC”), and DTC’s book-entry system has been obtained from DTC and the District and the Trustee take no responsibility for the completeness or accuracy thereof. The District and the Trustee cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Series [Designation] Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Series [Designation] Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series [Designation] Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The District and the Trustee are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Series [Designation] Bonds or an error or delay relating thereto. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC’s Direct and Indirect Participants are on file with DTC.

DTC acts as securities depository for the Series [Designation] Bonds. The Series [Designation] Bonds will be reissued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Series [Designation] Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of Series [Designation] Bonds under the DTC book-entry system must be made by or through Direct Participants, which will receive a credit for the Series [Designation] Bonds on DTC’s

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

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

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

Redemption notices shall be sent to DTC. If less than all of the Series [Designation] Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series [Designation] Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series [Designation] Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Series [Designation] Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the District or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such

Participant and not of DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Series [Designation] Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series [Designation] Bonds at any time by giving notice to the Trustee and the District. Under certain circumstances, in the event that a successor depository is not obtained, Series [Designation] Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers for the Series [Designation] Bonds through DTC (or a successor securities depository). In that event, Series [Designation] Bond certificates will be printed and delivered as provided in the Indenture. In addition, the following provisions would apply: the principal or redemption price of the Series [Designation] Bonds will be payable upon presentation thereof, at the principal corporate trust office of the Trustee, in San Francisco, California; interest on the Series [Designation] Bonds will be payable by check mailed on each interest payment date to the registered owners thereof as shown on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the calendar month immediately preceding the applicable interest payment date (the “record date”), except that in the case of an owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date; and the Series [Designation] Bonds will be transferable and exchangeable on the terms and conditions provided in the Indenture.

The information in this Appendix E concerning DTC and DTC’s book-entry system has been obtained from sources the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.



## **APPENDIX F**

### **FORM OF CONTINUING DISCLOSURE AGREEMENT**

## **APPENDIX A**

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### **THE EAST BAY MUNICIPAL UTILITY DISTRICT**

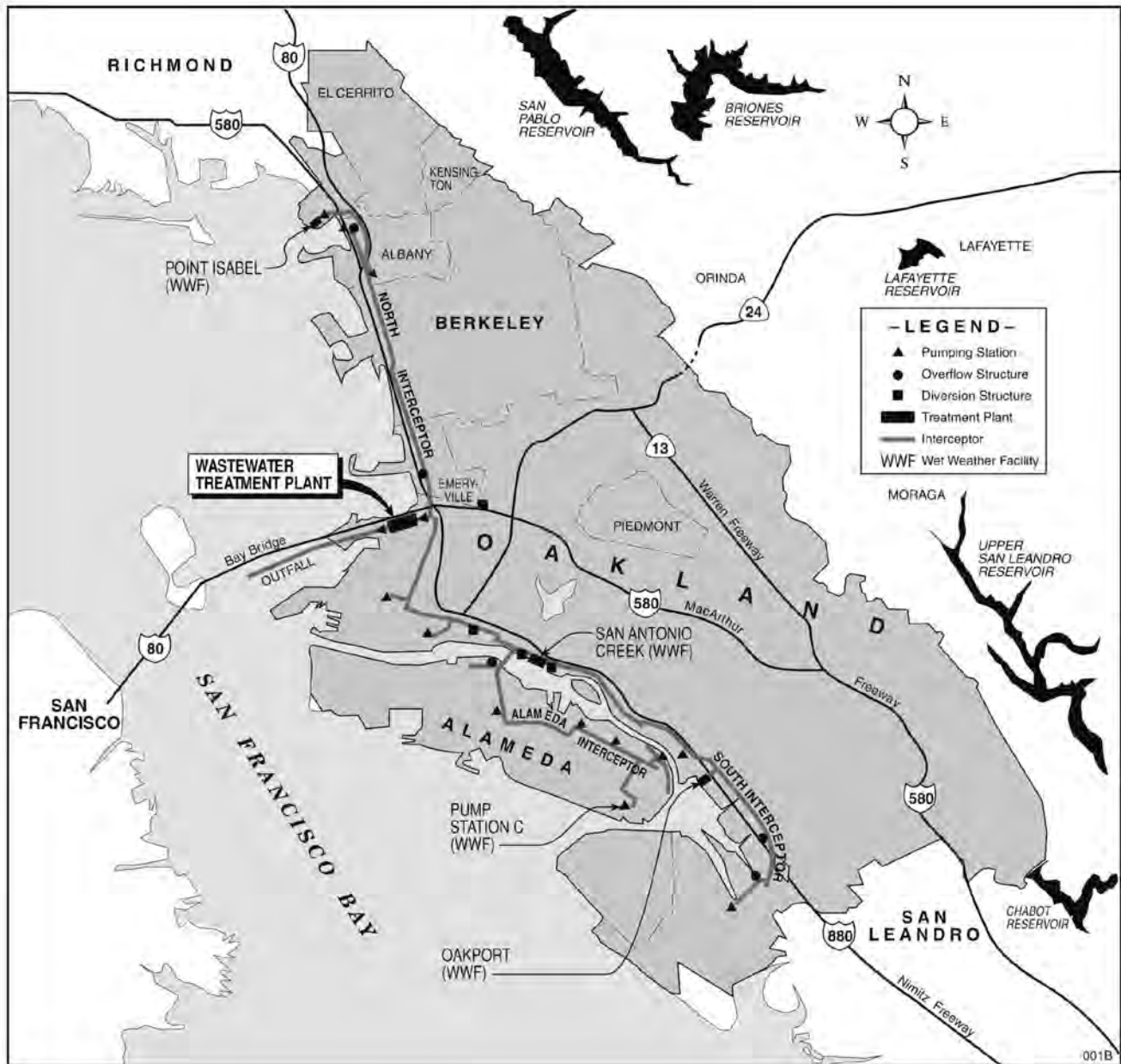
#### **(THE WASTEWATER SYSTEM)**

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The East Bay Municipal Utility District occupies 331 square miles of the San Francisco-Oakland metropolitan region. The Wastewater System serves approximately 650,000 persons in an area designated as Special District No. 1, which covers approximately 88 square miles primarily within Alameda County.

**EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM  
(SPECIAL DISTRICT NO. 1)**



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## THE DISTRICT

### Organization

In May 1923, voters in cities along the eastern shore of the San Francisco Bay located in portions of Alameda and Contra Costa Counties (known throughout the San Francisco Bay Area as the “East Bay”) elected to create the East Bay Municipal Utility District (the “District”) under the provisions of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the territory of the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

### District Board

The District, a public agency, is governed by an elected seven-member Board of Directors (the “Board”) which determines such matters as rates and charges for services, approval of contracts, and District policy. Voters elect directors by ward to four-year terms. There are seven wards which together cover the entire service area of the District. Each year, the Board elects from among its members persons to serve as Board officers (President and Vice President). With an average service tenure of almost 15 years, each of the Board members has served one or more years as an officer of the Board of Directors and has chaired one or more of the Board’s standing committees that review financial, long-range planning, and legislative matters. The following persons currently serve on the Board:

**Andy Katz** has been a Board member since 2006 and represents Ward 4, which includes Albany, Berkeley, El Cerrito, Emeryville, Kensington and North Oakland. Mr. Katz is currently President of the Board and Chair of the Board’s Finance and Administration Committee. He is employed as an attorney and public health advocate for Breathe California. Mr. Katz has a Bachelor of Arts degree and a Master of City Planning degree from the University of California, Berkeley, and a law degree from Santa Clara University. His current term expires on December 31, 2014.

**Katy H. Foulkes** has been a Board member since 1994 and represents Ward 3, which includes the City of Piedmont and a portion of Oakland, in Alameda County, the Contra Costa County cities of Orinda and El Sobrante, the Town of Moraga, and portions of Pinole and Richmond. Ms. Foulkes is currently Vice President of the Board, and she represents the District on the governing boards of the Upper Mokelumne River Watershed Authority and the Freeport Regional Water Authority. Ms. Foulkes served multiple terms as an officer for Region 5 of the Association of California Water Agencies (“ACWA”) and as a member of ACWA’s Board of Directors. She is Vice-President of the Alameda Chapter of the California Special Districts Association and Co-Chair of the Bay Area Water Forum. Ms. Foulkes has a Bachelor of Arts degree in English from the University of California, Berkeley. Her current term expires on December 31, 2014.

**John A. Coleman** has been a Board member since 1990 and represents Ward 2, which includes Alamo, Lafayette, Walnut Creek, the Town of Danville, the communities of Blackhawk and Diablo, and portions of Pleasant Hill and San Ramon. Mr. Coleman represents the District on the governing boards of the joint powers authorities in which the District participates that manage the provision of recycled water service (the DSRSD/EBMUD Recycled Water Authority (DERWA)), Sierra Nevada watershed management and protection (the Upper Mokelumne River Watershed Authority) and supplemental water supplies for dry years (the Freeport Regional Water Authority). Mr. Coleman is Vice President of ACWA, a board member of the National Water Resources Association and a board member of the WaterReuse Association. He is also a past president of the California Association of Sanitation Agencies. Mr. Coleman is employed as the Executive Director of the Bay Planning Coalition. He has a Bachelor of Science degree in Natural Resources from the University of California, Berkeley and a certificate in management from the University of Pacific School of Business and Public Administration. His current term expires on December 31, 2014.

**Doug A. Linney** has served on the Board since 2000 and represents Ward 5, which includes the Alameda County cities of Alameda and San Lorenzo, the West Oakland and Oakland Airport Area, and a portion of San Leandro. Mr. Linney is currently chair of the Board's Planning Committee. He is employed as President of The Next Generation, a public relations firm providing services that emphasize achieving environmental protection. Mr. Linney has a Bachelor of Science degree in environmental science and public policy from the University of California, Davis. His current term expires on December 31, 2016.

**Lesia R. McIntosh** has served on the Board since 1999 and represents Ward 1, which includes the Contra Costa County cities of Crockett, Hercules, Rodeo and San Pablo; portions of Richmond and Pinole, and the communities of North Richmond and Selby. Ms. McIntosh is currently chair of the Legislative/Human Resources Committee. Ms. McIntosh is employed as a lawyer specializing in business, land use and estate planning. She has a Bachelor of Science degree in political science from the University of California, Berkeley and a law degree from John F. Kennedy University. Ms. McIntosh's current term expires on December 31, 2016.

**Frank G. Mellon** has served on the Board since 1994 and represents Ward 7, which includes the areas of Castro Valley, communities of Cherryland and Fairview; portions of San Leandro and Hayward in Alameda County, and a portion of San Ramon in Contra Costa County. Mr. Mellon currently serves on the District's Retirement Board and on the Legislative/Human Resources Committee. He also represents the District on the governing board of DERWA. Mr. Mellon is employed as a consultant specializing in human resources and labor relations and he teaches labor law in the California State University East Bay Human Resources Certificate Program. Mr. Mellon has a Bachelor of Arts degree in Management from the University of Hawaii and a Master's Degree in Business Administration from St. Mary's College in Moraga. His current term expires on December 31, 2014.

**William B. Patterson** has served on the Board since 1997 and represents Ward 6, which includes Alameda County's East Oakland Hills and south of Lake Merritt to the San Leandro city boundary. Mr. Patterson is currently Vice-President of the District's Retirement Board. He retired several years ago, after working for many years as the City of Oakland Manager of Parks and Recreation. He has Bachelor's and Master's degrees in Parks and Recreation Administration from San Francisco State University and a Social Services Certificate from the University of California, Berkeley. Mr. Patterson's current term expires on December 31, 2016.

## **District Management**

**Alexander R. Coate** joined the District in 1993 and was appointed General Manager in 2011. Prior to his appointment as General Manager, he was Director of Water and Natural Resources with responsibility for water supply planning, water rights, and watershed management including recreation and fisheries. He has more than 29 years of experience with public agencies, engineering consulting firms, research and law. Mr. Coate is a member of the American Water Works Association and the Association of California Water Agencies. He currently serves on the Board of Directors of the Central Valley Project Water Association and California Urban Water Agencies. Mr. Coate has a Bachelor's degree in Neurobiology and a Master's degree in Civil Engineering, both from the University of California, Berkeley.

**Jylana D. Collins** joined the District in 1994 and was appointed General Counsel in 2006. Prior to her appointment as General Counsel, she was Assistant General Counsel. Before joining the District, she was Deputy City Attorney for the City of Berkeley. She has over 29 years of experience in public law. Ms. Collins has a Bachelor's degree in Psychology from Antioch University West and a law degree from the University of San Francisco School of Law.

**Eric L. Sandler** was appointed Director of Finance in 2012. He has over 24 years of experience in municipal and infrastructure financing. Prior to joining the District, he was Director of Finance/Treasurer at the San Diego County Water Authority. He also served as Director of Financial Planning and Acting Director of Finance for the San Francisco Public Utilities Commission. Previously, he was employed by Lehman Brothers in the municipal investment banking group in San Francisco. He has a Bachelor's degree in Biology from Stanford University and a Master's degree in Business Administration from the University of California, Berkeley.

**Bennett K. Horenstein** joined the District in 1991 and was appointed Director of Wastewater effective May 20, 2013. During his 22 years with the District, M. Horenstein has worked in various capacities in the District's Wastewater Department, including most recently as Manager of Environmental Services, with responsibility for a range of technical and regulatory activities, including the long-term approach to regional wet weather flow management and associated private lateral sewer program, and the development of the District's resource recovery program. He has over 25 years of experience in the engineering field. Mr. Horenstein has a Bachelor of Science degree in Environmental Engineering from the University of Florida.

**Xavier J. Irias** joined the District in 1986 and was appointed Director of Engineering and Construction in 2006. Prior to that appointment, he held progressively more responsible positions managing engineering design and engineering services, and he has over 28 years of experience in the engineering field. Mr. Irias has a Bachelor of Science degree in Civil Engineering from the University of California, Berkeley.

**Carol K. Nishita** joined the District in 1989 and was appointed Director of Administration in 2007. Prior to that appointment, she held progressively more responsible positions, including ten years as the Manager of Budget and Rates. Before joining the District, Ms. Nishita worked as a manager in non-profit and county agencies and as a policy analyst for the Governor's Office of Planning and Research in Sacramento. Ms. Nishita has a Bachelor of Arts degree in Sociology from the University of California, Berkeley and a Master's degree in Social Service Administration from the University of Chicago.

**Richard G. Sykes** joined the District in 1989 and was appointed Director of Water and Natural Resources in 2011. Mr. Sykes has held progressively more responsible positions over that time;

he has broad knowledge of the District's operations and is very experienced in water quality and regulatory issues. He has a Bachelor's degree in Conservation of Natural Resources and English and a Master's degree in Environmental Engineering from the University of California, Berkeley.

**Michael J. Wallis** joined the District in 1985 and was appointed Director of Operations and Maintenance in 1996. Prior to his current appointment Mr. Wallis held progressively more responsible positions in the District's Wastewater Department, and served as Director of Wastewater for several years. Mr. Wallis has over 35 years of water and wastewater related experience. He serves on the Board of Directors for the Association of Metropolitan Water Agencies and currently holds the position of Secretary. He has a Bachelor of Science degree and a Master's degree in Civil Engineering from North Carolina State University.

**Lynelle M. Lewis** joined the District in 1993 and was appointed Secretary of the District in 1995. She is a Certified Municipal Clerk and a member of the City Clerks Association of California and the International Institute of Municipal Clerks. Ms. Lewis received her Bachelor of Science degree in Business Administration from San Jose State University.

**Wanda B. Hendrix** joined the District in 1994 and was appointed Treasury Manager in 2006. She served as Principal Management Analyst for the Finance Department of the District prior to her appointment. Before joining the District, Ms. Hendrix worked for the City of Hayward as the Budget Administrator for eight years. Ms. Hendrix has a Bachelor's degree in Sociology and a Master's degree in Public Administration from San Jose State University.

## **Employees and Employee Relations**

As of August 31, 2013, the District has 1,461 regular (full-time equivalent) employees in the Water System and 250 regular (full-time equivalent) employees in the Wastewater System.

The District has four unions representing approximately 1,565 workers out of a total full-time equivalent workforce of 1,711 employees: Local 2019 of the American Federation of State, County and Municipal Employees ("AFSCME") represents white collar workers including professionals; Local 444 of AFSCME represents blue collar workers; Local 21, International Federation of Professional and Technical Engineers represents supervisory employees; and Local 39, International Union of Operating Engineers represents water treatment/distribution workers.

Locals 2019, 444, 21 and 39 are operating under Memoranda of Understanding ("MOUs"), first approved by the District Board in 2008, and extended by mutual agreement in 2011 for an additional two years. Each of the current MOUs expired on April 21, 2013. Negotiations for successor MOUs are ongoing. The MOUs are comprehensive in scope and provide for binding arbitration for the resolution of grievances. The District has not had a strike or work stoppage since 1985.

For a discussion of the District Employees' Retirement System, see "WASTEWATER SYSTEM FINANCES – Employees' Retirement System."



## **Service Area**

Originally formed to include nine cities covering 92.6 square miles, the District has grown by more than 450 separate annexations to a present area of 332 square miles in 20 incorporated and 15 unincorporated communities in both Alameda and Contra Costa Counties. It covers the eastern shore of San Francisco Bay from Carquinez Strait on the north to and including San Lorenzo on the south and it extends approximately 20 miles east, beyond the Oakland-Berkeley hills, into Contra Costa County.

The District's Water System serves this entire area, reaching 53% of the combined population of Alameda County and Contra Costa County. Approximately two-thirds of the population within the District service area resides in the cities of Alameda, Berkeley, Oakland, San Leandro, Richmond, and Walnut Creek.

The land area between the present service area boundary and the ultimate service area boundary, approximately 69 square miles, includes some areas of potential development. However, a large part of this land area is parklands and other undeveloped lands that are not anticipated to be developed in the foreseeable future. Another 81 square miles within the ultimate service area boundary outside the District's present service area boundary is under the waters of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the west and north by the shorelines of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the south and northeast by adjoining water agencies which have sources of supply independent of the District. There is limited potential for new development at the southern end of the San Ramon Valley, now in the early stages of land use planning and environmental documentation, which is located just outside the ultimate service area boundary. The District service area population, currently 1.3 million, is projected to grow by 2035 to a population of 1.75 million, with much of that growth expected to come from infill development within the urbanized parts of the service area.

The Municipal Utility District Act was amended in 1941 to enable formation of special districts for wastewater service provision. In 1944, voters elected to form the District's Special District No. 1 to treat wastewater released into the San Francisco Bay. The District's wastewater treatment system (the "Wastewater System") presently serves approximately 650,000 people in an 88-square-mile area of the two counties along the east shore of the San Francisco Bay, extending from Richmond on the north, southward to San Leandro. Domestic, commercial and industrial wastewater is treated for the six cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and for the Stege Sanitary District, which includes El Cerrito, Kensington and part of Richmond. Each of these entities operates a sewer collection system that discharges into the District's intercepting sewers. In addition to treating waste received through the sewer collection system, the District accepts high-organic waste streams delivered in trucks. The wastes include domestic waste from septic tanks, fat, oil, and grease from restaurants and other food and drink wastes.

## **Taxation of the District**

All property of the District within the District's boundaries generally is exempt from property taxation. District-owned land outside of the District's boundaries is taxable, but improvements constructed on that land by the District are not taxable. As a public agency, the District is exempt from the payment of State of California (the "State") and federal income taxes.

## **THE WASTEWATER SYSTEM**

### **General**

The District's Wastewater System treats and disposes of the wastewater from an area within the District designated as Special District No. 1. Special District No. 1, a separate district within the District governed by the Board, was established in 1944 and is administered by the District's Wastewater Department. As noted above, Special District No. 1 intercepts, treats and disposes of wastewater within its wastewater service area, which includes the six participating cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont and the Stege Sanitary District (collectively, the "participating agencies"), each of which maintains the responsibility for collecting and conveying wastewater to the District interceptors. The participating agencies and Special District No. 1 operate under separate Regional Water Quality Control Board San Francisco Bay Region ("RWQCBSFBR") National Pollutant Discharge Elimination System ("NPDES") permits and are separately responsible for failures of their own collection, conveyance and/or disposal systems. At the request of the City of Richmond, the District is presently participating in a study to explore the possibility of the District accepting wastewater from the Richmond Municipal Sewer District, which serves the majority of the City of Richmond, and has an average dry weather flow of approximately 6.5 million gallons per day ("MGD"). Under an agreement between the City of Richmond and the District, the City of Richmond will reimburse the District for its costs to perform the study, up to \$250,000. The study is anticipated to be completed by December 2013.

In addition to treating waste received through the sewer collection system, the District accepts high-organic waste streams delivered in trucks; the wastes include domestic waste from septic tanks, fat, oil and grease from restaurants and other food and drink wastes.

Table 1 shows the population trends for the seven largest cities within the District's Wastewater System service area, Alameda and Contra Costa Counties and the State for the current and last four years.

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**Table 1**  
**SEVEN LARGEST CITIES IN DISTRICT WASTEWATER SYSTEM SERVICE AREA**  
**ALAMEDA, CONTRA COSTA COUNTIES AND CALIFORNIA**  
**Population Trends<sup>(1)</sup>**

	2009	2010	2011	2012	2013
Seven Largest District Cities:					
Oakland	389,913	391,475	392,333	394,832	399,326
Berkeley	110,982	112,363	113,925	114,688	115,716
Alameda	73,166	73,717	74,052	74,544	75,126
El Cerrito	23,350	23,552	23,649	23,801	23,910
Albany	18,196	18,481	18,345	18,467	18,430
Piedmont	10,638	10,674	10,710	10,793	10,889
Emeryville	9,702	9,795	10,110	10,186	10,269
Total Seven Cities	635,947	640,057	643,124	647,311	653,666
Alameda County	1,497,799	1,509,240	1,517,756	1,530,176	1,548,681
Contra Costa County	1,038,390	1,047,948	1,056,306	1,066,602	1,074,702
California	36,966,713	37,223,900	37,427,948	37,668,804	37,966,471

<sup>(1)</sup> As of January 1 of each year. Includes the six participating cities and El Cerrito, the largest incorporated portion of the Stege Sanitary District service area.

Source: 2008-2010: State of California, Department of Finance, E-8 Historical Population and Housing Estimates, 2000-2012 Report, by Year, Sacramento, California, November 2012 (Revised Estimates).

2011-2013: State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change – January 1, 2011 and 2012, Sacramento, California, May 2012 and – January 1 2012 and 2013, Sacramento, California, May 2013.

### **Wastewater Facilities**

The District's interceptors consist of 29 miles of reinforced concrete gravity pipeline, ranging from 18 inches to 9 feet in diameter, and 8 miles of pressure pipeline from pump stations. The interceptors collect wastewater from approximately 1,700 miles of public sewers owned and operated by the participating agencies. Fifteen pumping stations, ranging in capacity from 1.5 to 60 MGD, lift wastewater throughout the interceptors as it travels to the District's Main Wastewater Treatment Plant in Oakland near the entrance of the San Francisco-Oakland Bay Bridge (the "Main Wastewater Treatment Plant"). The Main Wastewater Treatment Plant provides secondary treatment for permitted dry weather flow of up to 120 MGD and a maximum flow of 168 MGD during wet weather storm events. Primary treatment can be provided at the Main Wastewater Treatment Plant for up to a peak of 320 MGD, with peak influent hydraulic capacity of 415 MGD when utilizing an on-site 11 million gallon storage basin. The annual average daily flow is approximately 70 MGD.

Primary treatment removes floating material, oils and greases, sand and silt and organic solids heavy enough to settle in water. Secondary treatment biologically removes most of the suspended and dissolved organic and chemical impurities that would otherwise reduce the oxygen content of the waters of the San Francisco Bay if allowed to decompose naturally. The treatment steps are pre-chlorination, screening, grit removal, primary sedimentation, secondary treatment using high-purity, oxygen-activated sludge, final clarification, biosolids digestion, dewatering and beneficial use of biosolids through land application at non-edible crop farm sites or alternative daily cover at landfills. The treated effluent is then

disinfected, dechlorinated and discharged one mile off the East Bay shore through a deep-water outfall into San Francisco Bay.

The District has three wet weather facilities (Oakport, San Antonio Creek and Point Isabel), as well as five overflow structures that discharge stormwater and untreated sewage into the San Francisco Bay during wet weather storm events that exceed the capacity of the RWQCBSFBR-permitted wet weather system. The overflow structures are located at Temescal Creek, Oakland Inner Harbor (Alice Street), Oakland Inner Harbor (Webster Street), Elmhurst Creek and San Leandro Creek. In order to reduce storm water inflow and infiltration into the Wastewater System, the communities that discharge into the District's interceptors are rehabilitating their sewers to minimize the amount of inflow and infiltration into their collection systems. See “– Wet Weather Program” below.

The Wastewater System, which began operations in 1951, significantly reduced the pollution caused by the direct discharge of raw wastewater into the San Francisco Bay. In the late 1960s and early 1970s, however, the federal and State governments adopted new and more stringent standards of pollution control that required a higher level of treatment. The method selected to meet the new requirements was the high-purity, oxygen-activated sludge secondary treatment process in operation today. A major expansion project completed in 1978 included improvements to the existing primary treatment facility, and added secondary treatment facilities, eight new digesters, sludge dewatering facilities, including four centrifuges, and an advanced wastewater treatment plant for recycling treated wastewater for use in the plant and on the grounds. Funding of this wastewater treatment system improvement project was provided from federal, State and District sources.

## **Wastewater Flows**

Table 2 presents a ten-year record of wastewater flows through the Main Wastewater Treatment Plant, expressed as the average daily flow for each Fiscal Year.

**Table 2**  
**AVERAGE DAILY WASTEWATER FLOW**  
**(million gallons per day)**

<i>Fiscal Year Ended</i> <i>June 30</i>	<i>Flow</i>
2004	72
2005	78
2006	82
2007	67
2008	69
2009	66
2010	68
2011	71
2012	62
2013	59

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Source: The District.

## **Wet Weather Program**

In the 1970s, deteriorated community sewer pipes and improper storm drain connections allowed rainwater to enter local sewer systems during certain storms, causing overflows into streets, creeks and

the San Francisco Bay at more than 175 locations. Beginning in 1975, the District and the participating agencies in its service area undertook a multi-year planning effort to address these issues, and in 1979, the District entered into a joint powers agreement with the participating agencies to develop a regional solution. This planning process resulted in the implementation of two key programs: the District's Wet Weather Program and the East Bay Infiltration/Inflow Correction Program, for which the District is the lead agency.

The District's Wet Weather Program was initiated in 1988 and the final projects were completed in 1998. The Wet Weather Program involved the design and construction of more than \$300 million in new facilities and improvements, including three new wet weather facilities, two storage basins, 7.5 miles of new interceptors and improvements at the Main Wastewater Treatment Plant.

The 158-MGD Oakport Wet Weather Facility was completed in 1990. It provides for peak wet weather flow diversion along the District's South Interceptor.

Two projects totaling \$100 million were completed in 1992 that increased the capacity of the Main Wastewater Treatment Plant from 290 MGD to 415 MGD (peak influent hydraulic capacity) to accommodate peak wet weather flows. These projects included major modifications to the influent and effluent pumping stations, the solids-handling system, the chlorination facilities, the process control system, and an 11-million gallon storage basin to temporarily store peak storm flows for treatment after flows subside.

Construction was also completed in 1992 on two major pipeline projects, the South Foothill and Adeline Street Interceptors. These "joint-benefit" relief sewers serve the District and the cities of Oakland, Berkeley and Emeryville, providing greater hydraulic capacity to eliminate wet-weather overflows.

In 1993, the 100-MGD Point Isabel Wet Weather Facility was completed. It accepts peak wet weather flows from the District's North Interceptor. By 1996, the 51-MGD San Antonio Creek Wet Weather Facility, the 8.6-MGD Pump Station C/1-MGD Storage Basin and the 7.5-MGD Pump Station B Wet Weather Improvement projects, totaling nearly \$34 million, were completed and placed in operation. The 28-MGD North Interceptor Wet Weather Project was completed in 1998, and diverts flows away from the Main Wastewater Treatment Plant to the Point Isabel facility.

Additional projects were completed by the District in 1998 that increased the District's wet weather capacity to 724 MGD.

The East Bay Infiltration/Inflow Correction Program was initiated as a result of an East Bay Infiltration/Inflow Study which recommended an overall 20-year program of sewer rehabilitation and construction of new sewer capacity in each participating agency's collection system. In 1986, the joint powers agreement between the District and the participating agencies was amended to implement this program. The parties to the joint powers agreement are continuing with this original long-term program to correct the overflow problem.

Implementation of the District's Wet Weather Program was mandated by the RWQCBSFBR. The participating agencies' improvement programs are also mandated by an administrative Cease and Desist Order issued by the RWQCBSFBR as a result of wet weather overflows from their respective collection systems. The District's original Wet Weather Program and the East Bay Infiltration/Inflow Correction Program were designed to eliminate wet weather overflows from District facilities for up to a specified design storm event, assuming operation of the District's three wet weather facilities during peak storm events.

See “– Regulatory Matters” below for a discussion of regulatory matters affecting the Wet Weather Program and recent changes to the regulatory framework under which the District’s wet weather facilities operate, including certain litigation relating thereto described under “– Regulatory Matters – *Litigation Relating to the District’s Wet Weather Facilities NPDES Permit.*”

## **Biosolids Management**

The solid, stabilized organic materials removed from wastewater treatment process are called biosolids. The District generates approximately 80,000 wet tons per year of biosolids from wastewater treatment. Because there is no long term biosolids storage space available at the Main Wastewater Treatment Plant, each day’s biosolids production must have a reliable daily destination for beneficial reuse or disposal.

In 1990, the District completed the Long-Term Sludge Management Plan (“LTSMP”) for sewage sludge disposal and reuse alternatives. The LTSMP recommended maximizing beneficial reuse while maintaining disposal capacity. In 1993, upon the issuance of the regulations of the USEPA governing beneficial reuse of biosolids, the District initiated the Sludge Management Implementation Plan (“SMIP”) to reassess the conclusions of the LTSMP and identify a composite program for implementation. The District is currently implementing capital projects to improve the reliability and efficiency of biosolids processing facilities. The District has completed the installation of a more efficient fifth dewatering centrifuge, which has helped reduce the total biosolids volume produced at the Main Wastewater Treatment Plant and has also recently replaced one of the other four existing centrifuges with a similar, more efficient unit.

All of the District’s biosolids from its Main Wastewater Treatment Plant are currently beneficially reused through land application on non-food crop land or alternative daily cover at landfills under contracts, which expire on December 31, 2016. This work is accomplished through private contractors at substantial cost savings to the District, compared with the prior practice of landfill disposal and local composting. The District has completed implementation of the 2003 Biosolids Master Plan Update to identify a long-term cost effective strategy for biosolids reuse and/or disposal. One recommendation of the 2003 Biosolids Master Plan Update was to investigate a regional facility that could produce higher quality biosolids which would be more acceptable to the public. The District is currently monitoring development of a regional biosolids facility by 18 other Bay Area agencies. The District began implementing a Biosolids Environmental Management System in July 2005 and received program certification from the National Biosolids Partnership (“NBP”) in September 2006. The District successfully completed external program interim audits in 2007, 2008, 2009, 2010 and 2012, and a full-program recertification audit in 2011. The District’s biosolids program is currently certified at the “Platinum-level” by the NBP. The NBP is an alliance between the National Association of Clean Water Agencies, the Water Environment Federation and the USEPA. This program helps ensure excellence in biosolids management.

## **Power Facilities/Energy Recovery**

Another wastewater treatment byproduct is methane gas, produced by the sludge digestion process. In the spring of 1985, the District placed a 6.3-megawatt power generation plant into service, which recovers about 85% of the available energy from the methane gas produced at the Main Wastewater Treatment Plant. Through this facility, the District generates more than 90% of the electrical power needed to operate the Main Wastewater Treatment Plant. The District completed construction of a facility expansion that adds an additional 4.5-megawatt turbine to produce additional renewable energy at the end of 2011. The three existing internal combustion engines (in combination with the new turbine) have allowed the District to sell power generated in excess of plant demand back to the utility grid. See “– Capital Improvement Program – *Wastewater Infrastructure Program*” below.

## **Resource Recovery**

In 2001, the District initiated a pilot program to provide revenue enhancement for the Wastewater System through the utilization of excess capacity at its Main Wastewater Treatment Plant to accept trucked waste from outside its service area. The District’s Resource Recovery Program accepts a variety of trucked liquid and solid waste streams from outside the service area of Special District No. 1 for disposal in an environmentally sound manner. High strength trucked wastes are discharged into underground tanks, processed and anaerobically co-digested with biosolids. This program provides an additional source of methane gas for use in the District’s power generation plant at the Main Wastewater Treatment Plant as described above and generates an additional source of revenue for the Wastewater System through the collection of tipping fees charged to the trucked waste haulers. See “WASTEWATER SYSTEM FINANCES – Sources of Funds.”

## **Wastewater Source Control**

Source control involves the removal of such toxics as heavy metals and organic pollutants before discharging wastes into the sewer system. The District’s wastewater service area includes more than 20,000 commercial and industrial accounts. In 1972, the District began a local source control program requiring pretreatment of wastes by certain categories of industrial customers. The Wastewater Source Control Program reduces approximately 93% of the amount of heavy metals discharged into sewers, and the District’s treatment plant reduces the remaining heavy metals by approximately another 75%. These two steps together reduces approximately 98% of heavy metals discharged into the San Francisco Bay since 1977.

In 1988, source control efforts expanded into pollution prevention/waste minimization activities by educating commercial customers about how to reduce not only heavy metals, but volatile organics as well. In 1989, 1993, 1997 and 2004, the District’s Pretreatment Program received the National Pretreatment Excellence Award for large programs from the United States Environmental Protection Agency (“USEPA”), the only plant of its size to receive four National EPA Pretreatment Program awards. This EPA award program was discontinued by 2008.

## **Regulatory Matters**

***General Regulatory Framework.*** The construction and operation of wastewater treatment facilities and the discharge of wastewater are highly regulated activities. The two major laws governing the Wastewater System are the federal Clean Water Act enacted in 1972 (the “Clean Water Act”), and the State’s Porter-Cologne Act first enacted in 1969 (the “Porter-Cologne Act”). Both laws require that policies, plans, requirements and standards for discharges be developed for all water bodies in order to protect the beneficial uses of the water. The Clean Water Act also regulates the disposal of sewage sludge

and authorizes the adoption of sediment standards. The Porter-Cologne Act specifically requires the adoption of sediment standards for enclosed bays and estuaries. In 2008, the State approved sediment quality objectives for enclosed bays and estuaries, including the San Francisco Bay.

The USEPA, the federal agency charged with implementation and enforcement of the Clean Water Act, has delegated much of the planning, permitting and enforcement activities to the states. In California, the State Water Resources Control Board (the “SWRCB”) develops policies, plans, requirements and discharge standards for the three types of State waters: inland surface waters, enclosed bays and estuaries, and the ocean.

The Clean Water Act requires the adoption of criteria for priority toxic pollutants that may reasonably be expected to interfere with designated beneficial uses of the waters of the State. As they apply to inland surface waters, enclosed bays, and estuaries, these criteria are found in the California Toxics Rule (“CTR”) promulgated by USEPA in 2000 (40 C.F.R. §131.38), and are implemented by SWRCB’s “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (commonly known as the State Implementation Plan or “SIP”) approved in 2000 and amended in 2005 (SWRCB Order No. 2005-0019). These two documents form the basis of the NPDES permitting process for Publicly Owned Treatment Works (“POTWs”) in the State. The CTR provides the Water Quality Objectives for priority toxic pollutants and the SIP prescribes the methodology for determining whether a limit for a toxic pollutant should be included in a NPDES permit and the method for calculating the limit if one is needed.

In May 2006, the SWRCB adopted a Statewide General Waste Discharge Requirements (“GWDR”) for Sanitary Sewer Systems (SWRCB Order No. 2006-0003-DWQ). The GWDR is a proactive approach to ensure system-wide operation, maintenance and management plans to reduce sewer system overflows. Basic requirements of GWDR include on-line reporting of sewer system overflows and the development of a Sewer System Management Plan.

The RWQCBSFBR is the enforcement arm of the State and federal water pollution control programs in the San Francisco Bay region. The RWQCBSFBR issues discharge permits under Section 401 of the Clean Water Act, and establishes waste discharge requirements under the Porter-Cologne Act. Discharge permits are issued for a five-year period. The District’s Wastewater System currently has two NPDES permits, one for the Main Wastewater Treatment Plant which expires in 2015 (RWQCBSFBR Order No. R2-2010-0060), and one for the wet weather facilities which expires in 2014 (RWQCBSFBR Order No. R2-2009-0004). See also “– *Litigation Relating to the District’s Wet Weather NPDES Permit*” below.

***Permit Compliance History.*** In the 62-year history of Special District No. 1, the District has had fines imposed for permit violations under its NPDES permits only five times: \$70,000 in 1987, \$1,500 in 1995, \$314,000 in 2005, \$209,851 in 2010, and \$21,000 in 2011. The 1987 violation resulted when, before construction to renovate Pump Station H could begin, a simultaneous failure of two control system components resulted in a spill of approximately 8 million gallons of rain-diluted wastewater. The 1995 violation resulted when a chlorine residual occurred for several hours due to a lack of treatment chemical at Point Isabel. The 2005 violation resulted from an overflow from the District’s interceptor system during a significant storm event which occurred on December 18, 2005. Failure of a PG&E feed line resulted in loss of electrical power at the District’s Main Wastewater Treatment Plant for approximately 90 minutes. The District identified corrective actions to improve the reliability of electrical power service at the Main Wastewater Treatment Plant. The 2010 fine resulted from an effluent chlorine residual at the Point Isabel Wet Weather Facility, incomplete treatment during a single discharge from the San Antonio Creek Wet Weather Facility, and a sanitary sewer overflow from the collection system that occurred in 2009. Issues with the dechlorination system resulted in the chlorine residual and problems with activation



of the chlorination system resulted in the discharge of approximately 87,000 gallons of partially treated rain-diluted wastewater. An intense storm on October 13, 2009 that exceeded collection system capacity resulted in the overflow of approximately 233,000 gallons of rain-diluted wastewater. The 2011 violation resulted in a minimum mandatory penalty for seven permit violations that occurred between 2002 and 2006 from the District's three wet weather facilities. Five of the violations were the result of issues with the dechlorination feed systems that were corrected in 2007. The other two violations resulted from silver limit violations resulting from illicit discharges from an industrial facility in 2006. The illicit discharge was discontinued upon discovery and monetary penalties were collected by the District from the discharger.

In early 2010, the District settled five permit limit exceedances dating back to 2006 and 2007 and was assessed a \$6,000 total minimum administrative civil liability penalty. The RWQCBSFBR determined that these exceedances did not constitute violations of the NPDES permit requirements. In September 2010, following 132 consecutive months with no permit violations at its Main Wastewater Treatment Plant, the District experienced an acute toxicity bioassay test exceedance. This condition also occurred from November 2010 to February 2011. Following an extensive investigation by the District over 14 months, it was determined that the cause of toxicity was dissolved carbon dioxide, which would be rendered harmless once discharged to the San Francisco Bay. On November 16, 2011, the District received a letter from RWQCBSFBR concurring with the results of this investigation and confirming that the District did not in fact violate its NPDES permit during the above referenced periods. Following resolution of this issue, the District has now maintained 161 consecutive months (since August 1999) with no permit violations at its Main Wastewater Treatment Plant.

The Main Wastewater Treatment Plant is also regulated under the Clean Air Act. The District has exceeded the permitted hydrogen sulfide limit on digester gas a total of 11 occasions over the last 10 years. In response to the exceedances, the District constructed a new ferric feed system and a digester gas scrubber system to limit the production of hydrogen sulfide gas and remove any significant hydrogen sulfide levels prior to combustion.

***Litigation Relating to the District's Wet Weather Facilities NPDES Permit.*** On January 12, 2007, the SWRCB on its own motion for review issued a draft order (the "Draft SWRCB Remand Order") reviewing the District's 2005 Wet Weather Facilities NPDES Permit (RWQCBSFBR Order No. R2-2005-0047) and concluding that the 2005 Wet Weather Facilities NPDES Permit and time schedule order (RWQCBSFBR Order No. R2-2005-0048, the "TSO") approved in connection with the issuance of the Wet Weather Facilities NPDES Permit by the RWQCBSFBR in September 2005 were inconsistent with the mandates of the Clean Water Act (33 U.S.C. §1251 et seq.) and the implementing USEPA Regulations (40 C.F.R. Part 123). The Draft SWRCB Remand Order concluded that the District's 2005 Wet Weather Facilities NPDES Permit failed to implement secondary treatment requirements and to ensure compliance with applicable water quality standards. Following a public hearing held on May 1, 2007, the SWRCB approved the Draft SWRCB Remand Order with slight modifications (SWRCB Order No. WQ 2007-0004, the "SWRCB Remand Order") and remanded the 2005 Wet Weather NPDES Permit and the TSO to the RWQCBSFBR for revisions consistent with the SWRCB Remand Order.

On January 14, 2009, the RWQCBSFBR issued the District a new Wet Weather Facilities NPDES permit (RWQCBSFBR Order No. R2-2009-0004). Previous permits issued by the RWQCBSFBR allowed the District to discharge flows from its three wet weather facilities during heavy storm events, following primary treatment and disinfection, as part of a regional solution to help prevent sewer overflows on streets in the East Bay communities. This approach was consistent with USEPA policy at the time the wet weather facilities were constructed. The new permit, however, is more stringent and prohibits the District from discharging any flows from its wet weather facilities to San Francisco Bay even during heavy storm events. Recognizing that discharges from the wet weather facilities cannot be

immediately halted without causing sewer overflows, the RWQCBSFBR simultaneously issued a Cease and Desist Order (“CDO,” RWQCBSFBR Order No. R2-2009-0005) requiring the District to develop a plan for eliminating discharges from the wet weather facilities at the earliest possible date. The CDO notes that the time schedules therein account for the considerable uncertainty in determining effective measures to achieve compliance and may be revisited. The inability of the District to meet the terms of the new Wet Weather Facilities NPDES permit also prompted the USEPA, SWRCB and RWQCBSFBR to seek judicial entry of a Stipulated Order, followed by a Consent Decree, memorializing the compliance plan and rendering it enforceable. Towards that end, a Stipulated Order for Preliminary Relief (the “SO”) was negotiated among the District and the USEPA, SWRCB, RWQCBSFBR and the Department of Justice. After negotiations were completed, the regulatory agencies initiated a lawsuit against the District on January 15, 2009 (*United States of America, et al. v. East Bay Mun. Util. Dist.*, No. CV 09-0186 RS (N.D. Cal.)) and simultaneously filed the proposed SO for the Court’s approval. The SO was approved by the Court and became effective on July 22, 2009.

The objective of the SO is to develop remedial measures to address the excess wet weather flow issues, and to develop information to tailor a final remedy for inclusion in a Consent Decree which is anticipated to resolve the litigation. The SO requires the District, among other things, to initiate a number of programs, including: (i) a flow monitoring and data assessment program, including the monitoring of flows to the District’s interceptor system from the participating agencies that discharge into the District’s interceptors (see “Wastewater Facilities” above), the modeling of peak flows under design storm conditions, and the development of alternative sets of capacity flow limits; (ii) a private sewer lateral regional ordinance program requiring the District to develop, adopt and implement a regional ordinance setting standards for the performance of lateral sewer pipes that extend from privately-owned structures to the participating agencies’ collection systems and requiring property owners to obtain private sewer lateral compliance certificates at specified junctures, such as upon sale of property, upon obtaining building permits, and upon requests for changes in District water meter size; (iii) a private lateral incentive program requiring the District to provide \$2 million per year in incentives to encourage private lateral inspection and replacement; (iv) an interceptor system asset management program to develop protocols for interceptor condition assessment, including an inspection of the entire system within five years and annual repairs and reporting; and (v) development of a collection system asset management template through an interactive process among the District, the participating agencies and regulators. The total cost of these programs to the District is estimated at approximately \$5 million per year over the first five years of the SO. Funds have been budgeted in the District’s five-year Capital Improvement Program and the work required by the SO was initiated by the District in Fiscal Year 2010. Work under items (i) and (v) as described above is complete. Work on the remaining programs will continue as long as the SO is in place.

The District believes that the programs undertaken pursuant to the SO have and will continue to provide information of benefit in identifying the sources of the wet weather discharges and developing an appropriate regional plan to address them. The SO programs represent the first phase in the development of a long-term solution to address peak wet weather discharges. In parallel to the litigation and SO involving the District, the participating agencies that cause and contribute to the District’s wet weather facility discharges entered into their own SO with USEPA, SWRCB, RWQCBSFBR and the Department of Justice, which was approved by the Court in a related lawsuit (to which the District is not a party) and became effective on September 6, 2011. The activities undertaken by the participating agencies under their parallel SO are yielding further information and progress toward development of a long-term solution.

In January 2013, the District and the participating agencies began joint settlement negotiations with USEPA, SWRCB, RWQCBSFBR and the Department of Justice with a goal of adopting a long-term Consent Decree and resolving both parallel lawsuits. The Consent Decree, if negotiated and approved,

would supersede the SO and is expected to lay out a program of work by the District and the participating agencies designed to result in reducing peak wet weather flows over time to the point that the District's wet weather facilities would no longer discharge during storm events smaller than a determined design storm. In the vast majority of storms, it is anticipated that the District's wet weather facilities would then be used only to provide temporary storage of peak flows which would be drained back to the District's Main Wastewater Treatment Plant for secondary treatment and discharge. As negotiations with respect to the Consent Decree are ongoing, the District cannot predict at this time the outcome of any such negotiations nor the particular actions the District or the participating agencies may be required to undertake, or the level of financial investment that will be needed to complete any such required actions. The District anticipates that these issues will be addressed in the negotiations, which are expected to last well into 2013. The District's identified goal in the Consent Decree negotiations is to achieve a plan that serves the interests of the District and its ratepayers by adequately reducing wet weather flows while ensuring any necessary financial investments are apportioned and scheduled in the most cost-effective and equitable manner possible. The District expects that the process for renewal of the District's NPDES permit for the wet weather facilities which expires in 2014, as well as the review of the NPDES permits of the participating agencies which expire the following year, will be integrated with Consent Decree negotiations.

***Other Agencies with Regulatory Oversight Affecting the Wastewater System.*** Other regulatory agencies with approval or oversight responsibilities over the construction or operation of the Wastewater System include the Bay Conservation and Development Commission, the Bay Area Air Quality Management District, the California Department of Health Services, and the U.S. Army Corps of Engineers. The roles these other agencies play with respect to operations of the Wastewater System are summarized as follows:

*The Bay Conservation and Development Commission:* responsible for approving all projects undertaken within San Francisco Bay or within 100 feet of the mean high tide line of the Bay.

*The Bay Area Air Quality Management District:* responsible for setting air emissions standards for the Wastewater System's sewage treatment facilities and issues air emission permits.

*The California Department of Health Services:* responsible for setting standards for the use of recycled water.

*The U.S. Army Corps of Engineers:* responsible for approving all construction projects undertaken within navigable waters of the United States.

***Future Statutory and Regulatory Compliance.*** As noted above, the construction and operation of wastewater facilities and the discharge of wastewater are highly regulated activities. Federal, State and local standards and regulations are subject to change. Changes in the scope and standards for regulation of wastewater systems, such as the District's Wastewater System, may lead to increasing stringent operating requirements and the imposition of future administrative orders issued by federal or State regulators. Compliance with future requirements and orders that may be adopted could impose substantial additional costs on the Wastewater System. Furthermore, claims against the Wastewater System for failure to comply with applicable laws and regulations could be significant. The District is actively involved with major wastewater industry associations and routinely monitors and participates in the regulatory process in order to ensure that a "sound science" approach is applied in determining the need, and (if deemed necessary) implementation approach, for potential regulatory changes. However, no assurance can be given that the Wastewater System will remain subject to the laws and regulations currently in effect or will always be able to obtain all required operating permits or that the cost and/or impact of compliance

with such laws, regulations or orders will not adversely affect the finances or operations of the District and the Wastewater System.

### **Climate Change**

The effects of global climate change are expected to increase the risk of flooding at wastewater facilities due to the greater frequency of high precipitation events and sea level rise. The District has developed mitigation and adaptation strategies to deal with the changing climate and its effect on its wastewater facilities. In 2008, the District incorporated climate change into its Strategic Plan, and has developed and implemented a climate change monitoring and response plan, which includes specific guidance on infrastructure planning.

The District's response to climate change focuses on:

- Keeping current with science and assessing potential effects of climate change in the Mokelumne and East Bay watersheds and on local East Bay facilities, including the District's wastewater facilities such as the Main Wastewater Treatment Plant;
- Determining water supply and infrastructure vulnerabilities;
- Monitoring and reducing greenhouse gas emissions caused by the District's operations;
- Integrating climate change in strategic planning and budgeting decisions;
- Advocating for new legislation and regulations that help water and wastewater agencies better respond to climate change; and
- Developing adaptation and mitigation strategies as part of water supply management and wastewater treatment programs.

### **Seismic Matters**

The District is in a seismically active region of California. The Hayward Fault runs through the entire western portion of the District and the Calaveras Fault runs through the southeastern portion of the District. The Concord Fault is located several miles to the east of the District and the San Andreas Fault is located to the west.

The District commissioned a seismic evaluation study, completed in 1994, that examined the potential impacts on the District's Wastewater System of various magnitudes of earthquakes along the Hayward Fault. The study found that many of the Wastewater System facilities are located on poor soil and could be affected by liquefaction and settlement. Although structures supported on pile foundations should withstand the liquefaction with minimal structural damage, piping and electric conduit penetrating into basement walls of these structures could be sheared, effectively causing loss of function in the facility. The study further concluded that, in the event of an earthquake on the Hayward Fault measuring 7.5 on the Richter scale, approximately half of the facilities at the Main Wastewater Treatment Plant would suffer significant damage, that three of the District's 15 pump stations could possibly experience loss of function and that interceptor blockage could lead to sewage backup into the San Francisco Bay or onto city streets. A major earthquake could also have a severe adverse impact on the economy of the District's wastewater service area.

Following completion of the 1994 seismic evaluation study, the District began implementing its Wastewater Seismic Improvement Program. The Wastewater Seismic Improvement Program involves the retrofit of all the facilities that, if a failure occurred, would endanger life and/or public health. Structural

modifications will be made to reduce the possibility of significant damage to the Wastewater System. Each of the Main Wastewater Treatment Plant Operation Center, Sludge Dewatering Building, Primary Sedimentation Blower Building and Oxygenation Tank Control Building have been seismically retrofitted. All of the high priority projects identified in the 1994 seismic evaluation study have been completed.

In the event of significant earthquake damage to the Wastewater System, there can be no assurance that Subordinated Wastewater Revenues will be sufficient to pay the principal of and interest on the Wastewater System Revenue Bonds.

### **Security and Emergency Preparedness**

The District has implemented a security and emergency preparedness program that includes a Security Operations Control Center (the “SOCC”) that is staffed seven days a week, 24 hours a day. The SOCC houses a proprietary centralized security system to monitor access controls, digital video cameras and recorders, and security alarms; which include supervisory control and data acquisition (“SCADA”) alarms related to entry points and critical water distribution system hatches. The dispatchers at the SOCC monitor alarms, assess conditions using a closed circuit television system, and dispatch security and law enforcement response as needed for alarms and reports of suspicious circumstances or crimes at District facilities. In addition, the District maintains access controls for its water and wastewater treatment, administrative and maintenance facilities, its storage yards and service centers, and the reservoirs and pumping plants in its water distribution system. District security includes an internal security staff and security contracts, and both units patrol the District’s critical infrastructure and key resource facilities from the foothills in the Sierra Mountains to the San Francisco Bay. Contract security officers are also used to supplement automated access controls at certain key facilities.

In order to address emergency response by the District, the District has an established Emergency Operations Plan. Pursuant to the District’s Emergency Operations Plan, District employees are sworn disaster services workers, and staff is trained to use the State Office of Emergency Services Standardized Emergency Management System (SEMS) in response to emergencies and security incidents. As part of its Emergency Operations Plan, the District maintains two strategically located emergency operations centers and a mobile emergency command center, and has in place an emergency operations team to lead emergency response activities. The District also has adopted business continuity plans to ensure the District’s ability to respond to, work through and recover from any emergency or other event that disrupts its normal business functions.

### **Insurance**

The District uses a combination of self-funding/self-insuring and insurance coverage in the District’s risk management program. The program provides protection for the District’s buildings and facilities, including their contents and equipment, from fire, explosion and related perils, including flood. The District’s insurance program does not currently include earthquake coverage. The District self-insures for liability claims up to \$10 million for bodily injury and property damage that may arise from the District’s operations, including but not limited to use of its property, facilities, or vehicles. The District also maintains fidelity protection against fraudulent acts of employees.

The District maintains a reserve of approximately \$10 million that is earmarked to pay both liability and workers’ compensation claims. Selected insurance coverages include the following:

- \$90 million of commercial general and automobile liability insurance, subject to a \$10 million self-insured retention for the Water System and the Wastewater System;

- Statutory limits of excess workers’ compensation coverage, subject to a \$5 million self-insured retention for the Water System and the Wastewater System;
- \$200 million in coverage for District all risk property insurance, subject to a \$500,000 deductible, excluding coverage for all underground property and pipelines, earthquake and flood;
- \$25 million in coverage for flood perils (except for areas within the FEMA-designated 100-year flood plan in which a \$10 million limit is applicable), subject to a \$1.5 million deductible per occurrence, excluding coverage for all underground property and pipelines;
- \$10 million in coverage for boiler and machinery insurance, subject to a \$25,000 deductible (except for Pardee Dam, Camanche Dam and the Main Wastewater Treatment Plant, for which a \$50,000 deductible applies); and
- \$10 million in coverage for crime insurance, subject to a \$25,000 deductible.

### **Capital Improvement Program**

The District’s biennial planning process includes an update of facilities needs for the ensuing five fiscal years. A series of master plans document needs by specific asset classes and include assessments of key facilities, considering engineering condition assessments as well as operational performance and maintenance histories. Facilities in need of rehabilitation or replacement are identified and prioritized. Project scopes are also defined (for example, replacement of aging mechanical or electrical gear, seismic upgrades, or other defined scopes).

The results of the master plans are considered during the biennial update to the Capital Improvement Program (the “CIP”). The last CIP update was completed in 2013 and included a five-year capital expenditure forecast for Fiscal Years 2014 through 2018. Based upon the District’s five-year capital expenditures forecast for Fiscal Years 2014 through 2018, the District cash expenditures for capital improvements to the Wastewater System for Fiscal Years 2014 through 2018 are estimated to aggregate approximately \$155.1 million.

The Wastewater System Five-Year Capital Plan includes capital improvements both at the Main Wastewater Treatment Plant and at remote wastewater facilities designed to ensure that wastewater facilities are well maintained so that they function efficiently and safely, operate at an appropriate level of service and comply with new and existing wastewater regulations and permit requirements. Included in such five-year capital plan for the Wastewater System are the following major programs and projects:

***Wastewater Infrastructure Program.*** The Wastewater Infrastructure Program furthers the District’s objectives to replace aging infrastructure and to make infrastructure improvements to ensure delivery of reliable, high quality service now and in the future at both the Main Wastewater Treatment Plant (“MWWTP”) and at remote wastewater facilities. The majority of the work focuses on rehabilitating the digesters, sections of the sewer interceptor system, concrete structures at the MWWTP, and implementing odor control improvements. Elements of the program are described below.

The Digester Upgrade Project will rehabilitate the digesters which perform a key role in stabilizing wastewater solids prior to disposal. Phase 1 was completed in Fiscal Year 2009 and rehabilitated four primary digesters with new covers and mixers. The second phase is ongoing and construction will be completed in Fiscal Year 2014. The second phase will rehabilitate four digesters,

convert two digesters from secondary to primary, install new blending tanks and a sludge feed system, and construct a new fats, oil, and grease receiving station. The third phase will rehabilitate two digesters, and replace the floating covers with new Dystor covers. Design is scheduled for Fiscal Years 2014 through 2015, with construction in Fiscal Years 2015 through 2016. Phase 4 includes rehabilitation work on three digesters, and will replace the Dystor cover on one of the digesters. Design is scheduled to begin in Fiscal Year 2017, with construction in Fiscal Years 2018 through 2020. Phase 5 includes construction of two new digesters and is scheduled for Fiscal Years 2020 through 2023.

The Concrete Rehabilitation Project includes rehabilitating critical concrete structures, channels and gates at the MWWTP as sulfides and other constituents in the wastewater have accelerated corrosion of the concrete. Repairing the Plant Effluent Channel is the highest priority and is scheduled to be completed in Fiscal Year 2014. Repair of the Primary Tank Channels is being conducted in six phases, with the first two phases completed in Fiscal Year 2013. Phases 3 through 6 are scheduled to take place from Fiscal Years 2015 through 2020. A condition assessment of the secondary aeration reactor basins was completed in Fiscal Year 2011. Repair of the basins will be completed in four phases with the repair of two tanks per year from Fiscal Years 2015 through 2021. Rehabilitation of the concrete walls of the secondary clarifiers is scheduled for Fiscal Years 2022 through 2023.

The Odor Control Project provides for odor control facilities to improve the air quality in communities along the collection system and at the MWWTP. This project implements improvements that were identified and prioritized in the Odor Control Master Plan that was updated in Fiscal Year 2009. Planned work includes replacing the odor control units at the influent pump station in Fiscal Years 2014 through 2015; replacing the wet scrubber system at the solids dewatering building with a chemical scrubber in Fiscal Years 2015 through 2016; conducting a study of the primary sedimentation basins in Fiscal Year 2014 to evaluate potential treatment alternatives with construction occurring in two phases to cover the primary sedimentation tanks and provide new chemical scrubbers starting in Fiscal Year 2016 and going through Fiscal Year 2023; and replacing the scrubber system at the resource recovery receiving station in Fiscal Years 2016 through 2017.

The Treatment Plant Infrastructure Project provides for the cyclical replacement and rehabilitation of various facilities at the MWWTP. Improvements in Fiscal Years 2014 through 2018 include replacement of large variable frequency drives, replacement of influent screens, repair or replacement of flow meters, rehabilitation of the ventilation system in the dewatering building, and the installation of a plant-wide intercom system. The project also includes road modifications at the entrance to the MWWTP to accommodate the City of Oakland's redevelopment of property adjacent to the plant. In Fiscal Year 2019, improvements are planned for Engineers Road along the southern edge of the MWWTP which includes widening Engineers Road, a new intersection with a realigned Wake Avenue, and a new connection to Burma Road.

The Interceptor Rehabilitation program includes several projects to rehabilitate portions of the interceptor system that is now approaching 60 years of service. In Fiscal Year 2014, potential methods for corrosion prevention in the interceptor system will be evaluated, and existing cathodic protection systems will be rehabilitated and new ones installed as needed to prevent corrosion. The Wood Street segment of the South Interceptor in Oakland had one section rehabilitated in 2000. Construction is underway to rehabilitate the remainder of this two-mile, 105-inch concrete interceptor and is scheduled for completion in Fiscal Year 2016. The Versailles and Alameda Interceptors will be rehabilitated in Fiscal Years 2014 through 2016, and the 3rd Street Interceptor in Oakland in Fiscal Years 2015 through 2019.

The Motor Control Center ("MCC") Replacement Project provides for the cyclical replacement of all MCCs that are at the end of their service life. The most critical MCC will be replaced in Fiscal Year

2014, along with an assessment of MCCs at the MWWTP and installation of arc flash kits at certain MCCs. In Fiscal Years 2017 through 2018, MCCs will be replaced at the Reactor Deck (oxygenation tank) and the Operations Center. In Fiscal Years 2019 through 2020, MCCs at the Digester Control Building will be replaced.

The Centrifuge Replacement Project provides for the cyclical replacement of centrifuges for dewatering the solids processed by the digesters. A fifth centrifuge was installed in Fiscal Year 2009. The replacement of the first of the four original centrifuges with a high-speed unit was completed in Fiscal Year 2011. Replacement of the second original centrifuge and related equipment such as the feed pump, cake pump, polymer system, mechanical piping, electrical and control systems is scheduled for Fiscal Years 2020 through 2022. Replacement of the third centrifuge is scheduled for Fiscal Years 2021 through 2023.

The Power Generation Station Expansion Project will expand energy production at the MWWTP from 6 to 10.5 megawatts. With the increase of biogas production due to the Resource Recovery Program, significant quantities of biogas were flared to the atmosphere, precluding the District from utilizing the full potential of this renewable resource. The expansion includes a facility for two turbines, each with a capacity of 4.5 megawatts. One turbine was installed in Fiscal Year 2012, and the additional energy can be sold or utilized at the MWWTP to attain 100% energy self-sufficiency. The purchase and installation of the second turbine is planned for Fiscal Years 2020 through 2022.

The Pump Station Improvements program provides for the upgrade of various pump stations. The Pump Station Master Plan is being updated to identify and prioritize long-term pump station and collection system improvements, and is scheduled to be completed in Fiscal Year 2014. Such improvements may include the replacement of mechanical and electrical equipment; sump pumps and flow meters; the addition of programmable logic controllers and software; access improvements; and replacement of discharge piping. Work is scheduled to be performed on Pump Station L in Oakland in Fiscal Years 2014 through 2015, Pump Station N in Richmond in 2015, Pump Station M in Alameda in Fiscal Years 2017 through 2019, Pump Station C in Alameda in Fiscal Years 2019 through 2020, Pump Station H in Oakland in Fiscal Years 2019 through 2021, and Pump Station J in Oakland in Fiscal Years 2022 through 2023.

***Wastewater Regulatory Compliance Program.*** The Regulatory Compliance Program furthers the District's objectives to operate and maintain facilities to meet all air, land and water discharge requirements; to ensure protection and stewardship of San Francisco Bay; and implement preventative and corrective maintenance programs. The majority of work under this strategy focuses on monitoring and modeling efforts to meet discharge permit requirements, and updating the Wet Weather Master Plan. The program includes the following projects:

The Infiltration/Inflow Control Project includes work required by the NPDES permit, Cease and Desist Order, and Stipulated Order ("SO") for Preliminary Relief issued in 2009 for the District's three wet weather facilities. The required work includes flow monitoring and modeling in Fiscal Years 2014 through 2015; implementation of the regional private sewer lateral ordinance online system upgrades, the private sewer lateral rebate program, and the interceptor system asset management work plan as required by the SO which is ongoing and projected to continue over the next ten years. An engineering study to evaluate the potential application of Real Time Control systems to improve overall integration and operation of the interceptor system, wet weather facilities, MWWTP Influent Pump Station and wet weather storage basins will take place in Fiscal Year 2014.

The Wet Weather Plant Improvements Project addresses upgrades at the Wet Weather Treatment Facilities ("WWF") required to improve operations. It includes chemical system improvements to the



WWFs at Oakport and San Antonio Creek in Oakland. Work has begun to replace the existing suction and discharge piping and associated valves and pressure relief systems for the sodium hypochlorite and sodium bisulfite chemical feed systems. The work is scheduled for completion in Fiscal Year 2015.

The North Interceptor Pump Station Q Project (“PS Q”) involves the design and construction of modifications to allow dual operation of PS Q for use as either a gravity relief sewer (north to south flow) or a forcemain (south to north flow). Based on wet weather flow modeling work, discharges from the wet weather facilities may be reduced by operating the PS Q forcemain as a gravity sewer with relatively minor modifications. This work is scheduled for Fiscal Years 2017 through 2018.

***Wastewater Non-Program Specific Construction Contingency.*** The Non-Program Specific Construction furthers the District’s objective to maintain a strong financial position to meet short and long-term needs. The contingency program focuses on making funds available for unanticipated needs, and for projects that are seeking grants to pay for a majority of the project’s cost. The District has appropriated approximately \$8.5 million in the Fiscal Years 2014 and 2015 budget cycles to fund this program.

The program sets aside funds for unanticipated needs which arise before the next budget preparation cycle. Typical examples of such needs include replacement or repairs to facilities and equipment as a result of failures or safety deficiencies, new projects or the acceleration of planned projects requiring funding before the next budget cycle. Funds are also set aside for projects where grants are being sought in the event that the grant application is successful and funding is received. Most grants require the District to fund the project, and then apply for reimbursement of allowable costs. In Fiscal Year 2014, funds will be placed in contingency for making improvements at the food waste facility in the event that potential food waste contracts are procured.

Table 3 below summarizes the District's Fiscal Years 2014 through 2018 projected CIP cash expenditures by major category.

**Table 3**  
**Fiscal Years 2014-2018**  
**Capital Improvement Program**  
**Forecast – Cash Expenditures by Category<sup>(1)</sup>**  
**(Millions)**

	<i>Fiscal Year Ending June 30,</i>					
	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total</i>
Maintaining Infrastructure	\$23.6	\$23.7	\$25.4	\$24.7	\$19.9	\$117.3
Regulatory Compliance	4.6	3.9	2.0	3.3	7.5	21.3
Admin & General Expenses <sup>(2)</sup>	<u>3.3</u>	<u>3.3</u>	<u>3.3</u>	<u>3.3</u>	<u>3.3</u>	<u>16.5</u>
<b>Total</b>	<b><u>\$31.5</u></b>	<b><u>\$30.9</u></b>	<b><u>\$30.7</u></b>	<b><u>\$31.3</u></b>	<b><u>\$30.7</u></b>	<b><u>\$155.1</u></b>

<sup>(1)</sup> Cash expenditures include spending for projects appropriated in earlier Fiscal Years.

<sup>(2)</sup> Includes overhead, construction management and other administrative costs which are allocated to individual projects upon their completion.

Source: The District.

The cost estimates are adjusted periodically and represent preliminary estimates for planning purposes only. The District's currently estimated funding sources for its CIP for Fiscal Years 2014 through 2018 is set forth below:

**Table 4**  
**Sources of Funds for Capital**  
**Improvement Program Expenditures**

<i>Funding Sources</i>	<i>(Millions)</i>
Commercial Paper Proceeds	\$ 0.0
Bond Proceeds <sup>(1)</sup>	24.0
Advances, Contributions and Reimbursements	0.0
Revenues	<u>131.1</u>
<b>Total</b>	<b><u>\$155.1</u></b>

<sup>(1)</sup> Represents remaining proceeds of the Series 2010B Bonds.

Source: The District.

## WASTEWATER SYSTEM FINANCES

### Basis of Accounting

The District reports operations on a Fiscal Year basis (currently July 1 through June 30). Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the costs of providing goods and services to the general public are financed or recovered primarily through user charges. Enterprise funds are accounted for using the accrual basis of accounting. The accounting policies of the District conform to generally accepted accounting principles for municipal water and wastewater utilities. The accounts are maintained substantially in accordance with the Uniform System of Accounts prescribed for investor-owned and major municipally-owned water and wastewater utilities.

## Sources of Funds

The Wastewater System's principal source of revenues is dry weather user charges to the participating agencies. In Fiscal Year 2013, dry weather user charges of \$58.8 million provided approximately 58.7% of the Wastewater System's \$100.1 million total annual revenue. Wet weather facilities charges account for approximately 18.3% of total revenues and are designed to recapture the cost of financing the District's wet weather facilities. The District's Resource Recovery Program generated approximately 9.2% of the Wastewater System's total revenue in Fiscal Year 2013.

The following Table 5 sets forth the District's Wastewater System sources of funds for the five most recent Fiscal Years ended June 30, 2013. The sources of funds in the table below include certain funds which do not constitute Subordinated Wastewater Revenues for purposes of the Indenture. Subordinated Wastewater Revenues include all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System or arising from the Wastewater System, which includes, without limitation, the District's dry weather user charges, wet weather facilities charges, wastewater capacity fees and resource recovery revenues, as well as investment income. Property taxes are applied to reduce Operation and Maintenance Costs and are not pledged to the repayment of the Wastewater System Revenue Bonds. See "– Tax Revenues." Certain grants and contributions earned on construction which are restricted to use for specified purposes are not included in Subordinated Wastewater Revenues for purposes of the Indenture. Only Subordinated Wastewater Revenues are pledged to the payment of the Wastewater System Revenue Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Pledge of Subordinated Wastewater Revenues." Comparative summaries of the Wastewater System's historical operating results and debt service coverage ratio for each of the last five Fiscal Years appear in Table 15.

**Table 5**  
**WASTEWATER SYSTEM SOURCES OF FUNDS**  
**Five Fiscal Years ended June 30, 2013**  
**(Millions)**

	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
<b>Operating Revenue and Other Income:</b>					
Dry Weather User Charges	\$47.1	\$48.8	\$50.9	\$55.2	\$58.8
Wet Weather Facilities Charges	14.3	15.3	16.1	17.2	18.3
Resource Recovery	7.7	7.6	9.4	9.1	9.2
Interest <sup>(1)</sup>	2.9	1.2	2.0	1.6	0.3
Taxes <sup>(2)</sup>	7.4	7.4	7.4	8.3	9.4
Power Revenues	-	-	-	0.3	0.7
Other <sup>(3)</sup>	<u>1.0</u>	<u>1.1</u>	<u>2.4</u> <sup>(5)</sup>	<u>3.2</u> <sup>(5)</sup>	<u>3.4</u>
<b>Total Revenues</b>	<b>\$80.4</b>	<b>\$81.4</b>	<b>\$88.2</b>	<b>\$94.9</b>	<b>\$100.1</b>
<b>Capital Contributions:</b>					
Wastewater Capacity Fees	1.6	0.7	2.4	2.8	1.3
Earned contributions on construction	7.4 <sup>(4)</sup>	2.0	0.7	0.0	0.0
Grants	<u>0.0</u>	<u>0.2</u>	<u>0.0</u>	<u>0.0</u>	<u>0.3</u>
<b>Total Contributions</b>	<b><u>\$ 9.0</u></b>	<b><u>\$ 2.9</u></b>	<b><u>\$ 3.1</u></b>	<b><u>\$ 2.8</u></b>	<b><u>\$ 1.6</u></b>
<b>TOTAL</b>	<b><u>\$89.4</u></b>	<b><u>\$84.3</u></b>	<b><u>\$91.3</u></b>	<b><u>\$97.7</u></b>	<b><u>\$101.7</u></b>

<sup>(1)</sup> Includes interest earnings on Wastewater System Fund, including earnings on proceeds of the District's Wastewater System Revenue Bonds.

<sup>(2)</sup> Includes the District's share of 1% countywide property tax and the ad valorem tax levied for repayment of Special District No. 1's general obligation bonds.

<sup>(3)</sup> Other Revenues excludes reimbursements and certain other receipts applied directly to operating expenses.

<sup>(4)</sup> Includes certain reimbursements from CalTrans for relocation costs of portions of the District's South Interceptor in connection with Interstate-880 seismic retrofit.

<sup>(5)</sup> Beginning in Fiscal Year 2011, includes interest subsidy payments received by the District in connection with its Series 2010B Bonds which were Build America Bonds.

Source: The District.

### **Rates and Charges**

The District finances its wastewater operations with rates and charges, a share of the county-wide real property tax levy, and an *ad valorem* property tax levied to meet general obligation bond debt service payments. Rates and charges are established by the Board after a public hearing process. Dry weather user charges are collected by the District and included on the customers' water bills. Wet weather facilities charges are per parcel charges levied on property and collected by Alameda County and Contra Costa County on the property tax bill and remitted to the District. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Proposition 218" for a discussion of the notice, hearing and protest procedures followed by the District in setting rates. The District's most recent rate increase included the adoption on June 11, 2013 of a 9.00% and 8.50% rate increase for Fiscal Years 2014 and 2015, respectively.

The District's current (Fiscal Year 2014) rates are set forth below in Table 6. The District believes that the current rate structure is consistent with federal and State regulations, which require generally that wastewater charges be proportionate to the operation, maintenance and replacement costs associated with providing service for each discharger or class of dischargers. See also Table 16 under "Projected Operating Results" for a description of projected future rate increases.

**Table 6**  
**WASTEWATER SYSTEM RATES AND CHARGES**  
**Effective July 1, 2013**

<b>Residential Charge:</b>		
Service Charge (per account)	\$ 6.58	per month
Strength Charge (per dwelling unit)	6.60	per month
Flow Charge	0.735	per 100-cubic foot unit, to a maximum of 10 units
San Francisco Bay Pollution Fee	0.201	per month per dwelling unit
<b>Non-Residential Charge:</b>		
Service Charge (per account)	6.58	per month
Treatment Charge	0.86-11.97	per unit, depending on the nature of the business
San Francisco Bay Pollution Prevention Fee	5.48	per month
<b>Minimum Monthly Charge:</b>		
Duplex	19.78	per month
Triplex	26.38	per month
<b>Permit Accounts:</b>		
Flow Charge	0.735	per hundred cubic feet
COD	0.268	per pound of discharge
Suspended Solids	0.396	per pound of discharge
<b>Wet Weather Facilities Charge:</b>		
Residential Property	\$ 82.34	per year per dwelling unit per land parcel
Commercial/Industrial Property	\$123.50	per year per connection

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Source: The District.

### **Comparison of Wastewater System Charges**

Annual charges of various Bay Area wastewater service providers for single family residences discharging 6.0 hundred cubic feet ("CCF") of wastewater per month (as determined based upon metered water consumption) are shown in Table 7. Charges for cities served by the District include both the cities' charge for collection and the District charge for treatment and disposal. Charges for these cities include costs of sewer rehabilitation programs, now underway, to reduce wet weather rainwater infiltration and inflow into their collection systems. The District rates also reflect an additional wet weather facilities charge (\$82.34 per year per dwelling unit or \$123.50 per year per commercial/industrial property connection) to pay debt service related to the construction of the wet weather facilities.

**Table 7**  
**COMPARATIVE ANNUAL WASTEWATER CHARGES<sup>(1)</sup>**  
**Single Family Residences 6.7 CCF/Month**  
**As of June 2013**

City and County of San Francisco	\$663
Central Marin Sanitary District	638
City of Pinole	633
City of Richmond	633
<b>East Bay Municipal Utility District <sup>(2)</sup></b>	<b>624</b>
City of Vallejo	524
City of Livermore	489
City of San Jose	406
Central Contra Costa Sanitary District	405
City of Pleasanton	388
City of San Leandro	383
Delta Diablo Sanitary District	375
Dublin San Ramon Services District	355
West Contra Costa Sanitary District	330
Union Sanitary District	320
Oro Loma Sanitary District	195

<sup>(1)</sup> Includes collection and treatment charges.

<sup>(2)</sup> Monthly charges vary by metered water consumption. The District portion of the charge assumes a monthly wastewater discharge of 6.7 units for an annual charge of \$296, based on adopted rates, plus an average community collection charge of \$328 per year throughout the wastewater service area.

Source: The District.

### **Billing and Collection Procedure**

All wastewater service customers are billed by the District bimonthly for dry weather user charges, with the exception of the 450 largest accounts, which are billed monthly. Billing is staggered throughout the billing cycle by geographic location. Water service may be discontinued if an overdue wastewater account is not paid after appropriate customer notification.

The District considers its rates of payment delinquency, service discontinuance for non-payment and write-offs for uncollectible accounts to be low by wastewater industry standards for urban areas. The write-offs for uncollectible accounts for the last five Fiscal Years have been:

**Table 8**  
**WASTEWATER CHARGES UNCOLLECTIBLE REVENUES**  
**Last Five Fiscal Years**

<i>Fiscal Year Ended June 30</i>	<i>Uncollectible Revenues</i>	<i>Percent of Gross Billings</i>
2009	\$856,327	1.39%
2010	48,210	0.08
2011	452,760	0.68
2012	414,605	0.57
2013		

Source: The District.

As described above, wet weather facilities charges are per parcel charges and are collected by Alameda and Contra Costa County on the property tax bill and remitted to the District. Unpaid charges may become a lien on the property.

### **Wastewater Capacity Fees**

The District assesses a Wastewater Capacity Fee on each new Wastewater System customer or each existing Wastewater System customer that increases demand for treatment processing on or after July 1, 1984, measured in wastewater volume and strength. The Wastewater Capacity Fee is a one-time charge based on the maximum monthly wastewater volume and average strength. The Wastewater Capacity Fee for a single family residence is \$1,385. The fees for 2-4 units are \$1,235 times the number of dwelling units. In Fiscal Year 2013, Wastewater Capacity Fees collected totaled \$1.28 million.

### **Property Tax Revenues**

The District's share of the countywide 1% *ad valorem* property tax levy allocated to Special District No. 1 has provided approximately 4% to 5% of revenues of the Wastewater System in each of the past five Fiscal Years for the District. The District's share of the countywide 1% *ad valorem* property tax levy allocated to Special District No. 1 is not pledged as a source of payment for the Wastewater System Revenue Bonds, although such amounts are applied to pay Wastewater Operation and Maintenance Costs in accordance with the Indenture. Beginning in Fiscal Year 1995-96, the District exercised the authority to impose an additional *ad valorem* tax levy to pay debt service on its outstanding Wastewater System general obligation bonds.

Table 9 shows a five-year record of assessed valuations, secured roll levies and delinquencies for the taxable property included within Special District No. 1. Assessed valuations are expressed by county assessors as "full cash value" as defined by Article XIII A of the State Constitution. The tax levy shown includes both the District's allocated share of the maximum *ad valorem* tax levy by each county of 1% of full cash value and the *ad valorem* tax levy imposed to pay debt service on the District's outstanding Wastewater System general obligation bonds. Pursuant to California Revenue and Taxation Code Sections 4701 et seq., Contra Costa County and Alameda County each maintain a reserve fund for the purpose of guaranteeing 100% of the secured levies of the electing governmental jurisdictions for which such county collects taxes (commonly referred to as "The Teeter Plan"). The District has elected to participate in Contra Costa County's Teeter Plan program but has elected not to participate in Alameda County's Teeter Plan program. Consequently, the District is exposed to the effect of delinquencies in collections only for property located in Alameda County.

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**Table 9**  
**TAXABLE PROPERTY WITHIN THE WASTEWATER SYSTEM**  
**Assessed Valuation and Tax Collection Record**

	<i>Fiscal Year Ending June 30</i>				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Assessed Valuation for Taxation Purposes <sup>(1)</sup>					
Alameda County	\$71,452,305,974	\$70,004,422,511	\$70,659,732,542	\$71,934,582,382	\$75,005,826,233
Contra Costa County	<u>4,320,613,488</u>	<u>4,369,735,559</u>	<u>4,336,045,012</u>	<u>4,216,260,569</u>	<u>4,436,844,925</u>
Total	\$75,772,919,462	\$74,374,158,070	\$74,995,777,554	\$76,150,842,951	\$79,442,671,208
Secured Roll Tax Levy <sup>(2)</sup>					
Alameda County	\$ 6,833,829	\$ 6,941,851	\$ 6,821,501	\$ 7,747,832	
Contra Costa County	<u>541,168</u>	<u>530,137</u>	<u>557,588</u>	<u>558,780</u>	
Total	\$ 7,374,997	\$ 7,471,988	\$ 7,379,089	\$ 8,306,612	
Delinquent June 30 <sup>(3)</sup>					
Amount	\$ 403,486	\$ 305,905	\$ 255,170	\$ 214,184	
Percent	5.47%	4.09%	3.46%	2.58%	

(1) Net of all exemptions except homeowner's exemptions, the taxes on which are paid by the State. All valuations are stated on a 100% of full cash value basis. Assessed valuations shown include redevelopment project area incremental valuations.

(2) Net basis excluding all exemptions. Levies reflect the tax reductions effected by the adoption of Article XIII A of the State Constitution in 1978, the "Jarvis-Gann Initiative." Includes *ad valorem* tax levied for repayment of Special District No. 1's general obligation bonds.

(3) Amounts apply to Alameda County only, since Contra Costa County guarantees 100% payment of the District's secured roll levy. The delinquency percentages are based on the two counties' secured roll levies.

Sources: Auditor-Controller's Office, Alameda and Contra Costa Counties, as compiled by the District.

From time to time legislation has been considered as part of the State budget to shift the share of the 1% *ad valorem* property tax collected by counties from special districts to school districts or other governmental entities. The State budgets for Fiscal Years 2004-05 and 2005-06 reallocated portions of Special District No. 1's share of the countywide 1% *ad valorem* tax shifting a portion of the property tax revenues collected by Alameda County and Contra Costa County from special districts to school districts. As a result of the 2004-05 and 2005-06 State Budgets, Special District No. 1 lost approximately \$1,500,000 of property tax revenues in Fiscal Year 2005 and \$1,200,000 of property tax revenues in Fiscal Year 2006. Additionally, on November 2, 2004 voters within the State approved Proposition 1A, which prevents the State from reducing local government's share of the 1% *ad valorem* property tax below current levels, except in the case of fiscal emergency. Proposition 1A provides that in the case of fiscal emergency, the State could borrow up to 8% of local property tax revenues to be repaid within three years.

The 2009-10 State budget provided for the borrowing of 8% of property taxes from local jurisdictions, including the District, under Proposition 1A. This borrowing resulted in a reduction of approximately \$260,000 from property tax revenues allocable to Special District No. 1 for the Fiscal Year 2009-10. As noted above, under Proposition 1A, the State is required to repay the property taxes with interest within three years. State legislation allowed the District to sell its right to receive this repayment to a joint powers authority, which sold bonds payable from the receivables it purchased from participating local jurisdictions. The District participated in this program in order to replace the lost property taxes at no cost to the District, and treated amounts received under the program as it would have treated the State borrowed property tax revenues replaced thereby.

There can be no assurances that future legislation or voter initiatives will not reduce or eliminate the District's share of the 1% county-wide *ad valorem* property tax revenues. See also "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

The tax rolls for property located within the District Wastewater System service area for the Fiscal Year ended June 30, 2013, aggregated a total assessed valuation of approximately \$79.4 billion,



including redevelopment project areas incremental valuations of which the taxes payable were due to the redevelopment agency. In 2011, the State of California enacted legislation commonly referred to as “AB1X 26,” which required the dissolution of California redevelopment agencies and the dissolution and winding up of the operations of those agencies, which dissolution occurred on February 1, 2012. AB1X 26 provides a framework for the management of the remaining obligations of the dissolved redevelopment agencies by their respective successor agencies and oversight boards to oversee those successor agencies. Pursuant to AB1X 26, tax increment will continue to flow to the payment of “enforceable obligations” (such as tax allocation bonds) of the dissolved redevelopment agencies.

## **Grants and Reimbursements**

The District periodically receives grants for specific projects. In addition, the District from time to time receives certain reimbursements for capital costs, primarily in connection with facility relocations. No grant receipts are budgeted for Fiscal Years 2014 through 2018. Grants and facility relocation reimbursements received are treated as capital contributions and are not included in Subordinated Wastewater Revenues for purposes of the Indenture.

## **Operation and Maintenance Costs**

The primary component of the District’s Wastewater System Operation and Maintenance Costs is labor costs, including wages, salaries and benefits. Operation and Maintenance Costs also include materials, supplies and services such as treatment chemicals and sludge disposal costs, and other general and administrative expenses.

## **Outstanding Debt**

Table 10 shows Wastewater System debt outstanding as of June 30, 2013. The General Obligation Wastewater Pollution Control Bonds were authorized by voters in November 1970. All of the \$60,000,000 Wastewater Pollution Control Bonds (the “General Obligation Bonds”) that were authorized have been issued. The General Obligation Bonds are secured by the power and obligation of the District to levy *ad valorem* taxes upon property within the District’s Special District No. 1, subject to taxation therefor, without limitation of rate or amount.

By Resolution No. 33607-07 adopted June 12, 2007, the Board declared its intention to issue up to \$100,000,000 of Wastewater System Revenue Bonds, of which \$4,360,000 remains authorized but unissued. By Resolution No. 33781-10, adopted by the Board of Directors of the District on September 14, 2010, the Board declared its intention to issue up to \$200,000,000 of additional future Wastewater System Revenue Bonds, of which \$200,000,000 remains authorized but unissued. The issuance of revenue bonds by the District is not subject to prior voter approval, although such bond resolutions are subject to a 60-day referendum period (which with respect to bonds to be issued pursuant to Resolution No. 33607-07 and/or Resolution No. 33781-10 expired without challenge). The District may from time to time in the future adopt other resolutions authorizing the issuance of additional Wastewater System Revenue Bonds, subject to the satisfaction of the conditions set forth in the Indenture. See “SECURITY FOR THE SERIES \_\_\_\_ BONDS – Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations.”

From time to time, the District applies for and is granted loan funds from the SWRCB. The State Water Resources Control Board Loans (“State Loans”) are low-interest loans made by the SWRCB to fund various wet weather improvements. The SWRCB requires all future debt issued by agencies involved in loan contracts under the State Revolving Fund Loan Program to be issued on a parity with or

subordinate to the State Loans. The District currently has no outstanding State Loans for the Wastewater System. Any future State Loans would likely constitute Parity Debt under the Indenture.

Tax-exempt Extendable Municipal Commercial Paper Notes (Wastewater Series) (“Wastewater System CP Notes”) are issued by the District from time to time pursuant to Resolution No. 33705-09, which authorizes, as provided in the Municipal Utility District Act, a maximum outstanding principal amount of notes not exceeding the lesser of (1) the annual average of the District’s total revenue for the three preceding years or (2) 25% of the District’s total outstanding bonds issued pursuant to Chapters 6, 7 and 8 of the Municipal Utility District Act. As of June 30, 2013, \$15,000,000 principal amount of such Water System CP Notes were outstanding. The Wastewater System CP Notes are payable from and secured by a pledge of Wastewater Revenues on a basis subordinate to the Wastewater System Revenue Bonds.

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**Table 10**  
**OUTSTANDING WASTEWATER SYSTEM DEBT**  
**As of June 30, 2013**

	<i>Date of Issue</i>	<i>Last Maturity</i>	<i>Amount Issued</i>	<i>Outstanding June 30, 2013</i>
<u>Wastewater System Revenue Bonds:</u>				
Revenue Bonds, Series 2007A	05/16/07	06/01/37	\$ 80,630,000	\$ 60,630,000
Revenue Refunding Bonds, Series 2007B	05/16/07	06/01/26	46,670,000	35,290,000
Revenue Refunding Bonds, Series 2008C <sup>(1)</sup>	03/26/08	06/01/27	65,300,000	51,690,000
Revenue/Refunding Bonds, Series 2010A	10/20/10	06/01/29	58,095,000	51,705,000
Revenue Bonds, Series 2010B	10/20/10	06/01/40	150,000,000	150,000,000
Revenue Refunding Bonds, Series 2011A <sup>(2)</sup>	01/19/11	06/01/38	65,905,000	60,845,000
Revenue Refunding Bonds, Series 2012A	10/10/12	06/01/37	<u>20,000,000</u>	<u>20,000,000</u>
Total Wastewater System Revenue Bonds			\$486,600,000	\$430,160,000
<u>Subordinate Debt:</u>				
Extendable Municipal Commercial Paper Notes (Wastewater Series) <sup>(3)</sup>	Various	Various	15,000,000 <sup>(3)</sup>	15,000,000
<u>General Obligation Bonds:</u>				
Series F	01/22/03	04/01/18	<u>41,730,000</u>	<u>18,555,000</u>
<b>Total Debt</b>			<u>\$543,330,000</u>	<u>\$463,715,000</u>

<sup>(1)</sup> Liquidity Support provided by a Standby Bond Purchase Agreement with Bank of America, N.A., expiring January 10, 2014. The District has entered into interest rate swap agreements in connection with the Series 2008C Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*."

<sup>(2)</sup> The District has entered into an interest rate swap agreement in connection with the Series 2011A Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*."

<sup>(3)</sup> Wastewater System CP Notes may be issued in an amount up to the statutory limit described above. As of May 31, 2013, the District determined the issued amount for the Wastewater System will not exceed \$15,000,000 until subsequently increased by the District.

Source: The District.

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## Variable Rate and Swap Obligations

As of June 30, 2013, of the District's \$430,160,000 aggregate principal amount of outstanding Wastewater System Revenue Bonds, \$112,535,000 principal amount are variable rate obligations which are subject to tender prior to maturity in accordance with their terms, including \$60,845,000 principal amount of District's Wastewater System Revenue Refunding Bonds, Series 2011A (the "Series 2011A Bonds") which bear interest in a SIFMA-Based Term Interest Rate Period (the "SIFMA Index Bonds"). The SIFMA Index Bonds bear interest at a rate that fluctuates based on the weekly SIFMA Municipal Swap Index published weekly by Municipal Market Data plus a spread and are subject to mandatory tender on specified mandatory tender dates to occur at the end of each rate period. If the purchase price of the Series 2011A Bonds is not paid from proceeds of a remarketing or other funds on or prior to a scheduled mandatory tender at the end of the applicable rate period, failure of the District to provide funds for the purchase of such Series 2011A Bonds will constitute an Event of Default under the Indenture. See also "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Bonds – *Outstanding Wastewater System Revenue Bonds and Parity Debt.*"

The interest rates for the District's \$51,690,000 principal amount of other outstanding variable rate Wastewater System Revenue Bonds are reset on a weekly basis. Such variable rate demand obligations are supported by a Standby Bond Purchase Agreement between the District and Bank of America, N.A. Table 11 sets forth the liquidity provider, the expiration date of the current liquidity facility and the principal amount of outstanding bonds covered under such facility as of June 30, 2013].

**Table 11**  
**LIQUIDITY FACILITY AND EXPIRATION DATE**

<i><b>Wastewater System Revenue Bond Issue<sup>(1)</sup></b></i>	<i><b>Outstanding Principal Amount</b></i>	<i><b>Liquidity Provider</b></i>	<i><b>Facility Expiration</b></i>
Series 2008C	\$51,690,000	Bank of America, N.A.	January 10, 2014

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Source: The District.

In connection with the District's outstanding variable rate Wastewater System Revenue Bonds, the District has entered into various interest rate swap agreements (collectively, the "Wastewater Interest Rate Swap Agreements"). By virtue of these Wastewater Interest Rate Swap Agreements, the related variable rate Wastewater System Revenue Bonds are essentially treated by the District as fixed rate debt for the purpose of calculating debt service requirements, although the variable payments that the District receives from swap counterparties do not usually equal the payments that the District makes on associated variable rate debt. There is no guarantee that the floating rate payable to the District pursuant to each of the Wastewater Interest Rate Swap Agreements will match the variable interest rate on the associated Wastewater System Revenue Bonds to which the respective Wastewater Interest Rate Swap Agreement relates at all times or at any time. Under certain circumstances, the Swap Providers may be obligated to make a payment to the District under their respective Wastewater Interest Rate Swap Agreement that is less than the interest due on the associated Wastewater System Revenue Bonds to which such Wastewater Interest Rate Swap Agreement relates. In such event, the District would be obligated to pay such insufficiency from Subordinated Wastewater Revenues.

As of June 30, 2013, the District had outstanding the following Wastewater Interest Rate Swap Agreements relating to variable rate Wastewater System Revenue Bonds with the following counterparties (collectively, the "Swap Providers") in the aggregate notional amount of \$113,415,000:

**Table 12**  
**WASTEWATER INTEREST RATE SWAP AGREEMENTS**

<i>Related Bond Issue</i>	<i>Notional Amount</i>	<i>Swap Provider</i>	<i>District Pays</i>	<i>District Receives</i>	<i>Scheduled Maturity/ Termination Date</i>
Series 2011A Bonds	\$61,725,000	Dexia Credit Local, acting through its New York Branch	3.0975%	62.3% of 3 month LIBOR	06/01/2038
Series 2008C Bonds	25,845,000	Citigroup Financial Products, Inc.	3.468	65% of 30-day LIBOR	06/01/2027
Series 2008C Bonds	25,845,000	JPMorgan Chase Bank, N.A.	3.468	65% of 30-day LIBOR	06/01/2027

Source: The District.

Under certain circumstances, the Wastewater Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the respective Swap Providers. Pursuant to the Wastewater Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Wastewater System Revenue Bonds but prior to the District's Wastewater System CP Notes.

Early termination of an interest rate swap agreement could occur due to a default by either party or the occurrence of a termination event. In the event of early termination of any of the Wastewater Interest Rate Swap Agreements, there can be no assurance that (i) the District will receive any termination payment payable to the District by the respective Swap Providers, (ii) the District will at all times have sufficient available cash on hand to pay any termination payment payable by it to the respective Swap Providers, or (iii) the District will be able to obtain a replacement Wastewater Interest Rate Swap Agreement with comparable terms. As of June 30, 2013, the District would have been required to pay to counterparties termination payments if its Wastewater Interest Rate Swap Agreements were terminated on that date. The District estimated its net exposure to its counterparties for all such termination payments at June 30, 2013 to be approximately \$15.9 million. As of June 30, 2013, the largest aggregate termination payment owed to a single counterparty was estimated by the District to be approximately \$8.4 million. The District does not presently anticipate early termination of any of its Wastewater Interest Rate Swap Agreements due to default by either party or the occurrence of a termination event. The District routinely monitors its swap counterparties' creditworthiness and performance under the Wastewater Interest Rate Swap Agreements and may from time to time replace existing swap counterparties and Wastewater Interest Rate Swap Agreements with new replacement interest rate swap agreements if the District determines such action is warranted. Additional information regarding the terms of the Wastewater Interest Rate Swap Agreements may be found in [Note 6(F)] in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

Pursuant to the terms of certain of the Wastewater Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District's total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Wastewater Interest Rate Swap Agreement. The applicable collateral posting threshold amounts specified in such Wastewater Interest Rate Swap Agreements would be lower in the event certain ratings assigned to the Wastewater System Revenue Bonds were to be revised downward or withdrawn. In the case of a ratings withdrawal or significant downward rating revision, such decline in the applicable threshold amounts could significantly increase the District's collateral posting obligation thereunder. If the District's ratings are revised upward, the amount of collateral required to be posted by the District under certain of the Wastewater Interest Rate Swap Agreements could be reduced.

Under the terms of the Wastewater Interest Rate Swap Agreements, the counterparties are required to release collateral to the District as market conditions become favorable to the District and may be required to post collateral for the benefit of the District to the extent that such counterparty's total exposure for termination payments to the District exceeds the threshold amount specified in the applicable Wastewater Interest Rate Swap Agreement. As of June 30, 2013, the District had \$0 in collateral posted in favor of the counterparties to the Wastewater Interest Rate Swap Agreements and to date, has not been required to post any collateral in connection with the Wastewater Interest Rate Swap Agreements. The amount of collateral required to be posted can vary from time to time due primarily to interest rate movements and can change significantly over a short period of time. In the future, the District may be required to post collateral, or, if it has previously posted collateral to a counterparty, may be entitled to a reduction or return of the required collateral amount. Collateral deposited by the District is held by the counterparties or an agent therefor. A bankruptcy of any counterparty holding collateral posted by the District could adversely affect the return of the collateral to the District. Moreover, posting collateral limits the District's liquidity. If collateral requirements increase significantly, the District's liquidity may be adversely affected.

### **Debt Service Requirements**

Table 13 shows future payments on outstanding debt.

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**Table 13**  
**WASTEWATER SYSTEM ESTIMATED DEBT SERVICE<sup>(1)</sup>**

<i>Fiscal Year Ending June 30</i>	<i>Wastewater System Revenue Bonds – Series 2007 Through Series 2012A<sup>(2)</sup></i>	<i>Extendable Commercial Paper (Wastewater)<sup>(3)</sup></i>	<i>General Obligation Bonds<sup>(4)</sup></i>	<i>Total Debt Service<sup>(5)</sup></i>
2014	\$ 28,446,986	\$ 300,000	\$ 4,227,750	\$ 32,974,736
2015	28,566,821	300,000	4,312,750	33,179,571
2016	28,832,073	300,000	4,400,250	33,532,323
2017	28,869,296	300,000	4,489,500	33,658,796
2018	28,898,756	300,000	3,984,750	33,183,506
2019	28,894,356	450,000	--	29,344,356
2020	28,907,493	450,000	--	29,357,493
2021	28,909,286	450,000	--	29,359,286
2022	28,909,946	450,000	--	29,359,946
2023	28,914,281	450,000	--	29,364,281
2024	28,916,813	450,000	--	29,366,813
2025	28,910,746	450,000	--	29,360,746
2026	28,915,455	450,000	--	29,365,455
2027	28,309,182	450,000	--	28,759,182
2028	27,456,147	450,000	--	27,906,147
2029	27,481,191	450,000	--	27,931,191
2030	27,477,290	450,000	--	27,927,290
2031	27,493,398	450,000	--	27,943,398
2032	27,486,285	450,000	--	27,936,285
2033	27,499,726	450,000	--	27,949,726
2034	27,519,845	450,000	--	27,969,845
2035	27,527,495	450,000	--	27,977,495
2036	27,533,685	450,000	--	27,983,685
2037	27,536,156	450,000	--	27,986,156
2038	28,812,382	450,000	--	29,262,382
2039	29,037,794	450,000	--	29,487,794
2040	<u>29,039,094</u>	<u>450,000</u>	<u>--</u>	<u>29,489,094</u>
Total <sup>(5)</sup>	<u>\$765,101,978</u>	<u>\$11,100,000</u>	<u>\$21,415,000</u>	<u>\$797,916,978</u>

<sup>(1)</sup> Debt service is calculated on a cash basis.

<sup>(2)</sup> Includes fees to liquidity providers. Debt service on Series 2010B Bonds net of capitalized interest. Includes total interest before application of any cash subsidy received by the District from the United States Treasury relating to the Series 2010B Bonds (Build America Bonds) (the “BABs Subsidy”). Assumes debt service on the Series 2008C and Series 2011A Bonds has been fixed pursuant to interest rate swap agreements. See “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*.”

<sup>(3)</sup> Assumes \$15,000,000 outstanding and interest rate of 1.00% in Fiscal Year 2013, 2.00% in Fiscal Years 2014 through 2018 and 3.00% thereafter. Includes interest only (no principal amortization). While the commercial paper program is limited by statute to seven years, it is the District’s intention to reestablish the commercial paper program after each seven-year period. The District may increase the amount of the commercial paper program in the future subject to the limit described herein.

<sup>(4)</sup> General obligation bonds are paid from *ad valorem* property taxes levied for such purpose, not Wastewater Revenues.

<sup>(5)</sup> May not add due to rounding.

Source: The District.

## **Management Policies**

The District has detailed management policies that include guidelines for debt, capital planning, investments, derivatives, and formal reserves. It is the current policy of the District to seek to maintain a debt service coverage ratio of 1.6 times on its outstanding Wastewater System Revenue Bonds and to fund approximately 35% of its capital program over each five-year planning period from revenues and sources other than debt. The debt policy also limits unhedged variable rate debt to 25% of the total debt portfolio. Derivatives use is governed by a comprehensive derivatives policy with guidelines for counterparties, termination, and risk exposure. The District budgets for a number of formal reserves, including: (i) a working capital reserve equal to three months of operation and maintenance expenses; (ii) a self-insurance reserve equal to 1.25 times the expected annual expenditure; (iii) a workers' compensation reserve of approximately \$0.6 million in Fiscal Year 2014; and (iv) a contingency/rate stabilization reserve of 5% of operating and maintenance expenses. The aggregate budgeted reserves level for Fiscal Year 2014 for these four formal reserves is approximately \$20.6 million. The current investment policy dictates investment criteria, reporting, and administrative requirements.

## **District Investment Policy**

Funds of the District are invested in accordance with the Government Code of the State of California (the "State"), the Municipal Utility District Act and the District's investment policy. The four primary investment criteria set forth in the District's written investment policy are (in order of priority): (1) preservation of principal; (2) maintenance of liquidity; (3) yield; and (4) diversity. In order to keep funds available to meet commitments, the District's investment policy provides that the maturity date (or put provision) of individual investments shall not exceed five years and that the average maturity of the portfolio shall not exceed 720 days. Investments permitted by the District's current investment policy include U.S. Treasury notes, bonds and bills, the State of California Local Agency Investment Fund, obligations issued by federal agencies, bankers' acceptances and commercial paper rated in the highest short-term rating category, as well as collateralized repurchase agreements, certificates of time deposit with maturities not to exceed five years and negotiable certificates of deposit, with maturities not to exceed five years, medium term corporate notes with maturities not to exceed five years, California municipal bonds with maturities (or put provisions) not to exceed five years and California Management Program. Monies in the funds and accounts held by the Trustee under the Indenture may be invested only in Investment Securities, as defined therein. The District does not enter into reverse repurchase agreements or otherwise borrow for purposes of investing, and the District does not invest in derivatives. The District has, however, entered into interest rate swap transactions to hedge interest rate exposure on outstanding variable rate Water System Revenue Bonds as described herein.

Pursuant to the District's investment policy, all securities purchased from dealers and brokers are held in safekeeping by the trust department of a state or national bank on a payment vs. delivery basis. Collateral is delivered or assigned under a tri-party agreement for all repurchase agreements. Trade confirmations are reviewed for conformity to the original transaction by an individual other than the one who originated the transaction. Transactions are ratified by the General Manager and reported quarterly to the Finance/Administration Committee of the Board.

## **Cash and Investments**

The District's cash and investments are segregated by restricted and unrestricted amounts. Restricted cash and investments generally include bond proceeds and debt service reserve funds, developer advances and capital contributions, and other miscellaneous restricted amounts. At June 30, 2013, the breakdown between restricted and unrestricted amounts for the Wastewater System is as follows:



**Table 14**  
**CASH AND INVESTMENTS**  
**(Thousands)**

Cash and investments included in current assets	73,622
Cash and investments included in unrestricted assets	<u>21,915</u>
Total unrestricted cash and investments	95,537
Cash and investments included in restricted assets	<u>9,859</u>
Total cash and investments	<u>105,396</u>

Additional information regarding the District's investment portfolio may also be found in [Note 2] in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

### **Historical Operating Results**

The District's financial statements for Fiscal Year 2013, and the Report of Maze & Associates, independent accountants, are included as Appendix B, and should be read in their entirety. The summary of operating results for Fiscal Years 2009 through 2013 contained in Table 15 is derived from information from the audited financial statements for such Fiscal Years and is qualified in its entirety by reference to such statements, including the notes thereto.

Table 15 sets forth the historical operating results and the calculation of the debt service coverage ratio for the Wastewater System for each of the last five Fiscal Years. The presentation below differs from that previously reported in that Wastewater Capacity Fees previously excluded are now reflected as a component of Wastewater Revenues for purposes of the coverage calculation as permitted by the Indenture.

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**Table 15**  
**WASTEWATER SYSTEM**  
**Historical Operating Results and Debt Service Coverage<sup>(1)</sup>**  
**Fiscal Years 2009 through 2013**

	2009	2010	2011	2012	2013
<b>WASTEWATER REVENUES<sup>(2)</sup></b>					
Dry Weather User Charges	\$47,085,272	\$48,764,326	\$50,909,726	\$55,191,460	\$58,783,692
Wet Weather Facilities Charges	14,343,156	15,311,295	16,063,834	17,228,380	18,320,550
Interest	2,876,216	1,197,034	1,076,342	856,218	368,315
Resource Recovery	7,663,488	7,590,010	9,403,337	9,061,029	9,226,468
Power Revenue				333,812	693,272
Wastewater Capacity Fees	1,559,689	675,293	2,423,103	2,824,137	1,278,961
Other Revenue	<u>1,031,863</u>	<u>1,146,241</u>	<u>2,407,895<sup>(7)</sup></u>	<u>3,173,662<sup>(7)</sup></u>	<u>3,368,241</u>
<b>TOTAL WASTEWATER REVENUE</b>	<b>\$74,559,684</b>	<b>\$74,684,199</b>	<b>\$82,284,237</b>	<b>\$88,668,698</b>	<b>\$92,039,499</b>
<b>WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>					
Operating Expenses	\$48,043,270 <sup>(4)</sup>	\$44,712,916	\$49,553,385 <sup>(5)</sup>	\$52,482,539	\$51,435,631
(Less Tax Receipts) <sup>(3)</sup>	<u>(3,458,824)</u>	<u>(3,384,031)</u>	<u>(3,299,315)</u>	<u>(3,698,069)</u>	<u>(4,413,039)</u>
<b>TOTAL WASTEWATER OPERATION &amp; MAINTENANCE COSTS<sup>(4)</sup></b>	<b><u>\$44,584,446</u></b>	<b><u>\$41,328,885</u></b>	<b><u>\$46,254,070</u></b>	<b><u>\$48,784,470</u></b>	<b><u>47,022,592</u></b>
<b>NET WASTEWATER REVENUES</b>	<b>\$29,975,238</b>	<b>\$33,355,314</b>	<b>\$36,030,167</b>	<b>\$39,884,228</b>	<b>45,016,907</b>
<b>PARITY DEBT SERVICE:</b>					
Wastewater System Revenue Bonds <sup>(5)</sup>	\$18,867,204	\$18,026,658	\$20,084,078	\$26,385,738	\$28,284,129
Parity State Loans	<u>1,551,097</u>	<u>1,551,097</u>	<u>1,326,979</u>	<u>0</u>	<u>0</u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b><u>\$20,418,301</u></b>	<b><u>\$19,577,755</u></b>	<b><u>\$21,411,057</u></b>	<b><u>\$26,385,738</u></b>	<b><u>\$28,284,129</u></b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.47</b>	<b>1.70</b>	<b>1.68</b>	<b>1.51</b>	<b>1.59</b>
<b>SUBORDINATE WASTEWATER SYSTEM DEBT SERVICE<sup>(6)</sup></b>	<b>\$ 4,098,074</b>	<b>\$ 4,008,489</b>	<b>\$ 3,840,389</b>	<b>\$ 33,300</b>	<b>\$33,910</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$24,516,375</b>	<b>\$23,586,244</b>	<b>\$25,251,446</b>	<b>\$26,419,038</b>	<b>\$28,318,039</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.22</b>	<b>1.41</b>	<b>1.43</b>	<b>1.51</b>	<b>1.59</b>

(1) Calculated in accordance with the Indenture as footnoted.

(2) Wastewater Revenues exclude grant receipts, taxes and certain reimbursements.

(3) Operation and Maintenance Costs excludes those expenses paid from the share of the 1% countywide *ad valorem* tax levy allocated to Special District No. 1. Under current District policy, taxes are used to pay for operations allocable to storm water processing and infiltration/inflow processing. Restated from prior years' presentation to more accurately reflect application of tax receipts.

(4) Increased Operation and Maintenance Costs in 2009 primarily due to higher costs of chemicals, higher energy consumption to produce oxygen for the Resource Recovery Program and higher administrative costs. Increased Operation and Maintenance Costs in 2011 and 2012 primarily due to higher costs of wastewater treatment plant operations, interception and pumping, and information technology and higher administrative costs.

(5) Includes net swap payments. Net of capitalized interest.

(6) Includes outstanding Wastewater System commercial paper notes and certain subordinate State Loans (which State Loans have subsequently been retired or refunded by Wastewater System Revenue Bonds). With respect to commercial paper notes includes interest only with no principal amortization.

(7) Includes interest subsidy received in connection with Series 2010B Bonds (Build America Bonds).

Source: The District.

## District Management's Discussion of Operating Results

Wastewater Revenues increased from approximately \$88.7 million in Fiscal Year 2012 to approximately \$93.0 million in Fiscal Year 2013, mainly reflecting a stable customer base and a 6.0% increase in rates effective July 1, 2012. Operating expenses decreased from approximately \$52.5 million in Fiscal Year 2012 to approximately \$51.4 million in Fiscal Year 2013, reflecting [increases in costs of wastewater treatment plant operations, interception and pumping, and information technology]{update}. Other Revenue includes approximately \$2.7 million in interest subsidy in Fiscal Year 2012 and

approximately \$2.7 million in Fiscal Year 2013 received in connection with the District's Series 2010B Bonds (Build America Bonds). Recording this interest subsidy as Other Revenue rather than as a reduction to debt service costs negatively impacted the parity lien debt service coverage level in Fiscal Years 2012 and 2013. In addition, in Fiscal Year 2011, in order to achieve debt service savings, the District refunded approximately \$17.5 million of its outstanding State Loans with Water System Revenue Bonds. Included in the State Loans refunded was approximately \$7.4 million of State Loans that were treated as subordinate debt to the outstanding Water System Revenue Bonds. The annual debt service on these subordinate State Loans was approximately \$2.2 million and since these State Loans were non-parity loans, the debt service on these loans was not included as part of the parity lien debt service coverage calculation prior to the refunding. Although debt service costs were reduced as a result of such refunding, the increase in parity lien debt service negatively impacted the parity lien debt service coverage level resulting in coverage below the District's policy target of 1.6 times in Fiscal Years 2012 and 2013. See also "Management's Discussion and Analysis" contained in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

### **Projected Operating Results**

In the preparation of the projections in this section, the District has made certain assumptions with respect to conditions that may occur in the future. While the District believes these assumptions are reasonable for the purpose of the projections, they are dependent on future events, and actual conditions may differ from those assumed. To the extent actual future factors differ from those assumed by the District or provided to the District by others, the actual results will vary from those forecasted. This projected information has not been compiled, reviewed or examined by the District's independent accountants.

Table 16 sets forth the projected operating results and calculation of the debt service coverage ratios for the Wastewater System for the current and next four Fiscal Years. The projected results are based on the District's Biennial Budget for Fiscal Years 2014 and 2015. In the preparation of the projected operating results, the District has taken into account limited growth in the service area and the expectations for the future economic environment. The projection period reflects the overall rate increases of 9.00% and 8.50% for Fiscal Years 2014 and 2015, respectively. Annual rate increases of 5.0% are assumed thereafter. Any such future rate increases will be subject to Board approval. Operating expenses incorporate salary and benefit expectations.

**Table 16**  
**WASTEWATER SYSTEM**  
**Projected Operating Results and Debt Service Coverage**  
**Fiscal Year Ending June 30**  
**(\$ Millions)**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>WASTEWATER REVENUES<sup>(1)</sup></b>					
Dry Weather User Charges <sup>(2)</sup>	\$63.4	\$ 68.8	\$ 72.8	\$ 76.7	\$ 80.6
Wet Weather Facilities Charges <sup>(3)</sup>	19.8	21.5	22.6	23.7	24.9
Interest Earnings <sup>(4)</sup>	0.4	0.7	0.9	0.8	0.8
Resource Recovery	7.0	6.5	6.0	6.0	6.0
Wastewater Capacity Fees	1.5	1.5	1.5	1.5	1.5
Other Revenue <sup>(5)</sup>	<u>4.6</u>	<u>4.6</u>	<u>4.6</u>	<u>4.6</u>	<u>4.6</u>
<b>TOTAL WASTEWATER REVENUES</b>	<b>\$96.7</b>	<b>\$103.6</b>	<b>\$108.4</b>	<b>\$113.3</b>	<b>\$118.4</b>
<b>WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>					
Operating Expense <sup>(6)</sup>	\$56.2	\$ 58.7	\$ 61.3	\$ 64.1	\$ 67.1
(Less Tax Receipts) <sup>(7)</sup>	<u>(4.1)</u>	<u>(4.2)</u>	<u>(4.3)</u>	<u>(4.4)</u>	<u>(4.6)</u>
<b>TOTAL WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>	<b><u>\$52.1</u></b>	<b><u>\$ 54.5</u></b>	<b><u>\$ 57.0</u></b>	<b><u>\$ 59.7</u></b>	<b><u>\$ 62.5</u></b>
<b>NET WASTEWATER REVENUES</b>	<b>\$44.6</b>	<b>\$ 49.1</b>	<b>\$ 51.4</b>	<b>\$ 53.6</b>	<b>\$ 55.9</b>
<b>DEBT SERVICE</b>					
Wastewater System Revenue Bonds <sup>(8)</sup>	<u>\$28.9</u>	<u>\$ 29.0</u>	<u>\$ 29.3</u>	<u>\$ 30.6</u>	<u>\$ 30.6</u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$28.9</b>	<b>\$ 29.0</b>	<b>\$ 29.3</b>	<b>\$ 30.6</b>	<b>\$ 30.6</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.54</b>	<b>1.69</b>	<b>1.75</b>	<b>1.75</b>	<b>1.83</b>
<b>SUBORDINATE WASTEWATER SYSTEM CP NOTES DEBT SERVICE<sup>(9)</sup></b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$29.2</b>	<b>\$ 29.3</b>	<b>\$ 29.6</b>	<b>\$ 30.9</b>	<b>\$ 30.9</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.53</b>	<b>1.68</b>	<b>1.74</b>	<b>1.73</b>	<b>1.81</b>

*(Table footnotes contained on following page.)*

(Footnotes are to table contained on preceding page.)

- (1) Wastewater Revenues exclude grant receipts, taxes and certain reimbursements.
- (2) Reflects adoption of 9.00% and 8.50% rate increases for Fiscal Years 2014 and 2015, respectively. See “— Rates and Charges” above. Average annual rate increases of 5.0% are assumed thereafter over the remainder of the projection period. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”
- (3) Reflects adoption of 9.00% and 8.50% rate increases for Fiscal Years 2014 and 2015, respectively. Average annual rate increases of 5.0% are assumed thereafter over the remainder of the projection period.
- (4) Assumes approximately 0.50% earnings rate on fund balances for Fiscal Years 2013 and 2014, 1.0% earning rate in Fiscal Year 2015 and 1.50% thereafter. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”
- (5) Anticipated receipt of BABs Subsidy relating to Series 2010B Bonds in the amount of approximately \$2.7 million annually has been included in Other Revenue. Also includes estimated collections from power sales and inspection fees from the private sewer laterals program.
- (6) Assumes approximately 4.0-5.0% annual increase in Operating Expenses after 2014.
- (7) Operation and Maintenance Costs excludes those expenses paid from District’s share of 1% countywide *ad valorem* taxes. Under current District policy, taxes are used to pay for operations allocable to storm water processing and infiltration/inflow processing.
- (8) Debt service for Series 2010B Bonds is gross of the expected BABs Subsidy but net of capitalized interest. Series 2008C Bonds and Series 2011A Bonds assumed to be swapped to fixed rates. See “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Interest Rate Swap Agreements” above. Includes liquidity fees. Also includes additional amount budgeted by the District (not included in Table 13) for estimated basis differential between variable rate bond interest rates and related swap receipts. Assumes issuance of \$20 million of new money bonds in Fiscal Year 2017 at an annual interest rate of 5.00%.
- (9) Assumes interest only at 2.00% per annum in Fiscal Years 2014 through 2018 with no principal amortization.

Source: The District.

## Employees' Retirement System

**General.** The District has a contributory retirement system covering substantially all of its employees (including the Water System and Wastewater System). The East Bay Municipal Utility District Employees' Retirement System ("Retirement System") was established in 1937 to administer a single-employer, contributory, defined benefit pension plan (the "Plan") to provide retirement, disability, survivorship and post-employment health insurance benefits for eligible directors, officers and employees of the District. The Plan is funded by contributions from its members and from the District, and from investment earnings on Plan assets. The payment of benefits earned by plan members of the Retirement System is an obligation of the District. Employees of the District are also covered by Social Security.

The Retirement System is administered by a Retirement Board composed of three members appointed by the District Board, two members elected by and from the active membership and one (nonvoting) member elected by and from the retired membership of the Retirement System. Ordinance No. 40 of the District, effective October 1, 1937, as amended (the "Retirement System Ordinance"), assigns the authority to establish Plan benefit provisions to the District Board.

Contributions to the Retirement System are made by the members and the District. Each member's contribution is based upon a percentage of that member's covered compensation. The employee contribution rates are prescribed in the Retirement System Ordinance and may be adjusted by the District Board solely pursuant to the terms of a negotiated collective bargaining agreement or MOU with employee bargaining units. The District employees' contribution rate has been 6.83% since April 2006. The District (employer) contributions are based upon percentages of the aggregate amount of members' covered compensation. Employer contribution percentages are established by the District Board. Such percentages are based upon actuarial valuations.

As of June 30, 2012, collectively for the Water and Wastewater Systems, there were 1,703 active plan members, 224 terminated plan members entitled to but not yet receiving benefits and 1,361 retirees and beneficiaries receiving benefits.

Table 17 below sets forth the number of active members, total plan assets, District and Member contributions and retirement allowances paid in the five Fiscal Years 2008 through 2012.

**Table 17**  
**RETIREMENT SYSTEM**  
**Active Members, Total Plan Assets, District and Member Contributions and Allowances Paid**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Active Members<sup>(2)</sup></b></i>	<i><b>Total Plan Assets<sup>(3)</sup></b></i>	<i><b>District Contribution<sup>(4)</sup></b></i>	<i><b>Member Contributions</b></i>	<i><b>Allowances Paid From Retirement Plan<sup>(5)</sup></b></i>
2008	2,029	\$838,614,000	\$44,603,000	\$10,394,000	\$50,780,000
2009	2,022	668,750,000	45,803,000	10,740,000	54,502,000
2010	1,978	769,052,000	51,756,000	10,918,000	58,109,000
2011	1,928	968,239,000	58,481,000	10,850,000	62,114,000
2012	1,927	986,972,000	59,651,000	10,723,000	66,843,000

<sup>(1)</sup> Includes Health Insurance Benefit Plan.

<sup>(2)</sup> Includes active plan members and terminated plan members entitled to but not yet receiving benefits.

<sup>(3)</sup> Market value as of June 30 of such Fiscal Year as shown in the audited financial statements of the Retirement System.

<sup>(4)</sup> The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

<sup>(5)</sup> Includes benefits paid and refunds of contributions.

Source: The District.

The Retirement System is an integral part of the District and, as noted above, the District appoints the majority of the governing body of the Retirement System and provides for its funding. Accordingly, the Retirement System's operations are reported as a Pension and Other Employee Benefit Trust Fund in the District's basic financial statements. The Retirement System also issues separately available financial statements on an annual basis. Such financial statements can be obtained from the District at 375 Eleventh Street, Oakland, California 94607.

The amounts set forth in this discussion of the Employees' Retirement System, including, for example, actuarial accrued liabilities and funded ratios, are based upon numerous demographic and economic assumptions, including investment return rates, inflation rates, salary increase rates, cost of living adjustments, postemployment mortality, active member mortality, and rates of retirement. Prospective purchasers of the District's bonds are cautioned to review and carefully assess the reasonableness of the assumptions set forth in the documents that are cited as the sources for such information. In addition, prospective purchasers of the District's bonds are cautioned that such sources and the underlying assumptions speak as of their respective dates, and are subject to change. Prospective purchasers of the District's bonds should also be aware that some of the information presented in this discussion of the Employees' Retirement System contains forward-looking statements and the actual results of the Retirement System may differ materially from the information presented herein.

**Benefits.** All regular full-time employees (as well as certain job share and intermittent employees) of the District are members of the Plan. In accordance with the Retirement System Ordinance, eligible employees become members of the Plan on the first day they are physically on the job. Retirement plan benefits are generally determined by formula based on the employee's compensation in the last two years of employment and the length of employment with the District. Benefits adopted by the District vest in part with members after five years of continuous full-time employment. Vested members who terminate employment may elect a refund of their contributions or leave them in the Plan until eligible to receive benefits.

In addition to retirement benefits, the District provides post-employment health benefits assistance, administered by the Retirement System, for employees who retire from the District or their surviving spouses. As of June 30, 2012, there were 1,256 participants receiving these healthcare benefits. For participants entering the Retirement System prior to July 1, 1996, a monthly allowance of up to \$450 (\$550 for married retirees and retirees with financially dependent registered domestic partners) is paid to retirees with at least five years of full-time service to reimburse the retiree-paid medical expenses (including any health, dental or long-term care insurance premiums paid by the retiree for his or her self, and current spouse or domestic partner, or any health, dental or long-term care insurance premiums paid by the eligible surviving spouse of a retiree). Effective July 1, 1996, a 20-year vesting schedule for full benefits was implemented for all new employees. Effective January 1, 1999, retired members who had separated from the District prior to their retirement and who had at least 5 years of service also become eligible for the post-employment healthcare benefits based on the same sliding scale.

**Actuarial Assumptions and Funding Policy.** Under the ordinance governing the Retirement System, the District is required to have an actuarial study performed at least every two years, but the District's current policy is to have an actuarial study performed each year. The most recent actuarial study of the Retirement System, including the pension and the health insurance benefit ("HIB") trusts, was performed by The Segal Company, as of June 30, 2012.

The actuarial report provides a basis for the District Board's decision regarding the rate of contributions by the District to the Retirement System, including both the pension and the HIB trusts. The District makes its contribution using rates determined by its outside actuaries.

The actuarial valuation results included in this disclosure for the pension plan have been prepared using parameters required under Governmental Accounting Standards Board (“GASB”) Statements 25 and 27. These GASB Statements will be replaced by GASB Statements 67 and 68 for financial reporting purposes effective with Fiscal Year 2014 for the Plan and Fiscal Year 2015 for the District. The new GASB Statements will require much shorter amortization periods for recognition of non-investment gains/losses and actuarial assumption changes, as well as changes in the recognition of investment gains/losses. GASB has indicated throughout their process of obtaining comments from the retirement and accounting communities that the new GASB Statements may provide for a new and complete separation between financial reporting and funding requirements for pension plans.

To calculate the required contribution for each Fiscal Year, assumptions are made about future events that affect the amount and timing of benefits to be paid and assets to be accumulated. Each year actual experience is measured against the assumptions. If overall experience is more favorable than anticipated (an actuarial gain), the contribution requirement will decrease from the previous year. On the other hand, the contribution requirement will increase if overall actuarial experience is less favorable than assumed (an actuarial loss). If assumptions are changed, the contribution requirement is adjusted to take into account a change in experience anticipated for all future years.

A summary of the funding method and assumptions utilized in the actuarial study as of June 30, 2012 are described below.

*Funding Method.* The Plan’s funding policy provides for periodic District contributions at actuarially determined amounts sufficient to accumulate the necessary assets to pay benefits when due as specified by the ordinance governing the Retirement System. The entry age normal cost method is used for this purpose. Under the entry age normal cost method, there are two components to the total contributions: (i) the normal cost, which is the amount of contributions required to fund the benefit allocated to the current year of service (associated with active employees only), and (ii) an amortization payment on any unfunded actuarial accrued liability (“UAAL”). The normal cost is calculated on an individual basis where the entry age normal cost is calculated as the sum of the individual normal costs. The UAAL (past service liability) is amortized as a level percentage of payroll on a closed basis over the amortization periods described below. The actuarial accrued liability is calculated on an individual basis and is based on costs allocated as a level percentage of compensation.

*Amortization Periods.* As of June 30, 2012, the unfunded actuarial accrued liability is currently being funded using a layered approach. Each layer of the UAAL established prior to July 1, 2011 is being funded over a separate 30-year decreasing period, starting from the date the layer was originally established. On or after July 1, 2011, changes in the UAAL attributable to plan amendments are amortized over separate decreasing 15-year periods; changes in the UAAL attributable to assumption or method changes are amortized over separate decreasing 25-year periods; and changes in the UAAL attributable to actuarial gains/losses (i.e., the extent to which actual overall experience deviates from the assumptions) are amortized over separate decreasing 20-year periods. Under the layered approach, any new UAAL layer that emerges between the prior and the current actuarial valuation (due to deviations between actual and expected actuarial experience, changes in actuarial assumptions used to measure the liabilities or other factors) will be determined and factored into the District’s contribution rates so that it will be paid off after its respective amortization period described above.

*Actuarial Assumptions.* A number of assumptions are used to calculate the costs of the Plan and to compute contribution requirements for the Plan. The principal assumptions used in preparing the actuarial study as of June 30, 2012 include:

1. Investment rate of return: 7.75%.



2. Inflation rate: 3.25%.
3. Interest credited to member contributions: 7.75%.
4. Projected salary increases: Ranges from 4.25% to 9.75% based on years of service (includes inflation at 3.25% plus across the board salary increase of 0.50% plus merit and promotional increases).
5. Cost of living adjustments: 3.15%.
6. Increase in HIB maximum monthly allowance: The Plan does not provide for an automatic increase in the HIB allowance and no such increase is assumed in the valuation.
7. Additional assumptions: Additional assumptions were used regarding rates of termination from active membership, post-retirement mortality, active member mortality, disability rates and rates of retirement.

Actuarial Value of Assets (Asset Smoothing Method). Methods used to compute District contribution requirements include a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets (with further adjustments as may be required to keep the smoothed assets within 30% of market value). The impact of this will result in a “smoothed” valuation value of assets (or “Actuarial Value of Assets”) that is higher or lower than the market value of the assets depending on whether the amount that is being smoothed is either a net gain or a net loss.

Adopted Changes in Actuarial Assumption and Amortization Periods. Under the ordinance governing the Retirement System, the District is required to have an actuarial experience study conducted during each four-year period in order to review the mortality, service and compensation experience of the members, retired members and beneficiaries of the Retirement System, over the study period. The experience study provides the factual information upon which the outside actuary makes recommendations to the District regarding the economic and demographic assumptions that provide the basis for the actuarial valuation of the assets and liabilities of the Retirement System. In November 2012, The Segal Company completed and presented to the Retirement Board, its Analysis of Actuarial Experience During the Period July 1, 2008 through June 30, 2012, for the Retirement System (the “2012 Experience Study”). The 2012 Experience Study utilized demographic data of the Plan’s members and retirees from the last four actuarial valuations and provided recommendations regarding changes to the economic and demographic actuarial assumptions to be used in the June 30, 2012 and later actuarial valuations. Pursuant to the 2012 Experience Study, the actuary recommended changes in a number of the actuarial assumptions used to calculate the costs of the Plan and to compute the future contribution requirements for the Plan, including changes in the assumptions from those used in the actuarial study of the Plan as of June 30, 2011. At its November 15, 2012 meeting, the Retirement Board approved the changes in assumptions recommended by the actuary for the actuarial valuation to be performed as of June 30, 2012. The actuarial assumptions used in the actuarial study of the Plan as of June 30, 2012 (as described under “Actuarial Assumptions” above) include the following changes in the actuarial assumptions from those used in the actuarial study of the Plan as of June 30, 2011, among others: (i) a reduction in the assumed investment rate of return from 8.00% to 7.75%; (ii) a reduction in the assumed inflation rate from 3.50% to 3.25%; (iii) a reduction in the projected salary increases from the range of 4.70% to 10.00% based on years of service (and including the 3.50% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases) to a range of 4.25% to 9.75% (including the new recommended 3.25% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases); and (iv) a reduction in the assumed long-term annual average cost of living adjustment from 3.25% to 3.15%.

In the June 30, 2012 valuation, the actuary determined the change in the actuarial accrued liability for the pension plan (not including the HIB) due to the assumption changes to be \$53.4 million.

At the November 15, 2012 meeting, the Retirement Board also adopted a change in the amortization policy for the unfunded actuarial accrued liability (UAAL), effective with the June 30, 2012 valuation. In particular, changes in the UAAL due to actuarial assumption or method changes (previously amortized on a 30-year period) on or after July 1, 2011 are to be amortized on a 25-year period. In their June 30, 2012 valuation report, The Segal Company (the actuary) determined the effect of this change in the amortization policy combined with the effect of the changes in the actuarial assumptions to be an increase in the District contribution rate for the pension plan (not including the HIB) of 2.85% of payroll.

It should also be mentioned that, at the September 20, 2012 meeting, the Retirement Board also adopted a modification from an aggregate version to an individual version of the Entry Age Normal funding method. In their June 30, 2012 valuation report, the actuary determined that this modification increased the District's normal cost rate by 0.72% of payroll.

**Contribution History.** The schedule of District contributions for each of the pension plan and the HIB plan for the last five Fiscal Years are shown in Table 18 below:

**Table 18**  
**RETIREMENT SYSTEM**  
**History of Contributions**  
**Five Fiscal Years Ended June 30, 2012**  
**(\$ in 000's)**

**Pension Plan:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed</i>
2008	24.51%	\$37,387	\$37,387	100%
2009	24.96	39,485	39,485	100
2010	27.24	44,031	44,031	100
2011	31.80	50,987	50,987	100
2012	32.91	52,156	52,156	100

**Health Insurance Benefit:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed<sup>(1)</sup></i>
2008	3.74%	\$ 9,114	\$7,216	79%
2009	3.98	9,114	6,318	69
2010	4.91	11,370	7,725	68
2011	4.78	10,496	7,494	71
2012	4.83	11,518	7,495	65

<sup>(1)</sup> Percentage contributed was less than 100% as the District does not pre-fund the implicit retiree rate subsidy required to be valued under GASB Statements Nos. 43 and 45. See "— Schedule of Funding Progress" below.

As reflected in the actuarial study and shown in Table 38 below, the combined Actuarial Accrued Liability for pension and HIB benefits at June 30, 2012 was \$1,659,897,000 and the Actuarial Value of Assets was \$1,035,786,000, resulting in an Unfunded Actuarial Accrued Liability of \$624,111,000 and a funded ratio of the Plan under the entry age normal basis of 62.4%. As described above, the Actuarial

Value of Assets has been calculated using a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets. The liabilities for the pension benefits are calculated in compliance with GASB Statement No. 25 (“Financial Reporting for Defined Benefit Pension Plans, Note Disclosures for Defined Contribution Plans”) and Statement No. 27 (“Accounting for Pensions by State and Local Governmental Employers”), but do not reflect the parameters of GASB Statement No. 45. See also “– *Schedule of Funding Progress*” below.

Table 19 below sets forth the Actuarial Accrued Liability, Actuarial Value of Assets, the Unfunded Actuarial Accrued Liability and Funded Ratio as of June 30 of each of the Fiscal Years 2008 through 2012 (the year the most recent actuarial information is available).

**Table 19**  
**RETIREMENT SYSTEM**  
**Actuarial Accrued Liability, Actuarial Value of Assets,**  
**Unfunded Actuarial Accrued Liability and Funded Ratio**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**  
**(\$ in 000's)**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Actuarial Accrued Liability (AAL)</b></i>	<i><b>Actuarial Value of Assets</b></i>	<i><b>Market Value of Assets</b></i>	<i><b>Unfunded Actuarial Accrued Liability (UAAL)<sup>(2)</sup></b></i>	<i><b>Funded Ratio on Actuarial Value</b></i>	<i><b>Funded Ratio on Market Value</b></i>
2008	\$1,336,676	\$ 907,927	\$838,614	\$428,749	67.92%	62.74%
2009	1,415,392	869,375	668,750	546,017	61.42	47.25
2010	1,491,885	925,907	769,052	565,978	62.06	51.55
2011	1,544,486	966,767	968,239	577,719	62.59	62.69
2012	1,659,897 <sup>(3)</sup>	1,035,786	986,972	624,111	62.40	59.46

<sup>(1)</sup> Dollars rounded to nearest thousand.

<sup>(2)</sup> The District estimates that approximately 85% of the UAAL is attributable to the Water System and approximately 15% is attributable to the Wastewater System. The UAAL is determined based on the Actuarial Value of Assets.

<sup>(3)</sup> Of this amount, \$103,201 is attributable to the HIB liabilities. The HIB liabilities as calculated for GASB reporting purposes, which include the implicit retiree rate subsidy, were \$138,240 using a discount rate of 7.00%.

Source: The Segal Company.

As of June 30, 2012, the market value of the combined pension and HIB plan’s assets was \$986,972,000 and the projected benefit obligation (“PBO”) was \$1,606,973,000, resulting in a funded ratio of the plan under the PBO basis of 61.4%. Under the plan provisions, determination of the funded ratio on a PBO basis is required and certain cost of living increases are granted when the funded ratio of the plan is 85% or higher as calculated on the PBO basis.

***Schedule of Funding Progress.*** As required by GASB 45, the District reports the schedule of funding progress for each of the pension plan and the post-employment healthcare plan (HIB). The schedule of funding progress presents multiyear trend information that shows whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

The schedule of funding progress for the pension plan is set forth in Table 20 below.

**Table 20**  
**PENSION PLAN**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 900,917	\$1,244,993	\$344,076	72.4%	\$158,499	217.1%
2009	862,021	1,323,555	461,534	65.1	161,893	285.1
2010	915,845	1,396,003	480,158	65.6	164,085	292.6
2011	954,719	1,446,039	491,320	66.0	159,505	308.0
2012	1,021,546	1,556,696	535,150	65.6	158,847	336.9

Source: The Segal Company's Actuarial Valuation and Review of Pension Plan as of June 30, 2012.

The schedule of funding progress for the post-employment healthcare plan is set forth in Table 21 below.

The retiree health liabilities reported in the actuarial study as of June 30, 2012 (and referred to in Table 19 above) will not match those required to be used for GASB reporting purposes as shown in Table 21 below. The liabilities as reflected in the actuarial study have not been adjusted to include the implicit retiree rate subsidy as required under GASB reporting requirements. (Note that when premiums for active employees are determined on a pooled basis with premiums for retirees under age 65, a significant accounting obligation may exist even though the retiree under age 65 contributes most or all of the blended premium cost of the plan. The average costs for retirees if determined on a stand-alone basis is likely to exceed the average cost for the whole group, leading to an implicit subsidy for these retirees. The GASB accounting standard requires the employer to identify and account for this implicit subsidy as well as any explicit subsidies the employer may provide.) In addition, the liabilities for GASB reporting purposes for the HIB portion of the obligations shown below were determined based upon a lower discount rate (*i.e.*, 7.00%) than the 7.75% investment rate of return used in The Segal Company prefunding study. The liabilities calculated for GASB reporting purposes shown in Table 21 below are therefore higher than those reflected in the actuarial study as of June 30, 2012 and described above.

**Table 21**  
**POST-EMPLOYMENT HEALTHCARE BENEFIT (HIB)**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 7,010	\$137,055	\$130,045	5.1%	\$158,499	82.0%
2009	7,354	130,245	122,891	5.6	161,893	75.9
2010	10,061	135,379	125,318	7.4	164,085	76.4
2011	12,047	135,360	123,312	8.9	159,505	77.3
2012	14,240	138,240	123,999	10.3	158,847	78.1

Source: The Segal Company Actuarial Valuation and Review of Other Postemployment Benefits (OPEB) as of June 30, 2012 in accordance with GASB Statements No. 43 and 45.

***Related Matters.*** In the past few years, the Internal Revenue Service (the “IRS”) has focused its auditing activities towards governmental retirement plans to determine if those plans are complying with federal tax laws. While the District has consistently amended its Retirement Ordinance to comply with changes in the federal tax code, other governmental plans failed to amend their plans to reflect changes in tax laws. The failure to include these amendments put those plans at risk of a range of consequences from being assessed significant penalties to losing its tax-qualified status, wherein all assets under the plan would become immediately taxable. Because so many governmental plans were at risk, the IRS instituted a voluntary correction program (“VCP”), which provided such plans the opportunity to voluntarily report any failures and institute corrective measures. In participating in the voluntary correction program, governmental plans would be protected from enforcement actions for such failures. Under the VCP, the IRS would review and approve the corrective measures proposed by the plan and at the end of the review, issue a letter of determination of tax qualified status. A letter of determination of tax qualified status would serve as protection against liability for prior violations of federal tax laws as well as serve as a safe harbor for future IRS audits. The District has taken advantage of this “safe harbor” opportunity by participating in the IRS’ voluntary correction program to make additional necessary corrections to its Plan while protecting itself against potential tax liability. The District’s application for a determination letter to the IRS is still under review due to the voluminous number of VCP filings. While the District is unable to predict when the IRS will ultimately act on the District’s application or what action the IRS will take in its review of such application, since the District has been amending its Retirement Ordinance to maintain compliance with the federal tax code during the past two decades and because the voluntary correction program offers a safe harbor for non-complaint plans, the District expects that the IRS will provide a statement that the District’s Plan is in compliance with the tax code and that the Plan is tax qualified.

***California Pension Reform Act.*** On August 31, 2012, the California legislature enacted Assembly Bill 340, the California Public Employees’ Pension Reform Act of 2013 (the “PEPRA”). The PEPRA was signed into law by Governor Jerry Brown on September 12, 2012 and became effective on January 1, 2013. Pursuant to the provisions of the PEPRA, as enacted, the PEPRA is intended to apply to all state and local public retirement systems, independent public retirement systems, and to individual retirement plans offered by public employers, with the exception of the University of California, and California charter cities and counties, except to the extent such entities participate in any retirement system governed by State statute. The impacts of the PEPRA primarily apply to employees first hired by a public agency or after January 1, 2013. Some of these provisions include certain limits on the amount and types of compensation that may be included by a retirement system in calculating pension benefits, the imposition of new formulas for the calculation of pension benefits for employees, certain requirements for the sharing of the costs of pension benefits by employees, and certain limitations on the adoption of new defined benefit plans. The PEPRA would prohibit certain retroactive enhancements to pension benefit formulas for all employees, impose certain limits on post-retirement employment for all employees, prohibit the purchase of non-qualified permissive service credit by all employees after January 1, 2013, and require for any employee the forfeiture of pension and retirement-related benefits for certain felony convictions.

The District Board has adopted certain amendments to the Retirement System Ordinance effective as of January 1, 2013 in order to implement applicable provisions of the PEPRA. Because the interpretation and application of the PEPRA will likely be subject to judicial determination and further implementing legislation, it is too early to assess at this time what all of the impacts of PEPRA ultimately will be on the District’s Retirement System.

Additional information concerning the Retirement System may be found in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

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

AUTHORIZE AND APPROVE THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF WATER SYSTEM REVENUE REFUNDING BONDS IN CONNECTION WITH THE POTENTIAL REFUNDING OF OUTSTANDING FIXED RATE BONDS; APPROVE THE FORM OF, AND AUTHORIZE, CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND APPROVE CERTAIN ACTIONS RELATING THERETO

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the "District") is authorized by Section 12850 *et. seq.* of the Public Utilities Code of the State of California (the "Act") to issue revenue bonds; and

WHEREAS, the District is authorized by Section 53580 *et. seq.* of the Government Code of the State of California (the "Refunding Act") to issue refunding bonds; and

WHEREAS, pursuant to authority granted under the Act, the District has entered into a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990 (the "Bond Indenture"), by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as amended and supplemented; and

WHEREAS, the Bond Indenture provides that the District may issue additional water system revenue bonds as well as refunding bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, the District has heretofore authorized and issued multiple series of water system revenue bonds under and pursuant to the Act (and when applicable, the Refunding Act) and the Bond Indenture, including a number of series of fixed rate bonds, including the following outstanding series of fixed rate water system revenue bonds of the District: its Water System Subordinated Revenue Bonds, Series 2005A currently outstanding in the aggregate principal amount of \$228,250,000 (the "Series 2005A Bonds"); its Water System Subordinated Revenue Bonds, Series 2007A currently outstanding in the aggregate principal amount of \$330,000,000 (the "Series 2007A Bonds"); its Water System Subordinated Revenue Refunding Bonds, Series 2007B currently outstanding in the aggregate principal amount of \$35,700,000 (the "Series 2007B Bonds"); its Water System Subordinated Revenue/Refunding Bonds, Series 2010A currently outstanding in the aggregate principal amount of \$190,570,000 (the "Series 2010A Bonds"); its Water System Subordinated Revenue Bonds, Series 2010B currently outstanding in the aggregate principal amount of \$400,000,000 (the "Series 2010B Bonds"); its Water System Revenue Refunding Bonds, Series 2012A currently outstanding in the aggregate principal amount of \$191,750,000 (the "Series 2012A Bonds"); its Water System Revenue Refunding Bonds, Series 2012B currently outstanding in the aggregate principal amount of \$339,995,000 (the "Series 2012B Bonds"); and its Water System Revenue Refunding Bonds, Series 2013A currently outstanding in the aggregate principal amount of \$48,670,000 (the "Series 2013A

Bonds,” and collectively with the outstanding Series 2005A Bonds, Series 2007A Bonds, Series 2007B Bonds, Series 2010A Bonds, Series 2010B Bonds, Series 2012A Bonds and Series 2012B Bonds, the “Outstanding Fixed Rate Bonds”); and

WHEREAS, the Board has determined that it best serves the financing and debt management needs of the District to authorize the issuance, from time to time, of one or more series of its water system revenue refunding bonds (the “Additional Refunding Bonds”), if such issuance is determined by a Designated Officer (as hereinafter defined) to be in the best interests of the District in order to realize debt service savings for the District, and subject to the parameters set forth in this Resolution, for the purposes of refunding (in whole or in part) any Outstanding Fixed Rate Bonds eligible for such refunding, funding or making provision for any bond reserve fund for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds; and

WHEREAS, in order to provide for the issuance of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more supplemental indentures in connection therewith (each, an “Additional Supplemental Indenture”); and

WHEREAS, in order to provide for the refunding of any Outstanding Fixed Rate Bonds to be refunded by Additional Refunding Bonds, the District may enter into one or more escrow agreements in connection therewith (each, an “Additional Escrow Agreement”); and

WHEREAS, in order to provide a continuing disclosure undertaking pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more additional continuing disclosure undertakings in connection therewith (each, an “Additional Continuing Disclosure Agreement”); and

WHEREAS, in order to provide for the sale by the District and the purchase by an underwriter or underwriters of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more bond purchase contracts in connection therewith (each, an “Additional Bond Purchase Contract”); and

WHEREAS, the underwriters of any Additional Refunding Bonds will distribute a preliminary and final official statement (including any supplements or amendments thereto) relating to such Additional Refunding Bonds to prospective and actual purchasers of such Additional Refunding Bonds; and

WHEREAS, it is desirable that the Board provide for the issuance, securing and sale of the Additional Refunding Bonds authorized by this Resolution at this time; and

WHEREAS, there has been presented to this Board meeting one or more forms of financing documents that will be used in connection with the issuance, sale and delivery of any Additional Refunding Bonds authorized by this Resolution (with such changes to such financing documents as may be appropriate to reflect the terms of any such Additional Refunding Bonds);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of East Bay Municipal Utility District, as follows:

Section 1. Recitals True and Correct. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Authorization of Additional Refunding Bonds. For the purposes of refunding all or any portion of the District's then Outstanding Fixed Rate Bonds eligible for such refunding, funding or making provision for any bond reserve fund for such Additional Refunding Bonds (if necessary) and/or paying costs of issuance of such Additional Refunding Bonds, the issuance, from time to time, of one or more series of Additional Refunding Bonds is hereby authorized. The Additional Refunding Bonds shall be designated as "East Bay Municipal Utility District Water System Revenue Refunding Bonds," and include the further applicable year and alphabetical letter series designation (and with such additional or other designations as may be determined by a Designated Officer). The total aggregate principal amount of Additional Refunding Bonds issued by the District shall not exceed an amount sufficient (taking into account any original issue discount or premium) to refund all or any portion of the then Outstanding Fixed Rate Bonds, to fund or make provision for one or more bond reserve funds (if necessary) and to pay certain costs related to the issuance of the Additional Refunding Bonds (including, but not limited to, underwriters' discount). No series of the Additional Refunding Bonds shall mature later than the Outstanding Fixed Rate Bonds refunded thereby and the True Interest Cost of any series of the Additional Refunding Bonds shall not exceed 7.00%. The net present value of the savings to the District from the delivery of any series of Additional Refunding Bonds shall be not less than three percent (3.00%) of the par amount of the Outstanding Fixed Rate Bonds refunded thereby.

Subject to the parameters in the preceding paragraph, the Additional Refunding Bonds may be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended. The General Manager of the District, the Director of Finance of the District, the Treasury Manager of the District or any such officer serving in an acting or interim capacity as such, and any written designee of any of them (each a "Designated Officer"), acting in accordance with this Section 2, are each hereby authorized to determine the actual aggregate principal amount of each series of Additional Refunding Bonds to be issued (not in excess of the maximum amount set forth above), to determine if the Additional Refunding Bonds are to be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended, and to direct the execution and authentication of the Additional Refunding Bonds in such amount. Such direction shall be conclusive as to the principal amounts hereby authorized. The Additional Refunding Bonds shall be in fully registered form and shall be issued as book-entry bonds as provided in each applicable Additional Supplemental Indenture. Payment of principal of, interest on and premium, if any, on the Additional Refunding Bonds shall be made at the place or places and in the manner provided in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds of each series shall be issued as current interest bonds. The Additional Refunding Bonds of each series shall be available in denominations of not less than \$5,000 and integral multiples thereof. The Additional Refunding Bonds of each series shall, when issued, be in the aggregate principal amounts and shall be dated as shall be provided in the final form of each applicable Additional Supplemental Indenture. The Additional Refunding



Bonds may be issued as serial bonds or as term bonds or as both serial bonds and term bonds, all as set forth in each applicable Additional Supplemental Indenture. Interest on the Additional Refunding Bonds shall be paid at the rates and on the dates set forth in each applicable Additional Supplemental Indenture. No Additional Refunding Bond shall bear interest at a coupon rate in excess of 7.00% per annum. The Additional Refunding Bonds may be subject to redemption at the option of the District on such terms and conditions as shall be set forth in each applicable Additional Supplemental Indenture. The Additional Refunding Bonds issued as term bonds also shall be subject to mandatory sinking account redemption as shall be set forth in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds and the Trustee's Certificate of Authentication to appear thereon shall be in substantially the form set forth in Exhibit A to the Additional Supplemental Indenture now before this meeting, with such necessary or appropriate variations, omissions and insertions as permitted or required by the Bond Indenture or each applicable Additional Supplemental Indenture or as appropriate to adequately reflect the applicable designation and terms of such Additional Refunding Bonds and the obligation represented thereby.

Each of the Additional Refunding Bonds shall be executed on behalf of the District by the President of the Board of Directors of the District and shall be attested thereto by the Secretary of the District and any such execution may be by manual or facsimile signature, and each bond shall be authenticated by the endorsement of the Trustee or an agent of the Trustee. Any facsimile signature of the President of the Board of Directors of the District or the Secretary of the District shall have the same force and effect as if such officer had manually signed each of such Additional Refunding Bonds.

As used herein, the term "True Interest Cost" shall be the rate necessary, when using a 360-day year and semi-annual compounding, to discount the debt service payments from their respective payment dates to the initial delivery date of the applicable series of Additional Refunding Bonds and to the purchase price of the applicable series of Additional Refunding Bonds. For the purpose of calculating the True Interest Cost, the principal amount of the applicable series of Additional Refunding Bonds scheduled for mandatory sinking fund redemption as part of a term bond shall be treated as a serial maturity for such year. The True Interest Cost shall be calculated by the District's Financial Advisor as of the date of delivery of each series of the Additional Refunding Bonds. Such calculation of the True Interest Cost may include such other reasonable assumptions and methods as determined by the Financial Advisor of the District.

Section 3. Approval of Additional Supplemental Indentures. The form, terms and provisions of each Additional Supplemental Indenture within the parameters set forth in this Resolution are in all respects approved, and each Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Supplemental Indentures, including counterparts thereof. Each Additional Supplemental Indenture, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after

consultation with the District's General Counsel and Fulbright & Jaworski LLP and Curls Bartling P.C., the District's Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof). Execution and delivery of each Additional Supplemental Indenture, which document(s) will contain the maturities, interest rates and the fixed interest payment obligations of the District within parameters set forth in this Resolution, shall constitute conclusive evidence of the District's approval of such maturities, interest rates and payment obligations.

Section 4. Selection of Underwriters; Approval of Additional Bond Purchase Contracts. If a Designated Officer determines that it will be advantageous to the District to issue one or more series of Additional Refunding Bonds, for the purposes of refunding (in whole or in part) any Outstanding Fixed Rate Bonds, funding or making provision for any bond reserve fund (if necessary) for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds, the Board hereby approves the initial sale of each such series of Additional Refunding Bonds through a private, negotiated sale to any one or more of the municipal broker-dealers, banking and financial institutions and/or other persons or entities heretofore selected to serve as part of the District's underwriting pool as shall be determined by the Director of Finance in connection with each such issuance of Additional Refunding Bonds. The Additional Refunding Bonds of each series shall be sold subject to an underwriters' discount (excluding original issue discount and premium) not to exceed \$7.50 per \$1,000 of the principal amount of such series of the Additional Refunding Bonds and subject to the terms and conditions set forth in the form of the applicable Additional Bond Purchase Contract as herein approved. The form, terms and provisions of each Additional Bond Purchase Contract, within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized empowered and directed to execute, acknowledge and deliver from time to time an Additional Bond Purchase Contract, including counterparts thereof, in the name of and on behalf of the District. Each Additional Bond Purchase Contract, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 5. Approval of Additional Escrow Agreements. The form, terms and provisions of each Additional Escrow Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Escrow Agreements, including counterparts thereof. Each Additional Escrow Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 6. Approval of Additional Continuing Disclosure Agreements. The form, terms and provisions of each Additional Continuing Disclosure Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Continuing Disclosure Agreements,

including counterparts thereof. Each Additional Continuing Disclosure Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 7. Approval of Preliminary Official Statements and Official Statements. Each of the Designated Officers is hereby authorized to cause to be prepared a preliminary official statement in connection with any Additional Refunding Bonds. Each preliminary official statement shall be substantially in the form as presented to this meeting with such additions thereto and changes therein (including such changes and additions to reflect the terms of the Additional Refunding Bonds and to comply with applicable federal securities laws) as are approved by the Designated Officers after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be conclusively evidenced by the execution and delivery of the certificate referenced in the following sentence), including such changes as to reflect any updated information or to conform as applicable to the information contained in any future official statement, reoffering circular, remarketing memorandum or other offering document of the District hereafter presented to and approved by this Board in connection with the District's water system revenue bonds or other water system obligations during the term of the authorization of this Resolution, as are approved by a Designated Officer after consultation with the District's General Counsel and Co-Bond Counsel. Each preliminary official statement shall be circulated, from time to time, for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer (after consultation with the District's General Counsel and Co-Bond Counsel) shall determine, and the Designated Officers are hereby authorized to so determine, that such preliminary official statement is substantially final within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, said determination to be conclusively evidenced by a certificate signed by the Designated Officer to such effect. The Director of Finance or the Treasury Manager is hereby authorized to authorize the underwriters to distribute (via written format and/or through electronic means) such preliminary official statement in connection with the marketing of the Additional Refunding Bonds.

Upon the execution and delivery of each Additional Bond Purchase Contract, from time to time, the Designated Officers shall provide for the preparation, publication, execution and delivery of one or more final official statements in substantially the form of the preliminary official statement deemed final by a Designated Officer with such changes as any Designated Officer approves, such approval to be conclusively evidenced by the execution of such final official statement. Any Designated Officer is hereby authorized and directed to execute and deliver one or more final official statements (including any amendments or supplements thereto) in the name and on behalf of the District. Each final official statement shall be circulated (via written format and/or through electronic means) for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer deems appropriate after consultation with underwriters of the Additional Refunding Bonds, the District's Financial Advisor and Co-Bond Counsel and such other advisors as the Designated Officer believes to be useful. The Director of Finance or the Treasury Manager is hereby authorized to authorize the applicable underwriters of the Additional Refunding Bonds to distribute (via written format and/or through electronic means) the final official statement, any supplement to the final official statement and any revised

final official statement, as the case may be, in connection with the sale and delivery of the Additional Refunding Bonds.

Section 8. Additional Actions. The Designated Officers and all such other proper officers of the District be and they hereby are authorized, individually and collectively, to take all actions and execute any and all documents necessary: to engage The Bank of New York Mellon Trust Company, N.A. as trustee and paying agent under any Additional Supplemental Indenture and as escrow agent under any Additional Escrow Agreement; to arrange for the funding of any bond reserve fund (if any) for any Additional Refunding Bonds with a letter of credit, surety bond or insurance policy pursuant to the terms of the Bond Indenture, as so supplemented if, upon the advice of the District's Financial Advisor, the funding of such bond reserve fund (if any) with a letter of credit, surety bond or insurance policy will be economically beneficial to the District; to effect the sale and delivery of any Additional Refunding Bonds pursuant to the applicable Additional Bond Purchase Contract and the Bond Indenture as supplemented; and to do any and all things and to execute and deliver such other agreements, documents and certificates, including (without limitation) tax certificates relating to any Additional Refunding Bonds and any investment agreements relating to the investment of the bond proceeds, and to provide for the giving of written directions and notices, and the securing of any necessary third party approvals in connection with the defeasance, refunding and/or redemption of any Outstanding Fixed Rate Bonds and/or the issuance of any Additional Refunding Bonds, as may be necessary, convenient, or advisable in order to consummate the sale, execution and delivery of any Additional Refunding Bonds and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Additional Refunding Bonds, the Bond Indenture, any Additional Supplemental Indenture, any Additional Bond Purchase Contract, any Additional Escrow Agreements, any Additional Continuing Disclosure Agreements, the preliminary official statement(s) and the final official statement(s) and the transactions herein authorized. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

Section 9. Term of Authority. A Designated Officer's authority to approve the final terms of the sale of Additional Refunding Bonds and to execute or to direct the execution of Additional Supplemental Indentures, Additional Escrow Agreements, Additional Bond Purchase Contracts and official statements relating to Additional Refunding Bonds shall commence upon the date of adoption of this Resolution and shall continue for twelve calendar months thereafter unless rescinded or modified by subsequent action of the Board prior to the time that an Additional Bond Purchase Contract has been duly signed and delivered or except as such authorization period is hereafter extended by subsequent action of the Board.

ADOPTED this 24<sup>th</sup> day of September, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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President

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

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\_\_\_\_\_ SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

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

\_\_\_\_\_  
Dated as of \_\_\_\_\_  
\_\_\_\_\_

(Supplemental to the Water System Subordinated Revenue Bond  
Indenture dated as of April 1, 1990)

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\_\_\_\_\_ Supplemental Indenture  
(Supplemental to the Water System  
Subordinated Revenue Bond Indenture dated  
as of April 1, 1990)  
Authorizing the Issuance of  
\$\_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Water System Revenue Refunding Bonds,  
Series [Designation]

\_\_\_\_\_

This \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (the “\_\_\_\_\_ Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”);

W I T N E S S E T H :

WHEREAS, this \_\_\_\_\_ Supplemental Indenture is supplemental to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented (the “Indenture”), between the District and the Trustee, providing for the issuance of bonds initially designated as “Water System Subordinated Revenue Bonds” and subsequent to the execution and delivery of the Eighteenth Supplemental Indenture designated as “Water System Revenue Bonds” (the “Bonds”);

WHEREAS, in accordance with the Indenture there has been issued, *inter alia*, \$\_\_\_\_\_ aggregate principal amount of Water System Revenue Refunding Bonds, Series [specify series to be refunded] (the “Series [specify series to be refunded] Bonds”), pursuant to the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, between the District and the Trustee, of which \$\_\_\_\_\_ principal amount is Outstanding as of the date hereof;

WHEREAS, the Indenture provides that the District may issue additional Bonds as well as refunding Bonds from time to time as authorized by a Supplemental Indenture;

WHEREAS, the District has determined to issue its Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) in the aggregate principal amount of \$\_\_\_\_\_, pursuant to this \_\_\_\_\_ Supplemental Indenture in order to provide moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund [all] [a portion] of the Outstanding [specify series to be refunded] Bonds; and (ii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds; and

WHEREAS, the Indenture creates a valid and binding pledge and assignment of and security interest in the Subordinated Water Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) for the payment of the Bonds as and to the extent provided therein in accordance with the terms thereof without the need for any



physical delivery, recordation, filing or further act, in accordance with Section 5451 of the Government Code of the State of California;

NOW, THEREFORE, the parties hereto agree, as follows:

ARTICLE \_\_\_\_\_

SERIES [DESIGNATION] BONDS

SECTION \_\_.01. Definitions. The terms defined in this Section shall, for all purposes of this \_\_\_\_\_ Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series [Designation] Bond (including any Person holding a Series [Designation] Bond through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series [Designation] Bond for federal income tax purposes.

“Book-Entry System” means the system maintained by the Securities Depository and described in Section \_\_.03 hereof.

“Closing Date” means the date of delivery of the Series [Designation] Bonds to the Representative of the Underwriters, against payment therefor, such date being \_\_\_\_\_.

“Continuing Disclosure Agreement” means any continuing disclosure agreement entered into by the District and the Trustee in connection with the Series [Designation] Bonds in order to comply with the continuing disclosure requirements promulgated under S.E.C. Rule 15c2-12.

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

“Escrow Agreement” means the Escrow Agreement relating to the defeasance of a portion of the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [specify series to be refunded], dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent and as trustee for the Series [specify series to be refunded] Bonds.

“Representation Letter” means the Letter of Representations from the District to DTC relating to the Book-Entry System for the Series [Designation] Bonds.

“Representative” means \_\_\_\_\_, as representative of the Underwriters of the Series [Designation] Bonds.

“Securities Depository” means DTC or, if applicable, any successor securities depository appointed pursuant to Section \_\_.03 hereof.

“Securities Depository Participant” means any broker-dealer, bank or other financial institution for which a Securities Depository holds Series [Designation] Bonds as Securities Depository from time to time.

“Series [Designation] Bonds” means the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation].

“Series [Designation] Costs of Issuance Fund” means the fund by that name established pursuant to Section \_\_.12 hereof.

SECTION \_\_.02. Authorization.

(A) Designation of Bonds. A twenty-\_\_\_\_\_ Series of Bonds to be issued under the Indenture is hereby created. Such Series of Bonds shall be known as the “East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation]” (herein referred to as the “Series [Designation] Bonds”). The Series [Designation] Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_.

The Series [Designation] Bonds shall be issued in accordance with the Act and pursuant to Resolution No. \_\_\_\_\_, adopted by the Board on September 24, 2013, and this \_\_\_\_\_ Supplemental Indenture. The Series [Designation] Bonds shall be issued for the purpose of providing moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund [all] [a portion] of the outstanding Series [specify series to be refunded] Bonds; and (ii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds.

The Series [Designation] Bonds shall be Current Interest Indebtedness.

(B) Registered Form. The Series [Designation] Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.,” as nominee of DTC in accordance with Section \_\_.03 hereof. The Series [Designation] Bonds shall be evidenced by one bond maturing on each of the maturity dates of the Series [Designation] Bonds as set forth in Section \_\_.02(C) hereof. The Series [Designation] Bonds may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series [Designation] Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section \_\_.03 hereof.

(C) Maturities; Interest Rates; Denominations. The Series [Designation] Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum, and shall mature on June 1 in the following years in the following amounts:

Maturity Date (June 1)	Principal Amount	Interest Rate
<hr/>	<hr/>	<hr/>

Interest on the Series [Designation] Bonds shall be payable commencing on \_\_\_\_\_ and semiannually thereafter on June 1 and December 1 of each year by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. Interest on the Series [Designation] Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series [Designation] Bonds are payable when due upon presentation thereof at the corporate trust office of the Trustee in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

So long as the Series [Designation] Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer in accordance with mutually satisfactory arrangements between the Trustee and the Securities Depository.

The Trustee shall provide CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

SECTION \_\_.03. Book-Entry System. The Series [Designation] Bonds shall be initially issued registered in the name of “Cede & Co.,” as nominee for DTC and registered Owner of the Series [Designation] Bonds, and held in the custody of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of the Series [Designation] Bonds, and the Beneficial Owners will not receive physical delivery of Series [Designation] Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series [Designation] Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series [Designation] Bonds will receive, hold or deliver any Series [Designation] Bond certificate.

At the written direction of the District, with notice to the Trustee, but without the consent of the Owners of the Series [Designation] Bonds or the Trustee, the District, may appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book-Entry System for the Series [Designation] Bonds not inconsistent with the provisions of the Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The District and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Securities Depository Participants in the Book-Entry System with respect to the Series [Designation] Bonds and (ii) a certificate of any such Securities Depository Participant as to the identity of, and the respective principal amount of the Series [Designation] Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series [Designation] Bonds, the beneficial ownership thereof is determined by a book-entry at the Securities Depository, the requirements in the Indenture of holding, delivering or transferring the Series [Designation] Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Series [Designation] Bonds shall, while the Series [Designation] Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in the Indenture and the Series [Designation] Bonds with respect to the rights of Securities Depository Participants and Beneficial Owners, when a Book-Entry System is in effect, the District and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series [Designation] Bonds registered in its name for the purposes of payment of the principal of and interest on the Series [Designation] Bonds or portion thereof to be redeemed or purchased, and of giving any notice permitted or required to be given to the Owners of Series [Designation] Bonds under the Indenture, and neither the District nor the Trustee shall be affected by any notice to the contrary. Neither the District nor the Trustee will have any responsibility or obligations to the Securities Depository, any Securities Depository Participant, any Beneficial Owner or any other Person which is not shown on the registration books required to be maintained by the Trustee, with respect to (i) the accuracy of any records maintained by the Securities Depository or any

Securities Depository Participant; (ii) the payment by the Securities Depository or by any Securities Depository Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or purchase price of, or interest on, any Series [Designation] Bonds; (iii) the delivery of any notice by the Securities Depository or any Securities Depository Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series [Designation] Bonds; or (v) any other action taken by the Securities Depository or any Securities Depository Participant. The Trustee shall pay all principal of and interest on the Series [Designation] Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository, and all such payments shall be valid and effective to fully satisfy and discharge the District’s obligations with respect to the principal of and interest on such Series [Designation] Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the District, at the direction and expense of the District, and the District and the Trustee will cause the delivery of Series [Designation] Bond certificates to such Beneficial Owners of the Series [Designation] Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(1) The Securities Depository determines to discontinue providing its service with respect to the Series [Designation] Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving thirty (30) days’ notice to the District and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(2) The District determines not to continue the Book-Entry System through a Securities Depository, upon not less than forty-five (45) days’ prior written notice to the Trustee.

When the Book-Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect.

So long as any Series [Designation] Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Series [Designation] Bond and all notices with respect to such Series [Designation] Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

In the event of a redemption or any other transaction necessitating a reduction in aggregate principal amount of Series [Designation] Bonds Outstanding, DTC in its discretion: (a) may request the District and the Trustee to issue and authenticate a new Series [Designation] Bond certificate, or (b) shall make an appropriate notation on the Series [Designation] Bond certificate indicating the date and amounts of such reduction in principal, except in the case of final maturity, in which case the certificate must be presented to the Trustee prior to payment.

#### SECTION \_\_\_\_ .04. Redemption of Series [Designation] Bonds.

(A) Optional Redemption. The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or

in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(B) Mandatory Sinking Account Redemption. The Series [Designation] Bonds maturing on June 1, \_\_\_\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section \_\_.09, commencing on June 1, \_\_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

SECTION \_\_.05. Selection of Series [Designation] Bonds for Redemption. Whenever provision is made in this \_\_\_\_\_ Supplemental Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee shall select the Series [Designation] Bonds of such maturity to be redeemed, from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion shall deem appropriate and fair. The Trustee shall promptly notify the District in writing of the Series [Designation] Bonds so selected for redemption.

SECTION \_\_.06. Notice of Redemption of Series [Designation] Bonds. The District shall notify the Trustee at least twenty-five (25) days prior to the redemption date for any Series [Designation] Bonds pursuant to Section \_\_.04(A) (or such shorter time as may be agreed to by the Trustee). Notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series [Designation] Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first class mail, (ii) to the Securities Depository by facsimile or other electronic means of communications and by first class mail, and (iii) to the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at [www.emma.msrb.org](http://www.emma.msrb.org), by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Notice of redemption shall be given in the form and otherwise in accordance with the terms of the Indenture and this \_\_\_\_\_ Supplemental Indenture.

In the event of an optional redemption of Series [Designation] Bonds, in the event that the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

SECTION \_\_.07. Partial Redemption of Series [Designation] Bonds. Upon surrender of any Series [Designation] Bond redeemed in part only, the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a

new Series [Designation] Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series [Designation] Bond surrendered.

SECTION \_\_.08. Effect of Redemption of Series [Designation] Bonds. If notice of redemption has been duly given pursuant to Section \_\_.06, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the date fixed for redemption, interest on the Series [Designation] Bonds so called for redemption shall cease to accrue, the Series [Designation] Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of the Series [Designation] Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price and accrued interest.

All Series [Designation] Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION \_\_.09. Series [Designation] Sinking Accounts. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series [Designation] Sinking Account.” On each Business Day prior to the following payment dates, the District shall transfer from the Principal Fund to the Series [Designation] Sinking Account an amount equal to the payment due on such date as set forth below:

\$\_\_\_\_\_ Term Series [Designation] Bonds Due June 1, \_\_\_\_

Mandatory Sinking Account

Payment Dates  
(June 1)

Mandatory Sinking  
Account Payments

†

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† Final Maturity.

Upon an optional redemption of a portion of any Term Series [Designation] Bonds pursuant to Section \_\_.04(A), the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments.

Moneys in the Series [Designation] Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

SECTION \_\_.10. Form of Series [Designation] Bonds. The Series [Designation] Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series [Designation] Bond letters and numbers, maturity dates, principal amounts and interest rates shall be inserted therein in conformity with Section \_\_.02.

SECTION \_\_.11. Issuance of Series [Designation] Bonds. Upon the execution and delivery of this \_\_\_\_\_ Supplemental Indenture, the District may execute and the Trustee shall authenticate and deliver the Series [Designation] Bonds in the aggregate principal amount of \$\_\_\_\_\_ on the Closing Date therefor upon an Order of the District.

SECTION \_\_.12. Application of Proceeds of Series [Designation] Bonds. The net proceeds of the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds [plus/less \$\_\_\_\_\_ original issue premium/discount], less \$\_\_\_\_\_ of Underwriter's discount), [together with \$\_\_\_\_\_ transferred from the Series [specify series to be refunded] Bond Reserve Fund relating to the refunded Series [specify series to be refunded] Bonds, and \$\_\_\_\_\_ contributed by the District], or a total of \$\_\_\_\_\_, shall be received by the Trustee on behalf of the District and held in trust and set aside as follows:

(i) \$\_\_\_\_\_ of the proceeds from the sale of the Series [Designation] Bonds, [together with (a) the \$\_\_\_\_\_ transferred from the Series [specify series to be refunded] Bond Reserve Fund for the refunded Series [specify series to be refunded] Bonds, and (b) \$\_\_\_\_\_ contributed by the District, or a total of \$\_\_\_\_\_], shall be transferred by the Trustee to The Bank of New York Mellon Trust Company, N.A., as escrow agent pursuant to the Escrow Agreement for deposit in the escrow fund created pursuant to the Escrow Agreement, all as specified in the Escrow Agreement; and

(ii) The remaining proceeds from the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ shall be transferred by the Trustee to the District for deposit in the Costs of Issuance Account of the Series [Designation] Costs of Issuance Fund to be applied in accordance with Section \_\_.13.

SECTION \_\_.13. Establishment and Application of Series [Designation] Costs of Issuance Fund. The District shall establish, maintain and hold in trust a separate fund designated as the "Series [Designation] Costs of Issuance Fund." The moneys on deposit in the Series [Designation] Costs of Issuance Fund shall be used and withdrawn by the District to pay Costs of Issuance of the Series [Designation] Bonds.

SECTION \_\_.14. Continuing Disclosure. The District and the Trustee hereby covenant and agree that they will comply with and carry out all of their respective obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the District or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Series [Designation] Bondholder or Beneficial Owner or the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25%



of the aggregate principal amount of Outstanding Series [Designation] Bonds and upon provision of indemnification satisfactory to the Trustee, shall) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Trustee, as the case may be, to comply with its obligations under this Section \_\_\_\_\_.14. For purposes of this Section \_\_\_\_\_.14, "Beneficial Owner" means any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series [Designation] Bonds (including persons holding Series [Designation] Bonds through nominees, depositories or other intermediaries).

SECTION \_\_\_\_\_.15. [Revised Series [specify series to be refunded] Sinking Account Payment Schedules]. In accordance with Section 5.05 of the Indenture, the portion of the Series [specify series to be refunded] Bonds (such Series [specify series to be refunded] Bonds being Term Bonds) being refunded and redeemed in connection with the issuance of the Series [Designation] Bonds shall be allocated to Mandatory Sinking Account Payments for the applicable Term Bonds as may be specified by the District to the Trustee. The revised schedule of Mandatory Sinking Account Payments for each of the Series [specify series to be refunded] Bonds which are Term Bonds that will remain Outstanding following the issuance of the Series [Designation] Bonds and the retirement of the Series [specify series to be refunded] Bonds being partially refunded thereby are set forth in Exhibit B hereto.]

SECTION \_\_\_\_\_.16. Terms of Series [Designation] Bonds Subject to the Indenture. Except as in this \_\_\_\_\_ Supplemental Indenture expressly provided, every term and condition contained in the Indenture shall apply to this \_\_\_\_\_ Supplemental Indenture and to the Series [Designation] Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this \_\_\_\_\_ Supplemental Indenture.

This \_\_\_\_\_ Supplemental Indenture and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

SECTION \_\_\_\_\_.17. Effective Date of \_\_\_\_\_ Supplemental Indenture. This \_\_\_\_\_ Supplemental Indenture shall take effect upon its execution and delivery.

SECTION \_\_\_\_\_.18. Execution in Counterparts. This \_\_\_\_\_ Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed the \_\_\_\_\_  
Supplemental Indenture by their officers thereunto duly authorized as of the day and year first  
written above.

EAST BAY MUNICIPAL UTILITY  
DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

ATTEST:

By: \_\_\_\_\_  
Lynelle M. Lewis  
Secretary of the District

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

By: \_\_\_\_\_  
Milly Canessa  
Authorized Officer

EXHIBIT A

(FORM OF SERIES [DESIGNATION] BOND)

No. R-\_\_\_\_

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

EAST BAY MUNICIPAL UTILITY DISTRICT  
(ALAMEDA AND CONTRA COSTA COUNTIES, CALIFORNIA)  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]

Unless this certificate is presented by an authorized representative of The Depository Trust Company a New York corporation (“DTC”), to the District or its agent for registration of transfer, exchange, or payment, and any certificate 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.

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
June 1, ____	_____, 20____	____%	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Subordinated Water Revenues and funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal amount specified above together with interest thereon from its Dated Date until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on \_\_\_\_\_, and semiannually thereafter on December 1 and June 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of the hereinafter described Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made

(which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as successor trustee (together with any successor as trustee under said Indenture, the "Trustee"), in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

This Bond is one of a duly authorized issue (of the series and designation indicated on the face hereof) of Water System Revenue Bonds of the District issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, between the Trustee and the District, providing for the issuance of said bonds (the "Bonds"). Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Water System Subordinated Revenue Bond Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Water System Subordinated Revenue Bond Indenture provided, all issued and to be issued pursuant to the provisions of the Act (as defined in the Water System Subordinated Revenue Bond Indenture). This Bond is issued pursuant to the Water System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, between the Trustee and the District, authorizing the issuance of the series of bonds of which this Bond is one, such series being herein referred to as the "Series [Designation] Bonds" (the Water System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, being herein collectively referred to as the "Indenture"). Reference is hereby made to the Indenture and to the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Subordinated Water Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the interest thereon (to the extent set forth in the Indenture), together with the Parity Debt (as defined in the Indenture) issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the "Subordinated Water Revenues" (as more particularly defined in the Indenture). All of the Bonds and Parity Debt are equally secured by a pledge of, and charge and lien upon, all of the Subordinated Water Revenues, and the Subordinated Water Revenues constitute a trust fund for the security and payment of the interest on and principal of the Bonds; but nevertheless out of Subordinated Water Revenues certain amounts may be applied for other purposes as provided in the Indenture.

The Bonds are limited obligations of the District and are payable, both as to principal and interest, and as to any premiums upon the redemption thereof, out of the Subordinated Water Revenues and certain funds held under the Indenture. The general fund of the District is not

liable, and the credit or taxing power of the District is not pledged, for the payment of the Bonds or the interest thereon. The Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the District or any of its income or receipts, except the Subordinated Water Revenues and the funds held under the Indenture. No registered owner of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to each date on which the Bonds are stated to mature, registered in the name of the Cede & Co, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository Participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such Securities Depository Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Securities Depository Participants pursuant to rules and procedures established by the Securities Depository and its Securities Depository Participants. The District and the Trustee will recognize Cede & Co., while the registered owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on this Bond and (ii) notices. Transfer of principal, interest and any redemption premium payments to Securities Depository Participants, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by Securities Depository Participants will be the responsibility of such Securities Depository Participants and other nominees of such beneficial owners. The District will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, Cede & Co., its Securities Depository Participants or persons acting through such Securities Depository Participants. While Cede & Co. is the owner of this Bond, notwithstanding any other provision hereof, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements between the Trustee or its successors under the Indenture and the Securities Depository.

[The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series [Designation] Bonds maturing on June 1, \_\_\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, \_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate trust office of the Trustee in San Francisco, California, but only in the manner, subject to the

limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange hereof.

The District, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the District and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the District pertaining to the Subordinated Water Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or the Act.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, EAST BAY MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the President of the Board of Directors and attested by its Secretary, and this Bond to be dated as of the \_\_\_\_ day of \_\_\_\_\_.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

Attested:

By: \_\_\_\_\_  
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

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

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

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



[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

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

Signature Guaranteed by:

---

NOTE: Signature must be guaranteed by an eligible guarantor institution.

EXHIBIT B  
{if applicable}

REVISED SERIES [SPECIFY SERIES TO BE REFUNDED]  
MANDATORY SINKING ACCOUNT PAYMENT SCHEDULES

A. Following the defeasance and retirement of the \$\_\_\_\_\_ principal amount of the Series [specify series to be refunded] Bonds being refunded in connection with the issuance of the Series [Designation] Bonds, the Mandatory Sinking Account Payment schedule set forth in Section \_\_\_\_\_ of the \_\_\_\_\_ Supplemental Indenture shall be revised as follows for the Series [specify series to be refunded] Bonds to remain Outstanding upon the issuance of the Series [Designation] Bonds:

**Series [specify series to be refunded] Bonds**

\$\_\_\_\_\_ Term Series \_\_\_\_\_ Bonds Due June 1, 20\_\_\_\_

Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments	Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments
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† Final Maturity.

EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]  
PURCHASE CONTRACT

[Date]

Board of Directors  
East Bay Municipal Utility District  
375 -11th Street  
Oakland, California 94607

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, as representative (the “Representative”) of itself, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, the “Underwriters”), hereby offers to enter into this Purchase Contract (the “Purchase Contract”) with you, the East Bay Municipal Utility District (the “District”), which, upon the District’s acceptance of this offer, will be binding upon the District and the Underwriters. This offer is made subject to acceptance by you prior to 5:00 p.m., California time, on the date hereof. If this offer is not so accepted, this offer will be subject to withdrawal by the Underwriters upon notice delivered to you at any time prior to acceptance. Upon acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the District and the Underwriters. All capitalized terms used herein not otherwise defined herein shall have the respective meanings ascribed thereto in the Official Statement (as hereinafter defined). The Representative has been duly authorized to execute this Purchase Contract and to take any action hereunder by and on behalf of the Underwriters.

The District acknowledges and agrees that (i) the purchase and sale of the Series [Designation] Bonds (defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the District and the Underwriters, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principals and are not acting as advisors to or fiduciaries of the District, (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the District with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether an Underwriter has provided other services or is currently providing other services to the District on other matters), (iv) the Underwriters have financial and other interests that differ from those of the District, and (v) the District has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

1. Purchase, Sale and Delivery of the Series [Designation] Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters, jointly and severally, hereby agree to

purchase and the District agrees to sell and deliver to the Underwriters all (but not less than all) of the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation] (the "Series [Designation] Bonds") in the aggregate principal amount of \$\_\_\_\_\_.

(b) The Series [Designation] Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the "Act") and the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the "Indenture"). The Series [Designation] Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series [Designation] Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series [Designation] Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Water Revenues of the District. The Series [Designation] Bonds shall be dated the Closing Date (defined below), shall bear interest payable June 1 and December 1 of each year, commencing on \_\_\_\_\_, and shall mature on June 1 in each year, subject to earlier redemption, as set forth in Exhibit A.

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [all] [a portion of] the District's \$\_\_\_\_\_ aggregate principal amount of outstanding Water System Revenue Refunding Bonds, Series [specify series being refunded] (the "Refunded Bonds"), and (ii) paying costs of issuance of the Series [Designation] Bonds.

(c) The aggregate purchase price for the Series [Designation] Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ [plus/less original issuance premium/discount of \$\_\_\_\_\_] less \$\_\_\_\_\_ of Underwriters' discount).

If this offer shall be accepted by the District, then the Underwriters, shall, immediately upon the acceptance by the District of this offer (or as soon thereafter as practicable), deliver or cause to be delivered to the District a wire or cashier's check made payable to the order of the District, in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of their obligations to accept delivery of and pay for the Series [Designation] Bonds on the Closing Date in accordance with the provisions of this Purchase Contract (such deposit is herein referred to as the "Good Faith Deposit"). Such deposit shall not be expended by the District pending the Closing except as provided below. On the Closing Date, the Good Faith Deposit will be applied towards the purchase price stated above. If the District fails to deliver the Series [Designation] Bonds on the Closing Date, or if the conditions to the obligations of the Underwriters to purchase, accept delivery of and pay for the Series [Designation] Bonds as set forth in this Purchase Contract shall be unsatisfied (unless waived by the Underwriters), or if such obligations of the Underwriters shall be terminated by the Underwriters for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and the Good Faith Deposit with interest calculated at the prevailing 1-month LIBOR rate shall be immediately returned to the Underwriters. In the event that the Underwriters fail (other than for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the

Series [Designation] Bonds on the Closing Date as herein provided, the Good Faith Deposit shall be retained by the District and shall constitute full liquidated damages for such failure and for any and all defaults hereunder on the part of the Underwriters, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriters with respect to such failure.

(d) At 8:00 a.m., California time, on \_\_\_\_\_, or at such other time or on such other date as the District and the Representative mutually agree upon (the “Closing Date”), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriters, the Series [Designation] Bonds, in fully registered book-entry eligible form, through the facilities of The Depository Trust Company (“DTC”) in New York, New York, duly executed, and at the offices of Curls Bartling P.C., Lake Merritt Plaza, 1999 Harrison Street, Suite 610, Oakland, California 94612, or at such other place as shall have been mutually agreed upon by the District and the Representative, and the other documents mentioned herein. The Underwriters will accept such delivery and pay the purchase price of the Series [Designation] Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the “Closing”) to the order of the Trustee in an amount equal to the purchase price.

(e) The Underwriters agree to make a bona fide public offering of the Series [Designation] Bonds at the initial offering prices set forth in the Official Statement, which prices may be changed from time to time by the Underwriters after such initial offering.

## 2. Use and Preparation of Official Statement.

The District hereby ratifies, confirms and approves of the distribution and use by the Underwriters prior to the date hereof of the preliminary official statement dated \_\_\_\_\_ relating to the Series [Designation] Bonds (the “Preliminary Official Statement”) and the making available of the Preliminary Official Statement to investors prior to the date hereof on the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (“Rule 15c2-12”), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriters, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the final Official Statement relating to the Series [Designation] Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the Representative (including the appendices thereto and any amendments or supplements as have been approved by the District and the Underwriters, the “Official Statement”), in such quantity as the Underwriters shall reasonably request. The District hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series [Designation] Bonds. The Representative hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the “MSRB”) through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.

## 3. Representations, Warranties and Agreements of the District.

The District hereby represents, warrants and agrees with the Underwriters as follows:

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State

of California with full legal right, power and authority to issue the Series [Designation] Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract, the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the "Escrow Agreement"), and the Continuing Disclosure Agreement, dated \_\_\_\_\_, between the District and the Trustee, (the "Disclosure Agreement" and together with the Indenture, the Escrow Agreement and this Purchase Contract, the "District Documents");

(b) By all necessary official action of the District prior to or concurrently with the acceptance hereof, the District has duly approved, ratified and confirmed distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, and has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents and the consummation by it of all other transactions contemplated by the Official Statement and the District Documents and the District is and will be in compliance in all material respects with the provisions thereof; the District Documents are or as of the Closing Date will be in full force and effect in substantially the form heretofore submitted to the Underwriters with only such changes as shall have been agreed to in writing by the Underwriters; and the District Documents constitute valid and legally binding agreements of the District enforceable against the District in accordance with their terms; provided, however, that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights and to the limitations on legal remedies against public agencies in the State of California;

(c) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not in Material Breach or Default under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement, and compliance with the provisions on the District's part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term "Material Breach or Default" means any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Water System);

(d) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District:

(i) in any material respect affecting or contesting the existence of the District or the titles of its

officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, deliver or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Water System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series [Designation] Bonds;

(f) Under the laws of the State of California, the authority of the District to determine, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System is not presently subject to the regulatory jurisdiction of the California Public Utilities Commission, or other local, regional or state regulatory authority, and, except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not aware of any legislation proposed or pending to limit or restrict such rates, fees and charges;

(g) The Series [Designation] Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriters as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series [Designation] Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Water Revenues (as defined in the Indenture) and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series [Designation] Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Official Statement;

(i) The financial statements of the District contained in the Official Statement do and will fairly present the financial position and results of operations of the District as of the dates and for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Water System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order (i) to qualify the Series [Designation] Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Series [Designation] Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series [Designation] Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject;

(k) The Preliminary Official Statement (except for information relating to offering prices, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the securities depending on such matters, and the identity of the underwriters) did not as of the date thereof and, as supplemented or amended through the date hereof, does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect (except for information relating to DTC and its book-entry only system, as to which no opinion or view is expressed);

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined below) for the Series [Designation] Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the District will notify the Underwriters, and, if in the opinion of the District, the Underwriters or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriters (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and their counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the District will furnish such information with respect to itself as the Underwriters may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement



of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series [Designation] Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Representative on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series [Designation] Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series [Designation] Bonds the date specified as such in a notice from the Representative stating the date which is the End of the Underwriting Period;

(p) After the Closing, the District will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriters shall reasonably object in writing;

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District will apply, or cause the application of, the proceeds of the Series [Designation] Bonds in accordance with the Indenture;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriters in connection with the execution and delivery of the Series [Designation] Bonds, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(t) Except as disclosed in the Official Statement, the District has never failed within the last five years to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of enumerated events.

#### 4. Conditions to the Obligations of the Underwriters.

The Underwriters hereby enter into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters' obligations under this Purchase Contract to purchase, to accept delivery of and to pay for the Series [Designation] Bonds shall be subject, at the option of the Underwriters, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the

District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(a) The Underwriters shall receive, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the Official Statement (including all information previously permitted to have been omitted by Rule 15c2-12 and any amendments or supplements as have been approved by the Underwriters), in such reasonable quantity as the Underwriters shall have requested;

(b) The representations and warranties of the District contained herein shall be true and correct in all material respects on the date hereof and on the Closing Date, as if made on and at the Closing Date;

(c) At the Closing, the District Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the District, all in substantially the forms heretofore submitted to the Underwriters, with only such changes as shall have been agreed to in writing by the Underwriters (which consent shall not be unreasonably withheld), and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the Board of Directors of the District as, in the opinion of Fulbright & Jaworski LLP, Los Angeles, California, and Curls Bartling P.C., Oakland, California (“Co-Bond Counsel”), and Orrick, Herrington & Sutcliffe LLP, San Francisco, California, counsel to the Underwriters (hereinafter, “Underwriters’ Counsel”), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Series [Designation] Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriters (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and make any payment for the Series [Designation] Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been proposed for consideration by either such Committee by any member thereof or presented as an option for consideration by either such Committee by the staff of such Committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of

California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series [Designation] Bonds which, in the reasonable judgment of the Underwriters, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series [Designation] Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series [Designation] Bonds, or the Series [Designation] Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(3) the declaration of war or the escalation of, or engagement in, military hostilities by the United States or the occurrence of any other national or international emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(4) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series [Designation] Bonds or obligations of the general character of the Series [Designation] Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriters;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series [Designation] Bonds, or the issuance, offering or sale of the Series [Designation] Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series [Designation] Bonds or the underlying rating of any of the District's Water System Revenue Bonds by a national rating agency then rating the Series [Designation] Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriters, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated

therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriters, to materially adversely affect the market for the Series [Designation] Bonds or the sale of the Series [Designation] Bonds, at the contemplated offering prices (or yields).

(e) At or prior to the Closing Date, the Underwriters shall have received the following documents, in each case satisfactory in form and substance to the Underwriters and Underwriters' Counsel:

(1) Counterparts of the District Documents, duly executed and delivered by the respective parties thereto;

(2) The approving opinion of Co-Bond Counsel, dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(3) The supplemental opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit B;

(4) The opinion of the Office of General Counsel of the District, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit C;

(5) The opinion of counsel to the Trustee, dated the Closing Date and addressed to the District and the Representative, in substantially the form attached hereto as Exhibit D;

(6) The defeasance opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit E;

(7) The opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriters ("Special Tax Counsel"), dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(8) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Representative, to the effect that (a) the Series [Designation] Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriters, nothing has come to their attention which would

cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through F thereto, and information regarding DTC and its book-entry only system;

(9) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriters, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official's knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 20\_\_, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Water System, in any case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series [Designation] Bonds; and (d) the projected operating results and debt service coverage contained in Table [19] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

(10) A certificate, dated the Closing Date, signed by a duly authorized official of the Trustee, satisfactory in form and substance to the Underwriters, to the effect that: (a) the Trustee is a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having the full power and being qualified to enter into and perform its duties under the Indenture, the Escrow Agreement and the Disclosure Agreement (collectively, the "Trustee Documents"); (b) the execution and delivery of the Trustee Documents and compliance with the provisions on the Trustee's part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject; and (c) the Trustee has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action, to the best of such official's knowledge after reasonable investigation, threatened against the Trustee, as such but not in its individual capacity, affecting the existence of the Trustee, or the titles of its officers to their respective offices, or contesting or affecting the validity or enforceability of the Trustee Documents, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Trustee Documents;

(11) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Trustee Documents;

(12) a copy of the Preliminary Official Statement;

(13) A copy of the Official Statement, executed on behalf of the District by authorized representatives of the District;

(14) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series [Designation] Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

(15) Evidence that any ratings described in the Official Statement are in full force and effect as of the Closing Date;

(16) A copy of the Blue Sky Memorandum with respect to the Series [Designation] Bonds, prepared by Underwriters' Counsel;

(17) A Tax Certificate signed by the District relating to the Series [Designation] Bonds, in form and substance satisfactory to Special Tax Counsel;

(18) A copy of the Blanket Letter of Representations to DTC relating to the Series [Designation] Bonds signed by the District;

(19) A Verification Report of [Grant Thornton LLP], addressed to the Representative and dated the Closing Date, in form and substance acceptable to Co-Bond Counsel and Underwriters' Counsel; and

(20) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters, Underwriters' Counsel or Co-Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the District herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the District Documents and the Official Statement.

If the District shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Purchase Contract or if the Underwriters' obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District and neither the Underwriters nor the District shall have any further obligations hereunder.

## 5. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series [Designation] Bonds to the Underwriter, including the costs of printing of the Series [Designation] Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series [Designation] Bonds and the fees and expenses of Co-Bond Counsel and Underwriters' Counsel shall be paid either from the proceeds of the Series [Designation] Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriters' discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract,

including, but not limited to, meals, transportation, lodging and entertainment, of those employees. The District shall pay the reasonable out-of-pocket expenses of the Underwriters (included in the expense component of the Underwriters' Discount), including travel and other expenses and the California Debt and Investment Advisory Commission fee.

6. Notices.

Any notice or other communication to be given under this Purchase Contract may be given by delivering the same in writing to the respective parties at the following address:

District: East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607  
Attention: Director of Finance

Representative: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

7. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Series [Designation] Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series [Designation] Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

8. Effectiveness and Counterpart Signatures.

This Purchase Contract shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by duly authorized officials of the District and shall be valid and enforceable as of the time of such acceptance. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9. Parties in Interest.

This Purchase Contract is made solely for the benefit of the District and the Underwriters (including the successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof.

10. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriters with respect to the purchase of the Series [Designation] Bonds.

11. Headings.

The headings of the sections of this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

12. Governing Law.

This Purchase Contract shall be construed in accordance with the laws of the State of California.

Very truly yours,

\_\_\_\_\_, as Representative of the  
Underwriters

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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



EXHIBIT A

MATURITY SCHEDULE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM REVENUE  
REFUNDING BONDS, SERIES [DESIGNATION]

Dated Date: Date of Delivery

Maturity Date ( <u>June 1</u> )	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
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EXHIBIT B

FORM OF SUPPLEMENTAL OPINION OF  
CO-BOND COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the "District") in connection with the issuance, sale and delivery of the District's Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$ \_\_\_\_\_ (the "Bonds"), issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Bonds (collectively, the "Indenture").

The Bonds are being sold on the date hereof by the District to \_\_\_\_\_, as Representative of itself and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, as Underwriters, pursuant to a Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract").

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated \_\_\_\_\_, relating to the Bonds (the "Official Statement").

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of the District and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary to render this opinion, we are of the opinion that:

1. The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE SERIES [Designation] BONDS," and "SECURITY FOR THE SERIES [DESIGNATION] BONDS," and in "APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," and "APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT" (excluding the statements under each such caption relating to The Depository Trust Company ("DTC"), Cede & Co. and the book-entry system, as to all of which we

express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Water Interest Rate Swap Agreements and the Extendable Municipal Commercial Paper Notes (Water Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

2. The Official Statement and the execution and delivery thereof have been duly approved by the District, and the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement have been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the District, enforceable against the District in accordance with their respective terms. We call attention to the fact that the rights and obligations under the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement and the enforceability thereof are subject to and may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver (including, without limitation, waiver of jury trial or consent to nonjury trial) provisions contained in the foregoing documents.

3. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

4. The issuance of the Bonds, the execution and delivery of the \_\_\_\_\_ Supplemental Indenture, the Escrow Agreement, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or Resolution No. 33705-09 of the District, adopted on March 10, 2009, authorizing the District's extendable commercial paper program or, to the best of our knowledge, any loan agreement with any State governmental agency to which the District is a party or to which the District or any of its property or assets are otherwise subject.

Based upon our participation in the preparation of the Preliminary Official Statement, dated \_\_\_\_\_, relating to the Bonds, and the Official Statement as co-bond counsel and on the basis of the information made available to us in the course of the foregoing, but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement (except to the extent expressly set forth in paragraph 1 above), as of the date hereof no facts have come to the attention of the personnel in our respective firms directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement or the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of this Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the

discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, underwriters' discount and CUSIP numbers, or (b) the Official Statement as of its date or as of the hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view).

During the period from the date of the Official Statement to the date of this opinion, except for our review of the certificates and opinions regarding the Official Statement delivered on the date hereof, we have not undertaken any procedures or taken any actions which were intended to or were likely to elicit information concerning the accuracy, completeness or fairness of any of the statements contained in the Official Statement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

We are furnishing you this letter at the request of the District and solely for the information of, and assistance to, you in conducting and documenting your investigation of the affairs of the District in connection with the offering of the Bonds and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, including but not limited to the purchase or sale of the Bonds, nor is it to be referred to in whole or in part in the Official Statement or any other document, except that it may be included in, and reference may be made to it in any list of, the closing documents pertaining to the delivery of the Bonds. The provision of this opinion to you shall not create any attorney-client relationship between either of our firms and you. This opinion may not be relied upon by any other person, firm, corporation or other entity without our prior written consent.

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the "District"), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 4(e)(4) of the Purchase Contract (the "Purchase Contract") dated \_\_\_\_\_ between the District and \_\_\_\_\_, as representative of the underwriters (the "Underwriters") listed therein, and relating to the sale of \$ \_\_\_\_\_ aggregate principal amount of District's Water System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

In rendering this opinion, I have examined the following documents: (i) the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture dated as of \_\_\_\_\_, by and between the District and the Trustee (collectively, the "Indenture"); (ii) the Continuing Disclosure Agreement, dated \_\_\_\_\_, by and between the District and the Trustee; (iii) the Official Statement; (iv) the Series [Designation] Bonds; (v) the Escrow Agreement; and (vi) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement, the Escrow Agreement and the Purchase Contract are collectively referred to herein as the "District Documents." In addition, I call attention to the fact that the rights and obligations under the District Documents, the Series [Designation] Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.

Based on the foregoing, I am of the opinion that:

(1) The District is, and was at all relevant times, a municipal utility district duly organized and validly existing under the laws of the State of California.

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series [Designation] Bonds (the “Resolutions”), the District Documents and the Official Statement were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Official Statement by the District to the Underwriters on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series [Designation] Bonds, the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) which contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Water System.

(4) The issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate, to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the

valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement and based upon the information made available to me during the preparation of the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that the information contained in the Official Statement under the captions “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A thereto (excluding therefrom the financial statements and the statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and the Closing Date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) The Subordinated Water Revenues are free and clear of and from any and all liens and encumbrances other than as set forth in the Official Statement.

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by the Water System and is not presently subject to the regulatory jurisdiction of any state, regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series [Designation] Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

This opinion is delivered to you as the representatives of the Underwriters and is solely for the benefit of the Underwriters and is not to be used by any other person or for any other purpose.

Very truly yours,

Jylana Collins  
General Counsel

EXHIBIT D

FORM OF TRUSTEE COUNSEL'S OPINION

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, Series [Designation]

Ladies and Gentlemen:

We have acted as counsel to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), in connection with the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the "District") and the Trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture") in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation]. This opinion is rendered pursuant to Section 4(e)(5) of the Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract"), between the District and \_\_\_\_\_, as Representative of the Underwriters listed therein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In connection therewith, we have examined and reviewed such documents and certificates of public officials, officers of the Trustee and others as we have deemed necessary for the purposes of this opinion. In all such examinations, we have assumed the genuineness of all signatures (other than those of the Trustee), the authenticity of all documents submitted to us as originals, the conformity to original and certified documents of all copies submitted to us as conformed or photostatic copies, and the authenticity of the originals of all such latter documents. As to various questions of fact material to this opinion, we have relied, to the extent that we deemed such reliance proper, upon such certificates of officers of the Trustee. We have examined an executed counterpart of the Indenture and have assumed the power, municipal or corporate, as the case may be, and the legal authority to execute and deliver the same of the District and the due authorization, execution and delivery thereof by the District.

Based upon the foregoing, we are of the opinion under the laws of the State of California:

1. The Trustee is a national banking association duly organized and validly existing under and by virtue of the laws of the United States of America, having full power and being qualified to enter into and perform its duties under the Trustee Documents.

2. The Trustee has taken all corporate action necessary to assume the duties and obligations of Trustee under the Trustee Documents and to authorize in such capacity the execution and delivery of the Trustee Documents and the acceptance of the duties as Trustee does not and will



not contravene any law of governmental regulation or order presently binding on the Trustee or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which the Trustee is a party or by which the Trustee is or may be bound.

3. The Trustee has duly executed and delivered the Trustee Documents and the Trustee Documents constitute the legal, valid and binding obligations of the Trustee, enforceable in accordance with their terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought.

4. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of any of its duties and obligations under the Trustee Documents (insofar as it has the obligation to obtain any such approval, consent or order) have been obtained and are in full force and effect.

Respectfully submitted,

EXHIBIT E

FORM OF DEFEASANCE OPINION

[Closing Date]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Water System Revenue Refunding Bonds,  
Series [Designation]

Ladies and Gentlemen:

We have acted as co-bond counsel in connection with the issuance by the East Bay Municipal Utility District (the “District”) of its Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (collectively, the “Act”) and a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California (which has been succeeded by The Bank of New York Mellon Trust Company, N.A.), as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [all] [a portion of] the District’s \$\_\_\_\_\_ aggregate principal amount of outstanding Water System Revenue Refunding Bonds, Series [specify series being refunded] (the “Refunded Bonds”) and (ii) paying costs of issuance of the Series [Designation] Bonds.

In our capacity as co-bond counsel, we have examined a certified copy of the proceedings relating to the issuance of the Refunded Bonds and the Series [Designation] Bonds and such other documents and instruments as we deemed necessary to render the opinions set forth herein, including the Indenture, data and computations prepared by \_\_\_\_\_, a verification report relating to the Refunded Bonds, dated the date hereof and prepared by [Grant Thornton LLP] (the “Verification Report”) and the Escrow Agreement relating to the Refunded Bonds, dated as of \_\_\_\_\_ (the “Escrow Agreement”), by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”). As to questions of fact material to our

opinion, we have relied upon the certified proceedings and other certifications of District officers and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based on and subject to the foregoing, we are of the opinion that:

1. The defeasance of the Refunded Bonds and the deposit of moneys with the Escrow Agent pursuant to the Escrow Agreement are authorized by and comply with the conditions and terms of the Indenture.

2. Provision has been made to pay [the principal of and interest on the Refunded [specify series being refunded] Bonds becoming due on and before \_\_\_\_\_, \_\_\_\_ and] [on \_\_\_\_\_, \_\_\_\_ the principal of and interest becoming due on the Refunded Series [specify series being refunded] Bonds maturing on such date and] [the principal of and interest on the Refunded Bonds upon the redemption thereof, on \_\_\_\_\_,] all in accordance with the conditions and terms of the Indenture. Accordingly, the Refunded Bonds have been deemed to have been paid within the meaning expressed in the Indenture, the owners of the Refunded Bonds have ceased to be entitled to the pledge of and charge and lien established by the Indenture, and all agreements, covenants and other obligations of the District to the owners of the Refunded Bonds under the Indenture have ceased, terminated and become void and have been discharged and satisfied.

In rendering the opinions above, we have relied on the Verification Report and the Escrow Agreement as to matters contained therein. We note that [Grant Thornton LLP] has made certain assumptions in the Verification Report which we have not independently verified. We have also assumed that all other sums payable by the District under the Indenture with respect to the Refunded Bonds have been paid and that provision has been made by the District for the mailing of a notice to the respective owners of the Refunded Bonds that the moneys described in the preceding paragraph are so available for payment.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is addressed to you and it is not to be quoted, used, circulated or otherwise referred to for any other purpose without our written consent. No attorney-client relationship has existed or exists between us and your firms in connection with the Series [Designation] Bonds or by virtue of this opinion.

Respectfully submitted,

Respectfully submitted,

ESCROW AGREEMENT  
RELATING TO THE DEFEASANCE OF  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM [SUBORDINATED] REVENUE REFUNDING BONDS,  
SERIES [SPECIFY SERIES TO BE REFUNDED]

THIS ESCROW AGREEMENT (the “Escrow Agreement”), dated as of \_\_\_\_\_, \_\_\_\_\_, is by and between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as escrow agent hereunder (the “Escrow Agent”) and as trustee with respect to the Series [specify series to be refunded] Bonds referred to below (the “Trustee”),

W I T N E S S E T H:

WHEREAS, the District has previously authorized and issued its \$\_\_\_\_\_ principal amount of East Bay Municipal Utility District Water System [Subordinated] Revenue Refunding Bonds, Series [specify series to be refunded], of which \$\_\_\_\_\_ principal amount remains outstanding (the “Series [specify series to be refunded] Bonds”), pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, by and between the District and the Trustee (collectively, the “Indenture”);

WHEREAS, the District has determined to issue \$\_\_\_\_\_ aggregate principal amount of its East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”), pursuant to the Indenture, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, by and between the District and the Trustee, providing for the issuance of the Series [Designation] Bonds, for the purpose of refunding [all][\$\_\_\_\_\_ principal amount] of the \$\_\_\_\_\_ outstanding principal amount of Series [specify series to be refunded] Bonds (hereinafter, the “Refunded Series [specify series to be refunded] Bonds”);

WHEREAS, by irrevocably depositing with the Escrow Agent a specified amount of the proceeds from the sale of the Series [Designation] Bonds and directing the Escrow Agent to invest such amounts in certain investments satisfying the criteria set forth in Section 10.03 of the Indenture (herein, the “Federal Securities”), if any, the Escrow Agent will have money sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon];

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District and the Escrow Agent agree as follows:

SECTION 1. Deposit of Moneys. Simultaneously with the delivery of the Series [Designation] Bonds, the District shall deposit with the Escrow Agent \$\_\_\_\_\_, representing \$\_\_\_\_\_ of the proceeds of the sale of the Series [Designation] Bonds, [\$\_\_\_\_\_ transferred from the Series [specify series to be refunded] Bond Reserve Fund relating to the Refunded Series [specify series to be refunded] Bonds and \$\_\_\_\_\_ of amounts contributed by the District]; all to be held in irrevocable escrow by the Escrow Agent, separate and apart from other funds and accounts of the District and the Escrow Agent, in a fund hereby created and established to be known as the "Series [specify series to be refunded] Bonds Escrow Fund," to be applied solely as provided in this Escrow Agreement. The deposit is in a total amount which has been calculated by [Underwriter] and verified by [Grant Thornton LLP] (the "Verification Agent") to be sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon].

The Escrow Agent hereby acknowledges receipt of such calculations prepared by [Underwriter], the mathematical accuracy of which has been verified by the Verification Agent in its report relating to the Refunded Series [specify series to be refunded] Bonds (the "Verification Report"), a copy of which has been provided to the Escrow Agent, and the Escrow Agent may rely upon the conclusion of such report to the effect that the amounts to be deposited in the Series [specify series to be refunded] Bonds Escrow Fund as described in this Section 1 will be sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon].

SECTION 2. Investment of Moneys. The Escrow Agent agrees to immediately invest any moneys deposited or transferred to the Series [specify series to be refunded] Bonds Escrow Fund in accordance with Section 1 hereof in the Federal Securities (if any) set forth in Schedule A hereto and to deposit such Federal Securities (if any) in the Series [specify series to be refunded] Bonds Escrow Fund. All other amounts in the Series [specify series to be refunded] Bonds Escrow Fund, or if no Federal Securities are set forth in the completed Schedule A delivered pursuant hereto, all amounts, not so invested shall be held as cash.

SECTION 3. Reinvestment Requirements. In the event that the Escrow Agent receives any payment of principal or interest from the Federal Securities (if any), prior to the date on which such payment is required for the purposes set forth herein, the Escrow Agent shall, at the written direction of the District, reinvest the amount of such payment, or any portion thereof, in noncallable bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America maturing not later than the date on which such payment or portion thereof is required for the purposes set forth in Section 5, as verified in a report prepared by the Verification Agent or another independent certified public accountant or firm of certified public accountants of favorable national reputation

experienced in the refunding of obligations of public agencies, and provided the District has obtained and delivered to the Escrow Agent an unqualified opinion of nationally recognized bond counsel that such reinvestment will not adversely affect the exclusion from gross income of interest on the Refunded Series [specify series to be refunded] Bonds or the Series [Designation] Bonds for purposes of federal income taxation. Any interest income resulting from investment or reinvestment of moneys pursuant to this Section 3 which is not required for the purposes set forth in this Section 3 or Section 5, as verified in the report of the Verification Agent (the "Verification Report") originally obtained by the District with respect to the refunding of the Refunded Series [specify series to be refunded] Bonds or in any other report prepared by an independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of public agencies, shall be paid to the District promptly upon the receipt of such interest income by the Escrow Agent. In the absence of such written direction the Escrow Agent shall hold such amounts uninvested.

SECTION 4. Substitution of Securities. Upon the written request of the District, and subject to the conditions and limitations herein set forth and applicable governmental rules and regulations, the Escrow Agent shall sell, redeem or otherwise dispose of the Federal Securities (if any), provided there are substituted therefor from the proceeds of such Federal Securities (if any), bonds and other obligations which, as to principal and interest, constitute direct noncallable obligations of, or are unconditionally guaranteed by, the United States of America, but only after the District has obtained and delivered to the Escrow Agent (i) an unqualified opinion of nationally recognized bond counsel that such reinvestment will not adversely affect the exclusion from gross income of interest payable on the Refunded Series [specify series to be refunded] Bonds or the Series [Designation] Bonds for purposes of federal income taxation, and (ii) a report by the Verification Agent or another independent certified public accountant or firm of certified public accountants to the effect that such reinvestment will not adversely affect the sufficiency of the amounts of securities, investments and money in the Series [specify series to be refunded] Bonds Escrow Fund to pay the principal or redemption price of, and interest on, the Refunded Series [specify series to be refunded] Bonds in accordance with this Escrow Agreement. The Escrow Agent shall not be liable or responsible for any loss resulting from any reinvestment made pursuant to this Escrow Agreement and in full compliance with the provisions hereof.

SECTION 5. Payment of Refunded Series [specify series to be refunded] Bonds.

(a) Payment. From the maturing principal of the Federal Securities (if any) and the investment income and other earnings thereon, if any, and the moneys on deposit in the Series [specify series to be refunded] Bonds Escrow Fund, the Escrow Agent shall apply the amounts on deposit in the Series [specify series to be refunded] Bonds Escrow Fund to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon]. The amounts required to be paid on the Refunded Series [specify series to be refunded] Bonds on each date of payment therefor are shown on Schedule B hereto. Any moneys remaining in the Series [specify series to be

refunded] Bonds Escrow Fund after payment of the Refunded Series [specify series to be refunded] Bonds in full as provided in this Section 5(a) shall be transferred by the Escrow Agent to the trustee for the Series [Designation] Bonds to be applied to the payment of interest on the Series [Designation] Bonds.

(b) Irrevocable Instructions to Provide Notice. The District [hereby irrevocably instructs] [acknowledges that it has heretofore instructed] the Escrow Agent (as Trustee for the Refunded Series [specify series to be refunded] Bonds), (1) to mail a notice substantially in the form of Exhibit A to the owners of the Refunded Series [specify series to be refunded] Bonds [and to the Series [specify series to be refunded] Bond Insurer (as defined in the \_\_\_\_\_ Supplemental Indenture)] that an irrevocable deposit has been made with the Escrow Agent and that the Refunded Series [specify series to be refunded] Bonds have been deemed to be paid in accordance with the Indenture, with a copy of such notice to be provided by electronic means of communication to the Municipal Securities Rulemaking Board (“MSRB”) through the Electronic Municipal Market Access System (referred to as “EMMA”), at [www.emma.msrb.org](http://www.emma.msrb.org); and [hereby irrevocably instructs the Escrow Agent (as Trustee for the Refunded Series [specify series to be refunded] Bonds)] (2) provide a notice substantially the form of Exhibit B at least thirty (30) days but not more than sixty (60) days prior to \_\_\_\_\_, \_\_\_\_\_ (*i.e.*, the redemption date) of the redemption of the Refunded Series [specify series to be refunded] Bonds to be redeemed on such date (i) by first-class mail to the registered owners of the Refunded Series [specify series to be refunded] Bonds, (ii) by first-class mail to the Information Services (as defined in the Indenture) and by electronic means of communication to the MSRB through EMMA, at [www.emma.msrb.org](http://www.emma.msrb.org), and (iii) by facsimile and by first-class mail to the Securities Depositories (as defined in the Indenture), all in accordance with the Indenture and with a copy of such notice to [the Series [specify series to be refunded] Bond Insurer] and [Moody’s, Standard & Poor’s and Fitch] (as defined in the Indenture).

The Escrow Agent hereby confirms that it will take all actions required to be taken by it under the Indenture and this Escrow Agreement in order to effectuate the defeasance, redemption and payment of the Refunded Series [specify series to be refunded] Bonds as provided herein.

(c) Unclaimed Moneys. Any moneys which remain unclaimed for two years after the date such moneys have become due and payable hereunder shall be repaid by the Escrow Agent to the District, and the Escrow Agent shall thereupon be released and discharged with respect thereto, and the holders of the Refunded Series [specify series to be refunded] Bonds shall look only to the District for the payment on the Refunded Series [specify series to be refunded] Bonds; provided, however, that before making such repayment to the District, the Escrow Agent shall, at the expense of the District, cause to be mailed to the holders of any unredeemed Refunded Series [specify series to be refunded] Bonds, a notice that such money remains unclaimed and that, after a date set forth in the notice, which date shall not be less than thirty (30) days after the date of mailing of the notice, the balance of the money then unclaimed will be returned to the District.

(d) Priority of Payments. The owners of the Refunded Series [specify series to be refunded] Bonds shall have a lien on moneys and securities, if any, in the Series [specify series to be refunded] Bonds Escrow Fund which are allocable and sufficient to repay the Refunded Series [specify series to be refunded] Bonds, in accordance with this Escrow Agreement, as

verified by the Verification Report, until such moneys and such securities, if any, are used and applied as provided in this Escrow Agreement.

(e) Termination of Obligation. As provided in the Indenture, upon deposit of moneys with the Escrow Agent in the Series [specify series to be refunded] Bonds Escrow Fund as set forth in Section 1 hereof and the purchase of the various Federal Securities as provided in Section 2 hereof, if any, and notice of, or provision for notice of redemption having been given as set forth in Section 5(b) hereof, upon the election of the District, which the District hereby makes, the pledge of the Subordinated Water Revenues and other assets under the Indenture and other obligations of the District under the Indenture in respect of the Refunded Series [specify series to be refunded] Bonds shall cease, terminate, and be completely discharged and satisfied.

SECTION 6. Performance of Duties. The Escrow Agent agrees to perform only the duties set forth herein and shall have no responsibility to take any action or omit to take any action not set forth herein.

SECTION 7. Escrow Agent's Authority to Make Investments. Except as provided in Section 2 hereof, the Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement or to sell, transfer or otherwise dispose of the cash or the Federal Securities (if any) held hereunder.

SECTION 8. Indemnity. The District hereby assumes liability for, and agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, officers, directors, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the District or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Series [specify series to be refunded] Bonds Escrow Fund, the acceptance of the cash and securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any) or the proceeds thereof, if any, and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement; provided, however, that the District shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's employees or the willful breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the District or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

SECTION 9. Responsibilities of Escrow Agent. The Escrow Agent shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Series [specify series to be refunded] Bonds Escrow Fund, the acceptance of the moneys or securities deposited therein, the



purchase of the Federal Securities (if any), the retention of the Federal Securities (if any), or the proceeds thereof, the sufficiency of the Federal Securities (if any), or cash deposit to pay the Refunded Series [specify series to be refunded] Bonds or any payment, transfer or other application of moneys or obligations by the Escrow Agent in accordance with the provisions of this Escrow Agreement, or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall not be liable for any special indirect or consequential damages. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the District, and the Escrow Agent assumes no responsibility for the correctness thereof or the correctness of any recitals or statements contained in the Refunded Series [specify series to be refunded] Bonds. The Escrow Agent makes no representation as to the validity of this Escrow Agreement as to the District and, except as otherwise provided herein, the Escrow Agent shall incur no liability with respect thereto. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct or willful breach, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall be under no obligation to inquire into or be in any way responsible for the performance or nonperformance by the District of its obligations. The Escrow Agent may consult with counsel, who may or may not be counsel to the District, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an officer of the District. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to the provisions of this Escrow Agreement.

**SECTION 10. Resignation of Escrow Agent.** The Escrow Agent may at any time resign by giving thirty (30) days prior written notice to the District of such resignation. The District shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the District does not appoint a successor, the Escrow Agent may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of Escrow Agent, the District may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the District appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the District shall immediately and without further action be superseded by the successor Escrow Agent so appointed.

SECTION 11. Amendments. This Escrow Agreement is made for the benefit of the District and the owners of the Refunded Series [specify series to be refunded] Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such owners, the Escrow Agent and the District; provided, however, that the District and the Escrow Agent may, without the consent of, or notice to, such owners, amend this Escrow Agreement or enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Escrow Agreement or the Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Escrow Agreement; (ii) to grant to, or confer upon the Escrow Agent for the benefit of the owners of the Refunded Series [specify series to be refunded] Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such owners or the Escrow Agent; and (iii) to include under this Escrow Agreement additional funds, securities or properties. The Escrow Agent shall be entitled to rely conclusively upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the owners of the Refunded Series [specify series to be refunded] Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 12. Term. This Escrow Agreement shall commence upon its execution and delivery and terminate on the later to occur of either (i) the date upon which the Refunded Series [specify series to be refunded] Bonds have been paid in accordance with this Escrow Agreement or (ii) the date upon which no unclaimed moneys remain on deposit with the Escrow Agent pursuant to Section 5(c) of this Escrow Agreement.

SECTION 13. Compensation. The Escrow Agent shall receive its reasonable fees and expenses as previously agreed to by the Escrow Agent and the District; provided, however, that under no circumstances shall the Escrow Agent be entitled to any lien whatsoever on any moneys or obligations in the Series [specify series to be refunded] Bonds Escrow Fund for the payment of fees and expenses for services rendered or expenses incurred by the Escrow Agent under this Escrow Agreement until payment or provision for payment in full of the Refunded Series [specify series to be refunded] Bonds.

SECTION 14. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the District or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

SECTION 15. Counterparts. This Escrow Agreement may be executed in counterparts, any of which shall be regarded for all purposes as an original but all of which shall constitute and be but one and the same instrument.

SECTION 16. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 17. Insufficient Funds. If at any time the moneys and investments in the Series [specify series to be refunded] Bonds Escrow Fund, including the anticipated proceeds of and earnings thereon, if any, will not be sufficient to make all payments required by this Escrow Agreement, the Escrow Agent shall notify the District, in writing, immediately upon becoming aware of such deficiency, the amount thereof, and, if known to it, the reason therefor. Upon receipt of such notice, the District shall, as the case may be, promptly deposit with the Escrow Agent for deposit in the Series [specify series to be refunded] Bonds Escrow Fund the amount necessary to cure any such deficiency. The Escrow Agent shall have no further responsibility regarding any such deficiency.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Escrow Agent and as  
Trustee under the Indenture

By: \_\_\_\_\_  
Milly Canessa  
Vice President

SCHEDULE A  
FEDERAL SECURITIES

TYPE	MATURITY DATE	PAR AMOUNT	COUPON
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SCHEDULE B

REQUIREMENTS OF THE REFUNDED  
SERIES [SPECIFY SERIES TO BE REFUNDED] BONDS

<u>Date</u>	<u>Interest</u>	<u>Maturing Principal</u>	<u>Called Principal</u>	<u>Call Premium</u>	<u>Total Requirements</u>
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**NOTICE OF DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM [SUBORDINATED] REVENUE REFUNDING BONDS,  
SERIES [SPECIFY SERIES TO BE REFUNDED]**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series [specify series to be refunded] Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Mellon Trust Company, N.A., the successor trustee for the Series [specify series to be refunded] Bonds (the “Trustee”) under the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_ (collectively, the “Indenture”), cash and/or noncallable bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, paying interest and principal in an amount which shall be sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_,\_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and (iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon]. In accordance with the Indenture, the pledge of the Subordinated Water Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such portion of Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Series [specify series to be refunded] Bonds shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

DATED this \_\_\_\_ day of \_\_\_\_\_,\_\_\_\_\_.

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

**NOTICE OF REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WATER SYSTEM [SUBORDINATED] REVENUE REFUNDING BONDS,  
SERIES [SPECIFY SERIES TO BE REFUNDED]**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated \_\_\_\_\_, \_\_\_\_\_ (the "Bonds") that, pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption, on \_\_\_\_\_, \_\_\_\_\_ (the "Redemption Date"), [all] [a portion of] the outstanding Bonds maturing on and after June 1, \_\_\_\_\_, in the aggregate principal amount of \$\_\_\_\_\_, as set forth below:

Maturity Date (June 1)	Principal Amount	Interest Rate	CUSIP
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Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

**First Class/Registered/Certified:**

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

**Express Delivery Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

**By Hand Only:**

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

[PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL



REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.]

On \_\_\_\_\_, \_\_\_\_\_, the Bonds to be redeemed will be payable at a redemption price of [100.0%] of the principal amount together with interest accrued thereon to (but not including) \_\_\_\_\_, \_\_\_\_\_, the date of redemption. On \_\_\_\_\_, \_\_\_\_\_, [if the deposit of moneys has been made as provided above,] there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above. From and after \_\_\_\_\_, \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

#### **Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the City, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_, \_\_\_\_\_

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

## CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated **[Closing Date]**, is executed and delivered by the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”) in connection with the issuance of \$**[Par Amount]** aggregate principal amount of Water System Revenue Refunding Bonds, **[Name of Series]** (the “Bonds”). The Bonds are being issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as supplemented and amended, including as supplemented and amended by the **[Number of the Supplemental Indenture]** Supplemental Indenture, dated as of **[Supplemental Indenture Date]**, providing for the issuance of the Bonds (collectively, the “Indenture”). In connection therewith the District and the Trustee covenant and agree as follows:

Section 1. Purpose of this Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the District and the Trustee for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter (as defined herein) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

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

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Director of Finance or the Treasury Manager of the District or a designee of the Director of Finance, or such other officer or employee as the District shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the District and which has filed with the Trustee a written acceptance of such designation.

“Holder” shall mean either the registered owners of the Bonds or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the Official Statement for the Bonds dated *[Sale Date]*, as may be updated prior to the delivery of the Bonds.

“Participating Underwriter” shall mean any underwriter of the Bonds listed on the cover page of the Official Statement required to comply with the Rule in connection with offering of the Bonds.

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

“SEC” shall mean the United States Securities and Exchange Commission.

### Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the District’s Fiscal Year (presently June 30), commencing with the report for the 2012-13 Fiscal Year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that if the audited financial statements of the District are not available by the date required above for the filing of the Annual Report, the District shall submit the audited financial statements as soon thereafter as available. If the District’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) If the District is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the District shall send to the MSRB a notice in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

- (i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

- (ii) file a report with the District and (if the Dissemination Agent is not the Trustee, the Trustee) certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement, and stating the date it was provided.

Section 4. Content of Annual Reports. The District's Annual Report shall contain or include by reference the following categories or similar categories of information updated to incorporate information for the most recent fiscal or calendar year, as applicable (the tables referred to below are those appearing in the Official Statement relating to the Bonds):

- (a) The audited financial statements of the District for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;
- (b) A table showing the Number of Accounts and Metered Annual Consumption (by customer type) for the preceding Fiscal Year;
- (c) A table showing Water Sales Revenues, Consumption and Number of Connections by Customer Type for the preceding Fiscal Year;
- (d) A table showing Water System Sources of Funds by Source;
- (e) A table showing Water System Rates and Charges for the preceding Fiscal Year (as well as average rate increases);
- (f) A table showing Outstanding Water System Debt as of the preceding Fiscal Year;
- (g) A table showing water revenues, operating and maintenance expenses, debt service on water revenue bonds and debt service coverage for the water revenue bonds for the most recent Fiscal Year; and
- (h) Any material changes in the water supply.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the MSRB or the SEC. If any document included by reference is a final official statement, it must be available from the MSRB. The District shall clearly identify each such other document so included by reference.

Section 5.     Reporting of Significant Events.

(a)     Pursuant to the provisions of this section, upon the occurrence of any of the following events (in each case to the extent applicable) with respect to the Bonds, the District shall give, or cause to be given by so notifying the Dissemination Agent in writing and instructing the Dissemination Agent to give, notice of the occurrence of such event, in each case, pursuant to Section 5(c) hereof:

1.     principal or interest payment delinquencies;
2.     non-payment related defaults, if material;
3.     modifications to the rights of the Bondholders, if material;
4.     optional, contingent or unscheduled calls, if material, and tender offers;
5.     defeasances;
6.     rating changes;
7.     adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
8.     unscheduled draws on the debt service reserves reflecting financial difficulties;
9.     unscheduled draws on the credit enhancements reflecting financial difficulties;
10.    substitution of the credit or liquidity providers or their failure to perform;
11.    release, substitution or sale of property securing repayment of the Bonds, if material;
12.    bankruptcy, insolvency, receivership or similar proceedings of the District, which shall occur as described below;
13.    appointment of a successor or additional trustee or the change of name of a trustee, if material, or;
14.    the consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the Water System of the District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the

termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

For these purposes, any event described in item 12 of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District.

(b) Upon receipt of notice from the District and instruction by the District to report the occurrence of any Listed Event, the Dissemination Agent shall provide notice thereof to the MSRB in accordance with Section 5(c) hereof. In the event the Dissemination Agent shall obtain actual knowledge of the occurrence of any of the Listed Events, the Dissemination Agent shall, immediately after obtaining such knowledge, contact the Disclosure Representative, inform such person of the event, and request that the District promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to Section 5(c). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Event shall mean actual knowledge by the Dissemination Agent, if other than the Trustee, and if the Dissemination Agent is the Trustee, then by the officer at the corporate trust office of the Trustee with regular responsibility for the administration of matters related to the Indenture. The Dissemination Agent shall have no responsibility to determine the materiality, if applicable, of any of the Listed Events.

(c) The District, or the Dissemination Agent, if the Dissemination Agent has been instructed by the District to report the occurrence of a Listed Event, shall file a notice of such occurrence with the MSRB in a timely manner not more than ten business days after the occurrence of the event.

Section 6. Termination of Reporting Obligation. The District’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee, upon notice from the District, shall be the Dissemination Agent. The initial Dissemination Agent shall be the Trustee. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this

Disclosure Agreement. The Dissemination Agent shall receive compensation for the services provided pursuant to this Disclosure Agreement.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the District and the Dissemination Agent may amend this Disclosure Agreement (and, to the extent that any such amendment does not materially change or increase its obligations hereunder, the Dissemination Agent shall agree to any amendment so requested by the District), and any provision of this Disclosure Agreement may be waived; *provided*, that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Section 3(a), Section 4 or Section 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Filings with the MSRB. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in

addition to that which is specifically required by this Disclosure Agreement, the District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds and upon provision of indemnification satisfactory to the Trustee, shall), or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the District or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance hereunder.

Section 12. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if the Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations on liability afforded to the Trustee thereunder. The Dissemination Agent (if other than the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the District 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 any loss, expense and liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

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

To the District:

East Bay Municipal Utility District  
375 Eleventh Street, MS 801  
Oakland, California 94607-4240  
Attention: Treasury Manager  
Phone: 510-287-0231  
Fax: 510-287-0293

To the Dissemination Agent:

The Bank of New York Mellon  
Trust Company, N.A.  
100 Pine Street, Suite 3100  
San Francisco, California 94111  
Phone: 415-263-2420  
Fax: 415-399-1647

Section 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the District, the Trustee, the Dissemination Agent, the Participating Underwriters and the Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.



Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Disclosure Agreement has been executed on behalf of the District and the Trustee by their duly authorized representatives.

Dated: *[Closing Date]*

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

Dated: *[Closing Date]*

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

By: \_\_\_\_\_  
Milly Canessa  
Vice President

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of District: EAST BAY MUNICIPAL UTILITY DISTRICT

Name of Bond Issue: \$[*Par Amount*] East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, [*Name of Series*]  
(the "Bonds")

Date of Issuance: [*Closing Date*]

NOTICE IS HEREBY GIVEN that the East Bay Municipal Utility District (the "District") has not provided an Annual Report with respect to the above-named Bonds as required by Section 3(a) of the Continuing Disclosure Agreement, dated [*Closing Date*], (and effective as of the Date of Issuance) by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee") and in accordance with Section [*insert section number*] of the [*Number of the Supplemental Indenture*] Supplemental Indenture, dated as of [*Supplemental Indenture Date*], by and between the District and the Trustee, supplementing the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented and amended, by and between the District and the Trustee, providing for the issuance of the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

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

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee on behalf of the  
District

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

cc: East Bay Municipal Utility District

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_****NEW ISSUE – BOOK ENTRY ONLY****See “RATINGS” herein.**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Tax Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds. See “TAX MATTERS.”*

**[DISTRICT LOGO]**

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

**EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)**

**WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]****Dated: Date of Delivery****Due: June 1, as shown on inside cover**

*This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.*

The East Bay Municipal Utility District (the “District”) is issuing its Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”). The Series [Designation] Bonds will be issued in fully-registered form, without coupons, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series [Designation] Bonds. Beneficial ownership interests in the Series [Designation] Bonds may be purchased in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Interest on the Series [Designation] Bonds is payable semiannually on June 1 and December 1 of each year, commencing \_\_\_\_\_. Principal is payable on June 1 of the years set forth on the inside front cover. The principal of or redemption price of, and interest on, the Series [Designation] Bonds are payable by the Trustee to DTC, which is obligated in turn to remit such principal or redemption price and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

*The Series [Designation] Bonds are subject to redemption prior to maturity as more fully described herein. See “THE SERIES [DESIGNATION] BONDS – Redemption.”*

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of [all or a portion of] the District’s outstanding Water System Revenue Bonds, [specify series being refunded] and paying the costs of issuance in connection with the Series [Designation] Bonds, as described herein. See “PLAN OF REFUNDING.”

**The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Water Revenues as more fully described herein. Subordinated Water Revenues generally consist of the District’s Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of all Water Operation and Maintenance Costs. The Series [Designation] Bonds have been issued on a parity with the District’s Water System Revenue Bonds and Parity Debt heretofore or hereafter issued, as more fully described herein, including certain payment obligations of the District under interest rate swap agreements entered into by the District in connection therewith. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.**

**MATURITY SCHEDULE  
(SEE INSIDE COVER)**

*The Series [Designation] Bonds will be offered when, as and if issued, subject to the approval of validity by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. It is anticipated that the Series [Designation] Bonds will be available for delivery through the facilities of DTC in New York, New York by Fast Automated Securities Transfer (FAST) on or about \_\_\_\_\_.*

**[UNDERWRITER(S)]**

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

\* Preliminary; subject to change.

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

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

**MATURITY SCHEDULE**

<i><b>Maturity Date</b></i> <i><b>(June 1)</b></i>	<i><b>Principal</b></i> <i><b>Amount</b></i>	<i><b>Interest</b></i> <i><b>Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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<sup>†</sup> CUSIP is a registered trademark of The American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. Neither the District nor the Underwriter(s) assume any responsibility for the accuracy of the CUSIP data.

\* Preliminary; subject to change.

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
Alameda and Contra Costa Counties, California  
375 - 11th Street  
Oakland, California 94607  
(866) 403-2683

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**Board of Directors**

Andy Katz, *President*  
Katy H. Foulkes, *Vice President*  
John A. Coleman  
Doug A. Linney  
Lesa R. McIntosh  
Frank G. Mellon  
William B. Patterson

**Management**

Alexander R. Coate, *General Manager*  
Jylana D. Collins, *General Counsel*  
Eric L. Sandler, *Director of Finance*  
Bennett K. Horenstein, *Director of Wastewater*  
Xavier J. Irias, *Director of Engineering and Construction*  
Carol K. Nishita, *Director of Administration*  
Richard G. Sykes, *Director of Water and Natural Resources*  
Michael J. Wallis, *Director of Operations and Maintenance*  
Lynelle M. Lewis, *Secretary of the District*  
Wanda B. Hendrix, *Treasury Manager*

**Co-Bond Counsel**

Fulbright & Jaworski LLP  
Los Angeles, California,  
a member of Norton Rose Fulbright

Curls Bartling P.C.  
Oakland, California

**Financial Advisor**

Montague DeRose and Associates, LLC  
Walnut Creek, California

**Trustee**

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

**Verification Agent**

[Grant Thornton LLP  
Minneapolis, Minnesota]

No dealer, broker, salesperson or other person has been authorized by the District or the Underwriter(s) to give any information or to make any representation other than as set forth herein and, if given or made, such other information or representation must not be relied upon as having been authorized by the District or the Underwriter(s). 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 Series [Designation] Bonds 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 Series [Designation] Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts.

The Underwriter(s) have provided the following sentence for inclusion in this Official Statement:

The Underwriter(s) have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter(s) do not guarantee the accuracy or completeness of such information.

The information set forth in this Official Statement has been obtained from official sources and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter(s). The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District since the date hereof.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The District also maintains a website. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Series [Designation] Bonds.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER(S) MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES [Designation] BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND “FORWARD-LOOKING STATEMENTS.” NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS “ESTIMATE”, “PROJECT”, “ANTICIPATE”, “EXPECT”, “INTEND”, “BELIEVE” AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.**

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## OFFICIAL STATEMENT

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**East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Water System Revenue Refunding Bonds, Series [Designation]**

### INTRODUCTION

*This Introduction is not a summary of this Official Statement, and is qualified by more complete and detailed information contained in the entire Official Statement. A full review should be made of the entire Official Statement, including the cover page and attached appendices. The offering of Series [Designation] Bonds to potential investors is made only by means of the entire Official Statement. Certain definitions of capitalized terms used and not defined herein are set forth in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”*

#### **Purpose**

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning the East Bay Municipal Utility District (the “District”), the water supply, treatment and distribution system owned by the District (the “Water System” or the “System”), and System finances, in connection with the sale of the District’s \$ \_\_\_\_\_\* Water System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, by and between the District and the Trustee, relating to the Series [Designation] Bonds (as so amended and supplemented, the “Indenture”).

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of [all or a portion of] the District’s outstanding Water System Revenue Bonds, [specify series being refunded] and paying the costs of issuance in connection with the Series [Designation] Bonds, as described herein. See “PLAN OF REFUNDING” and “ESTIMATED SOURCES AND USES OF FUNDS.”

#### **The District**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California (the “State”). The District is formed under the authority of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State, commencing with Section 11501 (the “Municipal Utility District Act”). Pursuant to the Municipal Utility District Act, the District is empowered to own and operate the Water System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM).” The District also operates a wastewater system. The District’s wastewater system treats and disposes of sewage from a portion of the area within the District, which is designated as Special District No. 1.

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\* Preliminary; subject to change.

The Series [Designation] Bonds are not payable from or secured by the revenues of the wastewater system of the District.

### **Security for the Series [Designation] Bonds**

The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of the Subordinated Water Revenues of the District, as defined in the Indenture. Subordinated Water Revenues generally consist of the District's Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of (a) all Water Operation and Maintenance Costs and (b) all amounts required to be paid under the District's Senior Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Water Bonds. **There are no Senior Water Bonds currently outstanding and the District has covenanted pursuant to the Eighteenth Supplemental Indenture, dated as of September 15, 2010 (the "Eighteenth Supplemental Indenture") that it will not issue any Senior Water Bonds in the future.** Prior to the date of execution and delivery of the Eighteenth Supplemental Indenture, all Water System revenue bonds of the District issued under the Indenture were designated "Water System Subordinated Revenue Bonds." Pursuant to the Eighteenth Supplemental Indenture, any Water System revenue bonds of the District issued (or remarketed or otherwise reoffered) under the Indenture following the execution and delivery of the Eighteenth Supplemental Indenture are designated "Water System Revenue Bonds" in order to reflect that the lien of the Senior Water Bonds has been closed. All Outstanding Water System revenue bonds issued under the Indenture (howsoever designated), together with any additional Water System revenue bonds hereafter issued under the Indenture are secured on a parity from Subordinated Water Revenues and are collectively referred to herein as the "Water System Revenue Bonds." See "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Pledge of Subordinated Water Revenues."

The Series [Designation] Bonds are secured on a parity with the District's other Water System Revenue Bonds to be Outstanding upon the delivery thereof, together with any additional Water System Revenue Bonds thereafter issued, with certain scheduled payments which are payable by the District with respect to certain interest rate swap agreements as described under "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Outstanding Water System Revenue Obligations – *Interest Rate Swap Agreements*" and with certain outstanding State Loans as described in APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt," and with any other Parity Debt heretofore or hereafter incurred in accordance with the Indenture. See "SECURITY FOR THE SERIES [Designation] BONDS – Outstanding Water System Revenue Obligations," and "– Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations." As of [June 30, 2013], the District had Outstanding [\$2,210,830,000] aggregate principal amount of Water System Revenue Bonds (including the \$\_\_\_\_\_ aggregate principal amount of Outstanding Water System Revenue Bonds to be refunded with proceeds of the Series [Designation] Bonds). See also "PLAN OF REFUNDING."

The Sixteenth Supplemental Indenture dated as of February 1, 2010 (the "Sixteenth Supplemental Indenture") includes a number of amendments to the Indenture in the manner and effective as of the date described under "AMENDMENTS TO THE INDENTURE."

**NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE DISTRICT IS PLEDGED TO THE PAYMENT OF THE SERIES [Designation] BONDS OR THE INTEREST THEREON.**

## **Rate Covenant**

The District covenants under the Indenture that it will at all times, while any of the Water System Revenue Bonds (including the Series [Designation] Bonds) remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Water System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Covenants.” See also “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”

## **Continuing Disclosure**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide certain financial information and operating data relating to the District and the Water System by not later than 180 days following the end of the District’s Fiscal Year (which currently begins on July 1 and ends on June 30 of each year) (the “Annual Report”), commencing with the Annual Report for Fiscal Year [2012-13], and to provide notices of the occurrence of certain specified events. See “CONTINUING DISCLOSURE.” These covenants have been made in order to assist the Underwriter(s) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). See also APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District’s complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District’s complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Water System and the Wastewater System was unintentionally omitted from the District’s filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District’s audited financial statements and such information was also routinely made available in the District’s official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District’s Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

## **Professionals Involved in the Issue**

The Bank of New York Mellon Trust Company, N.A. serves as Trustee under the Indenture. Certain legal matters incident to the authorization, issuance and sale of the Series [Designation] Bonds are subject to the approval of Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel, and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. Montague DeRose and Associates, LLC, Walnut Creek, California, is serving as Financial Advisor to the District in connection with the issuance of the Series [Designation] Bonds. [Grant Thornton LLP, Minneapolis, Minnesota] is serving as Verification Agent in connection with the issuance of the Series [Designation] Bonds.

## **Summaries Not Definitive**

The summaries and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary or reference is qualified in its entirety by reference to each such document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in the Indenture and, as used herein, has the meaning given to it in the Indenture. Unless otherwise indicated, all financial and statistical information herein has been provided by the District.

All references to and summaries of the Indenture, the Escrow Agreement and all documents, statutes, reports and other instruments referred to herein are qualified in their entirety by reference to the full Indenture, the Escrow Agreement and each such document, statute, report or instrument, respectively, copies of which are available for inspection at the offices of the District in Oakland, California, and will be available from the Trustee upon request and payment of duplication costs. Forward looking statements in this Official Statement are subject to risks and uncertainties. Actual results may vary from forecasts or projections contained herein if events and circumstances do not occur as expected, and such variances may be material.

## **Additional Information**

The District regularly prepares a variety of publicly available reports, including audits, budgets and related documents. Any Series [Designation] Bondholder may obtain a copy of any such report, as available, from the Trustee or the District. Additional information regarding this Official Statement may be obtained by contacting the Trustee or Eric L. Sandler, Director of Finance, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607, (510) 287-0310.

## **THE DISTRICT**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California. The District is formed under the authority of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal, and power generation through its wastewater system, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the wastewater system.

For information on the District, the Water System and its finances and operations, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM);” and APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

## PLAN OF REFUNDING

### Refunding of Series \_\_\_\_ Bonds

**General.** The Series [Designation] Bonds are being issued for the purposes of (i) refunding [all or a portion of] the District's Outstanding Series [specify series being refunded] Bonds and (ii) paying costs incidental to the issuance of the Series [Designation] Bonds. The refunding of the outstanding Series [specify series being refunded] Bonds is being undertaken in order to achieve net present value and debt service savings.

**Refunded Series \_\_\_\_ Bonds.** The Series [specify series being refunded] Bonds were originally issued in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount remains Outstanding. [All of][The portion of] the Outstanding Series [specify series being refunded] Bonds described in the table below (the "Refunded Series [specify series being refunded] Bonds") are expected to be paid or redeemed on \_\_\_\_\_, 20\_\_.

#### Series \_\_\_\_ Bonds to be Refunded

<u>Maturity Date</u> <u>(June 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Date of Payment</u> <u>or Redemption</u>	<u>CUSIP</u>
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Pursuant to an Escrow Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Escrow Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., as escrow agent (the "Escrow Agent") and the District, a portion of the proceeds of the Series [Designation] Bonds will be deposited into an escrow fund (the "Escrow Fund") created pursuant to the Escrow Agreement, and will be held as cash or will be invested in direct noncallable obligations of, or unconditionally guaranteed by, the United States of America. The amounts deposited in the Escrow Fund will be sufficient to provide for [the payment] [of principal of and interest on the Refunded [specify series being refunded] Bonds as the same shall become due on and before \_\_\_\_\_, \_\_\_\_ and for] [on \_\_\_\_\_, \_\_\_\_ of the principal of and interest on the Refunded Series [specify series being refunded] Bonds maturing on such date and for] the redemption on \_\_\_\_\_ of the Refunded Series [specify series being refunded] Bonds maturing after such date at a redemption price of [100%] of the principal amount thereof plus accrued interest thereon to such redemption date.

Upon such deposit and investment and compliance with or provision for compliance with certain notice requirements set forth in the Indenture, the liability of the District with respect to the Series [specify series being refunded] Bonds will cease and the Series [specify series being refunded] Bonds will no longer be Outstanding under the Indenture except that the Owners of the Series [specify series being refunded] Bonds will be entitled to payment thereof solely from the amounts on deposit in the Escrow Fund held by the Escrow Agent.

**Verification.** [Grant Thornton LLP], independent certified public accountants, will verify, from the information provided to them, the mathematical accuracy as of the date of the Closing of the Series [Designation] Bonds of computations relating to the adequacy of the amounts to be deposited in the Escrow Fund under the Escrow Agreement to pay when due the principal or redemption price of the Refunded Series [specify series being refunded] Bonds and accrued interest thereon. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS.”

## ESTIMATED SOURCES AND USES OF FUNDS

The estimated sources and uses of funds with respect to the Series [Designation] Bonds are as follows:

### *Sources*

Principal Amount	
[Original Issue Premium/Discount]	
Transfer from Refunded Bonds	
Reserve Fund Releases	
[District Contribution]	
Total	<hr/> <hr/>

### *Uses*

Deposit to Escrow Fund	
Underwriter(s)' Discount	
Costs of Issuance <sup>(2)</sup>	
Total	<hr/> <hr/>

<sup>(1)</sup> Includes legal, financing and consulting fees, rating agency fees, printing costs and other miscellaneous expenses.

## THE SERIES [DESIGNATION] BONDS

### General Description

The Series [Designation] Bonds will be issued in the aggregate principal amounts, will bear interest at the rates and will mature in the years and amounts all as set forth on the inside cover page of this Official Statement. The Series [Designation] Bonds will be issued in denominations of \$5,000 principal amount or any integral multiple thereof. The Series [Designation] Bonds will be dated, and shall bear interest from, their date of delivery. Interest on the Series [Designation] Bonds is payable on each June 1 and December 1, commencing on \_\_\_\_\_, and will be computed on the basis of a 360-day year of twelve 30-day months. The Series [Designation] Bonds will be issued as fully registered bonds in book-entry form only and when delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Series [Designation] Bonds. So long as DTC, or its nominee, Cede & Co., is the registered owner of the Series [Designation] Bonds, all payments of principal of or redemption price of, and interest on, the Series [Designation] Bonds will be made directly to DTC, which is obligated in turn to remit such principal or redemption price and interest to its DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

### Redemption

**Optional Redemption.** The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are

not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

***Mandatory Redemption.*** The Series [Designation] Bonds are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below at the principal amount of each Series [Designation] Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>	<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>
	\$		\$

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† Final Maturity.

***Notice of Redemption.*** Notice of redemption of the Series [Designation] Bonds shall be mailed by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to DTC or, if the book-entry system as described in Appendix E has been discontinued, by first-class mail, to the respective Owners of any Series [Designation] Bonds designated for redemption in the manner and under the terms and conditions provided in the Indenture. Failure by any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

In the event of an optional redemption of Series [Designation] Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

***Selection of Bonds for Redemption.*** Whenever provision is made in the Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee will select the Series [Designation] Bonds of such maturity to be redeemed from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion deems appropriate and fair.

***Effect of Redemption.*** If notice of redemption is given as provided in the Indenture, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, then on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption will become due and payable at the Redemption Price specified in the notice of redemption, together with interest accrued thereon to the date fixed for redemption, interest on such Series [Designation] Bonds so called for redemption will cease to accrue, the Series [Designation] Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture and the owners of the Series [Designation] Bonds (or portions thereof) will have no rights in respect thereof except to receive payment of the Redemption Price plus accrued interest.

## **SECURITY FOR THE SERIES [DESIGNATION] BONDS**

### **General**

***Authority for Issuance.*** The Series [Designation] Bonds are authorized for issuance pursuant to the Municipal Utility District Act and all laws of the State amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), resolutions adopted by the District and the Indenture. By Resolution No. 33606-07, adopted by the Board of Directors of the District on June 12, 2007, the Board declared its intention to issue up to \$1,100,000,000 of Water System revenue bonds. Upon the issuance of the Series [Designation] Bonds, [\$602,300,000] of such authorized amount will remain unissued. The District has heretofore and may from time to time hereafter adopt other resolutions authorizing the issuance of additional Water System revenue bonds or other Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. The issuance of revenue bonds by the District is not subject to prior voter approval, although such bond resolutions are subject to a 60-day referendum period (which, with respect to bonds to be issued pursuant to Resolution No. 33606-07, expired without challenge). See “– Outstanding Water System Revenue Obligations” below.

***Amendments to the Indenture.*** The Sixteenth Supplemental Indenture includes a number of amendments to the Indenture in the manner and effective as of the date described under “AMENDMENTS TO THE INDENTURE.” See also APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

### **Pledge of Subordinated Water Revenues**

Pursuant to the Indenture, the District has irrevocably pledged to the payment of the principal or redemption price of and interest on the Water System Revenue Bonds, including the Series [Designation] Bonds and any Parity Debt, all Subordinated Water Revenues (as hereinafter defined) and amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

“Subordinated Water Revenues” is generally defined in the Indenture to mean, for any fiscal period, the sum of (a) all charges received for, and all other income and receipts derived by the District from, the operation of the Water System or arising from the Water System, together with income from the investment of any monies in any fund or account established under the Senior Water Bond Resolution relating to the District’s Senior Water Bonds or under the Indenture (collectively, the “Water Revenues”) for such fiscal period, plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund established under the Senior Water Bond Resolution for treatment as Water Revenues for such



fiscal period, less the sum of (c) all Water Operation and Maintenance Costs (as hereinafter defined) for such fiscal period and (d) the amounts, if any, withdrawn by the District from Water Revenues for such fiscal period for deposit in the Rate Stabilization Fund, and (e) all amounts required to be paid under the Senior Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Water Bonds as the same become due and payable. **There are no Senior Water Bonds currently outstanding and the District has covenanted pursuant to the Eighteenth Supplemental Indenture that it will not issue any Senior Water Bonds in the future.** See “– Outstanding Water System Revenue Obligations – *No Senior Water Bonds*” below.

The District may deposit into, or withdraw amounts from time to time held in, the Rate Stabilization Fund within 120 days after the end of the applicable Fiscal Year. Amounts deposited into the Rate Stabilization Fund shall be deducted from Water Revenues for such Fiscal Year. Amounts withdrawn from the Rate Stabilization Fund shall be included in Water Revenues for such Fiscal Year and may be applied for any purposes for which Water Revenues generally are available. All interest and earnings upon deposits in the Rate Stabilization Fund will not be held therein, but will be treated and accounted for as Water Revenues. The amount on deposit in the Rate Stabilization Fund as of [June 30, 2013] was \$50,000,000.

“Water Operation and Maintenance Costs” is generally defined in the Indenture to mean the reasonable and necessary costs of maintaining and operating the Water System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Water Revenues and therefore payable on a parity with the Water System Revenue Bonds (whether or not any Water System Revenue Bonds are Outstanding).

The Series [Designation] Bonds are not payable from or secured by the revenues of the wastewater system of the District.

**The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Water Revenues. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.**

#### **Allocation of Subordinated Water Revenues Under the Indenture**

In accordance with the Indenture, all Subordinated Water Revenues, when and as received by the District, shall be deposited into a fund to be established and maintained by the District designated as the “Revenue Fund.” So long as any Water System Revenue Bonds are Outstanding, the District will transfer the monies in the Revenue Fund into the following respective funds (established, maintained and held by the Trustee in trust for the benefit of the Owners of the Water System Revenue Bonds) in the following order of priority; provided, that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which deposits shall be proportionate in the event such amounts are insufficient to provide for all

deposits required as of any date to be made with respect to the Water System Revenue Bonds and such Parity Debt):

***Interest Fund.*** The District will transfer to the Trustee to be set aside in the Interest Fund on or before the Business Day prior to each interest payment date an amount equal to the interest becoming due and payable on the Outstanding Water System Revenue Bonds (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any series of Water System Revenue Bonds or other source to pay such interest).

***Principal Fund; Sinking Accounts.*** The District shall transfer to the Trustee to be set aside in the Principal Fund on or before the Business Day prior to each principal or sinking account payment date an amount equal to the amount of Bond Obligation (as defined in the Indenture) plus the Mandatory Sinking Account Payments becoming due and payable on such date. All Mandatory Sinking Account Payments shall be made without priority of any payment into any one such sinking account over any other such payment.

***Bond Reserve Funds.*** Upon the occurrence of any deficiency in any bond reserve fund established pursuant to the Indenture for any Series of Water System Revenue Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such bond reserve fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from such bond reserve fund until there is on deposit in such bond reserve fund an amount equal to the respective reserve requirement for such bond reserve fund. [There is no bond reserve fund being established in connection with the Series [Designation] Bonds and amounts on deposit in any bond reserve fund for any other Series of Water System Revenue Bonds are not available for the payment of, and do not in any manner secure, the Series [Designation] Bonds.]

The requirements of each such fund (including the making up of any deficiencies in any such fund resulting from a lack of Subordinated Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any other fund subsequent in priority. The Indenture provides that any Subordinated Water Revenues remaining in the Revenue Fund after the foregoing transfers, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of the Indenture by the District. The District may use and apply such Subordinated Water Revenues for any lawful purpose of the District, including the redemption of Water System Revenue Bonds upon the terms and conditions set forth in a Supplemental Indenture relating to such Water System Revenue Bonds and the purchase of Water System Revenue Bonds as and when and at such prices as it may determine.

Under the Indenture the District may enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Water System Revenue Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such an interest rate swap agreement may be applied to the deposits required under the Indenture. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Water Revenues and other assets pledged under the Indenture to the Water System Revenue Bonds on a parity basis therewith.

For further information regarding the allocation of Subordinated Water Revenues with respect to the Water System Revenue Bonds, see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Allocation of Subordinated Water Revenues.”

## **Investment of Monies in Funds and Accounts Under the Indenture**

All monies held in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District, solely in Investment Securities (see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Investment Securities under the Indenture). If and to the extent the Trustee does not receive investment instructions from the District with respect to the monies in such funds and accounts, such monies shall be invested in a cash sweep or similar account arrangement of or available to the Trustee described in clause (xi) of the definition of Investment Securities.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of monies in any fund or account other than the Rebate Fund shall be transferred to the Revenue Fund when received; provided, however, that an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

## **Rate Covenant**

The District has covenanted under the Indenture that it will, at all times while any of the Water System Revenue Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Water System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Debt Service under the Indenture. See also “AMENDMENTS TO THE INDENTURE.”

## **Outstanding Water System Revenue Obligations**

***No Senior Water Bonds.*** Pursuant to Resolution No. 30050 adopted by the Board of Directors of the District on January 26, 1982 (as amended and supplemented, the “Senior Water Bond Resolution”), the District authorized the issuance, from time to time, of bonds of the District designated as “East Bay Municipal Utility District Water System Revenue Bonds” (the “Senior Water Bonds”) and secured by a pledge of, and first lien on, the Net Revenues (as defined in the Senior Water Bond Resolution) of the District’s Water System, generally being all of the Water Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) after payment of Water Operation and Maintenance Costs thereof, all on the terms and conditions set forth in the Senior Water Bond Resolution. At the time of the initial execution and delivery of the Indenture in 1990, the Indenture did not preclude the District from issuing additional Senior Water Bonds pursuant to the Senior Water Bond Resolution. The District last issued Senior Water Bonds in 1986 and all outstanding Senior Water Bonds were retired in 1997. **There are currently no Senior Water Bonds outstanding. Pursuant to the Eighteenth Supplemental Indenture, the District has covenanted and agreed that it will not issue any Senior Water Bonds in the future pursuant to the Senior Water Bond Resolution.**

***Outstanding Water System Revenue Bonds and Parity Debt.*** As of [June 30, 2013], the District had Outstanding [\$2,210,830,000] aggregate principal amount of Water System Revenue Bonds, including the Series [specify series being refunded] Bonds to be refunded with proceeds of the Series [Designation] Bonds (collectively, the “Outstanding Water System Revenue Bonds”), issued under and pursuant to the Indenture. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT

(THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt.” See also “PLAN OF REFUNDING – Additional Financings Being Undertaken by the District.”

Approximately [\$445,895,000] principal amount of the District’s Outstanding Water System Revenue Bonds are variable rate obligations which are subject to tender prior to maturity in accordance with their terms. In connection with [\$82,075,000] principal amount of such variable rate Outstanding Water System Revenue Bonds (being the District’s Water System Revenue Refunding Bonds, Series 2009A), the District is solely obligated to provide funds (which may include remarketing or refunding proceeds) for the payment upon the mandatory tender thereof and failure of the District to provide such funds will constitute an Event of Default under the Indenture. In connection with [\$148,170,000] principal amount of such variable rate Outstanding Water System Revenue Bonds (being the District’s Water System Revenue Refunding Bonds, Series 2011A (the “Series 2011A Bonds”)), the failure of the District to pay the purchase price thereof upon the mandatory tender on certain scheduled mandatory purchase dates will not constitute an Event of Default under the Indenture; however, in the event sufficient remarketing proceeds are not available for the purchase of such Series 2011A Bonds upon such mandatory tender, such Series 2011A Bonds will go into a term-out period and will bear interest at an interest rate which is substantially higher than the current variable interest rate on the Series 2011A Bonds, and during such term-out period, the Series 2011A Bonds will be subject to special mandatory redemption over an approximately five-year period, which will result in an acceleration in the repayment of the principal of the Series 2011A Bonds from the principal payments that would otherwise be due on such Series 2011A Bonds.

In connection with [\$215,650,000] principal amount of the District’s variable rate Outstanding Water System Revenue Bonds, the District has entered into liquidity agreements with various banks to provide liquidity facilities for such variable rate Outstanding Water System Revenue Bonds upon tender thereof. The obligation of the District to repay any draws on such liquidity facilities is payable on a parity with the Outstanding Water System Revenue Bonds to the extent such repayment is not thereafter provided from remarketing proceeds of the related Outstanding Water System Revenue Bonds. Unreimbursed draws under liquidity facilities supporting such variable rate Outstanding Water System Revenue Bonds bear interest at a maximum rate that may be substantially in excess of the current interest rate on the related variable rate Outstanding Water System Revenue Bonds. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity facilities may result in the acceleration of the scheduled payment of principal on such variable rate Outstanding Water System Revenue Bonds. See Table 14 in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES” for additional information regarding the liquidity providers, the expiration date of the related liquidity facilities and the principal amount of Outstanding Water System Revenue Bonds covered under each such liquidity facility.

In addition to the Outstanding Water System Revenue Bonds, the District has outstanding loans with the State of California’s State Water Resources Control Board and the Department of Water Resources and certain interest rate swap agreements the scheduled payments under which are payable from Subordinated Water Revenues on a parity with the Water System Revenue Bonds, as described below. See “*Interest Rate Swap Agreements*” and “*State Loans*.” The Outstanding Water System Revenue Bonds, together with any additional Water System Revenue Bonds issued under the Indenture (including the Series [Designation] Bonds), and any Parity Debt heretofore or hereafter issued or incurred in accordance with the Indenture, are on a parity as to the pledge of and lien on Subordinated Water Revenues.

***Interest Rate Swap Agreements.*** As of [June 30, 2013], the District had outstanding interest rate swap agreements relating to variable rate Outstanding Water System Revenue Bonds (hereinafter collectively, the “Water Interest Rate Swap Agreements”) with various counterparties (collectively, the

“Swap Providers”) in the aggregate notional amount of [\$445,795,000]. The Water Interest Rate Swap Agreements were entered into to hedge the interest rate exposure on the related variable rate Water System Revenue Bonds by synthetically converting the variable interest rate payments that the District is obligated to make with respect to the related Water System Revenue Bonds into substantially fixed payments. In general, the terms of the Water Interest Rate Swap Agreements provide that, on a same-day net-payment basis determined by reference to a notional amount, the District will pay a fixed interest rate on the respective notional amount. In return, the applicable Swap Counterparty will pay a variable rate of interest (determined as a specified percentage of an interest rate index) on a like notional amount.

There is no guarantee that the floating rate payable to the District pursuant to each of the Water Interest Rate Swap Agreements will match the variable interest rate on the associated Water System Revenue Bonds to which the respective Water Interest Rate Swap Agreement relates at all times or at any time. Since the respective effective dates of the Water Interest Rate Swap Agreements, the floating rates payable to the District pursuant to the Water Interest Rate Swap Agreements have generally not matched the variable interest rates on the associated Water System Revenue Bonds. To the extent that the Swap Providers are obligated to make a payment to the District under their respective Water Interest Rate Swap Agreement that is less than the interest due on the associated Water System Revenue Bonds to which such Water Interest Rate Swap Agreement relates, the District is obligated to pay such insufficiency from Subordinated Water Revenues.

The obligation of the District to make regularly scheduled payments to the Swap Providers under the respective Water Interest Rate Swap Agreements is on a parity with the District’s obligation to make payments on the Water System Revenue Bonds, including the Series [Designation] Bonds. Under certain circumstances, the Water Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the respective Swap Providers. Pursuant to the Water Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Series [Designation] Bonds but prior to the District’s Extendable Municipal Commercial Paper Notes (Water Series).

Pursuant to the terms of certain of the Water Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District’s total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement.

See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Variable Rate and Swap Obligations” for additional information regarding the Water Interest Rate Swap Agreements, including the District’s collateral posting obligations in connection therewith.

The District may, from time-to-time, enter into additional interest rate swap agreements with security and payment provisions as determined by the District and subject to any conditions contained in the Indenture.

**Parity State Loans.** The District participates in the California State Water Resources Control Board (the “SWRCB”) and the Safe Drinking Water State Revolving Fund low interest rate loan programs, which were established to provide below-market rate financing for qualified water resource projects in the State. Under these programs, as of [June 30, 2013], the District had outstanding loan contracts with the State (the “State Loans”) in the aggregate outstanding principal amount of [\$17,002,717]. All such State Loans were entered into subsequent to January 1993 and provide that such State Loans shall be either senior to or on a parity with all future debt of the District. For purposes of

calculating debt service coverage ratios, the District has treated all such State Loans as Parity Debt. Any future State Loans would likely constitute Parity Debt under the Indenture.

***Subordinate Commercial Paper.*** The District has maintained a commercial paper note program since 1988. In March 2009, the District implemented an extendable municipal commercial paper note program for the purpose of retiring its then existing commercial paper note program. As of [June 30, 2013], the District had outstanding \$372,900,000 aggregate principal amount of tax-exempt Extendable Municipal Commercial Paper Notes (Water Series). See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Outstanding Debt” for a description of the District’s extendable municipal commercial paper note program.

### **Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations**

The Indenture provides conditions under which additional series of Water System Revenue Bonds or other Parity Debt payable from Subordinated Water Revenues may be issued on a parity with the Outstanding Water System Revenue Bonds. Among other conditions, the Indenture requires that the District shall have placed on file with the Trustee a certificate of the District certifying that the sum of: (1) the Subordinated Water Revenues for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Water System Revenue Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Water Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Water Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Water System Revenue Bonds due to improvements to the Water System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Water System Revenue Bonds, shall have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt then Outstanding and the additional Water System Revenue Bonds or Parity Debt then proposed to be issued. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions.”

Refunding Water System Revenue Bonds may be authorized and issued by the District without compliance with the provisions described above, subject to the terms and conditions of the Indenture, including the condition that Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt outstanding following the issuance of such refunding Water System Revenue Bonds is less than or equal to Maximum Annual Debt Service on all Water System Revenue Bonds and Parity Debt outstanding prior to the issuance of such refunding Water System Revenue Bonds. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Refunding Bonds.”

Pursuant to the Indenture, the District may incur obligations which are junior and subordinate to the payment of the principal, redemption price, interest and reserve fund requirements for the Water System Revenue Bonds and all Parity Debt and which subordinated obligations are payable as to principal, redemption price, interest and reserve fund requirements, if any, only out of Subordinated Water Revenues after the prior payment of all amounts then required to be paid under the Indenture from Subordinated Water Revenues for principal, redemption price, interest and reserve fund requirements for the Water System Revenue Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in the Indenture or the instrument authorizing such Parity Debt, as applicable.

## **Limitations on Remedies**

The ability of the District to comply with its covenants under the Indenture and to generate Water Revenues sufficient to pay the principal of and interest on the Series [Designation] Bonds may be adversely affected by actions and events outside of the control of the District. Furthermore, any remedies available to the owners of the Series [Designation] Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition, enforceability of the rights and remedies of the Owners of the Series [Designation] Bonds, and the obligations incurred by the District under the Series [Designation] Bonds and the Indenture, 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 Series [Designation] Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

## **AMENDMENTS TO THE INDENTURE**

The Sixteenth Supplemental Indenture includes a number of amendments to the Indenture which will become effective upon the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2001 Bonds, Series 2002 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2007A Bonds, Series 2007B Bonds, Series 2008A Bonds, Series 2008B Bonds and Series 2009A Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture (all of which Series 2001 Bonds, Series 2002 Bonds and Series 2003 Bonds have been retired) and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Sixteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

As modified, the term "Annual Debt Service" shall mean, for any Fiscal Year, the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

As modified, the term "Assumed Debt Service" shall mean for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker

delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

As modified, the term “Debt Service” shall mean the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, that for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Water Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Water Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Water Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:



(1) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest rate on such Water Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Water Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest on such Water Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Water Revenues on parity with the lien of the Water Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Water Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Water Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Water Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Water Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

As modified, the term "Maximum Annual Debt Service" shall mean the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

The term “SIFMA Municipal Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

As modified, the term “Water Revenues” shall mean all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Senior Water Bond Resolution or this Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code or any future similar program.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS**

### **Tax Limitations – Proposition 13**

Article XIII A of the State Constitution, 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 1% of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State statutes. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to *ad valorem* taxes levied to pay interest or redemption charges on (1) indebtedness approved by the voters prior to July 1, 1978, and (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the 1975-76 Fiscal Year 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 2% per year, or to reflect a reduction in the consumer price index or comparable data for the 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 to pay debt service on indebtedness approved by the voters as described above. Such legislation further provides that each county will levy the maximum tax permitted by Article XIII A, which is \$1.00 per \$100 of assessed market value. The legislation further establishes the method for allocating the taxes collected by each county among the taxing agencies in the county. Special districts, such as the District, receive an allocation that is based primarily upon their tax levies in certain years prior to the amendment’s effective date relative to the tax levies of other congruent agencies. The District receives approximately 1.25% of the non-debt service property taxes collected within its jurisdiction from Alameda and Contra Costa counties. See, however, APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – Tax Revenues” for a discussion of the borrowing by the State of certain property tax revenues of local jurisdictions for Fiscal Year 2009-10.

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.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the 2% annual adjustment are allocated among the various jurisdictions in the “taxing area” based upon their respective “situs.” Any such allocation made to a local agency continues as part of its allocation in future years.

The effect of Article XIII A on the District’s finances has been to restrict ad valorem tax revenues for general purposes to the statutory allocation of the 1% levy while leaving intact the power to levy ad valorem taxes in whatever rate or amount may be required to pay debt service on its outstanding general obligation bonds and unissued bonds authorized prior to July 1, 1978. Since Fiscal Year 1978-79 tax revenues have consisted exclusively of the District’s allocated share of the 1% county levy.

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

For a description of the property tax collection procedure and certain statistical information concerning tax collections and delinquencies, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – Tax Revenues.”

### **Spending Limitations**

At the statewide special election of November 6, 1979, the voters approved an initiative entitled “Limitation of Government Appropriations” which added Article XIII B to the California Constitution. Under Article XIII B, State and local governmental entities have an annual “appropriations limit” which limits the ability to spend certain monies which are called “appropriations subject to limitation” (consisting of tax revenues, state subventions and certain other funds) in an amount higher than the “appropriations.” Article XIII B does not affect the appropriation of monies which are excluded from the definition of “appropriations subject to limitation.” Among the exclusions is an “appropriation of any special district which existed on January 1, 1978, and which did not as of the 1977-78 Fiscal Year levy an *ad valorem* tax on property in excess of 12.5 cents per \$100 of assessed value.” In the opinion of the District’s General Counsel, the appropriations of the District are excluded from the limitations of Article XIII B under this clause.

### **Proposition 62**

A statutory initiative (“Proposition 62”) was adopted by the voters voting in the State at the November 4, 1986 General Election which (1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity, (2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction, (3) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (4) prohibits the imposition of ad valorem taxes on real property by local governmental entities except as permitted by Article XIII A, (5) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities and (6) requires that any tax imposed by a local governmental entity on or after March 1, 1985 be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

## Proposition 218

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 XIIC and XIID to the State Constitution, which contain a number of provisions affecting the ability of local governments to levy and collect both existing and future taxes, assessments, fees and charges.

Article XIID established procedural requirements for imposition of assessments, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the assessment, with each ballot weighted according to the proportional financial obligation of the affected parcel. The District does not currently impose standby charges or assessments for its Water System.

Article XIID conditions the imposition or increase of any “fee” or “charge” upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIID defines “fee” or “charge” to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIID is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and mailed notice sent to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

In Opinion No. 97-302, dated July 14, 1997, the California Attorney General concluded that Article XIID is inapplicable to the District’s tiered water rate structure. The opinion makes a distinction between a water rate structure based upon the amount of water used, which is not subject to Article XIID, and fees or assessments that are levied against a parcel of land on a per-parcel or per-acre basis, which are subject to Article XIID. The Attorney General concluded that fees for water that are based upon metered amounts used are not imposed as an incident of property ownership and do not have a direct relationship to property ownership and, consequently, such fees would not be governed by Article XIID. On December 1, 2000, the Court of Appeal for the Second Appellate District of the State of California published an opinion regarding Proposition 218’s definition of property-related fees that is consistent with Opinion No. 97-302. In *Howard Jarvis Taxpayers Association v. City of Los Angeles*, the Court of Appeal held that fees for water that are based upon metered amounts used are charges for a commodity and not related to property ownership and, consequently, Article XIID does not apply to such fees. However, in a decision rendered in February 2004, the California Supreme Court in *Richmond et al. v. Shasta Community Services District*, 32 Cal. 4th 409, upheld a Court of Appeals decision that water connection fees were not property-related fees or charges subject to Article XIID, while at the same time stating in dicta that fees for ongoing water service through an existing connection were property-related fees and charges. In October 2004, the California Supreme Court granted review of the decision of the Fourth District Court of Appeal in *Bighorn-Desert View Water Agency v. Beringson*, 120 Cal. App. 4th 891 (2004), in which the appellate court had relied on *Howard Jarvis Taxpayers Association v. City of Los Angeles* and rejected the California Supreme Court’s dicta in *Richmond et al. v. Shasta Community Services District*. On March 23, 2005, the California Fifth District Court of Appeal published *Howard Jarvis Taxpayers Association v. City of Fresno*, 127 Cal.App.4th 914 (5th Dist. 2005), holding that an “in lieu” fee which is payable to the City of Fresno’s general fund from its water utility and which is included in the city’s water rate structure was invalid. In reaching its decision, the court concluded that the city’s

water rates were “property related” fees, governed by the limitations of Article XIID. The City of Fresno requested a review of this decision by the California Supreme Court, which denied review. On July 24, 2006, the California Supreme Court ruled in *Bighorn-Desert View Water Agency v. Verjil*. In dicta, the California Supreme Court repeated its previous dicta in *Richmond et al. v. Shasta Community Services District* that fees and charges for ongoing water service through an existing connection were property related fees and charges under Article XIID. Prior to 2007, the District did not comply with the notice, hearing and protest procedures in Article XIII with respect to water rate increases based on the decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles* and Opinion No. 97-302. However, the District has followed the notice, hearing and protest procedures in Article XIID in connection with water rate increases since the Fiscal Year 2008 rate increases and plans to follow such notice, hearing and protest procedures in connection with future rate increases.

In addition to the procedural requirements of Article XIID, under Article XIID all property-related fees and charges, including those which were in existence prior to the passage of Proposition 218 in November 1996, must meet the following substantive standards:

- (1) Revenues derived from the fee or charge cannot exceed the funds required to provide the property-related service.
- (2) Revenues derived from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, must be classified as assessments and cannot be imposed without compliance with Section 4 of Article XIID (relating to assessments).
- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

The District believes that its rates comply with the foregoing standards.

Article XIID provides that nothing in Proposition 218 shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development. The District believes that Proposition 218 does not apply to the District’s System Capacity Charge, although there can be no assurance that a court would not determine otherwise. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM) – WATER SYSTEM FINANCES – System Capacity Charge.”

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms “local tax,” “assessment,” “fee” or “charge.” On July 24, 2006, the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil* that the provisions of Article XIIC applied to rates and fees charged for domestic water use. In the decision, the

Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District and its General Counsel do not believe that Article XIII C grants to the voters within the District the power to repeal or reduce rates and charges in a manner that would be inconsistent with the contractual obligations of the District. No assurance can be given that the voters of the District will not, in the future, approve initiatives which seek to repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the District's water service fees and charges, which are the source of Water Revenues pledged to the payment of debt service on the Series [Designation] Bonds.

The interpretation and application of Proposition 218 will likely be subject to further judicial determinations, and it is not possible at this time to predict with certainty the outcome of such determinations.

### **Proposition 26**

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIII A and XIII C. The proposition imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes. Proposition 26, according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIII A, XIII C and XIII D pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the State or local government of providing the service or product to the payor. The District believes that the initiative is not intended to and would not apply to fees for utility services charged by special districts such as the District. The District, however, is unable to predict whether Proposition 26 will be interpreted by the courts to apply to the provision of utility services by local governments such as the District.

### **Other Initiatives**

Articles XIII A, XIII B, XIII C and XIII D and Propositions 62 and 26 were adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiatives have been and could be proposed and adopted affecting the District's revenues or ability to increase revenues. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by the District.

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide in an annual report certain financial information and operating data relating to the District (the "Annual Report") by not later than 180 days following the end of the District's fiscal year (which currently is June 30 of each year), commencing with the Annual Report for Fiscal Year \_\_\_\_\_, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Trustee on behalf of the District with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The Municipal Securities Rulemaking Board has made such information available to the public without charge through such internet portal. The specific nature of the information

to be contained in the Annual Report and the notices of specified events is set forth in APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District’s complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District’s complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Water System and the Wastewater System was unintentionally omitted from the District’s filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District’s audited financial statements and such information was also routinely made available in the District’s official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District’s Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

### **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

[Grant Thornton LLP, Minneapolis, Minnesota,] a firm of independent certified public accountants, will verify the accuracy of the mathematical computations concerning the adequacy of the cash deposited and held in the Escrow Fund for the Refunded [specify series being refunded] Bonds, together with the maturing principal amounts of and interest earned on the Escrow Securities, if any, to pay [the principal of and interest on the Refunded [specify series being refunded] Bonds as the same shall become due on and before \_\_\_\_\_, \_\_\_\_ and] [on \_\_\_\_\_, \_\_\_\_ of the principal of and interest on the Refunded Series [specify series being refunded] Bonds maturing on such date and] the redemption price of the Refunded Series [specify series being refunded] Bonds maturing after such date (i.e., [100%] of the principal amount thereof) on the redemption date therefor, [plus any interested accrued and unpaid thereon.]

The report of [Grant Thornton LLP] will include the statement that the scope of their engagement was limited to verifying the mathematical accuracy of the computations contained in such schedules provided to them and that they have no obligation to update their report because of events occurring, or data or information coming to their attention, subsequent to the date of their report.

### **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the District in the execution or delivery of, or in any way contesting or affecting the validity of, the Series [Designation] Bonds. There is no litigation known to be pending, or to the knowledge of the District, threatened, questioning the existence of the District or the title of the officers of the District to their respective offices.

There exist lawsuits and claims against the District, which are incidental to the ordinary course of operations of the Water System. In the view of the District’s management and General Counsel, there is no litigation, present or pending, which will individually or in the aggregate materially impair the District’s ability to service its indebtedness or to expend the proceeds for the purposes for which the Series [Designation] Bonds are authorized or which will have a material adverse effect on the business operations of the District. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)” for a discussion of certain pending litigation.

## **RATINGS**

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P"), Fitch Ratings, Inc. ("Fitch") and Moody's Investors Service, Inc. ("Moody's") have assigned the Series [Designation] Bonds the ratings of "\_\_\_\_\_", "\_\_\_\_\_" and "\_\_\_\_\_", respectively. No application has been made to any other rating agency for the purpose of obtaining any additional rating on the Series [Designation] Bonds. Any desired explanation of such ratings should be obtained from the rating agency furnishing the same. Generally, rating agencies base their ratings on information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. There is no assurance that any rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in the judgment of such rating agency, circumstances so warrant. Any such change in or withdrawal of such ratings may have an adverse effect on the market price of the Series [Designation] Bonds.

## **TAX MATTERS**

In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s) ("Special Tax Counsel"), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the "Code") and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Special Tax Counsel is set forth in APPENDIX D.

To the extent the issue price of any maturity of the Series [Designation] Bonds is less than the amount to be paid at maturity of such Series [Designation] Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series [Designation] Bonds), the difference constitutes "original issue discount," the accrual of which, to the extent properly allocable to each beneficial owners thereof, is treated as interest on the Series [Designation] Bonds which is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series [Designation] Bonds is the first price at which a substantial amount of such maturity of the Series [Designation] Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of Underwriter(s), placement agents or wholesalers). The original issue discount with respect to any maturity of the Series [Designation] Bonds accrues daily over the term to maturity of such Series [Designation] Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series [Designation] Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series [Designation] Bonds. Beneficial owners of the Series [Designation] Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series [Designation] Bonds with original issue discount, including the treatment of beneficial owners who do not purchase such Series [Designation] Bonds in the original offering to the public at the first price at which a substantial amount of such Series [Designation] Bonds is sold to the public.

Series [Designation] Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (the



“Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of Series [Designation] Bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a beneficial owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such beneficial owner. Beneficial owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series [Designation] Bonds. The District has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series [Designation] Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series [Designation] Bonds being included in gross income for federal income tax purposes, possibly from the date of original issuance of the Series [Designation] Bonds. The opinion of Special Tax Counsel assumes the accuracy of these representations and compliance with these covenants. Special Tax Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Special Tax Counsel’s attention after the date of issuance of the Series [Designation] Bonds may adversely affect the value of, or the tax status of interest on, the Series [Designation] Bonds. Accordingly, the opinion of Special Tax Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Special Tax Counsel is of the opinion that interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds may otherwise affect a beneficial owner’s federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the beneficial owner or the beneficial owner’s other items of income or deduction. Special Tax Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series [Designation] Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. As one example, the Obama Administration recently announced a legislative proposal which, for tax years beginning on or after January 1, 2013, generally would limit the exclusion from gross income of interest on obligations like the Series [Designation] Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. Other proposals have been made that could significantly reduce the benefit of, or otherwise affect, the exclusion from gross income of interest on obligations like the Series [Designation] Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series [Designation] Bonds. Prospective purchasers of the Series [Designation] Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, and regarding the impact of future legislation, regulations or litigation, as to which Special Tax Counsel expresses no opinion.

The opinion of Special Tax Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Special Tax Counsel’s judgment as to the proper treatment of the Series [Designation] Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service (“IRS”) or the courts. Furthermore, Special Tax Counsel cannot give and has

not given any opinion or assurance about the future activities of the District, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The District has covenanted, however, to comply with the requirements of the Code.

Special Tax Counsel's engagement with respect to the Series [Designation] Bonds ends with the issuance of the Series [Designation] Bonds, and, unless separately engaged, Special Tax Counsel is not obligated to defend the District or the beneficial owners regarding the tax-exempt status of the Series [Designation] Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the District and their appointed counsel, including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the District legitimately disagree, may not be practicable. Any action of the IRS, including but not limited to selection of the Series [Designation] Bonds for audit, or the course or result of such audit, or an audit of Series [Designation] Bonds presenting similar tax issues may affect the market price for, or the marketability of, the Series [Designation] Bonds, and may cause the District or the beneficial owners to incur significant expense.

## **UNDERWRITING**

The Series [Designation] Bonds will be purchased by \_\_\_\_\_, [as representative of itself and the other underwriters of the Series [Designation] Bonds listed on the cover page hereof] (the "Underwriter(s)"), pursuant to and subject to the conditions set forth in the bond purchase contract between the District and the Underwriter(s), at a purchase price of \$\_\_\_\_\_ (equal to the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds, less an Underwriter(s)' discount of \$\_\_\_\_\_, [plus/less original issue premium/discount of \$\_\_\_\_\_]). The bond purchase contract provides that the Underwriter(s) will purchase all of the Series [Designation] Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the bond purchase contract.

The Underwriter(s) may offer and sell the Series [Designation] Bonds to certain dealers (including dealers depositing Series [Designation] Bonds into investment trusts) and others at prices lower than the respective public offering prices stated or derived from information stated on the inside cover page hereof. The initial public offering prices may be changed from time to time by the Underwriter(s).

Certain of the Underwriter(s) have entered into distribution agreements with other broker-dealers (that have not been designated by the District as Underwriter(s)) for the distribution of the Series [Designation] Bonds at the original public offering prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation with such broker-dealers.

## **APPROVAL OF LEGAL PROCEEDINGS**

All legal matters incident to the offering of the Series [Designation] Bonds are subject to the approval of legality by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by their counsel, Orrick, Herrington & Sutcliffe LLP, San Francisco, California. The form of approving opinion of Co-Bond Counsel and the form of opinion to be delivered by Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), in connection with the issuance of the Series [Designation] Bonds are included as APPENDIX D to this Official Statement.

## **FINANCIAL ADVISOR**

The District has retained Montague DeRose and Associates, LLC, Walnut Creek, California, as financial advisor (the “Financial Advisor”) in connection with the issuance and delivery of the Series [Designation] Bonds. 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. The Financial Advisor is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

## **INDEPENDENT ACCOUNTANTS**

Included as APPENDIX B to this Official Statement are the audited financial statements of the District for the Fiscal Years ended June 30, 2013 and 2012. The District’s financial statements for the Fiscal Years ended June 30, 2013 and 2012, included in APPENDIX B, have been audited by Maze & Associates Accountancy Corporation, certified public accountants. Maze & Associates has not been requested to consent to the inclusion of its report in APPENDIX B and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Maze & Associates with respect to any event subsequent to the date of its report.

It is District policy to competitively select and retain independent accountants on a periodic basis. Maze & Associates began serving as the District’s independent accountants in Fiscal Year 2005. In 2012, following a request for proposals and competitive selection process, Maze and Associates was retained to serve as independent accountants for the three additional fiscal years ending June 30, 2012 through 2014.

## **CERTAIN RELATIONSHIPS**

The Underwriter(s) and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriter(s) and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the District, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of sales, trading, brokerage and financing activities, certain of the Underwriter(s) may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities and financial instruments or bank loans, as applicable, of the District and other governmental entities and utilities. In connection with these activities and the provision of other services, certain of the Underwriter(s) may be or become creditors of such entities. In addition, many of the Underwriter(s), or their affiliates, currently serve as remarketing agents or providers of credit enhancement or liquidity facilities for variable rate obligations issued by, or as interest rate swap providers to, governmental entities and utilities, including the District.

## **MISCELLANEOUS**

References made herein to certain documents and reports are brief summaries thereof and do not purport to be complete or definitive and reference is hereby made to such documents and reports for a full and complete statement of the contents thereof.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or registered owners of any of the Series [Designation] Bonds. The delivery and distribution of this Official Statement have been duly authorized by the District.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
General Manager

## **APPENDIX A**

### **THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WATER SYSTEM)**

**APPENDIX B**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
AUDITED FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2013 AND 2012**

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Official Statement have the respective meanings set forth in the Indenture.*

*There are no senior Water Bonds outstanding, and the District has covenanted in the Indenture not to issue any additional senior Water Bonds. Therefore, all references hereto to “Water Bonds” may be disregarded.*

#### **Certain Definitions**

**“Accreted Value”** means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified in the Subordinated Water Bond Indenture.

**“Act”** means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**“Annual Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Maximum Annual Debt Service; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest on all Water Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Assumed Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Water Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Water Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered

to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

**“Bond Obligation”** means, as of any given date of calculation, (1) with respect to any Outstanding Bond or Water Bond which is Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Outstanding Bond or Water Bond which is Capital Appreciation Indebtedness, the Accreted Value thereof.

**“Bonds”** means the East Bay Municipal Utility District Water System Subordinated Revenue Bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**“Business Day”** means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions related to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

**“Capital Appreciation Indebtedness”** means Water Bonds, Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

**“Code”** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, as amended from time to time.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the District and related to the authorization, execution, sale and delivery of the Bonds, including but not limited to advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, travel expenses and costs relating to rating agency meeting and other meeting concerning the Bonds, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of Bonds surety, insurance and credit enhancement costs, and any other cost, charge or fee in connection with the delivery of the Bonds.

**“Current Interest Indebtedness”** means the Water Bonds, Bonds and Parity Debt on which interest is paid at least annually.

**“Debt Service”** (I) prior to the Effective Date, means, the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, that for the purposes of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are



to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such Water Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest rate swap agreement are greater than the interest payable on the Water Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Water Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Water Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Water Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Water Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Water Bonds, Bonds or Parity Debt are in one of the two highest Rating Categories by Moody's and by Standard & Poor's or such Water Bonds, Bonds or Parity Debt are rated in the highest short-term, note or commercial paper Rating Categories by Moody's and by Standard & Poor's and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt provided, however, for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be

assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Water Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Water Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Water Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Water Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Water Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Water Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest rate on such Water Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Water Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but

only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Water Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Water Bonds, Bonds or Parity Debt by the District, the interest on such Water Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Water Revenues on parity with the lien of the Water Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Water Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Water Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Water Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Water Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

**“Effective Date”** means the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2001 Bonds, Series 2002 Bonds, Series 2003 Bonds, Series 2005A Bonds, Series 2007A Bonds, Series 2007B Bonds, Series 2008A Bonds, Series 2008B Bonds and Series 2009A Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Sixteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

**“Excluded Principal Payments”** means each payment of principal (or the principal component of lease or installment purchase payments) of Water Bonds, Bonds or Parity Debt which the District

determines on a date not later than the date of issuance thereof that the District intends to pay with monies which are not Water Revenues or Subordinated Water Revenues but from the proceeds of future debt obligations of the District and the Trustee may rely conclusively on such determination of the District.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official fiscal year period of the District, which designation shall be provided to the Trustee in a certificate of the District.

**“Indenture”** means the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the Trustee and the District, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions thereof.

**“Investment Securities”** means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies and Federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or their obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been

rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or government bond dealer reporting to, trading with, and recognized as a primary

dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) a guaranteed investment contract with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than five years experience investing in such securities and obligations and with assets under management in excess of \$500,000,000; and

(xiv) any investment approved by the Board for which confirmation is received from each rating agency then rating any of the Bonds that such investment will not adversely affect such agency's rating on such Bonds.

**"Mandatory Sinking Account Payment"** means the amount required to be deposited by the District in a sinking account for the payment of Term Bonds.

**"Maximum Annual Debt Service"** (I) prior to the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Water Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Water Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Water Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Water Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Water Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Maximum Annual Debt Service unless the sum of (i) interest payable on such Water Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest swap agreement are greater than the interest payable on the Water Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Water Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Water Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Water Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Water Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Water Bonds, Bonds or Parity Debt are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) or such Water Bonds, Bonds or Parity Debt are rated in the highest short-term note or commercial paper Rating Categories by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Water Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Water Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Opinion of Bond Counsel”** means a written opinion of a law firm of national standing in the field of public finance selected by the District and not objected to by the Trustee.

**“Outstanding,”** when used at any particular time with reference to Bonds, means (subject to the provisions relating to disqualified bonds) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged under the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**“Owner” or “Bondholder” or “Bondowner,”** whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**“Parity Debt”** means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Water Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**“Person”** means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means with respect to any Bond (or portion thereof) the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

**“Revenue Fund”** means the fund held in trust by the District to which the Subordinated Water Revenues are required to be deposited.

**“Series”** whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.



**“SIFMA Municipal Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

**“Standard & Poor’s”** means Standard & Poor’s Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Subordinated Water Revenues”** for any fiscal period means the sum of (a) the Water Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund created in the Water Bond Resolution for treatment as Water Revenues for such fiscal period, less the sum of (c) all Water Operation and Maintenance Costs for such fiscal period, (d) the amounts, if any, withdrawn by the District from Water Revenues for such fiscal period for deposit in such Rate Stabilization Fund, and (e) all amounts required to be paid under the Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Water Bonds as the same become due and payable.

**“Variable Rate Indebtedness”** means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

**“Water Bond Resolution”** means Resolution No. 30050 of the District, adopted on January 26, 1982, as amended and supplemented from time to time.

**“Water Bonds”** means all bonds and other obligations of the District issued pursuant to the Water Bond Resolution.

**“Water Operation and Maintenance Costs”** means the reasonable and necessary costs of maintaining and operating the Water System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Water System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

**“Water Revenues”** (I) prior to the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any monies in any fund or account established under the Water Bond Resolution or the Indenture; and

(II) from and after the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Water System, or arising from the Water System, together with income from the investment of any moneys in any fund or account established under the Water Bond Resolution or this Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program.

**“Water System”** means the entire water system of the District and all of the facilities thereof, including all facilities for the storage, transmission or distribution of water or the generation or transmission of hydroelectric power, together with all additions, betterments, extensions and improvements to said system or any part thereof. The term “Water System” does not include the sewage disposal system or facilities of Special District No. 1 of the District (including any power generation facilities constituting a part of said system).

### **Pledge of Revenues**

The Bonds are revenue obligations of the District and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Subordinated Water Revenues and other amounts held by the Trustee (except for amounts held in the Rebate Fund). The Subordinated Water Revenues are pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other. Said pledge constitutes a first lien on the Subordinated Water Revenues and such other amounts referred to in this paragraph.

### **Allocation of Subordinated Water Revenues**

The District is to transfer the monies in the Revenue Fund, into the following respective funds, in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinated Water Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

(1) **Interest Fund.** The District shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds which are Current Interest Indebtedness (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) **Principal Fund; Sinking Accounts.** The District shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the Business Day prior to each principal or Sinking Account payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the Mandatory Sinking Account Payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in a bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) **Bond Reserve Funds.** Upon the occurrence of any deficiency in any Bond Reserve Fund established under the Indenture for any Series of Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such Bond Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund until there is on deposit in such Bond Reserve Fund an amount equal to the respective reserve requirement.

Any Subordinated Water Revenues remaining after the foregoing transfers shall be held free and clear of the Indenture by the District and it may use and apply such Subordinated Water Revenues for any lawful purpose of the District, including the redemption and purchase of Bonds.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein are insufficient to make such payments, the Trustee shall immediately notify the District of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District covenants and agrees to transfer to the Trustee from any Subordinated Water Revenues in its possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

### **Investments**

All monies in any of the funds and accounts held by the Trustee shall be invested, as directed by the District, solely in Investment Securities.

The District may and the Trustee shall, upon the Request of the District, enter into a financial futures or financial option contract with an entity the debt securities of which are rated in their respective highest short-term Rating Categories by Moody's and Standard & Poor's.

The District may and the Trustee shall, upon the Request of the District, and provided that the Trustee is supplied with an Opinion of Bond Counsel to the effect that such action is permitted under the laws of the State of California, enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such a swap agreement may be applied to the deposits required hereunder; in which case, the entity with which the District or the Trustee may contract for an interest rate swap is limited to entities the debt securities of which are rated in their respective highest short-term debt Rating Categories by Moody's and Standard & Poor's. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Water Revenues and other assets pledged hereunder to the Bonds on a parity basis therewith and, in such event, the District shall pay to the Trustee for deposit in the Interest Fund, at the times and in the manner provided in the Indenture, the amounts to be paid under such interest rate swap agreement, as if such amounts were additional interest due on the Bonds to which such interest rate swap agreement relates, and the Trustee shall pay to the other party to the interest rate swap agreement, to the extent required thereunder, amounts deposited in the Interest Fund for the payment of interest on the Bonds with respect to which such agreement was entered into.

### **Additional Bonds; Parity Debt**

The issuance of additional Water Bonds is not limited by the Indenture. The District may issue Bonds and Parity Debt payable from Subordinated Water Revenues and secured equally and ratably with Bonds previously issued, subject to the following specific conditions precedent to the issuance of any such additional Bonds or Parity Debt:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Bonds or Parity Debt shall not exceed any limitation imposed by law or by any Supplemental Indenture.

(c) The District shall have placed on file with the Trustee a Certificate of the District certifying that the sum of: (1) the Subordinated Water Revenues plus all amounts required to be paid under the Water Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Water Bonds for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Water Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Water Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Bonds due to improvements to the Water System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Bonds, shall (4) have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt then Outstanding and the additional Bonds or Parity Debt then proposed to be issued.

### **Refunding Bonds**

Refunding Bonds may be authorized and issued by the District without compliance with the provisions described above under “Additional Bonds; Parity Debt”, provided that Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding following the issuance of such refunding Bonds is less than or equal to Maximum Annual Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding prior to the issuance of such refunding Bonds.

### **Covenants**

Among other covenants the District has agreed as follows:

The District will not create any pledge, lien or charge upon any of the Subordinated Water Revenues having priority over or having parity with the lien of the Bonds except only as described above. The District will not amend or change the Water Bond Resolution in any manner which would permit the issuance of additional Water Bonds in a greater principal amount than would have been permitted thereunder prior to such amendment or change or reduce the debt service percentage or coverage requirements contained therein. The District will not issue Water Bonds pursuant to the Water Bond Resolution in such amount as would cause the District to fail to be in compliance with the rate covenant described in the second succeeding paragraph hereof.

The District will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code. The District will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District, or take or omit to take any action that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148(a) of the Code. To that end, the District will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds.

The District will, at all times while any of the Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Water System so as to yield Water Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Water Revenues for such year plus all amounts required to be paid under the Water Bond Resolution for such year for principal, interest, reserve fund and any other debt service requirements on the Water Bonds shall be at least equal to 1.1 times the amount of Debt Service on all Water Bonds, Bonds and Parity Debt Outstanding for such Fiscal Year.

The District will maintain and preserve the Water System in good repair and working order at all times, and will operate the Water System in an efficient and economical manner. Subject in each case to the condition that insurance is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District, the District will procure and maintain at all times: (a) insurance on the Water System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities, and (b) public liability insurance in such amounts as the District deems prudent taking into account insurance coverage for similar utilities.

### **Events of Default; Remedies**

The following events are Events of Default under the Indenture:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in this Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the District has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(e) if any default shall exist under the Water Bond Resolution and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(f) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or Federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; and

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Subordinated Water Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

In addition, pursuant to the Fifteenth Supplemental Indenture, with respect to the Series 2009A Bonds while bearing interest in a SIFMA-Based Term Interest Rate Period pursuant to such Fifteenth Supplemental Indenture, in the event sufficient funds are not available for the purchase of all Series 2009A Bonds tendered or deemed tendered and required to be purchased on any purchase date therefor pursuant to the Indenture, notwithstanding any other provision of the Indenture, in such event, such failed purchase shall constitute an Event of Default.

If an Event of Default shall occur and be continuing, the District is to immediately transfer to the Trustee all Subordinated Water Revenues held by it and received thereafter and the Trustee shall apply all Subordinated Water Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the District, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the District shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all matured installments of interest (if any) upon all the Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made

therefor, then, and in every such case, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, by written notice to the District and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

The Trustee is appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) to represent the Owners in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon any default or other occasion, giving rise to a right in the Trustee to represent the Bondholders, the Trustee may take such action as may seem appropriate and, upon the request in writing of Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Owners by such appropriate actions as it shall deem most effectual to protect and enforce any such right.

No remedy conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

## **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bonds then Outstanding. No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Subordinated Water Revenues and other assets pledged under the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Subordinated Water Revenues and other assets, without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture may also be modified or amended at any time with the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, rated not lower than the respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) or Standard & Poor's (if Standard & Poor's is then rating the Bonds).

The Indenture and the rights and obligations of the District, of the Trustee and the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the District or to surrender any right or power reserved to or conferred upon the District;
- (2) to make such provisions for the purpose of curing any omission or ambiguity, or of curing or correcting any defective provision contained in the Indenture, or in regard to questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (3) to modify the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statutes and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (4) to make modifications or adjustments necessary or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt, with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture;
- (5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that such provisions shall not materially and adversely affect the interest of the Owners of the Bonds;
- (6) if the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;
- (7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture; and
- (8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

## **Defeasance**

Bonds may be paid by the District in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem such Outstanding Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond



shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payments.

The District may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities described in clauses (i), (ii) or (v) of the definition thereof the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as required by the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

## APPENDIX D

### PROPOSED FORMS OF CO-BOND COUNSEL OPINION AND SPECIAL TAX COUNSEL OPINION

#### PROPOSED FORM OF CO-BOND COUNSEL OPINION

*Upon the delivery of the Series [Designation] Bonds, Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, propose to render their final approving opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$ \_\_\_\_\_  
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance of its Water System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”), and a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

In our capacity as co-bond counsel, we have reviewed the Act, the Indenture, certifications of the District, the Trustee, and others, opinions of counsel to the District and the Trustee, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture. In addition, we call attention to the fact that the rights and obligations under the Series [Designation] Bonds and the Indenture are subject to bankruptcy, insolvency,

reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. Furthermore, the imposition of fees and charges by the District relating to the Water System may be subject to the provisions of Articles XIII C and XIII D of the California Constitution.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Series [Designation] Bonds constitute the valid and binding special limited obligations of the District.

2. The Indenture has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the District. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Series [Designation] Bonds, of the Subordinated Water Revenues of the District, and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

3. The Series [Designation] Bonds are special limited obligations of the District and are payable exclusively from and are secured by a pledge of Subordinated Water Revenues and certain amounts held under the Indenture. The general fund of the District is not liable, and neither the credit nor taxing power of the District is pledged, for the payment of the Series [Designation] Bonds or the interest thereon.

4. Other bonds and parity debt of the District have been and may from time to time hereafter be issued under the Indenture which are payable from Subordinated Water Revenues on a parity basis with the Series [Designation] Bonds.

We express no opinion as to any federal, state or local tax consequences of the ownership or disposition of the Series [Designation] Bonds or the receipt of interest thereon.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Series [Designation] Bonds.

Respectfully submitted,

Respectfully submitted,

## PROPOSED FORM OF OPINION OF SPECIAL TAX COUNSEL

*Upon the delivery of the Series [Designation] Bonds, Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), proposes to render its tax opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$\_\_\_\_\_ East Bay Municipal Utility District  
Water System Revenue Refunding Bonds, Series [Designation]  
(Special Tax Opinion)

Ladies and Gentlemen:

We have acted as special tax counsel in connection with the issuance by the East Bay Municipal Utility District (the "District") of \$\_\_\_\_\_ aggregate principal amount of its Water System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). The Bonds are being issued pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented by supplemental indentures, including a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture"), between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

In such connection, we have reviewed the Indenture, the Tax Certificate of the District, dated the date hereof and relating to the Bonds (the "Tax Certificate"), opinions of counsel to the Trustee and the District, certificates of the District, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. In particular, we have relied on the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C., co-bond counsel to the District (the "Bond Counsel Opinion"), regarding, among other matters, the validity of the Bonds. In rendering the opinions expressed herein, we expressly have relied on the Bond Counsel Opinion that, among other matters, the Bonds are valid, binding and enforceable in accordance with their terms. We call attention to the fact that the interest on the Bonds may not be excluded from gross income for federal income tax purposes or exempt from State of California personal income taxes if the Bonds are not valid, binding and enforceable in accordance with their terms.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or copies) and the due and legal execution thereof by, and validity against, all parties. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or

certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause the interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the Indenture, or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of such interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E concerning The Depository Trust Company, New York, New York (“DTC”), and DTC’s book-entry system has been obtained from DTC and the District and the Trustee take no responsibility for the completeness or accuracy thereof. The District and the Trustee cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Series [Designation] Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Series [Designation] Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series [Designation] Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The District and the Trustee are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Series [Designation] Bonds or an error or delay relating thereto. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC’s Direct and Indirect Participants are on file with DTC.

DTC acts as securities depository for the Series [Designation] Bonds. The Series [Designation] Bonds will be reissued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Series [Designation] Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of Series [Designation] Bonds under the DTC book-entry system must be made by or through Direct Participants, which will receive a credit for the Series [Designation] Bonds on DTC’s

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

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

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

Redemption notices shall be sent to DTC. If less than all of the Series [Designation] Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series [Designation] Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series [Designation] Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Series [Designation] Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the District or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such

Participant and not of DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Series [Designation] Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series [Designation] Bonds at any time by giving notice to the Trustee and the District. Under certain circumstances, in the event that a successor depository is not obtained, Series [Designation] Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers for the Series [Designation] Bonds through DTC (or a successor securities depository). In that event, Series [Designation] Bond certificates will be printed and delivered as provided in the Indenture. In addition, the following provisions would apply: the principal or redemption price of the Series [Designation] Bonds will be payable upon presentation thereof, at the principal corporate trust office of the Trustee, in San Francisco, California; interest on the Series [Designation] Bonds will be payable by check mailed on each interest payment date to the registered owners thereof as shown on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the calendar month immediately preceding the applicable interest payment date (the “record date”), except that in the case of an owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date; and the Series [Designation] Bonds will be transferable and exchangeable on the terms and conditions provided in the Indenture.

The information in this Appendix E concerning DTC and DTC’s book-entry system has been obtained from sources the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.



## **APPENDIX F**

### **FORM OF CONTINUING DISCLOSURE AGREEMENT**

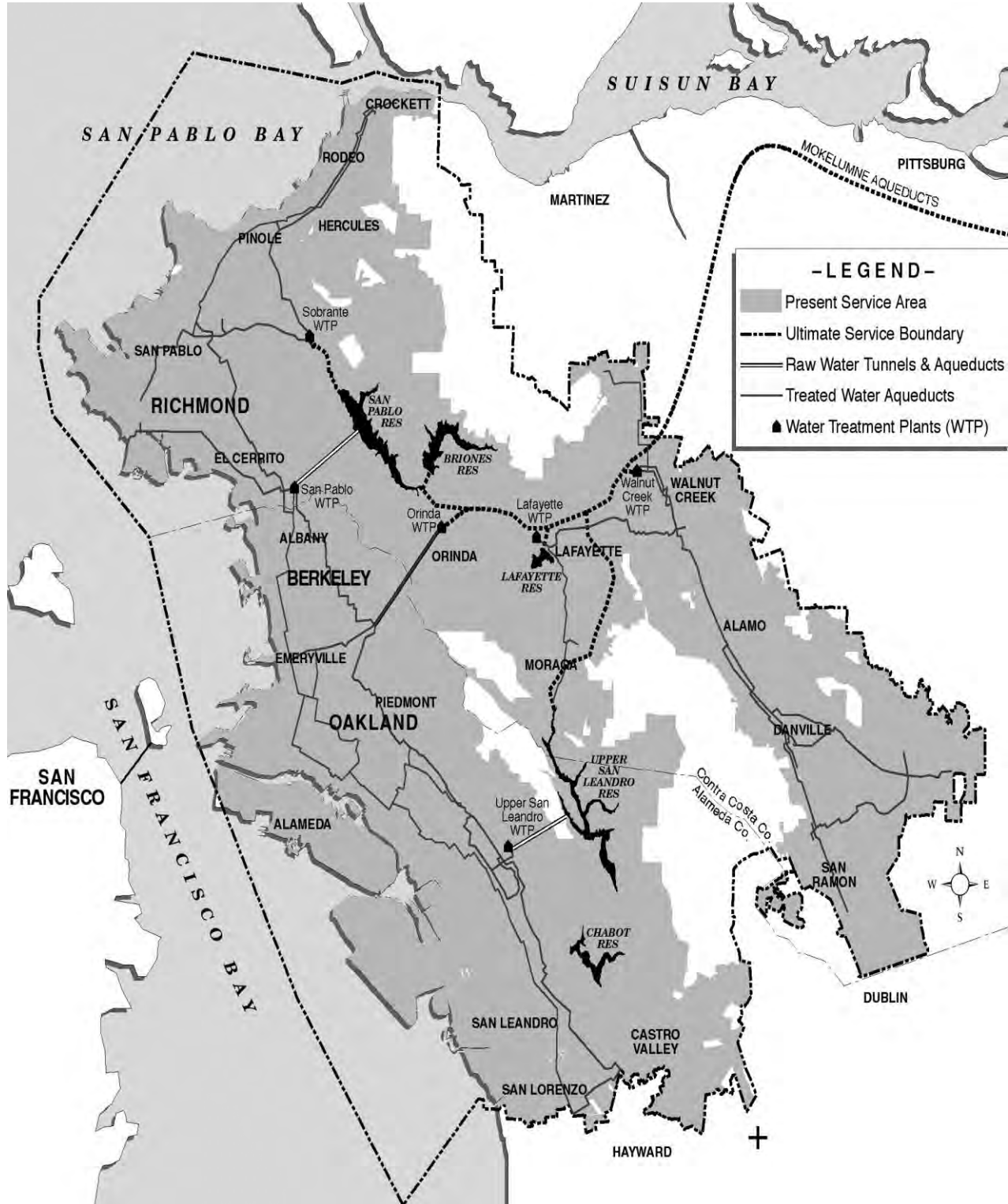
**APPENDIX A**

**THE EAST BAY MUNICIPAL UTILITY DISTRICT  
(THE WATER SYSTEM)**



The East Bay Municipal Utility District occupies 332 square miles of the San Francisco – Oakland metropolitan region. The Water System serves approximately 1.3 million people, or approximately 53% of the population of Alameda and Contra Costa Counties.

### EAST BAY MUNICIPAL UTILITY DISTRICT WATER SYSTEM



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## THE DISTRICT

### Organization

In May 1923, voters in cities along the eastern shore of the San Francisco Bay located in portions of Alameda and Contra Costa Counties (known throughout the San Francisco Bay Area as the “East Bay”) elected to create the East Bay Municipal Utility District (the “District”) under the provisions of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the territory of the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

### District Board

The District, a public agency, is governed by an elected seven-member Board of Directors (the “Board”) which determines such matters as rates and charges for services, approval of contracts, and District policy. Voters elect directors by ward to four-year terms. There are seven wards which together cover the entire service area of the District. Each year, the Board elects from among its members persons to serve as Board officers (President and Vice President). With an average service tenure of almost 15 years, each of the Board members has served one or more years as an officer of the Board of Directors and has chaired one or more of the Board’s standing committees that review financial, long-range planning, and legislative matters. The following persons currently serve on the Board:

**Andy Katz** has been a Board member since 2006 and represents Ward 4, which includes Albany, Berkeley, El Cerrito, Emeryville, Kensington and North Oakland. Mr. Katz is currently President of the Board and Chair of the Board’s Finance and Administration Committee. He is employed as an attorney and public health advocate for Breathe California. Mr. Katz has a Bachelor of Arts degree and a Master of City Planning degree from the University of California, Berkeley, and a law degree from Santa Clara University. His current term expires on December 31, 2014.

**Katy H. Foulkes** has been a Board member since 1994 and represents Ward 3, which includes the City of Piedmont and a portion of Oakland, in Alameda County, the Contra Costa County cities of Orinda and El Sobrante, the Town of Moraga, and portions of Pinole and Richmond. Ms. Foulkes is currently Vice President of the Board, and she represents the District on the governing boards of the Upper Mokelumne River Watershed Authority and the Freeport Regional Water Authority. Ms. Foulkes served multiple terms as an officer for Region 5 of the Association of California Water Agencies (“ACWA”) and as a member of ACWA’s Board of Directors. She is Vice-President of the Alameda Chapter of the California Special Districts Association and Co-Chair of the Bay Area Water Forum. Ms. Foulkes has a Bachelor of Arts degree in English from the University of California, Berkeley. Her current term expires on December 31, 2014.

**John A. Coleman** has been a Board member since 1990 and represents Ward 2, which includes Alamo, Lafayette, Walnut Creek, the Town of Danville, the communities of Blackhawk and Diablo, and portions of Pleasant Hill and San Ramon. Mr. Coleman represents the District on the

governing boards of the joint powers authorities in which the District participates that manage the provision of recycled water service (the DSRSD/EBMUD Recycled Water Authority (DERWA)), Sierra Nevada watershed management and protection (the Upper Mokelumne River Watershed Authority) and supplemental water supplies for dry years (the Freeport Regional Water Authority). Mr. Coleman is Vice President of ACWA, a board member of the National Water Resources Association and a board member of the WaterReuse Association. He is also a past president of the California Association of Sanitation Agencies. Mr. Coleman is employed as the Executive Director of the Bay Planning Coalition. He has a Bachelor of Science degree in Natural Resources from the University of California, Berkeley and a certificate in management from the University of Pacific School of Business and Public Administration. His current term expires on December 31, 2014.

**Doug A. Linney** has served on the Board since 2000 and represents Ward 5, which includes the Alameda County cities of Alameda and San Lorenzo, the West Oakland and Oakland Airport Area, and a portion of San Leandro. Mr. Linney is currently chair of the Board's Planning Committee. He is employed as President of The Next Generation, a public relations firm providing services that emphasize achieving environmental protection. Mr. Linney has a Bachelor of Science degree in environmental science and public policy from the University of California, Davis. His current term expires on December 31, 2016.

**Lesa R. McIntosh** has served on the Board since 1999 and represents Ward 1, which includes the Contra Costa County cities of Crockett, Hercules, Rodeo and San Pablo; portions of Richmond and Pinole, and the communities of North Richmond and Selby. Ms. McIntosh is currently chair of the Legislative/Human Resources Committee. Ms. McIntosh is employed as a lawyer specializing in business, land use and estate planning. She has a Bachelor of Science degree in political science from the University of California, Berkeley and a law degree from John F. Kennedy University. Ms. McIntosh's current term expires on December 31, 2016.

**Frank G. Mellon** has served on the Board since 1994 and represents Ward 7, which includes the areas of Castro Valley, communities of Cherryland and Fairview; portions of San Leandro and Hayward in Alameda County, and a portion of San Ramon in Contra Costa County. Mr. Mellon currently serves on the District's Retirement Board and on the Legislative/Human Resources Committee. He also represents the District on the governing board of DERWA. Mr. Mellon is employed as a consultant specializing in human resources and labor relations and he teaches labor law in the California State University East Bay Human Resources Certificate Program. Mr. Mellon has a Bachelor of Arts degree in Management from the University of Hawaii and a Master's Degree in Business Administration from St. Mary's College in Moraga. His current term expires on December 31, 2014.

**William B. Patterson** has served on the Board since 1997 and represents Ward 6, which includes Alameda County's East Oakland Hills and south of Lake Merritt to the San Leandro city boundary. Mr. Patterson is currently Vice-President of the District's Retirement Board. He retired several years ago, after working for many years as the City of Oakland Manager of Parks and Recreation. He has Bachelor's and Master's degrees in Parks and Recreation Administration from San Francisco State University and a Social Services Certificate from the University of California, Berkeley. Mr. Patterson's current term expires on December 31, 2016.

## **District Management**

**Alexander R. Coate** joined the District in 1993 and was appointed General Manager in 2011. Prior to his appointment as General Manager, he was Director of Water and Natural Resources with responsibility for water supply planning, water rights, and watershed management including

recreation and fisheries. He has more than 29 years of experience with public agencies, engineering consulting firms, research and law. Mr. Coate is a member of the American Water Works Association and the Association of California Water Agencies. He currently serves on the Board of Directors of the Central Valley Project Water Association and California Urban Water Agencies. Mr. Coate has a Bachelor's degree in Neurobiology and a Master's degree in Civil Engineering, both from the University of California, Berkeley.

**Jylana D. Collins** joined the District in 1994 and was appointed General Counsel in 2006. Prior to her appointment as General Counsel, she was Assistant General Counsel. Before joining the District, she was Deputy City Attorney for the City of Berkeley. She has over 29 years of experience in public law. Ms. Collins has a Bachelor's degree in Psychology from Antioch University West and a law degree from the University of San Francisco School of Law.

**Eric L. Sandler** was appointed Director of Finance in 2012. He has over 24 years of experience in municipal and infrastructure financing. Prior to joining the District, he was Director of Finance/Treasurer at the San Diego County Water Authority. He also served as Director of Financial Planning and Acting Director of Finance for the San Francisco Public Utilities Commission. Previously, he was employed by Lehman Brothers in the municipal investment banking group in San Francisco. He has a Bachelor's degree in Biology from Stanford University and a Master's degree in Business Administration from the University of California, Berkeley.

**Bennett K. Horenstein** joined the District in 1991 and was appointed Director of Wastewater effective May 20, 2013. During his 22 years with the District, Mr. Horenstein has worked in various capacities in the District's Wastewater Department, including most recently as Manager of Environmental Services, with responsibility for a range of technical and regulatory activities, including the long-term approach to regional wet weather flow management and associated private lateral sewer program, and the development of the District's resource recovery program. He has over 25 years of experience in the engineering field. Mr. Horenstein has a Bachelor of Science degree in Environmental Engineering from the University of Florida.

**Xavier J. Irias** joined the District in 1986 and was appointed Director of Engineering and Construction in 2006. Prior to that appointment, he held progressively more responsible positions managing engineering design and engineering services, and he has over 28 years of experience in the engineering field. Mr. Irias has a Bachelor of Science degree in Civil Engineering from the University of California, Berkeley.

**Carol K. Nishita** joined the District in 1989 and was appointed Director of Administration in 2007. Prior to that appointment, she held progressively more responsible positions, including ten years as the Manager of Budget and Rates. Before joining the District, Ms. Nishita worked as a manager in non-profit and county agencies and as a policy analyst for the Governor's Office of Planning and Research in Sacramento. Ms. Nishita has a Bachelor of Arts degree in Sociology from the University of California, Berkeley and a Master's degree in Social Service Administration from the University of Chicago.

**Richard G. Sykes** joined the District in 1989 and was appointed Director of Water and Natural Resources in 2011. Mr. Sykes has held progressively more responsible positions over that time; he has broad knowledge of the District's operations and is very experienced in water quality and regulatory issues. He has a Bachelor's degree in Conservation of Natural Resources and English and a Master's degree in Environmental Engineering from the University of California, Berkeley.

**Michael J. Wallis** joined the District in 1985 and was appointed Director of Operations and Maintenance in 1996. Prior to his current appointment Mr. Wallis held progressively more

responsible positions in the District's Wastewater Department, and served as Director of Wastewater for several years. Mr. Wallis has over 35 years of water and wastewater related experience. He serves on the Board of Directors for the Association of Metropolitan Water Agencies and currently holds the position of Secretary. He has a Bachelor of Science degree and a Master's degree in Civil Engineering from North Carolina State University.

**Lynelle M. Lewis** joined the District in 1993 and was appointed Secretary of the District in 1995. She is a Certified Municipal Clerk and a member of the City Clerks Association of California and the International Institute of Municipal Clerks. Ms. Lewis received her Bachelor of Science degree in Business Administration from San Jose State University.

**Wanda B. Hendrix** joined the District in 1994 and was appointed Treasury Manager in 2006. She served as Principal Management Analyst for the Finance Department of the District prior to her appointment. Before joining the District, Ms. Hendrix worked for the City of Hayward as the Budget Administrator for eight years. Ms. Hendrix has a Bachelor's degree in Sociology and a Master's degree in Public Administration from San Jose State University.

### **Employees and Employee Relations**

As of August 31, 2013, the District has 1,461 regular (full-time equivalent) employees in the Water System and 250 regular (full-time equivalent) employees in the Wastewater System.

The District has four unions representing approximately 1,565 workers out of a total full-time equivalent workforce of 1,711 employees: Local 2019 of the American Federation of State, County and Municipal Employees ("AFSCME") represents white collar workers including professionals; Local 444 of AFSCME represents blue collar workers; Local 21, International Federation of Professional and Technical Engineers represents supervisory employees; and Local 39, International Union of Operating Engineers represents water treatment/distribution workers.

Locals 2019, 444, 21 and 39 are operating under Memoranda of Understanding ("MOUs"), first approved by the District Board in 2008, and extended by mutual agreement in 2011 for an additional two years. Each of the current MOUs expired on April 21, 2013. Negotiations for successor MOUs are ongoing. The MOUs are comprehensive in scope and provide for binding arbitration for the resolution of grievances. The District has not had a strike or work stoppage since 1985.

For a discussion of the District Employees' Retirement System, see "WATER SYSTEM FINANCES – Employees' Retirement System."

### **Service Area**

Originally formed to include nine cities covering 92.6 square miles, the District has grown by more than 450 separate annexations to a present area of 332 square miles in 20 incorporated and 15 unincorporated communities in both Alameda and Contra Costa Counties. It covers the eastern shore of San Francisco Bay from Carquinez Strait on the north to and including San Lorenzo on the south and it extends approximately 20 miles east, beyond the Oakland-Berkeley hills, into Contra Costa County.

The District's Water System serves this entire area, reaching 53% of the combined population of Alameda County and Contra Costa County. Approximately two-thirds of the population within the District service area resides in the cities of Alameda, Berkeley, Oakland, San Leandro, Richmond and Walnut Creek.



The land area between the present service area boundary and the ultimate service area boundary, approximately 69 square miles, includes some areas of potential development. However, a large part of this land area is parklands and other undeveloped lands that are not anticipated to be developed in the foreseeable future. Another 81 square miles within the ultimate service area boundary outside the District's present service area boundary is under the waters of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the west and north by the shorelines of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the south and northeast by adjoining water agencies which have sources of supply independent of the District. There is limited potential for new development at the southern end of the San Ramon Valley, now in the early stages of land use planning and environmental documentation, which is located just outside the ultimate service area boundary. The District service area population, currently 1.3 million, is projected to grow by 2035 to a population of 1.75 million, with much of that growth expected to come from infill development within the urbanized parts of the service area.

The Municipal Utility District Act was amended in 1941 to enable formation of special districts for wastewater service provision. In 1944, voters elected to form the District's Special District No. 1 to treat wastewater released into the San Francisco Bay. The District's wastewater treatment system (the "Wastewater System") presently serves approximately 650,000 people in an 88-square-mile area of the two counties along the east shore of the San Francisco Bay, extending from Richmond on the north, southward to San Leandro. Domestic, commercial and industrial wastewater is treated for the six cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont, and for the Stege Sanitary District, which includes El Cerrito, Kensington and part of Richmond. Each of these entities operates a sewer collection system that discharges into the District's intercepting sewers. At the request of the City of Richmond, the District is presently participating in a study to explore the possibility of the District accepting waste from sewers in that city. In addition to treating waste received through the sewer collection system, the District accepts high-organic waste streams delivered in trucks. The wastes include domestic waste from septic tanks, fat, oil and grease from restaurants and other food and drink wastes.

### **Taxation of the District**

All property of the District within the District's boundaries generally is exempt from property taxation. District-owned land outside of the District's boundaries is taxable, but improvements constructed on that land by the District are not taxable. As a public agency, the District is exempt from the payment of State of California (the "State") and federal income taxes.

## THE WATER SYSTEM

### General

The District supplies water for major parts of Alameda and Contra Costa Counties. Approximately 1.3 million people are served by the District's Water System in an approximately 332 square-mile area extending from Crockett on the north, southward to and including San Lorenzo, encompassing the major cities of Oakland and Berkeley, and eastward from San Francisco Bay to Walnut Creek.

The District's Water System currently serves the incorporated communities of Alameda, Albany, Berkeley, Danville, El Cerrito, Emeryville, part of Hayward, Hercules, Lafayette, Moraga, Oakland, Orinda, Piedmont, Pinole, part of Pleasant Hill, Richmond, San Leandro, San Pablo, San Ramon, and part of Walnut Creek, and the unincorporated communities of Alamo, Ashland, Blackhawk, Castro Valley, Cherryland, Crockett, Diablo, El Sobrante, Fairview, Kensington, North Richmond, Olmsted, Rodeo, San Lorenzo and Selby.

Table 1 shows the population trends for the six largest cities in the District, Alameda and Contra Costa Counties and the State for the current and last five years.

**Table 1**  
**SIX LARGEST DISTRICT CITIES**  
**ALAMEDA, CONTRA COSTA COUNTIES AND CALIFORNIA**  
**Population Trends<sup>(1)</sup>**

	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Six Largest District Cities:					
Oakland	419,095	390,757	392,333	394,832	399,326
Berkeley	106,697	112,621	113,925	114,688	115,716
Richmond	103,577	103,661	104,382	105,004	105,562
San Leandro	81,851	84,977	85,364	85,941	86,666
Alameda	74,015	73,835	74,052	74,544	75,126
Walnut Creek	65,306	64,140	64,710	65,306	65,684
Total Six Cities	850,541	829,991	834,766	840,315	848,080
Alameda County	1,557,749	1,509,240	1,517,756	1,530,176	1,548,681
Contra Costa County	1,061,325	1,047,948	1,056,306	1,066,602	1,074,702
California	37,883,992	37,223,900	37,427,948	37,668,804	37,966,471

<sup>(1)</sup> As of January 1 of each year.

Source: 2009-2010: State of California, Department of Finance, E-8 Historical Population and Housing Estimates, 2000-2012 Report, by Year, Sacramento, California, November 2012 (Revised Estimates).

2011-2013: State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change – January 1, 2011 and 2012, Sacramento, California, May 2012 and – January 1 2012 and 2013, Sacramento, California, May 2013.

## Water Supply

During wet and normal rainfall years, the District's water supply is obtained from three sources: the 627-square mile Mokelumne River watershed in the Sierra Nevada mountains, runoff from streams within the District, and recycled water produced at various locations in the service area. During drought times, the District has substantial additional supplies from the Sacramento River via the Freeport Regional Water Project as described below. The District can also utilize water stored within a local aquifer through its Bayside Groundwater Project.

***Mokelumne River Watershed.*** The District holds permits and licenses issued by the State Water Resources Control Board (the "SWRCB") which enable the District to utilize waters of the Mokelumne River as the primary source of the water supply for the District's service area. The average annual runoff of the Mokelumne River is about 745,000 acre-feet. (An acre-foot is the amount of water that will cover one acre to a depth of one foot and equals approximately 326,000 gallons, which represents the needs of two average families in and around the home for one year.) As described below under "– Water Rights and Related Proceedings," the District's water rights permit the total diversion of approximately 364,000 acre-feet per year from the Mokelumne River, subject to certain prior water rights. Annual water production in the District to serve its customers has not exceeded 252,000 acre-feet. Water production includes the total water produced at the District's water treatment plants and water moved through the distribution system that was delivered to customers, as well as water lost through leaks in the transmission system, water used in the treatment process, evaporation, water used for fighting fires and other miscellaneous causes.

Annual water production in the District since Fiscal Year 2003 is shown in Table 2 below.

**Table 2**  
**WATER PRODUCTION BY FISCAL YEAR<sup>(1)</sup>**

<i><b>Fiscal Year</b></i>	<i><b>Annual Production (Acre-Feet)</b></i>	<i><b>Annual Production (Thousands of Ccf)</b></i>	<i><b>Annual Production (Million Gallons)</b></i>	<i><b>Average Production Per Day (Million Gallons per Day)</b></i>
2003	238,721	103,987	77,782	213
2004	251,935	109,743	82,088	224
2005	229,155	99,820	74,666	205
2006	236,866	103,179	77,174	211
2007	236,111	102,850	76,932	211
2008	230,363	100,346	75,059	205
2009	203,423 <sup>(2)</sup>	88,611 <sup>(2)</sup>	66,281 <sup>(2)</sup>	182 <sup>(2)</sup>
2010	195,158 <sup>(2)</sup>	85,011 <sup>(2)</sup>	63,588 <sup>(2)</sup>	174 <sup>(2)</sup>
2011	194,642 <sup>(2)</sup>	84,786 <sup>(2)</sup>	63,420 <sup>(2)</sup>	174 <sup>(2)</sup>
2012	200,220 <sup>(2)</sup>	87,216 <sup>(2)</sup>	65,242 <sup>(2)</sup>	178 <sup>(2)</sup>
2013	210,587 <sup>(3)</sup>	91,732 <sup>(3)</sup>	68,620 <sup>(3)</sup>	188 <sup>(3)</sup>

<sup>(1)</sup> Water production includes water lost through leaks in the transmission system, used in the treatment process, evaporation, fighting fires and other miscellaneous causes, which approximates 10.0% of gross production.

<sup>(2)</sup> Reflects implementation of conservation measures as a result of drought conditions and reduced post-drought consumption.

<sup>(3)</sup> Preliminary

Source: The District.

See also "– Water Supply Operations" below.

During the ten-year period from 2004 to 2013, the annual Mokelumne River runoff has ranged from a low of just over 400,000 acre-feet in Water Year 2008 to a high of over 1.45 million acre-feet in Water Year 2006. (A Water Year begins on October 1 and ends of the following September 30). In 1977, the lowest year of record since records have been kept, the annual runoff from the Mokelumne River was 129,000 acre-feet. Faced with fluctuating runoff volumes and periodic drought conditions, the District has developed a comprehensive approach to ensuring reliable water supply. That approach, its Water Supply Management Plan, utilizes demand management and multiple supply options to meet long-term water needs. The plan is discussed below under “– Water Supply Management Plan” below.

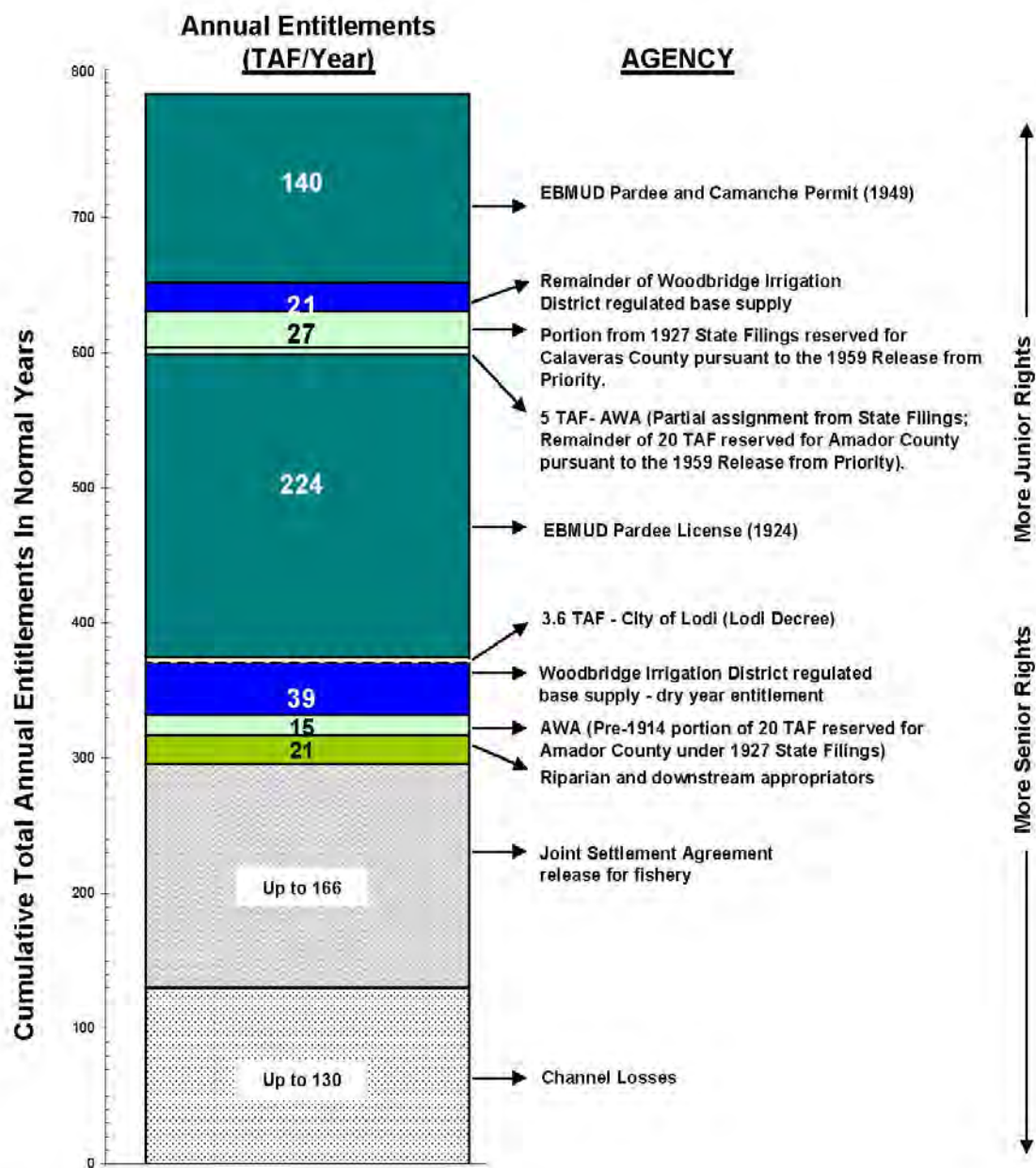
The Mokelumne River watershed also serves municipal, industrial and agricultural water needs in three Sierra Nevada foothill counties (Amador, Calaveras and San Joaquin), in addition to the municipal and industrial needs of the District’s service area. The agencies and individual diverters on the Mokelumne River each operate and divert water under separate entitlements, permits and licenses, along with a number of contracts and agreements among various agencies and under certain court decrees.

Entities with water rights in the Mokelumne River watershed senior to those of the District include Pacific Gas and Electric Company (“PG&E”) (which rights are essentially non-consumptive other than for project uses), Amador Water Agency and Jackson Valley Irrigation District (referred to collectively in the graphic on the next page as “AWA”) (for a total potential consumptive diversion of 20,000 acre-feet per year in Amador County); Calaveras County Water District and Calaveras Public Utility District (for a total potential consumptive diversion of 27,000 acre-feet per year in Calaveras County); and Woodbridge Irrigation District and the City of Lodi (for a total potential consumptive diversion of 63,600 acre-feet in normal and wet years and 42,600 acre-feet in dry years in San Joaquin County). In addition, adjacent property owners retain certain historical riparian and appropriative rights to water from the river. See “– Water Supply Management Plan” for discussion of potential effects of projected increased use of senior water rights holders on District water supplies and the District’s efforts to increase future supply through multiple water supply projects. In addition, the District’s water rights from the State for the Camanche Reservoir, including the District’s obligations under a 1998 Joint Settlement Agreement among the District, the U.S. Fish and Wildlife Service and the California Department of Fish and Game incorporated therein (the “1998 Joint Settlement Agreement”), requires that minimum releases be made from Camanche Reservoir for the protection of downstream fisheries. See also “– Water Rights and Related Proceedings” below.

The following graphic summarizes the priorities of Mokelumne River water rights and other flow commitments with respect to the Mokelumne River water supply in a normal Water Year. “TAF” as used in the graphic refers to thousand acre-feet.

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## Hierarchy Of Mokelumne River Water Rights And Other Flow Commitments



*Note: Total does not include storage rights or power rights which are non-consumptive (e.g. PG&E).*

**Local runoff.** In normal Water Years, District reservoirs in the East Bay receive an additional 30,000 acre-feet of water from local watershed runoff. Much of the local runoff is stored in the East Bay reservoirs for system use. In dry years, evaporation and other reservoir losses can total more than the runoff. Thus, there is no firm yield from local watersheds.

**United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project.** In December 1970, the District entered into its original Central Valley Project Contract (“CVP Contract”) with the United States Bureau of Reclamation (the “Bureau”), entitling the District to take up to a specified quantity of American River water from the Folsom-South Canal Unit of the Bureau’s Central Valley Project (“CVP”) annually. The CVP Contract was superseded on July 20, 2001 by an Amendatory Contract, which, in turn, was superseded on April 10, 2006 by a Long-Term Renewal Contract (“Long-Term Renewal CVP Contract”). The Long-Term Renewal CVP Contract has a term of 40 years, with a right of renewal for an additional 40 years available to the District. Historically, the District did not have permanent infrastructure in place to receive CVP contract water. The Freeport Regional Water Project (hereinafter, the “FRWP”), which was placed in commercial operation on November 15, 2011, provides the permanent infrastructure to allow the District to receive water deliveries pursuant to the Long-Term Renewal CVP Contract. Under the Long-Term Renewal CVP Contract, the District is entitled to receive deliveries of up to 133,000 acre-feet per year (119 million gallons per day (hereinafter, “MGD”)) of CVP water in a single dry year, and no more than 165,000 acre-feet over the course of any three consecutive dry-years. The FRWP can provide up to 100 MGD (112,000 acre-feet per year) of supplemental water supplies to the District in dry years which helps meet projected drought year needs.

The FRWP is a regional water supply project undertaken by the District in partnership with the Sacramento County Water Agency (“SCWA”). In February 2002, with the support of the Bureau, the District and SCWA formed the Freeport Regional Water Authority (“FRWA”) under a joint powers agreement to develop the FRWP. The FRWP provides the permanent infrastructure to allow the District to receive water deliveries pursuant to the Long-Term Renewal CVP Contract at a new point of diversion along the Sacramento River. In addition to providing the District up to 100 MGD of supplemental water in dry years as described above, the FRWP can provide up to 85 MGD to SCWA in all years.

In 2007, the District entered into a Dedicated Capacity Purchase Agreement, dated as of May 1, 2007, by and between FRWA and the District (the “Dedicated Capacity Purchase Agreement”). Pursuant to the Dedicated Capacity Purchase Agreement, FRWA sells to the District and the District agrees to acquire 100 MGD of capacity in the FRWP (“Dedicated Capacity”) in accordance with the Second Amended Joint Exercise of Powers Agreement Concerning the Freeport Regional Water Authority dated as of November 20, 2006 (the “FRWA JPA Agreement”). The purchase price of the Dedicated Capacity has been paid by the District in accordance with the FRWA JPA Agreement as a portion of the District’s capital cost of the FRWP pursuant to the FRWA JPA Agreement. In the event of future capital improvements to the FRWP, the District may be required to make additional capital contributions for its share of such costs pursuant to the FRWA JPA Agreement.

The FRWP diverts water from the Sacramento River near the community of Freeport and conveys this water through new pipelines and the existing Folsom South Canal (“FSC”) to the District’s Mokelumne Aqueduct near Camanche Reservoir. A turnout in the pipe within central Sacramento County delivers water to SCWA. Water is delivered to the District pursuant to its Long-Term Renewal CVP Contract. CVP water received by the District will be treated at existing District treatment facilities prior to delivery to customers. Short-term storage, if needed, will be provided at the District’s San Pablo terminal reservoir or Upper San Leandro reservoir. See “– Water Facilities” below.

The FRWP includes a number of significant components. Chiefly, the components consist of an intake and pumping plant, approximately 16 miles of pipeline and a communications system. The capacity of the intake and pumping plant is 185 MGD. The pipeline includes a 7-foot diameter segment

which runs from the intake to the SCWA turnout, a 5-foot, 6-inch diameter pipeline segment which feeds a new SCWA Treatment Plant and a 6-foot diameter pipeline segment which discharges to the FSC. Fiber optic and radio systems link project facilities and key outside agencies.

Water flows within the FSC for 14 miles and, in turn, is recaptured by the District and directed via pipeline along a route which leads to the District's Mokelumne Aqueducts. That southern system (known as the FSC Connection or the "FSCC") is a District-only element, and includes two 100 MGD pumping plants (an intake and a pumping plant at the terminus of the FSC and a high head pumping plant near Camanche Reservoir) and approximately 18 miles of 6-foot diameter pipeline.

The combined FRWP/FSCC system underwent a successful integrated operational test and, following such test was placed into commercial operation on November 15, 2011, and can be utilized by the District during dry years when the District's contractual right to CVP water is made available.

The District has adopted a supplemental supply charge of 14% of total water flow charges which may be added to customers' water bills during droughts when the Board declares a need to take deliveries of its CVP water under the Long-Term Renewal CVP Contract. The supplemental supply charge is designed to cover the costs of operating the Freeport Regional Water Project and the costs of CVP water during dry year periods when the District takes deliveries of CVP water. See "WATER SYSTEM FINANCES – Supplemental Supply Charge."

***Bayside Groundwater Project.*** In December 2009, the District completed another supplemental supply project, the Bayside Groundwater Project Phase 1. The Bayside Groundwater Project consists of facilities designed to provide a means of storing treated drinking water in a deep underground aquifer during wet years for future recovery, re-treatment and distribution to customers during times of drought. Implementation of the project is planned in two phases. The Bayside Groundwater Project Phase 1, completed in December 2009, provides a modest, locally available supplemental water supply that helps reduce the need for rationing in the event of a prolonged drought. Phase 1 is used to store an annual average of one MGD (1,120 acre-feet per year) of water within a deep aquifer that extends beneath the community of San Lorenzo. Storage operations will take place when water can be made available (during wet years). The District stored (injected) water for an eight week period beginning on June 2, 2011 and ending at the end of July 2011. The estimated volume of water stored is in the range of 30-40 million gallons (92-123 acre-feet). A volume equal to the total stored can be supplied to customers during dry years (at a delivery rate that does not exceed one MGD), helping to reduce the need for rationing. Primary Phase 1 facilities as constructed include an injection/extraction well (and pump), a treatment plant, a groundwater monitoring network and instruments used to measure minute changes (if any) in ground surface elevation (subsidence) during Phase 1 operations. The District intends to continue to operate Phase 1 facilities in either a storage mode or possibly an extraction mode (as based on water supply available for storage and/or drought conditions coupled with the need for water). Information gathered from Phase 1 operations will be used in part to determine the feasibility of Phase 2 and inform its future determinations on how to proceed with Phase 2 (which could provide an additional 9 MGD of supply). Significant planning activities for Phase 2 are not expected to begin for several years.

## **Water Recycling**

The District has undertaken a Water Recycling Program to develop and implement projects that reduce demands on potable water supplies. Recycled water has been used for landscape irrigation, cooling, equipment washdown and construction purposes at the District's Main Wastewater Treatment Plant since the early 1970s, as well as at a number of golf courses in the District's service area, beginning in 1984. Since 1993, the District has implemented various other recycled water projects that are designed to produce in the aggregate 9.3 MGD of additional supply. The program currently includes six operating recycled water projects. In 1996, the District began providing recycled water to the Richmond Chevron Oil Refinery for use in recirculating cooling towers. In 2006, the District began providing recycled water

to a number of sites in San Ramon for irrigation purposes through the San Ramon Valley Recycled Water Program described below. In 2008, the District began providing recycled water to a number of sites in Oakland primarily for irrigation purposes.

On April 9, 1996, the District's Board adopted the Nonpotable Water Policy which requires customers of the District to use nonpotable water (recycled water and other nonpotable water sources) for nondomestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health, and not injurious to plant life, fish and wildlife. The District has undertaken or will undertake in the future several water recycling project expansions in accordance with the long-term water recycling goal of 20 MGD by the year 2040. See "– Water Supply Management Plan" below. The District has entered into a Joint Exercise of Powers Agreement with the Dublin San Ramon Services District ("DSRSD") creating the DSRSD/EBMUD Recycled Water Authority ("DERWA") for the purpose of implementing a recycled water program to make available reliable supplies of recycled water to be provided to the District and DSRSD for their distribution within portions of their existing and future service areas. The first phase of the DERWA recycled water program, the San Ramon Valley Recycled Water Program, which provides recycled water supplies to a number of sites in San Ramon, was completed and became operational in 2006. The costs of such initial phase of facilities were financed from commercial paper notes issued by DERWA, State loan and grant moneys and capital contributions made by the District and DSRSD. The DERWA commercial paper notes were fully retired in January 2011 through the refinancing by each of DSRSD and the District of their respective obligations under the DERWA commercial paper program. The second phase of the DERWA recycled water program has also been completed. The District's share of the costs of the second phase of facilities was financed from federal grant funding and District capital contributions for the District's local share portion. The District has also completed additional distribution systems which were also financed by federal grants and District capital contributions for the local share match. The District and DSRSD have entered into an agreement for the sale of recycled water by DERWA to the District and DSRSD pursuant to which each of the District and DSRSD are responsible for paying their respective share of the costs incurred by DERWA in implementing the DERWA recycled water program (including among other things, administrative costs, construction costs, operation and maintenance costs and costs of debt service on any obligations issued by DERWA for the purposes of the recycled water program). Payments to be made by the District under such recycled water sales agreement for the purchase of recycled water are payable as a Water Operation and Maintenance Cost regardless of whether any recycled water is made available to the District from such facilities.

Another key water recycling project that is part of the District's Water Recycling Program is the Richmond Advanced Recycled Expansion ("RARE") Water Project. Construction of the RARE Water Project began in Fiscal Year 2009 and the first phase of the project was completed in Fiscal Year 2011. It initially provides 3.5 MGD of high quality recycled water to the Chevron refinery for use in industrial boilers (recycled water has been provided by the District to the Chevron refinery for use in recirculating cooling towers since 1996 as noted above). The project consists of a new high-purity recycled water treatment plant at the refinery, an influent pump station, flow equalization and a standby generator. In total, Chevron reimbursed the District approximately \$55 million for capital costs of the RARE Water Project. The Chevron Oil Refinery is currently the largest single user of recycled water in the District's service area.

## **Water Rights and Related Proceedings**

***Mokelumne River Rights.*** The District's appropriative rights to its Mokelumne River water supply include a license, which has a priority date of 1924, entitling the District to divert up to 200 MGD (approximately 224,000 acre-feet per year) to its service area from the Mokelumne River, and a permit, which has a 1949 priority, entitling the District to divert up to an additional 125 MGD (approximately 140,000 acre-feet per year) to the service area. The permit by its terms required that application of the



water to the proposed use be made by December 1, 2000. The District has completed construction of water diversion and storage facilities authorized by the permit for the diversion of up to the additional 125 MGD and in 2000, petitioned the SWRCB to extend the time to complete the application of water under the permit beyond the initial permit term of December 1, 2000 to allow additional time to put the entitlement to full beneficial use. The SWRCB posted a public notice of the petition in January 2007, commencing a formal proceeding which included an opportunity for other entities to protest the District's petition. The protest period ended on February 9, 2007, resulting in seven protests. The District had 180 days within which to resolve the protests from the date which the SWRCB accepted the protests as valid. The SWRCB accepted portions of the protests as valid in November 2007. Since all of the protests were not dismissed, a hearing before the SWRCB on the petition is likely to commence at some point in 2013 or later. [UPDATES?] Although the District is unable to predict the final outcome of these proceedings at this time, the District does not expect that such proceedings will materially adversely affect its water supply or operations. In accordance with the California Environmental Quality Act ("CEQA"), the District issued a Notice of Preparation of an Environmental Impact Report ("EIR") for the permit extension in November 2008. The comment period for the Notice of Preparation closed on December 11, 2008, and the District received seven comment letters. The District will consider the comments in preparing the draft EIR which is anticipated to be released for public review and comment in 2013. [UPDATES?] In addition to the water rights described above, the District also has a series of rights for the production of hydroelectric power at Pardee and Camanche Dams. The District also holds rights associated with its local reservoirs.

As previously noted, the State has placed conditions on operations in the District's Mokelumne River water rights requiring that minimum releases be made from Camanche Reservoir for the protection of anadromous fisheries. The District has entered into a series of agreements with State and federal agencies which are incorporated into its water rights and implemented through the annual Water System operations plan. Notably, the 1998 Joint Settlement Agreement is a multi-party agreement that provides for mitigation of the impact of the construction of Camanche Dam and Reservoir on historical spawning grounds for anadromous fish. Pursuant to the 1998 Joint Settlement Agreement, the District's required minimum releases from Camanche Dam are adjusted to reflect the time of year and type of Water Year (e.g., Normal/Above Normal, Below Normal, Dry and Critically Dry). In critically dry and dry years, a minimum average of from 22,500 to 65,000 acre-feet per year must be released downstream by the District to satisfy its obligations for the protection of fisheries resources. See "Water Supply – Mokelumne River Watershed" above.

**Central Valley Project Improvement Act.** In 1992, Congress enacted the Central Valley Project Improvement Act ("CVPIA") which provides environmental protections for fish and wildlife in the operation of the CVP. In 2000, the Bureau issued a Record of Decision on the CVPIA Programmatic Environmental Impact Statement ("PEIS"). The PEIS identified the impacts to CVP contract water supplies as a result of implementing the new fish and wildlife protection provisions of the CVPIA. All CVP contractors will be subject to shortages in CVP supply during dry years. The CVPIA requires that all CVP contracts contain provisions consistent with the CVPIA, including provisions for conservation and tiered prices. The District has executed the Long-Term Renewal CVP Contract consistent with the CVPIA provisions. See "– Water Supply – United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project" above.

## **Water Supply Management Plan**

The District recently updated its long range planning with the Water Supply Management Plan, extending the planning horizon from 2020 to 2040 ("WSMP 2040"). WSMP 2040 serves as the plan to ensure an adequate supply of water through the year 2040 for District customers. The primary objectives of WSMP 2040 are to maintain and improve the District's water supply reliability to its customers and help meet the growing need for water in the future. WSMP 2040 also guides adaption of the District's

water planning approach to circumstances that have changed since its prior Water Supply Management Plan, WSMP 2020, was adopted, such as competing and changing demands for water, the availability of water from the completed FRWP and Bayside Groundwater Project Phase 1, and long-term climate change. Further, the goal of the WSMP 2040 continues to be to examine what the District has done historically and what it can do in the future to ensure optimal use of the District's water resources.

WSMP 2040 assesses the supplemental supplies that are expected to be needed to serve a projected increase in water demand in the District's service area of approximately 0.8% per year between 2010 and 2040 (an additional 60 MGD from 2010 to 2040). WSMP 2040 also addresses the potential for additional constraints on the water supply available to the District arising from increased demand of the senior water rights holders along the Mokelumne River.

The WSMP 2040 provides for the District to meet its future drought year needs for water through 2040 by:

- increasing water conservation by an additional 39 MGD beyond current savings of 23 MGD (the savings achieved from 1993 to 2008) for a total 2040 savings of 62 MGD;
- increasing water recycling from 9 to 20 MGD;
- continued rationing during times of drought by up to 15%; and
- securing an additional 115,000 acre-feet (35 MGD annual average) of supplemental water supplies.

WSMP 2040 addresses the uncertainties posed by future climate change through its multi-element approach of demand management and a wide array of potential future supply options. In 2008, the District incorporated climate change into its strategic plan and issued its first Climate Change Monitoring and Response Plan. Both documents were updated in 2010. An interdisciplinary staff committee is reviewing the evolving science of climate change, assessing potential water supply impacts and vulnerabilities, and developing strategies for adaptation and mitigation. This information will continuously inform the implementation process for projects and programs under the WSMP 2040. See also "– Climate Change" below.

As a result of the completion of WSMP 2040 as described above, the District is undertaking efforts to identify and secure sources of supplemental water supply. For example, during the next several years, the District will be working to identify water transfer opportunities with various entities within Northern California, and specifically within the Sacramento River watershed, with a view toward utilizing the FRWP to move supplies secured via water transfers. As part of WSMP 2040, the District identified a possible contractual relationship and/or partnership opportunity with Contra Costa Water District ("CCWD"), an adjacent water agency, to secure from 20,000 to 30,000 acre-feet of storage in CCWD's Los Vaqueros Reservoir (the expansion of which was completed in 2012 to increase its total storage from 100,000 acre-feet to 160,000 acre-feet). The District initiated discussions with CCWD this year regarding the storage sharing opportunity. Within the next five to ten years approximately, the District will also review the operation of the Bayside Groundwater Project Phase 1, to determine the possibility for a Phase 2 expansion (which could provide an additional 9 MGD of supply).

Beyond those efforts, the District will also be reviewing other regional partnership opportunities. The District will work with Sacramento County water providers to evaluate the possibility of developing a regional groundwater banking operation. Further, the District will work with San Joaquin County water providers to evaluate the possibility of developing a conjunctive use/groundwater banking operation. Also, the District will continue to work with foothill water agencies to evaluate the possibility of expanding the storage in Lower Bear Reservoir (located on an upper tributary to the Mokelumne River). Finally, the District will work to assess the potential to develop a regional desalination project in

partnership with other Bay Area water agencies. Regional groundwater banking and desalination planning efforts are described below.

*Groundwater Banking Options.* The District has been exploring groundwater resource development in San Joaquin County. The District began negotiating with San Joaquin County water interests for a groundwater banking and conjunctive-use program in 1992. The overdrafted aquifer within San Joaquin County, which is traversed by the Mokelumne River and the District's Mokelumne aqueducts, presented an opportunity for a joint project of mutual benefit. However, lack of consensus among local water users and the absence of a legal framework to assure that a portion of the stored water could be exported to serve District customers during droughts has prevented a project from being developed. The District will continue to seek opportunities to develop a banking project within San Joaquin County, but no project has currently been identified.

*Bay Area Regional Desalination Project.* Since 2003, the District has been working with other Bay Area water agencies, specifically the San Francisco Public Utilities Commission ("SFPUC"), CCWD and Santa Clara Valley Water District, and since 2010, the Zone 7 Water Agency, to explore the development of regional desalination facilities that could (1) provide additional source(s) of water during emergencies, (2) provide an alternative water supply that would allow major facilities to be taken out of service for an extended period of time for inspection, maintenance or repairs, and (3) provide a supplemental supply during drought periods.

In the spring of 2010, the District and its partners finalized a report on the completed pilot testing of a desalination facility concept. The test was conducted in 2009 within the CCWD service area along Mallard Slough. In 2012, a study was conducted to review the mechanisms by which water would be conveyed from a regional plant to the various water supply agencies. Further studies may occur in the coming years. Test results will be used to help evaluate the technical feasibility of developing and operating the above-mentioned regional desalination facilities in the form of a full scale project.

## **Water Conservation**

The District has developed a Water Conservation Master Plan, most recently updated in 2011 (the "WCMP"), which directs the District's comprehensive water conservation strategies and initiatives to promote water conservation and reduce demand for water. The WCMP serves as a blueprint for implementation strategies, goals and objectives for achieving additional water savings consistent with the targets identified in the District's 2010 Urban Water Management Plan ("UWMP"). The District provides technical and financial assistance to encourage customers to help assure an adequate water supply by using water efficiently. The District advises customers on selecting water-efficient products, implementing best management practices, and designing/maintaining *WaterSmart* landscaping and efficient irrigation methods. Water conservation services include water use surveys, incentives for high-efficiency plumbing fixtures, appliances, process equipment and irrigation systems, and free distribution of conservation self-survey kits and water efficient devices (*i.e.*, showerhead, faucet aerators) that reduce water use. The District is also very active in new water conservation technology research and the development of education and demonstration projects.

The WCMP incorporates elements of the State Water Conservation Act of 2009 (Senate Bill X7-7) toward a statewide goal of a 20% reduction in urban per capita water use by the year 2020. All urban water agencies in the State were required to report their baseline per capita water use and reduction targets in their 2010 UWMP. The District has determined its base daily per capita use utilizing a State-approved methodology which applies a 5% reduction from the District's 2003 to 2007 baseline usage. The resulting District target for the year 2020 is 150 gallons per capita per day with an interim target for the year 2015 of 158 gallons per capita per day. The District is on track to meet these targets. The District currently assesses that with the implementation of the planning programs outlined in its 2010 UWMP, a

more aggressive and lower year 2020 demand level can be achieved (estimated at 144 gallons per capita per day). The District's 2015 UWMP will identify the District's final target for the year 2020 and its progress toward meeting that goal.

## **Water Facilities**

***Pardee Reservoir.*** The District's Mokelumne River water is collected and stored at Pardee Reservoir, located in the Sierra Nevada foothills approximately 90 miles east of the District and 38 miles northeast of Stockton. Pardee Reservoir has a storage capacity of 197,950 acre-feet.

***Camanche Reservoir.*** Camanche Reservoir is located ten miles below Pardee Reservoir on the Mokelumne River. Camanche Reservoir has a capacity of 417,120 acre-feet and serves to control floods and to regulate the river flow in order to satisfy downstream water rights.

***Terminal Reservoirs.*** Five terminal reservoirs are located within the District's service area: San Pablo (with a capacity of 38,600 acre-feet), Briones (with a capacity of 60,510 acre-feet), Lafayette (with a capacity of 4,250 acre-feet), Upper San Leandro (with a capacity of 37,960 acre-feet) and Chabot (with a capacity of 10,350 acre-feet), provide usable storage of approximately 151,670 acre-feet.

***Aqueducts.*** Raw untreated water is transported 91.5 miles from Pardee Reservoir, through the Pardee Tunnel, the Mokelumne Aqueducts and the Lafayette Aqueducts, to the District's service area, where it is stored in terminal reservoirs or delivered directly to treatment plants prior to distribution. The Pardee Tunnel is an 8-foot high horseshoe structure 2.2 miles long. The three Mokelumne Aqueducts have a combined capacity of 200 MGD under gravity flow, and approximately 325 MGD with existing pumping facilities. The first Mokelumne Aqueduct is 5-feet, 5-inches in diameter, the second is 5-feet, 7-inches in diameter, and the third is 7-feet, 3-inches in diameter. All are steel pipelines extending 81 miles from the Pardee Tunnel to the east end of the two Lafayette Aqueducts in Walnut Creek. Approximately nine miles of pipeline is above-ground and the balance is below-ground.

Lafayette Aqueduct No. 1 is a 9-foot in diameter circular concrete pipe and three tunnels that extend 7.1 miles from Walnut Creek to the Orinda Filter Plant. Lafayette Aqueduct No. 2 is a 9-foot in diameter concrete pipe with seven tunnels extending 7.3 miles from the Walnut Creek Water Treatment Plant to the Briones Diversion Works near Orinda. The supply is then pumped (or diverted) through the 7-foot, 6-inch diameter steel Briones Aqueduct into Briones Reservoir, discharged into San Pablo Reservoir, or diverted through the 7-foot, 6-inch diameter steel Orinda Raw Water Line to Orinda Filter Plant. Either or both Lafayette Aqueducts can be used to divert Mokelumne River water from Pardee directly or indirectly to all of the District's water treatment plants.

The Mokelumne Aqueducts cross the Sacramento-San Joaquin Delta for about fifteen miles and are protected by 51 miles of levees maintained by five reclamation districts governing Lower Roberts and Woodward Islands, Orwood and Palm, Upper Jones, and Lower Jones Tracts. The District has established a multi-pronged approach to protect the aqueducts from flooding and to recover from failures. These strategies include levee strengthening, aqueduct interconnections, and standby materials and supplies to respond to an emergency.

The District worked with the five reclamation districts to obtain \$33.5 million in funding for levee strengthening and to purchase emergency supplies and the District provided the \$6 million local cost share. This funding is being used to bring forty-one miles of levees, adjacent to the Mokelumne Aqueducts, up to the U.S. Army Corps of Engineers standards and to purchase materials and supplies to facilitate emergency response. These levee improvements substantially improve the stability of the levees and help protect the District's water supply and the region's agriculture, cultural, and historical resources, as well as the ecosystems in the Delta.

At a cost of \$14 million, the District is also constructing interconnections to the three Mokelumne Aqueducts on each side of the Delta. This will allow the District to restore 77% of the raw water system capacity with only one pipe in operation across the Delta. The District has six months of storage locally to serve its customers during an outage of the raw water system resulting from a failure in the Delta. This will bolster the resilience of the District's water supply system by enabling a rapid return to service after a failure with sufficient capacity to meet customer needs and begin to recover local storage.

**Tunnels.** Untreated water from San Pablo Reservoir is delivered to Sobrante Treatment Plant through a 5-foot, 6-inch diameter steel pipe; water from the Upper San Leandro Reservoir is delivered to the Upper San Leandro Treatment Plant through a 1.35 mile, 6-foot, 6-inch diameter horseshoe tunnel. The San Pablo Tunnel is 5-feet in diameter and can carry water 2.57 miles from the San Pablo Reservoir to the standby San Pablo Water Treatment Plant.

**Raw Water Pumping Plants.** The majority of the Water System is gravity-fed, with seasonal pumping. Walnut Creek No. 1, No. 2 and No. 3 Pumping Plants increase the capacities of the Mokelumne Aqueducts. When operating, these three pumping plants increase the combined capacity of the aqueducts to approximately 325 MGD. The Moraga Pumping Plant and Aqueduct supply water from the Lafayette Aqueducts to Upper San Leandro Reservoir. The plant's four pumps have a combined delivery capacity of 105 MGD; however, the configuration of the existing outlet works limits delivery to a maximum rate of 58 MGD. The Moraga aqueduct is six miles of 5.5-foot, 5-foot and 4-foot diameter steel and concrete pipe between Lafayette and the Upper San Leandro Reservoir near Moraga. The Briones Pumping Plant and Aqueduct were placed in service following completion of Briones Reservoir. These facilities supply Briones Reservoir with Mokelumne River water. The four pumps in the Briones No. 2 Pumping Plant can deliver up to a total of 60 MGD.

**Treatment Plants.** Water delivered to the District's customers is first treated at one of six treatment plants. The six water treatment plants in the District's Water System are capable of filtering and processing a combined total of approximately 415 MGD. The water treatment plants are Upper San Leandro in Oakland, San Pablo in Kensington (standby only), Sobrante in El Sobrante, and plants located in and named for Orinda, Lafayette and Walnut Creek. Orinda Water Treatment Plant is the largest, with a peak capacity of 200 MGD.

**Distribution Facilities.** From the Orinda Water Treatment Plant treated water is carried 3.41 miles through the Claremont Tunnel, a 9-foot diameter horseshoe bore to three distribution aqueducts. The water distribution network includes over 4,100 miles of pipe, 132 pumping plants and 171 neighborhood reservoirs (including approximately 143 above-ground concrete or steel reservoirs), having an operating capacity of 636 million gallons. The District's service area is divided into 124 pressure zones, ranging in elevation from sea level to 1,450 feet. About 60% of treated water is distributed to customers by gravity flow.

**Pardee and Camanche Power Plants.** The District operates hydropower plants at Pardee and Camanche Reservoirs pursuant to a Federal Energy Regulatory Commission ("FERC") license. The District's Pardee and Camanche hydropower plants are licensed as one project, the Lower Mokelumne River Hydroelectric Project No. 2916. The current FERC license for these hydropower plants expires on March 31, 2031. These plants generate 185 million kilowatt hours of electricity in normal rainfall years. Other than a small amount of power being used at the District facilities at Pardee and Camanche, the power produced is currently being sold by the District to the Sacramento Municipal Utility District. See "WATER SYSTEM FINANCES – Sources of Funds."

**Regional Intertie.** In 2007, the District, the City of Hayward ("Hayward") and SFPUC completed an intertie to allow for 30 MGD of water to be conveyed between the District and SFPUC water systems via Hayward's distribution system. This project, which was funded by the participating agencies and the

State of California through a Proposition 50 grant, provides the District and neighboring agencies increased flexibility to provide water throughout the region during an emergency. The intertie allows sharing of water among the parties during emergencies or planned critical work on facilities that would be difficult to remove from service without an alternative water source. The project consisted primarily of improvements within Hayward's water system, although there were associated minor improvements in the District and SFPUC systems.

### **Water Supply Operations**

**General.** As described above, the District's water supply system consists of an integrated network of reservoirs, aqueducts, raw water pumping plants, treatment plants, and distribution facilities that extend from its principal water source, the Mokelumne River watershed basin in the Sierra Nevada range, across the San Francisco Bay – San Joaquin Delta, to the East San Francisco Bay Area. Set forth below is a location map depicting the District's water supply system facilities.

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Streamflow from the Mokelumne River is collected and stored in the District's Pardee and Camanche Reservoirs, located in the Sierra foothills. Raw water from Pardee Reservoir is transported to the East Bay terminal reservoirs and treatment plants through the Pardee Tunnel, the three Mokelumne Aqueducts, and the Lafayette Aqueducts. The raw water is treated at one of the District's treatment plants before being delivered to customers.

The District operates the water system to achieve multiple objectives. These objectives are to provide municipal water supply benefits, stream flow regulation, fishery/public trust interests, flood control, temperature management and obligations to downstream diverters. All of the components of the system, including Pardee and Camanche Reservoirs, the Mokelumne Aqueducts, and the East Bay terminal reservoirs are interdependent; for this reason, the District develops an annual operations plan for the entire water supply system. The annual water supply operations plan includes scheduled operations from April through September and identifies all District requirements.

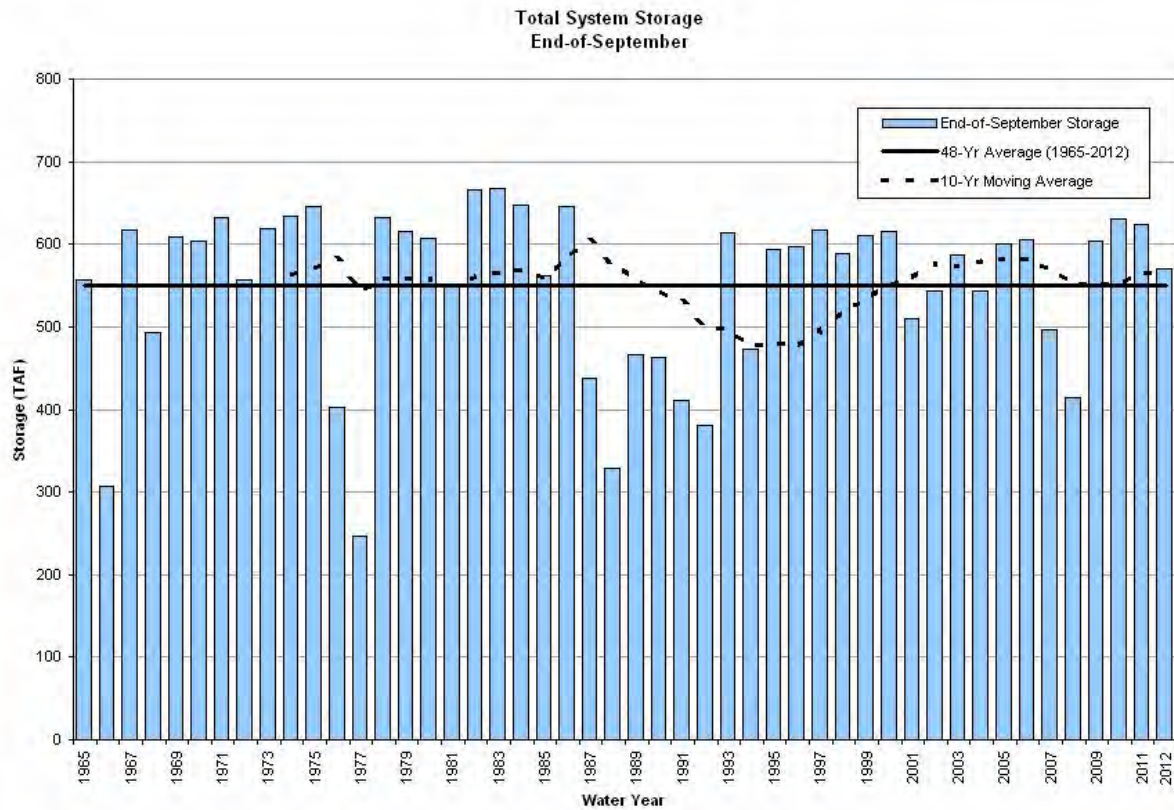
The District plans its operations according to three projections: the California Department of Water Resources ("CDWR") April 1st Water Supply Forecast, the District's End of September (the end of the Water Year) projected total system storage, and the District's projected November 5th combined storage for Pardee and Camanche Reservoirs. Reservoir storage levels are required to be reduced by November 5th of each year to maintain the minimum level of available capacity necessary for flood control purposes. The projected November 5th combined storage for Pardee and Camanche is also utilized in determining the required releases for fish flows for the October through March period each year. The District monitors projections throughout the year and adjusts reservoir operations, as conditions change, to meet its goals, objectives and requirements.

The District begins the Water Year by committing to provide the required minimum fish flows, associated with the projected November 5th storage levels for Pardee and Camanche Reservoirs, for the period October through March. Through fall and winter, the District continues to track rainfall, runoff, storage and demand to reassess reservoir operations as needed. By April, the District has a good indication of projected storage conditions for End-of-September total system storage, and November 5th Pardee and Camanche reservoir storage.

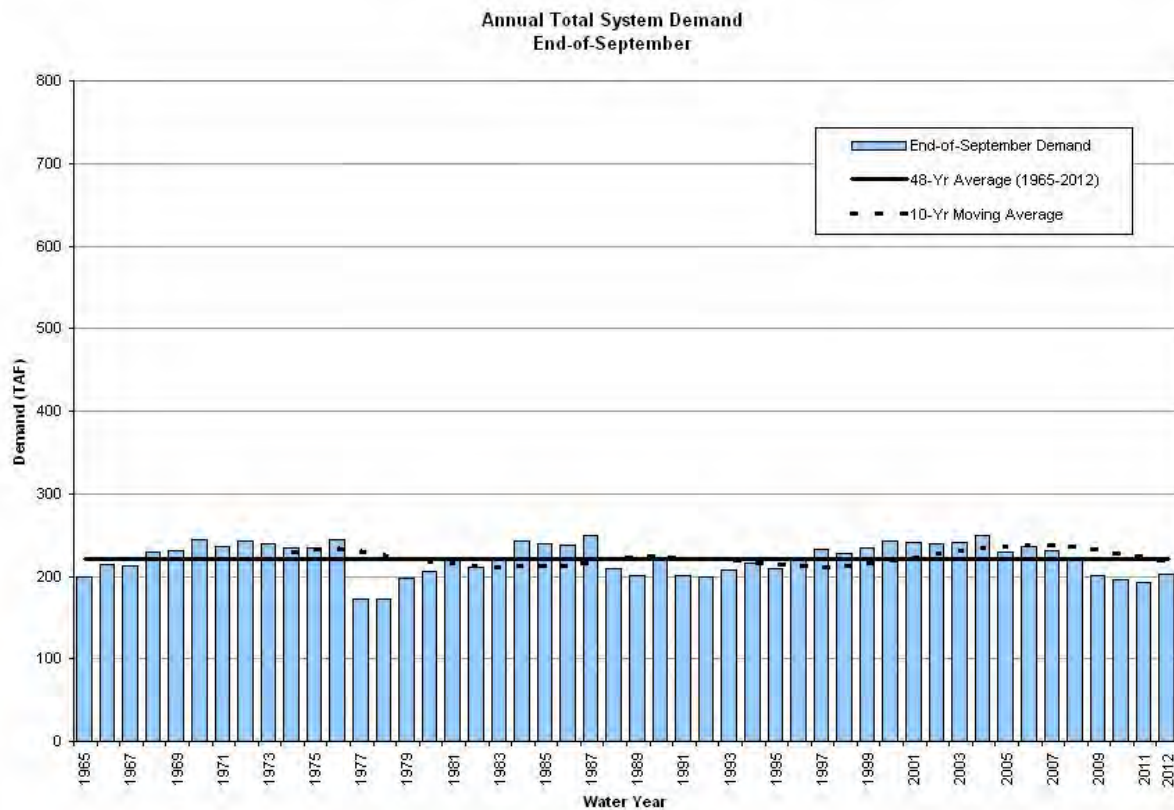
On April 1<sup>st</sup> of each year, CDWR publishes its snow survey water supply forecast of runoff for the Mokelumne River. The District uses the forecast to develop its Annual Water Supply Operations Plan, in which it schedules operations to meet all requirements according to the forecast for the period April through September. Scheduled operations include Camanche Reservoir releases in accordance with the prescribed flow requirements. As required by the District's Water Supply Availability and Deficiency Policy, the District Board is informed of the forecasted water supply condition for the end of the Water Year on September 30th. The September 30th storage forecast is used to determine if drought management measures will need to be implemented to reduce demand to ensure sufficient carryover storage for the following year. If dry year conditions exist (*i.e.*, projected total system storage on September 30th is less than 500,000 acre-feet), the Board will typically consider implementing demand management measures for the rest of the Water Year if the projected storage is significantly below 500,000 acre-feet. Projected end of September storage is required to be less than 500,000 acre-feet for the District to be able to utilize the supplemental supply made available under the Long-Term Renewal CVP Contract.

The following graph shows historical end of September storage from 1965 to 2012. As shown on the below graph, the driest period for the District was 1976 to 1977. The longest dry period during such time frame was the extended drought from 1987 to 1992.





Set forth below is a graph depicting the total Water System demand for each Water Year from 1965 to 2012.



In dry periods, the District first relies on storage to meet demands. The District was able to provide water to its customers during the 1976-1977 drought, and during the extended five year drought from 1987 to 1992 without supplemental supply, by relying on available storage. In future dry periods, the District will first rely on storage to meet demands. If there are two dry years in a row, then the District would rely on its supplemental supply from the FRWP, which was completed in 2011. With the completion of the FRWP, the District can take up to 165,000 acre-feet of water under its Long-Term Renewal CVP Contract over a three-year period as described herein. See “– Water Supply – *United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project.*”

**Current Water Conditions.** The District began Water Year 2013, which commenced on October 1, 2012, with 570,900 acre-feet in storage. Following a dry Water Year 2012 season, the combined Pardee and Camanche Reservoir storage on November 5, 2012 was 439,540 acre-feet, which is 20,700 acre-feet below the maximum allowable level.

Mokelumne River runoff for Water Year 2012, which ended on September 30, 2012, was approximately 414,300 acre-feet or 56% of the long-term average of 745,000 acre-feet. Although Water Year 2012 was the tenth driest on record for precipitation, total Water System storage, as of October 1, 2012, the start of Water Year 2013, was 74% of capacity or 99% of average.

The table below sets forth the capacity and water storage levels at the District’s water reservoirs as of September 10, 2013.

**Table 3**  
**DISTRICT WATER RESERVOIRS**  
**Current Capacity and Storage Levels**

<b>Data as of September 10, 2013</b>	<b>Capacity (acre-feet)</b>	<b>Current Storage (acre-feet)</b>	<b>% of Capacity</b>	<b>% of Average</b>
<b>Mokelumne</b>				
Pardee	197,950	191,480	97%	102%
Camanche	<u>417,120</u>	<u>262,590</u>	63	95
Total Mokelumne	<b>615,070</b>	<b>454,070</b>	<b>74</b>	<b>98</b>
<b>Terminal Reservoirs</b>				
Briones	60,510	42,570	70	80
Upper San Leandro	37,960	28,790	76	104
San Pablo	38,600	18,910	49	67
Chabot	10,350	7,760	75	90
Lafayette	<u>4,250</u>	<u>3,730</u>	88	103
Total Terminal Reservoirs	<b>151,670</b>	<b>101,760</b>	<b>67</b>	<b>84</b>
Total System Storage	<b>766,740</b>	<b>555,830</b>	<b>72</b>	<b>95</b>

Source: District Water Operations Department.

## **Water Quality and Treatment**

Federal and State regulatory agencies continually monitor and establish new water quality standards. New water quality standards could affect availability of water and impose compliance costs on the District. The federal Safe Drinking Water Act (“SDWA”) establishes drinking water quality standards, monitoring, public notification and enforcement requirements for public water systems. To achieve these objectives, the United States Environmental Protection Agency (the “EPA”), as the lead regulatory authority, promulgates national drinking water regulations and develops the mechanism for individual states to assume primary enforcement responsibilities. The California Department of Public Health (“CDPH”), formerly known as the Department of Health Services, has lead authority over California water agencies.

Currently, the State and the federal government regulate over 100 potential contaminants. Because the District’s water supply comes primarily from a remote, semi-protected watershed, the raw water requires minimal treatment to meet or surpass all health and aesthetic standards. The District’s drinking water is sampled and tested on an ongoing basis from all parts of the Water System to ensure that it meets or surpasses all primary (health related) and secondary (aesthetic) regulatory standards established by the EPA and the CDPH. Test results on the District’s water consistently show that regulated constituents of drinking water either are not detected at all, or they are present in amounts far below limits permitted by State and federal drinking water standards.

The District is actively involved with professional organizations at the federal and State levels related to water quality, including the American Water Works Association, the Association of California Water Agencies and the Association of Metropolitan Water Agencies. The District serves on technical advisory committees that interact with the Environmental Protection Agency during regulatory development or alteration, and recently worked with the EPA on updates to the Total Coliform Rule. In addition to working with the EPA, the District has developed its own water quality initiatives, including developing state and federal legislation to limit lead levels in household plumbing fixtures. The District also sits on national standards organizations which set standards for all aspects of water quality. The District was a founding member of the Water Research Foundation (“WRF”) and actively participates in research projects; with the WRF, the District participates on numerous project advisory committees and carries out funded research.

## **Statewide Water Issues**

There has been substantial attention at the State and federal level on restoring the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (the “Bay Delta”). Processes to achieve this end and the recommendations of agencies charged with this “Delta Fix” have been very controversial. The two primary proceedings are the Delta Plan and the Bay Delta Conservation Plan (the “BDCP”).

CDWR is leading the development of the BDCP to meet the requirements of the federal and State Endangered Species Acts in the operation of the export projects in the Delta. The BDCP is best known as the process through which new water conveyance would be built to divert Sacramento River water into a tunnel system or canal that would bypass the Delta (previously proposed as the “Peripheral Canal” and most recently as twin tunnels that would follow a fairly direct alignment between several intake facilities on the Sacramento River and south to the Clifton Court Forebay, a reservoir on the Delta in Contra Costa County, approximately 17 miles southwest of Stockton). Numerous export water users are seeking permits through this process, which will also incorporate ecosystem restoration measures among the permit conditions. Governor Jerry Brown proposed a redesigned, downsized facility (from 15,000 cfs to 9,000 cfs) in July 2012. The State later revised the schedule for completion of the draft BDCP. The administrative draft BDCP has been released in stages, beginning March 14, 2013 and concluding May 29, 2013. Release of the consultant administrative draft environmental impact report/statement

documents occurred on May 10, 2013. The public draft environmental impact report/statement is currently expected in October 2013, and the State plans to release a final environmental impact report/statement in the summer of 2014.

The Sacramento-San Joaquin Delta Reform Act of 2009 (the “Delta Reform Act”), which became law on November 12, 2009, established the Delta Stewardship Council tasked with developing a comprehensive, long-term management plan for the Delta, known as the “Delta Plan.” The Delta Plan is intended to implement the State’s co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. Pursuant to the Delta Reform Act, the Delta Stewardship Council was tasked with the development of the Delta Plan. The Delta Stewardship Council finalized the Delta Plan in May 2013, and the associated regulations became effective September 1, 2013. Seven different lawsuits are pending against the Delta Plan (including the EIR/EIS and associated regulations), filed by interest groups across the stakeholder spectrum, but the potential impact of the litigation on future Delta Plan implementation is unknown.

The District’s water rights are not directly affected by these proceedings but the District has actively followed and commented on these plans for several reasons:

- the District’s fishery restoration efforts on the Mokelumne could be impacted by restoration and or conveyance components of the BDCP;
- the District’s aqueducts cross the Delta and are protected by miles of levees which the District believes should continue to be maintained as part of any “Delta Fix”;
- the BDCP process will likely result in new flow requirements for the State and federal pumping facilities and the District believes that upstream water users should remain unharmed by any mitigations required to maintain Delta outflows; and
- the District is interested in ensuring that its ratepayers are not required to subsidize BDCP conveyance and mitigation costs which only benefit the State and federal water contractors who receive water pumped from the South Delta.

Another proceeding of significance to the Delta is the update to be conducted by the SWRCB on its Water Quality Control Plan. On January 24, 2012, the SWRCB published a Supplemental Notice of Preparation announcing its intention to review the 2006 WQCP for the Bay Delta. The WQCP sets flow standards and other water quality objectives that must be met to protect beneficial uses. The Notice of Preparation also provided that the SWRCB will prepare a substitute environmental document to evaluate potential modifications to current, and the establishment of new, objectives for the WQCP. The SWRCB also plans to approve a program of implementation that would modify water rights to help meet WQCP objectives. The new or revised objectives and program of implementation will have regulatory effect when implemented. The program of implementation, which will occur over a series of years, may address flow requirements for the Mokelumne River, Sacramento River, and San Joaquin River and tributaries thereto. The SWRCB is expected to provide additional details during the summer of 2013 on how the process to update the 2006 WQCP will be carried out. [UPDATES?]

## **Climate Change**

Global climate change is expected to create greater uncertainty in water supplies and demands in the future. The District has developed mitigation and adaptation strategies to deal with the changing climate and its effect on water resources. In 2008, the District incorporated climate change into its Strategic Plan, and has developed and implemented a climate change monitoring and response plan to inform future water supply, water quality, and infrastructure planning.

The District's response to climate change focuses on:

- keeping current with science and assessing potential effects of climate change in the Mokelumne and East Bay watersheds;
- determining water supply and infrastructure vulnerabilities;
- monitoring and reducing greenhouse gas emissions caused by the District's operations;
- integrating climate change in strategic planning and budgeting decisions;
- advocating for new legislation and regulations that help water and wastewater agencies better respond to climate change; and
- developing adaptation and mitigation strategies as part of a water supply management program.

## **Seismic Matters**

The District's service area is in a seismically active region of the State. The Hayward Fault runs through the entire western portion of the District and the Calaveras Fault runs through the southeastern portion of the District's service area. The Concord and Mt. Diablo Thrust Faults are located close to the east side of the District's service area and the San Andreas Fault is located to the west. The Pardee and Camanche Dams and the District's three aqueducts which carry water from Pardee Reservoir to the District's service area are in other active earthquake fault areas. Although the District has not experienced significant earthquake-related damage to its facilities, the District's Water System and/or its water supply could be adversely affected by a major local earthquake impacting the District's service area, or by earthquake damage to the Pardee or the Camanche Dams or the aqueducts delivering water to the District's service area.

A magnitude 6.8 to 7.0 earthquake on the Hayward Fault is likely within the next few decades according to the United States Geological Survey. A 1994 seismic study prepared for the District examined the likely effects on the District's existing local water system at that time of earthquakes on the Hayward Fault, the Calaveras Fault and the Concord Fault. The study concluded that, in the event of a magnitude 7.0 earthquake on the Hayward Fault, the District would likely experience major damage to the water transmission tunnels, substantial damage to distribution pipes, damage to potable water reservoirs and operational disruptions of the District's pumping plants, rate control stations and water treatment plants. The District also would likely experience significant damage in connection with a lesser magnitude earthquake on the Hayward Fault or an earthquake on the Calaveras or Concord Faults. If damage to the Claremont tunnel made it unusable, severe water rationing would be required in the western portion of the District during the estimated 26-week repair period. Further, in the event of severe earthquake damage to the District's Mokelumne Aqueducts, which carry water from Pardee Reservoir to the District's service area, it was determined repair efforts could take up to one year before water could be transported again to the District's terminal reservoirs. This would necessitate stringent customer conservation, as the District's terminal reservoirs store roughly six months' supply under normal consumption patterns. A major earthquake could also have a severe adverse impact on the economy of the District's service area.

In response to the 1994 seismic study, the District initiated a multi-year Water System Seismic Improvement Program and by 2007, the District substantially completed a \$200 million Seismic Improvement Program (the "SIP"), which focused on improving seismic performance of the distribution systems and facilities and better enabling the District to provide post-earthquake water service. The SIP included upgrades to 70 reservoirs, 130 pumping plants, six water treatment plants, three maintenance yards, the Administration Building and various electrical equipment anchorages throughout the District, as well as the completion of an alternate transmission pipeline, the Southern Loop; the completion of a

fault-line by-pass for the primary transmission line, the Claremont Tunnel; and seismic upgrades of Mokelumne Aqueduct No. 3, which is the aqueduct most relied on by the District to carry water across 15 miles of the Sacramento-San Joaquin Delta.

Key projects within the SIP include:

***Southern Loop Pipeline.*** The Oakland-Berkeley hills divide the District's service area into two water distribution areas, west-of-hills and east-of-hills. The Southern Loop Pipeline is an 11-mile long emergency transmission pipeline that provides an alternate water supply route after a major earthquake. The Southern Loop connects San Ramon and Castro Valley to create a loop at the southern ends of the water distribution system. This benefits customers by providing increased system redundancy, flexibility and reliability in the District's transmission system across the Hayward Fault.

***Claremont Tunnel Seismic Improvement Project.*** This project upgraded the Claremont Tunnel, a vital transmission facility providing service to 800,000 customers west of the Oakland-Berkeley Hills. This tunnel crosses the Hayward Fault and seismic analysis had suggested that in a magnitude 7.0 earthquake the tunnel would be damaged and most likely be out of service for up to six months for tunnel repairs, resulting in severe water rationing and reduced supplies for firefighting. The facility upgrade, completed in March 2007, consisted of a new 1,501-foot bypass tunnel to replace a vulnerable portion of the tunnel through the Hayward Fault zone as well as repair and reinforcement of other areas. The upgraded tunnel affords District customers substantially enhanced post-earthquake reliability.

***Mokelumne Aqueduct No. 3 Seismic Upgrade Project.*** This project involved seismically retrofitting Mokelumne Aqueduct No. 3, the District's largest aqueduct, at a cost of approximately \$40 million, to improve its ability to withstand a maximum credible seismic event.

***Building Structure Seismic Improvement Project.*** The Building Structure Seismic Improvement Project retrofitted occupied District buildings, including, but not limited to, the upgrade of the Administration Building to meet life safety performance goals and to ensure availability of facilities for post-earthquake operation.

***Reservoir Seismic Upgrades Project.*** The Reservoir Seismic Upgrades Project addressed seismic risks to 70 distribution tanks to assure continued water storage following an earthquake and mitigate the risks to life safety that would result from tank failure. Other accomplishments include the completion of landslide mitigations and the installation of seismic isolation valves at reservoirs and valve pit roof anchorages.

The SIP improvements collectively will allow the District to meet its service restoration goal of providing water service to 70% of its customers within ten days after a major seismic event. The District continues to enhance seismic safety as part of its comprehensive capital improvement project planning process (discussed under "– Capital Improvement Program" below). That process has to date resulted in major seismic upgrades, such as a \$76 million seismic upgrade to the dam at the largest of the local water storage reservoirs, San Pablo Reservoir, which was completed in 2010, and the integration of seismic upgrades into ongoing facility renewal work.

Despite the completed and continuing seismic work, in the event of significant earthquake damage to the Water System and/or the District's service area, there can be no assurance that Subordinated Water Revenues would be sufficient to pay the principal of and interest on any outstanding Water System Revenue Bonds.

## **Security and Emergency Preparedness**

The District has implemented a security and emergency preparedness program that includes a Security Operations Control Center (the “SOCC”) that is staffed seven days a week, 24 hours a day. The SOCC houses a proprietary centralized security system to monitor access controls, digital video cameras and recorders, and security alarms; which include supervisory control and data acquisition (“SCADA”) alarms related to entry points and critical water distribution system hatches. The dispatchers at the SOCC monitor alarms, assess conditions using a closed circuit television system, and dispatch security and law enforcement response as needed for alarms and reports of suspicious circumstances or crimes at District facilities. In addition, the District maintains access controls for its water and wastewater treatment, administrative and maintenance facilities, its storage yards and service centers, and the reservoirs and pumping plants in its water distribution system. District security includes an internal security staff and security contracts, and both units patrol the District’s critical infrastructure and key resource facilities from the foothills in the Sierra Mountains to the San Francisco Bay. Contract security officers are also used to supplement automated access controls at certain key facilities.

In order to address emergency response by the District, the District has an established Emergency Operations Plan. Pursuant to the District’s Emergency Operations Plan, District employees are sworn disaster services workers, and staff is trained to use the State Office of Emergency Services Standardized Emergency Management System (SEMS) in response to emergencies and security incidents. As part of its Emergency Operations Plan, the District maintains two strategically located emergency operations centers and a mobile emergency command center, and has in place an emergency operations team to lead emergency response activities. The District also has adopted business continuity plans to ensure the District’s ability to respond to, work through and recover from any emergency or other event that disrupts its normal business functions.

## **Insurance**

The District uses a combination of self-funding/self-insuring and insurance coverage in the District’s risk management program. The program provides protection for the District’s buildings and facilities, including their contents and equipment, from fire, explosion and related perils, including flood. The District’s insurance program does not currently include earthquake coverage. The District self-insures for liability claims up to \$10 million for bodily injury and property damage that may arise from the District’s operations, including but not limited to use of its property, facilities, or vehicles. The District also maintains fidelity protection against fraudulent acts of employees.

The District maintains a reserve of approximately \$10 million that is earmarked to pay both liability and workers’ compensation claims. Selected insurance coverages include the following:

- \$90 million of commercial general and automobile liability insurance, subject to a \$10 million self-insured retention for the Water System and the Wastewater System;
- Statutory limits of excess workers’ compensation coverage, subject to a \$5 million self-insured retention for the Water System and the Wastewater System;
- \$200 million in coverage for District all risk property insurance, subject to a \$500,000 deductible, excluding coverage for all underground property and pipelines, earthquake and flood;
- \$25 million in coverage for flood perils (except for areas within the FEMA-designated 100-year floodplain in which a \$10 million limit is applicable), subject to a \$1.5 million

deductible per occurrence, excluding coverage for all underground property and pipelines;

- \$10 million in coverage for boiler and machinery insurance, subject to a \$25,000 deductible (except for Pardee Dam, Camanche Dam and the Main Wastewater Treatment Plant, for which a \$50,000 deductible applies); and
- \$10 million in coverage for crime insurance, subject to a \$25,000 deductible.

### **Capital Improvement Program**

The District's biennial planning process includes an update of facilities needs for the ensuing five fiscal years. A series of master plans document needs by specific asset classes (such as pipes, reservoirs and other assets). The master plans include assessments of key facilities, considering engineering condition assessments as well as operational performance and maintenance histories. Facilities in need of rehabilitation or replacement are identified and prioritized. Project scopes are also defined (for example, replacement of aging mechanical or electrical gear, seismic upgrades, or other defined scopes).

The results of the master plans are considered during the biennial update to the Capital Improvement Program (the "CIP"). The last CIP update was completed in 2013 and included a five-year capital expenditure forecast for Fiscal Years 2014 through 2018.

Based upon the District's five-year capital expenditures forecast for Fiscal Years 2014 through 2018, the District's cash expenditures for capital improvements to the Water System for Fiscal Years 2014 through 2018 are estimated to aggregate approximately \$1,036.3 million. Included in such five-year capital plan are the major programs and projects described below:

***System Extensions and Improvements.*** System extensions and improvements further the District's objectives to improve the infrastructure to ensure reliable, high quality service, and update and enhance the District's system modeling capabilities. The majority of work under this strategy focuses on making improvements to various components of pressure zones such as pipelines, reservoirs, pumping plants and water treatment plants to improve system reliability for existing customers, and to provide service to new customers within the Ultimate Service Boundary. The programs include:

*The Pressure Zone Improvements Program* which addresses systematic improvements to the District's 123 pressure zones. It includes studying the highest priority zones for improvements due to the need to rehabilitate and upgrade facilities. Improvements include upgrading or replacing reservoirs, pumping plants and transmission systems to increase storage capacity and improve water quality. The following pressure zone work is planned in Fiscal Years 2014 through 2018:

- Almond/Fire Trail in Castro Valley – planning of storage improvements in Fiscal Years 2013 and 2014, and design and construction in Fiscal Years 2015 through 2018;
- Central Oakland Hills Cascade in Oakland – construction of the Estates Reservoir replacement in Fiscal Years 2012 through 2014, and design and construction of the 39th Avenue/Redwood Pumping Plant rehabilitation project in Fiscal Years 2013 and 2014.
- Leland in Lafayette/Walnut Creek – completion of a facilities plan, environmental documentation and design of the Leland Reservoir in Fiscal Years 2014 through 2018;



- Maloney in El Sobrante - design and construction of the improvements to the Maloney Pumping Plant and Selby Reservoir in Fiscal Years 2015 through 2018;
- Summit in Berkeley – design and construction of Summit Reservoir, Woods Pumping Plant and Shasta Pumping Plant replacement in Fiscal Years 2014 through 2017; and
- West of Hills Transmission Improvements – planning and environmental documentation for 23 recommended projects under the Master Plan in Fiscal Years 2014 through 2018; and design of North and South Wildcat Aqueduct pipe improvements and South 30 pipeline improvements in Fiscal Years 2016 through 2019. The first phase of water treatment plant upgrades will be performed under the Water Treatment and Transmission Improvements Program beginning in Fiscal Year 2016.

*The Water Treatment and Transmission Improvements Program (“WTTIP”)* which includes additions of new facilities and upgrades of existing facilities to meet current and projected water demands. WTTIP will more efficiently meet current and future regulatory standards related to both source water and treated water quality; comply with environmental permit conditions; and replace and upgrade aging infrastructure.

The program includes distribution improvements in the Lafayette, Orinda, Moraga and western Walnut Creek area including: a new Happy Valley Pumping Plant and associated pipeline in Orinda in Fiscal Years 2014 through 2016; a new Sunnyside Pumping Plant in Lafayette in Fiscal Years 2015 through 2017; and a new Ardith Reservoir and Donald Pumping Plant in Orinda in Fiscal Years 2015 through 2017. The project also includes: a 3.0 million gallon per day (MGD) Withers Pumping Plant (PP) in Lafayette in Fiscal Years 2017 through 2018; upgrades to the Fay Hill PP in Moraga which includes replacing 500 feet of 12-inch pipeline in Rheem Boulevard and replacing or relining the 2.5 MG Fay Hill Reservoir in Fiscal Years 2015 through 2018; constructing 1,525 feet of 12-inch pipeline in Glen Road and Nordstrom Lane in Lafayette in Fiscal Years 2017 through 2018, which allows decommissioning of the Glen Reservoir; and replacing or relining the 11.5 MG Moraga Reservoir in Fiscal Years 2016 through 2018.

The program will also include new facilities and upgrades to the District’s Water Treatment Plants (WTPs) including: ozone upgrades at Sobrante WTP in El Sobrante and Upper San Leandro WTP in Oakland starting in Fiscal Year 2014; backwash water system improvements and a chlorine contact basin at the Sobrante WTP starting in Fiscal Year 2017; and rebuilding the filters starting at the Walnut Creek WTP in Fiscal Year 2018.

WTTIP is projected to be one of the District’s most significant programs in the Fiscal Year 2019-23 timeframe. Planned projects include a new filter-to-waste equalization basin at the Upper San Leandro WTP in Oakland, a membrane filtration pilot plant at the Lafayette WTP, and the design of upgrades to the entire Lafayette WTP.

***Facilities, Services & Equipment.*** The facilities, services, and equipment projects further the District’s objectives to ensure the security of the water supply and the water system; to evaluate facilities and implement corrective maintenance programs; to implement changes in technology; and to maintain a safe, well equipped workplace. Work associated with this strategy includes making security improvements at various facilities, implementing new computer systems, and replacing old vehicles and equipment. The programs includes:

*The Area Service Center/Building Program* which is comprised of various projects that upgrade and make improvements to various District buildings such as service centers and administrative buildings. In Fiscal Years 2014 through 2018, the focus will be on the Oakland Administration Building.

Fiscal Years 2014 through 2018 work includes replacement of the Fire Alarm and Life Safety System; replacement of the roofing and waterproofing on the terraces and roof; upgrades to the boilers for greater energy efficiency; replacement of the Data Center power distribution unit; replacement of audio visual equipment in the board room; replacement of the uninterrupted power supply unit in the data center; replacement of the air conditioners in the computer server rooms; replacement of the chiller systems on the 10th floor; upgrades to the elevator controls; replacement of the cooling tower; and space planning to reconfigure underutilized areas. Future work includes power feed and distribution improvements; energy efficiency projects such as replacing the light fixtures; and replacing building system controls.

*The Communications Program* which is comprised of projects that replace and upgrade computer and communication systems. In Fiscal Years 2013 and 2014, the 25 year old Materials Management Information System (MMIS) that is used for purchasing and accounting purposes will be evaluated for replacement, along with the PeopleSoft Human Resources Information System (HRIS). Selecting a replacement for MMIS and HRIS is scheduled for Fiscal Year 2014, followed by implementation of the new systems. Replacing the PeopleSoft Financial Information System (FIS) will be considered in Fiscal Year 2016. In Fiscal Year 2014, the Contact Center call management system will be replaced, and an updated IVR (Interactive Voice Response) system developed. In Fiscal Years 2016 through 2019, upgrade will begin to the networking cables and equipment at locations outside of the Administration building in preparation for implementation of Voice over IP (VoIP) phone system.

*The Security Program* which includes the Vulnerability Assessment Security System Improvements Project that will implement critical security improvements to water supply, transmission, treatment, distribution, maintenance and administration facilities. The project provides for improvements to numerous facilities including fencing, lighting, alarms, video monitors and card readers. Work in Fiscal Years 2014 through 2018 includes: security improvements for Claremont Center in Oakland; planning and design of security improvements for Pardee and Camanche Powerhouse Warehouses; new access control gates for the Oakport Storage facility in Oakland and Castenada Service Area in San Ramon; and miscellaneous security improvements to various facilities as needed to address regulatory requirements and personnel safety concerns. Future work includes security improvements at the aqueduct facilities and at the six water treatment plants.

*The Vehicle Replacements Project* is ongoing and involves the replacement of construction equipment and vehicles. In Fiscal Years 2014 through 2018, the program includes replacing vehicles and construction equipment as needed; upgrading the District's fuel facilities to enhanced vapor recovery for the above ground storage tanks and prevent fuel from entering storm drains; upgrading the fuel management system to improve the District's ability to track vehicle fuel usage and mileage readings; and retrofit or replace diesel engines and equipment to meet fleet emissions averages established by new regulations.

***Maintaining Infrastructure.*** These programs further the District's objectives to implement preventative and corrective maintenance programs, and to maintain and improve the infrastructure to ensure delivery of reliable, high quality water service now and in the future. The majority of work under this strategy focuses on pipeline projects to enable the District to improve system reliability for existing customers, and to provide service to new customers within the Ultimate Service Boundary. The programs include:

*The Pipelines/Appurtenances Program* which will maintain efficient pipeline operations by replacing appurtenances such as valves, lead service connections, hydrants and meters at the end of their useful lives. The New Service Installations Project is an ongoing project to install services for new customers, and to replace old services at the end of their useful lives. The Meter Replacement Project is an ongoing project to replace water meters and boxes at the end of their useful lives, and to replace meters that are believed to be reading low. In Fiscal Year 2012, 11,404 residential meters, 129 small commercial meters and 26 large commercial meters were replaced. This level of replacement is expected to continue. 200 large commercial meters remain to be replaced at a rate of 30 annually through Fiscal Year 2017 to improve accuracy.

*The Pipelines/Regulators Program* is an ongoing program to meet the pipeline replacement and expansion needs of the distribution system. Pipeline System Improvements is an ongoing project to enhance the distribution system primarily for existing customers by improving water quality, system performance, capacity and reliability. In Fiscal Year 2014-15, planned work includes 1.5 miles of pipeline improvements per year, including 0.5 miles per year to replace 4-inch diameter mains throughout the District. The planned work includes improvements in Keith and Euclid Avenue in Berkeley, El Portal Drive in Richmond, Fontaine Street in Oakland and 173rd/174th Avenue in Castro Valley. In Fiscal Years 2016 through 2018, work includes 1.0 miles per year of pipeline system improvements and 0.5 miles per year of 4-inch replacements.

*The Pipeline System Extensions Project* is an ongoing project to serve new customers via Applicant Extension Agreements. Annual workload is estimated from projections of land development activity and trends in water service estimate activity in the New Business Office. The District averaged 12 miles of system extension per year with 2 miles installed by District Forces. However, demand has been reduced due to the current economic downturn. In Fiscal Years 2014 through 2016, system extensions is expected to include 6 miles per year, increasing to 8 miles in Fiscal Year 2018, with District forces installing 2 miles each year. The remaining system extensions are installed by applicants.

*The Pipeline Infrastructure Renewals Project* is an ongoing project to replace deteriorating water distribution pipelines. Pipelines for renewal are identified primarily through the evaluation of maintenance histories. In Fiscal Year 2012-13, approximately 8 miles per year of pipeline replacements were made. In Fiscal Year 2014-15, work will include construction of 10 miles of pipeline replacements per year and development of an asbestos cement (AC) pipeline replacement plan. In Fiscal Years 2016 through 2018, the project will include 11 miles of pipeline replacements per year. This project also includes an AC Pipe Study and Replacement program which will implement a testing program and investigate alternative AC pipe rehabilitation methods to identify cost effective replacement strategies. The study will also address water quality optimization to extend the service life of AC pipe. The District is collaborating with the Water Research Foundation to complete this study. In Fiscal Year 2014, the AC Pipe Study will be completed and starting in Fiscal Year 2015 the District will begin the replacement/rehabilitation of AC Pipes based on the study's recommendations.

*The Large Diameter Pipelines Project* is an ongoing project to replace the large pipes that form the backbone of the distribution system, and to conduct condition assessments. In Fiscal Year 2014-15, planned work includes the design and construction of the remaining portion of Lincoln Avenue Pipeline in Alameda, MacArthur/Davenport pipelines and Grand Ave. in Oakland; construction of the Dingee Pipeline and part of Aqueducts at Claremont Center in Oakland; final planning and design for the Webster/Alice Estuary Crossing in Alameda/Oakland and R/W 778/Mario Way in Lafayette; pre-design for East 15th Street and International Blvd. in Oakland; and completion of the master plan. In Fiscal Years 2016 through 2018, work includes the final construction of MacArthur/Davenport in Oakland, Aqueducts at Claremont Center in Oakland, Webster/Alice Estuary Crossing in Alameda/Oakland, and R/W 778/Mario Way in Lafayette; planning, design, and construction for East 15th Street in Oakland,

International Blvd. in Oakland, Judy Lane in Lafayette, D Street in Oakland and Dwight Way/UC Field in Berkeley/Oakland.

*The Polybutylene Lateral Replacement Program* was established to manage the cost-effective replacement of defective polybutylene service laterals. Litigation associated with the recovery of repair costs was completed in 2009. This project includes emergency replacements of broken laterals, planned pre-emptive replacements of laterals in areas suffering high failure rates, and opportunistic replacements when laterals are uncovered during the course of other pipeline repair work. Approximately 1,879 polybutylene laterals were replaced by District crews in Fiscal Year 2012. The current strategy is to continue replacing laterals when failures occur and to pre-emptively replace laterals on a planned basis where cost-effective opportunities arise.

*The Pumping Plant Rehabilitation Program* will upgrade and repair the facilities that have the most critical rehabilitation needs. The program was updated in 2012 and identifies the 44 highest priority facilities for rehabilitation, and six facilities for pit piping repair. In Fiscal Years 2014 through 2018, work includes design and construction at 25 pumping plant facilities and ongoing Arc Flash Mitigation. In Fiscal Year 2014-15, design and rehabilitation of pumping plants includes: Almond in Castro Valley, Danville No. 1 & 2 in Walnut Creek/Danville, Diablo Vista in Lafayette, Redwood in Oakland, Skyline in Oakland and Encinal in Orinda. Future work will include design and construction of the remaining priority rehabilitation projects, as well as on new projects added to the program priority list.

*The Reservoir Rehabilitation Program* maintains the integrity of the District's distribution reservoirs by preventing and mitigating corrosion, improving water quality and extending the useful lives of the reservoirs. The program seeks to extend the service lives of the District's 83 steel and 59 reinforced concrete distribution tanks by replacing coating systems, installing and/or repairing cathodic protection systems, repairing or replacing roof systems, and performing structural upgrades. In Fiscal Years 2014 through 2018, the program will rehabilitate three to four steel reservoirs each year. A reservoir roof safety program will also continue in Fiscal Years 2014 through 2018. Beyond Fiscal Year 2018, steel reservoir rehabilitations will continue at a rate of three per year and additional concrete reservoirs will be rehabilitated based on the priorities identified in the reservoir infrastructure rehabilitation plan.

*The Open Cut Reservoir Rehabilitation Project* develops outage plans and rehabilitates the 19 open-cut reservoirs in the District's system. Projects will address structural integrity, worker safety, operational reliability, regulatory requirements and water quality issues. In Fiscal Years 2014 through 2018, planning and design will begin for the replacement of the San Pablo Clearwell in Kensington, Central Reservoir in Oakland, and North Reservoir in Richmond. Beyond Fiscal Year 2018, rehabilitation projects are planned for Claremont Reservoir in Berkeley and Upper San Leandro Clearwell in Oakland. Additional open-cut reservoir projects such as Summit in Berkeley/Kensington, Almond in Castro Valley, Leland in Lafayette, and 39th Avenue in Oakland are funded through the Pressure Zone Improvement and WTTIP Projects.

*The Seismic Improvement Program.* The objective of this program is to strengthen and upgrade the District's water treatment and distribution system to ensure post earthquake water service. The program included upgrades to more than 250 critical facilities including reservoirs, pipelines, pumping plants, water treatment plants, etc. throughout the District. The program also included the Southern Loop Pipeline which connects the water systems between San Ramon and Castro Valley to provide operational redundancy, and improvements to the Claremont Tunnel which crosses over the Hayward Fault. While the program has been substantially completed, seismic work continues to strengthen and protect the water delivery system. In Fiscal Year 2013, seismic upgrades to the Berryman South Reservoir in Oakland were completed. In Fiscal Year 2014 through 2015, isolation valves will be installed at two reservoirs using prior appropriations. Seismic work is also included in other programs.

***Regulatory Compliance.*** Regulatory compliance projects will further the District's objectives to operate and maintain facilities to meet all air, land and water discharge requirements; implement preventative and corrective maintenance programs; and improve the infrastructure to ensure delivery of reliable, high quality service now and in the future. The work focuses on dam safety improvements and modifications to reservoir towers.

*The Dam Safety Program* upgrades dams, outlet towers, clearwells and spillways to meet earthquake and flood safety requirements. The Dam Seismic Upgrades Project includes seismic evaluations and dam freeboard increases to improve seismic safety. In Fiscal Years 2012-13, evaluations were completed for the 39th Avenue Dam and Pardee Dam and Spillway. Evaluations are planned for Moraga Reservoir, Dunsmuir Reservoir in Oakland, Leland Reservoir in Lafayette, and Sobrante Clearwell.

As part of this program, dam freeboard was increased by making structural modifications to the spillways at North Dam in Richmond, Estates Dam in Oakland, and Danville Dam; and operational modifications at Maloney Dam in Pinole, Moraga Dam, San Pablo Clearwell in Kensington and Estates Dam in Oakland. Operating levels were lowered at Maloney and Leland Reservoirs in Lafayette to achieve adequate freeboard until they can be removed from service to construct spillway modifications. Seismic upgrade of Chabot Dam in San Leandro is expected to be completed in Fiscal Year 2016. Upgrades are planned at Camanche Dam in Fiscal Years 2016 through 2019.

*The Reservoir Tower Modifications Project* provides for evaluating and retrofitting six reservoir towers to withstand the effect of seismic events. A stability analysis has been conducted for the Upper San Leandro Tower, and upgrades to the tower and access road are planned for Fiscal Years 2014 through 2016. Work at the Lafayette Reservoir Tower will include seismic and gate control upgrades, and modification of the tower to act as a spillway capable of handling the revised Probable Maximum Flood. Design flows. Construction is planned for Fiscal Years 2014 and 2015. A recent analysis of the Briones Reservoir Tower concluded that it will require upgrades which are planned to take place in Fiscal Years 2015 through 2018. Design and construction of retrofits to Chabot Reservoir Tower are planned to start in Fiscal Year 2015 as part of the Chabot Dam seismic upgrade. The Pardee Reservoir outlet tower was evaluated in Fiscal Year 2013.

*The Remediation Program* includes wastewater treatment improvements upgrades to the wastewater collection, treatment and disposal systems serving Pardee Center, Pardee Recreation Area and Camanche South and North Shore Recreation Areas. Fiscal Years 2014 through 2018 priorities include sewer collection system improvements at the Pardee Recreation Area RV Park, and rehabilitation of the Camanche South Shore Mobile Home Park sewer collection system. Additional sewer system improvements will be made outside the five year window.

***Resource Management.*** Resource management projects further the District's objectives to manage the Mokelumne and East Bay watersheds to ensure a high quality water supply; protect natural resources; provide public access and recreational opportunities compatible with water quality and natural resource protection; and prepare master plans to protect natural resources and ensure drinking water quality. Work will focus on making improvements to recreational facilities at Camanche and Pardee Reservoirs, and updating habitat conservation and watershed management plans. The projects include:

*The Recreation Area Program* which will upgrade four campgrounds to improve site drainage and storm water management; rehabilitate roads with recycled asphalt grindings; install new signage and striping for traffic control; and install new picnic tables and fire rings. In Fiscal Year 2014, design will be initiated for the South Shore campground improvements and day use roads, with construction to be completed in Fiscal Year 2015.

*The Pardee/Camanche Recreation Area Improvements Project* will upgrade the water, electrical, and wastewater utilities; and the roads and parking spurs at the Pardee RV campground in Fiscal Years 2014 through 15 to meet regulatory requirements. This project will be coordinated with sewer improvements under the Upcountry Wastewater Improvements project to achieve cost efficiencies. The fueling facilities will be upgraded in Fiscal Year 2016, and road repairs at Camanche will be addressed in Fiscal Year 2017.

*The Watershed Recreation Program* will provide funds to purchase, protect, and enhance the District's watershed lands including trails and recreation facilities in support of visitors, water quality and the environment. In Fiscal Years 2014 through 2018, recreation area projects will include parking lot and trail staging area improvements around the Orinda watershed; completion of the parking lot, visitor center and dock upgrades at the Lafayette recreation area; and improvements at the San Pablo recreation area including water and sewer system upgrades, roadway improvements, replace sections of the boat rental docks, and improvements to the visitor center cafe.

In Fiscal Years 2014 through 2018, watershed projects include habitat restoration under the East Bay Habitat Conservation Plan; replace or upgrade the sewer lift station infrastructure at the Lafayette Recreation Area; replace as needed old fire pumps used for fire prevention and suppression to maintain a fleet of fire ready engines; identify and remove hazardous trees; replace sections of the Mokelumne watershed boundary fencing; infrastructure upgrades at the Orinda Watershed Headquarters; and Division of Safety of Dams required upgrades at Upper San Leandro and San Pablo Reservoir dams.

**Water Quality.** Water quality projects further the District's objectives to operate and maintain facilities to surpass federal and state drinking water regulations, and to make system improvements that meet or surpass regulatory requirements. The majority of work under this strategy focuses on making improvements to reservoirs and water treatment plants to improve water quality.

*The Water Treatment Upgrade Program* which addresses the need to rehabilitate and modernize the District's water treatment plants ("WTPs"). In Fiscal Years 2014 through 2018, work is planned at five WTPs. At Lafayette WTP work includes a new clearwell and filter backwash system, electrical upgrades, backwash pump improvements, filters underdrain repair, air scour and particle counter installation and design of a new control system. At Orinda WTP work includes construction of a new filter backwash tank, installation of chemical feed lines, control system upgrade, retrofit of the sodium hypochlorite room, emergency power supply improvements, installation of a permanent emergency generator at the Briones Remote Disinfection Facility, design of an air scour system, and storm drain and ventilation system improvements. At Sobrante WTP work includes electrical upgrades, filter underdrain repair, control system upgrade, drainage improvements, sludge pipeline replacement, design of a new flocculation system, installation of a potassium permanganate feed system, and automation of the hydrogen peroxide feed system. At Upper San Leandro WTP work includes sludge detention tanks recoating, flocculation system repair, automation of the hydrogen peroxide feed system, property improvements at the West Portal Raw Water Valve, and clearwell roof replacement. At Walnut Creek WTP work includes a project to thicken the sludge by installing a hydrocyclone to save energy and reduce sludge trucking.

**Water Supply.** Water supply projects further the District's objectives to ensure a reliable, high quality water supply for the future; to preserve current entitlements and obtain additional supplemental supplies; and through conservation and recycling reduce the demand for potable water. Major projects that have recently been completed are the Freeport Regional Water Project (which will provide the District with a supplemental dry-year water supply) and the Richmond Advanced Recycled Expansion Water Project. The immediate focus of water supply projects will now be on maintaining the raw water aqueducts. The programs include:

*The Aqueduct Program* which consists of evaluating and improving the raw water aqueduct system to reliably meet operational requirements. Ongoing work to remove lead-based paint and recoat portions of the ten miles of above-ground pipe of the Mokelumne Aqueducts is projected to be completed in Fiscal Year 2018. The program also includes replacing the deteriorated cement lining in the Mokelumne Aqueducts that protects the steel pipeline from corrosion. In Fiscal Years 2014 through 2016, work includes an assessment of relining technologies and interior inspections of the elevated Delta reaches of the No. 2 and No. 3 Aqueducts. Relining the aqueducts is planned to begin in Fiscal Year 2017.

In Fiscal Years 2012 and 2013, 20 isolation bearings on Aqueduct No 3 were inspected and repaired, and 3 temperature anchors were rebuilt on Aqueduct No. 1. In Fiscal Years 2014 through 2015, a study and design for the remaining 220 isolation bearings and rebuilding 4 temperature anchors will be completed. In Fiscal Years 2016 through 2017, the isolation bearings will be repaired and the temperature anchors will start to be rebuilt at a rate of 2 per year.

Much of the work on the Aqueduct Interconnections Project has been done, and the project is expected to be completed in Fiscal Year 2015. Work on the project includes inspection and emergency planning for Lafayette Aqueduct No. 2; inspection of the Upper San Leandro tunnel; annual settlement surveys of Aqueduct No. 1; and electrical and geotechnical studies for work at the Moraga Raw Water Pumping Plant. In Fiscal Years 2016 through 2018, work will include stocking repair material for Lafayette No. 2 Aqueduct; completion of electrical upgrades at Briones Center; final design of a river bypass turnout for Aqueduct No. 3; preliminary studies for a cross-Delta tunnel; and inspection of the Pardee tunnel.

Beyond Fiscal Year 2018, planned work includes completing the temperature anchor retrofit, installing river bypass turnouts on Aqueduct No. 3, and installing a liner in Lafayette No. 1 Aqueduct.

*The Water Recycling Program.* In 2009, the Board of Directors adopted the revised Water Supply Management Program (“WSMP”) to help guide decisions for providing a reliable, high quality water supply and meet growing demand through the year 2040. The WSMP 2040 includes recycled water as a key element to offset demand for potable water. The Water Recycling Program includes projects to provide a total of 11 MGD of recycled water by the year 2040.

*The East Bayshore Project* began recycled water service in Fiscal Year 2008 and will ultimately supply up to 2.5 MGD of recycled water to portions of Alameda, Albany, Berkeley, Emeryville and Oakland for irrigation, industrial, commercial and environmental uses. The remainder of the Phase 1A project (I-80 pipeline, distribution pipelines in Berkeley and Albany, and customer retrofits) could be completed by Fiscal Year 2016 pending funding availability, and will provide roughly 0.5 MGD of recycled water. The Phase 1A project received a \$4.4 million grant and a \$20.1 million low-interest loan funding from the State Water Resources Control Board in Fiscal Year 2009. Phase 1B of the project will provide an estimated 1.2 MGD of recycled water to Alameda and will be implemented in Fiscal Years 2015 through 2019, pending funding assistance.

*The San Ramon Valley Recycled Water Program* is a joint program with the Dublin San Ramon Services District to ultimately supply 2.4 MGD of recycled water to portions of San Ramon, Danville, Blackhawk and surrounding areas. Portions of the project to extend recycled water service to northern San Ramon/Bishop Ranch, and work in Danville and Blackhawk began in FY11 with federal funding. Efforts in Fiscal Years 2014 through 2018 will focus on completing customer retrofits, completing a portion of the Phase 2 pipelines in Bishop Ranch, and planning and determining a site for Pump Station 3. Funds for future phases are pending federal funding availability. Expansion of the tertiary treatment facilities is anticipated by Fiscal Year 2019.

Planning studies are being conducted with the Diablo Country Club and other golf courses to evaluate potential satellite treatment plants. Diablo Country Club has completed a feasibility study and is interested in helping to fund a pilot plant to be implemented by Fiscal Year 2018. Additional satellite treatment projects at other sites will be pursued.

Long-term water recycling projects that may take place in Fiscal Year 2018 and beyond include expansion of the San Leandro project to expand recycled water delivery to large street medians near the Oakland Airport by an additional 0.5 MGD, and the ConocoPhillips High-Purity Recycled Water Project that could provide 3.7 MGD of recycled water for boiler and cooling tower applications.

*The Water Supply Management Program.* Based on the WSMP 2040 preferred portfolio, the District will pursue supplemental water supply efforts that include Mokelumne Regional Projects, Sacramento Basin Ground Water Banking, Regional Desalination, Water Transfers, and partnering on the Expand Los Vaqueros Reservoir.

A water transfers implementation plan has been completed which lays the groundwork for future transfers by establishing criteria and recommending water transfers to pursue. Work has begun with other Bay Area water agencies to plan and review the feasibility of a potential Regional Desalination Project. In Fiscal Years 2014 through 2018, the District will work to secure agreements for long-term water transfers with the goal of completing one or more negotiations with the most promising sellers. In addition, the District will begin negotiations with the Contra Costa Water District for a share of the storage in their expanded Los Vaqueros Reservoir, and will continue preliminary planning efforts to develop other supplemental supply elements of the WSMP 2040.

***Non-Program Specific.*** Non-program specific projects further the District's objective to maintain a strong financial position to meet short and long-term needs by making funds available for unanticipated needs, and for projects that are seeking grants to pay for a majority of the project's costs.

*The Contingency Project* provides funding for unanticipated needs which arises before the next budget preparation cycle, such as replacement or repairs to facilities and equipment as a result of failures or safety deficiencies, as well as funding for new projects or acceleration of planned projects requiring funding before the next budget cycle. Funds will also be set aside for projects where grants are being sought. Most grants require the District to fund the project and then apply for reimbursement of allowable costs. Funding for possible grant supported projects include: East Bayshore Recycled Water Project; Delta interties and design of pipeline river crossings; and extending recycled water service to northern San Ramon/Bishop Ranch. Funds are also being set aside for moving forward with the replacement of computer systems once comprehensive evaluations have been completed.



Table 4 below summarizes the District's Fiscal Years 2014 through 2018 projected CIP cash expenditures by major category.

**Table 4**  
**Fiscal Years 2014-2018**  
**Capital Improvement Program**  
**Forecast – Cash Expenditures**  
**(Thousands)**

	<i>Fiscal Year ended June 30</i>					
	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total</i>
Extensions/Improvements	\$ 17,977	\$ 19,427	\$ 32,366	\$ 48,283	\$ 48,419	\$ 166,473
Facilities	12,142	9,102	6,158	7,229	6,359	40,990
Maintaining Infrastructure	81,767	87,297	101,125	98,190	83,395	451,774
Regulatory Compliance	6,711	17,043	10,640	10,150	16,553	61,097
Resource Management & Seismic	2,942	4,659	1,994	1,347	708	11,650
Water Quality	8,518	6,117	2,180	3,624	6,951	27,390
Water Supply	21,008	17,266	21,029	20,895	21,670	101,868
Admin. & General Expense <sup>(1)</sup>	<u>35,000</u>	<u>35,000</u>	<u>35,000</u>	<u>35,000</u>	<u>35,000</u>	<u>175,000</u>
Total	\$186,064	\$195,910	\$210,492	\$224,718	\$219,056	\$1,036,241

<sup>(1)</sup> Includes overhead, construction management and other administrative costs which are allocated to individual projects upon their completion.

Source: The District.

The cost estimates are adjusted periodically and represent preliminary estimates at the time of development of the capital plan for planning purposes only. The District's estimated funding sources for its CIP for Fiscal Years 2014 through 2018 is set forth below:

**Table 5**  
**Fiscal Years 2014-2018**  
**Sources of Funds for Capital**  
**Improvement Program Expenditures**

<i>Funding Sources</i>	<i>(Millions)</i>
Commercial Paper Proceeds	\$ 0
Bond Proceeds	440.5
Advances, Contributions and Grants	94.3
Revenues	<u>501.5</u>
Total	<u>\$1,036.3</u>

Source: The District.

## WATER SYSTEM FINANCES

### Basis of Accounting

The District reports operations on a Fiscal Year basis (currently July 1 through June 30). Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the costs of providing goods and services to the general public are financed or recovered primarily through user charges. Enterprise funds are accounted for using the accrual basis of accounting. The accounting policies of the District conform to generally accepted

accounting principles for municipal water utilities. The accounts are maintained substantially in accordance with the Uniform System of Accounts for Water Utilities prescribed for investor-owned and major municipally-owned water utilities.

### **Sources of Funds**

The Water System's principal source of revenues is water sales. In Fiscal Year 2013, approximately 77% of the Water System's \$438.2 million in total sources of funds was provided from water sales. Sources of funds other than water sales include taxes, income from the sale of energy from the District's hydroelectric power plants, investment income, and grants and contributions in aid of construction. The District's share of the county 1% property tax levy contributed approximately 6%, or \$26.4 million of the total sources of funds. In Fiscal Year 2013, the Water System's hydroelectric power plants produced power revenues of approximately \$3.6 million and the District's income on investments was approximately \$3.7 million. Contributions in aid of construction totaled \$55.7 million, including \$20.5 million of seismic surcharge collections, \$22.7 million of system capacity charges collected during such year (which excludes accumulated system capacity charge funds available to offset debt service costs for such Fiscal Year), \$4.5 million of contributions for facility relocations, main extensions and service installations, and \$8.0 million of grants and other reimbursements.

The following Table 6 sets forth the District's Water System sources of funds for the five most recent Fiscal Years ended June 30, 2013. The sources of funds in the table below include certain funds which do not constitute Subordinated Water Revenues for purposes of the Indenture. Subordinated Water Revenues include all charges received for, and all other income and receipts derived by the District from, the operation of the Water System or arising from the Water System, which includes, without limitation, the District's water rates, system capacity charge and seismic surcharge, as well as investment income. Property taxes are applied to reduce Operation and Maintenance Costs and are not pledged to the repayment of the Water System Revenue Bonds. See "– Tax Revenues." Contributions received for facility relocations, main extensions and service installations, and grants and other reimbursements, which are restricted to use for the specified purposes are not included in Subordinated Water Revenues for purposes of the Indenture. Only Subordinated Water Revenues are pledged to the payment of the Water System Revenue Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Pledge of Subordinated Water Revenues." Comparative summaries of the Water System's historical operating results and debt service coverage ratio for each of the last five Fiscal Years appear in Table 18.

**Table 6**  
**WATER SYSTEM SOURCES OF FUNDS**  
**Five Fiscal Years Ended June 30, 2013**  
**(Millions)**

	<i>Fiscal Year Ending June 30</i>				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Operating Revenue and Other Income:					
Water sales	\$287.3	\$271.0	\$283.6	\$306.2	\$336.0
Power sales	4.3	6.2	8.1	4.6	3.6
Interest <sup>(1)</sup>	24.5	9.6	5.7	5.5	3.7
Taxes	23.4	22.9	22.2	23.4	26.4
Other <sup>(2)</sup>	<u>6.1</u>	<u>7.7</u>	<u>13.4<sup>(6)</sup></u>	<u>16.2<sup>(6)</sup></u>	<u>12.8<sup>(6)</sup></u>
Total Operating Revenue and Other Income	<u>\$345.6</u>	<u>\$317.4</u>	<u>\$333.0</u>	<u>\$355.9</u>	<u>\$382.5</u>
Capital Contributions:					
Seismic Surcharge	\$ 15.5	\$ 16.7	\$ 18.1	\$ 19.2	\$ 20.5
System Capacity Charge <sup>(3)</sup>	10.9	12.5	17.6	16.1	22.7
Earned contributions on construction <sup>(4)</sup>	10.8	6.0	6.5	5.8	4.5
Grants and reimbursements	<u>1.2</u>	<u>4.7</u>	<u>3.6</u>	<u>4.1</u>	<u>8.0</u>
Total Contributions	<u>\$ 38.4</u>	<u>\$ 39.9</u>	<u>\$ 45.8</u>	<u>\$ 45.2</u>	<u>\$ 55.7</u>
 Total	 <u>\$384.0</u>	 <u>\$357.3</u>	 <u>\$378.8</u>	 <u>\$401.1</u>	 <u>\$438.2</u>

<sup>(1)</sup> Includes interest earnings on Water System Fund, including earnings on proceeds of the District's Water System Revenue Bonds.

<sup>(2)</sup> Other Revenues include receipts from property sales, rental of District property, fees for use of District recreational facilities and other miscellaneous receipts. Excludes reimbursements and other receipts applied directly to operating expenses.

<sup>(3)</sup> System capacity charge collections presented in the table above include the "buy in" portion and the "future water supply" portion of SCC charges when collected. Does not include the "future water supply" portion of SCC charges applied from the Future Water Supply Fund to offset debt service costs. See " – System Capacity Charge" below.

<sup>(4)</sup> Includes contributions for facility relocations, main extensions and service installations.

<sup>(5)</sup> Includes approximately \$23.7 million of non-recurring litigation and insurance proceeds.

<sup>(6)</sup> In Fiscal Years 2011 through 2013, includes approximately \$8.2 million of interest subsidy payments in each year received by the District in connection with its Series 2010B Bonds which were Build America Bonds.

Source: The District.

## Water Sales Revenues

Water sales to residential accounts provide approximately 62% of the District's water sales revenues. Approximately 92% of the District's accounts are residential, but because residential consumption per account is lower than for other customer types, residential sales account for only 60% of consumption. The District's five largest customers are Chevron U.S.A. Inc. and its subsidiaries, Phillips 66 Company, the University of California, Golden Rain Foundation (Rossmoor retirement community) and the C&H Sugar Company. In Fiscal Year 2013, the five largest customers consumed approximately 9.6% of the District's water; Chevron U.S.A. Inc. and its subsidiaries alone consumed 4.2%.

The following Table 7 sets forth water sales revenues, consumption and number of connections by customer type.

**Table 7**  
**WATER SALES REVENUES, CONSUMPTION AND NUMBER**  
**OF CONNECTIONS BY CUSTOMER TYPE**  
**Fiscal Year Ended June 30, 2013**

<i>Type of Customer</i>	<i>Sales Revenues <sup>(1)</sup></i>	<i>Percent of Revenues</i>	<i>Consumption (MGD)</i>	<i>Percent of Consumption</i>	<i>Number of Connections</i>	<i>Percent of Connections</i>
Residential	208,500,630	62.0%	90.6	53.8%	345,169	89.0%
Commercial	85,701,930	25.5	53.9	32.0	37,788	10.0
Industrial	20,795,921	6.2	16.0	9.5	1,490	0.4
Other <sup>(2)</sup>	<u>21,067,035</u>	<u>.3</u>	<u>7.9</u>	<u>4.7</u>	<u>2,423</u>	<u>0.6</u>
Total	<u>336,065,516</u>	<u>100.0%</u>	<u>168.4</u>	<u>100.0%</u>	<u>386,870</u>	<u>100.0%</u>

<sup>(1)</sup> Excludes proceeds from the seismic surcharge which the District capitalizes in its audited financial statements in accordance with Generally Accepted Accounting Principles. Seismic surcharge revenues are Water Revenues for purposes of the Indenture. Does not include account establishment fees, recycled water fees and certain other miscellaneous charges.

<sup>(2)</sup> Includes public agencies, recycled water customers and late charges.

Source: The District.

### **Rates and Charges**

The District's rates and rate structure are established by its Board of Directors after a public hearing process, and are not subject to regulation by any other agency. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Proposition 218" for a discussion of the notice, hearing and protest procedures to which the District's proposed rate increases are subject.

From Fiscal Year 2009 through Fiscal Year 2015, residential rates have increased by an average of 7.5% per Fiscal Year. The District's most recent rate increase included the adoption on June 11, 2013 of a 9.75% and 9.50% system-wide rate increase for Fiscal Years 2014 and 2015, respectively. The average residential rate increases enacted by the District for the future, current, and five preceding Fiscal Years are as follows:

**Table 8**  
**WATER RATE INCREASES**

<i>Fiscal Year</i>	<i>Average Rate Increase (Residential)</i>
2009	5.10%
2010	8.70 <sup>(1)</sup>
2011	7.50
2012	6.00
2013	6.00
2014	9.75
2015	9.50

<sup>(1)</sup> Residential customers accounted for a higher portion of the 7.5% system-wide rate increase in Fiscal Year 2010 to reflect the results of a cost allocation study conducted by the District in 2009. The average rate increase for commercial and industrial users for Fiscal Year 2010 were 5.2% and 4.9%, respectively.

Source: The District.

The District's water rate structure is based on a cost of service methodology by customer class.

The rate structure consists of two elements: a monthly service charge and a commodity charge for water delivered. With the exception of single family residential customers, commodity charges for water delivered are based on a uniform volume rate. Single family residential customers are billed on a three-tier inclining block rate structure.

Table 9 shows the rate schedule effective July 1, 2013 for Fiscal Year 2014, which represents an average increase of 9.75% for residential customers from Fiscal Year 2013 rates. The monthly water bill for a typical residential account consuming 1,000 cubic feet ([10] Ccf or 7,480 gallons) per month is \$44.41. See also Table 19 under "– Projected Operating Results" for a description of projected future rate increases.

**Table 9**  
**WATER SYSTEM RATES AND CHARGES<sup>(1)</sup>**  
**Effective July 1, 2013**

**Service Charge**

<i>Meter Size</i>	<i>Per Month</i>
5/8-inch and ¾-inch	\$13.42
1-inch	21.58
1 ½-inch	34.79
2-inch	50.83
Over 2-inch	Various

**Charge for Water Delivered**

<i>Rate Class</i>	<i>Per Hundred Cubic Feet (Ccf)</i>
Basic Rate – Single Family <sup>(2)</sup>	2.66
Basic Rate – Multi Family	3.36
Basic Rate – Other	3.48
Elevation Surcharges <sup>(3)</sup> – Pressure Zones 2 through 5	0.50
Pressure Zones 6 and higher	1.02

<sup>(1)</sup> A seismic surcharge is added to each customer's water bill. The surcharge consists of a meter charge component that varies by meter size and a volume surcharge. See "– Seismic Surcharge" below.

<sup>(2)</sup> Applies to first 172 gallons per day (7 Ccf) for single family residential customers. Additional consumption by residential customers is billed at \$3.29 per Ccf for consumption between 173 and 393 gallons per day (16 Ccf) and \$4.04 for all water used in excess of 393 gallons per day. For a household using 10 Ccf, the water usage charge for the first 7 Ccf at the first tier rate of \$2.66 per Ccf would be \$18.62 and the water usage charge for the additional 3 Ccf at the second tier rate of \$3.29 per Ccf would be \$9.87, for a total charge for water delivered of \$28.49; the monthly service charge would be \$13.42 and the seismic surcharge would include a \$1.25 monthly meter charge component and a \$1.25 water service availability component, resulting in a total monthly bill of \$44.41.

<sup>(3)</sup> The water elevation surcharge provides for the increased power and facility costs needed to pump water to locations (zones) 200 or more feet above sea level.

Source: The District.

**Seismic Surcharge**

The District's seismic surcharge is a rate surcharge designed to recover costs of the SIP. See "THE WATER SYSTEM – Seismic Matters." The basis for the charges is to: (i) provide fire flow availability for real property after a seismic event; and (ii) provide continued water service to residential,

commercial and industrial customers after a seismic event. The surcharge is collected as part of the water bill and was established for the period of May 1, 1996 through February 28, 2025. The surcharge is sized to ensure that sufficient funds are available to fund construction of recommended seismic improvements with allowance for inflation in construction costs and growth in customer base.

For a typical residential customer in Fiscal Year 2014, the seismic surcharge consists of a \$1.25/month meter charge for a typical 5/8" meter plus a charge of \$1.25/month per single-family residential customer for water service availability. Outside of single-family and multi-family residential customers, the water service availability component is based on the customer's consumption and is charged at a rate of \$0.14 per 748 gallon billing unit due to the wide variation in water use by non-residential customers. The District's Board annually reviews these charges and adjusts them as necessary to ensure the seismic surcharge collected will meet all obligations of the program.

### Comparison of Annual Water Service Charges

Table 10 shows comparative average annual water service charges by various Bay Area water agencies for a typical residential account with a 5/8-inch meter using 1,000 cubic feet of water (7,480 gallons) per month. Charges are for the minimum cost zone or area served by the agency as of June 2013.

**Table 10**  
**COMPARATIVE ANNUAL RESIDENTIAL WATER CHARGES**  
**For 10 Ccf/Month and 5/8" Meter**  
**As of June 2013**

<i><b>Water Supplier</b></i>	<i><b>Average Annual Household Water Service Charge</b></i>
City of Palo Alto	\$831
City and County of San Francisco	714
City of Hayward	630
Contra Costa Water District	603
Marin Municipal Water District	578
North Marin Water District	577
City of San Jose	562
City of Los Altos	561
Alameda County Water District	557
Dublin San Ramon Services District	556
<b>East Bay Municipal Utility District<sup>(1)</sup></b>	<b>533</b>
City of Livermore	505
City of Pleasanton	340

<sup>(1)</sup> Based on District's Fiscal Year 2014 rates effective July 1, 2013 through June 30, 2014. Includes seismic surcharge.  
Source: The District.

### Billing and Collection Procedures

All water service customers are billed directly by the District bimonthly, with the exception of approximately 1,000 accounts consisting of the largest users in the District, which are billed monthly. Billing is staggered throughout the billing cycle by geographic location within the District. Service may be discontinued if an overdue account is not paid after appropriate customer notification. The District considers its rates of payment delinquency, service discontinuance for non-payment, and write-offs for uncollectible accounts to be low by water industry standards for urban areas. The write-offs for uncollectible accounts by Fiscal Year have been:

**Table 11**  
**WATER SALES UNCOLLECTIBLE REVENUES**  
**Last Five Fiscal Years**

<i>Fiscal Year Ended June 30</i>	<i>Uncollectible Revenues</i>	<i>Percent of Gross Billings</i>
2009	\$1,876,591	0.65%
2010	1,745,358	0.64
2011	1,588,746	0.56
2012	1,377,558	0.42
2013		

Source: The District.

### **System Capacity Charge**

The District's system capacity charge ("SCC") is designed to recover from new accounts a portion of the costs of existing facilities, as well as the costs of additional facilities (primarily water supply projects) to be constructed in the future to provide water service to new customers based on land use plans. Under the existing SCC policy, funds collected from SCCs are applied toward the costs of the District's capital program for such facilities, and in the case of future water supply projects, to reimburse the Water System for the payment of debt service on Water System Revenue Bonds issued to finance such facilities.

The SCC includes both a "buy-in" portion and a "future water supply" portion. The "buy-in" portion includes the costs of existing District storage, treatment and distribution facilities, as well as existing water supply facilities (including reservoirs and aqueducts) and administration facilities. As the "buy-in" portion of the SCC, new accounts are charged for their share of the costs of these existing District facilities (escalated to current dollars). The "future water supply" portion of SCC receipts is collected to fund the costs of additional facilities required to service new accounts. The "future water supply" portion of SCC receipts when collected are deposited in the Future Water Supply Fund, a segregated account of the Revenue Fund, to be applied in future years to offset debt service costs attributable to SCC-related capital facilities. In Fiscal Year 2013, SCCs collected totaled \$22.673 million (the "buy in" portion of \$16.187 million and the "future water supply portion" of \$6.486 million).

For purposes of the Indenture, the District has included in the SCC Revenues as shown in Table 18 for Fiscal Years 2009 through 2013, the "buy in" portion of SCC charges when collected and the debt service repayment component of the "future water supply" portion of SCC charges when applied from the Future Water Supply Fund to offset debt service costs attributable to SCC-related capital facilities. For Fiscal Year 2013, the District recognized SCC Revenues of \$22.673 million.

For financial statement purposes, however, the District has elected to account for both the "buy in" portion of SCC charges when collected and the debt service repayment component of the SCC when applied as part of capital contributions. As a result, no SCC amounts are reflected as operating revenues in the District's financial statements.

Due to the significant capital expenditures by the District on the FRWP and other capital improvements and the associated application of SCCs to the reimbursement of debt service and other costs related thereto, the application of SCC funds to offset debt service increased significantly beginning in Fiscal Year 2010.

## **Supplemental Supply Charge**

As described under “Water Supply – *United States Bureau of Reclamation Central Valley Project Contract; Freeport Regional Water Project*,” in connection with the FRWP, the District adopted a supplemental supply charge of 14% of total water flow charges which may be added to customers’ water bills during droughts when the Board declares a need to take deliveries of its CVP water under the Long-Term Renewal CVP Contract (which has not occurred since FRWP was completed in late 2011). The supplemental supply charge is designed to cover the costs of operating the FRWP and the costs of CVP water during dry year periods when the District takes deliveries of CVP water.

Prior to completion of the FRWP, during the 2008-09 drought, the District implemented special drought rate increases that included a 10% rate increase on water flow charges, a new surcharge for each account’s water use allocation equal to \$2.00 per Ccf of all water used in excess of the account’s water use allocation, and a new non-potable water use incentive rate. These rates were designed to encourage customers to reduce water use, to compensate for lost revenue due to reduced water use, and to fund drought management programs in the District. The drought surcharge was rescinded by the District as of July 1, 2009 as drought conditions subsided.

## **Property Tax Revenues**

The District’s share of the county 1% *ad valorem* property tax levy has provided approximately 5% to 6% of total operating revenues of the Water System in each of the past five Fiscal Years for the District. The District’s share of the county 1% *ad valorem* property tax is not pledged as a source of payment for the Water System Revenue Bonds, although such amounts are applied to pay Water Operation and Maintenance Costs in accordance with the Indenture.

Table 12 shows a five-year record of assessed valuations, secured roll levies and delinquencies for the taxable property included within the District. Assessed valuations are expressed by county assessors as “full cash value” as defined by Article XIII A of the State Constitution. The tax levy shown is the District’s allocated share of the maximum *ad valorem* tax levy by each county of 1% of full cash value. Pursuant to California Revenue and Taxation Code Sections 4701 et seq., Contra Costa County and Alameda County each maintain a reserve fund for the purpose of guaranteeing 100% of the secured levies of the electing governmental jurisdictions for which such county collects taxes (commonly referred to as “The Teeter Plan”). The District has elected to participate in Contra Costa County’s Teeter Plan program but has elected not to participate in Alameda County’s Teeter Plan program. Consequently, the District is exposed to the effect of delinquencies in collections only for property located in Alameda County.

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**Table 12**  
**TAXABLE PROPERTY WITHIN THE WATER SYSTEM**  
**Assessed Valuation and Tax Collection Record**

	<i>Fiscal Year Ending June 30</i>				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Assessed Valuation for Taxation Purposes <sup>(1)</sup>					
Alameda County	\$ 93,523,188,294	\$ 91,896,215,219	\$ 92,498,938,097	\$ 94,461,089,218	\$ 98,956,612,301
Contra Costa County	<u>82,362,321,780</u>	<u>79,539,647,643</u>	<u>79,611,319,471</u>	<u>81,232,708,213</u>	<u>83,100,933,502</u>
Total	\$175,885,510,074	\$171,435,862,862	\$172,110,257,568	\$175,693,797,431	\$182,057,545,803
District Secured Roll Tax Receipts <sup>(2)</sup>					
Alameda County	\$11,862,545	\$11,820,322	\$11,404,014	\$12,463,643	
Contra Costa County	<u>11,554,756</u>	<u>11,068,795</u>	<u>10,831,553</u>	<u>10,921,960</u>	
Total	\$23,417,301	\$22,889,117	\$22,235,567	\$23,385,603	
Delinquent June 30 <sup>(3)</sup>					
Amount	\$ 671,633	\$ 463,326	\$ 377,242	\$ 353,191	
Percent	2.87%	2.02%	1.70%	1.51%	

<sup>(1)</sup> Net of all exemptions except homeowner's exemptions, the taxes on which are paid by the State. All valuations are stated on a 100% of full cash value basis. Assessed valuations shown include redevelopment project area incremental valuations.

<sup>(2)</sup> Net basis excluding all exemptions. Levies reflect the tax reductions effected by the adoption of Article XIII A of the State Constitution in 1978, the "Jarvis-Gann Initiative." For Alameda County, receipts include District's share of prior years' delinquencies when collected.

<sup>(3)</sup> Amounts apply to Alameda County only, since Contra Costa County guarantees 100% payment of the District's secured roll levy as described above. The delinquency percentages are calculated based on the two counties' secured roll levies.

Sources: Auditor-Controller's Office, Alameda and Contra Costa Counties, as compiled by the District.

From time to time legislation has been considered as part of the State budget to shift the share of the 1% *ad valorem* property tax collected by counties from special districts to school districts or other governmental entities. The State budgets for Fiscal Years 2003-04 and 2004-05 reallocated portions of special districts' shares of the countywide 1% *ad valorem* tax, shifting a portion of the property tax revenues collected by the counties from special districts to school districts. The District has historically, since the 1970's, applied its share of property tax revenues to fund the maintenance of fire protection capacity. As a result of legislation providing for an exemption from the property tax shift for funding fire protection services and facilities, the District did not lose any property tax revenues allocable to the Water System in Fiscal Years 2004 and 2005. Additionally, on November 2, 2004 voters within the State approved Proposition 1A, which prevents the State from reducing local government's share of the 1% *ad valorem* property tax below current levels, except in the case of fiscal emergency. Proposition 1A provides that in the case of fiscal emergency, the State could borrow up to 8% of local property tax revenues to be repaid within three years.

The 2009-10 State budget provided for the borrowing of 8% of property taxes from local jurisdictions, including the District, under Proposition 1A. This borrowing resulted in a reduction of approximately \$1.85 million from property tax revenues allocable to the Water System. As noted above, under Proposition 1A, the State was required to repay the property taxes with interest within three years. State legislation allowed the District to sell its right to receive this repayment to a joint powers authority, which sold bonds payable from the receivables it purchased from participating local jurisdictions. The District participated in this program in order to replace the lost property taxes at no cost to the District, and treated amounts received under the program as it would have treated the State borrowed property tax revenues replaced thereby.

There can be no assurances that future legislation or voter initiatives will not reduce or eliminate the District's share of the 1% county-wide ad valorem property tax revenues. See also "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

The tax rolls for property located within the District Water System service area for the Fiscal Year ended June 30, 2013, aggregated a total assessed valuation of approximately \$182.1 billion, including redevelopment project areas incremental valuations of which the taxes payable were due to the redevelopment agency. In 2011, the State of California enacted legislation commonly referred to as "AB1X 26," which required the dissolution of California redevelopment agencies and the dissolution and winding up of the operations of those agencies, which dissolution occurred on February 1, 2012. AB1X 26 provides a framework for the management of the remaining obligations of the dissolved redevelopment agencies by their respective successor agencies and oversight boards to oversee those successor agencies. Pursuant to AB1X 26, tax increment will continue to flow to the payment of "enforceable obligations" (such as tax allocation bonds) of the dissolved redevelopment agencies.

### **Power Sales Revenues**

The District operates hydropower plants at Pardee and Camanche Reservoirs. These plants generate 185 million kilowatt hours of electricity in normal rainfall years. The power is sold to the Sacramento Municipal Utility District under a 10-year power purchase agreement which expires in July 2015. This power purchase agreement includes the sale of hydroelectric power, available capacity during summer months, and environmental attributes (*i.e.*, credits, benefits, offsets, reductions or allowances resulting from the generation of renewable energy). Annual revenues to the District from power sales have ranged from approximately \$3.6 million to \$8.1 million over the last five fiscal years. Revenues from power sales vary depending on power prices and the volume of water available for release from the reservoirs. The District currently budgets \$5.7 million annually in hydropower revenue.

### **Developer Contributions**

Cash contributions for main extension and other facilities to serve new customers depend on the level of development. In addition to collection of its SCC (as described under "System Capacity Charge" above), District policy requires new applicants for service to pay direct charges for mains, hydrants, and services necessary to serve them. In Fiscal Year 2013, developer contributions collected for facility relocation charges, mains and hydrants and service installations totaled \$4.5 million. These developer contributions are treated as capital contributions and are not included in Subordinated Water Revenues for purposes of the Indenture.

### **Grants**

Grants are received for specific projects. In Fiscal Year 2013, \$7.992 million was collected. The District also received \$54,944 in federal and State Disaster Relief funds in Fiscal Year 2013 primarily to reimburse the District for damages resulting from a levee break in the Sacramento-San Joaquin Delta that occurred in 2006 causing damage to the District's Mokelumne Aqueducts. An aggregate amount of \$2.9 million in grants and reimbursements is budgeted for Fiscal Years 2014 through 2018. Grants and reimbursements are treated as capital contributions and are not included in Subordinated Water Revenues for purposes of the Indenture.

## **Operation and Maintenance Costs**

The primary component of the District's Operation and Maintenance Costs is labor costs, including wages, salaries and benefits. Operation and Maintenance Costs also include materials, supplies and services such as costs of chemicals for water treatment and electrical power, and other general and administrative expenses.

## **Outstanding Debt**

Table 13 shows the District's Water System debt outstanding as of June 30, 2013. By Resolution No. 33606-07 adopted June 12, 2007, the Board declared its intention to issue up to \$1,100,000,000 of Water System revenue bonds, of which \$602,330,000 of such authorized amount remained unissued as of July 1, 2013. The District may from time to time in the future adopt other resolutions authorizing the issuance of additional Water System Revenue Bonds and Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. See "SECURITY FOR THE SERIES \_\_\_\_ BONDS – Issuance of Additional Water System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations."

Low-interest loans were made by the SWRCB and the CDWR to the District to finance certain water reclamation and reuse facilities within the District to conserve fresh water supplies. See "SECURITY FOR THE SERIES \_\_\_\_ BONDS – Outstanding Water System Revenue Obligations – *State Loans*."

Tax-exempt Extendable Municipal Commercial Paper Notes (Water Series) ("Water System CP Notes") are issued by the District from time to time pursuant to Resolution No. 33705-09, which authorizes, as provided in the Municipal Utility District Act, a maximum outstanding principal amount of notes not exceeding the lesser of (1) the annual average of the District's total revenue for the three preceding years or (2) 25% of the District's total outstanding bonds issued pursuant to Chapters 6, 7 and 8 of the Municipal Utility District Act. As of May 31, 2013, the District determined the maximum authorized principal amount of Extendable Commercial Paper Notes (Water Series) and Extendable Commercial Paper Notes (Wastewater Series) pursuant to the above limit to be an amount not to exceed \$475,000,000. As of June 30, 2013, \$372,900,000 principal amount of Extendable Commercial Paper Notes (Water Series) were outstanding. The Extendable Commercial Paper Notes (Water Series) are payable from and secured by a pledge of Water Revenues on a basis subordinate to the Water System Revenue Bonds.

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**Table 13**  
**OUTSTANDING WATER SYSTEM DEBT**  
**As of June 30, 2013**

<i>Issue</i>	<i>Date of Issue</i>	<i>Last Maturity</i>	<i>Amount Issued</i>	<i>Outstanding June 30, 2013</i>
<b>Water System Revenue Bonds</b>				
Revenue Bonds, Series 2005A	6/02/05	6/01/35	\$ 300,000,000	\$ 228,250,000
Revenue Bonds, Series 2007A	5/23/07	6/01/37	450,000,000	330,000,000
Revenue Refunding Bonds, Series 2007B	5/23/07	6/01/19	54,790,000	35,700,000
Revenue Refunding Bonds, Series 2008A	3/20/08	6/01/38	322,525,000	200,550,000
Revenue Refunding Bonds, Series 2008B-3	4/24/08	6/01/26	160,000,000	15,100,000
Revenue Refunding Bonds, Series 2009A	3/12/09	6/01/26	331,155,000	82,075,000
Revenue Refunding Bonds, Series 2010A	2/03/10	6/01/31	192,830,000	190,570,000
Revenue Bonds, Series 2010B (Build America Bonds)	2/23/10	6/01/40	400,000,000	400,000,000
Revenue Refunding Bonds, Series 2011A	12/29/11	6/01/25	159,210,000	148,170,000
Revenue Refunding Bonds, Series 2012A	10/10/12	6/01/37	191,750,000	191,750,000
Revenue Refunding Bonds, Series 2012B	11/13/12	6/01/26	358,620,000	339,995,000
Revenue Refunding Bonds, Series 2013A	03/05/13	6/01/21	<u>48,670,000</u>	<u>48,670,000</u>
Total Water System Revenue Bonds			\$2,969,550,000	\$2,210,830,000
<b>Parity Debt:</b>				
Safe Drinking Water State Revolving Fund Loan (Upper San Leandro Reservoir)	1/01/03	1/01/23	2,188,000	1,283,709
State Water Resources Control Board Loan (East Bayshore Recycled Water Project)	5/22/08	4/01/28	<u>20,100,000</u>	<u>15,719,008</u>
Total Parity State Loans			\$ 22,288,000	\$17,002,717
<b>Subordinate Debt:</b>				
Extendable Municipal Commercial Paper Notes (Water Series) <sup>(1)</sup>	Various	Various	<u>312,900,000<sup>(1)</sup></u>	<u>372,900,000</u>
Total Debt			<u>\$3,304,738,000</u>	<u>\$2,600,732,717</u>

<sup>(1)</sup> Extendable Commercial Paper Notes (Water Series) and Extendable Commercial Paper Notes (Wastewater Series) may be issued in an amount up to the statutory limit described above.

Source: The District.

### Variable Rate and Swap Obligations

As of June 30, 2013, of the District's \$2,210,830,000 aggregate principal amount of outstanding Water System Revenue Bonds, \$445,895,000 principal amount are variable rate obligations which are subject to tender prior to maturity in accordance with their terms, including the \$82,075,000 principal amount of Water System Revenue Refunding Bonds, Series 2009A (the "Series 2009A Bonds") and \$148,170,000 principal amount of District's Water System Revenue Refunding Bonds, Series 2011A (the "Series 2011A Bonds") which bear interest in a SIFMA-Based Term Interest Rate Period (the "SIFMA Index Bonds"). The SIFMA Index Bonds bear interest at a rate that fluctuates based on the weekly SIFMA Municipal Swap Index published weekly by Municipal Market Data plus a spread and are subject to mandatory tender on specified mandatory tender dates to occur at the end of each rate period. If the purchase price of the Series 2009A Bonds is not paid from proceeds of a remarketing or other funds on or prior to a scheduled mandatory tender at the end of the applicable rate period, failure of the District to provide funds for the purchase of such Series 2009A Bonds will constitute an Event of Default under the Indenture. If the purchase price of the Series 2011A Bonds is not paid from proceeds of a remarketing or other funds on or prior to a scheduled mandatory tender at the end of the applicable rate period, failure of the District to provide such funds will not constitute an Event of Default under the Indenture; however, in the event sufficient remarketing proceeds are not available for the purchase of such Series 2011A Bonds upon such mandatory tender, such Series 2011A Bonds will go into a term-out period and will bear interest at an interest rate which is substantially higher than the current variable interest rate on the Series 2011A Bonds, and during such term-out period, the Series 2011A Bonds will be subject to special mandatory redemption over an approximately five-year period, which will result in an acceleration in the

repayment of the principal of the Series 2011A Bonds from the principal payments that would otherwise be due on such Series 2011A Bonds. See also “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Water System Revenue Bonds – *Outstanding Water System Revenue Bonds and Parity Debt.*”

The interest rates for the District’s \$215,650,000 principal amount of other outstanding variable rate Water System Revenue Bonds are reset on a weekly basis. Such variable rate demand obligations are supported by Standby Bond Purchase Agreements between the District and various liquidity providers. Table 14 sets forth a listing of the liquidity providers, the expiration date of each facility and the principal amount of outstanding bonds covered under each facility as of June 30, 2013.

**Table 14**  
**LIQUIDITY FACILITIES AND EXPIRATION DATES**

<i><b>Water System Revenue Bond Issue<sup>(1)</sup></b></i>	<i><b>Outstanding Principal Amount</b></i>	<i><b>Liquidity Provider</b></i>	<i><b>Facility Expiration</b></i>
Series 2008A-1	\$ 61,725,000	Wells Fargo Bank, National Association	July 3, 2014
Series 2008A-2	46,275,000	U.S. Bank National Association	July 1, 2015
Series 2008A-3	46,275,000	U.S. Bank National Association	July 1, 2015
Series 2008A-4	46,275,000	Bank of America, N.A.	January 10, 2014
Series 2008B-3	15,100,000	JPMorgan Chase Bank, N.A.	January 10, 2014
Total	\$215,650,000		

Source: The District.

In connection with the District’s \$445,895,000 principal amount of outstanding variable rate Water System Revenue Bonds, the District has entered into various interest rate swap agreements (collectively, the “Water Interest Rate Swap Agreements”). By virtue of these Water Interest Rate Swap Agreements, the related variable rate Water System Revenue Bonds are essentially treated by the District as fixed rate debt for the purpose of calculating debt service requirements, although the variable payments that the District receives from swap counterparties do not usually equal the payments that the District makes on associated variable rate debt. There is no guarantee that the floating rate payable to the District pursuant to each of the Water Interest Rate Swap Agreements will match the variable interest rate on the associated Water System Revenue Bonds to which the respective Water Interest Rate Swap Agreement relates at all times or at any time. Under certain circumstances, the Swap Providers may be obligated to make a payment to the District under their respective Water Interest Rate Swap Agreement that is less than the interest due on the associated Water System Revenue Bonds to which such Water Interest Rate Swap Agreement relates. In such event, the District would be obligated to pay such insufficiency from Subordinated Water Revenues.

As of June 30, 2013, the District had outstanding the following Water Interest Rate Swap Agreements relating to variable rate Water System Revenue Bonds with the following counterparties (collectively, the “Swap Providers”) in the aggregate notional amount of \$445,795,000.

**Table 15**  
**WATER INTEREST RATE SWAP AGREEMENTS**

<i>Related Water System Revenue Bond Issue</i>	<i>Outstanding Notional Amount</i>	<i>Swap Provider</i>	<i>District Pays</i>	<i>District Receives</i>	<i>Scheduled Maturity/ Termination Date</i>
Series 2011A Bonds	\$ 98,780,000	The Bank of New York Mellon	3.835%	65.0% of 30-day LIBOR	06/01/2025
Series 2011A Bonds	49,390,000	JPMorgan Chase Bank, N.A.	3.835	65.0% of 30-day LIBOR	06/01/2025
Series 2008A Bonds	30,850,000	Merrill Lynch & Co., Inc.	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	70,965,000	Bank of America, N.A.	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	27,770,000	The Bank of New York Mellon	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008A Bonds	70,965,000 <sup>1</sup>	JPMorgan Chase Bank, N.A.	3.115	62.3% of 30-day LIBOR	06/01/2038
Series 2008B-3 Bonds/ Series 2009A Bonds	61,050,000	Deutsche Bank AG	3.407	91.0% of USD- SIFMA Municipal Swap Index	06/01/2026
Series 2008B-3 Bonds/ Series 2009A Bonds	20,350,000	Merrill Lynch & Co., Inc.	3.407	91.0% of USD- SIFMA Municipal Swap Index	06/01/2026
Series 2008B-3 Bonds/ Series 2009A Bonds	15,675,000	Citibank, N.A., New York	3.407	91.0% of USD- SIFMA Municipal Swap Index	06/01/2026
	<u>\$445,795,000</u>				

Source: The District.

Under certain circumstances, the Water Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the respective Swap Providers. Pursuant to the Water Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Water System Revenue Bonds but prior to the District's Water System CP Notes.

Early termination of an interest rate swap agreement could occur due to a default by either party or the occurrence of a termination event. In the event of early termination of any of the Water Interest Rate Swap Agreements, there can be no assurance that (i) the District will receive any termination payment payable to the District by the respective Swap Providers, (ii) the District will at all times have sufficient available cash on hand to pay any termination payment payable by it to the respective Swap Providers, or (iii) the District will be able to obtain a replacement Water Interest Rate Swap Agreement with comparable terms. As of June 30, 2013, the District would have been required to pay to counterparties termination payments if its then outstanding Water Interest Rate Swap Agreements were terminated on that date. The District estimated its net exposure to its counterparties for all such termination payments at June 30, 2013 to be approximately \$74.8 million. As of June 30, 2013, the largest aggregate termination payment owed to a single counterparty was estimated by the District to be approximately \$18.7 million. The District does not presently anticipate early termination of any of its Water Interest Rate Swap Agreements due to default by either party or the occurrence of a termination event. The District routinely monitors its swap counterparties' creditworthiness and performance under the Water Interest Rate Swap Agreements and may from time to time replace existing swap counterparties and Water Interest Rate Swap Agreements with new replacement interest rate swap agreements if the District determines such action is warranted. Additional information regarding the terms of the Water Interest Rate Swap Agreements may also be found in [Note 6(F)] in APPENDIX B – "EAST BAY

MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS  
ENDED JUNE 30, 2013 AND 2012.”

Pursuant to the terms of certain of the Water Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District’s total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement. The applicable collateral posting threshold amounts specified in such Water Interest Rate Swap Agreements would be lower in the event certain ratings assigned to the Water System Revenue Bonds were to be revised downward or withdrawn. In the case of a ratings withdrawal or significant downward rating revision, such decline in the applicable threshold amounts could significantly increase the District’s collateral posting obligation thereunder. If the District’s ratings are revised upward, the amount of collateral required to be posted by the District under certain of the Water Interest Rate Swap Agreements could be reduced.

Under the terms of the Water Interest Rate Swap Agreements, the counterparties are required to release collateral to the District as market conditions become favorable to the District and may be required to post collateral for the benefit of the District to the extent that such counterparty’s total exposure for termination payments to the District exceeds the threshold amount specified in the applicable Water Interest Rate Swap Agreement. As of June 30, 2013, the District had \$0.00 in collateral posted in favor of the counterparties to the Water Interest Rate Swap Agreements. The highest amount of collateral the District has been required to post in connection with the Water Interest Rate Swap Agreements on any date was approximately \$24.70 million, as of November 30, 2011. The amount of collateral varies from time to time due primarily to interest rate movements and can change significantly over a short period of time. In the future, the District may be required to post additional collateral, or may be entitled to a reduction or return of the required collateral amount. Collateral deposited by the District is held by the counterparties or an agent therefor. A bankruptcy of any counterparty holding collateral posted by the District could adversely affect the return of the collateral to the District. Moreover, posting collateral limits the District’s liquidity. If collateral requirements increase significantly, the District’s liquidity may be adversely affected.

## Debt Service Requirements

Table 16 shows future payments on outstanding debt.

**Table 16**  
**WATER SYSTEM ESTIMATED DEBT SERVICE<sup>(1)</sup>**

<i>Fiscal Year Ending June 30</i>	<i>Series 2005A Through Series 2013A<sup>(2)</sup></i>	<i>State Parity Loans<sup>(3)</sup></i>	<i>Total Water System Revenue Bonds and Parity Debt</i>	<i>Water System CP Notes<sup>(4)</sup></i>	<i>Total Debt Service<sup>(5)</sup></i>
2014	\$ 124,667,336	\$ 1,400,108	\$ 126,067,444	\$ 7,458,000	\$ 133,525,444
2015	140,375,626	1,400,108	141,775,734	7,458,000	149,233,734
2016	152,721,295	1,400,108	154,121,403	7,458,000	161,579,403
2017	154,146,326	1,400,108	155,546,434	7,458,000	163,004,434
2018	157,925,859	1,400,108	159,325,967	7,458,000	166,783,967
2019	157,800,236	1,400,108	159,200,344	11,187,000	170,387,344
2020	157,665,123	1,400,108	159,065,231	11,187,000	170,252,231
2021	157,467,437	1,400,108	158,867,545	11,187,000	170,054,545
2022	157,252,046	1,400,108	158,652,154	11,187,000	169,839,154
2023	157,071,750	1,400,108	158,471,858	11,187,000	169,658,858
2024	157,359,670	1,400,108	158,759,778	11,187,000	169,946,778
2025	157,347,420	1,260,248	158,607,668	11,187,000	169,794,668
2026	157,349,511	1,260,248	158,609,759	11,187,000	169,796,759
2027	152,125,872	1,260,248	153,386,120	11,187,000	164,573,120
2028	152,112,651	1,260,248	153,372,899	11,187,000	164,559,899
2029	152,096,753	--	152,096,753	11,187,000	163,283,753
2030	153,341,093	--	153,341,093	11,187,000	164,528,093
2031	153,328,455	--	153,328,455	11,187,000	164,515,455
2032	153,310,356	--	153,310,356	11,187,000	164,497,356
2033	153,290,871	--	153,290,871	11,187,000	164,477,871
2034	153,278,211	--	153,278,211	11,187,000	164,465,211
2035	153,260,493	--	153,260,493	11,187,000	164,447,493
2036	153,240,458	--	153,240,458	11,187,000	164,427,458
2037	152,313,030	--	152,313,030	11,187,000	163,500,030
2038	150,895,280	--	150,895,280	11,187,000	162,082,280
2039	148,347,851	--	148,347,851	11,187,000	159,534,851
2040	37,542,920	--	37,542,920	11,187,000	48,729,920
Total <sup>(6)</sup>	<u>\$4,007,633,933</u>	<u>\$20,442,177</u>	<u>\$4,028,076,110</u>	<u>\$283,404,000</u>	<u>\$4,311,480,110</u>

<sup>(1)</sup> Debt service is calculated on a cash basis.

<sup>(2)</sup> Fiscal Year 2013 includes debt service on refunded Series 2008A Bonds, Series 2008B-3 Bonds and Series 2009A Bonds prior to the refunding of portions of such bonds in November 2012. Includes fees to liquidity providers. Assumes debt service on outstanding Series 2008A Bonds, Series 2008B-3 Bonds and Series 2011A Bonds has been fixed pursuant to interest rate swap agreements. Assumes debt service on hedged principal amount of Series 2009A Bonds has been fixed pursuant to interest rate swap agreements. See “– Variable Rate and Swap Obligations” above. Assumes 10-year average SIFMA Index plus 10 basis points on unhedged Series 2009A Bonds. Includes total interest before application of any cash subsidy received by the District from the United States Treasury relating to the Series 2010B Bonds (Build America Bonds) (“BABs Interest Subsidy Payments”).

<sup>(3)</sup> See “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Water System Revenue Obligations –State Loans.”

<sup>(4)</sup> Assumes \$372,900,000 principal amount outstanding at assumed interest rate of 2.00% in Fiscal Years 2014 through 2018 and 3.00% thereafter. Includes interest only (no principal amortization). While the commercial paper program is limited by statute to seven years, it is the District’s intention to reestablish the commercial paper program prior to the expiration of each seven-year period.

<sup>(5)</sup> May not add due to rounding..

Source: The District.



## **Financial Management Policies**

The District has detailed management policies that include guidelines for debt, capital planning, investments, derivatives, and formal reserves. It is the current policy of the District to seek to maintain a debt service coverage ratio of 1.6 times on its outstanding Water System Revenue Bonds and to fund approximately 35% of its capital program over each five-year planning period from revenues and sources other than debt. The debt policy also limits unhedged variable rate debt to 25% of the total debt portfolio. Derivatives use is governed by a comprehensive derivatives policy with guidelines for counterparties, termination, and risk exposure. The District budgets for a number of formal reserves, including: (i) a working capital reserve equal to three months of operation and maintenance expenses; (ii) a self-insurance reserve equal to 1.25 times the expected annual expenditure; (iii) a workers' compensation reserve of approximately \$3.2 million in Fiscal Year 2013; and (iv) a contingency/rate stabilization reserve of 20% of projected annual water volume sales revenues. The aggregate budgeted reserves level for Fiscal Year 2014 is approximately \$118.4 million, which amount the District currently maintains in accordance with its reserve policies. The current investment policy dictates investment criteria, reporting, and administrative requirements.

### **District Investment Policy**

Funds of the District are invested in accordance with the Government Code of the State, the Municipal Utility District Act and the District's investment policy. The four primary investment criteria set forth in the District's written investment policy are (in order of priority): (1) preservation of principal; (2) maintenance of liquidity; (3) yield; and (4) diversity. In order to keep funds available to meet commitments, the District's investment policy provides that the maturity date (or put provision) of individual investments shall not exceed five years and that the average maturity of the portfolio shall not exceed 720 days. Investments permitted by the District's current investment policy include U.S. Treasury notes, bonds and bills, the State of California Local Agency Investment Fund, obligations issued by federal agencies, bankers' acceptances and commercial paper rated in the highest short-term rating category, as well as collateralized repurchase agreements, certificates of time deposit with maturities not to exceed five years and negotiable certificates of deposit, with maturities not to exceed five years, medium term corporate notes with maturities not to exceed five years, California municipal bonds with maturities (or put provisions) not to exceed five years, and the California Asset Management Program ("CAMP"). Monies in the funds and accounts held by the Trustee under the Indenture may be invested only in Investment Securities, as defined therein. The District does not enter into reverse repurchase agreements or otherwise borrow for purposes of investing, and the District does not invest in derivatives. The District has, however, entered into interest rate swap transactions to hedge interest rate exposure on outstanding variable rate Water System Revenue Bonds as described herein.

Pursuant to the District's investment policy, all securities purchased from dealers and brokers are held in safekeeping by the trust department of a state or national bank on a payment vs. delivery basis. Collateral is delivered or assigned under a tri-party agreement for all repurchase agreements. Trade confirmations are reviewed for conformity to the original transaction by an individual other than the one who originated the transaction. Transactions are ratified by the General Manager and reported quarterly to the Finance/Administration Committee of the Board.

### **Cash and Investments**

The District's cash and investments are segregated by restricted and unrestricted amounts. Restricted cash and investments generally include bond proceeds and debt service reserve funds, developer advances and capital contributions, and other miscellaneous restricted amounts. At June 30, 2013, the breakdown between restricted and unrestricted amounts is as follows:

**Table 17**  
**CASH AND INVESTMENTS**  
**(Thousands)**

Cash and investments included in current assets	303,247
Cash and investments included in unrestricted assets	<u>5,067</u>
Total unrestricted cash and investments	308,314
Cash and investments included in restricted assets	<u>63,232</u>
Total cash and investments	<u>371,546</u>

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Source: The District.

Additional information regarding the District's investment portfolio may also be found in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012" [Note 2].

### **Historical Operating Results**

The District's financial statements for Fiscal Year 2013, and the Report of Maze & Associates, independent accountants, are included as Appendix B, which are incorporated by reference into this Official Statement, and should be read in their entirety. The summary of operating results for Fiscal Years 2009 through 2013 contained in Table 18 is derived from information from the audited financial statements for such Fiscal Years and is qualified in its entirety by reference to such statements, including the notes thereto.

Table 18 sets forth the historical operating results and the calculation of the debt service coverage ratio for the Water System for each of the last five Fiscal Years.

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**Table 18**  
**WATER SYSTEM**  
**Historical Operating Results and Debt Service Coverage<sup>(1)</sup>**  
**Fiscal Years 2009 through 2013**

	2009	2010	2011	2012	2013
<b>WATER REVENUES<sup>(2)</sup>:</b>					
Water Sales <sup>(3)</sup>	\$287,313,350 <sup>(10)</sup>	\$271,022,353	\$283,643,516	\$306,228,357	\$336,065,516
Power Revenue	4,319,127	6,232,524	8,081,710	4,609,259	3,595,948
Interest	24,529,822	9,567,239 <sup>(11)</sup>	5,333,109	4,551,068	3,731,406
SCC Revenue <sup>(4)</sup>	16,090,659	40,490,369	46,190,321	30,733,972	22,673,134
Seismic Rate Surcharge <sup>(5)</sup>	15,479,577	16,657,412	18,102,265	19,172,928	20,536,924
Other Revenue	6,084,034	7,726,627 <sup>(12)</sup>	13,363,139 <sup>(12)</sup>	16,159,977 <sup>(12)</sup>	12,842,012
<b>TOTAL WATER REVENUES</b>	<u>\$353,816,569</u>	<u>\$351,696,524</u>	<u>\$374,714,060</u>	<u>\$381,455,561</u>	<u>\$399,444,940</u>
<b>WATER OPERATION &amp; MAINTENANCE COSTS:</b>					
Operating Expenses	\$199,631,357	\$178,964,687	\$181,709,853	\$197,818,566	\$196,452,184
(Less Tax Receipts) <sup>(6)</sup>	<u>(23,417,301)</u>	<u>(22,889,117)</u>	<u>(22,235,567)</u>	<u>(23,385,603)</u>	<u>(25,639,060)</u>
<b>TOTAL WATER OPERATION &amp; MAINTENANCE COSTS</b>	<u>\$176,214,056</u>	<u>\$156,075,570</u>	<u>\$159,474,286</u>	<u>\$174,432,963</u>	<u>\$170,813,124</u>
<b>NET WATER REVENUES</b>	\$177,602,513	\$195,620,954	\$215,239,774	\$207,022,598	\$228,631,816
<b>PARITY DEBT SERVICE:</b>					
Water System Revenue Bonds <sup>(9)</sup>	\$119,879,959	\$125,218,271	\$142,284,287	\$129,330,308	\$132,270,442
Parity State Loans	<u>1,400,108</u>	<u>1,400,108</u>	<u>1,400,108</u>	<u>1,400,105</u>	<u>1,400,105</u>
<b>TOTAL PARITY DEBT SERVICE</b>	\$121,280,067	\$126,618,379	\$143,684,395	\$130,730,413	\$133,670,547
<b>PARITY DEBT SERVICE COVERAGE</b>	1.46	1.54	1.50	1.58	1.71
<b>SUBORDINATE WATER SYSTEM DEBT SERVICE<sup>(14)</sup></b>	\$ 6,109,336	\$ 4,425,458	\$ 3,086,117	\$ 8,495,107	\$ 687,369
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	\$127,389,403	\$131,043,837	\$146,770,512	\$139,225,520	\$134,357,916
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	1.39	1.49	1.47	1.49	1.70

<sup>(1)</sup> Calculated in accordance with the Indenture as footnoted.

<sup>(2)</sup> Revenues exclude grant receipts, taxes, and certain developer contributions which are treated as contributions (not Water Revenues).

<sup>(3)</sup> Reflects average daily billed consumption of 169.8 MGD in Fiscal Year 2009, 160.4 MGD in Fiscal Year 2010, 160.5 MGD in Fiscal Year 2011, 162.1 MGD in Fiscal Year 2012 and 168.4 MGD in Fiscal Year 2013.

<sup>(4)</sup> System Capacity Charge ("SCC") Revenues presented in the table above include the "buy in" portion of SCC charges when collected and the "future water supply" portion of SCC charges when applied from the Future Water Supply Fund to offset such debt service costs. See "– System Capacity Charge" above. SCC Revenues are capitalized and are not recognized as operating revenues for purposes of the District's audited financial statements.

<sup>(5)</sup> Seismic rate surcharge revenues are capitalized and are not recognized as operating revenues for purposes of the District's audited financial statements.

<sup>(6)</sup> Operation and Maintenance Costs exclude those expenses paid from District's share of countywide 1% property tax revenues. Under current District policy, District's share of countywide 1% property tax revenues are used to pay for operations allocable to maintenance of fire protection capacity.

<sup>(7)</sup> Includes interest earnings on District's Series 2007A Bond proceeds.

<sup>(8)</sup> Includes receipt of approximately \$23.7 million of nonrecurring litigation and insurance proceeds.

<sup>(9)</sup> Includes net swap payments.

<sup>(10)</sup> Reflects adoption of drought surcharge during Fiscal Year 2009. See "– Supplemental Supply Charge."

<sup>(11)</sup> Includes interest earnings on District's Series 2010B Bonds proceeds.

<sup>(12)</sup> Includes interest subsidy received in connection with the Series 2010B Bonds (Build America Bonds).

<sup>(13)</sup> Does not include payment received by the District from Chevron for reimbursement of capital costs incurred by the District for the RARE Water Project. See "THE WATER SYSTEM – Water Recycling."

<sup>(14)</sup> Includes outstanding Water System commercial paper notes and certain federal and State subordinate loans (which loans have subsequently been retired). With respect to commercial paper notes includes interest only with no principal amortization.

Source: The District.

## **District Management's Discussion of Operating Results**

As reflected in the preceding table summarizing the District's operating revenues, operating expenses and net revenues for the five Fiscal Years ended June 30, 2009 through June 30, 2013, recent Fiscal Years have been characterized by decreased water sales volumes which resulted from the impact of past conservation combined with a prolonged economic downturn. Although water sales volumes increased from 162.1 MGD in Fiscal Year 2012 to 168.4 MGD in Fiscal Year 2013, since Fiscal Year 2008, water sales volumes have declined from 191.0 MGD. Water sales revenues increased in Fiscal Year 2013 by \$29.8 million from Fiscal Year 2012 as a result of a water rate increase of 6.0% and slightly higher billed consumption compared to Fiscal Year 2012. Power revenues decreased by approximately \$1.0 million from Fiscal Year 2012 to Fiscal Year 2013 [due to a decrease in available water run-off]. SCC Revenues decreased from \$30.7 million to \$22.7 million as a result of lower application of reimbursements for debt service repayment from the Future Water Supply Fund [and lower collections from developers]. Fiscal Year 2013 interest income decreased by \$0.8 million due to a generally lower interest rate environment. In response to reduced water sales and the effects of the economic downturn, the District continued its cost containment efforts such as not filling budgeted positions, foregoing salary increases, decreasing contract services, and deferring discretionary expenses. Operating expenses for Fiscal Year 2013 decreased by approximately \$1.4 million from Fiscal Year 2012. The District's debt service coverage ratio for Fiscal Year 2013 met the Board target of 1.60 through significant expense reductions, a rate increase, and debt service savings. The decrease of approximately \$4.8 million in debt service expenses reflects [the District's debt service restructuring in connection with the issuance of its Series 2012B Bonds and debt service savings achieved through additional refundings].

See also the "Management's Discussion and Analysis" contained in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

## **Projected Operating Results**

In the preparation of the projections in this section, the District has made certain assumptions with respect to conditions that may occur in the future. While the District believes these assumptions are reasonable for the purpose of the projections, they are dependent on future events, and actual conditions may differ from those assumed. To the extent actual future factors differ from those assumed by the District or provided to the District by others, the actual results will vary from those forecasted. This projected information has not been compiled, reviewed or examined by the District's independent accountants.

Table 19 sets forth the projected operating results and calculation of the debt service coverage ratio for the Water System for the current and next four Fiscal Years. The projected results are based on the District's Biennial Budget for Fiscal Years 2014 and 2015. In the preparation of the projected operating results, the District developed forecasts of water consumption for the projection period, taking into account historical consumption levels, the continuing effects of conservation measures, limited growth in the service area, and the expectations for the future economic environment. The District is adjusting to a "new normal" without expectation that growth will significantly bolster net revenues. As such, maintaining the District's policy target of 1.60x for debt service coverage on its Water System Revenue Bonds will require annual rate increases, continued cost containment efforts, and debt service savings. The projection period reflects the 9.75% and 9.50% overall rate increases for Fiscal Years 2014 and 2015, respectively. Average annual rate increases of 8.00%, 7.00% and 5.00% are assumed for Fiscal Years 2016, 2017 and 2018, respectively. Any such future rate increases will be subject to Board approval. Operating expenses incorporate salary and benefit expectations. The District's service area is mature and significant increases in SCC revenues are not expected. A higher level of cash funded capital

spending is assumed as a result of the cash generated by higher coverage levels and in response to the nature of the District's capital plan which is largely comprised of renewal and replacement projects.

The District's Biennial Budget for Fiscal Years 2014 and 2015 includes a new budget forecast for Fiscal Years 2014 through 2018 and rate increases for Fiscal Years 2014 and 2015. The Biennial Budget for Fiscal Years 2014 and 2015 was adopted on June 11, 2013. Over the next 18 months, the District will undertake a series of planning initiatives that will be the foundation of the Biennial Budget for Fiscal Years 2016 and 2017 that will include a formal long-range financial plan and Water and Wastewater cost of services studies.

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**Table 19**  
**WATER SYSTEM**  
**Projected Operating Results and Debt Service Coverage (Millions)**  
**Fiscal Year Ending June 30**

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>WATER REVENUES<sup>(1)</sup>:</b>					
Water Sales <sup>(2)</sup>	\$354.0	\$391.8	\$429.7	\$466.9	\$498.7
Power Revenue	5.7	5.7	5.7	5.7	5.7
Interest Earnings <sup>(3)</sup>	2.3	4.0	7.0	6.4	7.3
SCC Revenue <sup>(4)</sup>	23.7	23.3	24.6	25.9	27.3
Seismic Rate Surcharge <sup>(5)</sup>	22.4	24.6	26.8	28.8	30.4
Other Revenue <sup>(6)</sup>	<u>14.8</u>	<u>15.0</u>	<u>15.1</u>	<u>15.2</u>	<u>15.4</u>
<b>TOTAL WATER REVENUES</b>	<u><b>\$422.9</b></u>	<u><b>\$464.4</b></u>	<u><b>\$508.9</b></u>	<u><b>\$548.9</b></u>	<u><b>\$584.8</b></u>
<b>WATER OPERATION &amp; MAINTENANCE COSTS:</b>					
Operating Expense	\$224.9	\$234.9	\$247.9	\$261.5	\$276.0
(Less Tax Receipts) <sup>(7)</sup>	<u>(23.4)</u>	<u>(23.8)</u>	<u>(24.3)</u>	<u>(24.8)</u>	<u>(25.3)</u>
<b>TOTAL WATER OPERATION &amp; MAINTENANCE COSTS</b>	<u><b>\$201.5</b></u>	<u><b>\$211.1</b></u>	<u><b>\$223.6</b></u>	<u><b>\$236.7</b></u>	<u><b>\$250.7</b></u>
<b>NET WATER REVENUES</b>	<b>\$221.4</b>	<b>\$253.3</b>	<b>\$285.3</b>	<b>\$312.2</b>	<b>\$334.1</b>
<b>PARITY DEBT SERVICE:</b>					
Water System Revenue Bonds <sup>(8)</sup>	\$134.9	\$150.7	\$171.5	\$173.0	185.3
Parity State Loans	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>	<u>1.4</u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$136.3</b>	<b>\$152.1</b>	<b>\$172.9</b>	<b>\$174.4</b>	<b>\$186.7</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.62</b>	<b>1.67</b>	<b>1.65</b>	<b>1.79</b>	<b>1.79</b>
<b>SUBORDINATE WATER SYSTEM CP NOTES DEBT SERVICE<sup>(9)</sup></b>	<b>\$ 7.5</b>	<b>\$ 7.5</b>	<b>\$ 7.5</b>	<b>\$ 7.5</b>	<b>\$ 7.5</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$143.8</b>	<b>\$159.6</b>	<b>\$180.4</b>	<b>\$181.9</b>	<b>\$194.2</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.54</b>	<b>1.59</b>	<b>1.58</b>	<b>1.72</b>	<b>1.72</b>

*(Table footnotes contained on following page.)*

(Footnotes are to table contained on preceding page.)

- 
- (1) Revenues exclude grant receipts, taxes, and certain developer contributions which are treated as contributions (not Water Revenues).
  - (2) Assumes projected average daily billed consumption per day of 162.1 MGD in Fiscal Year 2013, 164.0 MGD in Fiscal Year 2014, 166.0 MGD in Fiscal Year 2015, 169.0 MGD in Fiscal Year 2016, 172.0 MGD in Fiscal Year 2017, and 175.0 in Fiscal Year 2018. See “Rates and Charges” above. Average annual rate increases of 8.00%, 7.00% and 5.00% are assumed for Fiscal Years 2016, 2017 and 2018, respectively. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”
  - (3) Assumes approximately 0.50% earnings rate on fund balances for Fiscal Years 2013 and 2014, 1.00% earnings rate for Fiscal Year 2015 and 1.50% earnings rate thereafter. Excludes non-cash change in fair market value of investments. Excludes earnings on Series 2010B Water Bonds (BABs) proceeds which are applied toward construction.
  - (4) SCC Revenues presented in the table above include the projected “buy in” portion of SCC charges when collected and the “future water supply” portion of SCC charges when applied from the Future Water Supply Fund to offset such debt service costs. See “– System Capacity Charge” above. SCC Revenues are capitalized and are not recognized as operating revenues for purposes of the District’s audited financial statements.
  - (5) Seismic rate surcharge revenues are capitalized and are not recognized as operating revenues for purposes of the District’s audited financial statements.
  - (6) Anticipated receipt of BABs Interest Subsidy Payments relating to Series 2010B Bonds (subject to sequestration) has been included in Other Revenue. See “SECURITY FOR THE SERIES \_\_\_\_ BONDS – Rate Covenant Under the Indenture.”
  - (7) Water Operation and Maintenance Costs exclude those expenses paid from *ad valorem* taxes. Under current District policy, taxes are used to pay for operations allocable to maintenance of fire protection capacity.
  - (8) Assumes that interest with respect to the outstanding Series 2008A Bonds, the Series 2008B-3 Bonds, the Series 2011A Bonds and the hedged principal amount of the Series 2009A Bonds have been swapped to fixed rates. See “SECURITY FOR THE SERIES \_\_\_\_ BONDS – Outstanding Water System Revenue Obligations – Water Interest Rate Swap Agreements.” Assumes 10-year average SIFMA Index plus 10 basis points on unhedged Series 2009A Water Bonds. Includes liquidity fees. Assumes future issuance of additional Bonds of approximately \$175.0 million in Fiscal Year 2014, approximately \$180.0 million in Fiscal Year 2016 and \$170.0 million in Fiscal Year 2018. Also includes additional amount budgeted by the District (not included in Table 16) for estimated basis differential between variable rate bond interest rates and related swap receipts.
  - (9) Assumes interest only at 1.00% per annum in Fiscal Year 2013 and 2.00% per annum in Fiscal Years 2014 through 2018 with no principal amortization. Assumes \$372.9 million of CP Notes (Water Series) outstanding.

Source: The District.

[UPDATE]

## Employees' Retirement System

**General.** The District has a contributory retirement system covering substantially all of its employees (including the Water System and Wastewater System). The East Bay Municipal Utility District Employees' Retirement System ("Retirement System") was established in 1937 to administer a single-employer, contributory, defined benefit pension plan (the "Plan") to provide retirement, disability, survivorship and post-employment health insurance benefits for eligible directors, officers and employees of the District. The Plan is funded by contributions from its members and from the District, and from investment earnings on Plan assets. The payment of benefits earned by plan members of the Retirement System is an obligation of the District. Employees of the District are also covered by Social Security.

The Retirement System is administered by a Retirement Board composed of three members appointed by the District Board, two members elected by and from the active membership and one (nonvoting) member elected by and from the retired membership of the Retirement System. Ordinance No. 40 of the District, effective October 1, 1937, as amended (the "Retirement System Ordinance"), assigns the authority to establish Plan benefit provisions to the District Board.

Contributions to the Retirement System are made by the members and the District. Each member's contribution is based upon a percentage of that member's covered compensation. The employee contribution rates are prescribed in the Retirement System Ordinance and may be adjusted by the District Board solely pursuant to the terms of a negotiated collective bargaining agreement or MOU with employee bargaining units. The District employees' contribution rate has been 6.83% since April 2006. The District (employer) contributions are based upon percentages of the aggregate amount of members' covered compensation. Employer contribution percentages are established by the District Board. Such percentages are based upon actuarial valuations.

As of June 30, 2012, collectively for the Water and Wastewater Systems, there were 1,703 active plan members, 224 terminated plan members entitled to but not yet receiving benefits and 1,361 retirees and beneficiaries receiving benefits.

Table 20 below sets forth the number of active members, total plan assets, District and Member contributions and retirement allowances paid in the five Fiscal Years 2008 through 2012.

**Table 20**  
**RETIREMENT SYSTEM**  
**Active Members, Total Plan Assets, District and Member Contributions and Allowances Paid**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Active Members<sup>(2)</sup></b></i>	<i><b>Total Plan Assets<sup>(3)</sup></b></i>	<i><b>District Contribution<sup>(4)</sup></b></i>	<i><b>Member Contributions</b></i>	<i><b>Allowances Paid From Retirement Plan<sup>(5)</sup></b></i>
2008	2,029	\$838,614,000	\$44,603,000	\$10,394,000	\$50,780,000
2009	2,022	668,750,000	45,803,000	10,740,000	54,502,000
2010	1,978	769,052,000	51,756,000	10,918,000	58,109,000
2011	1,928	968,239,000	58,481,000	10,850,000	62,114,000
2012	1,927	986,972,000	59,651,000	10,723,000	66,843,000

(1) Includes Health Insurance Benefit Plan.

(2) Includes active plan members and terminated plan members entitled to but not yet receiving benefits.

(3) Market value as of June 30 of such Fiscal Year as shown in the audited financial statements of the Retirement System.

(4) The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

(5) Includes benefits paid and refunds of contributions.

Source: The District.



The Retirement System is an integral part of the District and, as noted above, the District appoints the majority of the governing body of the Retirement System and provides for its funding. Accordingly, the Retirement System's operations are reported as a Pension and Other Employee Benefit Trust Fund in the District's basic financial statements. The Retirement System also issues separately available financial statements on an annual basis. Such financial statements can be obtained from the District at 375 Eleventh Street, Oakland, California 94607.

The amounts set forth in this discussion of the Employees' Retirement System, including, for example, actuarial accrued liabilities and funded ratios, are based upon numerous demographic and economic assumptions, including investment return rates, inflation rates, salary increase rates, cost of living adjustments, postemployment mortality, active member mortality, and rates of retirement. Prospective purchasers of the District's bonds are cautioned to review and carefully assess the reasonableness of the assumptions set forth in the documents that are cited as the sources for such information. In addition, prospective purchasers of the District's bonds are cautioned that such sources and the underlying assumptions speak as of their respective dates, and are subject to change. Prospective purchasers of the District's bonds should also be aware that some of the information presented in this discussion of the Employees' Retirement System contains forward-looking statements and the actual results of the Retirement System may differ materially from the information presented herein.

**Benefits.** All regular full-time employees (as well as certain job share and intermittent employees) of the District are members of the Plan. In accordance with the Retirement System Ordinance, eligible employees become members of the Plan on the first day they are physically on the job. Retirement plan benefits are generally determined by formula based on the employee's compensation in the last two years of employment and the length of employment with the District. Benefits adopted by the District vest in part with members after five years of continuous full-time employment. Vested members who terminate employment may elect a refund of their contributions or leave them in the Plan until eligible to receive benefits.

In addition to retirement benefits, the District provides post-employment health benefits assistance, administered by the Retirement System, for employees who retire from the District or their surviving spouses. As of June 30, 2012, there were 1,256 participants receiving these healthcare benefits. For participants entering the Retirement System prior to July 1, 1996, a monthly allowance of up to \$450 (\$550 for married retirees and retirees with financially dependent registered domestic partners) is paid to retirees with at least five years of full-time service to reimburse the retiree-paid medical expenses (including any health, dental or long-term care insurance premiums paid by the retiree for his or her self, and current spouse or domestic partner, or any health, dental or long-term care insurance premiums paid by the eligible surviving spouse of a retiree). Effective July 1, 1996, a 20-year vesting schedule for full benefits was implemented for all new employees. Effective January 1, 1999, retired members who had separated from the District prior to their retirement and who had at least 5 years of service also become eligible for the post-employment healthcare benefits based on the same sliding scale.

**Actuarial Assumptions and Funding Policy.** Under the ordinance governing the Retirement System, the District is required to have an actuarial study performed at least every two years, but the District's current policy is to have an actuarial study performed each year. The most recent actuarial study of the Retirement System, including the pension and the health insurance benefit ("HIB") trusts, was performed by The Segal Company, as of June 30, 2012.

The actuarial report provides a basis for the District Board's decision regarding the rate of contributions by the District to the Retirement System, including both the pension and the HIB trusts. The District makes its contribution using rates determined by its outside actuaries.

The actuarial valuation results included in this disclosure for the pension plan have been prepared using parameters required under Governmental Accounting Standards Board (“GASB”) Statements 25 and 27. These GASB Statements will be replaced by GASB Statements 67 and 68 for financial reporting purposes effective with Fiscal Year 2014 for the Plan and Fiscal Year 2015 for the District. The new GASB Statements will require much shorter amortization periods for recognition of non-investment gains/losses and actuarial assumption changes, as well as changes in the recognition of investment gains/losses. GASB has indicated throughout their process of obtaining comments from the retirement and accounting communities that the new GASB Statements may provide for a new and complete separation between financial reporting and funding requirements for pension plans.

To calculate the required contribution for each Fiscal Year, assumptions are made about future events that affect the amount and timing of benefits to be paid and assets to be accumulated. Each year actual experience is measured against the assumptions. If overall experience is more favorable than anticipated (an actuarial gain), the contribution requirement will decrease from the previous year. On the other hand, the contribution requirement will increase if overall actuarial experience is less favorable than assumed (an actuarial loss). If assumptions are changed, the contribution requirement is adjusted to take into account a change in experience anticipated for all future years.

A summary of the funding method and assumptions utilized in the actuarial study as of June 30, 2012 are described below.

*Funding Method.* The Plan’s funding policy provides for periodic District contributions at actuarially determined amounts sufficient to accumulate the necessary assets to pay benefits when due as specified by the ordinance governing the Retirement System. The entry age normal cost method is used for this purpose. Under the entry age normal cost method, there are two components to the total contributions: (i) the normal cost, which is the amount of contributions required to fund the benefit allocated to the current year of service (associated with active employees only), and (ii) an amortization payment on any unfunded actuarial accrued liability (“UAAL”). The normal cost is calculated on an individual basis where the entry age normal cost is calculated as the sum of the individual normal costs. The UAAL (past service liability) is amortized as a level percentage of payroll on a closed basis over the amortization periods described below. The actuarial accrued liability is calculated on an individual basis and is based on costs allocated as a level percentage of compensation.

*Amortization Periods.* As of June 30, 2012, the unfunded actuarial accrued liability is currently being funded using a layered approach. Each layer of the UAAL established prior to July 1, 2011 is being funded over a separate 30-year decreasing period, starting from the date the layer was originally established. On or after July 1, 2011, changes in the UAAL attributable to plan amendments are amortized over separate decreasing 15-year periods; changes in the UAAL attributable to assumption or method changes are amortized over separate decreasing 25-year periods; and changes in the UAAL attributable to actuarial gains/losses (i.e., the extent to which actual overall experience deviates from the assumptions) are amortized over separate decreasing 20-year periods. Under the layered approach, any new UAAL layer that emerges between the prior and the current actuarial valuation (due to deviations between actual and expected actuarial experience, changes in actuarial assumptions used to measure the liabilities or other factors) will be determined and factored into the District’s contribution rates so that it will be paid off after its respective amortization period described above.

*Actuarial Assumptions.* A number of assumptions are used to calculate the costs of the Plan and to compute contribution requirements for the Plan. The principal assumptions used in preparing the actuarial study as of June 30, 2012 include:

1. Investment rate of return: 7.75%.

2. Inflation rate: 3.25%.
3. Interest credited to member contributions: 7.75%.
4. Projected salary increases: Ranges from 4.25% to 9.75% based on years of service (includes inflation at 3.25% plus across the board salary increase of 0.50% plus merit and promotional increases).
5. Cost of living adjustments: 3.15%.
6. Increase in HIB maximum monthly allowance: The Plan does not provide for an automatic increase in the HIB allowance and no such increase is assumed in the valuation.
7. Additional assumptions: Additional assumptions were used regarding rates of termination from active membership, post-retirement mortality, active member mortality, disability rates and rates of retirement.

Actuarial Value of Assets (Asset Smoothing Method). Methods used to compute District contribution requirements include a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets (with further adjustments as may be required to keep the smoothed assets within 30% of market value). The impact of this will result in a “smoothed” valuation value of assets (or “Actuarial Value of Assets”) that is higher or lower than the market value of the assets depending on whether the amount that is being smoothed is either a net gain or a net loss.

Adopted Changes in Actuarial Assumption and Amortization Periods. Under the ordinance governing the Retirement System, the District is required to have an actuarial experience study conducted during each four-year period in order to review the mortality, service and compensation experience of the members, retired members and beneficiaries of the Retirement System, over the study period. The experience study provides the factual information upon which the outside actuary makes recommendations to the District regarding the economic and demographic assumptions that provide the basis for the actuarial valuation of the assets and liabilities of the Retirement System. In November 2012, The Segal Company completed and presented to the Retirement Board, its Analysis of Actuarial Experience During the Period July 1, 2008 through June 30, 2012, for the Retirement System (the “2012 Experience Study”). The 2012 Experience Study utilized demographic data of the Plan’s members and retirees from the last four actuarial valuations and provided recommendations regarding changes to the economic and demographic actuarial assumptions to be used in the June 30, 2012 and later actuarial valuations. Pursuant to the 2012 Experience Study, the actuary recommended changes in a number of the actuarial assumptions used to calculate the costs of the Plan and to compute the future contribution requirements for the Plan, including changes in the assumptions from those used in the actuarial study of the Plan as of June 30, 2011. At its November 15, 2012 meeting, the Retirement Board approved the changes in assumptions recommended by the actuary for the actuarial valuation to be performed as of June 30, 2012. The actuarial assumptions used in the actuarial study of the Plan as of June 30, 2012 (as described under “Actuarial Assumptions” above), include the following changes in the actuarial assumptions from those used in the actuarial study of the Plan as of June 30, 2011, among others: (i) a reduction in the assumed investment rate of return from 8.00% to 7.75%; (ii) a reduction in the assumed inflation rate from 3.50% to 3.25%; (iii) a reduction in the projected salary increases from the range of 4.70% to 10.00% based on years of service (and including the 3.50% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases) to a range of 4.25% to 9.75% (including the new recommended 3.25% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases); and (iv) a reduction in the assumed long-term annual average cost of living adjustment from 3.25% to 3.15%.

In the June 30, 2012 valuation, the actuary determined the change in the actuarial accrued liability for the pension plan (not including the HIB) due to the assumption changes to be \$53.4 million.

At the November 15, 2012 meeting, the Retirement Board also adopted a change in the amortization policy for the unfunded actuarial accrued liability (UAAL), effective with the June 30, 2012 valuation. In particular, changes in the UAAL due to actuarial assumption or method changes (previously amortized on a 30-year period) on or after July 1, 2011 are to be amortized on a 25-year period. In their June 30, 2012 valuation report, The Segal Company (the actuary) determined the effect of this change in the amortization policy combined with the effect of the changes in the actuarial assumptions to be an increase in the District contribution rate for the pension plan (not including the HIB) of 2.85% of payroll.

It should also be mentioned that, at the September 20, 2012 meeting, the Retirement Board also adopted a modification from an aggregate version to an individual version of the Entry Age Normal funding method. In their June 30, 2012 valuation report, the actuary determined that this modification increased the District's normal cost rate by 0.72% of payroll.

**Contribution History.** The schedule of District contributions for each of the pension plan and the HIB plan for the last five Fiscal Years are shown in Table 21 below:

**Table 21**  
**RETIREMENT SYSTEM**  
**History of Contributions**  
**Five Fiscal Years Ended June 30, 2012**  
**(\$ in 000's)**

**Pension Plan:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed</i>
2008	24.51%	\$37,387	\$37,387	100%
2009	24.96	39,485	39,485	100
2010	27.24	44,031	44,031	100
2011	31.80	50,987	50,987	100
2012	32.91	52,156	52,156	100

**Health Insurance Benefit:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed<sup>(1)</sup></i>
2008	3.74%	\$ 9,114	\$7,216	79%
2009	3.98	9,114	6,318	69
2010	4.91	11,370	7,725	68
2011	4.78	10,496	7,494	71
2012	4.83	11,518	7,495	65

<sup>(1)</sup> Percentage contributed was less than 100% as the District does not pre-fund the implicit retiree rate subsidy required to be valued under GASB Statements Nos. 43 and 45. See "-- Schedule of Funding Progress" below.

As reflected in the actuarial study and shown in Table 22 below, the combined Actuarial Accrued Liability for pension and HIB benefits at June 30, 2012 was \$1,659,897,000 and the Actuarial Value of Assets was \$1,035,786,000, resulting in an Unfunded Actuarial Accrued Liability of \$624,111,000 and a funded ratio of the Plan under the entry age normal basis of 62.4%. As described above, the Actuarial

Value of Assets has been calculated using a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets. The liabilities for the pension benefits are calculated in compliance with GASB Statement No. 25 (“Financial Reporting for Defined Benefit Pension Plans, Note Disclosures for Defined Contribution Plans”) and Statement No. 27 (“Accounting for Pensions by State and Local Governmental Employers”), but do not reflect the parameters of GASB Statement No. 45. See also “– *Schedule of Funding Progress*” below.

Table 22 below sets forth the Actuarial Accrued Liability, Actuarial Value of Assets, the Unfunded Actuarial Accrued Liability and Funded Ratio as of June 30 of each of the Fiscal Years 2008 through 2012 (the year the most recent actuarial information is available).

**Table 22**  
**RETIREMENT SYSTEM**  
**Actuarial Accrued Liability, Actuarial Value of Assets,**  
**Unfunded Actuarial Accrued Liability and Funded Ratio**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**  
**(\$ in 000’s)**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Actuarial Accrued Liability (AAL)</b></i>	<i><b>Actuarial Value of Assets</b></i>	<i><b>Market Value of Assets</b></i>	<i><b>Unfunded Actuarial Accrued Liability (UAAL)<sup>(2)</sup></b></i>	<i><b>Funded Ratio on Actuarial Value</b></i>	<i><b>Funded Ratio on Market Value</b></i>
2008	\$1,336,676	\$ 907,927	\$838,614	\$428,749	67.92%	62.74%
2009	1,415,392	869,375	668,750	546,017	61.42	47.25
2010	1,491,885	925,907	769,052	565,978	62.06	51.55
2011	1,544,486	966,767	968,239	577,719	62.59	62.69
2012	1,659,897 <sup>(3)</sup>	1,035,786	986,972	624,111	62.40	59.46

<sup>(1)</sup> Dollars rounded to nearest thousand.

<sup>(2)</sup> The District estimates that approximately 85% of the UAAL is attributable to the Water System and approximately 15% is attributable to the Wastewater System. The UAAL is determined based on the Actuarial Value of Assets.

<sup>(3)</sup> Of this amount, \$103,201 is attributable to the HIB liabilities. The HIB liabilities as calculated for GASB reporting purposes, which include the implicit retiree rate subsidy, were \$138,240 using a discount rate of 7.00%.

Source: The Segal Company.

As of June 30, 2012, the market value of the combined pension and HIB plan’s assets was \$986,972,000 and the projected benefit obligation (“PBO”) was \$1,606,973,000, resulting in a funded ratio of the plan under the PBO basis of 61.4%. Under the plan provisions, determination of the funded ratio on a PBO basis is required and certain cost of living increases are granted when the funded ratio of the plan is 85% or higher as calculated on the PBO basis.

***Schedule of Funding Progress.*** As required by GASB 45, the District reports the schedule of funding progress for each of the pension plan and the post-employment healthcare plan (HIB). The schedule of funding progress presents multiyear trend information that shows whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

The schedule of funding progress for the pension plan is set forth in Table 23 below.

**Table 23**  
**PENSION PLAN**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 900,917	\$1,244,993	\$344,076	72.4%	\$158,499	217.1%
2009	862,021	1,323,555	461,534	65.1	161,893	285.1
2010	915,845	1,396,003	480,158	65.6	164,085	292.6
2011	954,719	1,446,039	491,320	66.0	159,505	308.0
2012	1,021,546	1,556,696	535,150	65.6	158,847	336.9

Source: The Segal Company's Actuarial Valuation and Review of Pension Plan as of June 30, 2012.

The schedule of funding progress for the post-employment healthcare plan is set forth in Table 24 below.

The retiree health liabilities reported in the actuarial study as of June 30, 2012 (and referred to in Table 22 above) will not match those required to be used for GASB reporting purposes as shown in Table 24 below. The liabilities as reflected in the actuarial study have not been adjusted to include the implicit retiree rate subsidy as required under GASB reporting requirements. (Note that when premiums for active employees are determined on a pooled basis with premiums for retirees under age 65, a significant accounting obligation may exist even though the retiree under age 65 contributes most or all of the blended premium cost of the plan. The average costs for retirees if determined on a stand-alone basis is likely to exceed the average cost for the whole group, leading to an implicit subsidy for these retirees. The GASB accounting standard requires the employer to identify and account for this implicit subsidy as well as any explicit subsidies the employer may provide.) In addition, the liabilities for GASB reporting purposes for the HIB portion of the obligations shown below were determined based upon a lower discount rate (*i.e.*, 7.00%) than the 7.75% investment rate of return used in The Segal Company prefunding study. The liabilities calculated for GASB reporting purposes shown in Table 24 below are therefore higher than those reflected in the actuarial study as of June 30, 2012 and described above.

**Table 24**  
**POST-EMPLOYMENT HEALTHCARE BENEFIT (HIB)**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 7,010	\$137,055	\$130,045	5.1%	\$158,499	82.0%
2009	7,354	130,245	122,891	5.6	161,893	75.9
2010	10,061	135,379	125,318	7.4	164,085	76.4
2011	12,047	135,360	123,312	8.9	159,505	77.3
2012	14,240	138,240	123,999	10.3	158,847	78.1

Source: The Segal Company Actuarial Valuation and Review of Other Postemployment Benefits (OPEB) as of June 30, 2012 in accordance with GASB Statements No. 43 and 45.

***Related Matters.*** In the past few years, the Internal Revenue Service (the “IRS”) has focused its auditing activities towards governmental retirement plans to determine if those plans are complying with federal tax laws. While the District has consistently amended its Retirement Ordinance to comply with changes in the federal tax code, other governmental plans failed to amend their plans to reflect changes in tax laws. The failure to include these amendments put those plans at risk of a range of consequences from being assessed significant penalties to losing its tax-qualified status, wherein all assets under the plan would become immediately taxable. Because so many governmental plans were at risk, the IRS instituted a voluntary correction program (“VCP”), which provided such plans the opportunity to voluntarily report any failures and institute corrective measures. In participating in the voluntary correction program, governmental plans would be protected from enforcement actions for such failures. Under the VCP, the IRS would review and approve the corrective measures proposed by the plan and at the end of the review, issue a letter of determination of tax qualified status. A letter of determination of tax qualified status would serve as protection against liability for prior violations of federal tax laws as well as serve as a safe harbor for future IRS audits. The District has taken advantage of this “safe harbor” opportunity by participating in the IRS’ voluntary correction program to make additional necessary corrections to its Plan while protecting itself against potential tax liability. The District’s application for a determination letter to the IRS is still under review due to the voluminous number of VCP filings. While the District is unable to predict when the IRS will ultimately act on the District’s application or what action the IRS will take in its review of such application, since the District has been amending its Retirement Ordinance to maintain compliance with the federal tax code during the past two decades and because the voluntary correction program offers a safe harbor for non-complaint plans, the District expects that the IRS will provide a statement that the District’s Plan is in compliance with the tax code and that the Plan is tax qualified.

***California Pension Reform Act.*** On August 31, 2012, the California legislature enacted Assembly Bill 340, the California Public Employees’ Pension Reform Act of 2013 (the “PEPRA”). The PEPRA was signed into law by Governor Jerry Brown on September 12, 2012 and became effective on January 1, 2013. Pursuant to the provisions of the PEPRA, as enacted, the PEPRA is intended to apply to all state and local public retirement systems, independent public retirement systems, and to individual retirement plans offered by public employers, with the exception of the University of California, and California charter cities and counties, except to the extent such entities participate in any retirement system governed by State statute. The impacts of the PEPRA primarily apply to employees first hired by a public agency or after January 1, 2013. Some of these provisions include certain limits on the amount and types of compensation that may be included by a retirement system in calculating pension benefits, the imposition of new formulas for the calculation of pension benefits for employees, certain requirements for the sharing of the costs of pension benefits by employees, and certain limitations on the adoption of new defined benefit plans. The PEPRA would prohibit certain retroactive enhancements to pension benefit formulas for all employees, impose certain limits on post-retirement employment for all employees, prohibit the purchase of non-qualified permissive service credit by all employees after January 1, 2013, and require for any employee the forfeiture of pension and retirement-related benefits for certain felony convictions.

The District Board has adopted certain amendments to the Retirement System Ordinance effective as of January 1, 2013 in order to implement applicable provisions of the PEPRA. Because the interpretation and application of the PEPRA will likely be subject to judicial determination and further implementing legislation, it is too early to assess at this time what all of the impacts of PEPRA ultimately will be on the District’s Retirement System.

Additional information concerning the Retirement System may be found in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

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

AUTHORIZE AND APPROVE THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF WASTEWATER SYSTEM REVENUE REFUNDING BONDS IN CONNECTION WITH THE POTENTIAL REFUNDING OF OUTSTANDING FIXED RATE BONDS; APPROVE THE FORM OF, AND AUTHORIZE, CERTAIN DOCUMENTS IN CONNECTION WITH THE ISSUANCE, SECURING AND SALE OF SUCH BONDS; AND APPROVE CERTAIN ACTIONS RELATING THERETO

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the "District") is authorized by Section 12850 *et. seq.* of the Public Utilities Code of the State of California (the "Act") to issue revenue bonds; and

WHEREAS, the District is authorized by Section 53580 *et. seq.* of the Government Code of the State of California (the "Refunding Act") to issue refunding bonds; and

WHEREAS, pursuant to authority granted under the Act, the District has entered into a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990 (the "Bond Indenture"), by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), as amended and supplemented; and

WHEREAS, the Bond Indenture provides that the District may issue additional wastewater system revenue bonds as well as refunding bonds from time to time as authorized by a supplemental indenture; and

WHEREAS, the District has heretofore authorized and issued multiple series of wastewater system revenue bonds under and pursuant to the Act (and when applicable, the Refunding Act) and the Bond Indenture, including a number of series of fixed rate bonds, including the following outstanding series of fixed rate wastewater system revenue bonds of the District: its Wastewater System Subordinated Revenue Bonds, Series 2007A currently outstanding in the aggregate principal amount of \$60,630,000 (the "Series 2007A Bonds"); its Wastewater System Subordinated Revenue Refunding Bonds, Series 2007B currently outstanding in the aggregate principal amount of \$35,290,000 (the "Series 2007B Bonds"); its Wastewater System Revenue/Refunding Bonds, Series 2010A currently outstanding in the aggregate principal amount of \$51,705,000 (the "Series 2010A Bonds"); its Wastewater System Revenue Bonds, Series 2010B currently outstanding in the aggregate principal amount of \$150,000,000 (the "Series 2010B Bonds"); and its Wastewater System Revenue Refunding Bonds, Series 2012A currently outstanding in the aggregate principal amount of \$20,000,000 (the "Series 2012A Bonds," and collectively with the outstanding Series 2007A Bonds, Series 2007B Bonds, Series 2010A Bonds and Series 2010B Bonds, the "Outstanding Fixed Rate Bonds"); and

WHEREAS, the Board has determined that it best serves the financing and debt management needs of the District to authorize the issuance, from time to time, of one or more series of its



wastewater system revenue refunding bonds (the “Additional Refunding Bonds”), if such issuance is determined by a Designated Officer (as hereinafter defined) to be in the best interests of the District in order to realize debt service savings for the District, and subject to the parameters set forth in this Resolution, for the purposes of refunding (in whole or in part) any Outstanding Fixed Rate Bonds eligible for such refunding, funding or making provision for any bond reserve fund for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds; and

WHEREAS, in order to provide for the issuance of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more supplemental indentures in connection therewith (each, an “Additional Supplemental Indenture”); and

WHEREAS, in order to provide for the refunding of any Outstanding Fixed Rate Bonds to be refunded by Additional Refunding Bonds, the District may enter into one or more escrow agreements in connection therewith (each, an “Additional Escrow Agreement”); and

WHEREAS, in order to provide a continuing disclosure undertaking pursuant to the requirements promulgated under Rule 15c2-12 of the Securities and Exchange Commission in connection with any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more additional continuing disclosure undertakings in connection therewith (each, an “Additional Continuing Disclosure Agreement”); and

WHEREAS, in order to provide for the sale by the District and the purchase by an underwriter or underwriters of any Additional Refunding Bonds authorized pursuant to this Resolution, the District may enter into one or more bond purchase contracts in connection therewith (each, an “Additional Bond Purchase Contract”); and

WHEREAS, the underwriters of any Additional Refunding Bonds will distribute a preliminary and final official statement (including any supplements or amendments thereto) relating to such Additional Refunding Bonds to prospective and actual purchasers of such Additional Refunding Bonds; and

WHEREAS, it is desirable that the Board provide for the issuance, securing and sale of the Additional Refunding Bonds authorized by this Resolution at this time; and

WHEREAS, there has been presented to this Board meeting one or more forms of financing documents that will be used in connection with the issuance, sale and delivery of any Additional Refunding Bonds authorized by this Resolution (with such changes to such financing documents as may be appropriate to reflect the terms of any such Additional Refunding Bonds);

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of East Bay Municipal Utility District, as follows:

Section 1. Recitals True and Correct. The Board hereby finds and determines that the foregoing recitals are true and correct.

Section 2. Authorization of Additional Refunding Bonds. For the purposes of refunding all or any portion of the District’s then Outstanding Fixed Rate Bonds eligible for such

refunding, funding or making provision for any bond reserve fund for such Additional Refunding Bonds (if necessary) and/or paying costs of issuance of such Additional Refunding Bonds, the issuance, from time to time, of one or more series of Additional Refunding Bonds is hereby authorized. The Additional Refunding Bonds shall be designated as "East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds," and include the further applicable year and alphabetical letter series designation (and with such additional or other designations as may be determined by a Designated Officer). The total aggregate principal amount of Additional Refunding Bonds issued by the District shall not exceed an amount sufficient (taking into account any original issue discount or premium) to refund all or any portion of the then Outstanding Fixed Rate Bonds, to fund or make provision for one or more bond reserve funds (if necessary) and to pay certain costs related to the issuance of the Additional Refunding Bonds (including, but not limited to, underwriters' discount). No series of the Additional Refunding Bonds shall mature later than the Outstanding Fixed Rate Bonds refunded thereby and the True Interest Cost of any series of the Additional Refunding Bonds shall not exceed 7.00%. The net present value of the savings to the District from the delivery of any series of Additional Refunding Bonds shall be not less than three percent (3.00%) of the par amount of the Outstanding Fixed Rate Bonds refunded thereby.

Subject to the parameters in the preceding paragraph, the Additional Refunding Bonds may be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended. The General Manager of the District, the Director of Finance of the District, the Treasury Manager of the District or any such officer serving in an acting or interim capacity as such, and any written designee of any of them (each a "Designated Officer"), acting in accordance with this Section 2, are each hereby authorized to determine the actual aggregate principal amount of each series of Additional Refunding Bonds to be issued (not in excess of the maximum amount set forth above), to determine if the Additional Refunding Bonds are to be issued in a manner by which the interest thereon is excludable from gross income under the Internal Revenue Code of 1986, as amended, and/or includable in gross income under the Internal Revenue Code of 1986, as amended, and to direct the execution and authentication of the Additional Refunding Bonds in such amount. Such direction shall be conclusive as to the principal amounts hereby authorized. The Additional Refunding Bonds shall be in fully registered form and shall be issued as book-entry bonds as provided in each applicable Additional Supplemental Indenture. Payment of principal of, interest on and premium, if any, on the Additional Refunding Bonds shall be made at the place or places and in the manner provided in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds of each series shall be issued as current interest bonds. The Additional Refunding Bonds of each series shall be available in denominations of not less than \$5,000 and integral multiples thereof. The Additional Refunding Bonds of each series shall, when issued, be in the aggregate principal amounts and shall be dated as shall be provided in the final form of each applicable Additional Supplemental Indenture. The Additional Refunding Bonds may be issued as serial bonds or as term bonds or as both serial bonds and term bonds, all as set forth in each applicable Additional Supplemental Indenture. Interest on the Additional Refunding Bonds shall be paid at the rates and on the dates set forth in each applicable Additional Supplemental Indenture. No Additional Refunding Bond shall bear interest at a coupon rate in excess of 7.00% per annum. The Additional Refunding Bonds may be subject to

redemption at the option of the District on such terms and conditions as shall be set forth in each applicable Additional Supplemental Indenture. The Additional Refunding Bonds issued as term bonds also shall be subject to mandatory sinking account redemption as shall be set forth in each applicable Additional Supplemental Indenture.

The Additional Refunding Bonds and the Trustee's Certificate of Authentication to appear thereon shall be in substantially the form set forth in Exhibit A to the Additional Supplemental Indenture now before this meeting, with such necessary or appropriate variations, omissions and insertions as permitted or required by the Bond Indenture or each applicable Additional Supplemental Indenture or as appropriate to adequately reflect the applicable designation and terms of such Additional Refunding Bonds and the obligation represented thereby.

Each of the Additional Refunding Bonds shall be executed on behalf of the District by the President of the Board of Directors of the District and shall be attested thereto by the Secretary of the District and any such execution may be by manual or facsimile signature, and each bond shall be authenticated by the endorsement of the Trustee or an agent of the Trustee. Any facsimile signature of the President of the Board of Directors of the District or the Secretary of the District shall have the same force and effect as if such officer had manually signed each of such Additional Refunding Bonds.

As used herein, the term "True Interest Cost" shall be the rate necessary, when using a 360-day year and semi-annual compounding, to discount the debt service payments from their respective payment dates to the initial delivery date of the applicable series of Additional Refunding Bonds and to the purchase price of the applicable series of Additional Refunding Bonds. For the purpose of calculating the True Interest Cost, the principal amount of the applicable series of Additional Refunding Bonds scheduled for mandatory sinking fund redemption as part of a term bond shall be treated as a serial maturity for such year. The True Interest Cost shall be calculated by the District's Financial Advisor as of the date of delivery of each series of the Additional Refunding Bonds. Such calculation of the True Interest Cost may include such other reasonable assumptions and methods as determined by the Financial Advisor of the District.

Section 3. Approval of Additional Supplemental Indentures. The form, terms and provisions of each Additional Supplemental Indenture within the parameters set forth in this Resolution are in all respects approved, and each Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Supplemental Indentures, including counterparts thereof. Each Additional Supplemental Indenture, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Fulbright & Jaworski LLP and Curls Bartling P.C., the District's Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof). Execution and delivery of each Additional Supplemental Indenture, which document(s) will contain the maturities, interest rates and the fixed interest payment obligations

of the District within parameters set forth in this Resolution, shall constitute conclusive evidence of the District's approval of such maturities, interest rates and payment obligations.

Section 4. Selection of Underwriters; Approval of Additional Bond Purchase Contracts. If a Designated Officer determines that it will be advantageous to the District to issue one or more series of Additional Refunding Bonds, for the purposes of refunding (in whole or in part) any Outstanding Fixed Rate Bonds, funding or making provision for any bond reserve fund (if necessary) for such Additional Refunding Bonds and/or paying costs of issuance of such Additional Refunding Bonds, the Board hereby approves the initial sale of each such series of Additional Refunding Bonds through a private, negotiated sale to any one or more of the municipal broker-dealers, banking and financial institutions and/or other persons or entities heretofore selected to serve as part of the District's underwriting pool as shall be determined by the Director of Finance in connection with each such issuance of Additional Refunding Bonds. The Additional Refunding Bonds of each series shall be sold subject to an underwriters' discount (excluding original issue discount and premium) not to exceed \$7.50 per \$1,000 of the principal amount of such series of the Additional Refunding Bonds and subject to the terms and conditions set forth in the form of the applicable Additional Bond Purchase Contract as herein approved. The form, terms and provisions of each Additional Bond Purchase Contract, within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized empowered and directed to execute, acknowledge and deliver from time to time an Additional Bond Purchase Contract, including counterparts thereof, in the name of and on behalf of the District. Each Additional Bond Purchase Contract, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein (and additions thereto to reflect the terms of sale of the applicable series of Additional Refunding Bonds provided for thereunder) as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 5. Approval of Additional Escrow Agreements. The form, terms and provisions of each Additional Escrow Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Escrow Agreements, including counterparts thereof. Each Additional Escrow Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 6. Approval of Additional Continuing Disclosure Agreements. The form, terms and provisions of each Additional Continuing Disclosure Agreement within the parameters set forth in this Resolution are in all respects approved, and any Designated Officer, acting singly, is hereby authorized, empowered and directed to execute, acknowledge and deliver in the name of and on behalf of the District one or more Additional Continuing Disclosure Agreements, including counterparts thereof. Each Additional Continuing Disclosure Agreement, as executed and delivered, shall be in substantially the form as submitted to this meeting, with such changes therein as the Designated Officer executing the same shall approve after consultation with the

District's General Counsel and Co-Bond Counsel (such approval to be evidenced by the execution and delivery thereof).

Section 7. Approval of Preliminary Official Statements and Official Statements. Each of the Designated Officers is hereby authorized to cause to be prepared a preliminary official statement in connection with any Additional Refunding Bonds. Each preliminary official statement shall be substantially in the form as presented to this meeting with such additions thereto and changes therein (including such changes and additions to reflect the terms of the Additional Refunding Bonds and to comply with applicable federal securities laws) as are approved by the Designated Officers after consultation with the District's General Counsel and Co-Bond Counsel (such approval to be conclusively evidenced by the execution and delivery of the certificate referenced in the following sentence), including such changes as to reflect any updated information or to conform as applicable to the information contained in any future official statement, reoffering circular, remarketing memorandum or other offering document of the District hereafter presented to and approved by this Board in connection with the District's wastewater system revenue bonds or other wastewater system obligations during the term of the authorization of this Resolution, as are approved by a Designated Officer after consultation with the District's General Counsel and Co-Bond Counsel. Each preliminary official statement shall be circulated, from time to time, for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer (after consultation with the District's General Counsel and Co-Bond Counsel) shall determine, and the Designated Officers are hereby authorized to so determine, that such preliminary official statement is substantially final within the meaning of Rule 15c2-12 of the Securities and Exchange Commission, said determination to be conclusively evidenced by a certificate signed by the Designated Officer to such effect. The Director of Finance or the Treasury Manager is hereby authorized to authorize the underwriters to distribute (via written format and/or through electronic means) such preliminary official statement in connection with the marketing of the Additional Refunding Bonds.

Upon the execution and delivery of each Additional Bond Purchase Contract, from time to time, the Designated Officers shall provide for the preparation, publication, execution and delivery of one or more final official statements in substantially the form of the preliminary official statement deemed final by a Designated Officer with such changes as any Designated Officer approves, such approval to be conclusively evidenced by the execution of such final official statement. Any Designated Officer is hereby authorized and directed to execute and deliver one or more final official statements (including any amendments or supplements thereto) in the name and on behalf of the District. Each final official statement shall be circulated (via written format and/or through electronic means) for use in selling the Additional Refunding Bonds at such time or times as a Designated Officer deems appropriate after consultation with underwriters of the Additional Refunding Bonds, the District's Financial Advisor and Co-Bond Counsel and such other advisors as the Designated Officer believes to be useful. The Director of Finance or the Treasury Manager is hereby authorized to authorize the applicable underwriters of the Additional Refunding Bonds to distribute (via written format and/or through electronic means) the final official statement, any supplement to the final official statement and any revised final official statement, as the case may be, in connection with the sale and delivery of the Additional Refunding Bonds.

Section 8. Additional Actions. The Designated Officers and all such other proper officers of the District be and they hereby are authorized, individually and collectively, to take all actions and execute any and all documents necessary: to engage The Bank of New York Mellon Trust Company, N.A. as trustee and paying agent under any Additional Supplemental Indenture and as escrow agent under any Additional Escrow Agreement; to arrange for the funding of any bond reserve fund (if any) for any Additional Refunding Bonds with a letter of credit, surety bond or insurance policy pursuant to the terms of the Bond Indenture, as so supplemented if, upon the advice of the District's Financial Advisor, the funding of such bond reserve fund (if any) with a letter of credit, surety bond or insurance policy will be economically beneficial to the District; to effect the sale and delivery of any Additional Refunding Bonds pursuant to the applicable Additional Bond Purchase Contract and the Bond Indenture as supplemented; and to do any and all things and to execute and deliver such other agreements, documents and certificates, including (without limitation) tax certificates relating to any Additional Refunding Bonds and any investment agreements relating to the investment of the bond proceeds, and to provide for the giving of written directions and notices, and the securing of any necessary third party approvals in connection with the defeasance, refunding and/or redemption of any Outstanding Fixed Rate Bonds and/or the issuance of any Additional Refunding Bonds, as may be necessary, convenient, or advisable in order to consummate the sale, execution and delivery of any Additional Refunding Bonds and otherwise to carry out, give effect to and comply with the terms and intent of this Resolution, the Additional Refunding Bonds, the Bond Indenture, any Additional Supplemental Indenture, any Additional Bond Purchase Contract, any Additional Escrow Agreements, any Additional Continuing Disclosure Agreements, the preliminary official statement(s) and the final official statement(s) and the transactions herein authorized. All such actions heretofore taken by such officers or their designees are hereby ratified, confirmed and approved.

Section 9. Term of Authority. A Designated Officer's authority to approve the final terms of the sale of Additional Refunding Bonds and to execute or to direct the execution of Additional Supplemental Indentures, Additional Escrow Agreements, Additional Bond Purchase Contracts and official statements relating to Additional Refunding Bonds shall commence upon the date of adoption of this Resolution and shall continue for twelve calendar months thereafter unless rescinded or modified by subsequent action of the Board prior to the time that an Additional Bond Purchase Contract has been duly signed and delivered or except as such authorization period is hereafter extended by subsequent action of the Board.

ADOPTED this 24<sup>th</sup> day of September, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

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President

---

Secretary

APPROVED AS TO FORM AND PROCEDURE:

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General Counsel

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\_\_\_\_\_ SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

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

\_\_\_\_\_  
Dated as of \_\_\_\_\_  
\_\_\_\_\_

(Supplemental to the Wastewater System Subordinated Revenue Bond  
Indenture dated as of April 1, 1990)

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\_\_\_\_ Supplemental Indenture  
(Supplemental to the Wastewater System  
Subordinated Revenue Bond Indenture dated  
as of April 1, 1990)  
Authorizing the Issuance of  
\$\_\_\_\_\_ Aggregate Principal Amount of  
East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds,  
Series [Designation]

\_\_\_\_\_  
This \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (the “\_\_\_\_\_ Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”);

W I T N E S S E T H :

WHEREAS, this \_\_\_\_\_ Supplemental Indenture is supplemental to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented (the “Indenture”), between the District and the Trustee, providing for the issuance of bonds initially designated as “Wastewater System Subordinated Revenue Bonds” and subsequent to the execution and delivery of the Twelfth Supplemental Indenture designated as “Wastewater System Revenue Bonds” (the “Bonds”);

WHEREAS, in accordance with the Indenture there has been issued, *inter alia*, \$\_\_\_\_\_ aggregate principal amount of Wastewater System Revenue Refunding Bonds, Series [specify series being refunded] (the “Series [specify series to be refunded] Bonds”), pursuant to the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, between the District and the Trustee, of which \$\_\_\_\_\_ principal amount is Outstanding as of the date hereof;

WHEREAS, the Indenture provides that the District may issue additional Bonds as well as refunding Bonds from time to time as authorized by a Supplemental Indenture;

WHEREAS, the District has determined to issue its Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) in the aggregate principal amount of \$\_\_\_\_\_, pursuant to this \_\_\_\_\_ Supplemental Indenture in order to provide moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund [all] [a portion] of the Outstanding Series [specify series to be refunded] Bonds; and (ii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds; and

WHEREAS, the Indenture creates a valid and binding pledge and assignment of and security interest in the Subordinated Wastewater Revenues and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) for the payment of the Bonds as and to the extent provided therein in accordance with the terms thereof without the need for

any physical delivery, recordation, filing or further act, in accordance with Section 5451 of the Government Code of the State of California;

NOW, THEREFORE, the parties hereto agree, as follows:

ARTICLE \_\_\_\_\_

SERIES [DESIGNATION] BONDS

SECTION \_\_.01. Definitions. The terms defined in this Section shall, for all purposes of this \_\_\_\_\_ Supplemental Indenture and of any certificate, opinion or other document herein mentioned, have the meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Terms defined in the Indenture not otherwise defined herein shall have the meanings specified therein.

“Beneficial Owner” means any Person which (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Series [Designation] Bond (including any Person holding a Series [Designation] Bond through nominees, depositories or other intermediaries), or (b) is treated as the owner of any Series [Designation] Bond for federal income tax purposes.

“Book-Entry System” means the system maintained by the Securities Depository and described in Section \_\_.03 hereof.

“Closing Date” means the date of delivery of the Series [Designation] Bonds to the Representative of the Underwriters, against payment therefor, such date being \_\_\_\_\_.

“Continuing Disclosure Agreement” means any continuing disclosure agreement entered into by the District and the Trustee in connection with the Series [Designation] Bonds in order to comply with the continuing disclosure requirements promulgated under S.E.C. Rule 15c2-12.

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

“Escrow Agreement” means the Escrow Agreement relating to the defeasance of a portion of the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [specify series to be refunded], dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent and as trustee for the Series [specify series to be refunded] Bonds.

“Representation Letter” means the Letter of Representations from the District to DTC relating to the Book-Entry System for the Series [Designation] Bonds.

“Representative” means \_\_\_\_\_, as representative of the Underwriters of the Series [Designation] Bonds.

“Securities Depository” means DTC or, if applicable, any successor securities depository appointed pursuant to Section \_\_.03 hereof.

“Securities Depository Participant” means any broker-dealer, bank or other financial institution for which a Securities Depository holds Series [Designation] Bonds as Securities Depository from time to time.

“Series [Designation] Bonds” means the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation].

“Series [Designation] Costs of Issuance Fund” means the fund by that name established pursuant to Section \_\_.13 hereof.

SECTION \_\_.02. Authorization.

(A) Designation of Bonds. A [\_\_\_\_\_] Series of Bonds to be issued under the Indenture is hereby created. Such Series of Bonds shall be known as the “East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation]” (herein referred to as the “Series [Designation] Bonds”). The Series [Designation] Bonds shall be issued in the aggregate principal amount of \$\_\_\_\_\_.

The Series [Designation] Bonds shall be issued in accordance with the Act and pursuant to Resolution No. \_\_\_\_\_, adopted by the Board on September 24, 2013, and this \_\_\_\_\_ Supplemental Indenture. The Series [Designation] Bonds shall be issued for the purpose of providing moneys, together with certain other funds to be made available upon the delivery thereof, (i) to refund [all] [a portion] of the outstanding Series [specify series to be refunded] Bonds; and (ii) to pay Costs of Issuance in connection with the delivery of the Series [Designation] Bonds.

The Series [Designation] Bonds shall be Current Interest Indebtedness.

(B) Registered Form. The Series [Designation] Bonds shall be issued in fully registered form and shall be initially registered in the name of “Cede & Co.,” as nominee of DTC in accordance with Section \_\_.03 hereof. The Series [Designation] Bonds shall be evidenced by one bond maturing on each of the maturity dates of the Series [Designation] Bonds as set forth in Section \_\_.02(C) hereof. The Series [Designation] Bonds may be assigned by the Trustee a distinctive number or letter and number, and a record of the same shall be maintained by the Trustee. Registered ownership of the Series [Designation] Bonds, or any portion thereof, may not thereafter be transferred except as set forth in Section \_\_.03 hereof.

(C) Maturities; Interest Rates; Denominations. The Series [Designation] Bonds shall be dated the date of delivery thereof, shall be issued in denominations of \$5,000 principal amount or any integral multiple thereof, and shall bear interest from the date thereof at the following rates per annum, and shall mature on June 1 in the following years in the following amounts:

Maturity Date (June 1)	Principal Amount	Interest Rate

Interest on the Series [Designation] Bonds shall be payable commencing on \_\_\_\_\_ and semiannually thereafter on June 1 and December 1 of each year by check mailed by first-class mail on each interest payment date to the Owner thereof as of the close of business on the fifteenth (15th) day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. Interest on the Series [Designation] Bonds shall be computed on the basis of a 360-day year of twelve 30-day months. The principal of and premium, if any, on the Series [Designation] Bonds are payable when due upon presentation thereof at the corporate trust office of the Trustee in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

So long as the Series [Designation] Bonds are maintained in book-entry form, payments of principal, premium, if any, and interest shall be made by the Trustee to the Securities Depository by wire transfer in accordance with mutually satisfactory arrangements between the Trustee and the Securities Depository.

The Trustee shall provide CUSIP number identification, with appropriate dollar amounts for each CUSIP number, on all redemption payments and interest payments, whether by check or by wire transfer.

SECTION \_\_\_\_03. Book-Entry System. The Series [Designation] Bonds shall be initially issued registered in the name of “Cede & Co.,” as nominee for DTC and registered Owner of the Series [Designation] Bonds, and held in the custody of the Securities Depository. A single certificate will be issued and delivered to the Securities Depository for each maturity of the Series [Designation] Bonds, and the Beneficial Owners will not receive physical delivery of Series [Designation] Bond certificates except as provided herein. For so long as the Securities Depository shall continue to serve as securities depository for the Series [Designation] Bonds as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no investor or other party purchasing, selling or otherwise transferring beneficial ownership of Series [Designation] Bonds will receive, hold or deliver any Series [Designation] Bond certificate.

At the written direction of the District, with notice to the Trustee, but without the consent of the Owners of the Series [Designation] Bonds or the Trustee, the District, may appoint a successor Securities Depository and enter into an agreement with the successor Securities Depository, to establish procedures with respect to a Book-Entry System for the Series [Designation] Bonds not inconsistent with the provisions of the Indenture. Any successor Securities Depository shall be a “clearing agency” registered under Section 17A of the Securities Exchange Act of 1934, as amended.

The District and the Trustee may rely conclusively upon (i) a certificate of the Securities Depository as to the identity of the Securities Depository Participants in the Book-Entry System with respect to the Series [Designation] Bonds and (ii) a certificate of any such Securities Depository Participant as to the identity of, and the respective principal amount of the Series [Designation] Bonds beneficially owned by, the Beneficial Owners.

Whenever, during the term of the Series [Designation] Bonds, the beneficial ownership thereof is determined by a book-entry at the Securities Depository, the requirements in the Indenture of holding, delivering or transferring the Series [Designation] Bonds shall be deemed modified to require the appropriate person to meet the requirements of the Securities Depository as to registering or transferring the book-entry to produce the same effect. Any provision hereof permitting or requiring delivery of the Series [Designation] Bonds shall, while the Series [Designation] Bonds are in the Book-Entry System, be satisfied by the notation on the books of the Securities Depository in accordance with applicable state law.

Except as otherwise specifically provided in the Indenture and the Series [Designation] Bonds with respect to the rights of Securities Depository Participants and Beneficial Owners, when a Book-Entry System is in effect, the District and the Trustee may treat the Securities Depository (or its nominee) as the sole and exclusive Owner of the Series [Designation] Bonds registered in its name for the purposes of payment of the principal of and interest on the Series [Designation] Bonds or portion thereof to be redeemed or purchased, and of giving any notice permitted or required to be given to the Owners of Series [Designation] Bonds under the Indenture, and neither the District nor the Trustee shall be affected by any notice to the contrary.

Neither the District nor the Trustee will have any responsibility or obligations to the Securities Depository, any Securities Depository Participant, any Beneficial Owner or any other Person which is not shown on the registration books required to be maintained by the Trustee, with respect to (i) the accuracy of any records maintained by the Securities Depository or any Securities Depository Participant; (ii) the payment by the Securities Depository or by any Securities Depository Participant of any amount due to any Beneficial Owner in respect of the principal amount or redemption or purchase price of, or interest on, any Series [Designation] Bonds; (iii) the delivery of any notice by the Securities Depository or any Securities Depository Participant; (iv) the selection of the Beneficial Owners to receive payment in the event of any partial redemption of the Series [Designation] Bonds; or (v) any other action taken by the Securities Depository or any Securities Depository Participant. The Trustee shall pay all principal of and interest on the Series [Designation] Bonds registered in the name of Cede & Co. only to or “upon the order of” the Securities Depository, and all such payments shall be valid and effective to fully satisfy and discharge the District’s obligations with respect to the principal of and interest on such Series [Designation] Bonds to the extent of the sum or sums so paid.

The Book-Entry System may be discontinued by the Trustee and the District, at the direction and expense of the District, and the District and the Trustee will cause the delivery of Series [Designation] Bond certificates to such Beneficial Owners of the Series [Designation] Bonds and registered in the names of such Beneficial Owners as shall be specified to the Trustee by the Securities Depository in writing, under the following circumstances:

(1) The Securities Depository determines to discontinue providing its service with respect to the Series [Designation] Bonds and no successor Securities Depository is appointed as described above. Such a determination may be made at any time by giving thirty (30) days’ notice to the District and the Trustee and discharging its responsibilities with respect thereto under applicable law; or

(2) The District determines not to continue the Book-Entry System through a Securities Depository, upon not less than forty-five (45) days’ prior written notice to the Trustee.

When the Book-Entry System is not in effect, all references herein to the Securities Depository shall be of no further force or effect.

So long as any Series [Designation] Bond is registered in the name of Cede & Co., as nominee of DTC, all payments with respect to principal of and interest on such Series [Designation] Bond and all notices with respect to such Series [Designation] Bond shall be made and given, respectively, in the manner provided in the Representation Letter.

In the event of a redemption or any other transaction necessitating a reduction in aggregate principal amount of Series [Designation] Bonds Outstanding, DTC in its discretion: (a) may request the District and the Trustee to issue and authenticate a new Series [Designation] Bond certificate, or (b) shall make an appropriate notation on the Series [Designation] Bond certificate indicating the date and amounts of such reduction in principal, except in the case of final maturity, in which case the certificate must be presented to the Trustee prior to payment.

SECTION \_\_.04. Redemption of Series [Designation] Bonds.

(A) Optional Redemption. The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

(B) Mandatory Sinking Account Redemption. The Series [Designation] Bonds maturing on June 1, \_\_\_\_ are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in Section \_\_.09, commencing on June 1, \_\_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.

SECTION \_\_.05. Selection of Series [Designation] Bonds for Redemption. Whenever provision is made in this \_\_\_\_\_ Supplemental Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee shall select the Series [Designation] Bonds of such maturity to be redeemed, from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion shall deem appropriate and fair. The Trustee shall promptly notify the District in writing of the Series [Designation] Bonds so selected for redemption.

SECTION \_\_.06. Notice of Redemption of Series [Designation] Bonds. The District shall notify the Trustee at least twenty-five (25) days prior to the redemption date for any Series [Designation] Bonds pursuant to Section \_\_.04(A) (or such shorter time as may be agreed to by the Trustee). Notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, (i) to the respective Owners of any Series [Designation] Bonds designated for redemption at their addresses appearing on the bond registration books of the Trustee by first class mail, (ii) to the Securities Depository by facsimile or other electronic means of communications and by first class mail, and (iii) to the Electronic Municipal Market Access System (referred to as "EMMA"), a facility of the Municipal Securities Rulemaking Board, at [www.emma.msrb.org](http://www.emma.msrb.org), by electronic means of communication, or to such other securities depositories or information services as the District may designate in a Request of the District delivered to the Trustee. Notice of redemption shall be given in the form and otherwise in accordance with the terms of the Indenture and this \_\_\_\_\_ Supplemental Indenture.

In the event of an optional redemption of Series [Designation] Bonds, in the event that the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall



state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

SECTION \_\_.07. Partial Redemption of Series [Designation] Bonds. Upon surrender of any Series [Designation] Bond redeemed in part only, the District shall execute and the Trustee shall authenticate and deliver to the Owner thereof, at the expense of the District, a new Series [Designation] Bond of authorized denominations, and of the same maturity and interest rate, equal in aggregate principal amount to the unredeemed portion of the Series [Designation] Bond surrendered.

SECTION \_\_.08. Effect of Redemption of Series [Designation] Bonds. If notice of redemption has been duly given pursuant to Section \_\_.06, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption shall become due and payable at the Redemption Price specified in such notice together with interest accrued thereon to the date fixed for redemption, interest on the Series [Designation] Bonds so called for redemption shall cease to accrue, the Series [Designation] Bonds (or portions thereof) shall cease to be entitled to any benefit or security under the Indenture, and the Owners of the Series [Designation] Bonds shall have no rights in respect thereof except to receive payment of the Redemption Price and accrued interest.

All Series [Designation] Bonds redeemed pursuant to the provisions of this Article shall be cancelled upon surrender thereof and destroyed.

SECTION \_\_.09. Series [Designation] Sinking Accounts. An Account is hereby established within the Principal Fund created by Section 5.02 of the Indenture to be designated the “Series [Designation] Sinking Account.” On each Business Day prior to the following payment dates, the District shall transfer from the Principal Fund to the Series [Designation] Sinking Account an amount equal to the payment due on such date as set forth below:

\$\_\_\_\_\_ Term Series [Designation] Bonds Due June 1, \_\_\_\_

Mandatory Sinking Account

Payment Dates  
(June 1)

Mandatory Sinking  
Account Payments

†

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† Final Maturity.

Upon an optional redemption of a portion of any Term Series [Designation] Bonds pursuant to Section \_\_.04(A), the District shall provide the Trustee with a revised schedule of the foregoing Mandatory Sinking Account Payments.

Moneys in the Series [Designation] Sinking Account shall be applied as provided in Section 5.02(A) and Section 5.04(B) of the Indenture.

SECTION \_\_.10. Form of Series [Designation] Bonds. The Series [Designation] Bonds and the certificate of authentication and registration to be executed thereon shall be in substantially the form set forth as Exhibit A hereto. The Series [Designation] Bond letters and numbers, maturity dates, principal amounts and interest rates shall be inserted therein in conformity with Section \_\_.02.

SECTION \_\_.11. Issuance of Series [Designation] Bonds. Upon the execution and delivery of this \_\_\_\_\_ Supplemental Indenture, the District may execute and the Trustee shall authenticate and deliver the Series [Designation] Bonds in the aggregate principal amount of \$\_\_\_\_\_ on the Closing Date therefor upon an Order of the District.

SECTION \_\_.12. Application of Proceeds of Series [Designation] Bonds. The net proceeds of the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ (representing the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds [plus/less \$\_\_\_\_\_ original issue premium/discount], less \$\_\_\_\_\_ of Underwriter's discount), [together with \$\_\_\_\_\_ transferred from the Series [specify series to be refunded] Bond Reserve Fund relating to the refunded [specify series to be refunded] Bonds, and \$\_\_\_\_\_ contributed by the District], or a total of \$\_\_\_\_\_, shall be received by the Trustee on behalf of the District and held in trust and set aside as follows:

(i) \$\_\_\_\_\_ of the proceeds from the sale of the Series [Designation] Bonds, [together with (a) the \$\_\_\_\_\_ transferred from the Series [specify series to be refunded] Bond Reserve Fund for the refunded Series [specify series to be refunded] Bonds, and (b) \$\_\_\_\_\_ contributed by the District, or a total of \$\_\_\_\_\_], shall be transferred by the Trustee to The Bank of New York Mellon Trust Company, N.A., as escrow agent pursuant to the Escrow Agreement for deposit in the escrow fund created pursuant to the Escrow Agreement, all as specified in the Escrow Agreement; and

(ii) The remaining proceeds from the sale of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ shall be transferred by the Trustee to the District for deposit in the Costs of Issuance Account of the Series [Designation] Costs of Issuance Fund to be applied in accordance with Section \_\_.13.

SECTION \_\_.13. Establishment and Application of Series [Designation] Costs of Issuance Fund. The District shall establish, maintain and hold in trust a separate fund designated as the "Series [Designation] Costs of Issuance Fund." The moneys on deposit in the Series [Designation] Costs of Issuance Fund shall be used and withdrawn by the District to pay Costs of Issuance of the Series [Designation] Bonds.

SECTION \_\_.14. Continuing Disclosure. The District and the Trustee hereby covenant and agree that they will comply with and carry out all of their respective obligations under the Continuing Disclosure Agreement. Notwithstanding any other provision of this Indenture, failure of the District or the Trustee to comply with the Continuing Disclosure Agreement shall not be considered an Event of Default; however, any Series [Designation] Bondholder or Beneficial Owner or the Trustee may (and, at the request of any Participating Underwriter (as defined in the Continuing Disclosure Agreement) or the Owners of at least 25% of the aggregate principal amount of Outstanding Series [Designation] Bonds and upon provision of indemnification satisfactory to the Trustee, shall) take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to cause the District or the Trustee, as the case may be, to comply with its obligations under this Section \_\_.14. For purposes of this Section \_\_.14, "Beneficial Owner" means any person who has or shares the power, directly or indirectly, to make investment decisions concerning ownership of any Series [Designation] Bonds (including persons holding Series [Designation] Bonds through nominees, depositories or other intermediaries).

SECTION \_\_.15. [Revised [specify series to be refunded] Sinking Account Payment Schedules. In accordance with Section 5.05 of the Indenture, the portion of the Series [specify series to be refunded] Bonds (such Series [specify series to be refunded] Bonds being Term Bonds) being refunded and redeemed in connection with the issuance of the Series [Designation] Bonds shall be allocated to Mandatory Sinking Account Payments for the applicable Term Bonds as may be specified by the District to the Trustee. The revised schedule of Mandatory Sinking Account Payments for each of the Series [specify series to be refunded] Bonds which are Term Bonds that will remain Outstanding following the issuance of the Series [Designation] Bonds and the retirement of the Series [specify series to be refunded] Bonds being partially refunded thereby are set forth in Exhibit B hereto.]

SECTION \_\_.16. Terms of Series [Designation] Bonds Subject to the Indenture. Except as in this \_\_\_\_\_ Supplemental Indenture expressly provided, every term and condition contained in the Indenture shall apply to this \_\_\_\_\_ Supplemental Indenture and to the Series [Designation] Bonds with the same force and effect as if the same were herein set forth at length, with such omissions, variations and modifications thereof as may be appropriate to make the same conform to this \_\_\_\_\_ Supplemental Indenture.

This \_\_\_\_\_ Supplemental Indenture and all the terms and provisions herein contained shall form part of the Indenture as fully and with the same effect as if all such terms and provisions had been set forth in the Indenture. The Indenture is hereby ratified and confirmed and shall continue in full force and effect in accordance with the terms and provisions thereof, as supplemented and amended hereby.

SECTION \_\_.17. Effective Date of \_\_\_\_\_ Supplemental Indenture. This \_\_\_\_\_ Supplemental Indenture shall take effect upon its execution and delivery.

SECTION \_\_.18. Execution in Counterparts. This \_\_\_\_\_ Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed the \_\_\_\_\_  
Supplemental Indenture by their officers thereunto duly authorized as of the day and year first  
written above.

EAST BAY MUNICIPAL UTILITY  
DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

ATTEST:

By: \_\_\_\_\_  
Lynelle M. Lewis  
Secretary of the District

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

By: \_\_\_\_\_  
Milly Canessa  
Authorized Officer

EXHIBIT A

(FORM OF SERIES [DESIGNATION] BOND)

No. R-\_\_\_\_

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

EAST BAY MUNICIPAL UTILITY DISTRICT  
(ALAMEDA AND CONTRA COSTA COUNTIES, CALIFORNIA)  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]

Unless this certificate is presented by an authorized representative of The Depository Trust Company a New York corporation (“DTC”), to the District or its agent for registration of transfer, exchange, or payment, and any certificate 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.

<u>Maturity Date</u>	<u>Dated Date</u>	<u>Interest Rate</u>	<u>CUSIP</u>
June 1, ____	_____, 20____	%	

REGISTERED OWNER: CEDE & CO.

PRINCIPAL AMOUNT:

EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district duly organized and existing under and pursuant to the laws of the State of California (the “District”), for value received, hereby promises to pay (but only out of the Subordinated Wastewater Revenues and funds hereinafter referred to) to the registered owner named above or registered assigns, on the maturity date specified above (subject to any right of prior redemption or payment as provided in the hereinafter mentioned Indenture), the principal amount specified above together with interest thereon from its Dated Date until the principal hereof shall have been paid, at the interest rate per annum specified above, payable on \_\_\_\_\_, and semiannually thereafter on December 1 and June 1 in each year. Interest hereon is payable in lawful money of the United States of America by (except as otherwise provided in the hereinafter mentioned Indenture) check mailed by first class mail on each interest payment date to the registered owner as of the close of business on the 15th day of the calendar month immediately preceding such interest payment date (each, a “record date”), except that in the case of an Owner of \$1,000,000 or more in aggregate principal amount of the hereinafter described Series [Designation] Bonds, upon written request of such Owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to

which such payment shall be made (which request shall remain in effect until revoked by such Owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date. The principal hereof and premium, if any, hereon are payable when due upon presentation hereof at the corporate trust office of The Bank of New York Mellon Trust Company, N.A., as successor trustee (together with any successor as trustee under said Indenture, the "Trustee"), in San Francisco, California, or at such other place as designated by the Trustee, in lawful money of the United States of America.

This Bond is one of a duly authorized issue (of the series and designation indicated on the face hereof) of Wastewater System Revenue Bonds of the District issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, between the Trustee and the District, providing for the issuance of said bonds (the "Bonds"). Said authorized issue of Bonds is not limited in aggregate principal amount, except as otherwise provided in said Wastewater System Subordinated Revenue Bond Indenture, and consists or may consist of one or more series of varying denominations, dates, maturities, interest rates and other provisions, as in said Wastewater System Subordinated Revenue Bond Indenture provided, all issued and to be issued pursuant to the provisions of the Act (as defined in the Wastewater System Subordinated Revenue Bond Indenture). This Bond is issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, between the Trustee and the District, authorizing the issuance of the series of bonds of which this Bond is one, such series being herein referred to as the "Series [Designation] Bonds" (the Wastewater System Subordinated Revenue Bond Indenture, as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, being herein collectively referred to as the "Indenture"). Reference is hereby made to the Indenture and to the Act for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Subordinated Wastewater Revenues (as that term is defined in the Indenture), and the rights of the registered owners of the Bonds; and all the terms of the Indenture and the Act are hereby incorporated herein and constitute a contract between the District and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued, and indebtedness may be incurred, on a parity with the Bonds of this authorized issue, but only subject to the conditions and limitations contained in the Indenture.

The Bonds and the interest thereon (to the extent set forth in the Indenture), together with the Parity Debt (as defined in the Indenture) issued by the District, and the interest thereon, are payable from, and are secured by a charge and lien on, the "Subordinated Wastewater Revenues" (as more particularly defined in the Indenture). All of the Bonds and Parity Debt are equally secured by a pledge of, and charge and lien upon, all of the Subordinated Wastewater Revenues, and the Subordinated Wastewater Revenues constitute a trust fund for the security and payment of the interest on and principal of the Bonds; but nevertheless out of Subordinated Wastewater Revenues certain amounts may be applied for other purposes as provided in the Indenture.

The Bonds are limited obligations of the District and are payable, both as to principal and interest, and as to any premiums upon the redemption thereof, out of the Subordinated

Wastewater Revenues and certain funds held under the Indenture. The general fund of the District is not liable, and the credit or taxing power of the District is not pledged, for the payment of the Bonds or the interest thereon. The Bonds are not secured by a legal or equitable pledge of, or charge, lien or encumbrance upon, any of the property of the District or any of its income or receipts, except the Subordinated Wastewater Revenues and the funds held under the Indenture. No registered owner of this Bond shall ever have the right to compel any exercise of the taxing power of the District to pay this Bond or the interest hereon.

The Bonds are being issued by means of a book-entry system with no physical distribution of bond certificates to be made except as provided in the Indenture. One bond certificate with respect to each date on which the Bonds are stated to mature, registered in the name of the Cede & Co, is being issued and required to be deposited with the Securities Depository and immobilized in its custody. The book-entry system will evidence positions held in the Bonds by the Securities Depository Participants, beneficial ownership of the Bonds in authorized denominations being evidenced in the records of such Securities Depository Participants. Transfers of ownership shall be effected on the records of the Securities Depository and its Securities Depository Participants pursuant to rules and procedures established by the Securities Depository and its Securities Depository Participants. The District and the Trustee will recognize Cede & Co., while the registered owner of this Bond, as the owner of this Bond for all purposes, including (i) payments of principal of, and redemption premium, if any, and interest on this Bond and (ii) notices. Transfer of principal, interest and any redemption premium payments to Securities Depository Participants, and transfer of principal, interest and any redemption premium payments to beneficial owners of the Bonds by Securities Depository Participants will be the responsibility of such Securities Depository Participants and other nominees of such beneficial owners. The District will not be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, Cede & Co., its Securities Depository Participants or persons acting through such Securities Depository Participants. While Cede & Co. is the owner of this Bond, notwithstanding any other provision hereof, payments of principal of, redemption premium, if any, and interest on this Bond shall be made in accordance with existing arrangements between the Trustee or its successors under the Indenture and the Securities Depository.

[The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

The Series [Designation] Bonds maturing on June 1, \_\_\_\_, are also subject to redemption prior to maturity, in part, by lot, from Mandatory Sinking Account Payments required by and as specified in the Indenture, commencing on June 1, \_\_\_\_, at the principal amount thereof plus accrued interest thereon to the date fixed for redemption, without premium.]

This Bond is transferable or exchangeable for other authorized denominations by the registered owner hereof, in person or by its attorney duly authorized in writing, at the corporate

trust office of the Trustee in San Francisco, California, but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer or exchange a new fully registered Bond or Bonds without coupons, of authorized denomination or denominations, of the same series, tenor, maturity and interest rate for the same aggregate principal amount will be issued to the registered owner in exchange hereof.

The District, the Trustee and any paying agent may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the District, the Trustee and any paying agent shall not be affected by any notice to the contrary.

The rights and obligations of the District and of the registered owners of the Bonds may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the Indenture, which provide, in certain circumstances, for modifications and amendments without the consent of or notice to the registered owners of the Bonds.

It is hereby certified and recited that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, do exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the State of California, and that this Bond, together with all other indebtedness of the District pertaining to the Subordinated Wastewater Revenues, is within every debt and other limit prescribed by the Constitution and the statutes of the State of California, and is not in excess of the amount of Bonds permitted to be issued under the Indenture or the Act.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been signed by the Trustee.

Capitalized terms used but not defined herein shall have the meanings assigned to them in the Indenture.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]



IN WITNESS WHEREOF, EAST BAY MUNICIPAL UTILITY DISTRICT has caused this Bond to be executed in its name and on its behalf by the President of the Board of Directors and attested by its Secretary, and this Bond to be dated as of the \_\_\_\_ day of \_\_\_\_\_.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
President of the Board of Directors

Attested:

By: \_\_\_\_\_  
Secretary

[FORM OF CERTIFICATE OF AUTHENTICATION  
AND REGISTRATION]

This is one of the Bonds described in the within mentioned Indenture and registered on the date set forth below.

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

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

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

[FORM OF ASSIGNMENT]

For value received \_\_\_\_\_ hereby sell, assign and transfer unto \_\_\_\_\_ the within Bond and hereby irrevocably constitute and appoint \_\_\_\_\_ attorney, to transfer the same on the books of the District at the office of the Trustee, with full power of substitution in the premises.

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NOTE: The signature to this Assignment must correspond with the name on the face of the within registered bond in every particular, without alteration or enlargement or any change whatsoever.

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

Signature Guaranteed by:

---

NOTE: Signature must be guaranteed by an eligible guarantor institution.

EXHIBIT B  
{if applicable}

REVISED SERIES [SPECIFY SERIES TO BE REFUNDED]  
MANDATORY SINKING ACCOUNT PAYMENT SCHEDULES

A. Following the defeasance and retirement of the \$\_\_\_\_\_ principal amount of the Series [specify series to be refunded] Bonds being refunded in connection with the issuance of the Series [Designation] Bonds, the Mandatory Sinking Account Payment schedule set forth in Section \_\_\_\_ of the \_\_\_\_\_ Supplemental Indenture shall be revised as follows for the Series [specify series to be refunded] Bonds to remain Outstanding upon the issuance of the Series [Designation] Bonds:

**Series [specify series to be refunded] Bonds**

\$\_\_\_\_\_ Term Series \_\_\_\_\_ Bonds Due June 1, 20\_\_\_\_

Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments	Mandatory Sinking Account Payment Dates (June 1)	Mandatory Sinking Account Payments
<hr/>			

† Final Maturity.

EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS,  
SERIES [DESIGNATION]  
PURCHASE CONTRACT

[Date]

Board of Directors  
East Bay Municipal Utility District  
375 -11th Street  
Oakland, California 94607

Ladies and Gentlemen:

The undersigned \_\_\_\_\_, as representative (the “Representative”) of itself, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ (collectively, the “Underwriters”), hereby offers to enter into this Purchase Contract (the “Purchase Contract”) with you, the East Bay Municipal Utility District (the “District”), which, upon the District’s acceptance of this offer, will be binding upon the District and the Underwriters. This offer is made subject to acceptance by you prior to 5:00 p.m., California time, on the date hereof. If this offer is not so accepted, this offer will be subject to withdrawal by the Underwriters upon notice delivered to you at any time prior to acceptance. Upon acceptance, this Purchase Contract shall be in full force and effect in accordance with its terms and shall be binding upon the District and the Underwriters. All capitalized terms used herein not otherwise defined herein shall have the respective meanings ascribed thereto in the Official Statement (as hereinafter defined). The Representative has been duly authorized to execute this Purchase Contract and to take any action hereunder by and on behalf of the Underwriters.

The District acknowledges and agrees that (i) the purchase and sale of the Series [Designation] Bonds (defined below) pursuant to this Purchase Contract is an arm’s-length commercial transaction between the District and the Underwriters, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transaction, the Underwriters are and have been acting solely as principals and are not acting as advisors to or fiduciaries of the District, (iii) the Underwriters have not assumed an advisory or fiduciary responsibility in favor of the District with respect to the offering contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether an Underwriter has provided other services or is currently providing other services to the District on other matters), (iv) the Underwriters have financial and other interests that differ from those of the District, and (v) the District has consulted its own legal, financial and other advisors to the extent it has deemed appropriate.

1. Purchase, Sale and Delivery of the Series [Designation] Bonds.

(a) Subject to the terms and conditions and in reliance upon the representations, warranties and agreements set forth herein, the Underwriters, jointly and severally, hereby agree to

purchase and the District agrees to sell and deliver to the Underwriters all (but not less than all) of the East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation] (the "Series [Designation] Bonds") in the aggregate principal amount of \$\_\_\_\_\_.

(b) The Series [Designation] Bonds shall be issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the "Act") and the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the "Indenture"). The Series [Designation] Bonds shall be dated, shall mature, and shall be redeemable as provided in the Indenture and shall otherwise be as described in the Official Statement described below. The Series [Designation] Bonds shall be substantially in the form described in, and shall be issued and secured under the provisions of, the Indenture. The Series [Designation] Bonds shall be special obligations of the District payable from, and secured by a pledge of, the Subordinated Wastewater Revenues of the District. The Series [Designation] Bonds shall be dated the Closing Date (defined below), shall bear interest payable June 1 and December 1 of each year, commencing on \_\_\_\_\_, and shall mature on June 1 in each year, subject to earlier redemption, as set forth in Exhibit A.

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [all] [a portion of] the District's \$\_\_\_\_\_ aggregate principal amount of outstanding Wastewater System Revenue Refunding Bonds, Series [specify series being refunded] (the "Refunded Bonds"), and (ii) paying costs of issuance of the Series [Designation] Bonds.

(c) The aggregate purchase price for the Series [Designation] Bonds shall be \$\_\_\_\_\_ (consisting of the principal amount of the Series [Designation] Bonds in the amount of \$\_\_\_\_\_ [plus/less original issuance premium/discount of \$\_\_\_\_\_] less \$\_\_\_\_\_ of Underwriters' discount).

If this offer shall be accepted by the District, then the Underwriters, shall, immediately upon the acceptance by the District of this offer (or as soon thereafter as practicable), deliver or cause to be delivered to the District a wire or cashier's check made payable to the order of the District, in the amount of \$\_\_\_\_\_ as security for the performance by the Underwriters of their obligations to accept delivery of and pay for the Series [Designation] Bonds on the Closing Date in accordance with the provisions of this Purchase Contract (such deposit is herein referred to as the "Good Faith Deposit"). Such deposit shall not be expended by the District pending the Closing except as provided below. On the Closing Date, the Good Faith Deposit will be applied towards the purchase price stated above. If the District fails to deliver the Series [Designation] Bonds on the Closing Date, or if the conditions to the obligations of the Underwriters to purchase, accept delivery of and pay for the Series [Designation] Bonds as set forth in this Purchase Contract shall be unsatisfied (unless waived by the Underwriters), or if such obligations of the Underwriters shall be terminated by the Underwriters for any reason permitted by this Purchase Contract, this Purchase Contract shall terminate and the Good Faith Deposit with interest calculated at the prevailing 1-month LIBOR rate shall be immediately returned to the Underwriters. In the event that the Underwriters fail (other than

for a reason permitted under this Purchase Contract) to purchase, accept delivery of and pay for the Series [Designation] Bonds on the Closing Date as herein provided, the Good Faith Deposit shall be retained by the District and shall constitute full liquidated damages for such failure and for any and all defaults hereunder on the part of the Underwriters, and shall constitute full release and discharge of all claims and rights hereunder of the District against the Underwriters with respect to such failure.

(d) At 8:00 a.m., California time, on \_\_\_\_\_, or at such other time or on such other date as the District and the Representative mutually agree upon (the "Closing Date"), the District will, subject to the terms and conditions hereof, cause to be delivered to the Underwriters, the Series [Designation] Bonds, in fully registered book-entry eligible form, through the facilities of The Depository Trust Company ("DTC") in New York, New York, duly executed, and at the offices of Curls Bartling P.C., Lake Merritt Plaza, 1999 Harrison Street, Suite 610, Oakland, California 94612, or at such other place as shall have been mutually agreed upon by the District and the Representative, and the other documents mentioned herein. The Underwriters will accept such delivery and pay the purchase price of the Series [Designation] Bonds as set forth in subparagraph (c) above in immediately available funds (such delivery and payment being herein referred to as the "Closing") to the order of the Trustee in an amount equal to the purchase price.

(e) The Underwriters agree to make a bona fide public offering of the Series [Designation] Bonds at the initial offering prices set forth in the Official Statement, which prices may be changed from time to time by the Underwriters after such initial offering.

## 2. Use and Preparation of Official Statement.

The District hereby ratifies, confirms and approves of the distribution and use by the Underwriters prior to the date hereof of the preliminary official statement dated \_\_\_\_\_ relating to the Series [Designation] Bonds (the "Preliminary Official Statement") and the making available of the Preliminary Official Statement to investors prior to the date hereof on the internet. The District has deemed final the Preliminary Official Statement as of the date thereof for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 ("Rule 15c2-12"), except for information permitted to be omitted therefrom in accordance with paragraph (b)(1) of Rule 15c2-12. The District hereby agrees to deliver or cause to be delivered to the Underwriters, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the final Official Statement relating to the Series [Designation] Bonds, dated the date hereof, in the form of the Preliminary Official Statement, with such changes thereto, as may be approved by the Representative (including the appendices thereto and any amendments or supplements as have been approved by the District and the Underwriters, the "Official Statement"), in such quantity as the Underwriters shall reasonably request. The District hereby approves of the distribution and use by the Underwriters of the Official Statement in connection with the offer and sale of the Series [Designation] Bonds. The Representative hereby agrees to deliver a copy of the Official Statement to the Municipal Securities Rulemaking Board (the "MSRB") through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org> on or before the Closing Date.

3. Representations, Warranties and Agreements of the District.

The District hereby represents, warrants and agrees with the Underwriters as follows:

(a) The District is, and will be on the Closing Date, a municipal utility district of the State of California duly organized and validly existing and operating pursuant to the laws of the State of California with full legal right, power and authority to issue the Series [Designation] Bonds pursuant to the Act and the Indenture, to execute and deliver the Official Statement and to enter into this Purchase Contract, the Escrow Agreement, dated as of \_\_\_\_\_, by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agreement”), and the Continuing Disclosure Agreement, dated \_\_\_\_\_, between the District and the Trustee, (the “Disclosure Agreement” and together with the Indenture, the Escrow Agreement and this Purchase Contract, the “District Documents”);

(b) By all necessary official action of the District prior to or concurrently with the acceptance hereof, the District has duly approved, ratified and confirmed distribution of the Preliminary Official Statement and the execution, delivery and distribution of the Official Statement, and has duly authorized and approved the execution and delivery of, and the performance by the District of the obligations on its part contained in the District Documents and the consummation by it of all other transactions contemplated by the Official Statement and the District Documents and the District is and will be in compliance in all material respects with the provisions thereof; the District Documents are or as of the Closing Date will be in full force and effect in substantially the form heretofore submitted to the Underwriters with only such changes as shall have been agreed to in writing by the Underwriters; and the District Documents constitute valid and legally binding agreements of the District enforceable against the District in accordance with their terms; provided, however, that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights and to the limitations on legal remedies against public agencies in the State of California;

(c) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not in Material Breach or Default under any applicable constitutional provision, law or administrative regulation to which it is subject or any applicable judgment, decree, court order or consent decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a Material Breach or Default under any of the foregoing; and the issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement, and compliance with the provisions on the District’s part contained herein and therein, will not constitute a Material Breach or Default under any law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the properties or assets of the District under the terms of any such law, administrative regulation, judgment, decree, court order, consent decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument, except as provided in the Indenture (for purposes of this Purchase Contract, the term “Material Breach or Default” means any breach or default which could have a material adverse effect on the business operations or financial condition of the District or its Wastewater System);



(d) Except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending or, to the best knowledge of the District after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, deliver or perform its obligations under any of the foregoing, or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Wastewater System;

(e) All authorizations, approvals, licenses, permits, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction over the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the District of its obligations in connection with the District Documents have been duly obtained and remain in full force and effect, except for such approvals, consents and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Series [Designation] Bonds;

(f) Under the laws of the State of California, the authority of the District to determine, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System is not presently subject to the regulatory jurisdiction of the California Public Utilities Commission, or other local, regional or state regulatory authority, and, except as otherwise disclosed in writing by the District to the Representative on or prior to the date hereof, the District is not aware of any legislation proposed or pending to limit or restrict such rates, fees and charges;

(g) The Series [Designation] Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriters as provided herein, will be valid and legally enforceable obligations of the District in accordance with their terms and the terms of the Indenture and the Indenture will provide, for the benefit of the holders from time to time of the Series [Designation] Bonds and any parity bonds issued under the Indenture, a legally valid and binding pledge of Subordinated Wastewater Revenues (as defined in the Indenture) and the funds and accounts pledged under the Indenture, subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein;

(h) The Series [Designation] Bonds and the Indenture conform in all material respects to the descriptions thereof contained in the Official Statement;

(i) The financial statements of the District contained in the Official Statement do and will fairly present the financial position and results of operations of the District as of the dates and

for the periods therein set forth in accordance with generally accepted accounting principles applied consistently, and, except as otherwise disclosed in the Official Statement, since the date thereof there has been no material adverse change in the financial position or results of operations of the District or the Wastewater System;

(j) The District will furnish such information, execute such instruments and take such other action in cooperation with the Underwriters as the Underwriters may reasonably request in order (i) to qualify the Series [Designation] Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriters may designate and (ii) to determine the eligibility of the Series [Designation] Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualification in effect so long as required for distribution of the Series [Designation] Bonds; provided, however, that in no event shall the District be required to take any action which would subject it to the general service of process in any jurisdiction in which it is not now so subject;

(k) The Preliminary Official Statement (except for information relating to offering prices, interest rate, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, other terms of the securities depending on such matters, and the identity of the underwriters) did not as of the date thereof and, as supplemented or amended through the date hereof, does not as of the date hereof contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect (except for information relating to DTC and its book-entry only system, as to which no opinion or view is expressed);

(l) As of the date thereof and at all times subsequent thereto to and including the date which is 25 days following the End of the Underwriting Period (as defined below) for the Series [Designation] Bonds, the Official Statement did not and will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(m) If between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, an event occurs which might or would cause the information contained in the Official Statement, as then supplemented or amended, to contain an untrue statement of a material fact or to omit to state a material fact required to be stated therein or necessary to make such information therein, in the light of the circumstances under which it was presented, not misleading, the District will notify the Underwriters, and, if in the opinion of the District, the Underwriters or their respective counsel, such event requires the preparation and publication of a supplement or amendment to the Official Statement, the District will forthwith prepare and furnish to the Underwriters (at the expense of the District) a reasonable number of copies of an amendment of or supplement to the Official Statement (in form and substance satisfactory to the Underwriters and their counsel) which will amend or supplement the Official Statement so that it will not contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances existing at the time the Official Statement is delivered to prospective purchasers, not misleading. For the purposes of this subsection, between the date hereof and the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the District will furnish such information with respect to itself as the Underwriters may from time to time reasonably request;

(n) If the information contained in the Official Statement is amended or supplemented pursuant to paragraph (m) hereof, at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to such subparagraph) at all times subsequent thereto up to and including the date which is 25 days after the End of the Underwriting Period for the Series [Designation] Bonds, the portions of the Official Statement so supplemented or amended (including any financial and statistical data contained therein) will not contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or make such information therein, in the light of the circumstances under which it was presented, not misleading;

(o) As used herein and for the purposes of this Purchase Contract, the term “End of the Underwriting Period” for the Series [Designation] Bonds shall mean the earlier of (i) the Closing Date unless the District shall have been notified in writing to the contrary by the Representative on or prior to the Closing Date, or (ii) the date on which the End of the Underwriting Period for the Series [Designation] Bonds has occurred under Rule 15c2-12; provided, however, that the District may treat as the End of the Underwriting Period for the Series [Designation] Bonds the date specified as such in a notice from the Representative stating the date which is the End of the Underwriting Period;

(p) After the Closing, the District will not participate in the issuance of any amendment of or supplement to the Official Statement to which, after being furnished with a copy, the Underwriters shall reasonably object in writing;

(q) Between the date of this Purchase Contract and the Closing Date, except as referred to in or as contemplated by the Official Statement, the District will not, without the prior written consent of the Representative (which consent shall not be unreasonably withheld), publicly offer or issue any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, nor will there be any adverse change of a material nature in the financial position, results of operations or condition, financial or otherwise, of the District, in either case other than in the ordinary course of its business or as discussed in the Official Statement;

(r) The District will apply, or cause the application of, the proceeds of the Series [Designation] Bonds in accordance with the Indenture;

(s) Any certificate signed by any authorized official of the District, and delivered to the Underwriters in connection with the execution and delivery of the Series [Designation] Bonds, shall be deemed a representation and warranty by the District to the Underwriters as to the statements made therein; and

(t) Except as disclosed in the Official Statement, the District has never failed within the last five years to comply in all material respects with any previous undertakings with regard to Rule 15c2-12 to provide annual reports of financial and operating data or notices of enumerated events.

#### 4. Conditions to the Obligations of the Underwriters.

The Underwriters hereby enter into this Purchase Contract in reliance upon the representations and warranties of the District contained herein and the representations and warranties to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the District of its obligations both on and as of the date hereof and as of the Closing Date. Accordingly, the Underwriters’ obligations under this Purchase Contract to purchase, to accept

delivery of and to pay for the Series [Designation] Bonds shall be subject, at the option of the Underwriters, to the accuracy in all material respects of the representations and warranties of the District contained herein as of the date hereof and as of the Closing Date, to the accuracy in all material respects of the statements of the officers and other officials of the District made in any certificate or other document furnished pursuant to the provisions hereof, to the performance by the District of its obligations to be performed hereunder and under such documents and instruments at or prior to the Closing Date, and also shall be subject to the following additional conditions:

(a) The Underwriters shall receive, within seven (7) business days of the date hereof and, in any case, in sufficient time to accompany customer confirms requesting payment, copies of the Official Statement (including all information previously permitted to have been omitted by Rule 15c2-12 and any amendments or supplements as have been approved by the Underwriters), in such reasonable quantity as the Underwriters shall have requested;

(b) The representations and warranties of the District contained herein shall be true and correct in all material respects on the date hereof and on the Closing Date, as if made on and at the Closing Date;

(c) At the Closing, the District Documents shall have been duly authorized, executed and delivered by the respective parties thereto, and the Official Statement shall have been duly authorized, executed and delivered by the District, all in substantially the forms heretofore submitted to the Underwriters, with only such changes as shall have been agreed to in writing by the Underwriters (which consent shall not be unreasonably withheld), and shall be in full force and effect; and there shall be in full force and effect such resolution or resolutions of the Board of Directors of the District as, in the opinion of Fulbright & Jaworski LLP, Los Angeles, California, and Curls Bartling P.C., Oakland, California ("Co-Bond Counsel"), and Orrick, Herrington & Sutcliffe LLP, San Francisco, California, counsel to the Underwriters (hereinafter, "Underwriters' Counsel"), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(d) Between the date hereof and the Closing Date, the market price or marketability, at the initial offering price set forth in the Official Statement, of the Series [Designation] Bonds shall not have been materially adversely affected, in the reasonable judgment of the Underwriters (evidenced by a written notice to the District terminating the obligation of the Underwriters to accept delivery of and make any payment for the Series [Designation] Bonds), by reason of any of the following:

(1) an amendment to the Constitution of the United States or the State of California shall have been passed or legislation shall have been introduced in or enacted by the Congress of the United States or the legislature of the State of California or legislation pending in the Congress of the United States shall have been amended or legislation shall have been recommended to the Congress of the United States or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chairman or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation shall have been proposed for consideration by either such Committee by any member thereof or presented as an option for consideration by either such Committee by the staff of such Committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or legislation shall have been favorably reported for passage to either House of the Congress of the United States by a Committee of such House to which such legislation

has been referred for consideration, or a decision shall have been rendered by a court of the United States or of the State of California or the Tax Court of the United States, or a ruling shall have been made or a regulation or temporary regulation shall have been proposed or made or any other release or announcement shall have been made by the Treasury Department of the United States, the Internal Revenue Service or other federal or State of California authority, with respect to federal or State of California taxation upon revenues or other income of the general character to be derived by the District or upon interest received with respect to obligations of the general character of the Series [Designation] Bonds which, in the reasonable judgment of the Underwriters, may have the purpose or effect, directly or indirectly, of affecting the tax status of the District, its property or income, its securities (including the Series [Designation] Bonds) or the interest thereon, or any tax exemption granted or authorized by federal or State of California legislation;

(2) legislation shall have been enacted, introduced in the Congress or recommended for passage by the President of the United States, or a decision rendered by a court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary or proposed) or official statement by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, shall have been made or issued to the effect that obligations of the general character of the Series [Designation] Bonds, or the Series [Designation] Bonds, are not exempt from registration under the Securities Act of 1933, as amended, or that the Indenture is not exempt from qualification under the Trust Indenture Act of 1939, as amended;

(3) the declaration of war or the escalation of, or engagement in, military hostilities by the United States or the occurrence of any other national or international emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(4) the declaration of a general banking moratorium by federal, State of New York or State of California authorities, or the general suspension of trading on any national securities exchange;

(5) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Series [Designation] Bonds or obligations of the general character of the Series [Designation] Bonds or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Underwriters;

(6) an order, decree or injunction of any court of competent jurisdiction, or order, ruling, regulation or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series [Designation] Bonds, or the issuance, offering or sale of the Series [Designation] Bonds, as contemplated hereby or by the Official Statement, is or would be in violation of the federal securities laws as amended and then in effect;

(7) the withdrawal or downgrading of any rating of the Series [Designation] Bonds or the underlying rating of any of the District's Wastewater System Revenue Bonds by a national rating agency then rating the Series [Designation] Bonds; or

(8) any event occurring, or information becoming known which, in the reasonable judgment of the Underwriters, makes untrue in any material respect any statement or information then contained in the Official Statement, or has the effect that the Official Statement then contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and, in either such event, the District refuses to permit the Official Statement to be supplemented to supply such statement or information or the effect of the Official Statement as so supplemented is, in the judgment of the Underwriters, to materially adversely affect the market for the Series [Designation] Bonds or the sale of the Series [Designation] Bonds, at the contemplated offering prices (or yields).

(e) At or prior to the Closing Date, the Underwriters shall have received the following documents, in each case satisfactory in form and substance to the Underwriters and Underwriters' Counsel:

(1) Counterparts of the District Documents, duly executed and delivered by the respective parties thereto;

(2) The approving opinion of Co-Bond Counsel, dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(3) The supplemental opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit B;

(4) The opinion of the Office of General Counsel of the District, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit C;

(5) The opinion of counsel to the Trustee, dated the Closing Date and addressed to the District and the Representative, in substantially the form attached hereto as Exhibit D;

(6) The defeasance opinion of Co-Bond Counsel, dated the Closing Date and addressed to the Representative, in substantially the form attached hereto as Exhibit E;

(7) The opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriters ("Special Tax Counsel"), dated the Closing Date and addressed to the District, in substantially the form attached to the Official Statement in Appendix D thereto, and a letter of such counsel, dated the Closing Date and addressed to the Representative, to the effect that such opinion may be relied upon by the Underwriters to the same extent as if such opinion were addressed to them;

(8) The opinion of Underwriters' Counsel, dated the Closing Date and addressed to the Representative, to the effect that (a) the Series [Designation] Bonds are exempt from registration under the Securities Act of 1933, as amended, and the Indenture is exempt from qualification under the Trust Indenture Act of 1939, as amended, and the Disclosure Agreement satisfies paragraph (b)(5) of Rule 15c2-12; and (b) without having undertaken to determine

independently the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement and based upon the information made available to them in the course of their participation in the preparation of the Preliminary Official Statement and the Official Statement as counsel for the Underwriters, nothing has come to their attention which would cause them to believe that the Preliminary Official Statement, as of the date of this Purchase Contract, or the Official Statement, as of the date thereof and the Closing Date, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no opinion need be expressed with respect to the financial statements and the statistical data included in the Official Statement, and Appendices B through F thereto, and information regarding DTC and its book-entry only system;

(9) A certificate or certificates, dated the Closing Date, signed by a duly authorized official of the District, in form and substance satisfactory to the Underwriters, to the effect that (a) the representations and warranties of the District contained in this Purchase Contract are true and correct in all material respects on and as of the Closing Date with the same effect as if made on the Closing Date; (b) to the best of such official's knowledge, no event affecting the District has occurred since the date of the Official Statement which either makes untrue or incorrect in any material respect as of the Closing Date any statement or information contained in the Official Statement relating to the District or is not reflected in the Official Statement but should be reflected therein in order to make the statements and information therein relating to the District not misleading in any material respect; (c) since June 30, 20\_\_, except as referred to in or as contemplated by the Official Statement, the District has not incurred any financial liabilities, direct or contingent, or entered into any transactions and there has not been any adverse change in the condition, financial or physical, of the Wastewater System, in any case that would materially and adversely affect the ability of the District to meet its obligations under the Indenture or the Series [Designation] Bonds; and (d) the projected operating results and debt service coverage contained in Table [16] in Appendix A to the Official Statement are the District's projections and are based on the stated assumptions, which the District believes to be reasonable;

(10) A certificate, dated the Closing Date, signed by a duly authorized official of the Trustee, satisfactory in form and substance to the Underwriters, to the effect that: (a) the Trustee is a national banking association duly organized and existing under and by virtue of the laws of the United States of America, having the full power and being qualified to enter into and perform its duties under the Indenture, the Escrow Agreement and the Disclosure Agreement (collectively, the "Trustee Documents"); (b) the execution and delivery of the Trustee Documents and compliance with the provisions on the Trustee's part contained therein, will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the Trustee is a party or is otherwise subject; and (c) the Trustee has not been served with any action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, nor is any such action, to the best of such official's knowledge after reasonable investigation, threatened against the Trustee, as such but not in its individual capacity, affecting the existence of the Trustee, or the titles of its officers to their respective offices, or contesting or affecting the validity or enforceability of the Trustee Documents, or contesting the powers of the Trustee or its authority to enter into, adopt or perform its obligations under the foregoing, wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Trustee Documents;

(11) A certified copy of the general resolution of the Trustee authorizing the execution and delivery of the Trustee Documents;

(12) a copy of the Preliminary Official Statement;

(13) A copy of the Official Statement, executed on behalf of the District by authorized representatives of the District;

(14) A copy of each of the resolutions of the District authorizing the execution and delivery of the Official Statement, the District Documents and the issuance of the Series [Designation] Bonds, certified by the Secretary or an Assistant Secretary of the District to be in full force and effect as of the Closing Date;

(15) Evidence that any ratings described in the Official Statement are in full force and effect as of the Closing Date;

(16) A copy of the Blue Sky Memorandum with respect to the Series [Designation] Bonds, prepared by Underwriters' Counsel;

(17) A Tax Certificate signed by the District relating to the Series [Designation] Bonds, in form and substance satisfactory to Special Tax Counsel;

(18) A copy of the Blanket Letter of Representations to DTC relating to the Series [Designation] Bonds signed by the District;

(19) A Verification Report of [Grant Thornton LLP], addressed to the Representative and dated the Closing Date, in form and substance acceptable to Co-Bond Counsel and Underwriters' Counsel; and

(20) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Underwriters, Underwriters' Counsel or Co-Bond Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations of the District herein and of the statements and information contained in the Official Statement, and the due performance or satisfaction by the District at or prior to the Closing of all agreements then to be performed and all conditions then to be satisfied by the District in connection with the transactions contemplated hereby and by the District Documents and the Official Statement.

If the District shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Purchase Contract or if the Underwriters' obligations shall be terminated for any reason permitted herein, all obligations of the Underwriters hereunder may be terminated by the Underwriters at, or at any time prior to, the Closing Date by written notice to the District and neither the Underwriters nor the District shall have any further obligations hereunder.

## 5. Expenses.

All expenses and costs incident to the authorization, execution, delivery and sale of the Series [Designation] Bonds to the Underwriter, including the costs of printing of the Series [Designation] Bonds, the Preliminary Official Statement and the Official Statement, the cost of preparing and duplicating the Indenture, the fees of accountants, consultants and rating agencies, the initial fee of the Trustee and its counsel in connection with the execution and delivery of the Series [Designation]



Bonds and the fees and expenses of Co-Bond Counsel and Underwriters' Counsel shall be paid either from the proceeds of the Series [Designation] Bonds or from funds of the District. The District shall pay for expenses (included in the expense component of the Underwriters' discount) incurred on behalf of the District's employees which are incidental to implementing this Purchase Contract, including, but not limited to, meals, transportation, lodging and entertainment, of those employees. The District shall pay the reasonable out-of-pocket expenses of the Underwriters (included in the expense component of the Underwriters' Discount), including travel and other expenses and the California Debt and Investment Advisory Commission fee.

6. Notices.

Any notice or other communication to be given under this Purchase Contract may be given by delivering the same in writing to the respective parties at the following address:

District: East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607  
Attention: Director of Finance

Representative: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

7. Survival of Representations and Warranties.

The representations and warranties of the District set forth in or made pursuant to this Purchase Contract shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing or termination of this Purchase Contract and regardless of any investigations or statements as to the results thereof made by or on behalf of the Underwriters and regardless of delivery of and payment for the Series [Designation] Bonds. All of the District's representations, warranties and agreements contained in this Purchase Contract shall remain operative and in full force and effect, regardless of: (i) any investigations made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series [Designation] Bonds pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

8. Effectiveness and Counterpart Signatures.

This Purchase Contract shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by duly authorized officials of the District and shall be valid and enforceable as of the time of such acceptance. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

9. Parties in Interest.

This Purchase Contract is made solely for the benefit of the District and the Underwriters (including the successors or assigns of the Underwriters) and no other person shall acquire or have any right hereunder or by virtue hereof.

10. Entire Agreement.

This Purchase Contract when accepted by you in writing as heretofore specified shall constitute the entire agreement between the District and the Underwriters with respect to the purchase of the Series [Designation] Bonds.

11. Headings.

The headings of the sections of this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

12. Governing Law.

This Purchase Contract shall be construed in accordance with the laws of the State of California.

Very truly yours,

\_\_\_\_\_, as Representative of the  
Underwriters

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

ACCEPTED:

EAST BAY MUNICIPAL UTILITY DISTRICT

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

EXHIBIT A

MATURITY SCHEDULE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM REVENUE  
REFUNDING BONDS, SERIES [DESIGNATION]

Dated Date: Date of Delivery

Maturity Date ( <u>June 1</u> )	<u>Principal Amount</u>	<u>Interest Rate</u>	<u>Yield</u>
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EXHIBIT B

FORM OF SUPPLEMENTAL OPINION OF  
CO-BOND COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the "District") in connection with the issuance, sale and delivery of the District's Wastewater System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the "Bonds"), issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Bonds (collectively, the "Indenture").

The Bonds are being sold on the date hereof by the District to \_\_\_\_\_, as Representative of itself and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, as Underwriters, pursuant to a Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract").

All capitalized terms used herein and not otherwise defined shall have the meaning ascribed to such terms in the Purchase Contract, or if not defined therein, in the Official Statement dated \_\_\_\_\_, relating to the Bonds (the "Official Statement").

As to questions of fact material to our opinion, we have relied upon the certified proceedings and other certifications of the District and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based upon the foregoing and our review of such other information, documents and matters of law as we considered necessary to render this opinion, we are of the opinion that:

1. The statements contained in the Official Statement on the cover and under the captions "INTRODUCTION," "THE SERIES [Designation] BONDS," and "SECURITY FOR THE SERIES [DESIGNATION] BONDS," and in "APPENDIX C — SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE," and "APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT" (excluding the statements under each such caption relating to The Depository Trust Company ("DTC"), Cede & Co. and the book-entry system, as to all of which we

express no view); insofar as the statements contained under such captions purport to summarize certain provisions of the Bonds, the Indenture, the Continuing Disclosure Agreement, the Wastewater Interest Rate Swap Agreements and the Extendable Municipal Commercial Paper Notes (Wastewater Series), present an accurate summary of such provisions for the purpose of use in the Official Statement.

2. The Official Statement and the execution and delivery thereof have been duly approved by the District, and the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement have been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by and validity against the other parties thereto) are valid and binding agreements of the District, enforceable against the District in accordance with their respective terms. We call attention to the fact that the rights and obligations under the Purchase Contract, the Escrow Agreement and the Continuing Disclosure Agreement and the enforceability thereof are subject to and may be limited by bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver (including, without limitation, waiver of jury trial or consent to nonjury trial) provisions contained in the foregoing documents.

3. The Bonds are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture is exempt from qualification pursuant to the Trust Indenture Act of 1939, as amended.

4. The issuance of the Bonds, the execution and delivery of the \_\_\_\_\_ Supplemental Indenture, the Escrow Agreement, the Continuing Disclosure Agreement and the Purchase Contract by the District, and compliance by the District with provisions of the foregoing, as appropriate, do not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under the Indenture or the Bonds issued thereunder or Resolution No. 33705-09 of the District, adopted on March 10, 2009, authorizing the District's extendable commercial paper program.

Based upon our participation in the preparation of the Preliminary Official Statement, dated \_\_\_\_\_, relating to the Bonds, and the Official Statement as co-bond counsel and on the basis of the information made available to us in the course of the foregoing, but without having undertaken to determine or verify independently, or assuming any responsibility for, the accuracy, completeness or fairness of any of the statements contained in the Preliminary Official Statement or the Official Statement (except to the extent expressly set forth in paragraph 1 above), as of the date hereof no facts have come to the attention of the personnel in our respective firms directly involved in rendering legal advice and assistance in connection with the preparation of the Preliminary Official Statement or the Official Statement that causes us to believe that (a) the Preliminary Official Statement as of the date of this Purchase Contract contained any untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Preliminary Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the

description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view), and except for such information as is permitted to be excluded from the Preliminary Official Statement pursuant to Rule 15c2-12 of the Securities Exchange Act of 1934, as amended, including but not limited to information as to pricing, yields, interest rates, maturities, amortization, redemption provisions, debt service requirements, underwriters' discount and CUSIP numbers, or (b) the Official Statement as of its date or as of the hereof contained or contains any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (excluding therefrom the discussions contained in the Official Statement of permits, licenses and approvals required for the construction and operation of any projects of the District, and the status thereof, the description of any litigation, statements relating to the treatment of the Bonds or the interest, discount or premium, if any, thereon or therefrom for tax purposes under the law of any jurisdiction, any information relating to DTC, Cede & Co., the book-entry system, forecasts, projections, estimates, assumptions and expressions of opinions and the financial and statistical data included therein, as to all of which we express no view).

During the period from the date of the Official Statement to the date of this opinion, except for our review of the certificates and opinions regarding the Official Statement delivered on the date hereof, we have not undertaken any procedures or taken any actions which were intended to or were likely to elicit information concerning the accuracy, completeness or fairness of any of the statements contained in the Official Statement.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of any such actions or events.

We are furnishing you this letter at the request of the District and solely for the information of, and assistance to, you in conducting and documenting your investigation of the affairs of the District in connection with the offering of the Bonds and it is not to be used, circulated, quoted or otherwise referred to for any other purpose, including but not limited to the purchase or sale of the Bonds, nor is it to be referred to in whole or in part in the Official Statement or any other document, except that it may be included in, and reference may be made to it in any list of, the closing documents pertaining to the delivery of the Bonds. The provision of this opinion to you shall not create any attorney-client relationship between either of our firms and you. This opinion may not be relied upon by any other person, firm, corporation or other entity without our prior written consent.

Respectfully submitted,

Respectfully submitted,

EXHIBIT C

FORM OF OPINION OF OFFICE OF DISTRICT GENERAL COUNSEL

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

\$ \_\_\_\_\_  
EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)  
WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]

Ladies and Gentlemen:

I am General Counsel to the East Bay Municipal Utility District (the “District”), a municipal utility district organized and existing pursuant to the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, as amended. This opinion is rendered pursuant to Section 4(e)(4) of the Purchase Contract (the “Purchase Contract”) dated \_\_\_\_\_ between the District and \_\_\_\_\_, as representative of the underwriters (the “Underwriters”) listed therein, and relating to the sale of \$ \_\_\_\_\_ aggregate principal amount of District’s Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Bonds”). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Purchase Contract.

In rendering this opinion, I have examined the following documents: (i) the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture dated as of \_\_\_\_\_, by and between the District and the Trustee (collectively, the “Indenture”); (ii) the Continuing Disclosure Agreement, dated \_\_\_\_\_, by and between the District and the Trustee; (iii) the Official Statement; (iv) the Series [Designation] Bonds; (v) the Escrow Agreement; and (vi) such other documents and instruments, including certificates of public officials, and have made such investigations of law and of fact as I have deemed necessary or appropriate for the purpose of rendering the opinions set forth herein. The Indenture, the Continuing Disclosure Agreement, the Escrow Agreement and the Purchase Contract are collectively referred to herein as the “District Documents.” In addition, I call attention to the fact that the rights and obligations under the District Documents, the Series [Designation] Bonds and the other legal documents and the enforceability thereof are subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditors’ rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California.

Based on the foregoing, I am of the opinion that:

(1) The District is, and was at all relevant times, a municipal utility district duly organized and validly existing under the laws of the State of California.

(2) The resolution or resolutions of the District approving and authorizing the execution and delivery of the Series [Designation] Bonds (the “Resolutions”), the District Documents and the Official Statement were duly adopted and/or approved by the District at meetings of the Board of Directors of the District, which were called and held pursuant to law and with all public notice required by law and at which a quorum was present and acting throughout, and each of the District Documents has been duly authorized, executed and delivered by the District and (assuming due authorization, execution and delivery by the other parties thereto) constitutes the legal, valid and binding obligation of the District.

(3) Except as disclosed in the Official Statement by the District to the Underwriters on or prior to the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency, public board or body, pending (with service of process having been accomplished) or, to my knowledge after reasonable investigation, threatened against or affecting the District: (i) in any material respect affecting or contesting the existence of the District or the titles of its officers to their respective offices; or (ii) affecting or seeking to prohibit, restrain or enjoin the issuance, sale or delivery of the Series [Designation] Bonds; or (iii) contesting or affecting, as to the District, the validity or enforceability of the Series [Designation] Bonds or the District Documents; or (iv) contesting the powers of the District or its authority to enter into, adopt or perform its obligations under the Series [Designation] Bonds, the District Documents or contesting or affecting the power or authority of the District to impose rates and charges, or the collection thereof, or the pledge of revenues under the Indenture; or (v) which may result in any material adverse change in the ability of the District to pay the Series [Designation] Bonds; or (vi) which contests the status of the interest on the Series [Designation] Bonds as excludable from federal gross income as described in the Official Statement; or (vii) which contests in any way the completeness or accuracy of the Preliminary Official Statement or the Official Statement; or (viii) which could result in any material adverse change in the business operations or financial condition of the District or the Wastewater System.

(4) The issuance of the Series [Designation] Bonds, the execution and delivery of the District Documents and the Official Statement by the District, the adoption of the Resolutions, and compliance by the District with the provisions of the foregoing, as appropriate, to the best of my actual knowledge after reasonable investigation, do not and will not in any material respect conflict with or constitute on the part of the District a Material Breach or Default under any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the District is a party or to which the District or any of its property or assets is otherwise subject or any existing law, administrative regulation, judgment, decree, court order or consent decree to which the District or any of its property or assets is subject. In rendering the foregoing opinion, I have relied, in part, upon the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C. expressed in paragraph (4) of their supplemental opinion delivered on this date.

(5) Except as described in the Official Statement, no authorization, approval, consent, or other order of the State of California or any other governmental authority or agency within the State of California having jurisdiction over the District or its property is required for the



valid authorization, execution, delivery and performance by the District of the District Documents or the Official Statement or for the adoption of the Resolutions which has not been obtained, provided that no opinion is expressed with respect to qualification under Blue Sky or other state securities laws.

(6) Without having undertaken to determine independently the accuracy, completeness or fairness of the statements contained in the Official Statement and based upon the information made available to me during the preparation of the Official Statement as General Counsel to the District, nothing has come to my attention which causes me to believe that the information contained in the Official Statement under the captions “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS” and “LITIGATION” and in Appendix A thereto (excluding therefrom the financial statements and the statistical data included in the Official Statement, as to which no opinion is expressed), as of the date thereof and the Closing Date, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(7) The Subordinated Wastewater Revenues are free and clear of and from any and all liens and encumbrances other than as set forth in the Official Statement.

(8) Under the laws of the State of California, the District has the authority to fix and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System and is not presently subject to the regulatory jurisdiction of any state, regional or local government regulatory authority in connection with fixing and collecting such rates, fees and charges. No assurance can be given that any such legislation may not be proposed or introduced after the date of this opinion.

I express no opinion as to any matters other than as expressly set forth above and assume no obligation to revise or supplement this opinion should any law on which any opinions are based or any facts or matters upon which I have relied subsequently change. Without limiting the generality of the foregoing, I specifically express no opinion as to the status of the Series [Designation] Bonds or the interest thereon under any federal securities laws or any state securities or “Blue Sky” law or any federal, state or local tax law. Further, I express no opinion on the laws of any jurisdiction other than the State of California and the United States of America.

This opinion is delivered to you as the representatives of the Underwriters and is solely for the benefit of the Underwriters and is not to be used by any other person or for any other purpose.

Very truly yours,

Jylana Collins  
General Counsel

EXHIBIT D

FORM OF TRUSTEE COUNSEL'S OPINION

[CLOSING DATE]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds, Series [Designation]

Ladies and Gentlemen:

We have acted as counsel to The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), in connection with the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, between the East Bay Municipal Utility District (the "District") and the Trustee, as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture") in connection with the issuance of \$\_\_\_\_\_ aggregate principal amount of East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation]. This opinion is rendered pursuant to Section 4(e)(5) of the Purchase Contract, dated \_\_\_\_\_ (the "Purchase Contract"), between the District and \_\_\_\_\_, as Representative of the Underwriters listed therein. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Purchase Contract.

In connection therewith, we have examined and reviewed such documents and certificates of public officials, officers of the Trustee and others as we have deemed necessary for the purposes of this opinion. In all such examinations, we have assumed the genuineness of all signatures (other than those of the Trustee), the authenticity of all documents submitted to us as originals, the conformity to original and certified documents of all copies submitted to us as conformed or photostatic copies, and the authenticity of the originals of all such latter documents. As to various questions of fact material to this opinion, we have relied, to the extent that we deemed such reliance proper, upon such certificates of officers of the Trustee. We have examined an executed counterpart of the Indenture and have assumed the power, municipal or corporate, as the case may be, and the legal authority to execute and deliver the same of the District and the due authorization, execution and delivery thereof by the District.

Based upon the foregoing, we are of the opinion under the laws of the State of California:

1. The Trustee is a national banking association duly organized and validly existing under and by virtue of the laws of the United States of America, having full power and being qualified to enter into and perform its duties under the Trustee Documents.

2. The Trustee has taken all corporate action necessary to assume the duties and obligations of Trustee under the Trustee Documents and to authorize in such capacity the execution and delivery of the Trustee Documents and the acceptance of the duties as Trustee does not and will

not contravene any law of governmental regulation or order presently binding on the Trustee or its Articles of Association or By-Laws or, to my knowledge, contravene any provision or constitute a default under any indenture, contract or other instrument to which the Trustee is a party or by which the Trustee is or may be bound.

3. The Trustee has duly executed and delivered the Trustee Documents and the Trustee Documents constitute the legal, valid and binding obligations of the Trustee, enforceable in accordance with their terms, except to the extent the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by the application of equitable principles, if equitable remedies are sought.

4. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of any of its duties and obligations under the Trustee Documents (insofar as it has the obligation to obtain any such approval, consent or order) have been obtained and are in full force and effect.

Respectfully submitted,

EXHIBIT E

FORM OF DEFEASANCE OPINION

[Closing Date]

\_\_\_\_\_,  
as Representative of the Underwriters  
\_\_\_\_\_, California

The Bank of New York Mellon Trust Company, N.A.  
San Francisco, California

East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Wastewater System Revenue Refunding Bonds,  
Series [Designation]

Ladies and Gentlemen:

We have acted as co-bond counsel in connection with the issuance by the East Bay Municipal Utility District (the “District”) of its Wastewater System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$\_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California (collectively, the “Act”) and a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California (which has been succeeded by The Bank of New York Mellon Trust Company, N.A.), as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

The Series [Designation] Bonds are being issued for the purposes of (i) refunding [all] [a portion of] the District’s \$\_\_\_\_\_ aggregate principal amount of outstanding Wastewater System Revenue Refunding Bonds, Series [specify series being refunded] (the “Refunded Bonds”), and (ii) paying costs of issuance of the Series [Designation] Bonds.

In our capacity as co-bond counsel, we have examined a certified copy of the proceedings relating to the issuance of the Refunded Bonds and the Series [Designation] Bonds and such other documents and instruments as we deemed necessary to render the opinions set forth herein, including the Indenture, data and computations prepared by \_\_\_\_\_, a verification report relating to the Refunded Bonds, dated the date hereof and prepared by [Grant Thornton LLP] (the “Verification Report”) and the Escrow Agreement relating to the Refunded Bonds, dated as of \_\_\_\_\_ (the “Escrow Agreement”), by and between the District and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”). As to questions of fact material to our

opinion, we have relied upon the certified proceedings and other certifications of District officers and various public officials furnished to us without undertaking to verify the same by independent investigation.

Based on and subject to the foregoing, we are of the opinion that:

1. The defeasance of the Refunded Bonds and the deposit of moneys with the Escrow Agent pursuant to the Escrow Agreement are authorized by and comply with the conditions and terms of the Indenture.

2. Provision has been made to pay [the principal of and interest on the Refunded [specify series being refunded] Bonds becoming due on and before \_\_\_\_\_, \_\_\_\_ and] [on \_\_\_\_\_, \_\_\_\_ the principal of and interest becoming due on the Refunded Series [specify series being refunded] Bonds maturing on such date and] [the principal of and interest on the Refunded Bonds upon the redemption thereof, on \_\_\_\_\_,] all in accordance with the conditions and terms of the Indenture. Accordingly, the Refunded Bonds have been deemed to have been paid within the meaning expressed in the Indenture, the owners of the Refunded Bonds have ceased to be entitled to the pledge of and charge and lien established by the Indenture, and all agreements, covenants and other obligations of the District to the owners of the Refunded Bonds under the Indenture have ceased, terminated and become void and have been discharged and satisfied.

In rendering the opinions above, we have relied on the Verification Report and the Escrow Agreement as to matters contained therein. We note that [Grant Thornton LLP] has made certain assumptions in the Verification Report which we have not independently verified. We have also assumed that all other sums payable by the District under the Indenture with respect to the Refunded Bonds have been paid and that provision has been made by the District for the mailing of a notice to the respective owners of the Refunded Bonds that the moneys described in the preceding paragraph are so available for payment.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions. Such opinions may be adversely affected by actions taken or events occurring, including a change in law, regulation or ruling (or in the application or official interpretation of any law, regulation or ruling) after the date hereof. We have not undertaken to determine, or to inform any person, whether such actions are taken or such events occur, and we have no obligation to update this opinion in light of such actions or events.

This opinion is addressed to you and it is not to be quoted, used, circulated or otherwise referred to for any other purpose without our written consent. No attorney-client relationship has existed or exists between us and your firms in connection with the Series [Designation] Bonds or by virtue of this opinion.

Respectfully submitted,

Respectfully submitted,

ESCROW AGREEMENT  
RELATING TO THE DEFEASANCE OF  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM [SUBORDINATED] REVENUE REFUNDING BONDS,  
SERIES [SPECIFY SERIES TO BE REFUNDED]

THIS ESCROW AGREEMENT (the “Escrow Agreement”), dated as of \_\_\_\_\_, \_\_\_\_\_, is by and between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as escrow agent hereunder (the “Escrow Agent”) and as trustee with respect to the Series [specify series to be refunded] Bonds referred to below (the “Trustee”),

W I T N E S S E T H:

WHEREAS, the District has previously authorized and issued its \$\_\_\_\_\_ principal amount of East Bay Municipal Utility District Wastewater System [Subordinated] Revenue Refunding Bonds, Series [specify series to be refunded], of which \$\_\_\_\_\_ principal amount remains outstanding (the “Series [specify series to be refunded] Bonds”), pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, by and between the District and the Trustee (collectively, the “Indenture”);

WHEREAS, the District has determined to issue \$\_\_\_\_\_ aggregate principal amount of its East Bay Municipal Utility District Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”), pursuant to the Indenture, including as amended and supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, by and between the District and the Trustee, providing for the issuance of the Series [Designation] Bonds, for the purpose of refunding [all][\$\_\_\_\_\_ principal amount] of the \$\_\_\_\_\_ outstanding principal amount of Series [specify series to be refunded] Bonds (hereinafter, the “Refunded Series [specify series to be refunded] Bonds”);

WHEREAS, by irrevocably depositing with the Escrow Agent a specified amount of the proceeds from the sale of the Series [Designation] Bonds and directing the Escrow Agent to invest such amounts in certain investments satisfying the criteria set forth in Section 10.03 of the Indenture (herein, the “Federal Securities”), if any, the Escrow Agent will have money sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon];

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the District and the Escrow Agent agree as follows:

SECTION 1. Deposit of Moneys. Simultaneously with the delivery of the Series [Designation] Bonds, the District shall deposit with the Escrow Agent \$\_\_\_\_\_, representing \$\_\_\_\_\_ of the proceeds of the sale of the Series [Designation] Bonds, [\$\_\_\_\_\_ transferred from the Series [specify series to be refunded] Bond Reserve Fund relating to the Refunded Series [specify series to be refunded] Bonds and \$\_\_\_\_\_ of amounts contributed by the District]; all to be held in irrevocable escrow by the Escrow Agent, separate and apart from other funds and accounts of the District and the Escrow Agent, in a fund hereby created and established to be known as the "Series [specify series to be refunded] Bonds Escrow Fund," to be applied solely as provided in this Escrow Agreement. The deposit is in a total amount which has been calculated by [Underwriter] and verified by [Grant Thornton LLP] (the "Verification Agent") to be sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon].

The Escrow Agent hereby acknowledges receipt of such calculations prepared by [Underwriter], the mathematical accuracy of which has been verified by the Verification Agent in its report relating to the Refunded Series [specify series to be refunded] Bonds (the "Verification Report"), a copy of which has been provided to the Escrow Agent, and the Escrow Agent may rely upon the conclusion of such report to the effect that the amounts to be deposited in the Series [specify series to be refunded] Bonds Escrow Fund as described in this Section 1 will be sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_] and [(iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon].

SECTION 2. Investment of Moneys. The Escrow Agent agrees to immediately invest any moneys deposited or transferred to the Series [specify series to be refunded] Bonds Escrow Fund in accordance with Section 1 hereof in the Federal Securities (if any) set forth in Schedule A hereto and to deposit such Federal Securities (if any) in the Series [specify series to be refunded] Bonds Escrow Fund. All other amounts in the Series [specify series to be refunded] Bonds Escrow Fund, or if no Federal Securities are set forth in the completed Schedule A delivered pursuant hereto, all amounts, not so invested shall be held as cash.

SECTION 3. Reinvestment Requirements. In the event that the Escrow Agent receives any payment of principal or interest from the Federal Securities (if any), prior to the date on which such payment is required for the purposes set forth herein, the Escrow Agent shall, at the written direction of the District, reinvest the amount of such payment, or any portion thereof, in noncallable bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America maturing not

later than the date on which such payment or portion thereof is required for the purposes set forth in Section 5, as verified in a report prepared by the Verification Agent or another independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of public agencies, and provided the District has obtained and delivered to the Escrow Agent an unqualified opinion of nationally recognized bond counsel that such reinvestment will not adversely affect the exclusion from gross income of interest on the Refunded Series [specify series to be refunded] Bonds or the Series [Designation] Bonds for purposes of federal income taxation. Any interest income resulting from investment or reinvestment of moneys pursuant to this Section 3 which is not required for the purposes set forth in this Section 3 or Section 5, as verified in the report of the Verification Agent (the "Verification Report") originally obtained by the District with respect to the refunding of the Refunded Series [specify series to be refunded] Bonds or in any other report prepared by an independent certified public accountant or firm of certified public accountants of favorable national reputation experienced in the refunding of obligations of public agencies, shall be paid to the District promptly upon the receipt of such interest income by the Escrow Agent. In the absence of such written direction the Escrow Agent shall hold such amounts uninvested.

SECTION 4. Substitution of Securities. Upon the written request of the District, and subject to the conditions and limitations herein set forth and applicable governmental rules and regulations, the Escrow Agent shall sell, redeem or otherwise dispose of the Federal Securities (if any), provided there are substituted therefor from the proceeds of such Federal Securities (if any), bonds and other obligations which, as to principal and interest, constitute direct noncallable obligations of, or are unconditionally guaranteed by, the United States of America, but only after the District has obtained and delivered to the Escrow Agent (i) an unqualified opinion of nationally recognized bond counsel that such reinvestment will not adversely affect the exclusion from gross income of interest payable on the Refunded Series [specify series to be refunded] Bonds or the Series [Designation] Bonds for purposes of federal income taxation, and (ii) a report by the Verification Agent or another independent certified public accountant or firm of certified public accountants to the effect that such reinvestment will not adversely affect the sufficiency of the amounts of securities, investments and money in the Series [specify series to be refunded] Bonds Escrow Fund to pay the principal or redemption price of, and interest on, the Refunded Series [specify series to be refunded] Bonds in accordance with this Escrow Agreement. The Escrow Agent shall not be liable or responsible for any loss resulting from any reinvestment made pursuant to this Escrow Agreement and in full compliance with the provisions hereof.

SECTION 5. Payment of Refunded Series [specify series to be refunded] Bonds.

(a) Payment. From the maturing principal of the Federal Securities (if any) and the investment income and other earnings thereon, if any, and the moneys on deposit in the Series [specify series to be refunded] Bonds Escrow Fund, the Escrow Agent shall apply the amounts on deposit in the Series [specify series to be refunded] Bonds Escrow Fund to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_, \_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_] and (iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_.



[together, in each case, with accrued interest thereon]. The amounts required to be paid on the Refunded Series [specify series to be refunded] Bonds on each date of payment therefor are shown on Schedule B hereto. Any moneys remaining in the Series [specify series to be refunded] Bonds Escrow Fund after payment of the Refunded Series [specify series to be refunded] Bonds in full as provided in this Section 5(a) shall be transferred by the Escrow Agent to the trustee for the Series [Designation] Bonds to be applied to the payment of interest on the Series [Designation] Bonds.

(b) Irrevocable Instructions to Provide Notice. The District [hereby irrevocably instructs] [acknowledges that it has heretofore instructed] the Escrow Agent (as Trustee for the Refunded Series [specify series to be refunded] Bonds), (1) to mail a notice substantially in the form of Exhibit A to the owners of the Refunded Series [specify series to be refunded] Bonds [and to the Series [specify series to be refunded] Bond Insurer (as defined in the \_\_\_\_\_ Supplemental Indenture)] that an irrevocable deposit has been made with the Escrow Agent and that the Refunded Series [specify series to be refunded] Bonds have been deemed to be paid in accordance with the Indenture, with a copy of such notice to be provided by electronic means of communication to the Municipal Securities Rulemaking Board (“MSRB”) through the Electronic Municipal Market Access System (referred to as “EMMA”), at [www.emma.msrb.org](http://www.emma.msrb.org); and [hereby irrevocably instructs the Escrow Agent (as Trustee for the Refunded Series [specify series to be refunded] Bonds)] (2) provide a notice substantially the form of Exhibit B at least thirty (30) days but not more than sixty (60) days prior to \_\_\_\_\_, \_\_\_\_\_ (*i.e.*, the redemption date) of the redemption of the Refunded Series [specify series to be refunded] Bonds to be redeemed on such date (i) by first-class mail to the registered owners of the Refunded Series [specify series to be refunded] Bonds, (ii) by first-class mail to the Information Services (as defined in the Indenture) and by electronic means of communication to the MSRB through EMMA, at [www.emma.msrb.org](http://www.emma.msrb.org), and (iii) by facsimile and by first-class mail to the Securities Depositories (as defined in the Indenture), all in accordance with the Indenture and with a copy of such notice to [the Series [specify series to be refunded] Bond Insurer] and [Moody’s, Standard & Poor’s and Fitch] (as defined in the Indenture).

The Escrow Agent hereby confirms that it will take all actions required to be taken by it under the Indenture and this Escrow Agreement in order to effectuate the defeasance, redemption and payment of the Refunded Series [specify series to be refunded] Bonds as provided herein.

(c) Unclaimed Moneys. Any moneys which remain unclaimed for two years after the date such moneys have become due and payable hereunder shall be repaid by the Escrow Agent to the District, and the Escrow Agent shall thereupon be released and discharged with respect thereto, and the holders of the Refunded Series [specify series to be refunded] Bonds shall look only to the District for the payment on the Refunded Series [specify series to be refunded] Bonds; provided, however, that before making such repayment to the District, the Escrow Agent shall, at the expense of the District, cause to be mailed to the holders of any unredeemed Refunded Series [specify series to be refunded] Bonds, a notice that such money remains unclaimed and that, after a date set forth in the notice, which date shall not be less than thirty (30) days after the date of mailing of the notice, the balance of the money then unclaimed will be returned to the District.

(d) Priority of Payments. The owners of the Refunded Series [specify series to be refunded] Bonds shall have a lien on moneys and securities, if any, in the Series [specify series to be refunded] Bonds Escrow Fund which are allocable and sufficient to repay the Refunded Series [specify series to be refunded] Bonds, in accordance with this Escrow Agreement, as verified by the Verification Report, until such moneys and such securities, if any, are used and applied as provided in this Escrow Agreement.

(e) Termination of Obligation. As provided in the Indenture, upon deposit of moneys with the Escrow Agent in the Series [specify series to be refunded] Bonds Escrow Fund as set forth in Section 1 hereof and the purchase of the various Federal Securities as provided in Section 2 hereof, if any, and notice of, or provision for notice of redemption having been given as set forth in Section 5(b) hereof, upon the election of the District, which the District hereby makes, the pledge of the Subordinated Wastewater Revenues and other assets under the Indenture and other obligations of the District under the Indenture in respect of the Refunded Series [specify series to be refunded] Bonds shall cease, terminate, and be completely discharged and satisfied.

SECTION 6. Performance of Duties. The Escrow Agent agrees to perform only the duties set forth herein and shall have no responsibility to take any action or omit to take any action not set forth herein.

SECTION 7. Escrow Agent's Authority to Make Investments. Except as provided in Section 2 hereof, the Escrow Agent shall have no power or duty to invest any funds held under this Escrow Agreement or to sell, transfer or otherwise dispose of the cash or the Federal Securities (if any) held hereunder.

SECTION 8. Indemnity. The District hereby assumes liability for, and agrees (whether or not any of the transactions contemplated hereby are consummated) to indemnify, protect, save and keep harmless the Escrow Agent and its respective successors, assigns, agents, officers, directors, employees and servants, from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatever kind and nature which may be imposed on, incurred by, or asserted against, the Escrow Agent at any time (whether or not also indemnified against the same by the District or any other person under any other agreement or instrument, but without double indemnity) in any way relating to or arising out of the execution, delivery and performance of this Escrow Agreement, the establishment hereunder of the Series [specify series to be refunded] Bonds Escrow Fund, the acceptance of the cash and securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any) or the proceeds thereof, if any, and any payment, transfer or other application of moneys or securities by the Escrow Agent in accordance with the provisions of this Escrow Agreement; provided, however, that the District shall not be required to indemnify the Escrow Agent against the Escrow Agent's own negligence or willful misconduct or the negligence or willful misconduct of the Escrow Agent's employees or the willful breach by the Escrow Agent of the terms of this Escrow Agreement. In no event shall the District or the Escrow Agent be liable to any person by reason of the transactions contemplated hereby other than to each other as set forth in this Section. The indemnities contained in this Section shall survive the termination of this Escrow Agreement and the resignation or removal of the Escrow Agent.

SECTION 9. Responsibilities of Escrow Agent. The Escrow Agent shall not be held to any personal liability whatsoever, in tort, contract, or otherwise, in connection with the execution and delivery of this Escrow Agreement, the establishment of the Series [specify series to be refunded] Bonds Escrow Fund, the acceptance of the moneys or securities deposited therein, the purchase of the Federal Securities (if any), the retention of the Federal Securities (if any), or the proceeds thereof, the sufficiency of the Federal Securities (if any), or cash deposit to pay the Refunded Series [specify series to be refunded] Bonds or any payment, transfer or other application of moneys or obligations by the Escrow Agent in accordance with the provisions of this Escrow Agreement, or by reason of any non-negligent act, non-negligent omission or non-negligent error of the Escrow Agent made in good faith in the conduct of its duties. The Escrow Agent shall not be liable for any special indirect or consequential damages. The recitals of fact contained in the "Whereas" clauses herein shall be taken as the statements of the District, and the Escrow Agent assumes no responsibility for the correctness thereof or the correctness of any recitals or statements contained in the Refunded Series [specify series to be refunded] Bonds. The Escrow Agent makes no representation as to the validity of this Escrow Agreement as to the District and, except as otherwise provided herein, the Escrow Agent shall incur no liability with respect thereto. The Escrow Agent shall not be liable in connection with the performance of its duties under this Escrow Agreement except for its own negligence, willful misconduct or willful breach, and the duties and obligations of the Escrow Agent shall be determined by the express provisions of this Escrow Agreement. The Escrow Agent may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees appointed with due care, and shall not be responsible for any willful misconduct or negligence on the part of any agent, attorney, custodian or nominee so appointed. The Escrow Agent shall be under no obligation to inquire into or be in any way responsible for the performance or nonperformance by the District of its obligations. The Escrow Agent may consult with counsel, who may or may not be counsel to the District, and in reliance upon the written opinion of such counsel shall have full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith in accordance therewith. Whenever the Escrow Agent shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering, or omitting any action under this Escrow Agreement, such matter may be deemed to be conclusively established by a certificate signed by an officer of the District. No provision of this Escrow Agreement shall require the Escrow Agent to expend or risk its own funds or otherwise incur any financial liability in the performance or exercise of any of its duties hereunder, or in the exercise of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The Escrow Agent shall incur no liability for losses arising from any investment made pursuant to the provisions of this Escrow Agreement.

SECTION 10. Resignation of Escrow Agent. The Escrow Agent may at any time resign by giving thirty (30) days prior written notice to the District of such resignation. The District shall promptly appoint a successor Escrow Agent by the resignation date. Resignation of the Escrow Agent will be effective only upon acceptance of appointment by a successor Escrow Agent. If the District does not appoint a successor, the Escrow Agent may at the expense of the District petition any court of competent jurisdiction for the appointment of a successor Escrow Agent, which court may thereupon, after such notice, if any, as it may deem proper and as may be required by law, appoint a successor Escrow Agent. After receiving a notice of resignation of

Escrow Agent, the District may appoint a temporary Escrow Agent to replace the resigning Escrow Agent until the District appoints a successor Escrow Agent. Any such temporary Escrow Agent so appointed by the District shall immediately and without further action be superseded by the successor Escrow Agent so appointed.

SECTION 11. Amendments. This Escrow Agreement is made for the benefit of the District and the owners of the Refunded Series [specify series to be refunded] Bonds and it shall not be repealed, revoked, altered or amended without the written consent of all such owners, the Escrow Agent and the District; provided, however, that the District and the Escrow Agent may, without the consent of, or notice to, such owners, amend this Escrow Agreement or enter into such agreements supplemental to this Escrow Agreement as shall not adversely affect the rights of such owners and as shall not be inconsistent with the terms and provisions of this Escrow Agreement or the Indenture, for any one or more of the following purposes: (i) to cure any ambiguity or formal defect or omission in this Escrow Agreement; (ii) to grant to, or confer upon the Escrow Agent for the benefit of the owners of the Refunded Series [specify series to be refunded] Bonds, any additional rights, remedies, powers or authority that may lawfully be granted to, or conferred upon, such owners or the Escrow Agent; and (iii) to include under this Escrow Agreement additional funds, securities or properties. The Escrow Agent shall be entitled to rely conclusively upon an unqualified opinion of nationally recognized bond counsel with respect to compliance with this Section, including the extent, if any, to which any change, modification, addition or elimination affects the rights of the owners of the Refunded Series [specify series to be refunded] Bonds or that any instrument executed hereunder complies with the conditions and provisions of this Section.

SECTION 12. Term. This Escrow Agreement shall commence upon its execution and delivery and terminate on the later to occur of either (i) the date upon which the Refunded Series [specify series to be refunded] Bonds have been paid in accordance with this Escrow Agreement or (ii) the date upon which no unclaimed moneys remain on deposit with the Escrow Agent pursuant to Section 5(c) of this Escrow Agreement.

SECTION 13. Compensation. The Escrow Agent shall receive its reasonable fees and expenses as previously agreed to by the Escrow Agent and the District; provided, however, that under no circumstances shall the Escrow Agent be entitled to any lien whatsoever on any moneys or obligations in the Series [specify series to be refunded] Bonds Escrow Fund for the payment of fees and expenses for services rendered or expenses incurred by the Escrow Agent under this Escrow Agreement until payment or provision for payment in full of the Refunded Series [specify series to be refunded] Bonds.

SECTION 14. Severability. If any one or more of the covenants or agreements provided in this Escrow Agreement on the part of the District or the Escrow Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenants or agreements shall be null and void and shall be deemed separate from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Escrow Agreement.

SECTION 15. Counterparts. This Escrow Agreement may be executed in counterparts, any of which shall be regarded for all purposes as an original but all of which shall constitute and be but one and the same instrument.

SECTION 16. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of California.

SECTION 17. Insufficient Funds. If at any time the moneys and investments in the Series [specify series to be refunded] Bonds Escrow Fund, including the anticipated proceeds of and earnings thereon, if any, will not be sufficient to make all payments required by this Escrow Agreement, the Escrow Agent shall notify the District, in writing, immediately upon becoming aware of such deficiency, the amount thereof, and, if known to it, the reason therefor. Upon receipt of such notice, the District shall, as the case may be, promptly deposit with the Escrow Agent for deposit in the Series [specify series to be refunded] Bonds Escrow Fund the amount necessary to cure any such deficiency. The Escrow Agent shall have no further responsibility regarding any such deficiency.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed by their duly authorized officers as of the date first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Escrow Agent and as  
Trustee under the Indenture

By: \_\_\_\_\_  
Milly Canessa  
Vice President

SCHEDULE A  
FEDERAL SECURITIES

TYPE	MATURITY DATE	PAR AMOUNT	COUPON
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SCHEDULE B

REQUIREMENTS OF THE REFUNDED  
SERIES [SPECIFY SERIES TO BE REFUNDED] BONDS

<u>Date</u>	<u>Interest</u>	<u>Maturing Principal</u>	<u>Called Principal</u>	<u>Call Premium</u>	<u>Total Requirements</u>
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**NOTICE OF DEFEASANCE  
EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM [SUBORDINATED] REVENUE REFUNDING BONDS,  
SERIES [SPECIFY SERIES TO BE REFUNDED]**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned Bonds (the “Series [specify series to be refunded] Bonds”) that the East Bay Municipal Utility District (the “District”) has deposited with The Bank of New York Mellon Trust Company, N.A., the successor trustee for the Series [specify series to be refunded] Bonds (the “Trustee”) under the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as amended and supplemented, including by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_ (collectively, the “Indenture”), cash and/or noncallable bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, paying interest and principal in an amount which shall be sufficient to pay [(i) interest on the Refunded Series [specify series to be refunded] Bonds becoming due on and prior to \_\_\_\_\_,\_\_\_\_], [(ii) the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on \_\_\_\_\_, \_\_\_\_\_] and (iii) the redemption price (*i.e.*, 100% of the principal amount) of the \$\_\_\_\_\_ outstanding principal amount of the Refunded Series [specify series to be refunded] Bonds maturing on and after June 1, \_\_\_\_\_, [together, in each case, with accrued interest thereon]. In accordance with the Indenture, the pledge of the Subordinated Wastewater Revenues (as defined in such Indenture) provided for in the Indenture, and all other obligations of the District under the Indenture in respect of such portion of Bonds, shall cease and terminate and be completely discharged and satisfied and all payments of the interest on, and the principal or redemption price of, such Series [specify series to be refunded] Bonds shall be paid only from moneys on deposit with the Trustee and available as aforesaid.

DATED this \_\_\_\_ day of \_\_\_\_\_,\_\_\_\_\_.

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

**NOTICE OF REDEMPTION  
OF EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM [SUBORDINATED] REVENUE REFUNDING BONDS,  
SERIES [SPECIFY SERIES TO BE REFUNDED]**

NOTICE IS HEREBY GIVEN to the owners of the above-captioned bonds dated \_\_\_\_\_, \_\_\_\_\_ (the "Bonds") that, pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the East Bay Municipal Utility District (the "District") and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), as amended and supplemented, including by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, \_\_\_\_\_, by and between the District and the Trustee (collectively, the "Indenture"), the District has directed the Trustee to call for redemption, on \_\_\_\_\_, \_\_\_\_\_ (the "Redemption Date"), [all] [a portion of] the outstanding Bonds maturing on and after June 1, \_\_\_\_\_, in the aggregate principal amount of \$\_\_\_\_\_, as set forth below:

Maturity Date (June 1)	Principal Amount	Interest Rate	CUSIP
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Owners of the Bonds must present and surrender the Bonds on the Redemption Date at the applicable address of the Trustee set forth below:

*First Class/Registered/Certified:*

**The Bank of New York Mellon**  
Global Corporate Trust  
P.O. Box 2320  
Dallas, Texas 75221-2320

*Express Delivery Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
2001 Bryan Street, 9<sup>th</sup> Floor  
Dallas, Texas 75201

*By Hand Only:*

**The Bank of New York Mellon**  
Global Corporate Trust  
Corporate Trust Window  
101 Barclay Street, 1<sup>st</sup> Floor East  
New York, New York 10286

[PURSUANT TO THE TERMS OF THE INDENTURE, MONEYS SUFFICIENT FOR PAYMENT OF THE REDEMPTION PRICE MUST BE DEPOSITED WITH THE TRUSTEE ON OR BEFORE THE REDEMPTION DATE IN ORDER FOR THE BONDS TO BECOME DUE AND PAYABLE ON THE REDEMPTION DATE AND THE REDEMPTION OF THE BONDS ON THE REDEMPTION DATE IS EXPRESSLY CONDITIONAL UPON THE TIMELY DEPOSIT OF SUCH MONEYS. THE DISTRICT EXPECTS TO DEPOSIT ON OR BEFORE THE REDEMPTION DATE MONEYS TO PAY IN FULL THE REDEMPTION PRICE OF THE BONDS. IF FOR ANY REASON THE DISTRICT DOES NOT DEPOSIT ON OR BEFORE THE REDEMPTION DATE SUFFICIENT MONEYS TO PAY THE REDEMPTION PRICE OF THE BONDS, THIS NOTICE OF REDEMPTION WILL BE AUTOMATICALLY CANCELLED AND ANNULLED AND THE BONDS SHALL

REMAIN OUTSTANDING PURSUANT TO THE INDENTURE. IN SUCH EVENT, ANY BONDS PRESENTED FOR PAYMENT (AS PROVIDED ABOVE) WILL BE RETURNED.]

On \_\_\_\_\_, \_\_\_\_\_, the Bonds to be redeemed will be payable at a redemption price of [100.0%] of the principal amount together with interest accrued thereon to (but not including) \_\_\_\_\_, \_\_\_\_\_, the date of redemption. On \_\_\_\_\_, \_\_\_\_\_, [if the deposit of moneys has been made as provided above,] there shall become due and payable upon each Bond to be redeemed, to the person whose name appears on the registration books of the Trustee as the registered owner thereof, the redemption price thereof as set forth above. From and after \_\_\_\_\_, \_\_\_\_\_, interest on the Bonds to be redeemed will cease to accrue.

When inquiring about this redemption, please have the Bond number available. Please inform the customer service representative of the CUSIP number(s) of the affected Bonds. Our customer service number is 1-800-254-2826.

#### **Important Notice**

Under the Jobs and Growth Tax Relief Reconciliation Act of 2003, 28% will be withheld if tax identification number is not properly certified.

*The CUSIP numbers have been assigned by an independent service for convenience of reference and none of the City, the Trustee or the Escrow Agent shall be held liable for any inaccuracy in any such CUSIP number.*

DATED: \_\_\_\_\_, \_\_\_\_\_

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

## **CONTINUING DISCLOSURE AGREEMENT**

This Continuing Disclosure Agreement (the “Disclosure Agreement”), dated **[Closing Date]**, is executed and delivered by the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”) in connection with the issuance of \$**[Par Amount]** aggregate principal amount of Wastewater System Revenue Refunding Bonds, **[Name of Series]** (the “Bonds”). The Bonds are being issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and the Trustee, as supplemented and amended, including as supplemented and amended by the **[Number of the Supplemental Indenture]** Supplemental Indenture, dated as of **[Supplemental Indenture Date]**, providing for the issuance of the Bonds (collectively, the “Indenture”). In connection therewith the District and the Trustee covenant and agree as follows:

Section 1. Purpose of this Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the District and the Trustee for the benefit of the Holders and Beneficial Owners of the Bonds and in order to assist the Participating Underwriter (as defined herein) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5).

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

“Annual Report” shall mean any Annual Report provided by the District pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Beneficial Owner” shall mean any person who (a) has the power, directly or indirectly, to vote or consent with respect to, or to dispose of ownership of, any Bonds (including persons holding Bonds through nominees, depositories or other intermediaries); or (b) is treated as the owner of any Bonds for federal income tax purposes.

“Disclosure Representative” shall mean the Director of Finance or the Treasury Manager of the District or a designee of the Director of Finance, or such other officer or employee as the District shall designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, acting in its capacity as Dissemination Agent hereunder, or any successor Dissemination Agent designated in writing by the District and which has filed with the Trustee a written acceptance of such designation.

“Holder” shall mean either the registered owners of the Bonds or, if the Bonds are registered in the name of The Depository Trust Company or another recognized depository, any applicable participant in such depository system.

“Listed Event” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934 or any other entity designated or authorized by the Securities and Exchange Commission to receive reports pursuant to the Rule. Until otherwise designated by the MSRB or the Securities and Exchange Commission, filings with the MSRB are to be made through the Electronic Municipal Marketplace Access (EMMA) website of the MSRB, currently located at <http://emma.msrb.org>.

“Official Statement” shall mean the Official Statement for the Bonds dated *[Sale Date]*, as may be updated prior to the delivery of the Bonds.

“Participating Underwriter” shall mean any underwriter of the Bonds listed on the cover page of the Official Statement required to comply with the Rule in connection with offering of the Bonds.

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

“SEC” shall mean the United States Securities and Exchange Commission.

### Section 3. Provision of Annual Reports.

(a) The District shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of the District’s Fiscal Year (presently June 30), commencing with the report for the 2012-13 Fiscal Year, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. The Annual Report must be submitted in electronic format, accompanied by such identifying information as prescribed by the MSRB. The Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that if the audited financial statements of the District are not available by the date required above for the filing of the Annual Report, the District shall submit the audited financial statements as soon thereafter as available. If the District’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(f).

(b) If the District is unable to provide to the MSRB an Annual Report by the date required in subsection (a), the District shall send to the MSRB a notice in substantially the form attached hereto as Exhibit A.

(c) The Dissemination Agent shall:

- (i) determine the electronic filing address of, and then-current procedures for submitting Annual Reports to, the MSRB each year prior to the date for providing the Annual Report; and

- (ii) file a report with the District and (if the Dissemination Agent is not the Trustee, the Trustee) certifying that the Annual Report has been provided to the MSRB pursuant to this Disclosure Agreement, and stating the date it was provided.

Section 4. Content of Annual Reports. The District's Annual Report shall contain or include by reference the following categories or similar categories of information updated to incorporate information for the most recent fiscal or calendar year, as applicable (the tables referred to below are those appearing in the Official Statement relating to the Bonds):

- (a) The audited financial statements of the District for the prior Fiscal Year, prepared in accordance with Generally Accepted Accounting Principles as promulgated to apply to governmental entities from time to time by the Governmental Accounting Standards Board. If the District's audited financial statements are not available by the time the Annual Report is required to be filed pursuant to Section 3(a), the Annual Report shall contain unaudited financial statements in a format similar to the financial statements contained in the final Official Statement, and the audited financial statements shall be filed in the same manner as the Annual Report when they become available;

- (b) A table showing the Wastewater System Summary of Revenues and Contributions by Source;

- (c) A table showing Wastewater System Rates and Charges for the preceding Fiscal Year;

- (d) A table showing Average Wastewater Flows for the preceding Fiscal Year;

- (e) A table showing outstanding Wastewater System debt as of the preceding Fiscal Year; and

- (f) A table showing revenues, operating and maintenance expense, debt service on Wastewater System revenue bonds and debt service coverage for the Wastewater System for the most recent Fiscal Year.

Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues of the District or related public entities, which have been submitted to the MSRB or the SEC. If any document included by reference is a final official statement, it must be available from the MSRB. The District shall clearly identify each such other document so included by reference.

Section 5. Reporting of Significant Events.

- (a) Pursuant to the provisions of this section, upon the occurrence of any of the following events (in each case to the extent applicable) with respect to the Bonds, the District shall give, or cause to be given by so notifying the Dissemination Agent in writing and instructing the Dissemination Agent to give, notice of the occurrence of such event, in each case, pursuant to Section 5(c) hereof:

1. principal or interest payment delinquencies;
2. non-payment related defaults, if material;
3. modifications to the rights of the Bondholders, if material;
4. optional, contingent or unscheduled calls, if material, and tender offers;
5. defeasances;
6. rating changes;
7. adverse tax opinions or the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds or other material events affecting the tax status of the Bonds;
8. unscheduled draws on the debt service reserves reflecting financial difficulties;
9. unscheduled draws on the credit enhancements reflecting financial difficulties;
10. substitution of the credit or liquidity providers or their failure to perform;
11. release, substitution or sale of property securing repayment of the Bonds, if material;
12. bankruptcy, insolvency, receivership or similar proceedings of the District, which shall occur as described below;
13. appointment of a successor or additional trustee or the change of name of a trustee, if material, or;
14. the consummation of a merger, consolidation, or acquisition involving the District or the sale of all or substantially all of the assets of the Wastewater System of the District other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

For these purposes, any event described in item 12 of this Section 5(a) is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent, or similar officer for the District in a proceeding under the United States Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the District, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession

but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement, or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the District.

(b) Upon receipt of notice from the District and instruction by the District to report the occurrence of any Listed Event, the Dissemination Agent shall provide notice thereof to the MSRB in accordance with Section 5(c) hereof. In the event the Dissemination Agent shall obtain actual knowledge of the occurrence of any of the Listed Events, the Dissemination Agent shall, immediately after obtaining such knowledge, contact the Disclosure Representative, inform such person of the event, and request that the District promptly notify the Dissemination Agent in writing whether or not to report the event pursuant to Section 5(c). For purposes of this Disclosure Agreement, “actual knowledge” of the occurrence of such Listed Event shall mean actual knowledge by the Dissemination Agent, if other than the Trustee, and if the Dissemination Agent is the Trustee, then by the officer at the corporate trust office of the Trustee with regular responsibility for the administration of matters related to the Indenture. The Dissemination Agent shall have no responsibility to determine the materiality, if applicable, of any of the Listed Events.

(c) The District, or the Dissemination Agent, if the Dissemination Agent has been instructed by the District to report the occurrence of a Listed Event, shall file a notice of such occurrence with the MSRB in a timely manner not more than ten business days after the occurrence of the event.

Section 6. Termination of Reporting Obligation. The District’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the District shall give notice of such termination in the same manner as for a Listed Event under Section 5(c).

Section 7. Dissemination Agent. The District may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee, upon notice from the District, shall be the Dissemination Agent. The initial Dissemination Agent shall be the Trustee. The Dissemination Agent shall not be responsible in any manner for the content of any notice or report prepared by the District pursuant to this Disclosure Agreement. The Dissemination Agent shall receive compensation for the services provided pursuant to this Disclosure Agreement.

Section 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the District and the Dissemination Agent may amend this Disclosure Agreement (and, to the extent that any such amendment does not materially change or increase its obligations hereunder, the Dissemination Agent shall agree to any amendment so requested by the District), and any provision of this Disclosure Agreement may be waived; *provided*, that the following conditions are satisfied:



(a) If the amendment or waiver relates to the provisions of Section 3(a), Section 4 or Section 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the original issuance of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Holders or Beneficial Owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the District shall describe such amendment in the next Annual Report, and shall include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the District. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(c), and (ii) the Annual Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

Section 9. Filings with the MSRB. All information, operating data, financial statements, notices and other documents provided to the MSRB in accordance with this Disclosure Agreement shall be provided in an electronic format prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

Section 10. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the District from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the District chooses to include any information in any Annual Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the District shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of occurrence of a Listed Event.

Section 11. Default. In the event of a failure of the District or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Trustee may (and, at the request of any Participating Underwriter or the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds and upon provision of indemnification satisfactory to the Trustee, shall), or any Holder or Beneficial Owner of the Bonds may take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order, to

cause the District or the Dissemination Agent, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture, and the sole remedy under this Disclosure Agreement in the event of any failure of the District or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance hereunder.

Section 12. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Article VIII of the Indenture is hereby made applicable to this Disclosure Agreement as if the Disclosure Agreement were (solely for this purpose) contained in the Indenture. The Dissemination Agent shall be entitled to the protections and limitations on liability afforded to the Trustee thereunder. The Dissemination Agent (if other than the Trustee in its capacity as Dissemination Agent) shall have only such duties as are specifically set forth in this Disclosure Agreement, and the District 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 any loss, expense and liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the District under this Section 12 shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

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

To the District:

East Bay Municipal Utility District  
375 Eleventh Street, MS 801  
Oakland, California 94607-4240  
Attention: Treasury Manager  
Phone: 510-287-0231  
Fax: 510-287-0293

To the Dissemination Agent:

The Bank of New York Mellon  
Trust Company, N.A.  
100 Pine Street, Suite 3100  
San Francisco, California 94111  
Phone: 415-263-2420  
Fax: 415-399-1647

Section 14. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the District, the Trustee, the Dissemination Agent, the Participating Underwriters and the Holders and Beneficial Owners from time to time of the Bonds, and shall create no rights in any other person or entity.

Section 15. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, this Disclosure Agreement has been executed on behalf of the District and the Trustee by their duly authorized representatives.

Dated: *[Closing Date]*

EAST BAY MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_  
Eric L. Sandler  
Director of Finance

Dated: *[Closing Date]*

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

By: \_\_\_\_\_  
Milly Canessa  
Vice President

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of District: EAST BAY MUNICIPAL UTILITY DISTRICT

Name of Bond Issue: **[\$*Par Amount*]** East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds, **[*Name of Series*]**  
(the “Bonds”)

Date of Issuance: **[*Closing Date*]**

NOTICE IS HEREBY GIVEN that the East Bay Municipal Utility District (the “District”) has not provided an Annual Report with respect to the above-named bonds as required by Section 3(a) of the Continuing Disclosure Agreement, dated **[*Closing Date*]**, (and effective as of the Date of Issuance) by and between the District and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) and in accordance with Section **[*insert section number*]** of the **[*Number of the Supplemental Indenture*]** Supplemental Indenture, dated as of **[*Supplemental Indenture Date*]**, by and between the District and the Trustee, supplementing the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented and amended, by and between the District and the Trustee, providing for the issuance of the Bonds. The District anticipates that the Annual Report will be filed by \_\_\_\_\_, 20\_\_.

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

THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Trustee on behalf of the  
District

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

cc: East Bay Municipal Utility District

**PRELIMINARY OFFICIAL STATEMENT DATED \_\_\_\_\_****NEW ISSUE – BOOK ENTRY ONLY****See “RATINGS” herein.**

*In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. Special Tax Counsel expresses no opinion regarding any other tax consequences related to the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds. See “TAX MATTERS.”*

**[DISTRICT LOGO]**

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

**EAST BAY MUNICIPAL UTILITY DISTRICT  
(Alameda and Contra Costa Counties, California)**

**WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]****Dated: Date of Delivery****Due: June 1, as shown on inside cover**

*This cover page contains certain information for general reference only. It is not intended to be a summary of the security or terms of this issue. Investors are advised to read the entire Official Statement to obtain information essential to the making of an informed investment decision. Capitalized terms used on this cover page and not otherwise defined shall have the meanings set forth herein.*

The East Bay Municipal Utility District (the “District”) is issuing its Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”) pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”). The Series [Designation] Bonds will be issued in fully-registered form, without coupons, initially registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”). DTC will act as securities depository for the Series [Designation] Bonds. Beneficial ownership interests in the Series [Designation] Bonds may be purchased in book-entry form only in denominations of \$5,000 principal amount or any integral multiple thereof. Interest on the Series [Designation] Bonds is payable semiannually on June 1 and December 1 of each year, commencing \_\_\_\_\_. Principal is payable on June 1 of the years set forth on the inside front cover. The principal of or redemption price of, and interest on, the Series [Designation] Bonds are payable by the Trustee to DTC, which is obligated in turn to remit such principal or redemption price and interest to the DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

*The Series [Designation] Bonds are subject to redemption prior to maturity as more fully described herein. See “THE SERIES [DESIGNATION] BONDS – Redemption.”*

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of [all or a portion of] the District’s outstanding Wastewater System Revenue Bonds, [specify series being refunded] and paying the costs of issuance in connection with the Series [Designation] Bonds, as described herein. See “PLAN OF REFUNDING.”

**The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Wastewater Revenues as more fully described herein. Subordinated Wastewater Revenues generally consist of the District’s Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of all Wastewater Operation and Maintenance Costs. The Series [Designation] Bonds have been issued on a parity with the District’s Wastewater System Revenue Bonds and Parity Debt heretofore or hereafter issued, as more fully described herein, including certain payment obligations of the District under interest rate swap agreements entered into by the District in connection therewith. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.**

**MATURITY SCHEDULE  
(SEE INSIDE COVER)**

*The Series [Designation] Bonds will be offered when, as and if issued, subject to the approval of validity by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, and certain other conditions. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. It is anticipated that the Series [Designation] Bonds will be available for delivery through the facilities of DTC in New York, New York by Fast Automated Securities Transfer (FAST) on or about \_\_\_\_\_.*

**[UNDERWRITER(S)]**

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

\* Preliminary; subject to change.

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

**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

**MATURITY SCHEDULE**

<i><b>Maturity Date</b></i> <i><b>(June 1)</b></i>	<i><b>Principal</b></i> <i><b>Amount</b></i>	<i><b>Interest</b></i> <i><b>Rate</b></i>	<i><b>Yield</b></i>	<i><b>CUSIP<sup>†</sup></b></i>
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<sup>†</sup> CUSIP is a registered trademark of The American Bankers Association. CUSIP data herein is provided by CUSIP Global Services, managed by Standard & Poor's Financial Services LLC on behalf of The American Bankers Association. This data is not intended to create a database and does not serve in any way as a substitute for the CUSIP Services. Neither the District nor the Underwriter(s) assume any responsibility for the accuracy of the CUSIP data.

\* Preliminary; subject to change.

**EAST BAY MUNICIPAL UTILITY DISTRICT**

Alameda and Contra Costa Counties, California

375 - 11th Street

Oakland, California 94607

(866) 403-2683

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**Co-Bond Counsel**

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Los Angeles, California,

a member of Norton Rose Fulbright

Curls Bartling P.C.

Oakland, California

**Financial Advisor**

Montague DeRose and Associates, LLC

Walnut Creek, California

**Trustee**

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

San Francisco, California

**Verification Agent**

[Grant Thornton LLP

Minneapolis, Minnesota]

No dealer, broker, salesperson or other person has been authorized by the District or the Underwriter(s) to give any information or to make any representation other than as set forth herein and, if given or made, such other information or representation must not be relied upon as having been authorized by the District or the Underwriter(s). 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 Series [Designation] Bonds 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 Series [Designation] Bonds. Statements contained in this Official Statement which involve estimates, forecasts or matters of opinion, whether or not expressly so described herein, are intended solely as such and are not to be construed as representations of facts.

The Underwriter(s) have provided the following sentence for inclusion in this Official Statement:

The Underwriter(s) have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter(s) do not guarantee the accuracy or completeness of such information.

The information set forth in this Official Statement has been obtained from official sources and other sources which are believed to be reliable, but it is not guaranteed as to accuracy or completeness and is not to be construed as a representation by the Underwriter(s). The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the District since the date hereof.

This Official Statement, including any supplement or amendment hereto, is intended to be deposited with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The District also maintains a website. However, the information presented therein is not part of this Official Statement and must not be relied upon in making an investment decision with respect to the Series [Designation] Bonds.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER(S) MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES [Designation] BONDS AT LEVELS ABOVE THOSE WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME.

**CERTAIN STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT REFLECT NOT HISTORICAL FACTS BUT FORECASTS AND “FORWARD-LOOKING STATEMENTS.” NO ASSURANCE CAN BE GIVEN THAT THE FUTURE RESULTS DISCUSSED HEREIN WILL BE ACHIEVED, AND ACTUAL RESULTS MAY DIFFER MATERIALLY FROM THE FORECASTS DESCRIBED HEREIN. IN THIS RESPECT, THE WORDS “ESTIMATE”, “PROJECT”, “ANTICIPATE”, “EXPECT”, “INTEND”, “BELIEVE” AND SIMILAR EXPRESSIONS ARE INTENDED TO IDENTIFY FORWARD-LOOKING STATEMENTS. ALL PROJECTIONS, FORECASTS, ASSUMPTIONS, EXPRESSIONS OF OPINIONS, ESTIMATES AND OTHER FORWARD-LOOKING STATEMENTS ARE EXPRESSLY QUALIFIED IN THEIR ENTIRETY BY THE CAUTIONARY STATEMENTS SET FORTH IN THIS OFFICIAL STATEMENT.**



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## OFFICIAL STATEMENT

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**East Bay Municipal Utility District  
(Alameda and Contra Costa Counties, California)  
Wastewater System Revenue Refunding Bonds, Series [Designation]**

### INTRODUCTION

*This Introduction is not a summary of this Official Statement, and is qualified by more complete and detailed information contained in the entire Official Statement. A full review should be made of the entire Official Statement, including the cover page and attached appendices. The offering of Series [Designation] Bonds to potential investors is made only by means of the entire Official Statement. Certain definitions of capitalized terms used and not defined herein are set forth in APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”*

#### **Purpose**

The purpose of this Official Statement, which includes the cover page and appendices hereto, is to set forth certain information concerning the East Bay Municipal Utility District (the “District”), the wastewater interception, treatment and disposal system owned by the District (the “Wastewater System” or the “System”), and System finances, in connection with the sale of the District’s \$ \_\_\_\_\_\* Wastewater System Revenue Refunding Bonds, Series [Designation] (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as supplemented by the \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, by and between the District and the Trustee, relating to the Series [Designation] Bonds (as so amended and supplemented, the “Indenture”).

The Series [Designation] Bonds are being issued for the purpose of providing funds, together with certain other available moneys, to provide for the refunding of [all or a portion of] the District’s outstanding Wastewater System Revenue Bonds, [specify series being refunded] and paying the costs of issuance in connection with the Series [Designation] Bonds, as described herein. See “PLAN OF REFUNDING” and “ESTIMATED SOURCES AND USES OF FUNDS.”

#### **The District**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California (the “State”). The District is formed under the authority of the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State, commencing with Section 11501 (the “Municipal Utility District Act”). Pursuant to the Municipal Utility District Act, the District is empowered to own and operate the Wastewater System. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM).” The District also operates a water system.

The Series [Designation] Bonds are not payable from or secured by the revenues of the water system of the District.

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\* Preliminary; subject to change.

## Security for the Series [Designation] Bonds

The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of the Subordinated Wastewater Revenues of the District, as defined in the Indenture. Subordinated Wastewater Revenues generally consist of the District's Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) remaining after the payment of (a) all Wastewater Operation and Maintenance Costs and (b) all amounts required to be paid under the District's Senior Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Wastewater Bonds. **There are no Senior Wastewater Bonds currently outstanding and the District has covenanted pursuant to the Twelfth Supplemental Indenture, dated as of September 15, 2010 (the "Twelfth Supplemental Indenture") that it will not issue any Senior Wastewater Bonds in the future.** Prior to the date of execution and delivery of the Twelfth Supplemental Indenture, all Wastewater System revenue bonds of the District issued under the Indenture were designated "Wastewater System Subordinated Revenue Bonds." Pursuant to the Twelfth Supplemental Indenture, any Wastewater System revenue bonds of the District issued (or remarketed or otherwise reoffered) under the Indenture following the execution and delivery of the Twelfth Supplemental Indenture are designated "Wastewater System Revenue Bonds" in order to reflect that the lien of the Senior Wastewater Bonds has been closed. All Outstanding Wastewater System revenue bonds issued under the Indenture (howsoever designated), together with any additional Wastewater System revenue bonds hereafter issued under the Indenture are secured on a parity from Subordinated Wastewater Revenues and are collectively referred to herein as the "Wastewater System Revenue Bonds." See "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Pledge of Subordinated Wastewater Revenues."

The Series [Designation] Bonds are secured on a parity with the District's other Wastewater System Revenue Bonds to be Outstanding upon the delivery thereof, together with any additional Wastewater System Revenue Bonds thereafter issued, with certain scheduled payments which are payable by the District with respect to certain interest rate swap agreements as described under "SECURITY FOR THE SERIES [DESIGNATION] BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*" and with certain outstanding State Loans as described in APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt," and with any other Parity Debt heretofore or hereafter incurred in accordance with the Indenture. See "SECURITY FOR THE SERIES [Designation] BONDS – Outstanding Wastewater System Revenue Obligations," and "– Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations." As of [June 30, 2013], the District had Outstanding [\$430,160,000] aggregate principal amount of Wastewater System Revenue Bonds (including the \$\_\_\_\_\_ aggregate principal amount of Outstanding Wastewater System Revenue Bonds to be refunded with proceeds of the Series [Designation] Bonds). See also "PLAN OF REFUNDING."

The Thirteenth Supplemental Indenture dated as of October 1, 2010 (the "Thirteenth Supplemental Indenture") includes a number of amendments to the Indenture in the manner and effective as of the date described under "AMENDMENTS TO THE INDENTURE."

**NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE DISTRICT IS PLEDGED TO THE PAYMENT OF THE SERIES [Designation] BONDS OR THE INTEREST THEREON.**

## **Rate Covenant**

The District covenants under the Indenture that it will at all times, while any of the Wastewater System Revenue Bonds (including the Series [Designation] Bonds) remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Covenants.” See also “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”

## **Continuing Disclosure**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide certain financial information and operating data relating to the District and the Wastewater System by not later than 180 days following the end of the District’s Fiscal Year (which currently begins on July 1 and ends on June 30 of each year) (the “Annual Report”), commencing with the Annual Report for Fiscal Year [2012-13], and to provide notices of the occurrence of certain specified events. See “CONTINUING DISCLOSURE.” These covenants have been made in order to assist the Underwriter(s) in complying with Securities and Exchange Commission Rule 15c2-12(b)(5). See also APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.”

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District’s complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District’s complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Wastewater System and the Wastewastewater System was unintentionally omitted from the District’s filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District’s audited financial statements and such information was also routinely made available in the District’s official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District’s Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.

## **Professionals Involved in the Issue**

The Bank of New York Mellon Trust Company, N.A. serves as Trustee under the Indenture. Certain legal matters incident to the authorization, issuance and sale of the Series [Designation] Bonds are subject to the approval of Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel, and for the Underwriter(s) by Orrick, Herrington & Sutcliffe LLP, San Francisco, California. Montague DeRose and Associates, LLC, Walnut Creek, California, is serving as Financial Advisor to the District in connection with the issuance of the Series

[Designation] Bonds. [Grant Thornton LLP, Minneapolis, Minnesota] is serving as Verification Agent in connection with the issuance of the Series [Designation] Bonds.

### **Summaries Not Definitive**

The summaries and references to all documents, statutes, reports and other instruments referred to herein do not purport to be complete, comprehensive or definitive, and each such summary or reference is qualified in its entirety by reference to each such document, statute, report or instrument. The capitalization of any word not conventionally capitalized or otherwise defined herein, indicates that such word is defined in the Indenture and, as used herein, has the meaning given to it in the Indenture. Unless otherwise indicated, all financial and statistical information herein has been provided by the District.

All references to and summaries of the Indenture, the Escrow Agreement and all documents, statutes, reports and other instruments referred to herein are qualified in their entirety by reference to the full Indenture, the Escrow Agreement and each such document, statute, report or instrument, respectively, copies of which are available for inspection at the offices of the District in Oakland, California, and will be available from the Trustee upon request and payment of duplication costs. Forward looking statements in this Official Statement are subject to risks and uncertainties. Actual results may vary from forecasts or projections contained herein if events and circumstances do not occur as expected, and such variances may be material.

### **Additional Information**

The District regularly prepares a variety of publicly available reports, including audits, budgets and related documents. Any Series [Designation] Bondholder may obtain a copy of any such report, as available, from the Trustee or the District. Additional information regarding this Official Statement may be obtained by contacting the Trustee or Eric L. Sandler, Director of Finance, East Bay Municipal Utility District, 375 Eleventh Street, Oakland, California 94607, (510) 287-0310.

## **THE DISTRICT**

The District is a municipal utility district, created in 1923 by vote of the electorate in portions of Alameda and Contra Costa Counties in the State of California. The District is formed under the authority of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its water system, and sewerage and wastewater interception, treatment and disposal, and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the water system or the Wastewater System.

For information on the District, the Wastewater System and its finances and operations, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)” and APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”

## PLAN OF REFUNDING

### Refunding of Series \_\_\_\_ Bonds

**General.** The Series [Designation] Bonds are being issued for the purposes of (i) refunding [all or a portion of] the District's Outstanding Series [specify series being refunded] Bonds and (ii) paying costs incidental to the issuance of the Series [Designation] Bonds. The refunding of the outstanding Series [specify series being refunded] Bonds is being undertaken in order to achieve net present value and debt service savings.

**Refunded Series \_\_\_\_ Bonds.** The Series [specify series being refunded] Bonds were originally issued in the aggregate principal amount of \$\_\_\_\_\_, of which \$\_\_\_\_\_ principal amount remains Outstanding. [All of][The portion of] the Outstanding Series [specify series being refunded] Bonds described in the table below (the "Refunded Series [specify series being refunded] Bonds") are expected to be paid or redeemed on \_\_\_\_\_, 20\_\_.

#### Series \_\_\_\_ Bonds to be Refunded

<u>Maturity Date</u> <u>(June 1)</u>	<u>Principal</u> <u>Amount</u>	<u>Interest</u> <u>Rate</u>	<u>Date of Payment</u> <u>or Redemption</u>	<u>CUSIP</u>
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Pursuant to an Escrow Agreement, dated as of \_\_\_\_\_, \_\_\_\_\_ (the "Escrow Agreement"), by and between The Bank of New York Mellon Trust Company, N.A., as escrow agent (the "Escrow Agent") and the District, a portion of the proceeds of the Series [Designation] Bonds will be deposited into an escrow fund (the "Escrow Fund") created pursuant to the Escrow Agreement, and will be held as cash or will be invested in direct noncallable obligations of, or unconditionally guaranteed by, the United States of America. The amounts deposited in the Escrow Fund will be sufficient to provide for [the payment] [of principal of and interest on the Refunded [specify series being refunded] Bonds as the same shall become due on and before \_\_\_\_\_, \_\_\_\_ and for] [on \_\_\_\_\_, \_\_\_\_ of the principal of and interest on the Refunded Series [specify series being refunded] Bonds maturing on such date and for] the redemption on \_\_\_\_\_ of the Refunded Series [specify series being refunded] Bonds maturing after such date at a redemption price of [100%] of the principal amount thereof plus accrued interest thereon to such redemption date.

Upon such deposit and investment and compliance with or provision for compliance with certain notice requirements set forth in the Indenture, the liability of the District with respect to the Series [specify series being refunded] Bonds will cease and the Series [specify series being refunded] Bonds will no longer be Outstanding under the Indenture except that the Owners of the Series [specify series being refunded] Bonds will be entitled to payment thereof solely from the amounts on deposit in the Escrow Fund held by the Escrow Agent.

**Verification.** [Grant Thornton LLP], independent certified public accountants, will verify, from the information provided to them, the mathematical accuracy as of the date of the Closing of the Series [Designation] Bonds of computations relating to the adequacy of the amounts to be deposited in the Escrow Fund under the Escrow Agreement to pay when due the principal or redemption price of the Refunded Series [specify series being refunded] Bonds and accrued interest thereon. See “VERIFICATION OF MATHEMATICAL COMPUTATIONS.”

## **ESTIMATED SOURCES AND USES OF FUNDS**

The estimated sources and uses of funds with respect to the Series [Designation] Bonds are as follows:

### ***Sources***

Principal Amount	
[Original Issue Premium/Discount]	
[Transfer from Refunded Bonds	
Reserve Fund Releases]	
[District Contribution]	
Total	<hr/> <hr/>

### ***Uses***

Deposit to Escrow Fund	
Underwriter(s)' Discount	
Costs of Issuance <sup>(1)</sup>	
Total	<hr/> <hr/>

<sup>(1)</sup> Includes legal, financing and consulting fees, rating agency fees, printing costs and other miscellaneous expenses.

## **THE SERIES [DESIGNATION] BONDS**

### **General Description**

The Series [Designation] Bonds will be issued in the aggregate principal amounts, will bear interest at the rates and will mature in the years and amounts all as set forth on the inside cover page of this Official Statement. The Series [Designation] Bonds will be issued in denominations of \$5,000 principal amount or any integral multiple thereof. The Series [Designation] Bonds will be dated, and shall bear interest from, their date of delivery. Interest on the Series [Designation] Bonds is payable on each June 1 and December 1, commencing on \_\_\_\_\_, and will be computed on the basis of a 360-day year of twelve 30-day months. The Series [Designation] Bonds will be issued as fully registered bonds in book-entry form only and when delivered will be registered in the name of Cede & Co., as nominee of The Depository Trust Company, New York, New York (“DTC”), which will act as securities depository for the Series [Designation] Bonds. So long as DTC, or its nominee, Cede & Co., is the registered owner of the Series [Designation] Bonds, all payments of principal of or redemption price of, and interest on, the Series [Designation] Bonds will be made directly to DTC, which is obligated in turn to remit such principal or redemption price and interest to its DTC participants for subsequent disbursement to the beneficial owners of the Series [Designation] Bonds. See APPENDIX E – “DTC AND THE BOOK-ENTRY ONLY SYSTEM.”

### **Redemption**

**Optional Redemption.** The Series [Designation] Bonds maturing on or before June 1, 20\_\_ are



not subject to optional redemption prior to maturity. The Series [Designation] Bonds maturing on and after June 1, 20\_\_ are subject to redemption prior to their respective stated maturities, at the option of the District, from any source of available funds, as a whole or in part on any date (by such maturities as may be specified by the District and by lot within a maturity), on or after \_\_\_\_\_, at a redemption price equal to the principal amount of Series [Designation] Bonds called for redemption, plus accrued interest to the date fixed for redemption, without premium.

***Mandatory Redemption.*** The Series [Designation] Bonds are subject to redemption prior to their stated maturity, in part, by lot, from Mandatory Sinking Account Payments as specified below at the principal amount of each Series [Designation] Bond so redeemed plus accrued interest thereon to but not including the date fixed for redemption, without premium.

<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>	<b><i>Mandatory Sinking Account Payment Dates (June 1)</i></b>	<b><i>Mandatory Sinking Account Payments</i></b>
	\$		\$

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† Final Maturity.

***Notice of Redemption.*** Notice of redemption of the Series [Designation] Bonds shall be mailed by the Trustee, not less than 20 nor more than 60 days prior to the redemption date, to DTC or, if the book-entry system as described in Appendix E has been discontinued, by first-class mail, to the respective Owners of any Series [Designation] Bonds designated for redemption in the manner and under the terms and conditions provided in the Indenture. Failure by any Owner to receive notice or any defect in any such notice shall not affect the sufficiency of the proceedings for redemption.

In the event of an optional redemption of Series [Designation] Bonds, if the District shall not have deposited or otherwise made available to the Trustee the money required for the payment of the redemption price of the Series [Designation] Bonds to be redeemed at the time of the mailing of notice of redemption, such notice of redemption shall state that the redemption is expressly conditioned upon the timely deposit of sufficient funds therefor with the Trustee.

***Selection of Bonds for Redemption.*** Whenever provision is made in the Indenture for the redemption of less than all of the Series [Designation] Bonds, the maturities of the Series [Designation] Bonds to be redeemed shall be specified by the District. In the case of partial redemption of less than all of the Series [Designation] Bonds of any maturity, the Trustee will select the Series [Designation] Bonds of such maturity to be redeemed from all Series [Designation] Bonds of the respective maturity not previously called for redemption, in authorized denominations, by lot, in any manner which the Trustee in its sole discretion deems appropriate and fair.

***Effect of Redemption.*** If notice of redemption is given as provided in the Indenture, and moneys for payment of the Redemption Price of, together with interest accrued to the redemption date on, the

Series [Designation] Bonds (or portions thereof) so called for redemption is held by the Trustee, then on the redemption date designated in such notice, the Series [Designation] Bonds (or portions thereof) so called for redemption will become due and payable at the Redemption Price specified in the notice of redemption, together with interest accrued thereon to the date fixed for redemption, interest on such Series [Designation] Bonds so called for redemption will cease to accrue, the Series [Designation] Bonds (or portions thereof) will cease to be entitled to any benefit or security under the Indenture and the owners of the Series [Designation] Bonds (or portions thereof) will have no rights in respect thereof except to receive payment of the Redemption Price plus accrued interest.

## **SECURITY FOR THE SERIES [DESIGNATION] BONDS**

### **General**

***Authority for Issuance.*** The Series [Designation] Bonds were issued pursuant to the Municipal Utility District Act and all laws of the State amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State (collectively, the “Act”), resolutions adopted by the District and the Indenture. By Resolution No. 33607-07 adopted by the Board of Directors of the District on June 12, 2007, the Board declared its intention to issue up to \$100,000,000 of Wastewater System revenue bonds, of which [\$4,360,000] of authorization for Wastewater System revenue bonds remains unissued under Resolution No. 33607-07. By Resolution No. 33781-10, adopted by the Board of Directors of the District on September 14, 2010, the Board declared its intention to issue up to \$200,000,000 of additional future Wastewater System revenue bonds, of which [\$200,000,000] of authorization for Wastewater System revenue bonds remains unissued under Resolution No. 33781-10. The District has heretofore and may from time to time hereafter adopt other resolutions authorizing the issuance of additional Wastewater System revenue bonds or other Parity Debt, subject to the satisfaction of the conditions set forth in the Indenture. The issuance of revenue bonds by the District is not subject to prior voter approval, although such bond resolutions are subject to a sixty (60) day referendum period (which, with respect to bonds to be issued pursuant to Resolution No. 33607-07 and/or Resolution No. 33781-10 expired without challenge). See “ – Outstanding Wastewater System Revenue Obligations” below.

***Amendments to the Indenture.*** The Thirteenth Supplemental Indenture includes a number of amendments to the Indenture in the manner and effective as of the date described under “AMENDMENTS TO THE INDENTURE.” See also APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE.”

### **Pledge of Subordinated Wastewater Revenues**

Pursuant to the Indenture, the District has irrevocably pledged to the payment of the principal or redemption price of and interest on the Wastewater System Revenue Bonds, including the Series [Designation] Bonds and any Parity Debt, all Subordinated Wastewater Revenues (as hereinafter defined) and all amounts held by the Trustee under the Indenture (except for amounts held in the Rebate Fund) subject only to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

“Subordinated Wastewater Revenues” is generally defined in the Indenture to mean, for any fiscal period, the sum of (a) all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any monies in any fund or account established under the Senior Wastewater Bond Resolution relating to the District’s Senior Wastewater Bonds or under the Indenture

(collectively “Wastewater Revenues”) for such fiscal period, plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund established under the Senior Wastewater Bond Resolution for treatment as Wastewater Revenues for such fiscal period, less the sum of (c) all Wastewater Operation and Maintenance Costs (as hereinafter defined) for such fiscal period, (d) the amounts, if any, withdrawn by the District from Wastewater Revenues for such fiscal period for deposit in the Rate Stabilization Fund, and (e) all amounts required to be paid under the Senior Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Senior Wastewater Bonds as the same become due and payable. **There are no Senior Wastewater Bonds currently outstanding and the District has covenanted pursuant to the Twelfth Supplemental Indenture that it will not issue any Senior Wastewater Bonds in the future.** See “Outstanding Wastewater System Revenue Obligations – *No Senior Wastewater Bonds*” below.

The District may deposit into, or withdraw amounts from time to time held in, the Rate Stabilization Fund within 120 days after the end of the applicable Fiscal Year. Amounts deposited into the Rate Stabilization Fund shall be deducted from Wastewater Revenues for such Fiscal Year. Amounts withdrawn from the Rate Stabilization Fund shall be included in Wastewater Revenues for such Fiscal Year and may be applied for any purposes for which Wastewater Revenues generally are available. All interest and earnings upon deposits in the Rate Stabilization Fund will not be held therein, but will be treated and accounted for as Wastewater Revenues. The amount on deposit in the Rate Stabilization Fund as of [June 30, 2013] was \$15,000,000.

“Wastewater Operation and Maintenance Costs” is generally defined in the Indenture to mean the reasonable and necessary costs of maintaining and operating the Wastewater System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

“Parity Debt” means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Wastewater Revenues and therefore payable on a parity with the Wastewater System Revenue Bonds (whether or not any Wastewater System Revenue Bonds are Outstanding).

The Series [Designation] Bonds are not payable from or secured by the revenues of the water system of the District.

**The Series [Designation] Bonds are special obligations of the District, payable solely from and secured by a pledge of Subordinated Wastewater Revenues. Neither the full faith and credit nor the taxing power of the District is pledged to the payment of the Series [Designation] Bonds or the interest thereon.**

#### **Allocation of Subordinated Wastewater Revenues Under the Indenture**

In accordance with the Indenture, all Subordinated Wastewater Revenues, when and as received by the District, shall be deposited into a fund to be established and maintained by the District designated as the “Revenue Fund”. So long as any Wastewater System Revenue Bonds are Outstanding, the District will transfer the monies in the Revenue Fund into the following respective funds (established, maintained and held by the Trustee in trust for the benefit of the Owners of the Wastewater System Revenue Bonds)

in the following order of priority; provided, that on a parity with such deposits the Trustee may set aside or transfer amounts with respect to outstanding Parity Debt as provided in the proceedings for such Parity Debt (which deposits shall be proportionate in the event such amounts are insufficient to provide for all deposits required as of any date to be made with respect to the Wastewater System Revenue Bonds and such Parity Debt):

***Interest Fund.*** The District will transfer to the Trustee to be set aside in the Interest Fund on or before the Business Day prior to each interest payment date an amount equal to the interest becoming due and payable on the Outstanding Wastewater System Revenue Bonds (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any Series of Wastewater System Revenue Bonds or other source to pay such interest).

***Principal Fund; Sinking Accounts.*** The District shall transfer to the Trustee to be set aside in the Principal Fund on or before the Business Day prior to each principal or sinking account payment date an amount equal to the amount of Bond Obligation (as defined in the Indenture) plus the Mandatory Sinking Account Payments becoming due and payable on such date. All Mandatory Sinking Account Payments shall be made without priority of any payment into any one such sinking account over any other such payment.

***Bond Reserve Funds.*** Upon the occurrence of any deficiency in any bond reserve fund established pursuant to the Indenture for any Series of Wastewater System Revenue Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such bond reserve fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from such bond reserve fund until there is on deposit in such bond reserve fund an amount equal to the respective reserve requirement for such bond reserve fund. [There is no bond reserve fund being established in connection with the Series [Designation] Bonds and amounts on deposit in any bond reserve fund for any other series of Wastewater System Revenue Bonds are not available for the payment of, and do not in any manner secure, the Series [Designation] Bonds.]

The requirements of each such fund (including the making up of any deficiencies in any such fund resulting from a lack of Subordinated Wastewater Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any other fund subsequent in priority. The Indenture provides that any Subordinated Wastewater Revenues remaining in the Revenue Fund after the foregoing transfers, except as otherwise provided in a Supplemental Indenture, shall be held free and clear of the Indenture by the District. The District may use and apply such Subordinated Wastewater Revenues for any lawful purpose of the District, including the redemption of Wastewater System Revenue Bonds upon the terms and conditions set forth in a Supplemental Indenture relating to such Wastewater System Revenue Bonds and the purchase of Wastewater System Revenue Bonds as and when and at such prices as it may determine.

Under the Indenture the District may enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Wastewater System Revenue Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such an interest rate swap agreement may be applied to the deposits required under the Indenture. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Wastewater Revenues and other assets pledged under the Indenture to the Wastewater System Revenue Bonds on a parity basis therewith.

For further information regarding the allocation of Subordinated Wastewater Revenues with respect to the Wastewater System Revenue Bonds, see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Allocation of Subordinated Wastewater Revenues.”

## **Investment of Monies in Funds and Accounts Under the Indenture**

All monies held in any of the funds and accounts held by the Trustee and established pursuant to the Indenture shall be invested, as directed by the District, solely in Investment Securities (see APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Investment Securities under the Indenture). If and to the extent the Trustee does not receive investment instructions from the District with respect to the monies in such funds and accounts, such monies shall be invested in a cash sweep or similar account arrangement of or available to the Trustee described in clause (xi) of the definition of Investment Securities.

Unless otherwise provided in a Supplemental Indenture, all interest, profits and other income received from the investment of monies in any fund or account other than the Rebate Fund shall be transferred to the Revenue Fund when received; provided, however, that an amount of interest received with respect to any Investment Security equal to the amount of accrued interest, if any, paid as part of the purchase price of such Investment Security shall be credited to the fund or account from which such accrued interest was paid.

## **Rate Covenant**

The District has covenanted under the Indenture that it will, at all times while any of the Wastewater System Revenue Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater System Revenue Bonds and Parity Debt for such Fiscal Year. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Definitions” for the definition of Debt Service under the Indenture. See also “AMENDMENTS TO THE INDENTURE.”

## **Outstanding Wastewater System Revenue Obligations**

***No Senior Wastewater Bonds.*** Pursuant to Resolution No. 30051 adopted by the Board of Directors of the District on January 26, 1982 (as amended and supplemented, the “Senior Wastewater Bond Resolution”), the District authorized the issuance, from time to time, of bonds of the District designated as “East Bay Municipal Utility District Wastewater Treatment System Revenue Bonds” (the “Senior Wastewater Bonds”) and secured by a pledge of, and first lien on, the Net Revenues (as defined in the Senior Wastewater Bond Resolution) of the District’s Wastewater System, generally being all of the Wastewater Revenues (adjusted for deposits to and withdrawals from the Rate Stabilization Fund) after payment of Wastewater Operation and Maintenance Costs thereof, all on the terms and conditions set forth in the Senior Wastewater Bond Resolution. At the time of the initial execution and delivery of the Indenture in 1990, the Indenture did not preclude the District from issuing additional Senior Wastewater Bonds pursuant to the Senior Wastewater Bond Resolution. The District last issued Senior Wastewater Bonds in 1986 and all outstanding Senior Wastewater Bonds were retired in 1997. **There are currently no Senior Wastewater Bonds outstanding. Pursuant to the Twelfth Supplemental Indenture, the District has covenanted and agreed that it will not issue any Senior Wastewater Bonds in the future pursuant to the Senior Wastewater Bond Resolution.**

***Outstanding Wastewater System Revenue Bonds and Parity Debt.*** As of [June 30, 2013], the District had outstanding [\$430,160,000] aggregate principal amount of Wastewater System Revenue Bonds, including the Series [specify series being refunded] Bonds to be refunded with proceeds of the Series [Designation] Bonds (collectively, the “Outstanding Wastewater System Revenue Bonds”) issued under and pursuant to the Indenture. See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY

DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt.”

Approximately [\$112,535,000] principal amount of the Outstanding Wastewater System Revenue Bonds are variable rate obligations which are subject to tender prior to maturity in accordance with their terms. In connection with the [\$60,845,000] principal amount of such variable rate Outstanding Wastewater System Revenue Bonds (being the District’s Wastewater System Revenue Refunding Bonds, Series 2011A Bonds, the District is solely obligated to provide funds (which may include remarketing or refunding proceeds) for the payment upon the mandatory tender thereof and failure of the District to provide such funds will constitute an Event of Default under the Indenture.

In connection with [\$51,690,000] principal amount of its variable rate Outstanding Wastewater System Revenue Bonds (being the District’s Wastewater System Revenue Refunding Bonds, Series 2008C, the District has entered into a liquidity agreement with a bank to provide a liquidity facility for such variable rate Wastewater System Revenue Bonds upon tender thereof. The obligation of the District to repay any draws on such liquidity facility is payable on a parity with the Outstanding Wastewater System Revenue Bonds to the extent such repayment is not thereafter provided from remarketing proceeds of the related Wastewater System Revenue Bonds. Unreimbursed draws under the liquidity facility supporting such variable rate Wastewater System Revenue Bonds bear interest at a maximum rate that may be substantially in excess of the current interest rate on the related variable rate Wastewater System Revenue Bonds. Moreover, in certain circumstances, the failure to reimburse draws on the liquidity facility may result in the acceleration of the scheduled payment of principal on such variable rate Wastewater System Revenue Bonds. See Table 11 in APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Variable Rate and Swap Obligations” for additional information regarding the liquidity facility provider and the expiration date of the related liquidity facility.

In addition to the Outstanding Wastewater System Revenue Bonds, the District has outstanding certain interest rate swap agreements, the scheduled payments under which are payable from Subordinated Wastewater Revenues on a parity with the Wastewater System Revenue Bonds, as described below. See “*Interest Rate Swap Agreements.*” The Outstanding Wastewater System Revenue Bonds (including the Series [Designation] Bonds), together with any additional Wastewater System Revenue Bonds issued under the Indenture, and any Parity Debt heretofore or hereafter issued or incurred in accordance with the Indenture, are on a parity with the Series [Designation] Bonds as to the pledge of and lien on Subordinated Wastewater Revenues.

***Interest Rate Swap Agreements.*** As of [June 30, 2013], the District had outstanding interest rate swap agreements relating to variable rate Outstanding Wastewater System Revenue Bonds (hereinafter collectively, the “Wastewater Interest Rate Swap Agreements”) with various counterparties (collectively, the “Swap Providers”) in the aggregate notional amount of [\$113,415,000]. The Wastewater Interest Rate Swap Agreements were entered into to hedge the interest rate exposure on the related variable rate Wastewater System Revenue Bonds by synthetically converting the variable interest rate payments that the District is obligated to make with respect to the related Wastewater System Revenue Bonds into substantially fixed payments. In general, the terms of the Wastewater Interest Rate Swap Agreements provide that, on a same-day net-payment basis determined by reference to a notional amount, the District will pay a fixed interest rate on the respective notional amount. In return, the applicable Swap Providers will pay a variable rate of interest (determined as a specified percentage of an interest rate index) on a like notional amount.

There is no guarantee that the floating rate payable to the District pursuant to each of the Wastewater Interest Rate Swap Agreements will match the variable interest rate on the associated

Wastewater System Revenue Bonds to which the respective Wastewater Interest Rate Swap Agreement relates at all times or at any time. Since the respective effective dates of the Wastewater Interest Rate Swap Agreements, the floating rates payable to the District pursuant to the Wastewater Interest Rate Swap Agreements have generally not matched the variable interest rates on the associated Wastewater System Revenue Bonds. To the extent that the Swap Providers are obligated to make a payment to the District under their respective Wastewater Interest Rate Swap Agreement that is less than the interest due on the associated Wastewater System Revenue Bonds to which such Wastewater Interest Rate Swap Agreement relates, the District is obligated to pay such insufficiency from Subordinated Water Revenues.

The obligation of the District to make regularly scheduled payments to the Swap Providers under the respective Wastewater Interest Rate Swap Agreements is on a parity with the District's obligation to make payments on the Wastewater System Revenue Bonds, including the Series [Designation] Bonds. Under certain circumstances, the Wastewater Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the Swap Providers. Pursuant to the Wastewater Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Series [Designation] Bonds but prior to the District's Extendable Municipal Commercial Paper Notes (Wastewater Series).

Pursuant to the terms of certain of the Wastewater Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District's total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Wastewater Interest Rate Swap Agreement.

See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Variable Rate and Swap Obligations” for additional information regarding the Wastewater Interest Rate Swap Agreements, including the District's collateral posting obligations in connection therewith.

The District may, from time-to-time, enter into additional interest rate swap agreements with security and payment provisions as determined by the District and subject to any conditions contained in the Indenture.

***Parity State Loans.*** The District participates in the State of California's State Water Resources Control Board (the “SWRCB”) low interest rate loan program, which was established to provide below-market rate financing for qualified water resource projects in the State. Under this program, the District has from-to-time entered into loan contracts with the SWRCB (the “State Loans”) payable from the Wastewater Revenues. The District currently has no State Loans payable from Wastewater Revenues outstanding.

State Loans entered into from and after January 1993 provide that such State Loans shall be either senior to or on a parity with all future debt of the recipient thereof. Any future State Loans received by the District would likely constitute Parity Debt under the Indenture.

***Subordinate Commercial Paper.*** The District has maintained a commercial paper note program since 1988. In March 2009, the District implemented an extendable municipal commercial paper note program for the purpose of retiring its then existing commercial paper note program. As of [June 30, 2013], the District had outstanding \$15,000,000 aggregate principal amount of tax-exempt Extendable Municipal Commercial Paper Notes (Wastewater Series). See APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Outstanding Debt” for a description of the District's extendable municipal commercial paper note program.

## **Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations**

The Indenture provides conditions under which additional Series of Wastewater System Revenue Bonds or other Parity Debt payable from Subordinated Wastewater Revenues may be issued on a parity with the Outstanding Wastewater System Revenue Bonds. Among other conditions, the Indenture requires that the District shall have placed on file with the Trustee a certificate of the District certifying that the sum of: (1) the Subordinated Wastewater Revenues for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Wastewater System Revenue Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Wastewater Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Wastewater Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Wastewater System Revenue Bonds due to improvements to the Wastewater System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Wastewater System Revenue Bonds, shall have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt then Outstanding and the additional Wastewater System Revenue Bonds or Parity Debt then proposed to be issued. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Certain Definitions.”

Refunding Wastewater System Revenue Bonds may be authorized and issued by the District without compliance with the provisions described above, subject to the terms and conditions of the Indenture, including the condition that Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt outstanding following the issuance of such refunding Wastewater System Revenue Bonds is less than or equal to Maximum Annual Debt Service on all Wastewater System Revenue Bonds and Parity Debt outstanding prior to the issuance of such refunding Wastewater System Revenue Bonds. See APPENDIX C – “SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Refunding Bonds.”

Pursuant to the Indenture, the District may incur obligations which are junior and subordinate to the payment of the principal, redemption price, interest and reserve fund requirements for the Wastewater System Revenue Bonds and all Parity Debt and which subordinated obligations are payable as to principal, redemption price, interest and reserve fund requirements, if any, only out of Subordinated Wastewater Revenues after the prior payment of all amounts then required to be paid under the Indenture from Subordinated Wastewater Revenues for principal, redemption price, interest and reserve fund requirements for the Wastewater System Revenue Bonds and all Parity Debt, as the same become due and payable and at the times and in the manner as required in the Indenture or the instrument authorizing such Parity Debt, as applicable.

## **Limitations on Remedies**

The ability of the District to comply with its covenants under the Indenture and to generate Wastewater Revenues sufficient to pay the principal of and interest on the Series [Designation] Bonds may be adversely affected by actions and events outside of the control of the District. Furthermore, any remedies available to the owners of the Series [Designation] Bonds upon the occurrence of an event of default under the Indenture are in many respects dependent upon judicial actions which are often subject to discretion and delay and could prove both expensive and time consuming to obtain. In addition, enforceability of the rights and remedies of the Owners of the Series [Designation] Bonds, and the obligations incurred by the District under the Series [Designation] Bonds and the Indenture, 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 Series [Designation] Bonds to judicial discretion and interpretation of their rights in bankruptcy or otherwise, and consequently may entail risks of delay, limitation, or modification of their rights.

## **AMENDMENTS TO THE INDENTURE**

The Thirteenth Supplemental Indenture includes a number of amendments to the Indenture which will become effective upon the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2007A Bonds, Series 2007B Bonds, Series 2008B Bonds and Series 2008C Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture (all of which Series 2008B Bonds have been retired) and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Thirteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

As modified, the term "Annual Debt Service" shall mean, for any Fiscal Year, the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

As modified, the term "Assumed Debt Service" shall mean for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

As modified, the term "Debt Service" shall mean the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt provided, however, that for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be

assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Wastewater Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the “Assumed SIFMA-based Rate”);

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Wastewater Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest rate on such Wastewater Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y)

the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest on such Wastewater Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Wastewater Revenues on parity with the lien of the Wastewater Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Wastewater Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Wastewater Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Wastewater Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Wastewater Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

As modified, the term “Maximum Annual Debt Service” shall mean the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

The term “SIFMA Municipal Swap Index” means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

As modified, the term “Wastewater Revenues” shall mean all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any moneys in any fund or account established under the Senior Wastewater Bond Resolution or this Indenture; provided, however, there

shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code or any future similar program.

## **CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS**

### **Tax Limitations – Proposition 13**

Article XIII A of the State Constitution, 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 1% of “full cash value,” and provides that such tax shall be collected by the counties and apportioned according to State statutes. Section 1(b) of Article XIII A provides that the 1% limitation does not apply to *ad valorem* taxes levied to pay interest or redemption charges on (1) indebtedness approved by the voters prior to July 1, 1978, and (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

Section 2 of Article XIII A defines “full cash value” to mean the county assessor’s valuation of real property as shown on the 1975-76 Fiscal Year 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 2% per year, or to reflect a reduction in the consumer price index or comparable data for the 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 to pay debt service on indebtedness approved by the voters as described above. Such legislation further provides that each county will levy the maximum tax permitted by Article XIII A, which is \$1.00 per \$100 of assessed market value. The legislation further establishes the method for allocating the taxes collected by each county among the taxing agencies in the county. Special districts, such as the District, receive an allocation that is based primarily upon their tax levies in certain years prior to the amendment’s effective date relative to the tax levies of other congruent agencies. The District receives approximately 1.25% of the non-debt service property taxes collected within its jurisdiction from Alameda and Contra Costa counties. See, however, APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Property Tax Revenues” for a discussion of the borrowing by the State of certain property tax revenues of local jurisdictions for Fiscal Year 2009-10.

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.

Increases of assessed valuation resulting from reappraisals of property due to new construction, change in ownership or from the 2% annual adjustment are allocated among the various jurisdictions in the “taxing area” based upon their respective “situs.” Any such allocation made to a local agency continues as part of its allocation in future years.

The effect of Article XIII A on the District’s finances has been to restrict ad valorem tax revenues for general purposes to the statutory allocation of the 1% levy while leaving intact the power to levy ad valorem taxes in whatever rate or amount may be required to pay debt service on its outstanding general

obligation bonds and unissued bonds authorized prior to July 1, 1978. Both the California State Supreme Court and the United States Supreme Court have upheld the validity of Article XIII A.

For a description of the property tax collection procedure and certain statistical information concerning tax collections and delinquencies, see APPENDIX A – “THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM) – WASTEWATER SYSTEM FINANCES – Property Tax Revenues.”

### **Spending Limitations**

At the statewide special election of November 6, 1979, the voters approved an initiative entitled “Limitation of Government Appropriations” which added Article XIII B to the California Constitution. Under Article XIII B, State and local governmental entities have an annual “appropriations limit” which limits the ability to spend certain monies which are called “appropriations subject to limitation” (consisting of tax revenues, state subventions and certain other funds) in an amount higher than the “appropriations.” Article XIII B does not affect the appropriation of monies which are excluded from the definition of “appropriations subject to limitation.” Among the exclusions is an “appropriation of any special district which existed on January 1, 1978, and which did not as of the 1977-78 Fiscal Year levy an *ad valorem* tax on property in excess of 12.5 cents per \$100 of assessed value.” In the opinion of the District’s General Counsel, the appropriations of the District are excluded from the limitations of Article XIII B under this clause.

### **Proposition 62**

A statutory initiative (“Proposition 62”) was adopted by the voters voting in the State at the November 4, 1986 General Election which (1) requires that any tax for general governmental purposes imposed by local governmental entities be approved by resolution or ordinance adopted by two-thirds vote of the governmental agency’s legislative body and by a majority of the electorate of the governmental entity, (2) requires that any special tax (defined as taxes levied for other than general governmental purposes) imposed by a local governmental entity be approved by a two-thirds vote of the voters within that jurisdiction, (3) restricts the use of revenues from a special tax to the purposes or for the service for which the special tax was imposed, (4) prohibits the imposition of *ad valorem* taxes on real property by local governmental entities except as permitted by Article XIII A, (5) prohibits the imposition of transaction taxes and sales taxes on the sale of real property by local governmental entities and (6) requires that any tax imposed by a local governmental entity on or after March 1, 1985 be ratified by a majority vote of the electorate within two years of the adoption of the initiative or be terminated by November 15, 1988.

### **Proposition 218**

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 governments to levy and collect both existing and future taxes, assessments, fees and charges.

**Article XIII D.** Article XIII D established procedural requirements for imposition of assessments, which are defined as any charge on real property for a special benefit conferred upon the real property. Standby charges are classified as assessments. Procedural requirements include the conducting of a public hearing and an election by mailed ballot, with notice to the record owner of each parcel subject to the assessment. The assessment may not be imposed if a majority of the ballots returned oppose the

assessment, with each ballot weighted according to the proportional financial obligation of the affected parcel. The District does not currently impose standby charges or assessments for its Wastewater System.

Article XIID conditions the imposition or increase of any “fee” or “charge” upon there being no written majority protest after a required public hearing and, for fees and charges other than for sewer, water or refuse collection services, voter approval. Article XIID defines “fee” or “charge” to mean levies (other than *ad valorem* or special taxes or assessments) imposed by a local government upon a parcel or upon a person as an incident of the ownership or tenancy of real property, including a user fee or charge for a “property-related service.” One of the requirements of Article XIID is that before a property-related fee or charge may be imposed or increased, a public hearing upon the proposed fee or charge must be held and mailed notice sent to the record owner of each identified parcel of land upon which the fee or charge is proposed for imposition. In the public hearing if written protests of the proposed fee or charge are presented by a majority of the owners of affected identified parcel(s), an agency may not impose the fee or charge.

Based upon the California Court of Appeal’s decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles*, 85 Cal. App. 4th 79 (2000), it was generally believed that Article XIID did not apply to wastewater rates and charges, which had been held to be commodity charges related to consumption of the service, not property ownership. In a decision rendered in February, 2004, the California Supreme Court in *Richmond et al. v. Shasta Community Services District*, 32 Cal. 4th 409, upheld a Court of Appeal decision that water connection fees were not property related fees or charges subject to Article XIID, while at the same time stating in dicta that fees for ongoing water service through an existing connection were property related fees and charges. In October 2004, the California Supreme Court granted review of the decision of the Fourth District Court of Appeal in *Bighorn-Desert View Water Agency v. Beringson*, 120 Cal. App. 4th 891 (2004), in which the appellate court had relied on *Howard Jarvis Taxpayers Association v. City of Los Angeles* and rejected the California Supreme Court’s dicta in *Richmond et al. v. Shasta Community Services District*.

On March 23, 2005, the California Fifth District Court of Appeal published *Howard Jarvis Taxpayers Association v. City of Fresno*, 127 Cal.App.4th 914 (5th Dist. 2005), concluding that in lieu fees charged as a component of utility service charges are subject to the requirements of Proposition 218. The ruling in *City of Fresno* relies in part on the *Richmond* decision’s dicta and appears to conflict with *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles*, 24 Cal.4th 830 (2001), in which the California Supreme Court ruled that the property-related fee provisions of Proposition 218 apply only to fees triggered by property ownership alone and not by voluntary conduct of the property owner, such as consuming utility services. The City of Fresno requested a review of this decision by the California Supreme Court, which denied review. On July 24, 2006, the California Supreme Court ruled in *Bighorn-Desert View Water Agency v. Verjil*. In dicta, the California Supreme Court repeated its previous dicta in *Richmond et al. v. Shasta Community Services District* that fees and charges for ongoing water service through an existing connection were property related fees and charges under Article XIID. Prior to 2007, the District did not comply with the notice, hearing and protest procedures in Article XIII with respect to wastewater rate increases based on the decision in *Howard Jarvis Taxpayers Association v. City of Los Angeles*. However, the District has followed the notice, hearing and protest procedures in Article XIID in connection with wastewater rate increases since the Fiscal Year 2008 rate increases and plans to follow such notice, hearing and protest procedures in connection with future rate increases.

In addition to the procedural requirements of Article XIID, under Article XIID all property-related fees and charges, including those which were in existence prior to the passage of Proposition 218 in November 1996, must meet the following substantive standards:

- (1) Revenues derived from the fee or charge cannot exceed the funds required to provide the property-related service.
- (2) Revenues derived from the fee or charge must not be used for any purpose other than that for which the fee or charge was imposed.
- (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership must not exceed the proportional cost of the service attributable to the parcel.
- (4) No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question. Fees or charges based on potential or future use of a service are not permitted. Standby charges, whether characterized as charges or assessments, must be classified as assessments and cannot be imposed without compliance with Section 4 of Article XIID (relating to assessments).
- (5) No fee or charge may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large in substantially the same manner as it is to property owners.

The District believes that its rates comply with the foregoing standards.

Article XIID provides that nothing in Proposition 218 shall be construed to affect existing laws relating to the imposition of fees or charges as a condition of property development.

**Article XIIC.** Article XIIC provides that the initiative power shall not be prohibited or otherwise limited in matters of reducing or repealing any local tax, assessment, fee or charge and that the power of initiative to affect local taxes, assessments, fees and charges shall be applicable to all local governments. Article XIIC does not define the terms “local tax,” “assessment,” “fee” or “charge.” On July 24, 2006, the California Supreme Court held in *Bighorn-Desert View Water Agency v. Verjil* that the provisions of Article XIIC applied to rates and fees charged for domestic water use. In the decision, the Court noted that the decision did not address whether an initiative to reduce fees and charges could override statutory rate setting obligations. The District and its General Counsel do not believe that Article XIIC grants to the voters within the District the power to repeal or reduce rates and charges in a manner that would be inconsistent with the contractual obligations of the District. No assurance can be given that the voters of the District will not, in the future, approve initiatives which seek to repeal, reduce or prohibit the future imposition or increase of assessments, fees or charges, including the District’s wastewater service fees and charges, which are the source of Wastewater Revenues pledged to the payment of debt service on the Series [Designation] Bonds.

The interpretation and application of Proposition 218 will likely be subject to further judicial determinations, and it is not possible at this time to predict with certainty the outcome of such determinations.

## **Proposition 26**

Proposition 26 was approved by the electorate at the November 2, 2010 election and amended California Constitution Articles XIII A and XIIC. The proposition imposes a two-thirds voter approval requirement for the imposition of fees and charges by the State. It also imposes a majority voter approval requirement on local governments with respect to fees and charges for general purposes, and a two-thirds voter approval requirement with respect to fees and charges for special purposes. Proposition 26,

according to its supporters, is intended to prevent the circumvention of tax limitations imposed by the voters in California Constitution Articles XIII A, XIII C and XIII D pursuant to Proposition 13, approved in 1978, Proposition 218, approved in 1996, and other measures through the use of non-tax fees and charges. Proposition 26 expressly excludes from its scope a charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable cost to the State or local government of providing the service or product to the payor. The District believes that the initiative is not intended to and would not apply to fees for utility services charged by special districts such as the District. The District, however, is unable to predict whether Proposition 26 will be interpreted by the courts to apply to the provision of utility services by local governments such as the District.

### **Other Initiatives**

Articles XIII A, XIII B, XIII C and XIII D and Propositions 62 and 26 were adopted as measures that qualified for the ballot pursuant to California's initiative process. From time to time other initiatives have been and could be proposed and adopted affecting the District's revenues or ability to increase revenues. Neither the nature and impact of these measures nor the likelihood of qualification for ballot or passage can be anticipated by the District.

### **CONTINUING DISCLOSURE**

Pursuant to a Continuing Disclosure Agreement, by and between the District and the Trustee, as dissemination agent, the District will covenant and agree for the benefit of the holders and beneficial owners of the Series [Designation] Bonds to provide in an annual report certain financial information and operating data relating to the District (the "Annual Report") by not later than 180 days following the end of the District's fiscal year (which currently is June 30 of each year), commencing with the Annual Report for Fiscal Year \_\_\_\_\_, and to provide notices of the occurrence of certain specified events. The Annual Report and the notices of specified events will be filed by the Trustee on behalf of the District with the Municipal Securities Rulemaking Board through the Electronic Municipal Marketplace Access (EMMA) website. The Municipal Securities Rulemaking Board has made such information available to the public without charge through such internet portal. The specific nature of the information to be contained in the Annual Report and the notices of specified events is set forth in APPENDIX F – "FORM OF CONTINUING DISCLOSURE AGREEMENT."

As of the date hereof, the District is in compliance in all material respects with its continuing disclosure undertakings for the last five years; however, due to administrative oversight, the District's complete Annual Report for 2008 was filed 27 days after the specified filing deadline and the District's complete Annual Report for 2011 was filed three days after the specified filing deadline. In addition, in connection with the preparation of its Annual Report filing for Fiscal Year 2012, the District determined that a separate table summarizing the sources of revenues and contributions for each of the Wastewater System and the Wastewastewater System was unintentionally omitted from the District's filings prior to its Annual Report for Fiscal Year 2012. The information contained in such table of sources of revenues and contributions can be derived from the District's audited financial statements and such information was also routinely made available in the District's official statements during such period. In filing its Annual Report for Fiscal Year 2012, the District has included such a table with five years of data and thereby has effectively provided all information necessary to make its prior filings for such years complete. The District's Annual Report for Fiscal Year 2012 was timely filed on December 21, 2012. The District believes it has established processes to ensure it will timely file complete annual reports in the future.



## **VERIFICATION OF MATHEMATICAL COMPUTATIONS**

[Grant Thornton LLP, Minneapolis, Minnesota,] a firm of independent certified public accountants, will verify the accuracy of the mathematical computations concerning the adequacy of the cash deposited and held in the Escrow Fund for the Refunded [specify series being refunded] Bonds, together with the maturing principal amounts of and interest earned on the Escrow Securities, if any, to pay [the principal of and interest on the Refunded [specify series being refunded] Bonds as the same shall become due on and before \_\_\_\_\_, \_\_\_\_ and] [on \_\_\_\_\_, \_\_\_\_ of the principal of and interest on the Refunded Series [specify series being refunded] Bonds maturing on such date and] the redemption price of the Refunded Series [specify series being refunded] Bonds maturing after such date (*i.e.*, [100%] of the principal amount thereof) on the redemption date therefor, [plus any interested accrued and unpaid thereon.]

The report of [Grant Thornton LLP] will include the statement that the scope of their engagement was limited to verifying the mathematical accuracy of the computations contained in such schedules provided to them and that they have no obligation to update their report because of events occurring, or data or information coming to their attention, subsequent to the date of their report.

## **LITIGATION**

There is no action, suit or proceeding known to be pending or threatened, restraining or enjoining the District in the execution or delivery of, or in any way contesting or affecting the validity of, the Series [Designation] Bonds. There is no litigation known to be pending, or to the knowledge of the District, threatened, questioning the existence of the District or the title of the officers of the District to their respective offices.

There exist lawsuits and claims against the District, which are incidental to the ordinary course of operations of the Wastewater System. In the view of the District's management and General Counsel, there is no litigation, present or pending, which will individually or in the aggregate materially impair the District's ability to service its indebtedness or to expend the proceeds for the purposes for which the Series [Designation] Bonds are authorized or which will have a material adverse effect on the business operations of the District. See APPENDIX A – "THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)" for a discussion of certain pending litigation.

## **RATINGS**

Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("S&P"), Fitch Ratings, Inc. ("Fitch") and Moody's Investors Service, Inc. ("Moody's") have assigned the Series [Designation] Bonds the ratings of "\_\_\_\_\_", "\_\_\_\_\_" and "\_\_\_\_\_", respectively. No application has been made to any other rating agency for the purpose of obtaining any additional rating on the Series [Designation] Bonds. Any desired explanation of such ratings should be obtained from the rating agency furnishing the same. Generally, rating agencies base their ratings on information and materials furnished to them and on investigations, studies and assumptions by the rating agencies. There is no assurance that any rating will continue for any given period of time or that it will not be revised downward or withdrawn entirely by such rating agency if, in the judgment of such rating agency, circumstances so warrant. Any such change in or withdrawal of such ratings may have an adverse effect on the market price of the Series [Designation] Bonds.

## TAX MATTERS

In the opinion of Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s) (“Special Tax Counsel”), based upon an analysis of existing laws, regulations, rulings and court decisions, and assuming, among other matters, the accuracy of certain representations and compliance with certain covenants, interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 (the “Code”) and is exempt from State of California personal income taxes. In the further opinion of Special Tax Counsel, interest on the Series [Designation] Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although Special Tax Counsel observes that such interest is included in adjusted current earnings when calculating corporate alternative minimum taxable income. A complete copy of the proposed form of opinion of Special Tax Counsel is set forth in APPENDIX D.

To the extent the issue price of any maturity of the Series [Designation] Bonds is less than the amount to be paid at maturity of such Series [Designation] Bonds (excluding amounts stated to be interest and payable at least annually over the term of such Series [Designation] Bonds), the difference constitutes “original issue discount,” the accrual of which, to the extent properly allocable to each beneficial owners thereof, is treated as interest on the Series [Designation] Bonds which is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes. For this purpose, the issue price of a particular maturity of the Series [Designation] Bonds is the first price at which a substantial amount of such maturity of the Series [Designation] Bonds is sold to the public (excluding bond houses, brokers, or similar persons or organizations acting in the capacity of Underwriter(s), placement agents or wholesalers). The original issue discount with respect to any maturity of the Series [Designation] Bonds accrues daily over the term to maturity of such Series [Designation] Bonds on the basis of a constant interest rate compounded semiannually (with straight-line interpolations between compounding dates). The accruing original issue discount is added to the adjusted basis of such Series [Designation] Bonds to determine taxable gain or loss upon disposition (including sale, redemption, or payment on maturity) of such Series [Designation] Bonds. Beneficial owners of the Series [Designation] Bonds should consult their own tax advisors with respect to the tax consequences of ownership of Series [Designation] Bonds with original issue discount, including the treatment of beneficial owners who do not purchase such Series [Designation] Bonds in the original offering to the public at the first price at which a substantial amount of such Series [Designation] Bonds is sold to the public.

Series [Designation] Bonds purchased, whether at original issuance or otherwise, for an amount higher than their principal amount payable at maturity (or, in some cases, at their earlier call date) (the “Premium Bonds”) will be treated as having amortizable bond premium. No deduction is allowable for the amortizable bond premium in the case of Series [Designation] Bonds, like the Premium Bonds, the interest on which is excluded from gross income for federal income tax purposes. However, the amount of tax-exempt interest received, and a beneficial owner’s basis in a Premium Bond, will be reduced by the amount of amortizable bond premium properly allocable to such beneficial owner. Beneficial owners of Premium Bonds should consult their own tax advisors with respect to the proper treatment of amortizable bond premium in their particular circumstances.

The Code imposes various restrictions, conditions and requirements relating to the exclusion from gross income for federal income tax purposes of interest on obligations such as the Series [Designation] Bonds. The District has made certain representations and covenanted to comply with certain restrictions, conditions and requirements designed to ensure that interest on the Series [Designation] Bonds will not be included in federal gross income. Inaccuracy of these representations or failure to comply with these covenants may result in interest on the Series [Designation] Bonds being included in gross income for

federal income tax purposes, possibly from the date of original issuance of the Series [Designation] Bonds. The opinion of Special Tax Counsel assumes the accuracy of these representations and compliance with these covenants. Special Tax Counsel has not undertaken to determine (or to inform any person) whether any actions taken (or not taken), or events occurring (or not occurring), or any other matters coming to Special Tax Counsel's attention after the date of issuance of the Series [Designation] Bonds may adversely affect the value of, or the tax status of interest on, the Series [Designation] Bonds. Accordingly, the opinion of Special Tax Counsel is not intended to, and may not, be relied upon in connection with any such actions, events or matters.

Although Special Tax Counsel is of the opinion that interest on the Series [Designation] Bonds is excluded from gross income for federal income tax purposes and is exempt from State of California personal income taxes, the ownership or disposition of, or the accrual or receipt of interest on, the Series [Designation] Bonds may otherwise affect a beneficial owner's federal, state or local tax liability. The nature and extent of these other tax consequences depends upon the particular tax status of the beneficial owner or the beneficial owner's other items of income or deduction. Special Tax Counsel expresses no opinion regarding any such other tax consequences.

Current and future legislative proposals, if enacted into law, clarification of the Code or court decisions may cause interest on the Series [Designation] Bonds to be subject, directly or indirectly, to federal income taxation or to be subject to or exempted from state income taxation, or otherwise prevent beneficial owners from realizing the full current benefit of the tax status of such interest. As one example, the Obama Administration recently announced a legislative proposal which, for tax years beginning on or after January 1, 2013, generally would limit the exclusion from gross income of interest on obligations like the Series [Designation] Bonds to some extent for taxpayers who are individuals and whose income is subject to higher marginal income tax rates. Other proposals have been made that could significantly reduce the benefit of, or otherwise affect, the exclusion from gross income of interest on obligations like the Series [Designation] Bonds. The introduction or enactment of any such legislative proposals, clarification of the Code or court decisions may also affect, perhaps significantly, the market price for, or marketability of, the Series [Designation] Bonds. Prospective purchasers of the Series [Designation] Bonds should consult their own tax advisors regarding any pending or proposed federal or state tax legislation, regulations or litigation, and regarding the impact of future legislation, regulations or litigation, as to which Special Tax Counsel expresses no opinion.

The opinion of Special Tax Counsel is based on current legal authority, covers certain matters not directly addressed by such authorities, and represents Special Tax Counsel's judgment as to the proper treatment of the Series [Designation] Bonds for federal income tax purposes. It is not binding on the Internal Revenue Service ("IRS") or the courts. Furthermore, Special Tax Counsel cannot give and has not given any opinion or assurance about the future activities of the District, or about the effect of future changes in the Code, the applicable regulations, the interpretation thereof or the enforcement thereof by the IRS. The District has covenanted, however, to comply with the requirements of the Code.

Special Tax Counsel's engagement with respect to the Series [Designation] Bonds ends with the issuance of the Series [Designation] Bonds, and, unless separately engaged, Special Tax Counsel is not obligated to defend the District or the beneficial owners regarding the tax-exempt status of the Series [Designation] Bonds in the event of an audit examination by the IRS. Under current procedures, parties other than the District and their appointed counsel, including the beneficial owners, would have little, if any, right to participate in the audit examination process. Moreover, because achieving judicial review in connection with an audit examination of tax-exempt bonds is difficult, obtaining an independent review of IRS positions with which the District legitimately disagree, may not be practicable. Any action of the IRS, including but not limited to selection of the Series [Designation] Bonds for audit, or the course or result of such audit, or an audit of Series [Designation] Bonds presenting similar tax issues may affect the

market price for, or the marketability of, the Series [Designation] Bonds, and may cause the District or the beneficial owners to incur significant expense.

### **UNDERWRITING**

The Series [Designation] Bonds will be purchased by \_\_\_\_\_, [as representative of itself and the other underwriters of the Series [Designation] Bonds listed on the cover page hereof] (the “Underwriter(s)”), pursuant to and subject to the conditions set forth in the bond purchase contract between the District and the Underwriter(s), at a purchase price of \$\_\_\_\_\_ (equal to the \$\_\_\_\_\_ aggregate principal amount of the Series [Designation] Bonds, less an Underwriter(s)’ discount of \$\_\_\_\_\_, [plus/less original issue premium/discount of \$\_\_\_\_\_]). The bond purchase contract provides that the Underwriter(s) will purchase all of the Series [Designation] Bonds if any are purchased, and that the obligation to make such purchase is subject to certain terms and conditions set forth in the bond purchase contract.

The Underwriter(s) may offer and sell the Series [Designation] Bonds to certain dealers (including dealers depositing Series [Designation] Bonds into investment trusts) and others at prices lower than the respective public offering prices stated or derived from information stated on the inside cover page hereof. The initial public offering prices may be changed from time to time by the Underwriter(s).

Certain of the Underwriter(s) have entered into distribution agreements with other broker-dealers (that have not been designated by the District as Underwriter(s)) for the distribution of the Series [Designation] Bonds at the original public offering prices. Such agreements generally provide that the relevant Underwriter will share a portion of its underwriting compensation with such broker-dealers.

### **APPROVAL OF LEGAL PROCEEDINGS**

All legal matters incident to the offering of the Series [Designation] Bonds are subject to the approval of legality by Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel. Certain legal matters will be passed upon for the District by its General Counsel and for the Underwriter(s) by their counsel, Orrick, Herrington & Sutcliffe LLP, San Francisco, California. The form of approving opinion of Co-Bond Counsel and the form of opinion to be delivered by Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), in connection with the issuance of the Series [Designation] Bonds are included as APPENDIX D to this Official Statement.

### **FINANCIAL ADVISOR**

The District has retained Montague DeRose and Associates, LLC, Walnut Creek, California, as financial advisor (the “Financial Advisor”) in connection with the issuance and delivery of the Series [Designation] Bonds. 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. The Financial Advisor is an independent financial advisory firm and is not engaged in the business of underwriting, trading or distributing municipal securities or other public securities.

### **INDEPENDENT ACCOUNTANTS**

Included as APPENDIX B to this Official Statement are the audited financial statements of the District for the Fiscal Years ended June 30, 2013 and 2012. The District’s financial statements for the

Fiscal Years ended June 30, 2013 and 2012, included in APPENDIX B, have been audited by Maze & Associates Accountancy Corporation, certified public accountants. Maze & Associates has not been requested to consent to the inclusion of its report in APPENDIX B and it has not undertaken to update its report or to take any action intended or likely to elicit information concerning the accuracy, completeness or fairness of the statements made in this Official Statement, and no opinion is expressed by Maze & Associates with respect to any event subsequent to the date of its report.

It is District policy to competitively select and retain independent accountants on a periodic basis. Maze & Associates began serving as the District's independent accountants in Fiscal Year 2005. In 2012, following a request for proposals and competitive selection process, Maze and Associates was retained to serve as independent accountants for the three additional fiscal years ending June 30, 2012 through 2014.

### **CERTAIN RELATIONSHIPS**

The Underwriter(s) and their respective affiliates are full service financial institutions engaged in various activities, which may include securities trading, commercial and investment banking, financial advisory, investment management, principal investment, hedging, financing and brokerage activities. Certain of the Underwriter(s) and their respective affiliates have, from time to time, performed, and may in the future perform, various investment banking services for the District, for which they received or will receive customary fees and expenses.

In addition, in the ordinary course of sales, trading, brokerage and financing activities, certain of the Underwriter(s) may at any time hold long or short positions, and may trade or otherwise effect transactions, for their own accounts or the accounts of customers, in debt or equity securities and financial instruments or bank loans, as applicable, of the District and other governmental entities and utilities. In connection with these activities and the provision of other services, certain of the Underwriter(s) may be or become creditors of such entities. In addition, many of the Underwriter(s), or their affiliates, currently serve as remarketing agents or providers of credit enhancement or liquidity facilities for variable rate obligations issued by, or as interest rate swap providers to, governmental entities and utilities, including the District.

### **MISCELLANEOUS**

References made herein to certain documents and reports are brief summaries thereof and do not purport to be complete or definitive and reference is hereby made to such documents and reports for a full and complete statement of the contents thereof.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the District and the purchasers or registered owners of any of the Series [Designation] Bonds. The delivery and distribution of this Official Statement have been duly authorized by the District.

### **EAST BAY MUNICIPAL UTILITY DISTRICT**

By: \_\_\_\_\_  
General Manager

## **APPENDIX A**

### **THE EAST BAY MUNICIPAL UTILITY DISTRICT (THE WASTEWATER SYSTEM)**

**APPENDIX B**

**EAST BAY MUNICIPAL UTILITY DISTRICT  
AUDITED FINANCIAL STATEMENTS  
FOR THE YEARS ENDED JUNE 30, 2013 AND 2012**

## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following is a summary of certain provisions of the Indenture. This summary is not to be considered a full statement of the terms of the Indenture and accordingly is qualified by reference thereto and is subject to the full text thereof. Capitalized terms not defined in this summary or elsewhere in the Reoffering Circular have the respective meanings set forth in the Indenture.*

*There are no senior Wastewater Bonds outstanding, and the District has covenanted in the Indenture not to issue any senior Wastewater Bonds in the future. Therefore, all references hereto to “Wastewater Bonds” may be disregarded.*

#### Definitions

**“Accreted Value”** means, with respect to any Capital Appreciation Indebtedness, the principal amount thereof plus the interest accrued thereon, compounded at the interest rate thereon on each date as specified in the Indenture.

**“Act”** means the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

**“Annual Debt Service”** (I) prior to the Effective Date, means, for any Fiscal Year the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Maximum Annual Debt Service; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest on all Wastewater Bonds, Bonds and Parity Debt becoming due and payable during such Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.

**“Assumed Debt Service”** (I) prior to the Effective Date, means for any Fiscal Year the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds and Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis, calculated based on a fixed interest rate equal to the rate at which the District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation; and

(II) on and after the Effective Date, means, for any Fiscal Year, the aggregate amount of principal and interest which would be payable on all Wastewater Bonds, Bonds or Parity Debt if each Excluded Principal Payment were amortized for a period specified by the District (but no longer than thirty (30) years from the date of the issuance of the Wastewater Bonds, Bonds or Parity Debt to which such Excluded Principal Payment relates) on a substantially level debt service basis or other amortization basis provided by the District, calculated based on a fixed interest rate equal to the rate at which the



District could borrow for such period, as certified by a certificate of a financial advisor or investment banker delivered to the Trustee, who may rely conclusively on such certificate, within thirty (30) days of the date of calculation.

**“Bond Obligation”** means, as of any given date of calculation, (1) with respect to any Outstanding Bond or Wastewater Bond which is Current Interest Indebtedness, the principal amount thereof, and (2) with respect to any Outstanding Bond or Wastewater Bond which is Capital Appreciation Indebtedness, the Accreted Value thereof.

**“Bonds”** means the bonds authorized by, and at any time Outstanding pursuant to, the Indenture.

**“Business Day”** means any day other than (1) a Saturday, Sunday, or a day on which banking institutions in the State of California or the State of New York are authorized or obligated by law or executive order to be closed, and (2) for purposes of payments and other actions related to Bonds secured by a letter of credit, a day upon which commercial banks in the city in which is located the office of the issuing bank at which demands for payment under the letter of credit are to be presented are authorized or obligated by law or executive order to be closed.

**“Capital Appreciation Indebtedness”** means Wastewater Bonds, Bonds and Parity Debt on which interest is compounded and paid less frequently than annually.

**“Code”** means the Internal Revenue Code of 1986, and the regulations applicable thereto or issued thereunder, as amended from time to time.

**“Current Interest Indebtedness”** means the Wastewater Bonds, Bonds and Parity Debt on which interest is paid at least annually.

**“Debt Service”** (I) prior to the Effective Date, means the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt; provided, however, that for the purposes of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and

interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Debt Service unless the sum of (i) interest payable on such Wastewater Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest rate swap agreement are greater than the interest payable on the Wastewater Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Wastewater Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Wastewater Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Wastewater Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Wastewater Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Wastewater Bonds, Bonds or Parity Debt are in one of the two highest Rating Categories by Moody's and by Standard & Poor's or such Wastewater Bonds, Bonds or Parity Debt are rated in the highest short-term, note or commercial paper Rating Categories by Moody's and by Standard & Poor's and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt provided, however, for the purpose of computing Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be equal to the average of the SIFMA Municipal Swap Index for the five (5) years preceding such date of calculation (provided, however, that if such index is no longer published, the interest rate on such Wastewater Bonds, Bonds or Parity Debt shall be calculated based upon such similar index as the District shall designate in writing to the Trustee) (the "Assumed SIFMA-based Rate");

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow or trust specifically therefor and to the extent that such

interest payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and the regularly scheduled payments thereunder are payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, interest deemed to be payable on any such Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in effect shall be based on the net economic effect expected by the District to be produced by the terms of such Wastewater Bonds, Bonds or Parity Debt and such interest rate swap agreement, including but not limited to the effects that (i) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Variable Rate Indebtedness instead shall be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate, and (ii) such Wastewater Bonds, Bonds or Parity Debt would, but for such interest rate swap agreement, be treated as Wastewater Bonds, Bonds or Parity Debt bearing interest at a fixed interest rate instead shall be treated as Variable Rate Indebtedness; and accordingly, the amount of interest deemed to be payable on any Wastewater Bonds, Bonds or Parity Debt with respect to which an interest rate swap agreement is in force shall be an amount equal to the amount of interest that would be payable at the rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt plus the amounts payable by the District under such interest rate swap agreement, minus the amounts receivable by the District under such interest rate swap agreement, and for the purpose of calculating as nearly as practicable such amounts, the following assumptions shall be made:

(1) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a net variable interest rate under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest rate on such Wastewater Bonds, Bonds or Parity Debt for future periods when the actual interest rate cannot yet be determined shall be assumed (but only during the period the interest rate swap agreement is in effect) to be equal to the sum of (A) the fixed rate or rates stated in such Wastewater Bonds, Bonds or Parity Debt minus (B) the fixed rate paid by the counterparty of such interest rate swap agreement to the District, plus (C) the lesser of (x) the interest rate cap, if any, provided by a counterparty with respect to such interest rate swap agreement (but only during the period that such interest rate cap is in effect) and (y) the applicable variable interest rate calculated in accordance with paragraph (b) above; and

(2) if an interest rate swap agreement has been entered into by the District with respect to Wastewater Bonds, Bonds or Parity Debt providing for the payment of a fixed rate of interest to maturity or for a specific term under such interest rate swap agreement with respect to such Wastewater Bonds, Bonds or Parity Debt by the District, the interest on such Wastewater Bonds, Bonds or Parity Debt shall be included in the calculation of payments (but only during the period the interest rate swap agreement is in

effect) by including for each period of calculation an amount equal to the amount of interest payable at the fixed interest rate pursuant to such interest rate swap agreement.

Notwithstanding any other paragraph of this definition of Debt Service, except as set forth in this paragraph (e), no amounts payable under any interest rate swap agreement (including termination payments) shall be included in the calculation of Debt Service;

(f) if any Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness subject to tender for purchase and funds for the purchase price may be provided by a letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility which, if drawn upon, could create a repayment obligation which has a lien on Subordinated Wastewater Revenues on parity with the lien of the Wastewater Bonds, Bonds or Parity Debt, then for purposes of determining the amounts of principal due in any Fiscal Year on such Wastewater Bonds, Bonds or Parity Debt, (i) the options or obligations of the owners of such Wastewater Bonds, Bonds or Parity Debt to tender the same for purchase or payment prior to the stated maturity or maturities shall be ignored and not treated as a principal maturity; and (ii) any repayment obligations of the District to the provider of such letter of credit, line of credit, revolving credit agreement, standby bond purchase agreement or other liquidity facility, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be treated as Excluded Principal Payments; and

(g) if interest on any Wastewater Bonds, Bonds or Parity Debt is reasonably anticipated to be reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program, then interest payments with respect to such Wastewater Bonds, Bonds or Parity Debt shall be reduced by the amount of such interest reasonably anticipated to be paid or reimbursed by the United States of America.

**“Effective Date”** means the earlier to occur of: (i) the first date upon which all of the Outstanding Series 2007A Bonds, Series 2007B Bonds, Series 2008B Bonds and Series 2008C Bonds have been paid or discharged in accordance with their terms and shall no longer be Outstanding for purposes of the Indenture and all obligations of the District under any interest rate swap agreements and any standby bond purchase agreements or other liquidity facilities relating thereto shall have been discharged and satisfied, or (ii) the first date upon which the District has filed with the Trustee the written consents to the amendments to the Indenture set forth in the Thirteenth Supplemental Indenture of (a) the Owners of a majority in aggregate principal amount of Bond Obligation then Outstanding and (b) the providers of any interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements relating to such Bond Obligation then Outstanding to the extent the consent thereof shall be required by the terms of such interest rate swap agreements and any standby bond purchase agreements, other liquidity facilities or other agreements.

**“Excluded Principal Payments”** means each payment of principal (or the principal component of lease or installment purchase payments) of Wastewater Bonds, Bonds or Parity Debt which the District determines on a date not later than the date of issuance thereof that the District intends to pay with monies which are not Wastewater Revenues or Subordinated Wastewater Revenues but from the proceeds of future debt obligations of the District and the Trustee may rely conclusively on such determination of the District.

**“Fiscal Year”** means the period beginning on July 1 of each year and ending on the next succeeding June 30, or any other twelve-month period selected and designated as the official fiscal year period of the District, which designation shall be provided to the Trustee in a certificate of the District.

**“Indenture”** means the Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the Trustee and the District, as originally executed or as it may from time to time be supplemented or amended by any Supplemental Indenture delivered pursuant to the provisions of the Indenture.

**“Investment Securities”** means the following:

(i) any bonds or other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by, the United States of America, including obligations of any of the Federal agencies and Federally sponsored entities set forth in clause (iii) below to the extent unconditionally guaranteed by the United States of America;

(ii) any certificates, receipts, securities or other obligations evidencing ownership of, or the right to receive, a specified portion of one or more interest payments or principal payments, or any combination thereof, to be made on any bond, note, or other obligation described above in clause (i);

(iii) obligations of the Federal National Mortgage Association, the Government National Mortgage Association, Federal Home Loan Banks and Federal Home Loan Mortgage Corporation;

(iv) obligations of any state, territory or commonwealth of the United States of America or any political subdivision thereof or any agency or department of the foregoing; provided that at the time of their purchase such obligations are rated not lower than their respective ratings on the Bonds by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds);

(v) any bonds or other obligations of any state of the United States of America or any political subdivision thereof (a) which are not callable prior to maturity or as to which irrevocable instructions have been given to the trustee of such bonds or their obligations by the obligor to give due notice of redemption and to call such bonds for redemption on the date or dates specified in such instructions, (b) which are secured as to principal and interest and redemption premium, if any, by a fund consisting only of cash or bonds or other obligations of the character described above in clause (i), (ii) or (iii) which fund may be applied only to the payment of such principal of and interest and redemption premium, if any, on such bonds or other obligations on the interest payment dates and the maturity date or dates thereof or the specified redemption date or dates pursuant to such irrevocable instructions, as appropriate, (c) as to which the principal of and interest on the bonds and obligations of the character described above in clause (i), (ii) or (iii) which have been deposited in such fund along with any cash on deposit in such fund are sufficient to pay the principal of and interest and redemption premium, if any, on the bonds or other obligations described in this clause (v) on the interest payment dates and the maturity date or dates thereof or on the redemption date or dates specified in the irrevocable instructions referred to in subclause (a) of this clause (v), as appropriate, and (d) which have been rated not lower than their respective ratings on the Bonds by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds);

(vi) bonds, notes, debentures or other evidences of indebtedness issued or guaranteed by any corporation which are, at the time of purchase, rated by Moody’s (if Moody’s is then rating the Bonds) and Standard & Poor’s (if Standard & Poor’s is then rating the Bonds) in their respective highest short-term Rating Categories, or, if the term of such indebtedness is longer than three (3) years, rated not lower than their respective ratings on the Bonds by Moody’s (if

Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(vii) demand or time deposits or certificates of deposit, whether negotiable or nonnegotiable, issued by any bank or trust company organized under the laws of any state of the United States of America or any national banking association (including the Trustee), provided that such certificates of deposit shall be purchased directly from such a bank, trust company or national banking association and shall be either (1) continuously and fully insured by the Federal Deposit Insurance Corporation, or (2) continuously and fully secured by such securities and obligations as are described above in clauses (i) through (iv), inclusive, which shall have a market value (exclusive of accrued interest) at all times at least equal to the principal amount of such certificates of deposit and shall be lodged with the Trustee, as custodian, by the bank, trust company or national banking association issuing such certificates of deposit, and the bank, trust company or national banking association issuing each such certificate of deposit required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such certificate of deposit will at all times be an amount equal to the principal amount of each such certificate of deposit and the Trustee shall be entitled to rely on each such undertaking;

(viii) taxable commercial paper or tax-exempt commercial paper rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(ix) variable rate obligations required to be redeemed or purchased by the obligor or its agent or designee upon demand of the holder thereof secured as to such redemption or purchase requirement by a liquidity agreement with a corporation and as to the payment of interest and principal either upon maturity or redemption (other than upon demand by the holder thereof) thereof by an unconditional credit facility of a corporation, provided that the variable rate obligations themselves are rated in their respective highest Rating Categories for its short-term rating, if any, and not lower than their respective ratings on the Bonds for its long-term rating, if any, by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds), and that the corporations providing the liquidity agreement and credit facility have, at the date of acquisition of the variable rate obligation by the Trustee, an outstanding issue of unsecured, uninsured and unguaranteed debt obligations rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(x) any repurchase agreement with any bank or trust company organized under the laws of any state of the United States or any national banking association (including the Trustee) having a minimum permanent capital of one hundred million dollars (\$100,000,000) and with short-term debt rated by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) in their respective four highest short-term rating categories or government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, which agreement is secured by any one or more of the securities and obligations described in clauses (i), (ii) or (iii) above, which shall have a market value (exclusive of accrued interest and valued at least monthly) at least equal to the principal amount of such investment and shall be lodged with the Trustee or other fiduciary, as custodian for the Trustee, by the bank, trust company, national banking association or bond dealer executing such repurchase agreement, and the entity executing each such repurchase agreement required to be so secured shall furnish the Trustee with an undertaking satisfactory to it that the aggregate market value of all such obligations securing each such repurchase agreement (as

valued at least monthly) will be an amount equal to the principal amount of each such repurchase agreement and the Trustee shall be entitled to rely on each such undertaking;

(xi) any cash sweep or similar account arrangement of or available to the Trustee, the investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and any money market fund, the entire investments of which are limited to investments described in clauses (i), (ii), (iii), (iv) and (x) of this definition of Investment Securities and which money market fund is rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds); provided that as used in this clause (xi) and clause (xii) investments will be deemed to satisfy the requirements of clause (x) if they meet the requirements set forth in clause (x) ending with the words "clauses (i), (ii) or (iii) above" and without regard to the remainder of such clause (x);

(xii) a guaranteed investment contract with a financial institution or insurance company which has at the date of execution thereof an outstanding issue of unsecured, uninsured and unguaranteed debt obligations or a claims paying ability rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds);

(xiii) shares of beneficial interest in diversified management companies investing exclusively in securities and obligations described in clauses (i) through (xii) of this definition of Investment Securities and which companies are rated in their respective highest Rating Categories by Moody's (if Moody's is then rating the Bonds) and Standard & Poor's (if Standard & Poor's is then rating the Bonds) or have an investment advisor registered with the Securities and Exchange Commission with not less than five years experience investing in such securities and obligations and with assets under management in excess of \$500,000,000; and

(xiv) any investment approved by the Board for which confirmation is received from each rating agency then rating any of the Bonds that such investment will not adversely affect such agency's rating on such Bonds.

**"Mandatory Sinking Account Payment"** means the amount required to be deposited by the District in a sinking account for the payment of term Bonds.

**"Maximum Annual Debt Service"** (I) prior to the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year; provided, however, that for the purposes of computing Maximum Annual Debt Service:

(a) Excluded Principal Payments shall be excluded from such calculation and Assumed Debt Service shall be included in such calculation;

(b) if the Wastewater Bonds, Bonds or Parity Debt are Variable Rate Indebtedness, the interest rate thereon for periods when the actual interest rate cannot yet be determined shall be assumed to be twelve percent (12%) per annum;

(c) principal and interest payments on Wastewater Bonds, Bonds and Parity Debt shall be excluded to the extent such payments are to be paid from amounts on deposit with the Trustee or another fiduciary in escrow specifically therefor and to the extent that such interest

payments are to be paid from the proceeds of Wastewater Bonds, Bonds or Parity Debt held by the Trustee or another fiduciary as capitalized interest;

(d) in determining the principal amount due in each Fiscal Year, payment shall (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization) be assumed to be made in accordance with any amortization schedule established for such debt, including any Mandatory Sinking Account Payments or any scheduled redemption or payment of Wastewater Bonds, Bonds or Parity Debt on the basis of Accreted Value, and for such purpose, the redemption payment or payment of Accreted Value shall be deemed a principal payment and interest that is compounded and paid as Accreted Value shall be deemed due on the scheduled redemption or payment date of such Capital Appreciation Indebtedness;

(e) if any interest rate swap agreement is in effect with respect to, and is payable on a parity with, the Wastewater Bonds, Bonds or Parity Debt to which it relates, no amounts payable under such interest rate swap agreement shall be included in the calculation of Maximum Annual Debt Service unless the sum of (i) interest payable on such Wastewater Bonds, Bonds or Parity Debt, plus (ii) amounts payable by the District under such interest rate swap agreement, less (iii) amounts receivable by the District under such interest swap agreement are greater than the interest payable on the Wastewater Bonds, Bonds or Parity Debt to which it relates, then, in such instance, the amount of such payments to be made that exceed the interest to be paid on the Wastewater Bonds, Bonds or Parity Debt shall be included in such calculation. For such purposes, the variable amount under any such interest rate swap agreement shall be assumed to be equal to twelve percent (12%) per annum; and

(f) if any Wastewater Bonds, Bonds or Parity Debt include an option or an obligation to tender all or a portion of such Wastewater Bonds, Bonds or Parity Debt to the District, the Trustee or another fiduciary or agent and require that such Wastewater Bonds, Bonds or Parity Debt or portion thereof be purchased if properly presented, then for purposes of determining the amounts of principal and interest due in any Fiscal Year, the options or obligations to tender shall be treated as a principal maturity occurring on the first date on which holders or owners thereof may or are required to tender, except that any such option or obligation to tender shall be ignored and not treated as a principal maturity, if (1) such Wastewater Bonds, Bonds or Parity Debt are rated not lower than their respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) or such Wastewater Bonds, Bonds or Parity Debt are rated in the highest short-term note or commercial paper Rating Categories by Moody's (if Moody's is then rating the Bonds) and by Standard & Poor's (if Standard and Poor's is then rating the Bonds) and (2) funds for the purchase price are to be provided by a letter of credit or standby bond purchase agreement and the obligation of the District with respect to the provider of such letter of credit or standby bond purchase agreement, other than its obligations on such Wastewater Bonds, Bonds or Parity Debt, shall be subordinated to the obligation of the District on the Bonds and Parity Debt or, if not subordinate, shall be incurred (assuming such immediate tender) under the conditions and meeting the tests for the issuance of Parity Debt set forth in the Indenture; and

(II) on and after the Effective Date, means, the greatest amount of principal and interest becoming due and payable on all Wastewater Bonds, Bonds and Parity Debt in the Fiscal Year in which the calculation is made or any subsequent Fiscal Year calculated using the principles and assumptions set forth under the definition of Debt Service.



**“Moody’s”** means Moody’s Investors Service, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Moody’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Opinion of Bond Counsel”** means a written opinion of a law firm of national standing in the field of public finance selected by the District and not objected to by the Trustee.

**“Outstanding,”** when used at any particular time with reference to Bonds, means (subject to the provisions relating to disqualified bonds) all Bonds theretofore, or thereupon being, authenticated and delivered by the Trustee under the Indenture except (1) Bonds theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Bonds with respect to which all liability of the District shall have been discharged under the Indenture; and (3) Bonds for the transfer or exchange of or in lieu of or in substitution for which other Bonds shall have been authenticated and delivered by the Trustee pursuant to the Indenture.

**“Owner” or “Bondholder” or “Bondowner,”** whenever used with respect to a Bond, means the person in whose name such Bond is registered.

**“Parity Debt”** means any indebtedness, installment sale obligation, lease obligation or other obligation of the District for borrowed money or interest rate swap agreement having an equal lien and charge upon the Subordinated Wastewater Revenues and therefore payable on a parity with the Bonds (whether or not any Bonds are Outstanding).

**“Person”** means a corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

**“Rating Category”** means (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Redemption Price”** means with respect to any Bond (or portion thereof) the principal amount of such Bond (or portion thereof) plus the applicable premium, if any, payable upon redemption thereof pursuant to the provisions of such Bond and the Indenture.

**“Revenue Fund”** means the fund held in trust by the District to which the Subordinated Wastewater Revenues are required to be deposited.

**“Series”** whenever used with respect to Bonds, means all of the Bonds designated as being of the same series, authenticated and delivered in a simultaneous transaction, regardless of variations in maturity, interest rate, redemption and other provisions, and any Bonds thereafter authenticated and delivered upon transfer or exchange or in lieu of or in substitution for (but not to refund) such Bonds as provided in the Indenture.

**“SIFMA Municipal Swap Index”** means, on any date, a rate determined on the basis of the seven-day high grade market index of tax-exempt variable rate demand obligations, as produced by Municipal Market Data and published or made available by the Securities Industry & Financial Markets

Association (formerly the Bond Market Association) (“SIFMA”) or by any Person acting in cooperation with or under the sponsorship of SIFMA and effective from such date.

**“Standard & Poor’s”** means Standard & Poor’s Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New York, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Standard & Poor’s” shall be deemed to refer to any other nationally recognized securities rating agency selected by the District and not objected to by the Trustee.

**“Subordinated Wastewater Revenues”** for any fiscal period means the sum of (a) the Wastewater Revenues for such fiscal period plus (b) the amounts, if any, withdrawn by the District from the Rate Stabilization Fund created in the Wastewater Bond Resolution for treatment as Wastewater Revenues for such fiscal period, less the sum of (c) all Wastewater Operation and Maintenance Costs for such fiscal period, (d) the amounts, if any, withdrawn by the District from Wastewater Revenues for such fiscal period for deposit in such Rate Stabilization Fund, and (e) all amounts required to be paid under the Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds as the same become due and payable.

**“Variable Rate Indebtedness”** means any indebtedness the interest rate on which is not fixed at the time of incurrence of such indebtedness, and has not at some subsequent date been fixed, at a single numerical rate for the entire term of the indebtedness.

**“Wastewater Bond Resolution”** means Resolution No. 30051 of the District, adopted on January 26, 1982, as amended and supplemented from time to time. All obligations of the District under the Wastewater Bond Resolution have ceased and been discharged; provided, however, that the Rate Stabilization Fund created thereunder shall continue.

**“Wastewater Bonds”** means all bonds and other obligation of the District issued pursuant to the Wastewater Bond Resolution.

**“Wastewater Operation and Maintenance Costs”** means the reasonable and necessary costs of maintaining and operating the Wastewater System, calculated on sound accounting principles, including (among other things) the reasonable expenses of management, repair and other expenses necessary to maintain and preserve the Wastewater System in good repair and working order, and reasonable amounts for administration, overhead, insurance, taxes and other similar costs, but excluding in all cases depreciation and obsolescence charges or reserves therefor and amortization of intangibles or other bookkeeping entries of a similar nature, and excluding all costs paid from the proceeds of taxes received by the District.

**“Wastewater Revenues”** (I) prior to the Effective Date, means all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any monies in any fund or account established under the Wastewater Bond Resolution or the Indenture; and

(II) from and after the Effective Date, means, all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System, or arising from the Wastewater System, together with income from the investment of any moneys in any fund or account established under the Wastewater Bond Resolution or the Indenture; provided, however, there shall be excluded therefrom any amounts reimbursed to the District by the United States of America pursuant to Section 54AA of the Code, or any future similar program.

**“Wastewater System”** means the entire sewage disposal system of Special District No. 1 of the District and all of the facilities thereof, including all facilities for the disposal of sewage, sewage treatment works, wastewater disposal facilities, sludge treatment facilities, intercepting and outfall sewers, power generation facilities, and other facilities necessary or convenient for the collection, treatment or disposition of sewage and wastewater for Special District No. 1 of the District, together with all additions, betterments, extensions and improvements to said system or any part thereof.

### **Pledge of Revenues**

The Bonds are revenue obligations of the District and are payable as to both principal and interest, and any premium upon redemption thereof, exclusively from the Subordinated Wastewater Revenues and other amounts held by the Trustee (except for amounts held in the Rebate Fund). The Subordinated Wastewater Revenues are pledged to the payment of Bonds and Parity Debt without priority or distinction of one over the other. Said pledge constitutes a first lien on the Subordinated Wastewater Revenues and such other amounts referred to in this paragraph.

### **Allocation of Subordinated Wastewater Revenues**

The District is to transfer the monies in the Revenue Fund, into the following respective funds, in the following amounts, in the following order of priority, the requirements of each such fund (including the making up of any deficiencies in any such fund resulting from lack of Subordinated Wastewater Revenues sufficient to make any earlier required deposit) at the time of deposit to be satisfied before any deposit is made to any fund subsequent in priority.

(1) **Interest Fund.** The District shall transfer to the Trustee and the Trustee shall set aside in the Interest Fund on or before the Business Day prior to each interest payment date therefor an amount equal to the interest becoming due and payable on the Outstanding Bonds which are Current Interest Indebtedness (excluding any interest for which there are monies on deposit in the Interest Fund from the proceeds of any Series of Bonds or other source to pay such interest).

(2) **Principal Fund; Sinking Accounts.** The District shall transfer to the Trustee and the Trustee shall set aside in the Principal Fund on or before the Business Day prior to each principal or Sinking Account payment date therefor an amount equal to (a) the amount of Bond Obligation becoming due and payable on the Outstanding Serial Bonds, plus (b) the Mandatory Sinking Account Payments to be paid into the respective Sinking Accounts for the Term Bonds; provided that if the District certifies to the Trustee that any principal payments are expected to be refunded on or prior to their respective due dates or paid from excess amounts on deposit in a bond reserve fund upon such payment, no amounts need be set aside towards such principal to be so refunded or paid. All of the aforesaid Mandatory Sinking Account Payments shall be made without priority of any payment into any one such Sinking Account over any other such payment.

(3) **Bond Reserve Funds.** Upon the occurrence of any deficiency in any Bond Reserve Fund established under the Indenture for any Series of Bonds, the District shall transfer to the Trustee and the Trustee shall set aside in such Bond Reserve Fund an amount equal to the aggregate amount of each unreplenished prior withdrawal from the Bond Reserve Fund until there is on deposit in such Bond Reserve Fund an amount equal to the respective reserve requirement.

Any Subordinated Wastewater Revenues remaining after the foregoing transfers shall be held free and clear of the Indenture by the District and it may use and apply such Subordinated Wastewater Revenues for any lawful purpose of the District, including the redemption and purchase of Bonds.

If on any principal payment date, interest payment date or mandatory redemption date the amounts on deposit in the Interest Fund and Principal Fund, including the Sinking Accounts therein are insufficient to make such payments, the Trustee shall immediately notify the District of such deficiency and direct that the District transfer the amount of such deficiency to the Trustee on such payment date. The District covenants and agrees to transfer to the Trustee from any Subordinated Wastewater Revenues in its possession the amount of such deficiency on the principal, interest or mandatory redemption date referenced in such notice.

### **Investments**

All monies in any of the funds and accounts held by the Trustee shall be invested, as directed by the District, solely in Investment Securities.

The District may and the Trustee shall, upon the Request of the District, enter into a financial futures or financial option contract with an entity the debt securities of which are rated in their respective highest short-term Rating Categories by Moody's and Standard & Poor's.

The District may and the Trustee shall, upon the Request of the District, and provided that the Trustee is supplied with an Opinion of Bond Counsel to the effect that such action is permitted under the laws of the State of California, enter into an interest rate swap agreement corresponding to the interest rate or rates payable on a Series of Bonds or any portion thereof and the amounts received by the District or the Trustee, if any, pursuant to such a swap agreement may be applied to the deposits required hereunder; in which case, the entity with which the District or the Trustee may contract for an interest rate swap is limited to entities the debt securities of which are rated in their respective highest short-term debt Rating Categories by Moody's and Standard & Poor's. If the District so designates, amounts payable under the interest rate swap agreement shall be secured by Subordinated Wastewater Revenues and other assets pledged hereunder to the Bonds on a parity basis therewith and, in such event, the District shall pay to the Trustee for deposit in the Interest Fund, at the times and in the manner provided in the Indenture, the amounts to be paid under such interest rate swap agreement, as if such amounts were additional interest due on the Bonds to which such interest rate swap agreement relates, and the Trustee shall pay to the other party to the interest rate swap agreement, to the extent required thereunder, amounts deposited in the Interest Fund for the payment of interest on the Bonds with respect to which such agreement was entered into.

### **Additional Bonds; Parity Debt**

The issuance of additional Wastewater Bonds is not limited by the Indenture. The District may issue Bonds and Parity Debt payable from Subordinated Wastewater Revenues and secured equally and ratably with Bonds previously issued, subject to the following specific conditions precedent to the issuance of any such additional Bonds or Parity Debt:

- (a) No Event of Default shall have occurred and then be continuing.
- (b) The aggregate principal amount of Bonds or Parity Debt shall not exceed any limitation imposed by law or by any Supplemental Indenture.

(c) The District shall have placed on file with the Trustee a Certificate of the District certifying that the sum of: (1) the Subordinated Wastewater Revenues plus all amounts required to be paid under the Wastewater Bond Resolution for principal, interest, reserve fund and any other debt service requirements on the Wastewater Bonds for any period of 12 consecutive months during the 18 months immediately preceding the date on which such additional Bonds or Parity Debt will become Outstanding; plus (2) 90% of the amount by which the District projects Subordinated Wastewater Revenues for such period of 12 months would have been increased had increases in rates, fees and charges during such period of 12 months been in effect throughout such period of 12 months; plus (3) 75% of the amount by which the District projects Subordinated Wastewater Revenues will increase during the period of 12 months commencing on the date of issuance of such additional Series of Bonds due to improvements to the Wastewater System under construction (financed from any source) or to be financed with the proceeds of such additional Series of Bonds, shall (4) have been at least equal to 1.1 times the amount of Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt then Outstanding and the additional Bonds or Parity Debt then proposed to be issued.

### **Refunding Bonds**

Refunding Bonds may be authorized and issued by the District without compliance with the provisions described above under "Additional Bonds; Parity Debt," provided that Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding following the issuance of such refunding Bonds is less than or equal to Maximum Annual Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding prior to the issuance of such refunding Bonds.

### **Covenants**

Among other covenants the District has agreed as follows:

The District will not create any pledge, lien or charge upon any of the Subordinated Wastewater Revenues having priority over or having parity with the lien of the Bonds except only as described above. The District will not amend or change the Wastewater Bond Resolution in any manner which would permit the issuance of additional Wastewater Bonds in a greater principal amount than would have been permitted thereunder prior to such amendment or change or reduce the debt service percentage or coverage requirements contained therein. The District will not issue Wastewater Bonds pursuant to the Wastewater Bond Resolution in such amount as would cause the District to fail to be in compliance with the rate covenant described in the second succeeding paragraph hereof.

The District will not take any action, or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on the Bonds under Section 103 of the Code, if applicable. The District will not directly or indirectly use or permit the use of any proceeds of the Bonds or any other funds of the District, or take or omit to take any action that would cause the Bonds to be "arbitrage bonds" within the meaning of Section 148(a) of the Code, if applicable. To that end, the District will comply with all requirements of Section 148 of the Code to the extent applicable to the Bonds.

The District will, at all times while any of the Bonds remain Outstanding, fix, prescribe and collect rates, fees and charges in connection with the services and facilities furnished by the Wastewater System so as to yield Wastewater Revenues in each Fiscal Year sufficient so that the sum of the Subordinated Wastewater Revenues for such year plus all amounts required to be paid under the Wastewater Bond Resolution for such year for principal, interest, reserve fund and any other debt service

requirements on the Wastewater Bonds shall be at least equal to 1.1 times the amount of Debt Service on all Wastewater Bonds, Bonds and Parity Debt Outstanding for such Fiscal Year.

The District will maintain and preserve the Wastewater System in good repair and working order at all times, and will operate the Wastewater System in an efficient and economical manner. Subject in each case to the condition that insurance is obtainable at rates deemed reasonable by the District and upon terms and conditions deemed reasonable by the District, the District will procure and maintain at all times: (a) insurance on the Wastewater System against such risks as and in such amounts as the District deems prudent taking into account insurance coverage for similar utilities, and (b) public liability insurance in such amounts as the District deems prudent taking into account insurance coverage for similar utilities.

### **Events of Default; Remedies**

The following events are Events of Default under the Indenture:

(a) default in the due and punctual payment of the principal or Redemption Price of any Bond when and as the same shall become due and payable, whether at maturity as therein expressed, by proceedings for redemption, by declaration or otherwise, or default in the redemption from any Sinking Account of any Bonds in the amounts and at the times provided therefor;

(b) default in the due and punctual payment of any installment of interest on any Bond when and as such interest installment shall become due and payable;

(c) if the District shall fail to observe or perform any covenant, condition, agreement or provision in the Indenture on its part to be observed or performed, other than as referred to in subsection (a) or (b), for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, has been given to the District by the Trustee; except that, if such failure can be remedied but not within such sixty (60) day period and if the District has taken all action reasonably possible to remedy such failure within such sixty (60) day period, such failure shall not become an Event of Default for so long as the District shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(d) if any default shall exist under any agreement governing any Parity Debt and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(e) if any default shall exist under the Wastewater Bond Resolution and such default shall continue beyond the therein stated grace period, if any, with respect to such default;

(f) if the District files a petition in voluntary bankruptcy, for the composition of its affairs or for its corporate reorganization under any state or Federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(g) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the District insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the District, or approving a petition filed against the District seeking reorganization of the District

under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof; and

(h) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the District or of the Subordinated Wastewater Revenues, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control.

In addition, pursuant to the Fifteenth Supplemental Indenture, with respect to the Series 2011A Bonds while bearing interest in a SIFMA-Based Term Interest Rate Period pursuant to such Fifteenth Supplemental Indenture, in the event sufficient funds are not available for the purchase of all Series 2011A Bonds tendered or deemed tendered and required to be purchased on any purchase date therefor pursuant to the Indenture, notwithstanding any other provision of the Indenture, in such event, such failed purchase shall constitute an Event of Default.

If an Event of Default shall occur and be continuing, the District is to immediately transfer to the Trustee all Subordinated Wastewater Revenues held by it and received thereafter and the Trustee shall apply all Subordinated Wastewater Revenues and any other funds then held or thereafter received by the Trustee under any of the provisions of the Indenture (except as otherwise provided in the Indenture) as follows and in the following order:

(1) To the payment of any expenses necessary in the opinion of the Trustee to protect the interests of the Owners of the Bonds and Parity Debt, including the costs and expenses of the Trustee and the Bondholders in declaring such Event of Default, and payment of reasonable fees and expenses of the Trustee (including reasonable fees and disbursements of its counsel and other agents) incurred in and about the performance of its powers and duties under the Indenture;

(2) To the payment of the whole amount of Bond Obligation then due on the Bonds and Parity Debt (upon presentation of the Bonds and Parity Debt to be paid, and stamping thereon of the payment if only partially paid, or surrender thereof if fully paid) subject to the provisions of the Indenture, with interest on such Bond Obligation, at the rate or rates of interest borne by the respective Bonds and Parity Debt, to the payment to the persons entitled thereto of all installments of interest then due and the unpaid principal or Redemption Price of any Bonds and Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates, with interest on the overdue Bond Obligation and Parity Debt at the rate borne by the respective Bonds and Parity Debt, and, if the amount available shall not be sufficient to pay in full all the Bonds and Parity Debt due on any date, together with such interest, then to the payment thereof ratably, according to the amounts of principal or interest or Accreted Value (plus accrued interest) due on such date to the persons entitled thereto, without any discrimination or preference.

In each and every such case during the continuance of such Event of Default, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding shall be entitled, upon notice in writing to the District, to declare the principal of all of the Bonds then Outstanding, and the interest accrued thereon, to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable.

This provision, however, is subject to the condition that if, at any time after the principal of the Bonds shall have been so declared due and payable, the District shall pay to or shall deposit with the Trustee a sum sufficient to pay all principal on such Bonds matured prior to such declaration and all

matured installments of interest (if any) upon all the Bonds, and the reasonable expenses of the Trustee, and any and all other defaults known to the Trustee (other than in the payment of principal of and interest on the Bonds due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall have been made therefor, then, and in every such case, the Owners of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, by written notice to the District and to the Trustee, may, on behalf of the Owners of all the Bonds, rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair or exhaust any right or power consequent thereon.

The Trustee is appointed (and the successive respective Owners of the Bonds, by taking and holding the same, shall be conclusively deemed to have so appointed the Trustee) to represent the Owners in the matter of exercising and prosecuting on their behalf such rights and remedies as may be available to such Owners under the provisions of the Bonds, the Indenture, the Act and applicable provisions of any other law. Upon any default or other occasion, giving rise to a right in the Trustee to represent the Bondholders, the Trustee may take such action as may seem appropriate and, upon the request in writing of Owners of not less than twenty-five percent (25%) in aggregate principal amount of Bonds then Outstanding, and upon being indemnified to its satisfaction therefor, shall proceed to protect or enforce its rights or the rights of such Owners by such appropriate actions as it shall deem most effectual to protect and enforce any such right.

No remedy conferred upon or reserved to the Trustee or to the Owners of the Bonds is intended to be exclusive of any other remedy or remedies, and each and every such remedy to the extent permitted by law, shall be cumulative and in addition to any other remedy given under the Indenture or now or hereafter existing at law or in equity or otherwise.

## **Amendments**

The Indenture and the rights and obligations of the District, the Owners of the Bonds and the Trustee may be modified or amended at any time by a Supplemental Indenture, with the written consent of the Owners of a majority in the aggregate amount of Bonds then Outstanding. No such modification or amendment shall (a) extend the fixed maturity of any Bond or reduce the amount of principal thereof, or extend the time of payment or reduce the amount of any Mandatory Sinking Account Payment provided for the payment of any Bonds, or reduce the rate of interest thereon, or extend the time of payment of interest thereon, or reduce any premium payable upon the redemption thereof, without the consent of the Owner of each Bond so affected, or (b) reduce the aforesaid percentage of Bond Obligation the consent of the Owners of which is required to effect any such modification or amendment, or permit the creation of any lien on the Subordinated Wastewater Revenues and other assets pledged under the Indenture, or deprive the Owners of the Bonds of the lien created by the Indenture on such Subordinated Wastewater Revenues and other assets, without the consent of the Owners of all of the Bonds then Outstanding.

The Indenture may also be modified or amended at any time with the written consents of each provider of a letter of credit or a policy of bond insurance for the Bonds, provided that at such time the payment of all the principal of and interest on all Outstanding Bonds shall be insured by a policy or policies of municipal bond insurance or payable under a letter of credit the provider of which shall be a financial institution or association having unsecured debt obligations rated, or insuring or securing other debt obligations rated on the basis of such insurance or letters of credit, rated not lower than the respective ratings on the Bonds by Moody's (if Moody's is then rating the Bonds) or Standard & Poor's (if Standard & Poor's is then rating the Bonds).



The Indenture and the rights and obligations of the District, of the Trustee and the Owners of the Bonds may also be modified or amended at any time by a Supplemental Indenture, without the consent of any Bondholders but only to the extent permitted by law and only for any one or more of the following purposes:

- (1) to add to the covenants and agreements of the District or to surrender any right or power reserved to or conferred upon the District;
- (2) to make such provisions for the purpose of curing any omission or ambiguity, or of curing or correcting any defective provision contained in the Indenture, or in regard to questions arising under the Indenture, as the District may deem necessary or desirable, and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (3) to modify the Indenture in such manner as to permit qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, and to add such other terms, conditions and provisions as may be permitted by said act or similar federal statutes and which shall not materially and adversely affect the interests of the Owners of the Bonds;
- (4) to make modifications or adjustments necessary or desirable to provide for the issuance of Variable Rate Indebtedness, Capital Appreciation Indebtedness or Parity Debt, with such interest rate, payment, maturity and other terms as the District may deem desirable, subject to the provisions of the Indenture;
- (5) to provide for the issuance of Bonds in book-entry form or bearer form, provided that such provisions shall not materially and adversely affect the interest of the Owners of the Bonds;
- (6) if the District agrees in a Supplemental Indenture to maintain the exclusion of interest on a Series of Bonds from gross income for purposes of federal income taxation, to make such provisions as are necessary or appropriate to ensure such exclusion;
- (7) to provide for the issuance of an additional Series of Bonds pursuant to provisions of the Indenture; and
- (8) for any other purpose that does not materially and adversely affect the interests of the Owners of the Bonds.

## **Defeasance**

Bonds may be paid by the District in any of the following ways:

- (a) by paying or causing to be paid the Bond Obligations of and interest on such Outstanding Bonds, as and when the same become due and payable;
- (b) by depositing with the Trustee, an escrow agent or other fiduciary, in trust, at or before maturity, money or securities in the necessary amount to pay or redeem such Outstanding Bonds; or
- (c) by delivering to the Trustee, for cancellation by it, such Outstanding Bonds.

Upon the deposit with the Trustee, escrow agent or other fiduciary, in trust, at or before maturity, of money or securities in the necessary amount to pay or redeem any Outstanding Bond (whether upon or prior to its maturity or the redemption date of such Bond), provided that, if such Bond is to be redeemed prior to maturity, notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, then all liability of the District in respect of such Bond shall cease, terminate and be completely discharged, provided that the Owner thereof shall thereafter be entitled to the payment of the principal of and premium, if any, and interest on the Bonds, and the District shall remain liable for such payment, but only out of such money or securities deposited with the Trustee as aforesaid for their payments.

The District may at any time surrender to the Trustee for cancellation by it any Bonds previously issued and delivered, which the District may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired.

Whenever in the Indenture it is provided or permitted that there be deposited with or held in trust by the Trustee money or securities in the necessary amount to pay or redeem any Bonds, the money or securities so to be deposited or held may include money or securities held by the Trustee in the funds and accounts established pursuant to the Indenture and shall be:

(a) lawful money of the United States of America in an amount equal to the principal amount of such Bonds and all unpaid interest thereon to maturity, except that, in the case of Bonds which are to be redeemed prior to maturity and in respect of which notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been made for the giving of such notice, the amount to be deposited or held shall be the principal amount or Redemption Price of such Bonds and all unpaid interest thereon to the redemption date; or

(b) Investment Securities described in clauses (i), (ii) or (iv) of the definition thereof, the principal of and interest on which when due will, in the opinion of an independent certified public accountant delivered to the Trustee (upon which opinion the Trustee may conclusively rely), provide money sufficient to pay the principal or Redemption Price of and all unpaid interest to maturity, or to the redemption date, as the case may be, on the Bonds to be paid or redeemed, as such principal or Redemption Price and interest become due, provided that, in the case of Bonds which are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given as required by the Indenture or provision satisfactory to the Trustee shall have been made for the giving of such notice; provided, in each case, that the Trustee shall have been irrevocably instructed (by the terms of the Indenture or by Request of the District) to apply such money to the payment of such principal or Redemption Price and interest with respect to such Bonds.

## APPENDIX D

### PROPOSED FORMS OF CO-BOND COUNSEL OPINION AND SPECIAL TAX COUNSEL OPINION

#### PROPOSED FORM OF CO-BOND COUNSEL OPINION

*Upon the delivery of the Series [Designation] Bonds, Fulbright & Jaworski LLP, Los Angeles, California, a member of Norton Rose Fulbright, and Curls Bartling P.C., Oakland, California, Co-Bond Counsel, propose to render their final approving opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$ \_\_\_\_\_  
**EAST BAY MUNICIPAL UTILITY DISTRICT**  
**(Alameda and Contra Costa Counties, California)**  
**WASTEWATER SYSTEM REVENUE REFUNDING BONDS, SERIES [DESIGNATION]**

Ladies and Gentlemen:

We have acted as co-bond counsel to the East Bay Municipal Utility District (the “District”) in connection with the issuance of its Wastewater System Revenue Refunding Bonds, Series [Designation] in the aggregate principal amount of \$ \_\_\_\_\_ (the “Series [Designation] Bonds”). The Series [Designation] Bonds are being issued pursuant to the Municipal Utility District Act (constituting Division 6 of the Public Utilities Code of the State of California, as amended), the Revenue Bond Law of 1941 as made applicable by Article 6a of Chapter 6 of Division 6 of the Municipal Utility District Act and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California, as amended (collectively, the “Act”), and a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), as amended and supplemented, including as amended and supplemented by a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_, providing for the issuance of the Series [Designation] Bonds (collectively, the “Indenture”).

In our capacity as co-bond counsel, we have reviewed the Act, the Indenture, certifications of the District, the Trustee, and others, opinions of counsel to the District and the Trustee, and such other documents, opinions and instruments as we deemed necessary to render the opinions set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Indenture.

We have assumed the genuineness of all documents and signatures presented to us. We have not undertaken to verify independently, and have assumed, the accuracy of the factual matters represented, warranted or certified in the documents. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture. In addition, we call attention to the fact that the rights and obligations under the Series [Designation] Bonds and the Indenture are subject to bankruptcy, insolvency,

reorganization, arrangement, fraudulent conveyance, moratorium and other similar laws affecting creditors' rights, to the application of equitable principles, to the possible unavailability of specific performance or injunctive relief, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against public agencies in the State of California. Furthermore, the imposition of fees and charges by the District relating to the Wastewater System may be subject to the provisions of Articles XIII C and XIII D of the California Constitution.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the following opinions:

1. The Series [Designation] Bonds constitute the valid and binding special limited obligations of the District.

2. The Indenture has been duly authorized, executed and delivered by, and constitutes the valid and binding obligation of, the District. The Indenture creates a valid pledge, to secure the payment of the principal of and interest on the Series [Designation] Bonds, of the Subordinated Wastewater Revenues of the District, and certain other amounts held by the Trustee under the Indenture, as and to the extent set forth in the Indenture and subject to the provisions of the Indenture permitting the application thereof for the purposes and on the terms and conditions set forth therein.

3. The Series [Designation] Bonds are special limited obligations of the District and are payable exclusively from and are secured by a pledge of Subordinated Wastewater Revenues and certain amounts held under the Indenture. The general fund of the District is not liable, and neither the credit nor taxing power of the District is pledged, for the payment of the Series [Designation] Bonds or the interest thereon.

4. Other bonds and parity debt of the District have been and may from time to time hereafter be issued under the Indenture which are payable from Subordinated Wastewater Revenues on a parity basis with the Series [Designation] Bonds.

We express no opinion as to any federal, state or local tax consequences of the ownership or disposition of the Series [Designation] Bonds or the receipt of interest thereon.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement our opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and represent our legal judgment based upon our review of existing law that we deem relevant to such opinions and in reliance upon the representations and covenants referenced above.

No opinion is expressed herein on the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Series [Designation] Bonds.

Respectfully submitted,

Respectfully submitted,

## PROPOSED FORM OF OPINION OF SPECIAL TAX COUNSEL

*Upon the delivery of the Series [Designation] Bonds, Orrick, Herrington & Sutcliffe LLP, Special Tax Counsel to the Underwriter(s), proposes to render its tax opinion with respect to the Series [Designation] Bonds in substantially the following form:*

[Closing Date]

East Bay Municipal Utility District  
Oakland, California

\$\_\_\_\_\_ East Bay Municipal Utility District  
Wastewater System Revenue Refunding Bonds, Series [Designation]  
(Special Tax Opinion)

Ladies and Gentlemen:

We have acted as special tax counsel in connection with the issuance by the East Bay Municipal Utility District (the "District") of \$\_\_\_\_\_ aggregate principal amount of its Wastewater System Revenue Refunding Bonds, Series [Designation] (the "Bonds"). The Bonds are being issued pursuant to a Wastewater System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as supplemented by supplemental indentures, including a \_\_\_\_\_ Supplemental Indenture, dated as of \_\_\_\_\_ (collectively, the "Indenture"), between the District and First Interstate Bank of California, which has been succeeded by The Bank of New York Mellon Trust Company, N.A., as trustee. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture.

In such connection, we have reviewed the Indenture, the Tax Certificate of the District, dated the date hereof and relating to the Bonds (the "Tax Certificate"), opinions of counsel to the Trustee and the District, certificates of the District, the Trustee and others, and such other documents, opinions and matters to the extent we deemed necessary to render the opinions set forth herein. In particular, we have relied on the opinion of Fulbright & Jaworski LLP and Curls Bartling P.C., co-bond counsel to the District (the "Bond Counsel Opinion"), regarding, among other matters, the validity of the Bonds. In rendering the opinions expressed herein, we expressly have relied on the Bond Counsel Opinion that, among other matters, the Bonds are valid, binding and enforceable in accordance with their terms. We call attention to the fact that the interest on the Bonds may not be excluded from gross income for federal income tax purposes or exempt from State of California personal income taxes if the Bonds are not valid, binding and enforceable in accordance with their terms.

The opinions expressed herein are based on an analysis of existing laws, regulations, rulings and court decisions and cover certain matters not directly addressed by such authorities. Such opinions may be affected by actions taken or omitted or events occurring after the date hereof. We have not undertaken to determine, or to inform any person, whether any such actions are taken or omitted or events do occur or any other matters come to our attention after the date hereof. Accordingly, this opinion is not intended to, and may not, be relied upon in connection with any such actions, events or matters. Our engagement with respect to the Bonds has concluded with their issuance, and we disclaim any obligation to update this letter. We have assumed the genuineness of all documents and signatures presented to us (whether as originals or copies) and the due and legal execution thereof by, and validity against, all parties. We have assumed, without undertaking to verify, the accuracy of the factual matters represented, warranted or

certified in the documents, and of the legal conclusions contained in the opinions, referred to in the second paragraph hereof. Furthermore, we have assumed compliance with all covenants and agreements contained in the Indenture and the Tax Certificate, including (without limitation) covenants and agreements compliance with which is necessary to assure that future actions, omissions or events will not cause the interest on the Bonds to be included in gross income for federal income tax purposes. We call attention to the fact that the rights and obligations under the Bonds, the Indenture and the Tax Certificate and their enforceability may be subject to bankruptcy, insolvency, reorganization, arrangement, fraudulent conveyance, moratorium and other laws relating to or affecting creditors' rights, to the application of equitable principles, to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against municipal utility districts in the State of California. We express no opinion with respect to any indemnification, contribution, penalty, choice of law, choice of forum or waiver provisions contained in the foregoing documents, nor do we express any opinion with respect to the state or quality of title to or interest in any of the real or personal property described in or subject to the Indenture, or the accuracy or sufficiency of the description contained therein of, or the remedies available to enforce liens on, any such property. Finally, we undertake no responsibility for the accuracy, completeness or fairness of the Official Statement or other offering material relating to the Bonds and express no opinion with respect thereto.

Based on and subject to the foregoing, and in reliance thereon, as of the date hereof, we are of the opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986 and is exempt from State of California personal income taxes. Interest on the Bonds is not a specific preference item for purposes of the federal individual or corporate alternative minimum taxes, although we observe that it is included in adjusted current earnings when calculating corporate alternative minimum taxable income. We express no opinion regarding other tax consequences related to the ownership or disposition of, or the accrual or receipt of such interest on, the Bonds.

Faithfully yours,

ORRICK, HERRINGTON & SUTCLIFFE LLP

## APPENDIX E

### DTC AND THE BOOK-ENTRY ONLY SYSTEM

The information in this Appendix E concerning The Depository Trust Company, New York, New York (“DTC”), and DTC’s book-entry system has been obtained from DTC and the District and the Trustee take no responsibility for the completeness or accuracy thereof. The District and the Trustee cannot and do not give any assurances that DTC, Direct Participants (as defined below) or Indirect Participants (as defined below) will distribute to the Beneficial Owners (a) payments of interest, principal or premium, if any, with respect to the Series [Designation] Bonds, (b) certificates representing ownership interest in or other confirmation of ownership interest in the Series [Designation] Bonds, or (c) redemption or other notices sent to DTC or Cede & Co., its nominee, as the registered owner of the Series [Designation] Bonds, or that they will do so on a timely basis, or that DTC, Direct Participants or Indirect Participants will act in the manner described in this Appendix E. The District and the Trustee are not responsible or liable for the failure of DTC or any DTC Direct or Indirect Participant to make any payment or give any notice to a Beneficial Owner with respect to the Series [Designation] Bonds or an error or delay relating thereto. The current “Rules” applicable to DTC are on file with the Securities and Exchange Commission and the current “Procedures” of DTC to be followed in dealing with DTC’s Direct and Indirect Participants are on file with DTC.

DTC acts as securities depository for the Series [Designation] Bonds. The Series [Designation] Bonds will be reissued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered certificate will be issued for each maturity of the Series [Designation] Bonds, in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has a Standard & Poor’s rating of AA+. The DTC Rules applicable to Direct and Indirect Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com). The information on such website is not incorporated herein by reference.

Purchases of Series [Designation] Bonds under the DTC book-entry system must be made by or through Direct Participants, which will receive a credit for the Series [Designation] Bonds on DTC’s

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

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

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

Redemption notices shall be sent to DTC. If less than all of the Series [Designation] Bonds are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series [Designation] Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the District as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Series [Designation] Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Payments of principal of, premium, if any, and interest on the Series [Designation] Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the District or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Direct or Indirect Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such



Participant and not of DTC, the Trustee, or the District, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of principal of, premium, if any, and interest on the Series [Designation] Bonds to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the District or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series [Designation] Bonds at any time by giving notice to the Trustee and the District. Under certain circumstances, in the event that a successor depository is not obtained, Series [Designation] Bond certificates are required to be printed and delivered.

The District may decide to discontinue use of the system of book-entry transfers for the Series [Designation] Bonds through DTC (or a successor securities depository). In that event, Series [Designation] Bond certificates will be printed and delivered as provided in the Indenture. In addition, the following provisions would apply: the principal or redemption price of the Series [Designation] Bonds will be payable upon presentation thereof, at the principal corporate trust office of the Trustee, in San Francisco, California; interest on the Series [Designation] Bonds will be payable by check mailed on each interest payment date to the registered owners thereof as shown on the registration books of the Trustee as of the close of business on the 15<sup>th</sup> day of the calendar month immediately preceding the applicable interest payment date (the “record date”), except that in the case of an owner of \$1,000,000 or more in aggregate principal amount of Series [Designation] Bonds, upon written request of such owner to the Trustee received at least 10 days prior to the record date for the payment of interest, specifying the account or accounts to which such payment shall be made (which request shall remain in effect until revoked by such owner in a subsequent writing delivered to the Trustee), such interest shall be paid in immediately available funds by wire transfer to such account or accounts on the following interest payment date; and the Series [Designation] Bonds will be transferable and exchangeable on the terms and conditions provided in the Indenture.

The information in this Appendix E concerning DTC and DTC’s book-entry system has been obtained from sources the District believes to be reliable, but the District takes no responsibility for the accuracy thereof.

## **APPENDIX F**

### **FORM OF CONTINUING DISCLOSURE AGREEMENT**

## **APPENDIX A**

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### **THE EAST BAY MUNICIPAL UTILITY DISTRICT**

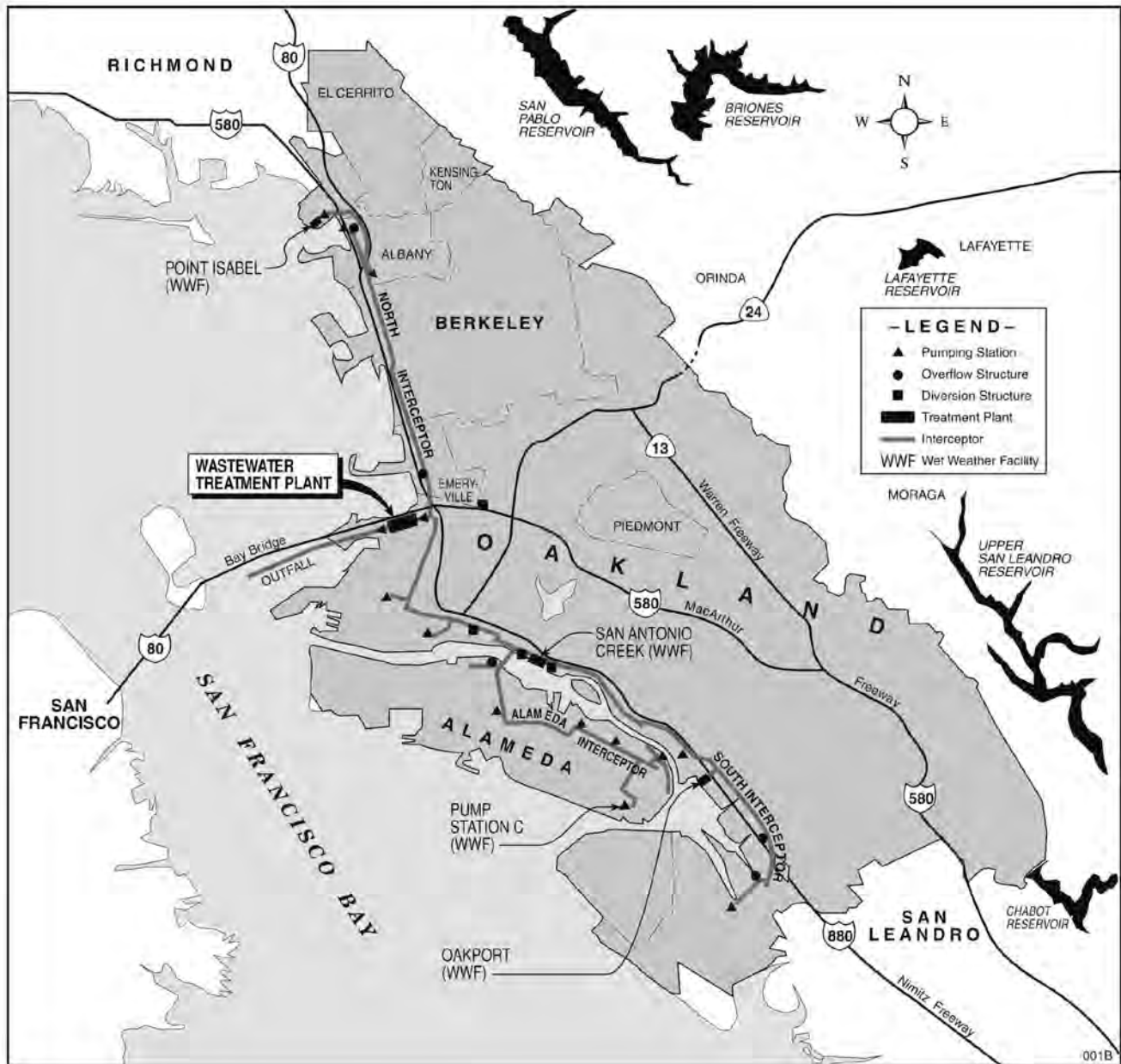
#### **(THE WASTEWATER SYSTEM)**

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The East Bay Municipal Utility District occupies 331 square miles of the San Francisco-Oakland metropolitan region. The Wastewater System serves approximately 650,000 persons in an area designated as Special District No. 1, which covers approximately 88 square miles primarily within Alameda County.

**EAST BAY MUNICIPAL UTILITY DISTRICT  
WASTEWATER SYSTEM  
(SPECIAL DISTRICT NO. 1)**



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## THE DISTRICT

### Organization

In May 1923, voters in cities along the eastern shore of the San Francisco Bay located in portions of Alameda and Contra Costa Counties (known throughout the San Francisco Bay Area as the “East Bay”) elected to create the East Bay Municipal Utility District (the “District”) under the provisions of the Municipal Utility District Act. Under the Municipal Utility District Act, municipal utility districts are empowered to acquire, construct, own, operate or control works for supplying the district and public agencies in the territory of the district with light, water, power, heat, transportation, telephone service or other means of communications, means for the collection, treatment or disposition of garbage, sewage or refuse matter, and public recreation facilities appurtenant to its reservoirs and may do all things necessary and convenient to the full exercise of powers granted in the Municipal Utility District Act. The District presently exercises only those functions relating to water supply, power generation and recreational facilities through its Water System, and sewerage and wastewater interception, treatment and disposal and power generation through its Wastewater System, within an area known as Special District No. 1. Special District No. 1 covers only a portion of the service area of the District. The District presently does not intend to exercise other functions. Such other functions and the related facilities, if exercised, would not constitute part of the Water System or the Wastewater System.

### District Board

The District, a public agency, is governed by an elected seven-member Board of Directors (the “Board”) which determines such matters as rates and charges for services, approval of contracts, and District policy. Voters elect directors by ward to four-year terms. There are seven wards which together cover the entire service area of the District. Each year, the Board elects from among its members persons to serve as Board officers (President and Vice President). With an average service tenure of almost 15 years, each of the Board members has served one or more years as an officer of the Board of Directors and has chaired one or more of the Board’s standing committees that review financial, long-range planning, and legislative matters. The following persons currently serve on the Board:

**Andy Katz** has been a Board member since 2006 and represents Ward 4, which includes Albany, Berkeley, El Cerrito, Emeryville, Kensington and North Oakland. Mr. Katz is currently President of the Board and Chair of the Board’s Finance and Administration Committee. He is employed as an attorney and public health advocate for Breathe California. Mr. Katz has a Bachelor of Arts degree and a Master of City Planning degree from the University of California, Berkeley, and a law degree from Santa Clara University. His current term expires on December 31, 2014.

**Katy H. Foulkes** has been a Board member since 1994 and represents Ward 3, which includes the City of Piedmont and a portion of Oakland, in Alameda County, the Contra Costa County cities of Orinda and El Sobrante, the Town of Moraga, and portions of Pinole and Richmond. Ms. Foulkes is currently Vice President of the Board, and she represents the District on the governing boards of the Upper Mokelumne River Watershed Authority and the Freeport Regional Water Authority. Ms. Foulkes served multiple terms as an officer for Region 5 of the Association of California Water Agencies (“ACWA”) and as a member of ACWA’s Board of Directors. She is Vice-President of the Alameda Chapter of the California Special Districts Association and Co-Chair of the Bay Area Water Forum. Ms. Foulkes has a Bachelor of Arts degree in English from the University of California, Berkeley. Her current term expires on December 31, 2014.

**John A. Coleman** has been a Board member since 1990 and represents Ward 2, which includes Alamo, Lafayette, Walnut Creek, the Town of Danville, the communities of Blackhawk and Diablo, and portions of Pleasant Hill and San Ramon. Mr. Coleman represents the District on the governing boards of the joint powers authorities in which the District participates that manage the provision of recycled water service (the DSRSD/EBMUD Recycled Water Authority (DERWA)), Sierra Nevada watershed management and protection (the Upper Mokelumne River Watershed Authority) and supplemental water supplies for dry years (the Freeport Regional Water Authority). Mr. Coleman is Vice President of ACWA, a board member of the National Water Resources Association and a board member of the WaterReuse Association. He is also a past president of the California Association of Sanitation Agencies. Mr. Coleman is employed as the Executive Director of the Bay Planning Coalition. He has a Bachelor of Science degree in Natural Resources from the University of California, Berkeley and a certificate in management from the University of Pacific School of Business and Public Administration. His current term expires on December 31, 2014.

**Doug A. Linney** has served on the Board since 2000 and represents Ward 5, which includes the Alameda County cities of Alameda and San Lorenzo, the West Oakland and Oakland Airport Area, and a portion of San Leandro. Mr. Linney is currently chair of the Board's Planning Committee. He is employed as President of The Next Generation, a public relations firm providing services that emphasize achieving environmental protection. Mr. Linney has a Bachelor of Science degree in environmental science and public policy from the University of California, Davis. His current term expires on December 31, 2016.

**Lesia R. McIntosh** has served on the Board since 1999 and represents Ward 1, which includes the Contra Costa County cities of Crockett, Hercules, Rodeo and San Pablo; portions of Richmond and Pinole, and the communities of North Richmond and Selby. Ms. McIntosh is currently chair of the Legislative/Human Resources Committee. Ms. McIntosh is employed as a lawyer specializing in business, land use and estate planning. She has a Bachelor of Science degree in political science from the University of California, Berkeley and a law degree from John F. Kennedy University. Ms. McIntosh's current term expires on December 31, 2016.

**Frank G. Mellon** has served on the Board since 1994 and represents Ward 7, which includes the areas of Castro Valley, communities of Cherryland and Fairview; portions of San Leandro and Hayward in Alameda County, and a portion of San Ramon in Contra Costa County. Mr. Mellon currently serves on the District's Retirement Board and on the Legislative/Human Resources Committee. He also represents the District on the governing board of DERWA. Mr. Mellon is employed as a consultant specializing in human resources and labor relations and he teaches labor law in the California State University East Bay Human Resources Certificate Program. Mr. Mellon has a Bachelor of Arts degree in Management from the University of Hawaii and a Master's Degree in Business Administration from St. Mary's College in Moraga. His current term expires on December 31, 2014.

**William B. Patterson** has served on the Board since 1997 and represents Ward 6, which includes Alameda County's East Oakland Hills and south of Lake Merritt to the San Leandro city boundary. Mr. Patterson is currently Vice-President of the District's Retirement Board. He retired several years ago, after working for many years as the City of Oakland Manager of Parks and Recreation. He has Bachelor's and Master's degrees in Parks and Recreation Administration from San Francisco State University and a Social Services Certificate from the University of California, Berkeley. Mr. Patterson's current term expires on December 31, 2016.

## **District Management**

**Alexander R. Coate** joined the District in 1993 and was appointed General Manager in 2011. Prior to his appointment as General Manager, he was Director of Water and Natural Resources with responsibility for water supply planning, water rights, and watershed management including recreation and fisheries. He has more than 29 years of experience with public agencies, engineering consulting firms, research and law. Mr. Coate is a member of the American Water Works Association and the Association of California Water Agencies. He currently serves on the Board of Directors of the Central Valley Project Water Association and California Urban Water Agencies. Mr. Coate has a Bachelor's degree in Neurobiology and a Master's degree in Civil Engineering, both from the University of California, Berkeley.

**Jylana D. Collins** joined the District in 1994 and was appointed General Counsel in 2006. Prior to her appointment as General Counsel, she was Assistant General Counsel. Before joining the District, she was Deputy City Attorney for the City of Berkeley. She has over 29 years of experience in public law. Ms. Collins has a Bachelor's degree in Psychology from Antioch University West and a law degree from the University of San Francisco School of Law.

**Eric L. Sandler** was appointed Director of Finance in 2012. He has over 24 years of experience in municipal and infrastructure financing. Prior to joining the District, he was Director of Finance/Treasurer at the San Diego County Water Authority. He also served as Director of Financial Planning and Acting Director of Finance for the San Francisco Public Utilities Commission. Previously, he was employed by Lehman Brothers in the municipal investment banking group in San Francisco. He has a Bachelor's degree in Biology from Stanford University and a Master's degree in Business Administration from the University of California, Berkeley.

**Bennett K. Horenstein** joined the District in 1991 and was appointed Director of Wastewater effective May 20, 2013. During his 22 years with the District, M. Horenstein has worked in various capacities in the District's Wastewater Department, including most recently as Manager of Environmental Services, with responsibility for a range of technical and regulatory activities, including the long-term approach to regional wet weather flow management and associated private lateral sewer program, and the development of the District's resource recovery program. He has over 25 years of experience in the engineering field. Mr. Horenstein has a Bachelor of Science degree in Environmental Engineering from the University of Florida.

**Xavier J. Irias** joined the District in 1986 and was appointed Director of Engineering and Construction in 2006. Prior to that appointment, he held progressively more responsible positions managing engineering design and engineering services, and he has over 28 years of experience in the engineering field. Mr. Irias has a Bachelor of Science degree in Civil Engineering from the University of California, Berkeley.

**Carol K. Nishita** joined the District in 1989 and was appointed Director of Administration in 2007. Prior to that appointment, she held progressively more responsible positions, including ten years as the Manager of Budget and Rates. Before joining the District, Ms. Nishita worked as a manager in non-profit and county agencies and as a policy analyst for the Governor's Office of Planning and Research in Sacramento. Ms. Nishita has a Bachelor of Arts degree in Sociology from the University of California, Berkeley and a Master's degree in Social Service Administration from the University of Chicago.

**Richard G. Sykes** joined the District in 1989 and was appointed Director of Water and Natural Resources in 2011. Mr. Sykes has held progressively more responsible positions over that time;



he has broad knowledge of the District's operations and is very experienced in water quality and regulatory issues. He has a Bachelor's degree in Conservation of Natural Resources and English and a Master's degree in Environmental Engineering from the University of California, Berkeley.

**Michael J. Wallis** joined the District in 1985 and was appointed Director of Operations and Maintenance in 1996. Prior to his current appointment Mr. Wallis held progressively more responsible positions in the District's Wastewater Department, and served as Director of Wastewater for several years. Mr. Wallis has over 35 years of water and wastewater related experience. He serves on the Board of Directors for the Association of Metropolitan Water Agencies and currently holds the position of Secretary. He has a Bachelor of Science degree and a Master's degree in Civil Engineering from North Carolina State University.

**Lynelle M. Lewis** joined the District in 1993 and was appointed Secretary of the District in 1995. She is a Certified Municipal Clerk and a member of the City Clerks Association of California and the International Institute of Municipal Clerks. Ms. Lewis received her Bachelor of Science degree in Business Administration from San Jose State University.

**Wanda B. Hendrix** joined the District in 1994 and was appointed Treasury Manager in 2006. She served as Principal Management Analyst for the Finance Department of the District prior to her appointment. Before joining the District, Ms. Hendrix worked for the City of Hayward as the Budget Administrator for eight years. Ms. Hendrix has a Bachelor's degree in Sociology and a Master's degree in Public Administration from San Jose State University.

## **Employees and Employee Relations**

As of August 31, 2013, the District has 1,461 regular (full-time equivalent) employees in the Water System and 250 regular (full-time equivalent) employees in the Wastewater System.

The District has four unions representing approximately 1,565 workers out of a total full-time equivalent workforce of 1,711 employees: Local 2019 of the American Federation of State, County and Municipal Employees ("AFSCME") represents white collar workers including professionals; Local 444 of AFSCME represents blue collar workers; Local 21, International Federation of Professional and Technical Engineers represents supervisory employees; and Local 39, International Union of Operating Engineers represents water treatment/distribution workers.

Locals 2019, 444, 21 and 39 are operating under Memoranda of Understanding ("MOUs"), first approved by the District Board in 2008, and extended by mutual agreement in 2011 for an additional two years. Each of the current MOUs expired on April 21, 2013. Negotiations for successor MOUs are ongoing. The MOUs are comprehensive in scope and provide for binding arbitration for the resolution of grievances. The District has not had a strike or work stoppage since 1985.

For a discussion of the District Employees' Retirement System, see "WASTEWATER SYSTEM FINANCES – Employees' Retirement System."

## **Service Area**

Originally formed to include nine cities covering 92.6 square miles, the District has grown by more than 450 separate annexations to a present area of 332 square miles in 20 incorporated and 15 unincorporated communities in both Alameda and Contra Costa Counties. It covers the eastern shore of San Francisco Bay from Carquinez Strait on the north to and including San Lorenzo on the south and it extends approximately 20 miles east, beyond the Oakland-Berkeley hills, into Contra Costa County.

The District's Water System serves this entire area, reaching 53% of the combined population of Alameda County and Contra Costa County. Approximately two-thirds of the population within the District service area resides in the cities of Alameda, Berkeley, Oakland, San Leandro, Richmond, and Walnut Creek.

The land area between the present service area boundary and the ultimate service area boundary, approximately 69 square miles, includes some areas of potential development. However, a large part of this land area is parklands and other undeveloped lands that are not anticipated to be developed in the foreseeable future. Another 81 square miles within the ultimate service area boundary outside the District's present service area boundary is under the waters of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the west and north by the shorelines of the San Francisco and San Pablo Bays. The ultimate service area boundary is limited on the south and northeast by adjoining water agencies which have sources of supply independent of the District. There is limited potential for new development at the southern end of the San Ramon Valley, now in the early stages of land use planning and environmental documentation, which is located just outside the ultimate service area boundary. The District service area population, currently 1.3 million, is projected to grow by 2035 to a population of 1.75 million, with much of that growth expected to come from infill development within the urbanized parts of the service area.

The Municipal Utility District Act was amended in 1941 to enable formation of special districts for wastewater service provision. In 1944, voters elected to form the District's Special District No. 1 to treat wastewater released into the San Francisco Bay. The District's wastewater treatment system (the "Wastewater System") presently serves approximately 650,000 people in an 88-square-mile area of the two counties along the east shore of the San Francisco Bay, extending from Richmond on the north, southward to San Leandro. Domestic, commercial and industrial wastewater is treated for the six cities of Alameda, Albany, Berkeley, Emeryville, Oakland, and Piedmont, and for the Stege Sanitary District, which includes El Cerrito, Kensington and part of Richmond. Each of these entities operates a sewer collection system that discharges into the District's intercepting sewers. In addition to treating waste received through the sewer collection system, the District accepts high-organic waste streams delivered in trucks. The wastes include domestic waste from septic tanks, fat, oil, and grease from restaurants and other food and drink wastes.

## **Taxation of the District**

All property of the District within the District's boundaries generally is exempt from property taxation. District-owned land outside of the District's boundaries is taxable, but improvements constructed on that land by the District are not taxable. As a public agency, the District is exempt from the payment of State of California (the "State") and federal income taxes.

## **THE WASTEWATER SYSTEM**

### **General**

The District's Wastewater System treats and disposes of the wastewater from an area within the District designated as Special District No. 1. Special District No. 1, a separate district within the District governed by the Board, was established in 1944 and is administered by the District's Wastewater Department. As noted above, Special District No. 1 intercepts, treats and disposes of wastewater within its wastewater service area, which includes the six participating cities of Alameda, Albany, Berkeley, Emeryville, Oakland and Piedmont and the Stege Sanitary District (collectively, the "participating agencies"), each of which maintains the responsibility for collecting and conveying wastewater to the District interceptors. The participating agencies and Special District No. 1 operate under separate Regional Water Quality Control Board San Francisco Bay Region ("RWQCBSFBR") National Pollutant Discharge Elimination System ("NPDES") permits and are separately responsible for failures of their own collection, conveyance and/or disposal systems. At the request of the City of Richmond, the District is presently participating in a study to explore the possibility of the District accepting wastewater from the Richmond Municipal Sewer District, which serves the majority of the City of Richmond, and has an average dry weather flow of approximately 6.5 million gallons per day ("MGD"). Under an agreement between the City of Richmond and the District, the City of Richmond will reimburse the District for its costs to perform the study, up to \$250,000. The study is anticipated to be completed by December 2013.

In addition to treating waste received through the sewer collection system, the District accepts high-organic waste streams delivered in trucks; the wastes include domestic waste from septic tanks, fat, oil and grease from restaurants and other food and drink wastes.

Table 1 shows the population trends for the seven largest cities within the District's Wastewater System service area, Alameda and Contra Costa Counties and the State for the current and last four years.

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**Table 1**  
**SEVEN LARGEST CITIES IN DISTRICT WASTEWATER SYSTEM SERVICE AREA**  
**ALAMEDA, CONTRA COSTA COUNTIES AND CALIFORNIA**  
**Population Trends<sup>(1)</sup>**

	2009	2010	2011	2012	2013
Seven Largest District Cities:					
Oakland	389,913	391,475	392,333	394,832	399,326
Berkeley	110,982	112,363	113,925	114,688	115,716
Alameda	73,166	73,717	74,052	74,544	75,126
El Cerrito	23,350	23,552	23,649	23,801	23,910
Albany	18,196	18,481	18,345	18,467	18,430
Piedmont	10,638	10,674	10,710	10,793	10,889
Emeryville	9,702	9,795	10,110	10,186	10,269
Total Seven Cities	635,947	640,057	643,124	647,311	653,666
Alameda County	1,497,799	1,509,240	1,517,756	1,530,176	1,548,681
Contra Costa County	1,038,390	1,047,948	1,056,306	1,066,602	1,074,702
California	36,966,713	37,223,900	37,427,948	37,668,804	37,966,471

<sup>(1)</sup> As of January 1 of each year. Includes the six participating cities and El Cerrito, the largest incorporated portion of the Stege Sanitary District service area.

Source: 2008-2010: State of California, Department of Finance, E-8 Historical Population and Housing Estimates, 2000-2012 Report, by Year, Sacramento, California, November 2012 (Revised Estimates).

2011-2013: State of California, Department of Finance, E-1 Population Estimates for Cities, Counties and the State with Annual Percent Change – January 1, 2011 and 2012, Sacramento, California, May 2012 and – January 1 2012 and 2013, Sacramento, California, May 2013.

### **Wastewater Facilities**

The District's interceptors consist of 29 miles of reinforced concrete gravity pipeline, ranging from 18 inches to 9 feet in diameter, and 8 miles of pressure pipeline from pump stations. The interceptors collect wastewater from approximately 1,700 miles of public sewers owned and operated by the participating agencies. Fifteen pumping stations, ranging in capacity from 1.5 to 60 MGD, lift wastewater throughout the interceptors as it travels to the District's Main Wastewater Treatment Plant in Oakland near the entrance of the San Francisco-Oakland Bay Bridge (the "Main Wastewater Treatment Plant"). The Main Wastewater Treatment Plant provides secondary treatment for permitted dry weather flow of up to 120 MGD and a maximum flow of 168 MGD during wet weather storm events. Primary treatment can be provided at the Main Wastewater Treatment Plant for up to a peak of 320 MGD, with peak influent hydraulic capacity of 415 MGD when utilizing an on-site 11 million gallon storage basin. The annual average daily flow is approximately 70 MGD.

Primary treatment removes floating material, oils and greases, sand and silt and organic solids heavy enough to settle in water. Secondary treatment biologically removes most of the suspended and dissolved organic and chemical impurities that would otherwise reduce the oxygen content of the waters of the San Francisco Bay if allowed to decompose naturally. The treatment steps are pre-chlorination, screening, grit removal, primary sedimentation, secondary treatment using high-purity, oxygen-activated sludge, final clarification, biosolids digestion, dewatering and beneficial use of biosolids through land application at non-edible crop farm sites or alternative daily cover at landfills. The treated effluent is then

disinfected, dechlorinated and discharged one mile off the East Bay shore through a deep-water outfall into San Francisco Bay.

The District has three wet weather facilities (Oakport, San Antonio Creek and Point Isabel), as well as five overflow structures that discharge stormwater and untreated sewage into the San Francisco Bay during wet weather storm events that exceed the capacity of the RWQCBSFBR-permitted wet weather system. The overflow structures are located at Temescal Creek, Oakland Inner Harbor (Alice Street), Oakland Inner Harbor (Webster Street), Elmhurst Creek and San Leandro Creek. In order to reduce storm water inflow and infiltration into the Wastewater System, the communities that discharge into the District's interceptors are rehabilitating their sewers to minimize the amount of inflow and infiltration into their collection systems. See “– Wet Weather Program” below.

The Wastewater System, which began operations in 1951, significantly reduced the pollution caused by the direct discharge of raw wastewater into the San Francisco Bay. In the late 1960s and early 1970s, however, the federal and State governments adopted new and more stringent standards of pollution control that required a higher level of treatment. The method selected to meet the new requirements was the high-purity, oxygen-activated sludge secondary treatment process in operation today. A major expansion project completed in 1978 included improvements to the existing primary treatment facility, and added secondary treatment facilities, eight new digesters, sludge dewatering facilities, including four centrifuges, and an advanced wastewater treatment plant for recycling treated wastewater for use in the plant and on the grounds. Funding of this wastewater treatment system improvement project was provided from federal, State and District sources.

## **Wastewater Flows**

Table 2 presents a ten-year record of wastewater flows through the Main Wastewater Treatment Plant, expressed as the average daily flow for each Fiscal Year.

**Table 2**  
**AVERAGE DAILY WASTEWATER FLOW**  
**(million gallons per day)**

<i>Fiscal Year Ended</i>	
<i>June 30</i>	<i>Flow</i>
2004	72
2005	78
2006	82
2007	67
2008	69
2009	66
2010	68
2011	71
2012	62
2013	59

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Source: The District.

## **Wet Weather Program**

In the 1970s, deteriorated community sewer pipes and improper storm drain connections allowed rainwater to enter local sewer systems during certain storms, causing overflows into streets, creeks and

the San Francisco Bay at more than 175 locations. Beginning in 1975, the District and the participating agencies in its service area undertook a multi-year planning effort to address these issues, and in 1979, the District entered into a joint powers agreement with the participating agencies to develop a regional solution. This planning process resulted in the implementation of two key programs: the District's Wet Weather Program and the East Bay Infiltration/Inflow Correction Program, for which the District is the lead agency.

The District's Wet Weather Program was initiated in 1988 and the final projects were completed in 1998. The Wet Weather Program involved the design and construction of more than \$300 million in new facilities and improvements, including three new wet weather facilities, two storage basins, 7.5 miles of new interceptors and improvements at the Main Wastewater Treatment Plant.

The 158-MGD Oakport Wet Weather Facility was completed in 1990. It provides for peak wet weather flow diversion along the District's South Interceptor.

Two projects totaling \$100 million were completed in 1992 that increased the capacity of the Main Wastewater Treatment Plant from 290 MGD to 415 MGD (peak influent hydraulic capacity) to accommodate peak wet weather flows. These projects included major modifications to the influent and effluent pumping stations, the solids-handling system, the chlorination facilities, the process control system, and an 11-million gallon storage basin to temporarily store peak storm flows for treatment after flows subside.

Construction was also completed in 1992 on two major pipeline projects, the South Foothill and Adeline Street Interceptors. These "joint-benefit" relief sewers serve the District and the cities of Oakland, Berkeley and Emeryville, providing greater hydraulic capacity to eliminate wet-weather overflows.

In 1993, the 100-MGD Point Isabel Wet Weather Facility was completed. It accepts peak wet weather flows from the District's North Interceptor. By 1996, the 51-MGD San Antonio Creek Wet Weather Facility, the 8.6-MGD Pump Station C/1-MGD Storage Basin and the 7.5-MGD Pump Station B Wet Weather Improvement projects, totaling nearly \$34 million, were completed and placed in operation. The 28-MGD North Interceptor Wet Weather Project was completed in 1998, and diverts flows away from the Main Wastewater Treatment Plant to the Point Isabel facility.

Additional projects were completed by the District in 1998 that increased the District's wet weather capacity to 724 MGD.

The East Bay Infiltration/Inflow Correction Program was initiated as a result of an East Bay Infiltration/Inflow Study which recommended an overall 20-year program of sewer rehabilitation and construction of new sewer capacity in each participating agency's collection system. In 1986, the joint powers agreement between the District and the participating agencies was amended to implement this program. The parties to the joint powers agreement are continuing with this original long-term program to correct the overflow problem.

Implementation of the District's Wet Weather Program was mandated by the RWQCBSFBR. The participating agencies' improvement programs are also mandated by an administrative Cease and Desist Order issued by the RWQCBSFBR as a result of wet weather overflows from their respective collection systems. The District's original Wet Weather Program and the East Bay Infiltration/Inflow Correction Program were designed to eliminate wet weather overflows from District facilities for up to a specified design storm event, assuming operation of the District's three wet weather facilities during peak storm events.

See “– Regulatory Matters” below for a discussion of regulatory matters affecting the Wet Weather Program and recent changes to the regulatory framework under which the District’s wet weather facilities operate, including certain litigation relating thereto described under “– Regulatory Matters – *Litigation Relating to the District’s Wet Weather Facilities NPDES Permit.*”

## **Biosolids Management**

The solid, stabilized organic materials removed from wastewater treatment process are called biosolids. The District generates approximately 80,000 wet tons per year of biosolids from wastewater treatment. Because there is no long term biosolids storage space available at the Main Wastewater Treatment Plant, each day’s biosolids production must have a reliable daily destination for beneficial reuse or disposal.

In 1990, the District completed the Long-Term Sludge Management Plan (“LTSMP”) for sewage sludge disposal and reuse alternatives. The LTSMP recommended maximizing beneficial reuse while maintaining disposal capacity. In 1993, upon the issuance of the regulations of the USEPA governing beneficial reuse of biosolids, the District initiated the Sludge Management Implementation Plan (“SMIP”) to reassess the conclusions of the LTSMP and identify a composite program for implementation. The District is currently implementing capital projects to improve the reliability and efficiency of biosolids processing facilities. The District has completed the installation of a more efficient fifth dewatering centrifuge, which has helped reduce the total biosolids volume produced at the Main Wastewater Treatment Plant and has also recently replaced one of the other four existing centrifuges with a similar, more efficient unit.

All of the District’s biosolids from its Main Wastewater Treatment Plant are currently beneficially reused through land application on non-food crop land or alternative daily cover at landfills under contracts, which expire on December 31, 2016. This work is accomplished through private contractors at substantial cost savings to the District, compared with the prior practice of landfill disposal and local composting. The District has completed implementation of the 2003 Biosolids Master Plan Update to identify a long-term cost effective strategy for biosolids reuse and/or disposal. One recommendation of the 2003 Biosolids Master Plan Update was to investigate a regional facility that could produce higher quality biosolids which would be more acceptable to the public. The District is currently monitoring development of a regional biosolids facility by 18 other Bay Area agencies. The District began implementing a Biosolids Environmental Management System in July 2005 and received program certification from the National Biosolids Partnership (“NBP”) in September 2006. The District successfully completed external program interim audits in 2007, 2008, 2009, 2010 and 2012, and a full-program recertification audit in 2011. The District’s biosolids program is currently certified at the “Platinum-level” by the NBP. The NBP is an alliance between the National Association of Clean Water Agencies, the Water Environment Federation and the USEPA. This program helps ensure excellence in biosolids management.

## **Power Facilities/Energy Recovery**

Another wastewater treatment byproduct is methane gas, produced by the sludge digestion process. In the spring of 1985, the District placed a 6.3-megawatt power generation plant into service, which recovers about 85% of the available energy from the methane gas produced at the Main Wastewater Treatment Plant. Through this facility, the District generates more than 90% of the electrical power needed to operate the Main Wastewater Treatment Plant. The District completed construction of a facility expansion that adds an additional 4.5-megawatt turbine to produce additional renewable energy at the end of 2011. The three existing internal combustion engines (in combination with the new turbine) have allowed the District to sell power generated in excess of plant demand back to the utility grid. See “– Capital Improvement Program – *Wastewater Infrastructure Program*” below.

## **Resource Recovery**

In 2001, the District initiated a pilot program to provide revenue enhancement for the Wastewater System through the utilization of excess capacity at its Main Wastewater Treatment Plant to accept trucked waste from outside its service area. The District’s Resource Recovery Program accepts a variety of trucked liquid and solid waste streams from outside the service area of Special District No. 1 for disposal in an environmentally sound manner. High strength trucked wastes are discharged into underground tanks, processed and anaerobically co-digested with biosolids. This program provides an additional source of methane gas for use in the District’s power generation plant at the Main Wastewater Treatment Plant as described above and generates an additional source of revenue for the Wastewater System through the collection of tipping fees charged to the trucked waste haulers. See “WASTEWATER SYSTEM FINANCES – Sources of Funds.”

## **Wastewater Source Control**

Source control involves the removal of such toxics as heavy metals and organic pollutants before discharging wastes into the sewer system. The District’s wastewater service area includes more than 20,000 commercial and industrial accounts. In 1972, the District began a local source control program requiring pretreatment of wastes by certain categories of industrial customers. The Wastewater Source Control Program reduces approximately 93% of the amount of heavy metals discharged into sewers, and the District’s treatment plant reduces the remaining heavy metals by approximately another 75%. These two steps together reduces approximately 98% of heavy metals discharged into the San Francisco Bay since 1977.

In 1988, source control efforts expanded into pollution prevention/waste minimization activities by educating commercial customers about how to reduce not only heavy metals, but volatile organics as well. In 1989, 1993, 1997 and 2004, the District’s Pretreatment Program received the National Pretreatment Excellence Award for large programs from the United States Environmental Protection Agency (“USEPA”), the only plant of its size to receive four National EPA Pretreatment Program awards. This EPA award program was discontinued by 2008.

## **Regulatory Matters**

***General Regulatory Framework.*** The construction and operation of wastewater treatment facilities and the discharge of wastewater are highly regulated activities. The two major laws governing the Wastewater System are the federal Clean Water Act enacted in 1972 (the “Clean Water Act”), and the State’s Porter-Cologne Act first enacted in 1969 (the “Porter-Cologne Act”). Both laws require that policies, plans, requirements and standards for discharges be developed for all water bodies in order to protect the beneficial uses of the water. The Clean Water Act also regulates the disposal of sewage sludge



and authorizes the adoption of sediment standards. The Porter-Cologne Act specifically requires the adoption of sediment standards for enclosed bays and estuaries. In 2008, the State approved sediment quality objectives for enclosed bays and estuaries, including the San Francisco Bay.

The USEPA, the federal agency charged with implementation and enforcement of the Clean Water Act, has delegated much of the planning, permitting and enforcement activities to the states. In California, the State Water Resources Control Board (the “SWRCB”) develops policies, plans, requirements and discharge standards for the three types of State waters: inland surface waters, enclosed bays and estuaries, and the ocean.

The Clean Water Act requires the adoption of criteria for priority toxic pollutants that may reasonably be expected to interfere with designated beneficial uses of the waters of the State. As they apply to inland surface waters, enclosed bays, and estuaries, these criteria are found in the California Toxics Rule (“CTR”) promulgated by USEPA in 2000 (40 C.F.R. §131.38), and are implemented by SWRCB’s “Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California” (commonly known as the State Implementation Plan or “SIP”) approved in 2000 and amended in 2005 (SWRCB Order No. 2005-0019). These two documents form the basis of the NPDES permitting process for Publicly Owned Treatment Works (“POTWs”) in the State. The CTR provides the Water Quality Objectives for priority toxic pollutants and the SIP prescribes the methodology for determining whether a limit for a toxic pollutant should be included in a NPDES permit and the method for calculating the limit if one is needed.

In May 2006, the SWRCB adopted a Statewide General Waste Discharge Requirements (“GWDR”) for Sanitary Sewer Systems (SWRCB Order No. 2006-0003-DWQ). The GWDR is a proactive approach to ensure system-wide operation, maintenance and management plans to reduce sewer system overflows. Basic requirements of GWDR include on-line reporting of sewer system overflows and the development of a Sewer System Management Plan.

The RWQCBSFBR is the enforcement arm of the State and federal water pollution control programs in the San Francisco Bay region. The RWQCBSFBR issues discharge permits under Section 401 of the Clean Water Act, and establishes waste discharge requirements under the Porter-Cologne Act. Discharge permits are issued for a five-year period. The District’s Wastewater System currently has two NPDES permits, one for the Main Wastewater Treatment Plant which expires in 2015 (RWQCBSFBR Order No. R2-2010-0060), and one for the wet weather facilities which expires in 2014 (RWQCBSFBR Order No. R2-2009-0004). See also “– *Litigation Relating to the District’s Wet Weather NPDES Permit*” below.

***Permit Compliance History.*** In the 62-year history of Special District No. 1, the District has had fines imposed for permit violations under its NPDES permits only five times: \$70,000 in 1987, \$1,500 in 1995, \$314,000 in 2005, \$209,851 in 2010, and \$21,000 in 2011. The 1987 violation resulted when, before construction to renovate Pump Station H could begin, a simultaneous failure of two control system components resulted in a spill of approximately 8 million gallons of rain-diluted wastewater. The 1995 violation resulted when a chlorine residual occurred for several hours due to a lack of treatment chemical at Point Isabel. The 2005 violation resulted from an overflow from the District’s interceptor system during a significant storm event which occurred on December 18, 2005. Failure of a PG&E feed line resulted in loss of electrical power at the District’s Main Wastewater Treatment Plant for approximately 90 minutes. The District identified corrective actions to improve the reliability of electrical power service at the Main Wastewater Treatment Plant. The 2010 fine resulted from an effluent chlorine residual at the Point Isabel Wet Weather Facility, incomplete treatment during a single discharge from the San Antonio Creek Wet Weather Facility, and a sanitary sewer overflow from the collection system that occurred in 2009. Issues with the dechlorination system resulted in the chlorine residual and problems with activation

of the chlorination system resulted in the discharge of approximately 87,000 gallons of partially treated rain-diluted wastewater. An intense storm on October 13, 2009 that exceeded collection system capacity resulted in the overflow of approximately 233,000 gallons of rain-diluted wastewater. The 2011 violation resulted in a minimum mandatory penalty for seven permit violations that occurred between 2002 and 2006 from the District's three wet weather facilities. Five of the violations were the result of issues with the dechlorination feed systems that were corrected in 2007. The other two violations resulted from silver limit violations resulting from illicit discharges from an industrial facility in 2006. The illicit discharge was discontinued upon discovery and monetary penalties were collected by the District from the discharger.

In early 2010, the District settled five permit limit exceedances dating back to 2006 and 2007 and was assessed a \$6,000 total minimum administrative civil liability penalty. The RWQCBSFBR determined that these exceedances did not constitute violations of the NPDES permit requirements. In September 2010, following 132 consecutive months with no permit violations at its Main Wastewater Treatment Plant, the District experienced an acute toxicity bioassay test exceedance. This condition also occurred from November 2010 to February 2011. Following an extensive investigation by the District over 14 months, it was determined that the cause of toxicity was dissolved carbon dioxide, which would be rendered harmless once discharged to the San Francisco Bay. On November 16, 2011, the District received a letter from RWQCBSFBR concurring with the results of this investigation and confirming that the District did not in fact violate its NPDES permit during the above referenced periods. Following resolution of this issue, the District has now maintained 161 consecutive months (since August 1999) with no permit violations at its Main Wastewater Treatment Plant.

The Main Wastewater Treatment Plant is also regulated under the Clean Air Act. The District has exceeded the permitted hydrogen sulfide limit on digester gas a total of 11 occasions over the last 10 years. In response to the exceedances, the District constructed a new ferric feed system and a digester gas scrubber system to limit the production of hydrogen sulfide gas and remove any significant hydrogen sulfide levels prior to combustion.

***Litigation Relating to the District's Wet Weather Facilities NPDES Permit.*** On January 12, 2007, the SWRCB on its own motion for review issued a draft order (the "Draft SWRCB Remand Order") reviewing the District's 2005 Wet Weather Facilities NPDES Permit (RWQCBSFBR Order No. R2-2005-0047) and concluding that the 2005 Wet Weather Facilities NPDES Permit and time schedule order (RWQCBSFBR Order No. R2-2005-0048, the "TSO") approved in connection with the issuance of the Wet Weather Facilities NPDES Permit by the RWQCBSFBR in September 2005 were inconsistent with the mandates of the Clean Water Act (33 U.S.C. §1251 et seq.) and the implementing USEPA Regulations (40 C.F.R. Part 123). The Draft SWRCB Remand Order concluded that the District's 2005 Wet Weather Facilities NPDES Permit failed to implement secondary treatment requirements and to ensure compliance with applicable water quality standards. Following a public hearing held on May 1, 2007, the SWRCB approved the Draft SWRCB Remand Order with slight modifications (SWRCB Order No. WQ 2007-0004, the "SWRCB Remand Order") and remanded the 2005 Wet Weather NPDES Permit and the TSO to the RWQCBSFBR for revisions consistent with the SWRCB Remand Order.

On January 14, 2009, the RWQCBSFBR issued the District a new Wet Weather Facilities NPDES permit (RWQCBSFBR Order No. R2-2009-0004). Previous permits issued by the RWQCBSFBR allowed the District to discharge flows from its three wet weather facilities during heavy storm events, following primary treatment and disinfection, as part of a regional solution to help prevent sewer overflows on streets in the East Bay communities. This approach was consistent with USEPA policy at the time the wet weather facilities were constructed. The new permit, however, is more stringent and prohibits the District from discharging any flows from its wet weather facilities to San Francisco Bay even during heavy storm events. Recognizing that discharges from the wet weather facilities cannot be

immediately halted without causing sewer overflows, the RWQCBSFBR simultaneously issued a Cease and Desist Order (“CDO,” RWQCBSFBR Order No. R2-2009-0005) requiring the District to develop a plan for eliminating discharges from the wet weather facilities at the earliest possible date. The CDO notes that the time schedules therein account for the considerable uncertainty in determining effective measures to achieve compliance and may be revisited. The inability of the District to meet the terms of the new Wet Weather Facilities NPDES permit also prompted the USEPA, SWRCB and RWQCBSFBR to seek judicial entry of a Stipulated Order, followed by a Consent Decree, memorializing the compliance plan and rendering it enforceable. Towards that end, a Stipulated Order for Preliminary Relief (the “SO”) was negotiated among the District and the USEPA, SWRCB, RWQCBSFBR and the Department of Justice. After negotiations were completed, the regulatory agencies initiated a lawsuit against the District on January 15, 2009 (*United States of America, et al. v. East Bay Mun. Util. Dist.*, No. CV 09-0186 RS (N.D. Cal.)) and simultaneously filed the proposed SO for the Court’s approval. The SO was approved by the Court and became effective on July 22, 2009.

The objective of the SO is to develop remedial measures to address the excess wet weather flow issues, and to develop information to tailor a final remedy for inclusion in a Consent Decree which is anticipated to resolve the litigation. The SO requires the District, among other things, to initiate a number of programs, including: (i) a flow monitoring and data assessment program, including the monitoring of flows to the District’s interceptor system from the participating agencies that discharge into the District’s interceptors (see “Wastewater Facilities” above), the modeling of peak flows under design storm conditions, and the development of alternative sets of capacity flow limits; (ii) a private sewer lateral regional ordinance program requiring the District to develop, adopt and implement a regional ordinance setting standards for the performance of lateral sewer pipes that extend from privately-owned structures to the participating agencies’ collection systems and requiring property owners to obtain private sewer lateral compliance certificates at specified junctures, such as upon sale of property, upon obtaining building permits, and upon requests for changes in District water meter size; (iii) a private lateral incentive program requiring the District to provide \$2 million per year in incentives to encourage private lateral inspection and replacement; (iv) an interceptor system asset management program to develop protocols for interceptor condition assessment, including an inspection of the entire system within five years and annual repairs and reporting; and (v) development of a collection system asset management template through an interactive process among the District, the participating agencies and regulators. The total cost of these programs to the District is estimated at approximately \$5 million per year over the first five years of the SO. Funds have been budgeted in the District’s five-year Capital Improvement Program and the work required by the SO was initiated by the District in Fiscal Year 2010. Work under items (i) and (v) as described above is complete. Work on the remaining programs will continue as long as the SO is in place.

The District believes that the programs undertaken pursuant to the SO have and will continue to provide information of benefit in identifying the sources of the wet weather discharges and developing an appropriate regional plan to address them. The SO programs represent the first phase in the development of a long-term solution to address peak wet weather discharges. In parallel to the litigation and SO involving the District, the participating agencies that cause and contribute to the District’s wet weather facility discharges entered into their own SO with USEPA, SWRCB, RWQCBSFBR and the Department of Justice, which was approved by the Court in a related lawsuit (to which the District is not a party) and became effective on September 6, 2011. The activities undertaken by the participating agencies under their parallel SO are yielding further information and progress toward development of a long-term solution.

In January 2013, the District and the participating agencies began joint settlement negotiations with USEPA, SWRCB, RWQCBSFBR and the Department of Justice with a goal of adopting a long-term Consent Decree and resolving both parallel lawsuits. The Consent Decree, if negotiated and approved,

would supersede the SO and is expected to lay out a program of work by the District and the participating agencies designed to result in reducing peak wet weather flows over time to the point that the District's wet weather facilities would no longer discharge during storm events smaller than a determined design storm. In the vast majority of storms, it is anticipated that the District's wet weather facilities would then be used only to provide temporary storage of peak flows which would be drained back to the District's Main Wastewater Treatment Plant for secondary treatment and discharge. As negotiations with respect to the Consent Decree are ongoing, the District cannot predict at this time the outcome of any such negotiations nor the particular actions the District or the participating agencies may be required to undertake, or the level of financial investment that will be needed to complete any such required actions. The District anticipates that these issues will be addressed in the negotiations, which are expected to last well into 2013. The District's identified goal in the Consent Decree negotiations is to achieve a plan that serves the interests of the District and its ratepayers by adequately reducing wet weather flows while ensuring any necessary financial investments are apportioned and scheduled in the most cost-effective and equitable manner possible. The District expects that the process for renewal of the District's NPDES permit for the wet weather facilities which expires in 2014, as well as the review of the NPDES permits of the participating agencies which expire the following year, will be integrated with Consent Decree negotiations.

***Other Agencies with Regulatory Oversight Affecting the Wastewater System.*** Other regulatory agencies with approval or oversight responsibilities over the construction or operation of the Wastewater System include the Bay Conservation and Development Commission, the Bay Area Air Quality Management District, the California Department of Health Services, and the U.S. Army Corps of Engineers. The roles these other agencies play with respect to operations of the Wastewater System are summarized as follows:

*The Bay Conservation and Development Commission:* responsible for approving all projects undertaken within San Francisco Bay or within 100 feet of the mean high tide line of the Bay.

*The Bay Area Air Quality Management District:* responsible for setting air emissions standards for the Wastewater System's sewage treatment facilities and issues air emission permits.

*The California Department of Health Services:* responsible for setting standards for the use of recycled water.

*The U.S. Army Corps of Engineers:* responsible for approving all construction projects undertaken within navigable waters of the United States.

***Future Statutory and Regulatory Compliance.*** As noted above, the construction and operation of wastewater facilities and the discharge of wastewater are highly regulated activities. Federal, State and local standards and regulations are subject to change. Changes in the scope and standards for regulation of wastewater systems, such as the District's Wastewater System, may lead to increasing stringent operating requirements and the imposition of future administrative orders issued by federal or State regulators. Compliance with future requirements and orders that may be adopted could impose substantial additional costs on the Wastewater System. Furthermore, claims against the Wastewater System for failure to comply with applicable laws and regulations could be significant. The District is actively involved with major wastewater industry associations and routinely monitors and participates in the regulatory process in order to ensure that a "sound science" approach is applied in determining the need, and (if deemed necessary) implementation approach, for potential regulatory changes. However, no assurance can be given that the Wastewater System will remain subject to the laws and regulations currently in effect or will always be able to obtain all required operating permits or that the cost and/or impact of compliance

with such laws, regulations or orders will not adversely affect the finances or operations of the District and the Wastewater System.

### **Climate Change**

The effects of global climate change are expected to increase the risk of flooding at wastewater facilities due to the greater frequency of high precipitation events and sea level rise. The District has developed mitigation and adaptation strategies to deal with the changing climate and its effect on its wastewater facilities. In 2008, the District incorporated climate change into its Strategic Plan, and has developed and implemented a climate change monitoring and response plan, which includes specific guidance on infrastructure planning.

The District's response to climate change focuses on:

- Keeping current with science and assessing potential effects of climate change in the Mokelumne and East Bay watersheds and on local East Bay facilities, including the District's wastewater facilities such as the Main Wastewater Treatment Plant;
- Determining water supply and infrastructure vulnerabilities;
- Monitoring and reducing greenhouse gas emissions caused by the District's operations;
- Integrating climate change in strategic planning and budgeting decisions;
- Advocating for new legislation and regulations that help water and wastewater agencies better respond to climate change; and
- Developing adaptation and mitigation strategies as part of water supply management and wastewater treatment programs.

### **Seismic Matters**

The District is in a seismically active region of California. The Hayward Fault runs through the entire western portion of the District and the Calaveras Fault runs through the southeastern portion of the District. The Concord Fault is located several miles to the east of the District and the San Andreas Fault is located to the west.

The District commissioned a seismic evaluation study, completed in 1994, that examined the potential impacts on the District's Wastewater System of various magnitudes of earthquakes along the Hayward Fault. The study found that many of the Wastewater System facilities are located on poor soil and could be affected by liquefaction and settlement. Although structures supported on pile foundations should withstand the liquefaction with minimal structural damage, piping and electric conduit penetrating into basement walls of these structures could be sheared, effectively causing loss of function in the facility. The study further concluded that, in the event of an earthquake on the Hayward Fault measuring 7.5 on the Richter scale, approximately half of the facilities at the Main Wastewater Treatment Plant would suffer significant damage, that three of the District's 15 pump stations could possibly experience loss of function and that interceptor blockage could lead to sewage backup into the San Francisco Bay or onto city streets. A major earthquake could also have a severe adverse impact on the economy of the District's wastewater service area.

Following completion of the 1994 seismic evaluation study, the District began implementing its Wastewater Seismic Improvement Program. The Wastewater Seismic Improvement Program involves the retrofit of all the facilities that, if a failure occurred, would endanger life and/or public health. Structural

modifications will be made to reduce the possibility of significant damage to the Wastewater System. Each of the Main Wastewater Treatment Plant Operation Center, Sludge Dewatering Building, Primary Sedimentation Blower Building and Oxygenation Tank Control Building have been seismically retrofitted. All of the high priority projects identified in the 1994 seismic evaluation study have been completed.

In the event of significant earthquake damage to the Wastewater System, there can be no assurance that Subordinated Wastewater Revenues will be sufficient to pay the principal of and interest on the Wastewater System Revenue Bonds.

### **Security and Emergency Preparedness**

The District has implemented a security and emergency preparedness program that includes a Security Operations Control Center (the “SOCC”) that is staffed seven days a week, 24 hours a day. The SOCC houses a proprietary centralized security system to monitor access controls, digital video cameras and recorders, and security alarms; which include supervisory control and data acquisition (“SCADA”) alarms related to entry points and critical water distribution system hatches. The dispatchers at the SOCC monitor alarms, assess conditions using a closed circuit television system, and dispatch security and law enforcement response as needed for alarms and reports of suspicious circumstances or crimes at District facilities. In addition, the District maintains access controls for its water and wastewater treatment, administrative and maintenance facilities, its storage yards and service centers, and the reservoirs and pumping plants in its water distribution system. District security includes an internal security staff and security contracts, and both units patrol the District’s critical infrastructure and key resource facilities from the foothills in the Sierra Mountains to the San Francisco Bay. Contract security officers are also used to supplement automated access controls at certain key facilities.

In order to address emergency response by the District, the District has an established Emergency Operations Plan. Pursuant to the District’s Emergency Operations Plan, District employees are sworn disaster services workers, and staff is trained to use the State Office of Emergency Services Standardized Emergency Management System (SEMS) in response to emergencies and security incidents. As part of its Emergency Operations Plan, the District maintains two strategically located emergency operations centers and a mobile emergency command center, and has in place an emergency operations team to lead emergency response activities. The District also has adopted business continuity plans to ensure the District’s ability to respond to, work through and recover from any emergency or other event that disrupts its normal business functions.

### **Insurance**

The District uses a combination of self-funding/self-insuring and insurance coverage in the District’s risk management program. The program provides protection for the District’s buildings and facilities, including their contents and equipment, from fire, explosion and related perils, including flood. The District’s insurance program does not currently include earthquake coverage. The District self-insures for liability claims up to \$10 million for bodily injury and property damage that may arise from the District’s operations, including but not limited to use of its property, facilities, or vehicles. The District also maintains fidelity protection against fraudulent acts of employees.

The District maintains a reserve of approximately \$10 million that is earmarked to pay both liability and workers’ compensation claims. Selected insurance coverages include the following:

- \$90 million of commercial general and automobile liability insurance, subject to a \$10 million self-insured retention for the Water System and the Wastewater System;

- Statutory limits of excess workers’ compensation coverage, subject to a \$5 million self-insured retention for the Water System and the Wastewater System;
- \$200 million in coverage for District all risk property insurance, subject to a \$500,000 deductible, excluding coverage for all underground property and pipelines, earthquake and flood;
- \$25 million in coverage for flood perils (except for areas within the FEMA-designated 100-year flood plan in which a \$10 million limit is applicable), subject to a \$1.5 million deductible per occurrence, excluding coverage for all underground property and pipelines;
- \$10 million in coverage for boiler and machinery insurance, subject to a \$25,000 deductible (except for Pardee Dam, Camanche Dam and the Main Wastewater Treatment Plant, for which a \$50,000 deductible applies); and
- \$10 million in coverage for crime insurance, subject to a \$25,000 deductible.

### **Capital Improvement Program**

The District’s biennial planning process includes an update of facilities needs for the ensuing five fiscal years. A series of master plans document needs by specific asset classes and include assessments of key facilities, considering engineering condition assessments as well as operational performance and maintenance histories. Facilities in need of rehabilitation or replacement are identified and prioritized. Project scopes are also defined (for example, replacement of aging mechanical or electrical gear, seismic upgrades, or other defined scopes).

The results of the master plans are considered during the biennial update to the Capital Improvement Program (the “CIP”). The last CIP update was completed in 2013 and included a five-year capital expenditure forecast for Fiscal Years 2014 through 2018. Based upon the District’s five-year capital expenditures forecast for Fiscal Years 2014 through 2018, the District cash expenditures for capital improvements to the Wastewater System for Fiscal Years 2014 through 2018 are estimated to aggregate approximately \$155.1 million.

The Wastewater System Five-Year Capital Plan includes capital improvements both at the Main Wastewater Treatment Plant and at remote wastewater facilities designed to ensure that wastewater facilities are well maintained so that they function efficiently and safely, operate at an appropriate level of service and comply with new and existing wastewater regulations and permit requirements. Included in such five-year capital plan for the Wastewater System are the following major programs and projects:

***Wastewater Infrastructure Program.*** The Wastewater Infrastructure Program furthers the District’s objectives to replace aging infrastructure and to make infrastructure improvements to ensure delivery of reliable, high quality service now and in the future at both the Main Wastewater Treatment Plant (“MWWTP”) and at remote wastewater facilities. The majority of the work focuses on rehabilitating the digesters, sections of the sewer interceptor system, concrete structures at the MWWTP, and implementing odor control improvements. Elements of the program are described below.

The Digester Upgrade Project will rehabilitate the digesters which perform a key role in stabilizing wastewater solids prior to disposal. Phase 1 was completed in Fiscal Year 2009 and rehabilitated four primary digesters with new covers and mixers. The second phase is ongoing and construction will be completed in Fiscal Year 2014. The second phase will rehabilitate four digesters,

convert two digesters from secondary to primary, install new blending tanks and a sludge feed system, and construct a new fats, oil, and grease receiving station. The third phase will rehabilitate two digesters, and replace the floating covers with new Dystor covers. Design is scheduled for Fiscal Years 2014 through 2015, with construction in Fiscal Years 2015 through 2016. Phase 4 includes rehabilitation work on three digesters, and will replace the Dystor cover on one of the digesters. Design is scheduled to begin in Fiscal Year 2017, with construction in Fiscal Years 2018 through 2020. Phase 5 includes construction of two new digesters and is scheduled for Fiscal Years 2020 through 2023.

The Concrete Rehabilitation Project includes rehabilitating critical concrete structures, channels and gates at the MWWTP as sulfides and other constituents in the wastewater have accelerated corrosion of the concrete. Repairing the Plant Effluent Channel is the highest priority and is scheduled to be completed in Fiscal Year 2014. Repair of the Primary Tank Channels is being conducted in six phases, with the first two phases completed in Fiscal Year 2013. Phases 3 through 6 are scheduled to take place from Fiscal Years 2015 through 2020. A condition assessment of the secondary aeration reactor basins was completed in Fiscal Year 2011. Repair of the basins will be completed in four phases with the repair of two tanks per year from Fiscal Years 2015 through 2021. Rehabilitation of the concrete walls of the secondary clarifiers is scheduled for Fiscal Years 2022 through 2023.

The Odor Control Project provides for odor control facilities to improve the air quality in communities along the collection system and at the MWWTP. This project implements improvements that were identified and prioritized in the Odor Control Master Plan that was updated in Fiscal Year 2009. Planned work includes replacing the odor control units at the influent pump station in Fiscal Years 2014 through 2015; replacing the wet scrubber system at the solids dewatering building with a chemical scrubber in Fiscal Years 2015 through 2016; conducting a study of the primary sedimentation basins in Fiscal Year 2014 to evaluate potential treatment alternatives with construction occurring in two phases to cover the primary sedimentation tanks and provide new chemical scrubbers starting in Fiscal Year 2016 and going through Fiscal Year 2023; and replacing the scrubber system at the resource recovery receiving station in Fiscal Years 2016 through 2017.

The Treatment Plant Infrastructure Project provides for the cyclical replacement and rehabilitation of various facilities at the MWWTP. Improvements in Fiscal Years 2014 through 2018 include replacement of large variable frequency drives, replacement of influent screens, repair or replacement of flow meters, rehabilitation of the ventilation system in the dewatering building, and the installation of a plant-wide intercom system. The project also includes road modifications at the entrance to the MWWTP to accommodate the City of Oakland's redevelopment of property adjacent to the plant. In Fiscal Year 2019, improvements are planned for Engineers Road along the southern edge of the MWWTP which includes widening Engineers Road, a new intersection with a realigned Wake Avenue, and a new connection to Burma Road.

The Interceptor Rehabilitation program includes several projects to rehabilitate portions of the interceptor system that is now approaching 60 years of service. In Fiscal Year 2014, potential methods for corrosion prevention in the interceptor system will be evaluated, and existing cathodic protection systems will be rehabilitated and new ones installed as needed to prevent corrosion. The Wood Street segment of the South Interceptor in Oakland had one section rehabilitated in 2000. Construction is underway to rehabilitate the remainder of this two-mile, 105-inch concrete interceptor and is scheduled for completion in Fiscal Year 2016. The Versailles and Alameda Interceptors will be rehabilitated in Fiscal Years 2014 through 2016, and the 3rd Street Interceptor in Oakland in Fiscal Years 2015 through 2019.

The Motor Control Center ("MCC") Replacement Project provides for the cyclical replacement of all MCCs that are at the end of their service life. The most critical MCC will be replaced in Fiscal Year



2014, along with an assessment of MCCs at the MWWTP and installation of arc flash kits at certain MCCs. In Fiscal Years 2017 through 2018, MCCs will be replaced at the Reactor Deck (oxygenation tank) and the Operations Center. In Fiscal Years 2019 through 2020, MCCs at the Digester Control Building will be replaced.

The Centrifuge Replacement Project provides for the cyclical replacement of centrifuges for dewatering the solids processed by the digesters. A fifth centrifuge was installed in Fiscal Year 2009. The replacement of the first of the four original centrifuges with a high-speed unit was completed in Fiscal Year 2011. Replacement of the second original centrifuge and related equipment such as the feed pump, cake pump, polymer system, mechanical piping, electrical and control systems is scheduled for Fiscal Years 2020 through 2022. Replacement of the third centrifuge is scheduled for Fiscal Years 2021 through 2023.

The Power Generation Station Expansion Project will expand energy production at the MWWTP from 6 to 10.5 megawatts. With the increase of biogas production due to the Resource Recovery Program, significant quantities of biogas were flared to the atmosphere, precluding the District from utilizing the full potential of this renewable resource. The expansion includes a facility for two turbines, each with a capacity of 4.5 megawatts. One turbine was installed in Fiscal Year 2012, and the additional energy can be sold or utilized at the MWWTP to attain 100% energy self-sufficiency. The purchase and installation of the second turbine is planned for Fiscal Years 2020 through 2022.

The Pump Station Improvements program provides for the upgrade of various pump stations. The Pump Station Master Plan is being updated to identify and prioritize long-term pump station and collection system improvements, and is scheduled to be completed in Fiscal Year 2014. Such improvements may include the replacement of mechanical and electrical equipment; sump pumps and flow meters; the addition of programmable logic controllers and software; access improvements; and replacement of discharge piping. Work is scheduled to be performed on Pump Station L in Oakland in Fiscal Years 2014 through 2015, Pump Station N in Richmond in 2015, Pump Station M in Alameda in Fiscal Years 2017 through 2019, Pump Station C in Alameda in Fiscal Years 2019 through 2020, Pump Station H in Oakland in Fiscal Years 2019 through 2021, and Pump Station J in Oakland in Fiscal Years 2022 through 2023.

***Wastewater Regulatory Compliance Program.*** The Regulatory Compliance Program furthers the District's objectives to operate and maintain facilities to meet all air, land and water discharge requirements; to ensure protection and stewardship of San Francisco Bay; and implement preventative and corrective maintenance programs. The majority of work under this strategy focuses on monitoring and modeling efforts to meet discharge permit requirements, and updating the Wet Weather Master Plan. The program includes the following projects:

The Infiltration/Inflow Control Project includes work required by the NPDES permit, Cease and Desist Order, and Stipulated Order ("SO") for Preliminary Relief issued in 2009 for the District's three wet weather facilities. The required work includes flow monitoring and modeling in Fiscal Years 2014 through 2015; implementation of the regional private sewer lateral ordinance online system upgrades, the private sewer lateral rebate program, and the interceptor system asset management work plan as required by the SO which is ongoing and projected to continue over the next ten years. An engineering study to evaluate the potential application of Real Time Control systems to improve overall integration and operation of the interceptor system, wet weather facilities, MWWTP Influent Pump Station and wet weather storage basins will take place in Fiscal Year 2014.

The Wet Weather Plant Improvements Project addresses upgrades at the Wet Weather Treatment Facilities ("WWF") required to improve operations. It includes chemical system improvements to the

WWFs at Oakport and San Antonio Creek in Oakland. Work has begun to replace the existing suction and discharge piping and associated valves and pressure relief systems for the sodium hypochlorite and sodium bisulfite chemical feed systems. The work is scheduled for completion in Fiscal Year 2015.

The North Interceptor Pump Station Q Project (“PS Q”) involves the design and construction of modifications to allow dual operation of PS Q for use as either a gravity relief sewer (north to south flow) or a forcemain (south to north flow). Based on wet weather flow modeling work, discharges from the wet weather facilities may be reduced by operating the PS Q forcemain as a gravity sewer with relatively minor modifications. This work is scheduled for Fiscal Years 2017 through 2018.

***Wastewater Non-Program Specific Construction Contingency.*** The Non-Program Specific Construction furthers the District’s objective to maintain a strong financial position to meet short and long-term needs. The contingency program focuses on making funds available for unanticipated needs, and for projects that are seeking grants to pay for a majority of the project’s cost. The District has appropriated approximately \$8.5 million in the Fiscal Years 2014 and 2015 budget cycles to fund this program.

The program sets aside funds for unanticipated needs which arise before the next budget preparation cycle. Typical examples of such needs include replacement or repairs to facilities and equipment as a result of failures or safety deficiencies, new projects or the acceleration of planned projects requiring funding before the next budget cycle. Funds are also set aside for projects where grants are being sought in the event that the grant application is successful and funding is received. Most grants require the District to fund the project, and then apply for reimbursement of allowable costs. In Fiscal Year 2014, funds will be placed in contingency for making improvements at the food waste facility in the event that potential food waste contracts are procured.

Table 3 below summarizes the District's Fiscal Years 2014 through 2018 projected CIP cash expenditures by major category.

**Table 3**  
**Fiscal Years 2014-2018**  
**Capital Improvement Program**  
**Forecast – Cash Expenditures by Category<sup>(1)</sup>**  
**(Millions)**

	<i>Fiscal Year Ending June 30,</i>					
	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>Total</i>
Maintaining Infrastructure	\$23.6	\$23.7	\$25.4	\$24.7	\$19.9	\$117.3
Regulatory Compliance	4.6	3.9	2.0	3.3	7.5	21.3
Admin & General Expenses <sup>(2)</sup>	<u>3.3</u>	<u>3.3</u>	<u>3.3</u>	<u>3.3</u>	<u>3.3</u>	<u>16.5</u>
<b>Total</b>	<b><u>\$31.5</u></b>	<b><u>\$30.9</u></b>	<b><u>\$30.7</u></b>	<b><u>\$31.3</u></b>	<b><u>\$30.7</u></b>	<b><u>\$155.1</u></b>

<sup>(1)</sup> Cash expenditures include spending for projects appropriated in earlier Fiscal Years.

<sup>(2)</sup> Includes overhead, construction management and other administrative costs which are allocated to individual projects upon their completion.

Source: The District.

The cost estimates are adjusted periodically and represent preliminary estimates for planning purposes only. The District's currently estimated funding sources for its CIP for Fiscal Years 2014 through 2018 is set forth below:

**Table 4**  
**Sources of Funds for Capital**  
**Improvement Program Expenditures**

<i>Funding Sources</i>	<i>(Millions)</i>
Commercial Paper Proceeds	\$ 0.0
Bond Proceeds <sup>(1)</sup>	24.0
Advances, Contributions and Reimbursements	0.0
Revenues	<u>131.1</u>
<b>Total</b>	<b><u>\$155.1</u></b>

<sup>(1)</sup> Represents remaining proceeds of the Series 2010B Bonds.

Source: The District.

## WASTEWATER SYSTEM FINANCES

### Basis of Accounting

The District reports operations on a Fiscal Year basis (currently July 1 through June 30). Enterprise funds are used to account for operations that are financed and operated in a manner similar to private business enterprises, where the costs of providing goods and services to the general public are financed or recovered primarily through user charges. Enterprise funds are accounted for using the accrual basis of accounting. The accounting policies of the District conform to generally accepted accounting principles for municipal water and wastewater utilities. The accounts are maintained substantially in accordance with the Uniform System of Accounts prescribed for investor-owned and major municipally-owned water and wastewater utilities.

## Sources of Funds

The Wastewater System's principal source of revenues is dry weather user charges to the participating agencies. In Fiscal Year 2013, dry weather user charges of \$58.8 million provided approximately 58.7% of the Wastewater System's \$100.1 million total annual revenue. Wet weather facilities charges account for approximately 18.3% of total revenues and are designed to recapture the cost of financing the District's wet weather facilities. The District's Resource Recovery Program generated approximately 9.2% of the Wastewater System's total revenue in Fiscal Year 2013.

The following Table 5 sets forth the District's Wastewater System sources of funds for the five most recent Fiscal Years ended June 30, 2013. The sources of funds in the table below include certain funds which do not constitute Subordinated Wastewater Revenues for purposes of the Indenture. Subordinated Wastewater Revenues include all charges received for, and all other income and receipts derived by the District from, the operation of the Wastewater System or arising from the Wastewater System, which includes, without limitation, the District's dry weather user charges, wet weather facilities charges, wastewater capacity fees and resource recovery revenues, as well as investment income. Property taxes are applied to reduce Operation and Maintenance Costs and are not pledged to the repayment of the Wastewater System Revenue Bonds. See "– Tax Revenues." Certain grants and contributions earned on construction which are restricted to use for specified purposes are not included in Subordinated Wastewater Revenues for purposes of the Indenture. Only Subordinated Wastewater Revenues are pledged to the payment of the Wastewater System Revenue Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Pledge of Subordinated Wastewater Revenues." Comparative summaries of the Wastewater System's historical operating results and debt service coverage ratio for each of the last five Fiscal Years appear in Table 15.

**Table 5**  
**WASTEWATER SYSTEM SOURCES OF FUNDS**  
**Five Fiscal Years ended June 30, 2013**  
**(Millions)**

	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
<b>Operating Revenue and Other Income:</b>					
Dry Weather User Charges	\$47.1	\$48.8	\$50.9	\$55.2	\$58.8
Wet Weather Facilities Charges	14.3	15.3	16.1	17.2	18.3
Resource Recovery	7.7	7.6	9.4	9.1	9.2
Interest <sup>(1)</sup>	2.9	1.2	2.0	1.6	0.3
Taxes <sup>(2)</sup>	7.4	7.4	7.4	8.3	9.4
Power Revenues	-	-	-	0.3	0.7
Other <sup>(3)</sup>	<u>1.0</u>	<u>1.1</u>	<u>2.4</u> <sup>(5)</sup>	<u>3.2</u> <sup>(5)</sup>	<u>3.4</u>
<b>Total Revenues</b>	<b>\$80.4</b>	<b>\$81.4</b>	<b>\$88.2</b>	<b>\$94.9</b>	<b>\$100.1</b>
<b>Capital Contributions:</b>					
Wastewater Capacity Fees	1.6	0.7	2.4	2.8	1.3
Earned contributions on construction	7.4 <sup>(4)</sup>	2.0	0.7	0.0	0.0
Grants	<u>0.0</u>	<u>0.2</u>	<u>0.0</u>	<u>0.0</u>	<u>0.3</u>
<b>Total Contributions</b>	<b><u>\$ 9.0</u></b>	<b><u>\$ 2.9</u></b>	<b><u>\$ 3.1</u></b>	<b><u>\$ 2.8</u></b>	<b><u>\$ 1.6</u></b>
<b>TOTAL</b>	<b><u>\$89.4</u></b>	<b><u>\$84.3</u></b>	<b><u>\$91.3</u></b>	<b><u>\$97.7</u></b>	<b><u>\$101.7</u></b>

<sup>(1)</sup> Includes interest earnings on Wastewater System Fund, including earnings on proceeds of the District's Wastewater System Revenue Bonds.

<sup>(2)</sup> Includes the District's share of 1% countywide property tax and the ad valorem tax levied for repayment of Special District No. 1's general obligation bonds.

<sup>(3)</sup> Other Revenues excludes reimbursements and certain other receipts applied directly to operating expenses.

<sup>(4)</sup> Includes certain reimbursements from CalTrans for relocation costs of portions of the District's South Interceptor in connection with Interstate-880 seismic retrofit.

<sup>(5)</sup> Beginning in Fiscal Year 2011, includes interest subsidy payments received by the District in connection with its Series 2010B Bonds which were Build America Bonds.

Source: The District.

## Rates and Charges

The District finances its wastewater operations with rates and charges, a share of the county-wide real property tax levy, and an *ad valorem* property tax levied to meet general obligation bond debt service payments. Rates and charges are established by the Board after a public hearing process. Dry weather user charges are collected by the District and included on the customers' water bills. Wet weather facilities charges are per parcel charges levied on property and collected by Alameda County and Contra Costa County on the property tax bill and remitted to the District. See "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS – Proposition 218" for a discussion of the notice, hearing and protest procedures followed by the District in setting rates. The District's most recent rate increase included the adoption on June 11, 2013 of a 9.00% and 8.50% rate increase for Fiscal Years 2014 and 2015, respectively.

The District's current (Fiscal Year 2014) rates are set forth below in Table 6. The District believes that the current rate structure is consistent with federal and State regulations, which require generally that wastewater charges be proportionate to the operation, maintenance and replacement costs associated with providing service for each discharger or class of dischargers. See also Table 16 under "Projected Operating Results" for a description of projected future rate increases.

**Table 6**  
**WASTEWATER SYSTEM RATES AND CHARGES**  
**Effective July 1, 2013**

**Residential Charge:**

Service Charge (per account)	\$ 6.58	per month
Strength Charge (per dwelling unit)	6.60	per month
Flow Charge	0.735	per 100-cubic foot unit, to a maximum of 10 units
San Francisco Bay Pollution Fee	0.201	per month per dwelling unit

**Non-Residential Charge:**

Service Charge (per account)	6.58	per month
Treatment Charge	0.86-11.97	per unit, depending on the nature of the business
San Francisco Bay Pollution Prevention Fee	5.48	per month

**Minimum Monthly Charge:**

Duplex	19.78	per month
Triplex	26.38	per month

**Permit Accounts:**

Flow Charge	0.735	per hundred cubic feet
COD	0.268	per pound of discharge
Suspended Solids	0.396	per pound of discharge

**Wet Weather Facilities Charge:**

Residential Property	\$ 82.34	per year per dwelling unit per land parcel
Commercial/Industrial Property	\$123.50	per year per connection

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Source: The District.

**Comparison of Wastewater System Charges**

Annual charges of various Bay Area wastewater service providers for single family residences discharging 6.0 hundred cubic feet ("CCF") of wastewater per month (as determined based upon metered water consumption) are shown in Table 7. Charges for cities served by the District include both the cities' charge for collection and the District charge for treatment and disposal. Charges for these cities include costs of sewer rehabilitation programs, now underway, to reduce wet weather rainwater infiltration and inflow into their collection systems. The District rates also reflect an additional wet weather facilities charge (\$82.34 per year per dwelling unit or \$123.50 per year per commercial/industrial property connection) to pay debt service related to the construction of the wet weather facilities.

**Table 7**  
**COMPARATIVE ANNUAL WASTEWATER CHARGES<sup>(1)</sup>**  
**Single Family Residences 6.7 CCF/Month**  
**As of June 2013**

City and County of San Francisco	\$663
Central Marin Sanitary District	638
City of Pinole	633
City of Richmond	633
<b>East Bay Municipal Utility District <sup>(2)</sup></b>	<b>624</b>
City of Vallejo	524
City of Livermore	489
City of San Jose	406
Central Contra Costa Sanitary District	405
City of Pleasanton	388
City of San Leandro	383
Delta Diablo Sanitary District	375
Dublin San Ramon Services District	355
West Contra Costa Sanitary District	330
Union Sanitary District	320
Oro Loma Sanitary District	195

<sup>(1)</sup> Includes collection and treatment charges.

<sup>(2)</sup> Monthly charges vary by metered water consumption. The District portion of the charge assumes a monthly wastewater discharge of 6.7 units for an annual charge of \$296, based on adopted rates, plus an average community collection charge of \$328 per year throughout the wastewater service area.

Source: The District.

### **Billing and Collection Procedure**

All wastewater service customers are billed by the District bimonthly for dry weather user charges, with the exception of the 450 largest accounts, which are billed monthly. Billing is staggered throughout the billing cycle by geographic location. Water service may be discontinued if an overdue wastewater account is not paid after appropriate customer notification.

The District considers its rates of payment delinquency, service discontinuance for non-payment and write-offs for uncollectible accounts to be low by wastewater industry standards for urban areas. The write-offs for uncollectible accounts for the last five Fiscal Years have been:

**Table 8**  
**WASTEWATER CHARGES UNCOLLECTIBLE REVENUES**  
**Last Five Fiscal Years**

<i>Fiscal Year Ended June 30</i>	<i>Uncollectible Revenues</i>	<i>Percent of Gross Billings</i>
2009	\$856,327	1.39%
2010	48,210	0.08
2011	452,760	0.68
2012	414,605	0.57
2013		

Source: The District.

As described above, wet weather facilities charges are per parcel charges and are collected by Alameda and Contra Costa County on the property tax bill and remitted to the District. Unpaid charges may become a lien on the property.

### **Wastewater Capacity Fees**

The District assesses a Wastewater Capacity Fee on each new Wastewater System customer or each existing Wastewater System customer that increases demand for treatment processing on or after July 1, 1984, measured in wastewater volume and strength. The Wastewater Capacity Fee is a one-time charge based on the maximum monthly wastewater volume and average strength. The Wastewater Capacity Fee for a single family residence is \$1,385. The fees for 2-4 units are \$1,235 times the number of dwelling units. In Fiscal Year 2013, Wastewater Capacity Fees collected totaled \$1.28 million.

### **Property Tax Revenues**

The District's share of the countywide 1% *ad valorem* property tax levy allocated to Special District No. 1 has provided approximately 4% to 5% of revenues of the Wastewater System in each of the past five Fiscal Years for the District. The District's share of the countywide 1% *ad valorem* property tax levy allocated to Special District No. 1 is not pledged as a source of payment for the Wastewater System Revenue Bonds, although such amounts are applied to pay Wastewater Operation and Maintenance Costs in accordance with the Indenture. Beginning in Fiscal Year 1995-96, the District exercised the authority to impose an additional *ad valorem* tax levy to pay debt service on its outstanding Wastewater System general obligation bonds.

Table 9 shows a five-year record of assessed valuations, secured roll levies and delinquencies for the taxable property included within Special District No. 1. Assessed valuations are expressed by county assessors as "full cash value" as defined by Article XIII A of the State Constitution. The tax levy shown includes both the District's allocated share of the maximum *ad valorem* tax levy by each county of 1% of full cash value and the *ad valorem* tax levy imposed to pay debt service on the District's outstanding Wastewater System general obligation bonds. Pursuant to California Revenue and Taxation Code Sections 4701 et seq., Contra Costa County and Alameda County each maintain a reserve fund for the purpose of guaranteeing 100% of the secured levies of the electing governmental jurisdictions for which such county collects taxes (commonly referred to as "The Teeter Plan"). The District has elected to participate in Contra Costa County's Teeter Plan program but has elected not to participate in Alameda County's Teeter Plan program. Consequently, the District is exposed to the effect of delinquencies in collections only for property located in Alameda County.

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**Table 9**  
**TAXABLE PROPERTY WITHIN THE WASTEWATER SYSTEM**  
**Assessed Valuation and Tax Collection Record**

	<i>Fiscal Year Ending June 30</i>				
	<i>2009</i>	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>
Assessed Valuation for Taxation Purposes <sup>(1)</sup>					
Alameda County	\$71,452,305,974	\$70,004,422,511	\$70,659,732,542	\$71,934,582,382	\$75,005,826,233
Contra Costa County	<u>4,320,613,488</u>	<u>4,369,735,559</u>	<u>4,336,045,012</u>	<u>4,216,260,569</u>	<u>4,436,844,925</u>
Total	\$75,772,919,462	\$74,374,158,070	\$74,995,777,554	\$76,150,842,951	\$79,442,671,208
Secured Roll Tax Levy <sup>(2)</sup>					
Alameda County	\$ 6,833,829	\$ 6,941,851	\$ 6,821,501	\$ 7,747,832	
Contra Costa County	<u>541,168</u>	<u>530,137</u>	<u>557,588</u>	<u>558,780</u>	
Total	\$ 7,374,997	\$ 7,471,988	\$ 7,379,089	\$ 8,306,612	
Delinquent June 30 <sup>(3)</sup>					
Amount	\$ 403,486	\$ 305,905	\$ 255,170	\$ 214,184	
Percent	5.47%	4.09%	3.46%	2.58%	

(1) Net of all exemptions except homeowner's exemptions, the taxes on which are paid by the State. All valuations are stated on a 100% of full cash value basis. Assessed valuations shown include redevelopment project area incremental valuations.

(2) Net basis excluding all exemptions. Levies reflect the tax reductions effected by the adoption of Article XIII A of the State Constitution in 1978, the "Jarvis-Gann Initiative." Includes *ad valorem* tax levied for repayment of Special District No. 1's general obligation bonds.

(3) Amounts apply to Alameda County only, since Contra Costa County guarantees 100% payment of the District's secured roll levy. The delinquency percentages are based on the two counties' secured roll levies.

Sources: Auditor-Controller's Office, Alameda and Contra Costa Counties, as compiled by the District.

From time to time legislation has been considered as part of the State budget to shift the share of the 1% *ad valorem* property tax collected by counties from special districts to school districts or other governmental entities. The State budgets for Fiscal Years 2004-05 and 2005-06 reallocated portions of Special District No. 1's share of the countywide 1% *ad valorem* tax shifting a portion of the property tax revenues collected by Alameda County and Contra Costa County from special districts to school districts. As a result of the 2004-05 and 2005-06 State Budgets, Special District No. 1 lost approximately \$1,500,000 of property tax revenues in Fiscal Year 2005 and \$1,200,000 of property tax revenues in Fiscal Year 2006. Additionally, on November 2, 2004 voters within the State approved Proposition 1A, which prevents the State from reducing local government's share of the 1% *ad valorem* property tax below current levels, except in the case of fiscal emergency. Proposition 1A provides that in the case of fiscal emergency, the State could borrow up to 8% of local property tax revenues to be repaid within three years.

The 2009-10 State budget provided for the borrowing of 8% of property taxes from local jurisdictions, including the District, under Proposition 1A. This borrowing resulted in a reduction of approximately \$260,000 from property tax revenues allocable to Special District No. 1 for the Fiscal Year 2009-10. As noted above, under Proposition 1A, the State is required to repay the property taxes with interest within three years. State legislation allowed the District to sell its right to receive this repayment to a joint powers authority, which sold bonds payable from the receivables it purchased from participating local jurisdictions. The District participated in this program in order to replace the lost property taxes at no cost to the District, and treated amounts received under the program as it would have treated the State borrowed property tax revenues replaced thereby.

There can be no assurances that future legislation or voter initiatives will not reduce or eliminate the District's share of the 1% county-wide *ad valorem* property tax revenues. See also "CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS."

The tax rolls for property located within the District Wastewater System service area for the Fiscal Year ended June 30, 2013, aggregated a total assessed valuation of approximately \$79.4 billion,

including redevelopment project areas incremental valuations of which the taxes payable were due to the redevelopment agency. In 2011, the State of California enacted legislation commonly referred to as “AB1X 26,” which required the dissolution of California redevelopment agencies and the dissolution and winding up of the operations of those agencies, which dissolution occurred on February 1, 2012. AB1X 26 provides a framework for the management of the remaining obligations of the dissolved redevelopment agencies by their respective successor agencies and oversight boards to oversee those successor agencies. Pursuant to AB1X 26, tax increment will continue to flow to the payment of “enforceable obligations” (such as tax allocation bonds) of the dissolved redevelopment agencies.

## **Grants and Reimbursements**

The District periodically receives grants for specific projects. In addition, the District from time to time receives certain reimbursements for capital costs, primarily in connection with facility relocations. No grant receipts are budgeted for Fiscal Years 2014 through 2018. Grants and facility relocation reimbursements received are treated as capital contributions and are not included in Subordinated Wastewater Revenues for purposes of the Indenture.

## **Operation and Maintenance Costs**

The primary component of the District’s Wastewater System Operation and Maintenance Costs is labor costs, including wages, salaries and benefits. Operation and Maintenance Costs also include materials, supplies and services such as treatment chemicals and sludge disposal costs, and other general and administrative expenses.

## **Outstanding Debt**

Table 10 shows Wastewater System debt outstanding as of June 30, 2013. The General Obligation Wastewater Pollution Control Bonds were authorized by voters in November 1970. All of the \$60,000,000 Wastewater Pollution Control Bonds (the “General Obligation Bonds”) that were authorized have been issued. The General Obligation Bonds are secured by the power and obligation of the District to levy *ad valorem* taxes upon property within the District’s Special District No. 1, subject to taxation therefor, without limitation of rate or amount.

By Resolution No. 33607-07 adopted June 12, 2007, the Board declared its intention to issue up to \$100,000,000 of Wastewater System Revenue Bonds, of which \$4,360,000 remains authorized but unissued. By Resolution No. 33781-10, adopted by the Board of Directors of the District on September 14, 2010, the Board declared its intention to issue up to \$200,000,000 of additional future Wastewater System Revenue Bonds, of which \$200,000,000 remains authorized but unissued. The issuance of revenue bonds by the District is not subject to prior voter approval, although such bond resolutions are subject to a 60-day referendum period (which with respect to bonds to be issued pursuant to Resolution No. 33607-07 and/or Resolution No. 33781-10 expired without challenge). The District may from time to time in the future adopt other resolutions authorizing the issuance of additional Wastewater System Revenue Bonds, subject to the satisfaction of the conditions set forth in the Indenture. See “SECURITY FOR THE SERIES \_\_\_\_ BONDS – Issuance of Additional Wastewater System Revenue Bonds and Parity Debt; Junior and Subordinate Obligations.”

From time to time, the District applies for and is granted loan funds from the SWRCB. The State Water Resources Control Board Loans (“State Loans”) are low-interest loans made by the SWRCB to fund various wet weather improvements. The SWRCB requires all future debt issued by agencies involved in loan contracts under the State Revolving Fund Loan Program to be issued on a parity with or

subordinate to the State Loans. The District currently has no outstanding State Loans for the Wastewater System. Any future State Loans would likely constitute Parity Debt under the Indenture.

Tax-exempt Extendable Municipal Commercial Paper Notes (Wastewater Series) (“Wastewater System CP Notes”) are issued by the District from time to time pursuant to Resolution No. 33705-09, which authorizes, as provided in the Municipal Utility District Act, a maximum outstanding principal amount of notes not exceeding the lesser of (1) the annual average of the District’s total revenue for the three preceding years or (2) 25% of the District’s total outstanding bonds issued pursuant to Chapters 6, 7 and 8 of the Municipal Utility District Act. As of June 30, 2013, \$15,000,000 principal amount of such Water System CP Notes were outstanding. The Wastewater System CP Notes are payable from and secured by a pledge of Wastewater Revenues on a basis subordinate to the Wastewater System Revenue Bonds.

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**Table 10**  
**OUTSTANDING WASTEWATER SYSTEM DEBT**  
**As of June 30, 2013**

	<i>Date of Issue</i>	<i>Last Maturity</i>	<i>Amount Issued</i>	<i>Outstanding June 30, 2013</i>
<u>Wastewater System Revenue Bonds:</u>				
Revenue Bonds, Series 2007A	05/16/07	06/01/37	\$ 80,630,000	\$ 60,630,000
Revenue Refunding Bonds, Series 2007B	05/16/07	06/01/26	46,670,000	35,290,000
Revenue Refunding Bonds, Series 2008C <sup>(1)</sup>	03/26/08	06/01/27	65,300,000	51,690,000
Revenue/Refunding Bonds, Series 2010A	10/20/10	06/01/29	58,095,000	51,705,000
Revenue Bonds, Series 2010B	10/20/10	06/01/40	150,000,000	150,000,000
Revenue Refunding Bonds, Series 2011A <sup>(2)</sup>	01/19/11	06/01/38	65,905,000	60,845,000
Revenue Refunding Bonds, Series 2012A	10/10/12	06/01/37	<u>20,000,000</u>	<u>20,000,000</u>
Total Wastewater System Revenue Bonds			\$486,600,000	\$430,160,000
<u>Subordinate Debt:</u>				
Extendable Municipal Commercial Paper Notes (Wastewater Series) <sup>(3)</sup>	Various	Various	15,000,000 <sup>(3)</sup>	15,000,000
<u>General Obligation Bonds:</u>				
Series F	01/22/03	04/01/18	<u>41,730,000</u>	<u>18,555,000</u>
<b>Total Debt</b>			<u>\$543,330,000</u>	<u>\$463,715,000</u>

<sup>(1)</sup> Liquidity Support provided by a Standby Bond Purchase Agreement with Bank of America, N.A., expiring January 10, 2014. The District has entered into interest rate swap agreements in connection with the Series 2008C Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*."

<sup>(2)</sup> The District has entered into an interest rate swap agreement in connection with the Series 2011A Bonds. See "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*."

<sup>(3)</sup> Wastewater System CP Notes may be issued in an amount up to the statutory limit described above. As of May 31, 2013, the District determined the issued amount for the Wastewater System will not exceed \$15,000,000 until subsequently increased by the District.

Source: The District.

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## Variable Rate and Swap Obligations

As of June 30, 2013, of the District's \$430,160,000 aggregate principal amount of outstanding Wastewater System Revenue Bonds, \$112,535,000 principal amount are variable rate obligations which are subject to tender prior to maturity in accordance with their terms, including \$60,845,000 principal amount of District's Wastewater System Revenue Refunding Bonds, Series 2011A (the "Series 2011A Bonds") which bear interest in a SIFMA-Based Term Interest Rate Period (the "SIFMA Index Bonds"). The SIFMA Index Bonds bear interest at a rate that fluctuates based on the weekly SIFMA Municipal Swap Index published weekly by Municipal Market Data plus a spread and are subject to mandatory tender on specified mandatory tender dates to occur at the end of each rate period. If the purchase price of the Series 2011A Bonds is not paid from proceeds of a remarketing or other funds on or prior to a scheduled mandatory tender at the end of the applicable rate period, failure of the District to provide funds for the purchase of such Series 2011A Bonds will constitute an Event of Default under the Indenture. See also "SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Bonds – *Outstanding Wastewater System Revenue Bonds and Parity Debt.*"

The interest rates for the District's \$51,690,000 principal amount of other outstanding variable rate Wastewater System Revenue Bonds are reset on a weekly basis. Such variable rate demand obligations are supported by a Standby Bond Purchase Agreement between the District and Bank of America, N.A. Table 11 sets forth the liquidity provider, the expiration date of the current liquidity facility and the principal amount of outstanding bonds covered under such facility as of June 30, 2013].

**Table 11**  
**LIQUIDITY FACILITY AND EXPIRATION DATE**

<i>Wastewater System Revenue Bond Issue<sup>(1)</sup></i>	<i>Outstanding Principal Amount</i>	<i>Liquidity Provider</i>	<i>Facility Expiration</i>
Series 2008C	\$51,690,000	Bank of America, N.A.	January 10, 2014

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Source: The District.

In connection with the District's outstanding variable rate Wastewater System Revenue Bonds, the District has entered into various interest rate swap agreements (collectively, the "Wastewater Interest Rate Swap Agreements"). By virtue of these Wastewater Interest Rate Swap Agreements, the related variable rate Wastewater System Revenue Bonds are essentially treated by the District as fixed rate debt for the purpose of calculating debt service requirements, although the variable payments that the District receives from swap counterparties do not usually equal the payments that the District makes on associated variable rate debt. There is no guarantee that the floating rate payable to the District pursuant to each of the Wastewater Interest Rate Swap Agreements will match the variable interest rate on the associated Wastewater System Revenue Bonds to which the respective Wastewater Interest Rate Swap Agreement relates at all times or at any time. Under certain circumstances, the Swap Providers may be obligated to make a payment to the District under their respective Wastewater Interest Rate Swap Agreement that is less than the interest due on the associated Wastewater System Revenue Bonds to which such Wastewater Interest Rate Swap Agreement relates. In such event, the District would be obligated to pay such insufficiency from Subordinated Wastewater Revenues.

As of June 30, 2013, the District had outstanding the following Wastewater Interest Rate Swap Agreements relating to variable rate Wastewater System Revenue Bonds with the following counterparties (collectively, the "Swap Providers") in the aggregate notional amount of \$113,415,000:

**Table 12**  
**WASTEWATER INTEREST RATE SWAP AGREEMENTS**

<i>Related Bond Issue</i>	<i>Notional Amount</i>	<i>Swap Provider</i>	<i>District Pays</i>	<i>District Receives</i>	<i>Scheduled Maturity/ Termination Date</i>
Series 2011A Bonds	\$61,725,000	Dexia Credit Local, acting through its New York Branch	3.0975%	62.3% of 3 month LIBOR	06/01/2038
Series 2008C Bonds	25,845,000	Citigroup Financial Products, Inc.	3.468	65% of 30-day LIBOR	06/01/2027
Series 2008C Bonds	25,845,000	JPMorgan Chase Bank, N.A.	3.468	65% of 30-day LIBOR	06/01/2027

Source: The District.

Under certain circumstances, the Wastewater Interest Rate Swap Agreements may be terminated and the District may be required to make a substantial termination payment to the respective Swap Providers. Pursuant to the Wastewater Interest Rate Swap Agreements, any such termination payment owed by the District would be payable on a basis that is subordinate to the Wastewater System Revenue Bonds but prior to the District's Wastewater System CP Notes.

Early termination of an interest rate swap agreement could occur due to a default by either party or the occurrence of a termination event. In the event of early termination of any of the Wastewater Interest Rate Swap Agreements, there can be no assurance that (i) the District will receive any termination payment payable to the District by the respective Swap Providers, (ii) the District will at all times have sufficient available cash on hand to pay any termination payment payable by it to the respective Swap Providers, or (iii) the District will be able to obtain a replacement Wastewater Interest Rate Swap Agreement with comparable terms. As of June 30, 2013, the District would have been required to pay to counterparties termination payments if its Wastewater Interest Rate Swap Agreements were terminated on that date. The District estimated its net exposure to its counterparties for all such termination payments at June 30, 2013 to be approximately \$15.9 million. As of June 30, 2013, the largest aggregate termination payment owed to a single counterparty was estimated by the District to be approximately \$8.4 million. The District does not presently anticipate early termination of any of its Wastewater Interest Rate Swap Agreements due to default by either party or the occurrence of a termination event. The District routinely monitors its swap counterparties' creditworthiness and performance under the Wastewater Interest Rate Swap Agreements and may from time to time replace existing swap counterparties and Wastewater Interest Rate Swap Agreements with new replacement interest rate swap agreements if the District determines such action is warranted. Additional information regarding the terms of the Wastewater Interest Rate Swap Agreements may be found in [Note 6(F)] in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

Pursuant to the terms of certain of the Wastewater Interest Rate Swap Agreements, the District is required to post collateral in favor of a counterparty to the extent that the District's total exposure for termination payments to that counterparty exceeds the threshold amount specified in the applicable Wastewater Interest Rate Swap Agreement. The applicable collateral posting threshold amounts specified in such Wastewater Interest Rate Swap Agreements would be lower in the event certain ratings assigned to the Wastewater System Revenue Bonds were to be revised downward or withdrawn. In the case of a ratings withdrawal or significant downward rating revision, such decline in the applicable threshold amounts could significantly increase the District's collateral posting obligation thereunder. If the District's ratings are revised upward, the amount of collateral required to be posted by the District under certain of the Wastewater Interest Rate Swap Agreements could be reduced.

Under the terms of the Wastewater Interest Rate Swap Agreements, the counterparties are required to release collateral to the District as market conditions become favorable to the District and may be required to post collateral for the benefit of the District to the extent that such counterparty's total exposure for termination payments to the District exceeds the threshold amount specified in the applicable Wastewater Interest Rate Swap Agreement. As of June 30, 2013, the District had \$0 in collateral posted in favor of the counterparties to the Wastewater Interest Rate Swap Agreements and to date, has not been required to post any collateral in connection with the Wastewater Interest Rate Swap Agreements. The amount of collateral required to be posted can vary from time to time due primarily to interest rate movements and can change significantly over a short period of time. In the future, the District may be required to post collateral, or, if it has previously posted collateral to a counterparty, may be entitled to a reduction or return of the required collateral amount. Collateral deposited by the District is held by the counterparties or an agent therefor. A bankruptcy of any counterparty holding collateral posted by the District could adversely affect the return of the collateral to the District. Moreover, posting collateral limits the District's liquidity. If collateral requirements increase significantly, the District's liquidity may be adversely affected.

### **Debt Service Requirements**

Table 13 shows future payments on outstanding debt.

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**Table 13**  
**WASTEWATER SYSTEM ESTIMATED DEBT SERVICE<sup>(1)</sup>**

<i>Fiscal Year Ending June 30</i>	<i>Wastewater System Revenue Bonds – Series 2007 Through Series 2012A<sup>(2)</sup></i>	<i>Extendable Commercial Paper (Wastewater)<sup>(3)</sup></i>	<i>General Obligation Bonds<sup>(4)</sup></i>	<i>Total Debt Service<sup>(5)</sup></i>
2014	\$ 28,446,986	\$ 300,000	\$ 4,227,750	\$ 32,974,736
2015	28,566,821	300,000	4,312,750	33,179,571
2016	28,832,073	300,000	4,400,250	33,532,323
2017	28,869,296	300,000	4,489,500	33,658,796
2018	28,898,756	300,000	3,984,750	33,183,506
2019	28,894,356	450,000	--	29,344,356
2020	28,907,493	450,000	--	29,357,493
2021	28,909,286	450,000	--	29,359,286
2022	28,909,946	450,000	--	29,359,946
2023	28,914,281	450,000	--	29,364,281
2024	28,916,813	450,000	--	29,366,813
2025	28,910,746	450,000	--	29,360,746
2026	28,915,455	450,000	--	29,365,455
2027	28,309,182	450,000	--	28,759,182
2028	27,456,147	450,000	--	27,906,147
2029	27,481,191	450,000	--	27,931,191
2030	27,477,290	450,000	--	27,927,290
2031	27,493,398	450,000	--	27,943,398
2032	27,486,285	450,000	--	27,936,285
2033	27,499,726	450,000	--	27,949,726
2034	27,519,845	450,000	--	27,969,845
2035	27,527,495	450,000	--	27,977,495
2036	27,533,685	450,000	--	27,983,685
2037	27,536,156	450,000	--	27,986,156
2038	28,812,382	450,000	--	29,262,382
2039	29,037,794	450,000	--	29,487,794
2040	<u>29,039,094</u>	<u>450,000</u>	<u>--</u>	<u>29,489,094</u>
Total <sup>(5)</sup>	<u>\$765,101,978</u>	<u>\$11,100,000</u>	<u>\$21,415,000</u>	<u>\$797,916,978</u>

<sup>(1)</sup> Debt service is calculated on a cash basis.

<sup>(2)</sup> Includes fees to liquidity providers. Debt service on Series 2010B Bonds net of capitalized interest. Includes total interest before application of any cash subsidy received by the District from the United States Treasury relating to the Series 2010B Bonds (Build America Bonds) (the “BABs Subsidy”). Assumes debt service on the Series 2008C and Series 2011A Bonds has been fixed pursuant to interest rate swap agreements. See “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Outstanding Wastewater System Revenue Obligations – *Interest Rate Swap Agreements*.”

<sup>(3)</sup> Assumes \$15,000,000 outstanding and interest rate of 1.00% in Fiscal Year 2013, 2.00% in Fiscal Years 2014 through 2018 and 3.00% thereafter. Includes interest only (no principal amortization). While the commercial paper program is limited by statute to seven years, it is the District’s intention to reestablish the commercial paper program after each seven-year period. The District may increase the amount of the commercial paper program in the future subject to the limit described herein.

<sup>(4)</sup> General obligation bonds are paid from *ad valorem* property taxes levied for such purpose, not Wastewater Revenues.

<sup>(5)</sup> May not add due to rounding.

Source: The District.



## **Management Policies**

The District has detailed management policies that include guidelines for debt, capital planning, investments, derivatives, and formal reserves. It is the current policy of the District to seek to maintain a debt service coverage ratio of 1.6 times on its outstanding Wastewater System Revenue Bonds and to fund approximately 35% of its capital program over each five-year planning period from revenues and sources other than debt. The debt policy also limits unhedged variable rate debt to 25% of the total debt portfolio. Derivatives use is governed by a comprehensive derivatives policy with guidelines for counterparties, termination, and risk exposure. The District budgets for a number of formal reserves, including: (i) a working capital reserve equal to three months of operation and maintenance expenses; (ii) a self-insurance reserve equal to 1.25 times the expected annual expenditure; (iii) a workers' compensation reserve of approximately \$0.6 million in Fiscal Year 2014; and (iv) a contingency/rate stabilization reserve of 5% of operating and maintenance expenses. The aggregate budgeted reserves level for Fiscal Year 2014 for these four formal reserves is approximately \$20.6 million. The current investment policy dictates investment criteria, reporting, and administrative requirements.

## **District Investment Policy**

Funds of the District are invested in accordance with the Government Code of the State of California (the "State"), the Municipal Utility District Act and the District's investment policy. The four primary investment criteria set forth in the District's written investment policy are (in order of priority): (1) preservation of principal; (2) maintenance of liquidity; (3) yield; and (4) diversity. In order to keep funds available to meet commitments, the District's investment policy provides that the maturity date (or put provision) of individual investments shall not exceed five years and that the average maturity of the portfolio shall not exceed 720 days. Investments permitted by the District's current investment policy include U.S. Treasury notes, bonds and bills, the State of California Local Agency Investment Fund, obligations issued by federal agencies, bankers' acceptances and commercial paper rated in the highest short-term rating category, as well as collateralized repurchase agreements, certificates of time deposit with maturities not to exceed five years and negotiable certificates of deposit, with maturities not to exceed five years, medium term corporate notes with maturities not to exceed five years, California municipal bonds with maturities (or put provisions) not to exceed five years and California Management Program. Monies in the funds and accounts held by the Trustee under the Indenture may be invested only in Investment Securities, as defined therein. The District does not enter into reverse repurchase agreements or otherwise borrow for purposes of investing, and the District does not invest in derivatives. The District has, however, entered into interest rate swap transactions to hedge interest rate exposure on outstanding variable rate Water System Revenue Bonds as described herein.

Pursuant to the District's investment policy, all securities purchased from dealers and brokers are held in safekeeping by the trust department of a state or national bank on a payment vs. delivery basis. Collateral is delivered or assigned under a tri-party agreement for all repurchase agreements. Trade confirmations are reviewed for conformity to the original transaction by an individual other than the one who originated the transaction. Transactions are ratified by the General Manager and reported quarterly to the Finance/Administration Committee of the Board.

## **Cash and Investments**

The District's cash and investments are segregated by restricted and unrestricted amounts. Restricted cash and investments generally include bond proceeds and debt service reserve funds, developer advances and capital contributions, and other miscellaneous restricted amounts. At June 30, 2013, the breakdown between restricted and unrestricted amounts for the Wastewater System is as follows:

**Table 14**  
**CASH AND INVESTMENTS**  
**(Thousands)**

Cash and investments included in current assets	73,622
Cash and investments included in unrestricted assets	<u>21,915</u>
Total unrestricted cash and investments	95,537
Cash and investments included in restricted assets	<u>9,859</u>
Total cash and investments	<u>105,396</u>

Additional information regarding the District's investment portfolio may also be found in [Note 2] in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

### **Historical Operating Results**

The District's financial statements for Fiscal Year 2013, and the Report of Maze & Associates, independent accountants, are included as Appendix B, and should be read in their entirety. The summary of operating results for Fiscal Years 2009 through 2013 contained in Table 15 is derived from information from the audited financial statements for such Fiscal Years and is qualified in its entirety by reference to such statements, including the notes thereto.

Table 15 sets forth the historical operating results and the calculation of the debt service coverage ratio for the Wastewater System for each of the last five Fiscal Years. The presentation below differs from that previously reported in that Wastewater Capacity Fees previously excluded are now reflected as a component of Wastewater Revenues for purposes of the coverage calculation as permitted by the Indenture.

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**Table 15**  
**WASTEWATER SYSTEM**  
**Historical Operating Results and Debt Service Coverage<sup>(1)</sup>**  
**Fiscal Years 2009 through 2013**

	2009	2010	2011	2012	2013
<b>WASTEWATER REVENUES<sup>(2)</sup></b>					
Dry Weather User Charges	\$47,085,272	\$48,764,326	\$50,909,726	\$55,191,460	\$58,783,692
Wet Weather Facilities Charges	14,343,156	15,311,295	16,063,834	17,228,380	18,320,550
Interest	2,876,216	1,197,034	1,076,342	856,218	368,315
Resource Recovery	7,663,488	7,590,010	9,403,337	9,061,029	9,226,468
Power Revenue				333,812	693,272
Wastewater Capacity Fees	1,559,689	675,293	2,423,103	2,824,137	1,278,961
Other Revenue	1,031,863	1,146,241	2,407,895 <sup>(7)</sup>	3,173,662 <sup>(7)</sup>	3,368,241
<b>TOTAL WASTEWATER REVENUE</b>	<b>\$74,559,684</b>	<b>\$74,684,199</b>	<b>\$82,284,237</b>	<b>\$88,668,698</b>	<b>\$92,039,499</b>
<b>WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>					
Operating Expenses	\$48,043,270 <sup>(4)</sup>	\$44,712,916	\$49,553,385 <sup>(5)</sup>	\$52,482,539	\$51,435,631
(Less Tax Receipts) <sup>(3)</sup>	<u>(3,458,824)</u>	<u>(3,384,031)</u>	<u>(3,299,315)</u>	<u>(3,698,069)</u>	<u>(4,413,039)</u>
<b>TOTAL WASTEWATER OPERATION &amp; MAINTENANCE COSTS<sup>(4)</sup></b>	<b>\$44,584,446</b>	<b>\$41,328,885</b>	<b>\$46,254,070</b>	<b>\$48,784,470</b>	<b>47,022,592</b>
<b>NET WASTEWATER REVENUES</b>	<b>\$29,975,238</b>	<b>\$33,355,314</b>	<b>\$36,030,167</b>	<b>\$39,884,228</b>	<b>45,016,907</b>
<b>PARITY DEBT SERVICE:</b>					
Wastewater System Revenue Bonds <sup>(5)</sup>	\$18,867,204	\$18,026,658	\$20,084,078	\$26,385,738	\$28,284,129
Parity State Loans	1,551,097	1,551,097	1,326,979	0	0
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$20,418,301</b>	<b>\$19,577,755</b>	<b>\$21,411,057</b>	<b>\$26,385,738</b>	<b>\$28,284,129</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.47</b>	<b>1.70</b>	<b>1.68</b>	<b>1.51</b>	<b>1.59</b>
<b>SUBORDINATE WASTEWATER SYSTEM DEBT SERVICE<sup>(6)</sup></b>	<b>\$ 4,098,074</b>	<b>\$ 4,008,489</b>	<b>\$ 3,840,389</b>	<b>\$ 33,300</b>	<b>\$33,910</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$24,516,375</b>	<b>\$23,586,244</b>	<b>\$25,251,446</b>	<b>\$26,419,038</b>	<b>\$28,318,039</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.22</b>	<b>1.41</b>	<b>1.43</b>	<b>1.51</b>	<b>1.59</b>

(1) Calculated in accordance with the Indenture as footnoted.

(2) Wastewater Revenues exclude grant receipts, taxes and certain reimbursements.

(3) Operation and Maintenance Costs excludes those expenses paid from the share of the 1% countywide *ad valorem* tax levy allocated to Special District No. 1. Under current District policy, taxes are used to pay for operations allocable to storm water processing and infiltration/inflow processing. Restated from prior years' presentation to more accurately reflect application of tax receipts.

(4) Increased Operation and Maintenance Costs in 2009 primarily due to higher costs of chemicals, higher energy consumption to produce oxygen for the Resource Recovery Program and higher administrative costs. Increased Operation and Maintenance Costs in 2011 and 2012 primarily due to higher costs of wastewater treatment plant operations, interception and pumping, and information technology and higher administrative costs.

(5) Includes net swap payments. Net of capitalized interest.

(6) Includes outstanding Wastewater System commercial paper notes and certain subordinate State Loans (which State Loans have subsequently been retired or refunded by Wastewater System Revenue Bonds). With respect to commercial paper notes includes interest only with no principal amortization.

(7) Includes interest subsidy received in connection with Series 2010B Bonds (Build America Bonds).

Source: The District.

## District Management's Discussion of Operating Results

Wastewater Revenues increased from approximately \$88.7 million in Fiscal Year 2012 to approximately \$93.0 million in Fiscal Year 2013, mainly reflecting a stable customer base and a 6.0% increase in rates effective July 1, 2012. Operating expenses decreased from approximately \$52.5 million in Fiscal Year 2012 to approximately \$51.4 million in Fiscal Year 2013, reflecting [increases in costs of wastewater treatment plant operations, interception and pumping, and information technology]{update}. Other Revenue includes approximately \$2.7 million in interest subsidy in Fiscal Year 2012 and

approximately \$2.7 million in Fiscal Year 2013 received in connection with the District's Series 2010B Bonds (Build America Bonds). Recording this interest subsidy as Other Revenue rather than as a reduction to debt service costs negatively impacted the parity lien debt service coverage level in Fiscal Years 2012 and 2013. In addition, in Fiscal Year 2011, in order to achieve debt service savings, the District refunded approximately \$17.5 million of its outstanding State Loans with Water System Revenue Bonds. Included in the State Loans refunded was approximately \$7.4 million of State Loans that were treated as subordinate debt to the outstanding Water System Revenue Bonds. The annual debt service on these subordinate State Loans was approximately \$2.2 million and since these State Loans were non-parity loans, the debt service on these loans was not included as part of the parity lien debt service coverage calculation prior to the refunding. Although debt service costs were reduced as a result of such refunding, the increase in parity lien debt service negatively impacted the parity lien debt service coverage level resulting in coverage below the District's policy target of 1.6 times in Fiscal Years 2012 and 2013. See also "Management's Discussion and Analysis" contained in APPENDIX B – "EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012."

### **Projected Operating Results**

In the preparation of the projections in this section, the District has made certain assumptions with respect to conditions that may occur in the future. While the District believes these assumptions are reasonable for the purpose of the projections, they are dependent on future events, and actual conditions may differ from those assumed. To the extent actual future factors differ from those assumed by the District or provided to the District by others, the actual results will vary from those forecasted. This projected information has not been compiled, reviewed or examined by the District's independent accountants.

Table 16 sets forth the projected operating results and calculation of the debt service coverage ratios for the Wastewater System for the current and next four Fiscal Years. The projected results are based on the District's Biennial Budget for Fiscal Years 2014 and 2015. In the preparation of the projected operating results, the District has taken into account limited growth in the service area and the expectations for the future economic environment. The projection period reflects the overall rate increases of 9.00% and 8.50% for Fiscal Years 2014 and 2015, respectively. Annual rate increases of 5.0% are assumed thereafter. Any such future rate increases will be subject to Board approval. Operating expenses incorporate salary and benefit expectations.

**Table 16**  
**WASTEWATER SYSTEM**  
**Projected Operating Results and Debt Service Coverage**  
**Fiscal Year Ending June 30**  
**(\$ Millions)**

	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>
<b>WASTEWATER REVENUES<sup>(1)</sup></b>					
Dry Weather User Charges <sup>(2)</sup>	\$63.4	\$ 68.8	\$ 72.8	\$ 76.7	\$ 80.6
Wet Weather Facilities Charges <sup>(3)</sup>	19.8	21.5	22.6	23.7	24.9
Interest Earnings <sup>(4)</sup>	0.4	0.7	0.9	0.8	0.8
Resource Recovery	7.0	6.5	6.0	6.0	6.0
Wastewater Capacity Fees	1.5	1.5	1.5	1.5	1.5
Other Revenue <sup>(5)</sup>	<u>4.6</u>	<u>4.6</u>	<u>4.6</u>	<u>4.6</u>	<u>4.6</u>
<b>TOTAL WASTEWATER REVENUES</b>	<b>\$96.7</b>	<b>\$103.6</b>	<b>\$108.4</b>	<b>\$113.3</b>	<b>\$118.4</b>
<b>WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>					
Operating Expense <sup>(6)</sup>	\$56.2	\$ 58.7	\$ 61.3	\$ 64.1	\$ 67.1
(Less Tax Receipts) <sup>(7)</sup>	<u>(4.1)</u>	<u>(4.2)</u>	<u>(4.3)</u>	<u>(4.4)</u>	<u>(4.6)</u>
<b>TOTAL WASTEWATER OPERATION &amp; MAINTENANCE COSTS</b>	<b><u>\$52.1</u></b>	<b><u>\$ 54.5</u></b>	<b><u>\$ 57.0</u></b>	<b><u>\$ 59.7</u></b>	<b><u>\$ 62.5</u></b>
<b>NET WASTEWATER REVENUES</b>	<b>\$44.6</b>	<b>\$ 49.1</b>	<b>\$ 51.4</b>	<b>\$ 53.6</b>	<b>\$ 55.9</b>
<b>DEBT SERVICE</b>					
Wastewater System Revenue Bonds <sup>(8)</sup>	<u>\$28.9</u>	<u>\$ 29.0</u>	<u>\$ 29.3</u>	<u>\$ 30.6</u>	<u>\$ 30.6</u>
<b>TOTAL PARITY DEBT SERVICE</b>	<b>\$28.9</b>	<b>\$ 29.0</b>	<b>\$ 29.3</b>	<b>\$ 30.6</b>	<b>\$ 30.6</b>
<b>PARITY DEBT SERVICE COVERAGE</b>	<b>1.54</b>	<b>1.69</b>	<b>1.75</b>	<b>1.75</b>	<b>1.83</b>
<b>SUBORDINATE WASTEWATER SYSTEM CP NOTES DEBT SERVICE<sup>(9)</sup></b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>	<b>\$ 0.3</b>
<b>TOTAL PARITY AND SUBORDINATE DEBT SERVICE</b>	<b>\$29.2</b>	<b>\$ 29.3</b>	<b>\$ 29.6</b>	<b>\$ 30.9</b>	<b>\$ 30.9</b>
<b>PARITY AND SUBORDINATE DEBT SERVICE COVERAGE</b>	<b>1.53</b>	<b>1.68</b>	<b>1.74</b>	<b>1.73</b>	<b>1.81</b>

*(Table footnotes contained on following page.)*

(Footnotes are to table contained on preceding page.)

- (1) Wastewater Revenues exclude grant receipts, taxes and certain reimbursements.
- (2) Reflects adoption of 9.00% and 8.50% rate increases for Fiscal Years 2014 and 2015, respectively. See “— Rates and Charges” above. Average annual rate increases of 5.0% are assumed thereafter over the remainder of the projection period. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”
- (3) Reflects adoption of 9.00% and 8.50% rate increases for Fiscal Years 2014 and 2015, respectively. Average annual rate increases of 5.0% are assumed thereafter over the remainder of the projection period.
- (4) Assumes approximately 0.50% earnings rate on fund balances for Fiscal Years 2013 and 2014, 1.0% earning rate in Fiscal Year 2015 and 1.50% thereafter. See “CONSTITUTIONAL AND STATUTORY LIMITATIONS ON TAXES AND APPROPRIATIONS.”
- (5) Anticipated receipt of BABs Subsidy relating to Series 2010B Bonds in the amount of approximately \$2.7 million annually has been included in Other Revenue. Also includes estimated collections from power sales and inspection fees from the private sewer laterals program.
- (6) Assumes approximately 4.0-5.0% annual increase in Operating Expenses after 2014.
- (7) Operation and Maintenance Costs excludes those expenses paid from District’s share of 1% countywide *ad valorem* taxes. Under current District policy, taxes are used to pay for operations allocable to storm water processing and infiltration/inflow processing.
- (8) Debt service for Series 2010B Bonds is gross of the expected BABs Subsidy but net of capitalized interest. Series 2008C Bonds and Series 2011A Bonds assumed to be swapped to fixed rates. See “SECURITY FOR THE SERIES \_\_\_\_\_ BONDS – Interest Rate Swap Agreements” above. Includes liquidity fees. Also includes additional amount budgeted by the District (not included in Table 13) for estimated basis differential between variable rate bond interest rates and related swap receipts. Assumes issuance of \$20 million of new money bonds in Fiscal Year 2017 at an annual interest rate of 5.00%.
- (9) Assumes interest only at 2.00% per annum in Fiscal Years 2014 through 2018 with no principal amortization.

Source: The District.

## Employees' Retirement System

**General.** The District has a contributory retirement system covering substantially all of its employees (including the Water System and Wastewater System). The East Bay Municipal Utility District Employees' Retirement System ("Retirement System") was established in 1937 to administer a single-employer, contributory, defined benefit pension plan (the "Plan") to provide retirement, disability, survivorship and post-employment health insurance benefits for eligible directors, officers and employees of the District. The Plan is funded by contributions from its members and from the District, and from investment earnings on Plan assets. The payment of benefits earned by plan members of the Retirement System is an obligation of the District. Employees of the District are also covered by Social Security.

The Retirement System is administered by a Retirement Board composed of three members appointed by the District Board, two members elected by and from the active membership and one (nonvoting) member elected by and from the retired membership of the Retirement System. Ordinance No. 40 of the District, effective October 1, 1937, as amended (the "Retirement System Ordinance"), assigns the authority to establish Plan benefit provisions to the District Board.

Contributions to the Retirement System are made by the members and the District. Each member's contribution is based upon a percentage of that member's covered compensation. The employee contribution rates are prescribed in the Retirement System Ordinance and may be adjusted by the District Board solely pursuant to the terms of a negotiated collective bargaining agreement or MOU with employee bargaining units. The District employees' contribution rate has been 6.83% since April 2006. The District (employer) contributions are based upon percentages of the aggregate amount of members' covered compensation. Employer contribution percentages are established by the District Board. Such percentages are based upon actuarial valuations.

As of June 30, 2012, collectively for the Water and Wastewater Systems, there were 1,703 active plan members, 224 terminated plan members entitled to but not yet receiving benefits and 1,361 retirees and beneficiaries receiving benefits.

Table 17 below sets forth the number of active members, total plan assets, District and Member contributions and retirement allowances paid in the five Fiscal Years 2008 through 2012.

**Table 17**  
**RETIREMENT SYSTEM**  
**Active Members, Total Plan Assets, District and Member Contributions and Allowances Paid**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Active Members<sup>(2)</sup></b></i>	<i><b>Total Plan Assets<sup>(3)</sup></b></i>	<i><b>District Contribution<sup>(4)</sup></b></i>	<i><b>Member Contributions</b></i>	<i><b>Allowances Paid From Retirement Plan<sup>(5)</sup></b></i>
2008	2,029	\$838,614,000	\$44,603,000	\$10,394,000	\$50,780,000
2009	2,022	668,750,000	45,803,000	10,740,000	54,502,000
2010	1,978	769,052,000	51,756,000	10,918,000	58,109,000
2011	1,928	968,239,000	58,481,000	10,850,000	62,114,000
2012	1,927	986,972,000	59,651,000	10,723,000	66,843,000

<sup>(1)</sup> Includes Health Insurance Benefit Plan.

<sup>(2)</sup> Includes active plan members and terminated plan members entitled to but not yet receiving benefits.

<sup>(3)</sup> Market value as of June 30 of such Fiscal Year as shown in the audited financial statements of the Retirement System.

<sup>(4)</sup> The District estimates that approximately 85% of the District's annual contributions are attributable to the Water System and approximately 15% are attributable to the Wastewater System.

<sup>(5)</sup> Includes benefits paid and refunds of contributions.

Source: The District.

The Retirement System is an integral part of the District and, as noted above, the District appoints the majority of the governing body of the Retirement System and provides for its funding. Accordingly, the Retirement System's operations are reported as a Pension and Other Employee Benefit Trust Fund in the District's basic financial statements. The Retirement System also issues separately available financial statements on an annual basis. Such financial statements can be obtained from the District at 375 Eleventh Street, Oakland, California 94607.

The amounts set forth in this discussion of the Employees' Retirement System, including, for example, actuarial accrued liabilities and funded ratios, are based upon numerous demographic and economic assumptions, including investment return rates, inflation rates, salary increase rates, cost of living adjustments, postemployment mortality, active member mortality, and rates of retirement. Prospective purchasers of the District's bonds are cautioned to review and carefully assess the reasonableness of the assumptions set forth in the documents that are cited as the sources for such information. In addition, prospective purchasers of the District's bonds are cautioned that such sources and the underlying assumptions speak as of their respective dates, and are subject to change. Prospective purchasers of the District's bonds should also be aware that some of the information presented in this discussion of the Employees' Retirement System contains forward-looking statements and the actual results of the Retirement System may differ materially from the information presented herein.

**Benefits.** All regular full-time employees (as well as certain job share and intermittent employees) of the District are members of the Plan. In accordance with the Retirement System Ordinance, eligible employees become members of the Plan on the first day they are physically on the job. Retirement plan benefits are generally determined by formula based on the employee's compensation in the last two years of employment and the length of employment with the District. Benefits adopted by the District vest in part with members after five years of continuous full-time employment. Vested members who terminate employment may elect a refund of their contributions or leave them in the Plan until eligible to receive benefits.

In addition to retirement benefits, the District provides post-employment health benefits assistance, administered by the Retirement System, for employees who retire from the District or their surviving spouses. As of June 30, 2012, there were 1,256 participants receiving these healthcare benefits. For participants entering the Retirement System prior to July 1, 1996, a monthly allowance of up to \$450 (\$550 for married retirees and retirees with financially dependent registered domestic partners) is paid to retirees with at least five years of full-time service to reimburse the retiree-paid medical expenses (including any health, dental or long-term care insurance premiums paid by the retiree for his or her self, and current spouse or domestic partner, or any health, dental or long-term care insurance premiums paid by the eligible surviving spouse of a retiree). Effective July 1, 1996, a 20-year vesting schedule for full benefits was implemented for all new employees. Effective January 1, 1999, retired members who had separated from the District prior to their retirement and who had at least 5 years of service also become eligible for the post-employment healthcare benefits based on the same sliding scale.

**Actuarial Assumptions and Funding Policy.** Under the ordinance governing the Retirement System, the District is required to have an actuarial study performed at least every two years, but the District's current policy is to have an actuarial study performed each year. The most recent actuarial study of the Retirement System, including the pension and the health insurance benefit ("HIB") trusts, was performed by The Segal Company, as of June 30, 2012.

The actuarial report provides a basis for the District Board's decision regarding the rate of contributions by the District to the Retirement System, including both the pension and the HIB trusts. The District makes its contribution using rates determined by its outside actuaries.



The actuarial valuation results included in this disclosure for the pension plan have been prepared using parameters required under Governmental Accounting Standards Board (“GASB”) Statements 25 and 27. These GASB Statements will be replaced by GASB Statements 67 and 68 for financial reporting purposes effective with Fiscal Year 2014 for the Plan and Fiscal Year 2015 for the District. The new GASB Statements will require much shorter amortization periods for recognition of non-investment gains/losses and actuarial assumption changes, as well as changes in the recognition of investment gains/losses. GASB has indicated throughout their process of obtaining comments from the retirement and accounting communities that the new GASB Statements may provide for a new and complete separation between financial reporting and funding requirements for pension plans.

To calculate the required contribution for each Fiscal Year, assumptions are made about future events that affect the amount and timing of benefits to be paid and assets to be accumulated. Each year actual experience is measured against the assumptions. If overall experience is more favorable than anticipated (an actuarial gain), the contribution requirement will decrease from the previous year. On the other hand, the contribution requirement will increase if overall actuarial experience is less favorable than assumed (an actuarial loss). If assumptions are changed, the contribution requirement is adjusted to take into account a change in experience anticipated for all future years.

A summary of the funding method and assumptions utilized in the actuarial study as of June 30, 2012 are described below.

*Funding Method.* The Plan’s funding policy provides for periodic District contributions at actuarially determined amounts sufficient to accumulate the necessary assets to pay benefits when due as specified by the ordinance governing the Retirement System. The entry age normal cost method is used for this purpose. Under the entry age normal cost method, there are two components to the total contributions: (i) the normal cost, which is the amount of contributions required to fund the benefit allocated to the current year of service (associated with active employees only), and (ii) an amortization payment on any unfunded actuarial accrued liability (“UAAL”). The normal cost is calculated on an individual basis where the entry age normal cost is calculated as the sum of the individual normal costs. The UAAL (past service liability) is amortized as a level percentage of payroll on a closed basis over the amortization periods described below. The actuarial accrued liability is calculated on an individual basis and is based on costs allocated as a level percentage of compensation.

*Amortization Periods.* As of June 30, 2012, the unfunded actuarial accrued liability is currently being funded using a layered approach. Each layer of the UAAL established prior to July 1, 2011 is being funded over a separate 30-year decreasing period, starting from the date the layer was originally established. On or after July 1, 2011, changes in the UAAL attributable to plan amendments are amortized over separate decreasing 15-year periods; changes in the UAAL attributable to assumption or method changes are amortized over separate decreasing 25-year periods; and changes in the UAAL attributable to actuarial gains/losses (i.e., the extent to which actual overall experience deviates from the assumptions) are amortized over separate decreasing 20-year periods. Under the layered approach, any new UAAL layer that emerges between the prior and the current actuarial valuation (due to deviations between actual and expected actuarial experience, changes in actuarial assumptions used to measure the liabilities or other factors) will be determined and factored into the District’s contribution rates so that it will be paid off after its respective amortization period described above.

*Actuarial Assumptions.* A number of assumptions are used to calculate the costs of the Plan and to compute contribution requirements for the Plan. The principal assumptions used in preparing the actuarial study as of June 30, 2012 include:

1. Investment rate of return: 7.75%.

2. Inflation rate: 3.25%.
3. Interest credited to member contributions: 7.75%.
4. Projected salary increases: Ranges from 4.25% to 9.75% based on years of service (includes inflation at 3.25% plus across the board salary increase of 0.50% plus merit and promotional increases).
5. Cost of living adjustments: 3.15%.
6. Increase in HIB maximum monthly allowance: The Plan does not provide for an automatic increase in the HIB allowance and no such increase is assumed in the valuation.
7. Additional assumptions: Additional assumptions were used regarding rates of termination from active membership, post-retirement mortality, active member mortality, disability rates and rates of retirement.

Actuarial Value of Assets (Asset Smoothing Method). Methods used to compute District contribution requirements include a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets (with further adjustments as may be required to keep the smoothed assets within 30% of market value). The impact of this will result in a “smoothed” valuation value of assets (or “Actuarial Value of Assets”) that is higher or lower than the market value of the assets depending on whether the amount that is being smoothed is either a net gain or a net loss.

Adopted Changes in Actuarial Assumption and Amortization Periods. Under the ordinance governing the Retirement System, the District is required to have an actuarial experience study conducted during each four-year period in order to review the mortality, service and compensation experience of the members, retired members and beneficiaries of the Retirement System, over the study period. The experience study provides the factual information upon which the outside actuary makes recommendations to the District regarding the economic and demographic assumptions that provide the basis for the actuarial valuation of the assets and liabilities of the Retirement System. In November 2012, The Segal Company completed and presented to the Retirement Board, its Analysis of Actuarial Experience During the Period July 1, 2008 through June 30, 2012, for the Retirement System (the “2012 Experience Study”). The 2012 Experience Study utilized demographic data of the Plan’s members and retirees from the last four actuarial valuations and provided recommendations regarding changes to the economic and demographic actuarial assumptions to be used in the June 30, 2012 and later actuarial valuations. Pursuant to the 2012 Experience Study, the actuary recommended changes in a number of the actuarial assumptions used to calculate the costs of the Plan and to compute the future contribution requirements for the Plan, including changes in the assumptions from those used in the actuarial study of the Plan as of June 30, 2011. At its November 15, 2012 meeting, the Retirement Board approved the changes in assumptions recommended by the actuary for the actuarial valuation to be performed as of June 30, 2012. The actuarial assumptions used in the actuarial study of the Plan as of June 30, 2012 (as described under “Actuarial Assumptions” above) include the following changes in the actuarial assumptions from those used in the actuarial study of the Plan as of June 30, 2011, among others: (i) a reduction in the assumed investment rate of return from 8.00% to 7.75%; (ii) a reduction in the assumed inflation rate from 3.50% to 3.25%; (iii) a reduction in the projected salary increases from the range of 4.70% to 10.00% based on years of service (and including the 3.50% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases) to a range of 4.25% to 9.75% (including the new recommended 3.25% assumed inflation rate plus across the board salary increases of 0.50% plus merit and promotional increases); and (iv) a reduction in the assumed long-term annual average cost of living adjustment from 3.25% to 3.15%.

In the June 30, 2012 valuation, the actuary determined the change in the actuarial accrued liability for the pension plan (not including the HIB) due to the assumption changes to be \$53.4 million.

At the November 15, 2012 meeting, the Retirement Board also adopted a change in the amortization policy for the unfunded actuarial accrued liability (UAAL), effective with the June 30, 2012 valuation. In particular, changes in the UAAL due to actuarial assumption or method changes (previously amortized on a 30-year period) on or after July 1, 2011 are to be amortized on a 25-year period. In their June 30, 2012 valuation report, The Segal Company (the actuary) determined the effect of this change in the amortization policy combined with the effect of the changes in the actuarial assumptions to be an increase in the District contribution rate for the pension plan (not including the HIB) of 2.85% of payroll.

It should also be mentioned that, at the September 20, 2012 meeting, the Retirement Board also adopted a modification from an aggregate version to an individual version of the Entry Age Normal funding method. In their June 30, 2012 valuation report, the actuary determined that this modification increased the District's normal cost rate by 0.72% of payroll.

**Contribution History.** The schedule of District contributions for each of the pension plan and the HIB plan for the last five Fiscal Years are shown in Table 18 below:

**Table 18**  
**RETIREMENT SYSTEM**  
**History of Contributions**  
**Five Fiscal Years Ended June 30, 2012**  
**(\$ in 000's)**

**Pension Plan:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed</i>
2008	24.51%	\$37,387	\$37,387	100%
2009	24.96	39,485	39,485	100
2010	27.24	44,031	44,031	100
2011	31.80	50,987	50,987	100
2012	32.91	52,156	52,156	100

**Health Insurance Benefit:**

<i>Fiscal Year Ended June 30:</i>	<i>District Contribution Rate at June 30</i>	<i>Annual Required Contribution</i>	<i>Actual Contribution</i>	<i>Percentage Contributed<sup>(1)</sup></i>
2008	3.74%	\$ 9,114	\$7,216	79%
2009	3.98	9,114	6,318	69
2010	4.91	11,370	7,725	68
2011	4.78	10,496	7,494	71
2012	4.83	11,518	7,495	65

<sup>(1)</sup> Percentage contributed was less than 100% as the District does not pre-fund the implicit retiree rate subsidy required to be valued under GASB Statements Nos. 43 and 45. See "— Schedule of Funding Progress" below.

As reflected in the actuarial study and shown in Table 38 below, the combined Actuarial Accrued Liability for pension and HIB benefits at June 30, 2012 was \$1,659,897,000 and the Actuarial Value of Assets was \$1,035,786,000, resulting in an Unfunded Actuarial Accrued Liability of \$624,111,000 and a funded ratio of the Plan under the entry age normal basis of 62.4%. As described above, the Actuarial

Value of Assets has been calculated using a five-year smoothing of the difference between the actual market return and the expected return on the market value of the assets. The liabilities for the pension benefits are calculated in compliance with GASB Statement No. 25 (“Financial Reporting for Defined Benefit Pension Plans, Note Disclosures for Defined Contribution Plans”) and Statement No. 27 (“Accounting for Pensions by State and Local Governmental Employers”), but do not reflect the parameters of GASB Statement No. 45. See also “– *Schedule of Funding Progress*” below.

Table 19 below sets forth the Actuarial Accrued Liability, Actuarial Value of Assets, the Unfunded Actuarial Accrued Liability and Funded Ratio as of June 30 of each of the Fiscal Years 2008 through 2012 (the year the most recent actuarial information is available).

**Table 19**  
**RETIREMENT SYSTEM**  
**Actuarial Accrued Liability, Actuarial Value of Assets,**  
**Unfunded Actuarial Accrued Liability and Funded Ratio**  
**Five Fiscal Years Ended June 30, 2012<sup>(1)</sup>**  
**(\$ in 000's)**

<i><b>Fiscal Year Ended June 30</b></i>	<i><b>Actuarial Accrued Liability (AAL)</b></i>	<i><b>Actuarial Value of Assets</b></i>	<i><b>Market Value of Assets</b></i>	<i><b>Unfunded Actuarial Accrued Liability (UAAL)<sup>(2)</sup></b></i>	<i><b>Funded Ratio on Actuarial Value</b></i>	<i><b>Funded Ratio on Market Value</b></i>
2008	\$1,336,676	\$ 907,927	\$838,614	\$428,749	67.92%	62.74%
2009	1,415,392	869,375	668,750	546,017	61.42	47.25
2010	1,491,885	925,907	769,052	565,978	62.06	51.55
2011	1,544,486	966,767	968,239	577,719	62.59	62.69
2012	1,659,897 <sup>(3)</sup>	1,035,786	986,972	624,111	62.40	59.46

<sup>(1)</sup> Dollars rounded to nearest thousand.

<sup>(2)</sup> The District estimates that approximately 85% of the UAAL is attributable to the Water System and approximately 15% is attributable to the Wastewater System. The UAAL is determined based on the Actuarial Value of Assets.

<sup>(3)</sup> Of this amount, \$103,201 is attributable to the HIB liabilities. The HIB liabilities as calculated for GASB reporting purposes, which include the implicit retiree rate subsidy, were \$138,240 using a discount rate of 7.00%.

Source: The Segal Company.

As of June 30, 2012, the market value of the combined pension and HIB plan's assets was \$986,972,000 and the projected benefit obligation (“PBO”) was \$1,606,973,000, resulting in a funded ratio of the plan under the PBO basis of 61.4%. Under the plan provisions, determination of the funded ratio on a PBO basis is required and certain cost of living increases are granted when the funded ratio of the plan is 85% or higher as calculated on the PBO basis.

***Schedule of Funding Progress.*** As required by GASB 45, the District reports the schedule of funding progress for each of the pension plan and the post-employment healthcare plan (HIB). The schedule of funding progress presents multiyear trend information that shows whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liabilities for benefits.

The schedule of funding progress for the pension plan is set forth in Table 20 below.

**Table 20**  
**PENSION PLAN**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 900,917	\$1,244,993	\$344,076	72.4%	\$158,499	217.1%
2009	862,021	1,323,555	461,534	65.1	161,893	285.1
2010	915,845	1,396,003	480,158	65.6	164,085	292.6
2011	954,719	1,446,039	491,320	66.0	159,505	308.0
2012	1,021,546	1,556,696	535,150	65.6	158,847	336.9

Source: The Segal Company's Actuarial Valuation and Review of Pension Plan as of June 30, 2012.

The schedule of funding progress for the post-employment healthcare plan is set forth in Table 21 below.

The retiree health liabilities reported in the actuarial study as of June 30, 2012 (and referred to in Table 19 above) will not match those required to be used for GASB reporting purposes as shown in Table 21 below. The liabilities as reflected in the actuarial study have not been adjusted to include the implicit retiree rate subsidy as required under GASB reporting requirements. (Note that when premiums for active employees are determined on a pooled basis with premiums for retirees under age 65, a significant accounting obligation may exist even though the retiree under age 65 contributes most or all of the blended premium cost of the plan. The average costs for retirees if determined on a stand-alone basis is likely to exceed the average cost for the whole group, leading to an implicit subsidy for these retirees. The GASB accounting standard requires the employer to identify and account for this implicit subsidy as well as any explicit subsidies the employer may provide.) In addition, the liabilities for GASB reporting purposes for the HIB portion of the obligations shown below were determined based upon a lower discount rate (*i.e.*, 7.00%) than the 7.75% investment rate of return used in The Segal Company prefunding study. The liabilities calculated for GASB reporting purposes shown in Table 21 below are therefore higher than those reflected in the actuarial study as of June 30, 2012 and described above.

**Table 21**  
**POST-EMPLOYMENT HEALTHCARE BENEFIT (HIB)**  
**Schedule of Funding Progress**  
**(Dollar Amounts in Thousands)**

<b>Actuarial Valuation Date June 30</b>	<b>Actuarial Value of Assets</b>	<b>Actuarial Accrued Liability (AAL)</b>	<b>Unfunded AAL (UAAL)</b>	<b>Funded Ratio</b>	<b>Covered Payroll</b>	<b>UAAL as a Percentage of Covered Payroll</b>
2008	\$ 7,010	\$137,055	\$130,045	5.1%	\$158,499	82.0%
2009	7,354	130,245	122,891	5.6	161,893	75.9
2010	10,061	135,379	125,318	7.4	164,085	76.4
2011	12,047	135,360	123,312	8.9	159,505	77.3
2012	14,240	138,240	123,999	10.3	158,847	78.1

Source: The Segal Company Actuarial Valuation and Review of Other Postemployment Benefits (OPEB) as of June 30, 2012 in accordance with GASB Statements No. 43 and 45.

***Related Matters.*** In the past few years, the Internal Revenue Service (the “IRS”) has focused its auditing activities towards governmental retirement plans to determine if those plans are complying with federal tax laws. While the District has consistently amended its Retirement Ordinance to comply with changes in the federal tax code, other governmental plans failed to amend their plans to reflect changes in tax laws. The failure to include these amendments put those plans at risk of a range of consequences from being assessed significant penalties to losing its tax-qualified status, wherein all assets under the plan would become immediately taxable. Because so many governmental plans were at risk, the IRS instituted a voluntary correction program (“VCP”), which provided such plans the opportunity to voluntarily report any failures and institute corrective measures. In participating in the voluntary correction program, governmental plans would be protected from enforcement actions for such failures. Under the VCP, the IRS would review and approve the corrective measures proposed by the plan and at the end of the review, issue a letter of determination of tax qualified status. A letter of determination of tax qualified status would serve as protection against liability for prior violations of federal tax laws as well as serve as a safe harbor for future IRS audits. The District has taken advantage of this “safe harbor” opportunity by participating in the IRS’ voluntary correction program to make additional necessary corrections to its Plan while protecting itself against potential tax liability. The District’s application for a determination letter to the IRS is still under review due to the voluminous number of VCP filings. While the District is unable to predict when the IRS will ultimately act on the District’s application or what action the IRS will take in its review of such application, since the District has been amending its Retirement Ordinance to maintain compliance with the federal tax code during the past two decades and because the voluntary correction program offers a safe harbor for non-complaint plans, the District expects that the IRS will provide a statement that the District’s Plan is in compliance with the tax code and that the Plan is tax qualified.

***California Pension Reform Act.*** On August 31, 2012, the California legislature enacted Assembly Bill 340, the California Public Employees’ Pension Reform Act of 2013 (the “PEPRA”). The PEPRA was signed into law by Governor Jerry Brown on September 12, 2012 and became effective on January 1, 2013. Pursuant to the provisions of the PEPRA, as enacted, the PEPRA is intended to apply to all state and local public retirement systems, independent public retirement systems, and to individual retirement plans offered by public employers, with the exception of the University of California, and California charter cities and counties, except to the extent such entities participate in any retirement system governed by State statute. The impacts of the PEPRA primarily apply to employees first hired by a public agency or after January 1, 2013. Some of these provisions include certain limits on the amount and types of compensation that may be included by a retirement system in calculating pension benefits, the imposition of new formulas for the calculation of pension benefits for employees, certain requirements for the sharing of the costs of pension benefits by employees, and certain limitations on the adoption of new defined benefit plans. The PEPRA would prohibit certain retroactive enhancements to pension benefit formulas for all employees, impose certain limits on post-retirement employment for all employees, prohibit the purchase of non-qualified permissive service credit by all employees after January 1, 2013, and require for any employee the forfeiture of pension and retirement-related benefits for certain felony convictions.

The District Board has adopted certain amendments to the Retirement System Ordinance effective as of January 1, 2013 in order to implement applicable provisions of the PEPRA. Because the interpretation and application of the PEPRA will likely be subject to judicial determination and further implementing legislation, it is too early to assess at this time what all of the impacts of PEPRA ultimately will be on the District’s Retirement System.

Additional information concerning the Retirement System may be found in APPENDIX B – “EAST BAY MUNICIPAL UTILITY DISTRICT AUDITED FINANCIAL STATEMENTS FOR THE YEARS ENDED JUNE 30, 2013 AND 2012.”



AGENDA NO.  
MEETING DATE

11.  
September 24, 2013

TITLE **REPLACE ROYAL BANK OF CANADA AND BARCLAYS BANK AS  
REMARKETING AGENTS FOR THE WATER SERIES 2008A-1, 2008A-2 and  
2008A-3 BONDS**

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

### RECOMMENDED ACTION

Transfer the remarketing agent assignment for the Water Series 2008A-1 Variable Rate Demand Bonds (VRDBs) from Royal Bank of Canada (RBC) to Wells Fargo Bank and transfer the remarketing agent assignment for the Water Series 2008A-2 and 2008A-3 VRDBs from Barclays Bank to U. S. Bank. Approve the following documents to execute the transfer: First Amendment to the 13<sup>th</sup> Supplemental Indenture, Remarketing Agreement for Wells Fargo Bank and Remarketing Agreement for U.S. Bank.


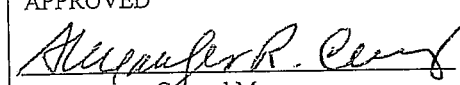
### SUMMARY

The District routinely manages its pool of remarketing agents for its outstanding VRDBs. In 2012, Wells Fargo Bank and U.S. Bank replaced RBC and Barclays Bank as providers of Standby Bond Purchase Agreements (SBPAs) for the District's Water Series 2008A-1, Water Series 2008A-2 and Water Series 2008A-3 VRDBs. The District, however, did not replace RBC and Barclays as remarketing agents for the VRDBs at that time and as a result, these VRDBs continue to be remarketed by RBC and Barclays Bank. At this time, the District would like to assign the remarketing responsibilities for these VRDBs from RBC and Barclays Bank to two other members of the District's underwriting pool.

### DISCUSSION

Currently, RBC serves as the remarketing agent for the Water Series 2008A-1 VRDBs and, with this action, will be replaced by Wells Fargo Bank as the remarketing agent for approximately \$61.7 million of VRDBs. Barclays Bank currently remarkets approximately \$46.3 million Water Series 2008A-2 VRDBs and approximately \$46.3 million Series 2008A-3 VRDBs. With this action, Barclays Bank will be replaced by U.S. Bank for both series of VRDBs.

The Bond Resolution approves the form of the First Amendment to the 13<sup>th</sup> Supplemental Indenture and approves the form of the two new Remarketing Agreements and delegates authority to the General Manager, the Finance Director or the Treasury Manager to execute the Remarketing Agreements and any other agreements and actions necessary to complete this transaction.

Funds Available: FY 14 - 15		Budget Code: VAR.
DEPARTMENT SUBMITTING  Finance	DEPARTMENT MANAGER or DIRECTOR   Eric L. Sandler	APPROVED   General Manager

A copy of the Bond Resolution is attached. The First Amendment to the 13<sup>th</sup> Supplemental Indenture and other documents have been provided on the attached CD and paper copies are available from the Office of the Secretary upon request.

A summary of the approved documents is as follows:

- First Amendment to the 13<sup>th</sup> Supplemental Indenture broadens the types of entities that can serve as remarketing agents by allowing commercial banks, national banking association or trust companies (which Wells Fargo Bank and U.S. Bank are) to serve as remarketing agents in addition to members of the Financial Industry Regulatory Authority, Inc.
- Remarketing Agreement appoints Wells Fargo Bank as remarketing agent and provides the terms and conditions on which Wells Fargo Bank, as remarketing agent, will remarket the Series 2008A-1 Water VRDBs. Remarketing fees will not exceed 7 basis points per annum (approximately \$43,208) plus certain remarketing expenses. Wells Fargo Bank is currently rated A+ by Standard & Poor's and is highly regarded in the municipal bond market as a remarketing agent for municipal bonds.
- Remarketing Agreement appoints U.S. Bank as remarketing agent and provides the terms and conditions on which U.S. Bank, as remarketing agent, will remarket the Series 2008A-2 and Series 2008A-3 Water VRDBs. Remarketing fees will not exceed 7.0 basis points per annum (approximately \$64,785) plus certain remarketing expenses. U.S. Bank is currently rated A+ by Standard & Poor's and is highly regarded in the municipal bond market as a remarketing agent for municipal bonds.

## **FISCAL IMPACT**

Funds for the payment of remarketing fees are included in the FY14 and FY15 budget.

## **ALTERNATIVE**

Do not replace remarketing agents. This is not recommended as the current remarketing agents no longer provide liquidity in the form of Standby Bond Purchase Agreements to the District.

ARC:ELS

Attachments



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

AUTHORIZE THE EXECUTION AND DELIVERY OF A FIRST  
AMENDMENT TO THE THIRTEENTH SUPPLEMENTAL INDENTURE  
AND TWO OR MORE REMARKETING AGREEMENTS IN CONNECTION  
WITH THE WATER SYSTEM REVENUE REFUNDING BONDS, SERIES  
2008A-1, SERIES 2008 A-2 AND SERIES 2008A-3 AND CERTAIN OTHER  
ACTIONS RELATED THERETO AND AUTHORIZE THE OFFICERS OF  
THE DISTRICT TO DO ALL OTHER THINGS DEEMED NECESSARY  
OR ADVISABLE

Introduced by Director

; Seconded by Director

WHEREAS, the East Bay Municipal Utility District (the "District") has previously issued its Water System Revenue Refunding Bonds, Series 2008A, comprised of subseries Series 2008A-1 (the "Series 2008A-1 Bonds"), Series 2008A-2 (the "Series 2008A-2 Bonds"), Series 2008A-3 (the "Series 2008A-3 Bonds") and Series 2008A-4 (collectively, the "Series 2008A Bonds"), pursuant to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, by and between the District and The Bank of New York Mellon Trust Company, N.A., as successor trustee, as amended and supplemented (the "Indenture"), including as supplemented by the Thirteenth Supplemental Indenture, dated as of March 1, 2008 (the "Thirteenth Supplemental Indenture"), providing for the issuance of the Series 2008A Bonds; and

WHEREAS, the Series 2008A-1 Bonds, Series 2008A-2 Bonds and Series 2008A-3 Bonds are each variable rate demand obligations subject to remarketing upon tender by the owners thereof; and

WHEREAS, RBC Capital Markets, LLC ("RBC") presently serves as remarketing agent for the Series 2008A-1 Bonds and Barclays Capital Inc. ("Barclays") presently serves as remarketing agent for the Series 2008A-2 Bonds and Series 2008A-3 Bonds; and

WHEREAS, the District desires to authorize the appointment of Wells Fargo Bank, National Association ("Wells Fargo") or such other firm or firms as are hereby approved as replacement remarketing agent for the Series 2008A-1 Bonds and desires to authorize the appointment of U.S. Bancorp Investments, Inc. and U.S. Bank Municipal Securities Group, a division of U.S. Bank National Association (together, "U.S. Bank"), or such other firm or firms as are hereby approved as replacement remarketing agent for the Series 2008A-2 Bonds and Series 2008A-3 Bonds and the execution and delivery of remarketing agreements by and between the District and the named remarketing agent in connection therewith; and

WHEREAS, the District further desires to amend certain provisions of the Thirteenth Supplemental Indenture relating to the entities eligible to serve as remarketing agent for the Series 2008A Bonds in order to facilitate the replacement of the remarketing agents for the Series 2008A-1 Bonds with Wells Fargo and for the Series 2008A-2 Bonds and the Series 2008A-3 with U.S. Bank;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of East Bay Municipal Utility District, as follows:

Section 1. Approval of First Amendment to Thirteenth Supplemental Indenture. The General Manager, the Director of Finance or the Treasury Manager or the designee of any of such officers is hereby authorized and directed to execute for and on behalf of the District the First Amendment to Thirteenth Supplemental Indenture, in substantially the form as submitted to this meeting, with such changes, insertions and omissions as the General Manager, the Director of Finance or the Treasury Manager shall approve after consultation with the District's General Counsel and Co-Bond Counsel, such approval to be evidenced by the execution and delivery thereof. The First Amendment to Thirteenth Supplemental Indenture, as executed and delivered, is hereinafter referred to as the "First Amendment to Thirteenth Supplemental Indenture" and the First Amendment to Thirteenth Supplemental Indenture is hereby approved.

Section 2. Approval of Remarketing Agreements. The General Manager, the Director of Finance or the Treasury Manager or the designee of any of such officers is hereby authorized and directed to execute for and on behalf of the District a remarketing agreement relating to the Series 2008A-1 Bonds, between the District and Wells Fargo or such other firm or firms as shall be approved by the General Manager or the Director of Finance, as remarketing agent for the Series 2008A-1 Bonds, and one or more remarketing agreements, relating to the Series 2008A-2 Bonds and Series 2008A-3 Bonds, between the District and U.S. Bank or such other firm or firms as shall be approved by the General Manager or the Director of Finance, as remarketing agent for the Series 2008A-2 Bonds and Series 2008A-3 Bonds, each in substantially the forms as submitted to this meeting, with such changes, insertions and omissions as the General Manager, the Director of Finance or the Treasury Manager shall approve after consultation with the District's General Counsel and Co-Bond Counsel, such approval to be evidenced by the execution and delivery thereof; provided that such annual remarketing agent fees payable by the District thereunder shall not exceed 0.07 of one percent of the weighted average daily principal amount of bonds outstanding during each such period. The remarketing agreements, as executed and delivered, are hereinafter referred to as the "Remarketing Agreements" and the Remarketing Agreements are hereby approved.

Section 3. Additional Actions. The General Manager, the Director of Finance and the Treasury Manager and such other proper officers of the District be and they hereby are authorized, individually and collectively, to execute and deliver any and all agreements and to approve any and all documents and instruments and to do and cause to be done any and all acts and things deemed necessary or advisable for carrying out the transactions contemplated by this Resolution, including without limitation, such actions to provide for the giving of notices or the securing of any required third party approvals or waivers in connection with the First Amendment to Thirteenth Supplemental Indenture, the Remarketing Agreements and the replacement of the remarketing agents for the Series 2008A-1 Bonds, Series 2008A-2 Bonds and Series 2008A-3 Bonds. All actions heretofore taken by the officers, employees and agents of the

District in furtherance of the matters contemplated by this Resolution are hereby approved, ratified and confirmed.

ADOPTED this 24<sup>th</sup> day of September, 2013 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM AND PROCEDURE:

\_\_\_\_\_  
General Counsel



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FIRST AMENDMENT TO THIRTEENTH SUPPLEMENTAL INDENTURE

between

EAST BAY MUNICIPAL UTILITY DISTRICT

and

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

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Dated as of October \_\_, 2013

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(Supplemental to the Water System Subordinated Revenue Bond  
Indenture dated as of April 1, 1990)

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First Amendment to Thirteenth Supplemental Indenture  
(Supplemental to the Water System Subordinated  
Revenue Bond Indenture dated as of April 1, 1990)

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This First Amendment to Thirteenth Supplemental Indenture, dated as of October \_\_, 2013 (this “First Amendment to Thirteenth Supplemental Indenture”), between the East Bay Municipal Utility District (the “District”) and The Bank of New York Mellon Trust Company, N.A. (successor-in-interest to BNY Western Trust Company), as trustee (the “Trustee”);

W I T N E S S E T H :

WHEREAS, the Thirteenth Supplemental Indenture, dated as of March 1, 2008 (the “Thirteenth Supplemental Indenture”), is supplemental to the Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented (the “Indenture”), between the District and the Trustee, providing for, among others, the issuance of the East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2008A (the “Series 2008A Bonds”); and

WHEREAS, the District now desires to amend and restate certain provisions of the Thirteenth Supplemental Indenture; and

NOW, THEREFORE, the parties hereto agree, as follows:

ARTICLE I

AMENDMENT

SECTION 1.01. Authorization. This First Amendment to Thirteenth Supplemental Indenture is authorized pursuant to Section 9.01(B)(8) of the Indenture. Capitalized terms used herein not otherwise defined shall have the meanings ascribed thereto in the Indenture.

SECTION 1.02. Amendments.

(A) Amendment of Section 29.22(A). The first sentence of Section 29.22(A) of the Thirteenth Supplemental Indenture is hereby amended and restated as follows (with the remainder of said Section 29.22(A) remaining unchanged):

“(A) Remarketing Agent. Each Remarketing Agent shall be a commercial bank, national banking association or trust company or be a member of the Financial Industry Regulatory Authority, Inc. and shall be authorized by law to perform all the duties imposed upon it hereunder and under the Remarketing Agreement.

## ARTICLE II

### MISCELLANEOUS

SECTION 2.01. Effective Date of First Amendment to Thirteenth Supplemental Indenture. This First Amendment to Thirteenth Supplemental Indenture shall take effect upon its execution and delivery.

SECTION 2.02. Execution in Counterparts. This First Amendment to Thirteenth Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Thirteenth Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

EAST BAY MUNICIPAL UTILITY  
DISTRICT

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

ATTEST:

By: \_\_\_\_\_  
Secretary of the District

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

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



**REMARKETING AGREEMENT**

**by and between**

**EAST BAY MUNICIPAL UTILITY DISTRICT**

**and**

**WELLS FARGO BANK, NATIONAL ASSOCIATION**

**Dated as of October \_\_, 2013**

**East Bay Municipal Utility District  
Water System Revenue Refunding Bonds,  
Series 2008A-1**

## REMARKETING AGREEMENT

This REMARKETING AGREEMENT, dated as of [October \_\_,] 2013, is by and between EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district organized and existing under the laws of the State of California (the "Issuer"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association organized and existing pursuant to the laws of the United States of America (the "Remarketing Agent").

### WITNESSETH:

WHEREAS, the Issuer has previously issued its East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2008A-1 (herein, the "Bonds") pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented to the date hereof, including by a Thirteenth Supplemental Indenture, dated as of March 1, 2008, as amended (the "Supplemental Indenture"), providing for the issuance of the Bonds (collectively, the "Indenture"), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the "Trustee"), and as authorized pursuant to the Act (as hereinafter defined); and

WHEREAS, the Issuer, pursuant to the terms and provisions of the Indenture, desires to appoint the Remarketing Agent to undertake the duties and responsibilities of Remarketing Agent under the Indenture in respect of the Bonds, and the Remarketing Agent has agreed to accept such duties and responsibilities upon the terms and conditions set forth in this Remarketing Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. Definitions. The following words and terms as used in this Remarketing Agreement shall have the following meanings:

"Act" shall mean the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

"Liquidity Facility Provider" shall mean initially Wells Fargo Bank, National Association and any successors or assigns thereto, and, upon the effective date of an Alternate Liquidity Facility, the bank or banks or other financial institution or financial institutions or other Person or Persons issuing such Alternate Liquidity Facility and their successors and assigns.

"Official Statement" shall mean the Remarketing Memorandum dated December 27, 2012, prepared and distributed by the Issuer in connection with the remarketing of the Bonds (including the cover page thereof and all appendices included therein or attached thereto), and any subsequent offering document prepared with respect to the Bonds.

"Purchase Contract" shall mean the Purchase Contract, dated March 19, 2008, by and between the Issuer and Citigroup Global Markets Inc., executed in connection with the issuance and sale of the Bonds.

“Tender Agent” shall mean the entity serving as Tender Agent as provided in the Indenture.

Other terms used herein but not defined herein shall have the same meaning as that assigned to such terms in the Indenture unless the context indicates otherwise.

Section 2. Acceptance. The Remarketing Agent accepts its appointment as the Remarketing Agent for the Bonds. This Remarketing Agreement shall constitute any written instrument of acceptance which may be referred to in the Supplemental Indenture, and counterparts of this Remarketing Agreement, or true copies thereof, shall be delivered to the Issuer and the Tender Agent.

Section 3. Remarketing Agent’s Duties and Obligations. The Remarketing Agent agrees that, commencing as of 12:01 a.m., \_\_\_\_\_, 2013, it will:

(a) At the times and in the manner set forth in the applicable provisions of the Indenture, determine (i) with respect to Bonds bearing Interest at a Weekly Interest Rate, the Weekly Interest Rate applicable to such Bonds; (ii) with respect to Bonds bearing Interest at a Daily Interest Rate, the Daily Interest Rate applicable to such Bonds; (iii) with respect to the Short-Term Interest Rate Period, the Bond Interest Term Rate and the duration of the Bond Interest Term applicable to such Bonds; (iv) with respect to the Long-Term Interest Rate Period, the Long-Term Interest Rate applicable to such Bonds; (v) with respect to the CPI Interest Rate Period, the CPI Interest Rate applicable to such Bond; and (vi) with respect to the LIBOR-Based Interest Rate Period, the LIBOR-Based Interest Rate applicable to such Bonds.

(b) In accordance with the applicable provisions of the Indenture, give notification of the interest rates and rate periods so determined.

(c) Subject to the provisions of Section 9 hereof and the Indenture, use its best efforts to remarket (i) all Bonds which are subject to mandatory tender, and (ii) all Bonds bearing interest at a Weekly Interest Rate or at a Daily Interest Rate which are subject to optional tender for purchase pursuant to the Supplemental Indenture.

(d) In accordance with and at the times specified in the Supplemental Indenture, give immediate notice to the Tender Agent specifying the principal amount of Bonds subject to optional or mandatory purchase which have been remarketed and the amount thereof which has not been remarketed and to deliver to the Tender Agent in accordance with and at the times set forth in the Supplemental Indenture in immediately available funds, an amount equal to remarketing proceeds.

(e) Hold all Bonds delivered to it for the benefit of the respective owners which shall have delivered such Bonds until moneys representing the purchase price of such Bonds shall have been delivered to, for the account of, or to the order of such Bondholders.

(f) Hold all moneys delivered to it for the purchase of Bonds for the benefit of the person or entity which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such person or entity.

(g) Perform all duties and obligations of the Remarketing Agent under the Supplemental Indenture.

Section 4. Remarketing Agent Compensation.

(a) In consideration of the services to be performed by the Remarketing Agent under this Remarketing Agreement, the Issuer shall pay to the Remarketing Agent the following fees: (i) an annual fee equal to 0.07 of one percent of the weighted average daily principal amount of Bonds outstanding during such periods in which the Bonds shall bear interest at a Weekly Interest Rate or a Bond Interest Term Rate or Bond Interest Term Rates, (ii) an annual fee equal to 0.07 of one percent of the weighted average daily principal amount of Bonds outstanding during such periods in which the Bonds shall bear interest at a Daily Interest Rate; (iii) in connection with, or in anticipation of, the establishment of a Long-Term Interest Rate Period, an amount as shall be agreed to by the Issuer and the Remarketing Agent at that time, and (iv) reasonable expenses incurred by the Remarketing Agent in connection with its services hereunder as provided in paragraph (b) of this Section 4 below. It is understood and agreed that payment of the fees referred to in clauses (i) and (ii) of the first sentence of this Section shall be made by the Issuer as soon as practicable upon receipt of an invoice therefor from the Remarketing Agent, such invoice to be sent quarterly in arrears, that payment of the fee referred to in clause (iii) of the first sentence of this Section shall be made by the Issuer on the effective date of the Long-Term Interest Rate Period and that the payment of expenses referred to in clause (iv) of the first sentence of this Section shall be made by the Issuer as soon as practicable upon receipt of an invoice therefor from the Remarketing Agent.

(b) In addition, the Issuer shall pay all reasonable expenses and costs of the Remarketing Agent incurred in connection with the transactions contemplated hereby (including, without limitation, the expenses and costs of the preparation of any blue sky and legal investment surveys required for the public marketing or remarketing of the Bonds and the preparation, printing, photocopying, execution and delivery of any revised or updated Official Statements, and further including, the reasonable fees and expenses of counsel to the Remarketing Agent, if any, in connection therewith).

Section 5. Remarketing Agent Not Acting as Underwriter.

(a) It is understood and agreed that the Remarketing Agent is only undertaking its obligations under this Remarketing Agent and the Indenture on a best efforts basis. The Issuer agrees that while this Remarketing Agreement is in effect, the Remarketing Agent shall be the exclusive remarketing agent of the Bonds. The Remarketing Agent shall not act, nor shall be deemed to be acting, as an underwriter for the Bonds in connection with any remarketing of such Bonds during the Weekly Interest Rate Period and shall be in no way obligated to advance its own funds to purchase any such Bonds, including upon a conversion of the Bonds to another Interest Rate Period. The Remarketing Agent shall not be liable to the Issuer, the Trustee, the Tender Agent or the Liquidity Facility Provider on account of the failure of any person to whom the Remarketing Agent has sold a Bond to pay for such Bond or to deliver any document in respect of the sale of such Bond.

The Remarketing Agent, in its individual capacity, either as principal or agent, may in its sole discretion, buy, sell, hold and deal in any of the Bonds and, if it does so, it will have the same rights as any other person owning Bonds. The Remarketing Agent, in its individual capacity, either as principal or agent, may enter into other business arrangements or transactions with the Issuer.

(b) It is understood and agreed that: (i) the transaction contemplated by this Remarketing Agreement is an arm's length, commercial transaction between the Issuer and the Remarketing Agent in which the Remarketing Agent is acting solely as a principal and is not acting

as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) the Remarketing Agent has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the obligations to be performed by the Remarketing Agent under this Remarketing Agreement and the discussions, undertakings and procedures leading thereto (irrespective of whether the Remarketing Agent has provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligations the Remarketing Agent has to the Issuer with respect to the transaction contemplated under this Remarketing Agreement are expressly set forth in this Remarketing Agreement; and (iv) in connection with the transaction contemplated under this Remarketing Agreement, the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Section 6.      Representations by the Issuer.

(a)      The Issuer, by acceptance hereof, and upon the date of each remarketing of the Bonds, represents and warrants to the Remarketing Agent that it has full power and authority to take all actions required or permitted to be taken by it by or under, and to perform and observe the covenants and agreements on its part contained in, this Remarketing Agreement and any other agreement or instrument relating thereto to which the Issuer is a party, including without limitation the Indenture, and when duly executed and delivered by the respective parties thereto, this Remarketing Agreement and such other related agreements or instruments will constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with the respective terms thereof, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity ("Creditors' Rights Limitations") and to limitations on legal remedies against public agencies within the State of California.

(b)      The Issuer agrees that, in connection with the sale and any remarketing of the Bonds, it will not make any untrue statement of a material fact, or omit to state a material fact which is required or necessary to be stated therein in order to make any statements made by the Issuer, in the light of the circumstances under which they were made, not misleading (except the Issuer makes no representations as to the Excluded Information (as defined below)). The Issuer represents and warrants that the financial statements of the Issuer delivered or to be delivered to the Remarketing Agent in connection with the remarketing of the Bonds on and after the effective date of this Remarketing Agreement will be in accordance with the related books and records, and will be complete and correct and fairly present the financial position as of the dates set forth therein and the results of operations for the periods set forth therein, all in conformity with generally accepted accounting principles and practices, it being understood that, in the case of interim reports, such reports will be subject to year-end adjustments.

(c)      The Issuer hereby confirms to the Remarketing Agent that the representations and warranties made by the Issuer in the Purchase Contract are true and correct in all material respects on and as of the date hereof as if made on and as of the date hereof, unless such representation and warranty refers to a specific earlier date, in which case such representation and warranty is true and correct in all material respects on and as of such earlier date, all of which representations and warranties, for such purpose, are hereby incorporated by such reference.

(d)      The Issuer shall immediately notify the Remarketing Agent by telephone, confirmed in writing, of:

(i) the occurrence or existence of any event or condition which becomes known to the Issuer and which would make any of its representations contained herein or incorporated herein by reference (as set forth in (a) and (b) above) incorrect or untrue in any material respect if made on and as of any day during the term of this Remarketing Agreement;

(ii) any reduction or termination of the commitment or obligation of the Liquidity Facility Provider with respect to the Liquidity Facility; and

(iii) any resignation or removal of, and appointment of a successor for, the Tender Agent or Trustee for the Bonds.

(e) The Issuer will notify the Remarketing Agent of any amendment made to the Indenture affecting the Bonds and will notify the Remarketing Agent of any amendment, extension, replacement or termination of the Liquidity Facility (and will use its best efforts to notify the Remarketing Agent of any proposed amendment, extension, replacement or termination of the Liquidity Facility prior to the execution thereof).

(f) The Issuer hereby agrees to provide such information, execute such instruments and take such other action in cooperation with the Remarketing Agent as the Remarketing Agent may reasonably request in order to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states as the Remarketing Agent may designate; provided however, that the Issuer shall not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determinations in any jurisdiction.

Section 7. Representations by the Remarketing Agent. The Remarketing Agent represents to the Issuer that it is a national banking association duly organized and validly existing and in good standing under the laws of the United States of America; that it has full power and authority to enter into and perform its obligations under this Remarketing Agreement; and that this Remarketing Agreement constitutes the legal, valid and binding obligation of the Remarketing Agent enforceable against the Remarketing Agent in accordance with its terms, except as the enforcement thereof may be limited by Creditors' Rights Limitations.

Section 8. Furnishing of Offering Materials and Other Documents.

(a) The Issuer has delivered a copy of the Official Statement to the Remarketing Agent. The Issuer hereby authorizes the Official Statement and the information contained therein to be used in connection with the remarketing of the Bonds by the Remarketing Agent.

(b) The Issuer agrees to cooperate with the Remarketing Agent to update and supplement the Official Statement at the Issuer's expense if in the reasonable judgment of the Issuer or the Remarketing Agent such supplement is necessary, and the Issuer agrees that it will provide to the Remarketing Agent copies of any supplements to the Official Statement and any revised Official Statements.

(c) The Issuer agrees to furnish to the Remarketing Agent sufficient copies of a reoffering statement (the "Reoffering Statement"), in a preliminary and final form, in form and substance satisfactory to the Remarketing Agent, and any other related material (including, if

applicable, a continuing disclosure undertaking), as the Remarketing Agent reasonably determines may be necessary in connection with any remarketing of the Bonds that constitutes a “primary offering” within the meaning of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Further, the Issuer agrees to cooperate in the preparation of and to make available to the Remarketing Agent revised Reoffering Statements or amendments or supplements thereto such as may be required so that the Reoffering Statement required for use in any such “primary offering” will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Any costs or expenses incurred in connection with the preparation of a Reoffering Statement and any amendments or supplements thereto shall be the responsibility of the Issuer. The representations contained in this paragraph (c) shall not apply to information in the Official Statement or any amendments or supplements thereto relating to the Liquidity Facility Provider, the Depository Trust Company, the Liquidity Facility, the price or yield information on the cover of the Official Statement, or to any statements or omissions based upon information furnished in writing by the underwriters of the Bonds expressly for use therein (collectively, the “Excluded Information”).

(d) The Issuer hereby (i) authorizes and consents to the delivery by the Remarketing Agent to the Municipal Securities Rulemaking Board (the “MSRB”) pursuant to MSRB Rule G-34(c) of the Liquidity Facility and such other documents (if any) that establish an obligation to provide liquidity with respect to the Bonds or that set forth or define critical aspects of the liquidity facility for the Bonds that are required to be submitted by the Remarketing Agent to the MSRB pursuant to MSRB Rule G-34(c) (including any executed amendments, extensions or related changes thereto) (all such documents, “Rule G-34 Documents”), and (ii) agrees to provide to the Remarketing Agent at the Issuer’s expense, upon request, executed PDF word-searchable copies of such Rule G-34 Documents in order to assist the Remarketing Agent in its timely filing of such Rule G-34 Documents in compliance with MSRB Rule G-34(c). The Issuer further agrees that the Remarketing Agent shall have no responsibility with respect to identifying any confidential or proprietary information in the Rule G-34 Documents. If the Issuer determines that any information in the Rule G-34 Documents is confidential or proprietary, the Issuer will provide the Remarketing Agent with redacted copies of such MSRB Rule G-34 Documents for submission by the Remarketing Agent to the MSRB for purposes of compliance with MSRB Rule G-34(c). In the event additional legal or regulatory requirements are imposed on the Remarketing Agent’s performance of its obligations under this Remarketing Agreement, the Issuer agrees to cooperate with the Remarketing Agent and to provide such additional documents or take such additional steps related to the Remarketing Agent’s fulfillment of such requirements as may be reasonably requested by the Remarketing Agent.

(e) If, at any time after the effective date of this Remarketing Agreement, any event known to the Issuer relating to or affecting the Issuer, the Liquidity Facility Provider, the Trustee, the Indenture, the Liquidity Facility, this Remarketing Agreement or the Bonds shall occur which materially adversely affects the Bonds or the remarketing thereof, the Issuer shall promptly notify the Remarketing Agent in writing of the circumstances and details of such event.

(f) The Issuer will cooperate with the Remarketing Agent and will supply the Remarketing Agent with any additional materials to which the Issuer has access and which the Remarketing Agent believes are necessary in connection with its remarketing of the Bonds.

(g) The Issuer will not amend or supplement, or request the amendment or supplementation of, the Official Statement prior to notifying the Remarketing Agent in writing of the proposed amendment or supplement thereto.

(h) No later than 180 days following the end of each fiscal year of the Issuer, the Issuer will provide the audited financial statements of the Issuer for such fiscal year to the Remarketing Agent.

Section 9. Term and Termination.

(a) This Remarketing Agreement shall become effective upon the execution hereof by the parties hereto and shall continue to be in effect for as long as any Bonds remain outstanding; provided, however, that the Remarketing Agent or the Issuer may terminate their obligations under this Remarketing Agreement upon 30 days' written notice to the other party; provided, however, that any such termination shall not take effect prior to the date that a successor remarketing agent acceptable to the Liquidity Provider has been appointed by the Issuer and has accepted such appointment. The Issuer agrees that upon notice of any such termination it shall use its best efforts to appoint a successor remarketing agent. Notwithstanding the foregoing, the Issuer may terminate its obligations under this Remarketing Agreement upon three Business Days written notice to the Remarketing Agent in the event that the Remarketing Agent elects not to (or is unable to) determine the Weekly Interest Rate or Daily Interest Rate other than as a result of the occurrence of any event described in paragraph (b) below.

(b) In addition, the Issuer or the Remarketing Agent may terminate this Agreement and the Remarketing Agent shall have no obligation to remarket or attempt to remarket Bonds if any one of the following events has occurred:

(i) The marketability of the Bonds or the contemplated offering prices thereof, in the opinion of the Remarketing Agent, shall have been materially adversely affected by any federal or state legislation, effective, pending or favorably reported out of any legislative committee, or by any decision of any federal or state court or by any order, ruling or regulation (final, temporary or proposed) of the Treasury Department or the Internal Revenue Service of the United States or other federal or state authority or regulatory body, or by a release or announcement or communication issued or sent by the Treasury Department or the Internal Revenue Service of the United States, affecting the status of the Issuer, its property or income, obligations of the general character of the Bonds, as contemplated hereby, or the interest thereon, or any tax exemption with respect to obligations of the general character of the Bonds, as contemplated hereby, or the interest thereon, granted or authorized by the Internal Revenue Code of 1986, as amended; or

(ii) Legislation shall be introduced by amendment or otherwise in or be enacted by the House of Representatives or the Senate of the Congress of the United States, or a decision by a Court of the United States of America shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the offering or sale of obligations of the general character of the Bonds, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939,



as amended and as then in effect, or with the purpose or effect of otherwise prohibiting the offering and sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby; or

(iii) Any information shall have become known which, in the Remarketing Agent's reasonable opinion, makes untrue, incorrect or misleading in any material respect any statement or information contained in the Official Statement, as the information contained therein has been supplemented or amended by other information, or causes the Official Statement, as so supplemented or amended, to contain an untrue, incorrect or misleading statement of a material fact or to omit to state a material fact required or necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and upon the receipt of notice of same by the Issuer, the Issuer fails to promptly amend or supplement the Official Statement in a manner which is reasonably acceptable in form and content to the Remarketing Agent; or

(iv) Any of the following events shall have occurred:

(1) the engagement or escalation of activities by the United States of America in hostilities which have resulted in a declaration of war or national emergency, or the occurrence of any other outbreak or hostilities or escalation thereof or national or international calamity or crisis, financial or otherwise, the effect of such outbreak, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Remarketing Agent, would materially adversely affect the ability of the Remarketing Agent to market the Bonds;

(2) a general suspension of trading on the New York Stock Exchange or the American Stock Exchange or other national securities exchange;

(3) the establishment of material restrictions upon trading of securities, including limited or minimum prices, by any governmental authority or by any national securities exchange;

(4) the declaration of a banking moratorium either by federal, New York, or other state authorities or by authorities in the country in which the Remarketing Agent is organized; or

(5) the market for the Bonds or the sale thereof by the Remarketing Agent at the contemplated offering prices shall have been materially and adversely affected, in the reasonable opinion of the Remarketing Agent;

(v) The short term credit ratings on the Bonds is reduced to below "A-1" by Standard & Poor's or "VMIG-1" by Moody's Investors Service; or

(vi) If the Remarketing Agent reasonably determines that a disclosure document is required for distribution to prospective purchasers and that such document is not available or, if available, is not satisfactory to the Remarketing Agent, in form or substance, or if the Remarketing Agent reasonably determines that Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 is applicable to the Bonds and additional documents, instruments, agreements or action is required to comply with same, including but not limited

to the Issuer having entered into a written agreement or contract for the benefit of the holders of the Bonds to provide the annual financial information, operating data, required event notices, and other information required by, and in accordance with, Rule 15c2-12, and such additional documents, instruments, agreements or action is not available or taken, or if available or taken, is not satisfactory to the Remarketing Agent, in form or substance, or if the Remarketing Agent shall receive an opinion of counsel that substantial grounds exist upon which the exclusion of interest on the Bonds from gross income for federal income tax purposes can be challenged, or the exemption of the Bonds from registration under the Securities Act of 1933, as amended, or the exemption of the Indenture from qualification under the Trust Indenture Act of 1939, as amended, can be challenged or if any default under the Indenture shall have occurred and be continuing.

(c) Notwithstanding anything in this Section 9 to the contrary, in the event that the Remarketing Agent elects not to (or is unable to) remarket the Bonds as a result of the occurrence of any event described in paragraph (b) above, the Issuer may immediately terminate this Remarketing Agreement and appoint a substitute remarketing agent, in which event the Issuer is not required to provide the 30-day notice required under the provisions of paragraph (a) above, and such substitute remarketing agent shall provide the services contemplated by this Remarketing Agreement.

#### Section 10. Indemnification.

(a) To the extent permitted by law, the Issuer hereby indemnifies and holds the Remarketing Agent, the officers, directors, employees, members and agents of the Remarketing Agent and each person, if any, who controls the Remarketing Agent within the meaning of Section 15 of the Securities Act of 1933, as amended, or of Section 20 of the Securities Exchange Act of 1934, as amended (each an “Indemnified Party”) harmless from and against any and all claims, damages, losses, liabilities, costs or expenses which an Indemnified Person may incur or which may be claimed against any Indemnified Person by any person or entity by reason of any untrue statement or alleged untrue statement of any material fact which is contained in any offering documents or disclosure documents provided by the Issuer and used by the Remarketing Agent in any remarketing of the Bonds (an “Offering Document”) or the omission or alleged omission to state therein a material fact which is required or necessary to be stated therein in order to make statements made therein, in the light of the circumstances under which they were made, not misleading; provided that such indemnification shall not extend to the Excluded Information.

In case any action or proceeding shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect of which indemnity may be sought against the Issuer, such Indemnified Party shall promptly notify the Issuer in writing, enclosing a copy of all papers served, but the failure so to notify the Issuer of any such action shall not relieve the Issuer of any liability which it may be determined to have by a court of law to any Indemnified Party pursuant to applicable law. In case any such action or proceeding shall be brought against any Indemnified Party and it shall notify the Issuer of the commencement thereof, the Issuer shall be entitled to participate in and, to the extent that it shall wish, to assume the defense thereof with counsel satisfactory to such Indemnified Party and, after notice from the Issuer to such Indemnified Party of the Issuer’s election so to assume the defense thereof, the Issuer shall not be liable to such Indemnified Party for any legal or other expenses. Any Indemnified Party shall have the right to employ its own counsel in any such action or proceeding, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Issuer shall have agreed to pay the fees and expenses of such counsel, (ii) such Indemnified Party shall have reasonably

concluded that there may be a conflict of interest between the Issuer and the Indemnified Party in the conduct of the defense of such action or proceeding (in which case the Issuer shall not have the right to direct the defense of such action or proceeding on behalf of the Indemnified Party) or (iii) the Issuer shall not in fact have employed counsel satisfactory to such Indemnified Party to assume the defense of such action. The Issuer shall not be liable for any settlement of any action or claim effected without its written consent.

To the extent permitted by law, the provisions of this Section 10(a) shall survive the termination of this Remarketing Agreement.

(b) The Remarketing Agent agrees to indemnify and hold the Issuer, the directors, trustees, members, officers and employees of the Issuer and each person, if any, who controls the Issuer within the meaning of Section 15 of the Securities Act of 1933, as amended, or of Section 20 of the Securities Exchange Act of 1934, as amended (each an "Indemnified Entity") harmless, from and against any and all losses, claims, damages, liabilities or expenses which an Indemnified Entity may incur or which may be claimed against any Indemnified Entity by any person or entity by reason of any untrue statement or alleged untrue statement of any material fact contained in any Offering Document or the omission or alleged omission to state therein a material fact which is required or necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, but in each case only to the extent that such untrue or alleged untrue statement or omission or alleged omission was made in any of the information furnished in writing by the Remarketing Agent for inclusion in the Offering Document.

In case any action or proceeding shall be brought against one or more of the Indemnified Entities based upon any of the above in respect of which indemnity may be sought against the Remarketing Agent, such Indemnified Entity shall promptly notify the Remarketing Agent in writing, enclosing a copy of all papers served, but the failure so to notify the Remarketing Agent of any such action shall not relieve the Remarketing Agent of any liability which it may be determined to have by a court of law to any Indemnified Entity pursuant to applicable law. In case any such action or proceeding shall be brought against any Indemnified Entity and it shall notify the Remarketing Agent of the commencement thereof, the Remarketing Agent shall be entitled to participate in and, to the extent that it shall wish, to assume the defense thereof with counsel satisfactory to such Indemnified Entity and, after notice from the Remarketing Agent to such Indemnified Entity of the Remarketing Agent's election so to assume the defense thereof, the Remarketing Agent shall not be liable to such Indemnified Entity for any legal or other expenses. Any Indemnified Entity shall have the right to employ its own counsel in any such action or proceeding, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Entity unless (i) the Remarketing Agent shall have agreed to pay the fees and expenses of such counsel, (ii) such Indemnified Entity shall have reasonably concluded that there may be a conflict of interest between the Remarketing Agent and the Indemnified Entity in the conduct of the defense of such action or proceeding (in which case the Remarketing Agent shall not have the right to direct the defense of such action or proceeding on behalf of the Indemnified Entity) or (iii) the Remarketing Agent shall not in fact have employed counsel satisfactory to such Indemnified Entity to assume the defense of such action. The Remarketing Agent shall not be liable for any settlement of any action or claim effected without its written consent.

To the extent permitted by law, the provisions of this Section 10(b) shall survive the termination of this Remarketing Agreement.

Section 11. Events of Default. The failure by the Issuer to make any payment required by this Remarketing Agreement when due and the continuation of such failure unremedied for ten (10) days after notice thereof shall constitute an “event of default” hereunder and shall entitle the Remarketing Agent to take whatever action at law or in equity, including specific performance, that is necessary or desirable to collect the amounts then due and thereafter to become due to them or to enforce observance or performance of any covenant, condition or agreement of the Issuer hereunder.

Section 12. Miscellaneous.

(a) Books and Records. The Remarketing Agent agrees to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer and the Tender Agent at all times.

(b) Amendments. This Remarketing Agreement may be amended from time to time by an instrument in writing executed by all parties hereto, without the consent of the holders of Bonds then outstanding. A copy of any amendment to this Remarketing Agreement will be provided promptly to the Tender Agent.

(c) Reliance. The Remarketing Agent may conclusively rely upon any notice or document given or furnished to the Remarketing Agent by the Issuer and conforming to the requirements of this Remarketing Agent or the Indenture and shall be protected in acting upon any such notice or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(d) Notices. Except as otherwise provided, it shall be sufficient service of any notice, request, complaint, demand or other paper required to be given to or filed with the Issuer, the Tender Agent and the Remarketing Agent if the same shall be duly mailed by registered or certified mail. Any service by mail or a delivery service shall be addressed, and service by telephone shall be given, as follows:

(1) To the Issuer:

East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607-4240  
Attn: Director of Finance  
Telephone: (510) 287-0310  
Telecopier: (510) 287-0293

(2) To the Remarketing Agent:

Wells Fargo Bank, National Association  
301 S. College Street, 7<sup>th</sup> Floor  
MAC D1053-077  
Charlotte, North Carolina 28202-6000  
Attn: Richard O. White, Director  
Telephone: (704) 383-6452  
Telecopier: (704) 383-0065

(3) To the Tender Agent:

The Bank of New York Mellon Trust Company, N.A.  
100 Pine Street, Suite 3100  
San Francisco, California 94111  
Attn: Manager, Securities Servicing  
Corporate Trust Services  
Telephone: (415) 263-2412  
Telecopier: (415) 399-1647

(4) To the Liquidity Facility Provider:

Wells Fargo Bank, National Association  
550 California Street  
MAC A0112-102, 10<sup>th</sup> Floor  
San Francisco, California 94104  
Attn: Jose Henriquez  
Telephone: (415) 222-4795  
Telecopier: (415) 646-8767

(5) To the owners of the Bonds:

Addressed to each owner of Bonds at the time outstanding, as shown by the list of Bond owners required by the Indenture to be kept at the principal corporate office of the Registrar.

(e) Payments Due on Saturdays, Sundays and Holidays. Whenever the provisions of this Remarketing Agreement call for any payment or the performance of any act on a date which is not a Business Day, then such payment or such performance shall be required on the next succeeding Business Day.

(f) Defined Terms. All capitalized terms used in this Remarketing Agreement and not otherwise defined herein have the same meaning as in the Indenture.

(g) Counterparts. This Remarketing Agreement can be signed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

(h) Effective Date. This Remarketing Agreement shall become effective upon the execution hereof by the parties hereto.

(i) Additional Documents. The Remarketing Agent acknowledges that it has received the following executed documents as the same may have been amended or supplemented to date:

- (i) Indenture;
- (ii) Liquidity Facility; and
- (iii) Purchase Contract.

(j) Governing Law. The validity, interpretation and performance of this Remarketing Agreement shall be governed by the laws of the State of New York provided, however, that the powers, duties and obligations of the Issuer shall be governed by California law.

(k) Principal Office of Remarketing Agent. The Remarketing Agent designates the address listed in Section 12(d)(2) hereof as the principal office of the Remarketing Agent.

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed and delivered by their respective officers thereunder duly authorized as of the date first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

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

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

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

**REMARKETING AGREEMENT**

**by and between**

**EAST BAY MUNICIPAL UTILITY DISTRICT,**

**and**

**U.S. BANCORP INVESTMENTS, INC.,**

**and**

**U.S. BANK MUNICIPAL SECURITIES GROUP,  
A DIVISION OF U.S. BANK NATIONAL ASSOCIATION**

**Dated as of October \_\_, 2013**

**East Bay Municipal Utility District  
Water System Revenue Refunding Bonds,  
Series 2008A-2 and Series 2008A-3**



## REMARKETING AGREEMENT

This REMARKETING AGREEMENT, dated as of [October \_\_\_\_], 2013, is by and among EAST BAY MUNICIPAL UTILITY DISTRICT, a municipal utility district organized and existing under the laws of the State of California (the “Issuer”), U.S. BANCORP INVESTMENTS, INC. (“USBII”) and U.S. BANK MUNICIPAL SECURITIES GROUP, a division of U.S. Bank National Association (“MSG” and, together with USBII, the “Remarketing Agent”).

### W I T N E S S E T H :

WHEREAS, the Issuer has previously issued its East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2008A-2 and East Bay Municipal Utility District Water System Revenue Refunding Bonds, Series 2008A-3 (collectively herein, the “Bonds”) pursuant to a Water System Subordinated Revenue Bond Indenture, dated as of April 1, 1990, as amended and supplemented to the date hereof, including by a Thirteenth Supplemental Indenture, dated as of March 1, 2008, as amended (the “Supplemental Indenture”), providing for the issuance of the Bonds (collectively, the “Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as successor trustee (the “Trustee”), and as authorized pursuant to the Act (as hereinafter defined); and

WHEREAS, the Issuer, pursuant to the terms and provisions of the Indenture, desires to appoint the Remarketing Agent to undertake the duties and responsibilities of Remarketing Agent under the Indenture in respect of the Bonds, and the Remarketing Agent has agreed to accept such duties and responsibilities upon the terms and conditions set forth in this Remarketing Agreement.

NOW, THEREFORE, the parties hereto hereby agree as follows:

Section 1. Definitions. The following words and terms as used in this Remarketing Agreement shall have the following meanings:

“Act” shall mean the Municipal Utility District Act, constituting Division 6 of the Public Utilities Code of the State of California, and all laws of the State of California amendatory thereof or supplemental thereto, including the Revenue Bond Law of 1941, as made applicable by Article 6a of Chapter 6 of said Division 6, and Article 11 of Chapter 3 of Part 1 of Division 2 of Title 5 of the Government Code of the State of California.

“Liquidity Facility Provider” shall mean initially U.S. Bank National Association and any successors or assigns thereto, and, upon the effective date of an Alternate Liquidity Facility, the bank or banks or other financial institution or financial institutions or other Person or Persons issuing such Alternate Liquidity Facility and their successors and assigns.

“Official Statement” shall mean the Remarketing Memorandum dated December 27, 2012, prepared and distributed by the Issuer in connection with the remarketing of the Bonds (including the cover page thereof and all appendices included therein or attached thereto), and any subsequent offering document prepared with respect to the Bonds.

“Purchase Contract” shall mean the Purchase Contract, dated March 19, 2008, by and between the Issuer and Citigroup Global Markets Inc., executed in connection with the issuance and sale of the Bonds.

“Tender Agent” shall mean the entity serving as Tender Agent as provided in the Indenture.

Other terms used herein but not defined herein shall have the same meaning as that assigned to such terms in the Indenture unless the context indicates otherwise.

Section 2. Acceptance. The Remarketing Agent accepts its appointment as the Remarketing Agent for the Bonds. This Remarketing Agreement shall constitute any written instrument of acceptance which may be referred to in the Supplemental Indenture, and counterparts of this Remarketing Agreement, or true copies thereof, shall be delivered to the Issuer and the Tender Agent.

Section 3. Remarketing Agent’s Duties and Obligations. The Remarketing Agent agrees that, commencing as of 12:01 a.m., \_\_\_\_\_, 2013, it will:

(a) At the times and in the manner set forth in the applicable provisions of the Indenture, determine (i) with respect to Bonds bearing Interest at a Weekly Interest Rate, the Weekly Interest Rate applicable to such Bonds; (ii) with respect to Bonds bearing Interest at a Daily Interest Rate, the Daily Interest Rate applicable to such Bonds; (iii) with respect to the Short-Term Interest Rate Period, the Bond Interest Term Rate and the duration of the Bond Interest Term applicable to such Bonds; (iv) with respect to the Long-Term Interest Rate Period, the Long-Term Interest Rate applicable to such Bonds; (v) with respect to the CPI Interest Rate Period, the CPI Interest Rate applicable to such Bond; and (vi) with respect to the LIBOR-Based Interest Rate Period, the LIBOR-Based Interest Rate applicable to such Bonds.

(b) In accordance with the applicable provisions of the Indenture, give notification of the interest rates and rate periods so determined.

(c) Subject to the provisions of Section 9 hereof and the Indenture, use its best efforts to remarket (i) all Bonds which are subject to mandatory tender, and (ii) all Bonds bearing interest at a Weekly Interest Rate or at a Daily Interest Rate which are subject to optional tender for purchase pursuant to the Supplemental Indenture.

(d) In accordance with and at the times specified in the Supplemental Indenture, give immediate notice to the Tender Agent specifying the principal amount of Bonds subject to optional or mandatory purchase which have been remarketed and the amount thereof which has not been remarketed and to deliver to the Tender Agent in accordance with and at the times set forth in the Supplemental Indenture in immediately available funds, an amount equal to remarketing proceeds.

(e) Hold all Bonds delivered to it for the benefit of the respective owners which shall have delivered such Bonds until moneys representing the purchase price of such Bonds shall have been delivered to, for the account of, or to the order of such Bondholders.

(f) Hold all moneys delivered to it for the purchase of Bonds for the benefit of the person or entity which shall have so delivered such moneys until the Bonds purchased with such moneys shall have been delivered to or for the account of such person or entity.

(g) Perform all duties and obligations of the Remarketing Agent under the Supplemental Indenture.

Section 4. Remarketing Agent Compensation.

(a) In consideration of the services to be performed by the Remarketing Agent under this Remarketing Agreement, the Issuer shall pay to the Remarketing Agent the following fees: (i) an annual fee equal to 0.07 of one percent of the weighted average daily principal amount of Bonds outstanding during such periods in which the Bonds shall bear interest at a Weekly Interest Rate or a Bond Interest Term Rate or Bond Interest Term Rates, (ii) an annual fee equal to 0.07 of one percent of the weighted average daily principal amount of Bonds outstanding during such periods in which the Bonds shall bear interest at a Daily Interest Rate; (iii) in connection with, or in anticipation of, the establishment of a Long-Term Interest Rate Period, an amount as shall be agreed to by the Issuer and the Remarketing Agent at that time, and (iv) reasonable expenses incurred by the Remarketing Agent in connection with its services hereunder as provided in paragraph (b) of this Section 4 below. It is understood and agreed that payment of the fees referred to in clauses (i) and (ii) of the first sentence of this Section shall be made by the Issuer as soon as practicable upon receipt of an invoice therefor from the Remarketing Agent, such invoice to be sent quarterly in arrears, that payment of the fee referred to in clause (iii) of the first sentence of this Section shall be made by the Issuer on the effective date of the Long-Term Interest Rate Period and that the payment of expenses referred to in clause (iv) of the first sentence of this Section shall be made by the Issuer as soon as practicable upon receipt of an invoice therefor from the Remarketing Agent.

(b) In addition, the Issuer shall pay all reasonable expenses and costs of the Remarketing Agent incurred in connection with the transactions contemplated hereby (including, without limitation, the expenses and costs of the preparation of any blue sky and legal investment surveys required for the public marketing or remarketing of the Bonds and the preparation, printing, photocopying, execution and delivery of any revised or updated Official Statements, and further including, the reasonable fees and expenses of counsel to the Remarketing Agent, if any, in connection therewith).

Section 5. Remarketing Agent Not Acting as Underwriter.

(a) It is understood and agreed that the Remarketing Agent is only undertaking its obligations under this Remarketing Agent and the Indenture on a best efforts basis. The Issuer agrees that while this Remarketing Agreement is in effect, the Remarketing Agent shall be the exclusive remarketing agent of the Bonds. The Remarketing Agent shall not act, nor shall be deemed to be acting, as an underwriter for the Bonds in connection with any remarketing of such Bonds during the Weekly Interest Rate Period and shall be in no way obligated to advance its own funds to purchase any such Bonds, including upon a conversion of the Bonds to another Interest Rate Period. The Remarketing Agent shall not be liable to the Issuer, the Trustee, the Tender Agent or the Liquidity Facility Provider on account of the failure of any person to whom the Remarketing Agent has sold a Bond to pay for such Bond or to deliver any document in respect of the sale of such Bond.

The Remarketing Agent, in its individual capacity, either as principal or agent, may in its sole discretion, buy, sell, hold and deal in any of the Bonds and, if it does so, it will have the same rights as any other person owning Bonds. The Remarketing Agent, in its individual capacity, either as principal or agent, may enter into other business arrangements or transactions with the Issuer.

(b) It is understood and agreed that: (i) the transaction contemplated by this Remarketing Agreement is an arm's length, commercial transaction between the Issuer and the Remarketing Agent in which the Remarketing Agent is acting solely as a principal and is not acting

as a municipal advisor, financial advisor or fiduciary to the Issuer; (ii) the Remarketing Agent has not assumed any advisory or fiduciary responsibility to the Issuer with respect to the obligations to be performed by the Remarketing Agent under this Remarketing Agreement and the discussions, undertakings and procedures leading thereto (irrespective of whether the Remarketing Agent has provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligations the Remarketing Agent has to the Issuer with respect to the transaction contemplated under this Remarketing Agreement are expressly set forth in this Remarketing Agreement; and (iv) in connection with the transaction contemplated under this Remarketing Agreement, the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate.

Section 6.      Representations by the Issuer.

(a)      The Issuer, by acceptance hereof, and upon the date of each remarketing of the Bonds, represents and warrants to the Remarketing Agent that it has full power and authority to take all actions required or permitted to be taken by it by or under, and to perform and observe the covenants and agreements on its part contained in, this Remarketing Agreement and any other agreement or instrument relating thereto to which the Issuer is a party, including without limitation the Indenture, and when duly executed and delivered by the respective parties thereto, this Remarketing Agreement and such other related agreements or instruments will constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with the respective terms thereof, except as the enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting the enforcement of creditors' rights generally and by general principles of equity ("Creditors' Rights Limitations") and to limitations on legal remedies against public agencies within the State of California.

(b)      The Issuer agrees that, in connection with the sale and any remarketing of the Bonds, it will not make any untrue statement of a material fact, or omit to state a material fact which is required or necessary to be stated therein in order to make any statements made by the Issuer, in the light of the circumstances under which they were made, not misleading (except the Issuer makes no representations as to the Excluded Information (as defined below)). The Issuer represents and warrants that the financial statements of the Issuer delivered or to be delivered to the Remarketing Agent in connection with the remarketing of the Bonds on and after the effective date of this Remarketing Agreement will be in accordance with the related books and records, and will be complete and correct and fairly present the financial position as of the dates set forth therein and the results of operations for the periods set forth therein, all in conformity with generally accepted accounting principles and practices, it being understood that, in the case of interim reports, such reports will be subject to year-end adjustments.

(c)      The Issuer hereby confirms to the Remarketing Agent that the representations and warranties made by the Issuer in the Purchase Contract are true and correct in all material respects on and as of the date hereof as if made on and as of the date hereof, unless such representation and warranty refers to a specific earlier date, in which case such representation and warranty is true and correct in all material respects on and as of such earlier date, all of which representations and warranties, for such purpose, are hereby incorporated by such reference.

(d)      The Issuer shall immediately notify the Remarketing Agent by telephone, confirmed in writing, of:

(i) the occurrence or existence of any event or condition which becomes known to the Issuer and which would make any of its representations contained herein or incorporated herein by reference (as set forth in (a) and (b) above) incorrect or untrue in any material respect if made on and as of any day during the term of this Remarketing Agreement;

(ii) any reduction or termination of the commitment or obligation of the Liquidity Facility Provider with respect to the Liquidity Facility; and

(iii) any resignation or removal of, and appointment of a successor for, the Tender Agent or Trustee for the Bonds.

(e) The Issuer will notify the Remarketing Agent of any amendment made to the Indenture affecting the Bonds and will notify the Remarketing Agent of any amendment, extension, replacement or termination of the Liquidity Facility (and will use its best efforts to notify the Remarketing Agent of any proposed amendment, extension, replacement or termination of the Liquidity Facility prior to the execution thereof).

(f) The Issuer hereby agrees to provide such information, execute such instruments and take such other action in cooperation with the Remarketing Agent as the Remarketing Agent may reasonably request in order to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states as the Remarketing Agent may designate; provided however, that the Issuer shall not be required to execute a general or special consent to service of process or qualify to do business in connection with any such qualification or determinations in any jurisdiction.

Section 7. Representations by the Remarketing Agent. MSG represents to the Issuer that it is a national banking association duly organized and validly existing and in good standing under the laws of the United States of America; USBII represents to the Issuer that it is a registered broker-dealer and a member in good standing of the Financial Industry Regulatory Authority, Inc.; each of MSG and USBII represents to the Issuer that it has full power and authority to enter into and perform its obligations under this Remarketing Agreement; and that this Remarketing Agreement constitutes the legal, valid and binding obligation of the Remarketing Agent enforceable against the Remarketing Agent in accordance with its terms, except as the enforcement thereof may be limited by Creditors' Rights Limitations.

Section 8. Furnishing of Offering Materials and Other Documents.

(a) The Issuer has delivered a copy of the Official Statement to the Remarketing Agent. The Issuer hereby authorizes the Official Statement and the information contained therein to be used in connection with the remarketing of the Bonds by the Remarketing Agent.

(b) The Issuer agrees to cooperate with the Remarketing Agent to update and supplement the Official Statement at the Issuer's expense if in the reasonable judgment of the Issuer or the Remarketing Agent such supplement is necessary, and the Issuer agrees that it will provide to the Remarketing Agent copies of any supplements to the Official Statement and any revised Official Statements.

(c) The Issuer agrees to furnish to the Remarketing Agent sufficient copies of a reoffering statement (the “Reoffering Statement”), in a preliminary and final form, in form and substance satisfactory to the Remarketing Agent, and any other related material (including, if applicable, a continuing disclosure undertaking), as the Remarketing Agent reasonably determines may be necessary in connection with any remarketing of the Bonds that constitutes a “primary offering” within the meaning of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended. Further, the Issuer agrees to cooperate in the preparation of and to make available to the Remarketing Agent revised Reoffering Statements or amendments or supplements thereto such as may be required so that the Reoffering Statement required for use in any such “primary offering” will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Any costs or expenses incurred in connection with the preparation of a Reoffering Statement and any amendments or supplements thereto shall be the responsibility of the Issuer. The representations contained in this paragraph (c) shall not apply to information in the Official Statement or any amendments or supplements thereto relating to the Liquidity Facility Provider, the Depository Trust Company, the Liquidity Facility, the price or yield information on the cover of the Official Statement, or to any statements or omissions based upon information furnished in writing by the underwriters of the Bonds expressly for use therein (collectively, the “Excluded Information”).

(d) The Issuer hereby (i) authorizes and consents to the delivery by the Remarketing Agent to the Municipal Securities Rulemaking Board (the “MSRB”) pursuant to MSRB Rule G-34(c) of the Liquidity Facility and such other documents (if any) that establish an obligation to provide liquidity with respect to the Bonds or that set forth or define critical aspects of the liquidity facility for the Bonds that are required to be submitted by the Remarketing Agent to the MSRB pursuant to MSRB Rule G-34(c) (including any executed amendments, extensions or related changes thereto) (all such documents, “Rule G-34 Documents”), and (ii) agrees to provide to the Remarketing Agent at the Issuer’s expense, upon request, executed PDF word-searchable copies of such Rule G-34 Documents in order to assist the Remarketing Agent in its timely filing of such Rule G-34 Documents in compliance with MSRB Rule G-34(c). The Issuer further agrees that the Remarketing Agent shall have no responsibility with respect to identifying any confidential or proprietary information in the Rule G-34 Documents. If the Issuer determines that any information in the Rule G-34 Documents is confidential or proprietary, the Issuer will provide the Remarketing Agent with redacted copies of such MSRB Rule G-34 Documents for submission by the Remarketing Agent to the MSRB for purposes of compliance with MSRB Rule G-34(c). In the event additional legal or regulatory requirements are imposed on the Remarketing Agent’s performance of its obligations under this Remarketing Agreement, the Issuer agrees to cooperate with the Remarketing Agent and to provide such additional documents or take such additional steps related to the Remarketing Agent’s fulfillment of such requirements as may be reasonably requested by the Remarketing Agent.

(e) If, at any time after the effective date of this Remarketing Agreement, any event known to the Issuer relating to or affecting the Issuer, the Liquidity Facility Provider, the Trustee, the Indenture, the Liquidity Facility, this Remarketing Agreement or the Bonds shall occur which materially adversely affects the Bonds or the remarketing thereof, the Issuer shall promptly notify the Remarketing Agent in writing of the circumstances and details of such event.

(f) The Issuer will cooperate with the Remarketing Agent and will supply the Remarketing Agent with any additional materials to which the Issuer has access and which the Remarketing Agent believes are necessary in connection with its remarketing of the Bonds.

(g) The Issuer will not amend or supplement, or request the amendment or supplementation of, the Official Statement prior to notifying the Remarketing Agent in writing of the proposed amendment or supplement thereto.

(h) No later than 180 days following the end of each fiscal year of the Issuer, the Issuer will provide the audited financial statements of the Issuer for such fiscal year to the Remarketing Agent.

Section 9. Term and Termination.

(a) This Remarketing Agreement shall become effective upon the execution hereof by the parties hereto and shall continue to be in effect for as long as any Bonds remain outstanding; provided, however, that the Remarketing Agent or the Issuer may terminate their obligations under this Remarketing Agreement upon 30 days' written notice to the other party; provided, however, that any such termination shall not take effect prior to the date that a successor remarketing agent acceptable to the Liquidity Provider has been appointed by the Issuer and has accepted such appointment. The Issuer agrees that upon notice of any such termination it shall use its best efforts to appoint a successor remarketing agent. Notwithstanding the foregoing, the Issuer may terminate its obligations under this Remarketing Agreement upon three Business Days written notice to the Remarketing Agent in the event that the Remarketing Agent elects not to (or is unable to) determine the Weekly Interest Rate or Daily Interest Rate other than as a result of the occurrence of any event described in paragraph (b) below.

(b) In addition, the Issuer or the Remarketing Agent may terminate this Agreement and the Remarketing Agent shall have no obligation to remarket or attempt to remarket Bonds if any one of the following events has occurred:

(i) The marketability of the Bonds or the contemplated offering prices thereof, in the opinion of the Remarketing Agent, shall have been materially adversely affected by any federal or state legislation, effective, pending or favorably reported out of any legislative committee, or by any decision of any federal or state court or by any order, ruling or regulation (final, temporary or proposed) of the Treasury Department or the Internal Revenue Service of the United States or other federal or state authority or regulatory body, or by a release or announcement or communication issued or sent by the Treasury Department or the Internal Revenue Service of the United States, affecting the status of the Issuer, its property or income, obligations of the general character of the Bonds, as contemplated hereby, or the interest thereon, or any tax exemption with respect to obligations of the general character of the Bonds, as contemplated hereby, or the interest thereon, granted or authorized by the Internal Revenue Code of 1986, as amended; or

(ii) Legislation shall be introduced by amendment or otherwise in or be enacted by the House of Representatives or the Senate of the Congress of the United States, or a decision by a Court of the United States of America shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject

matter shall be made or proposed, to the effect that the offering or sale of obligations of the general character of the Bonds, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect, or with the purpose or effect of otherwise prohibiting the offering and sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby; or

(iii) Any information shall have become known which, in the Remarketing Agent's reasonable opinion, makes untrue, incorrect or misleading in any material respect any statement or information contained in the Official Statement, as the information contained therein has been supplemented or amended by other information, or causes the Official Statement, as so supplemented or amended, to contain an untrue, incorrect or misleading statement of a material fact or to omit to state a material fact required or necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading and upon the receipt of notice of same by the Issuer, the Issuer fails to promptly amend or supplement the Official Statement in a manner which is reasonably acceptable in form and content to the Remarketing Agent; or

(iv) Any of the following events shall have occurred:

(1) the engagement or escalation of activities by the United States of America in hostilities which have resulted in a declaration of war or national emergency, or the occurrence of any other outbreak or hostilities or escalation thereof or national or international calamity or crisis, financial or otherwise, the effect of such outbreak, calamity or crisis on the financial markets of the United States of America being such as, in the reasonable opinion of the Remarketing Agent, would materially adversely affect the ability of the Remarketing Agent to market the Bonds;

(2) a general suspension of trading on the New York Stock Exchange or the American Stock Exchange or other national securities exchange;

(3) the establishment of material restrictions upon trading of securities, including limited or minimum prices, by any governmental authority or by any national securities exchange;

(4) the declaration of a banking moratorium either by federal, New York, or other state authorities or by authorities in the country in which the Remarketing Agent is organized; or

(5) the market for the Bonds or the sale thereof by the Remarketing Agent at the contemplated offering prices shall have been materially and adversely affected, in the reasonable opinion of the Remarketing Agent;

(v) The short term credit ratings on the Bonds is reduced to below "A-1" by Standard & Poor's or "VMIG-1" by Moody's Investors Service; or

(vi) If the Remarketing Agent reasonably determines that a disclosure document is required for distribution to prospective purchasers and that such document is not



available or, if available, is not satisfactory to the Remarketing Agent, in form or substance, or if the Remarketing Agent reasonably determines that Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 is applicable to the Bonds and additional documents, instruments, agreements or action is required to comply with same, including but not limited to the Issuer having entered into a written agreement or contract for the benefit of the holders of the Bonds to provide the annual financial information, operating data, required event notices, and other information required by, and in accordance with, Rule 15c2-12, and such additional documents, instruments, agreements or action is not available or taken, or if available or taken, is not satisfactory to the Remarketing Agent, in form or substance, or if the Remarketing Agent shall receive an opinion of counsel that substantial grounds exist upon which the exclusion of interest on the Bonds from gross income for federal income tax purposes can be challenged, or the exemption of the Bonds from registration under the Securities Act of 1933, as amended, or the exemption of the Indenture from qualification under the Trust Indenture Act of 1939, as amended, can be challenged or if any default under the Indenture shall have occurred and be continuing.

(c) Notwithstanding anything in this Section 9 to the contrary, in the event that the Remarketing Agent elects not to (or is unable to) remarket the Bonds as a result of the occurrence of any event described in paragraph (b) above, the Issuer may immediately terminate this Remarketing Agreement and appoint a substitute remarketing agent, in which event the Issuer is not required to provide the 30-day notice required under the provisions of paragraph (a) above, and such substitute remarketing agent shall provide the services contemplated by this Remarketing Agreement.

#### Section 10. Indemnification.

(a) To the extent permitted by law, the Issuer hereby indemnifies and holds the Remarketing Agent, the officers, directors, employees, members and agents of the Remarketing Agent and each person, if any, who controls the Remarketing Agent within the meaning of Section 15 of the Securities Act of 1933, as amended, or of Section 20 of the Securities Exchange Act of 1934, as amended (each an “Indemnified Party”) harmless from and against any and all claims, damages, losses, liabilities, costs or expenses which an Indemnified Person may incur or which may be claimed against any Indemnified Person by any person or entity by reason of any untrue statement or alleged untrue statement of any material fact which is contained in any offering documents or disclosure documents provided by the Issuer and used by the Remarketing Agent in any remarketing of the Bonds (an “Offering Document”) or the omission or alleged omission to state therein a material fact which is required or necessary to be stated therein in order to make statements made therein, in the light of the circumstances under which they were made, not misleading; provided that such indemnification shall not extend to the Excluded Information.

In case any action or proceeding shall be brought against one or more of the Indemnified Parties based upon any of the above and in respect of which indemnity may be sought against the Issuer, such Indemnified Party shall promptly notify the Issuer in writing, enclosing a copy of all papers served, but the failure so to notify the Issuer of any such action shall not relieve the Issuer of any liability which it may be determined to have by a court of law to any Indemnified Party pursuant to applicable law. In case any such action or proceeding shall be brought against any Indemnified Party and it shall notify the Issuer of the commencement thereof, the Issuer shall be entitled to participate in and, to the extent that it shall wish, to assume the defense thereof with counsel satisfactory to such Indemnified Party and, after notice from the Issuer to such Indemnified Party of the Issuer’s election so to assume the defense thereof, the Issuer shall not be liable to such

Indemnified Party for any legal or other expenses. Any Indemnified Party shall have the right to employ its own counsel in any such action or proceeding, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (i) the Issuer shall have agreed to pay the fees and expenses of such counsel, (ii) such Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Issuer and the Indemnified Party in the conduct of the defense of such action or proceeding (in which case the Issuer shall not have the right to direct the defense of such action or proceeding on behalf of the Indemnified Party) or (iii) the Issuer shall not in fact have employed counsel satisfactory to such Indemnified Party to assume the defense of such action. The Issuer shall not be liable for any settlement of any action or claim effected without its written consent.

To the extent permitted by law, the provisions of this Section 10(a) shall survive the termination of this Remarketing Agreement.

(b) The Remarketing Agent agrees to indemnify and hold the Issuer, the directors, trustees, members, officers and employees of the Issuer and each person, if any, who controls the Issuer within the meaning of Section 15 of the Securities Act of 1933, as amended, or of Section 20 of the Securities Exchange Act of 1934, as amended (each an "Indemnified Entity") harmless, from and against any and all losses, claims, damages, liabilities or expenses which an Indemnified Entity may incur or which may be claimed against any Indemnified Entity by any person or entity by reason of any untrue statement or alleged untrue statement of any material fact contained in any Offering Document or the omission or alleged omission to state therein a material fact which is required or necessary to be stated therein in order to make the statements made therein, in the light of the circumstances under which they were made, not misleading, but in each case only to the extent that such untrue or alleged untrue statement or omission or alleged omission was made in any of the information furnished in writing by the Remarketing Agent for inclusion in the Offering Document.

In case any action or proceeding shall be brought against one or more of the Indemnified Entities based upon any of the above in respect of which indemnity may be sought against the Remarketing Agent, such Indemnified Entity shall promptly notify the Remarketing Agent in writing, enclosing a copy of all papers served, but the failure so to notify the Remarketing Agent of any such action shall not relieve the Remarketing Agent of any liability which it may be determined to have by a court of law to any Indemnified Entity pursuant to applicable law. In case any such action or proceeding shall be brought against any Indemnified Entity and it shall notify the Remarketing Agent of the commencement thereof, the Remarketing Agent shall be entitled to participate in and, to the extent that it shall wish, to assume the defense thereof with counsel satisfactory to such Indemnified Entity and, after notice from the Remarketing Agent to such Indemnified Entity of the Remarketing Agent's election so to assume the defense thereof, the Remarketing Agent shall not be liable to such Indemnified Entity for any legal or other expenses. Any Indemnified Entity shall have the right to employ its own counsel in any such action or proceeding, but the reasonable fees and expenses of such counsel shall be at the expense of such Indemnified Entity unless (i) the Remarketing Agent shall have agreed to pay the fees and expenses of such counsel, (ii) such Indemnified Entity shall have reasonably concluded that there may be a conflict of interest between the Remarketing Agent and the Indemnified Entity in the conduct of the defense of such action or proceeding (in which case the Remarketing Agent shall not have the right to direct the defense of such action or proceeding on behalf of the Indemnified Entity) or (iii) the Remarketing Agent shall not in fact have employed counsel satisfactory to such Indemnified Entity to assume the defense of such action. The Remarketing Agent shall not be liable for any settlement of any action or claim effected without its written consent.

To the extent permitted by law, the provisions of this Section 10(b) shall survive the termination of this Remarketing Agreement.

Section 11. Events of Default. The failure by the Issuer to make any payment required by this Remarketing Agreement when due and the continuation of such failure unremedied for ten (10) days after notice thereof shall constitute an “event of default” hereunder and shall entitle the Remarketing Agent to take whatever action at law or in equity, including specific performance, that is necessary or desirable to collect the amounts then due and thereafter to become due to them or to enforce observance or performance of any covenant, condition or agreement of the Issuer hereunder.

Section 12. Miscellaneous.

(a) Books and Records. The Remarketing Agent agrees to keep such books and records as shall be consistent with prudent industry practice and to make such books and records available for inspection by the Issuer and the Tender Agent at all times.

(b) Amendments. This Remarketing Agreement may be amended from time to time by an instrument in writing executed by all parties hereto, without the consent of the holders of Bonds then outstanding. A copy of any amendment to this Remarketing Agreement will be provided promptly to the Tender Agent.

(c) Reliance. The Remarketing Agent may conclusively rely upon any notice or document given or furnished to the Remarketing Agent by the Issuer and conforming to the requirements of this Remarketing Agent or the Indenture and shall be protected in acting upon any such notice or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.

(d) Notices. Except as otherwise provided, it shall be sufficient service of any notice, request, complaint, demand or other paper required to be given to or filed with the Issuer, the Tender Agent and the Remarketing Agent if the same shall be duly mailed by registered or certified mail. Any service by mail or a delivery service shall be addressed, and service by telephone shall be given, as follows:

(1) To the Issuer:

East Bay Municipal Utility District  
375 Eleventh Street  
Oakland, California 94607-4240  
Attn: Director of Finance  
Telephone: (510) 287-0310  
Telecopier: (510) 287-0293

(2) To the Remarketing Agent:

U.S. Bank National Association  
461 Fifth Avenue 10<sup>th</sup> Floor  
New York, New York 10017  
Attn: Mr. Thomas Gallo  
Telephone: (704) 383-6452  
Telecopier: (704) 383-0065

(3) To the Tender Agent:

The Bank of New York Mellon Trust Company, N.A.  
100 Pine Street, Suite 3100  
San Francisco, California 94111  
Attn: Manager, Securities Servicing  
Corporate Trust Services  
Telephone: (415) 263-2412  
Telecopier: (415) 399-1647

(4) To the Liquidity Facility Provider:

U.S. Bank National Association  
151910 Ventura Blvd., Suite 1712  
Encino, California 91436  
Attn: Kenneth Haber  
Telephone: (818) 817-7235  
Telecopier: (818) 789-3041

(5) To the owners of the Bonds:

Addressed to each owner of Bonds at the time outstanding, as shown by the list of Bond owners required by the Indenture to be kept at the principal corporate office of the Registrar.

(e) Payments Due on Saturdays, Sundays and Holidays. Whenever the provisions of this Remarketing Agreement call for any payment or the performance of any act on a date which is not a Business Day, then such payment or such performance shall be required on the next succeeding Business Day.

(f) Defined Terms. All capitalized terms used in this Remarketing Agreement and not otherwise defined herein have the same meaning as in the Indenture.

(g) Counterparts. This Remarketing Agreement can be signed in one or more counterparts, each of which shall be an original and all of which shall constitute but one and the same document.

(h) Effective Date. This Remarketing Agreement shall become effective upon the execution hereof by the parties hereto.

(i) Additional Documents. The Remarketing Agent acknowledges that it has received the following executed documents as the same may have been amended or supplemented to date:

- (i) Indenture;
- (ii) Liquidity Facility; and
- (iii) Purchase Contract.

(j) Governing Law. The validity, interpretation and performance of this Remarketing Agreement shall be governed by the laws of the State of New York provided, however, that the powers, duties and obligations of the Issuer shall be governed by California law.

(k) Principal Office of Remarketing Agent. The Remarketing Agent designates the address listed in Section 12(d)(2) hereof as the principal office of the Remarketing Agent.

IN WITNESS WHEREOF, the parties hereto have caused this Remarketing Agreement to be duly executed and delivered by their respective officers thereunder duly authorized as of the date first above written.

EAST BAY MUNICIPAL UTILITY DISTRICT

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

U.S. BANCORP INVESTMENTS, INC.

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

U.S. BANK MUNICIPAL SECURITIES GROUP,  
A DIVISION OF U.S. BANK NATIONAL ASSOCIATION

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

**EAST BAY MUNICIPAL UTILITY DISTRICT**

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DATE: September 19, 2013

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *ARC*

FROM: Michael J. Wallis, Director of Operations and Maintenance *mw*

SUBJECT: Work in the Streets -- Leak Repairs

**INTRODUCTION**

The District infrastructure includes over 4,100 miles of pipe, 75,000 valves and appurtenances, and 30,000 hydrants. The District experiences an estimated 3,000 leaks per year that require excavation and repair. Repairing leaks requires a multi-phase response to comply with regulatory and District notification protocols. This memo provides an overview of this major activity that will be presented at the September 24, 2013 Board meeting.

**DISCUSSION**

Of the more than 3,000 leaks per year that require excavation, approximately one-third are main breaks, one-third are service lateral leaks, and the remaining third are polybutylene service failures. The bulk of the leaks reported are small to medium leaks with discharges between 5 and 20 gallons per minute. In FY13, leak repairs required emergency shutdowns 28 percent of the time and road closures 22 percent of the time. The outages were under four hours in duration 59 percent of the time and most affected less than 25 services within the area of the shutdown.

Most of the time customers call to inform the District of apparent leaks. We respond as soon as possible, 24 hours a day, to do an initial investigation. The investigator assesses the severity of the leak, deploys mitigation measures for sediment control and to remove chlorine, stabilizes the site, and begins the notification process. The District has established protocols and criteria to make required notifications, and depending on the severity of the leak, multiple notifications may be required. The boundaries of the excavation are marked and other utilities must mark the location of their facilities before excavation begins. Resources are deployed to complete additional investigation, excavate, determine the repair method, repair and disinfect the pipe, backfill the excavation, flush the pipe, complete clean up, and install temporary paving. Most repairs are completed by the crew within six hours, at an average cost of \$7,250 compared to pipe replacement projects that cost \$2 million per mile.

Regulatory agencies and local environmental stewardship groups monitor the District's practices and the impacts of discharges when they occur. Each of the jurisdictions in which we operate has

inspection and notification requirements. Emergency events necessitate emergency notifications to other utility owners, public works departments, and regulatory agencies prior to excavation to protect public, worker, and environmental safety. The combination of communication, safety and regulatory best management practices, repair activities, and site restoration results in processes that minimize the impacts to our customers.

The District tracks our performance against three customer impact Key Performance Indicators (KPI's) regarding length and frequency of customer outages per 1,000 customer accounts. We have a goal to limit the number of unplanned service outages to 10 per 1,000 customers in 4 hours or less; 5 per 1,000 customers in 4 to 12 hours; and 2 per 1,000 customers in greater than 12 hours. We are successful in meeting these KPI's and publish results in the annual report. In addition, the Operations and Maintenance Department has three KPI's: 1) responding to leaks within an hour 80 percent of the time, 2) repairing critical emergency leaks within 24 hours, and 3) completing repairs on 90 percent of non-emergency leaks within seven days.

## **NEW APPROACHES**

Recently, the District has made several improvements to repair and notification processes to mitigate customer impacts. The District has developed a process to leverage emergency main breaks and replace up to 500 feet of pipe instead of a simple spot repair. We purchased two vacuum excavators that are used to reduce infrastructure damage, enhance public safety, and reduce the size of excavation and costs. New technology has been employed to insert a valve inline on an active water main so that we can limit the number of customers on a shutdown without an extended outage. An online internal main break notification form is circulated to staff that includes details needed to respond to customer and regulatory concerns. For jobs that meet a certain threshold of impacts (e.g., customers out of water, traffic, damage), we initiate a web alert that informs affected customers of what is occurring and the estimated length of the impact. The alert information also facilitates earlier Board notification. A new door hanger is being designed for customers within the immediate area, advising them about final restoration and giving them contact information for further information.

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## EAST BAY MUNICIPAL UTILITY DISTRICT

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DATE: September 19, 2013

MEMO TO: Board of Directors

THROUGH: Alexander R. Coate, General Manager *me*

FROM: Lynelle M. Lewis, Secretary of the District *Lynelle*

SUBJECT: Planning Committee Minutes – September 10, 2013

Chair Katy Foulkes called to order the Planning Committee at 9:31 a.m. in the Training Resource Center. Directors Doug Linney and Lesa R. McIntosh were present at roll call. Staff present included: General Manager Alexander R. Coate, General Counsel Jylana Collins, Director of Water and Natural Resources Richard G. Sykes, Operations and Maintenance Department Manager Eileen M. White, Manager of Watershed and Recreation Kent W. Lambert, Manager of Watershed and Recreation Scott G. Hill, Management Analyst Rick Leong, Manager of Water Quality Rick Sakaji, Manager of Regulatory Compliance Michael R. Ambrose, Special Assistant to the General Manager Cheryl A. Farr, and Secretary of the District Lynelle M. Lewis.

**Public Comment.** None.

**Annual Watershed Recreation Reports.** Manager of Watershed and Recreation Kent W. Lambert provided a status update on recreation activities in the Mokelumne watershed during the past year. He reported that overall visitation was slightly lower than the previous year and financial targets were met at nearly all venues. Public safety remained good in all areas with a relatively low number of boating accidents and no significant change in law enforcement actions. The early results from customer card surveys indicate very high satisfaction levels. Mr. Lambert said that during FY14 and beyond staff will continue to focus on replacing old infrastructure.

Next, Manager of Watershed and Recreation Scott G. Hill provided an update on the East Bay recreation programs. He reported that attendance was relatively stable at Lafayette Recreation Area and that the parking lot reconfiguration was well received by customers. Additionally, he reported that visitation at the San Pablo Recreation Area has significantly increased. He noted that in 2013 staff is replacing the sewage lift station, the potable water storage tank at the San Pablo Recreation Area, and the self-contained toilets at Lafayette Recreation Area. Staff also is working on updating the East Bay trail system map.

There was a question raised in public comment regarding use of EBMUD's East Bay trails by bicyclists. General Manager Coate said staff would provide an information memo on prior policy discussions about use of District trails for mountain biking and the District's existing policy.

**Mokelumne Environmental Benefits Program (MEBP).** Management Analyst Rick Leong presented an overview of the MEBP and its goals, and described the two primary projects currently underway. He said the MEBP goal is to bring together public and private sectors to develop and participate in investment opportunities that reward sustainable resource management and watershed restoration in the Mokelumne River watershed. The two projects underway are developing a Riparian Habitat Valuation Tool (focused on the lower Mokelumne River watershed) and an Avoided Cost Analysis (focused on the upper Mokelumne River watershed). EBMUD and several other local and regional organizations and agencies have been active participants in this program since its inception over two years ago. A follow-up briefing will be made to the Planning Committee when the analyses are completed. The Committee raised no questions.

**Regulatory Compliance Semi-Annual Report-March 2013 through August 2013.** Manager of Regulatory Compliance Michael T. Ambrose presented an update on the status of key regulatory issues and compliance activities since the last update in March 2013. He said that during this reporting period, the District entered into two settlement agreements to resolve outstanding regulatory issues. The District accepted a settlement offer from the United States Environmental Protection Agency for a 1980 shipment of a *de minimis* amount of waste to a facility which is now designated as a Superfund site. Also, the District accepted a settlement with the Bay Area Air Quality Management District for four minor air permit violations at the Main Wastewater Treatment Plant. Mr. Ambrose reported that the District lowered its lost time injury rate from 4.15 in 2010 to 2.12 in 2013.

During the next six months, he said the District will continue to work with regulatory agencies and Bay Area water agencies to develop a multi-region general permit for potable water discharges. Modifications to the Penn Mine landfill will be completed to minimize leachate generation. In addition, the District will be working with regulatory agencies to select and implement a remedial alternative to address mine tailings impoundments near Camanche Reservoir. The Committee had no questions.

**Water Quality Program Semi-Annual Update.** Manager of Water Quality Rick Sakaji reported that in the first half of FY13 the District was in compliance with all water quality regulations and most water quality goals. He said water quality goals were not met for total trihalomethanes (TTHMs), Haloacetic Acids (HAAs) and N-Nitrosodimethylamine (NDMA). However, staff is working on a capital project to address control of TTHM and HAA and is involved in major research projects to evaluate alternatives to chemicals that are known to lead to NDMA formation. Next, Mr. Sakaji reported on the success of a 2013 effort to deliver annual water quality report information to all customers more cost-effectively. Mr. Sakaji also noted that staff is collaborating with the Water Research Foundation to study management strategies to extend the life of asbestos cement pipe in the distribution system. The Committee had no questions.

**Adjournment.** Director Foulkes adjourned the meeting at 9:50 a.m.