



BOARD OF DIRECTORS
EAST BAY MUNICIPAL UTILITY DISTRICT

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

Notice of Location Change

**REGULAR CLOSED SESSION
and
REGULAR BUSINESS MEETINGS
Tuesday, January 25, 2022
Virtual**

In accordance with Government Code section 54953(e), a physical location will not be provided for these meetings. The Regular Closed Session Meeting scheduled for 11:00 a.m., and the Regular Business Meeting scheduled for 1:15 p.m., **will be conducted via webinar and teleconference only.**

Dated: January 20, 2022



Rischa S. Cole
Secretary of the District

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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

AGENDA
REGULAR CLOSED SESSION

Tuesday, January 25, 2022

11:00 a.m.

****Virtual****

Location

In accordance with Government Code section 54953(e), **this meeting will be conducted by webinar and teleconference only.** A physical location will not be provided for this meeting.

*****Please see appendix for public participation instructions*****

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.

BROWN ACT BRIEFING:

- Presentation on the Ethics Policy of the EBMUD Board of Directors and Updates to the Brown Act and Ethics Laws

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

1. Existing litigation pursuant to Government Code section 54956.9(a):
East Bay Municipal Utility District v. Union Pacific Railroad Company
Alameda County Superior Court, Case No. RG20065313
2. Conference with Labor Negotiators Gregory Ramirez and Jeff Bailey from the Industrial Employers Distributors Association; Clifford C. Chan, General Manager; Sophia D. Skoda, Director of Finance; Winnie W. Anderson, Interim Director of Human Resources, pursuant to Government Code section 54957.6: Employee Organizations International Union of Operating Engineers, Local 39; American Federation of State, County and Municipal Employees, Locals 444 and 2019; and International Federation of Professional & Technical Engineers, Local 21.
3. Personnel exception pursuant to Government Code section 54957 to consider public employee evaluation: General Counsel.

REGULAR BUSINESS MEETING

1:15 p.m.
****Virtual****

Location

In accordance with Government Code section 54953(e), **this meeting will be conducted by webinar and teleconference only.** A physical location will not be provided for this meeting.

*****Please see appendix for public participation instructions*****

ROLL CALL:

BOARD OF DIRECTORS:

- Pledge of Allegiance
- Approve 2022 Board Committee Assignments

ANNOUNCEMENTS FROM CLOSED SESSION:

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 January 11, 2022.
2. File correspondence with the Board.
3. Award a contract and authorize agreements for construction, construction management and inspection services, and engineering services during construction for the Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements Projects (DCSSIP).
 - 3.1. Award a contract to the lowest responsive/responsible bidder, Flatiron West, Inc., in the amount of \$267,721,132 for construction of the Orinda WTP DCSSIP under Specification 2139.
 - 3.2. Authorize an agreement beginning on or after January 25, 2022 with Arcadis U.S., Inc., for five years in an amount not to exceed \$10,000,000 for as-needed construction management and inspection services for the Orinda WTP DCSSIP.
 - 3.3. Authorize an agreement beginning on or after January 25, 2022 with Carollo Engineers, Inc., in an amount not to exceed \$12,499,787 for Engineering Services During Construction for the disinfection improvements portion of the Orinda WTP DCSSIP.
 - 3.4. Authorize an agreement beginning on or after January 25, 2022 with Stantec Consulting Services, Inc., in an amount not to exceed \$3,551,248 for Engineering Services During Construction for the chemical systems safety improvements portion of the Orinda WTP DCSSIP.

CONSENT CALENDAR: (Continued)

4. Award a contract to the lowest responsive/responsible bidder, Polydyne, Inc., for supplying cationic polymer (Clarifloc C-308P) for the District's water treatment plants for two years, beginning on or after January 25, 2022 with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including options years, not to exceed \$6,181,035 under Request for Quotation No. 2203.
5. Authorize an agreement beginning on or after January 25, 2022 with EETS, Inc., for two years in an amount not to exceed \$400,000 for professional electrical engineering services to support repairs and upgrades of water system facilities.
6. Authorize an amendment to the agreement previously authorized under Board Resolution No. 35171-20 with Axiom Medical Consulting, LLC, to increase the agreement amount by \$400,000 to a total amount not to exceed \$900,000 to provide COVID-19 contact tracing services, employee interviews, and recordkeeping for COVID-19 positive employees.
7. Approve the November and December 2021 Monthly Investment Transactions Reports.
8. Adopt a resolution to confirm the following individuals as Standby Officers for the East Bay Municipal Utility District Board of Directors for Calendar Year 2022 as outlined in the Director's Emergency Succession Plan. (Resolution)

Ward No. 1 – 1) Celia S. McCoy; 2) Linda Jackson-Whitmore; 3) Lynelle Lewis
Ward No. 2 – 1) Dennis Diemer; 2) Carol June Rowley; 3) Robert Dean
Ward No. 3 – 1) Jennifer Jackson; 2) Peter T. Vorster; 3) Alexander R. Coate
Ward No. 4 – 1) Margo Schueler; 2) Xanthe M. Berry; 3) Helen Burke
Ward No. 5 – 1) Heinrich Albert; 2) James C. Prola; 3) Ronald Stork
Ward No. 6 – 1) Robert Harris; 2) Jose Guzman; 3) Kevin Blackburn
Ward No. 7 – 1) Calvin Sakamoto; 2) Gene Ashford Jr.; 3) Gregory Chan

PUBLIC HEARING:

9. Conduct a public hearing to receive comments on a Resolution of Necessity to acquire a Temporary Construction Easement (TCE) and adopt a Resolution of Necessity for eminent domain proceedings for the acquisition of a TCE in support of the Oakland Inner Harbor Pipeline Crossing Project.
 - 9.1. Conduct a public hearing to receive comments on a Resolution of Necessity to acquire a TCE on a Union Pacific Railroad Company property (APN: 74-906-41-1), adjacent to Barnhill Marina, in support of the Oakland Inner Harbor Pipeline Crossing Project.
 - 9.2. Adopt a Resolution of Necessity for eminent domain proceedings for the acquisition of a TCE from Union Pacific Railroad Company; and authorize the General Counsel to prepare and proceed with such proceedings. (Resolution)

DETERMINATION AND DISCUSSION:

10. Appointment of Assistant Attorney. (Resolution)
11. Adopt a resolution in observance of the life and public service of Gail Berkley-Armstrong, award-winning Bay Area journalist and Sun-Reporter editor. (Resolution)
12. Take actions related to the 2021-2025 Memorandum of Understanding (MOU) and other special agreements between the District and the International Union of Operating Engineers Local 39, and to the salary and other benefits for Senior Management Team members, managers, confidential employees, and non-represented employees. (Resolution)
 - 12a. Approve the MOU and other special agreements between the District and the International Union of Operating Engineers Local 39 and approve the salary and other benefits revisions for Senior Management Team members, managers, confidential employees, and non-represented employees.
 - 12b. Approve revisions to District salary schedules.
 - 12c. Amend all existing Civil Service Rules, Policy Statements and Procedures, and other pertinent resolutions to conform to revisions contained in the MOU and in the resolution.
13. General Manager's Report:
 - Coronavirus Update
 - Water Supply Update

REPORTS AND DIRECTOR COMMENTS:

14. Committee Reports:
 - Planning
 - Legislative/Human Resources
 - Sustainability/Energy
15. Other Items for Future Consideration.
16. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, February 8, 2022.

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, and can be viewed on our website at www.ebmud.com.

BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, January 25	Sustainability/Energy Committee	8:45 a.m.	<ul style="list-style-type: none"> • Biosolids Management Program Update • Closed Session • Regular Meeting
	Finance/Administration Committee	<i>Cancelled</i>	
	Diversity, Equity, and Inclusion Strategic Plan Workshop	9:15 a.m.	
	Board of Directors	11:00 a.m. Virtual 1:15 p.m. Virtual	
Tuesday, February 8	Planning Committee	TBD	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
	Legislative/Human Resources Committee	TBD	
	Customer Assistance Program Workshop	TBD	
	Board of Directors	11:00 a.m. TBD 1:15 p.m. TBD	
Friday, February 11	Lincoln's Birthday <i>observed</i>		<i>District Offices Closed</i>
Monday, February 21	Washington's Birthday <i>observed</i>		<i>District Offices Closed</i>
Tuesday, February 22	Finance Administration Committee	TBD	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
	Long-Term Water Supply Workshop	TBD	
	Board of Directors	11:00 a.m. TBD 1:15 p.m. TBD	

2022 Board Committee Members

Finance/Administration	Patterson {Chair}, Coleman, Katz
Legislative/Human Resources	Coleman {Chair}, McIntosh, Patterson
Planning	Young {Chair}, McIntosh, Mellon
Sustainability/Energy	Young {Chair}, Katz, Mellon



Closed Session and Regular Business Meetings
Tuesday, January 25, 2022
11:00 a.m. and 1:15 p.m.

EBMUD public Board meetings will be conducted via Zoom.
Please note that Board meetings are recorded, live-streamed, and posted on the District's website.

Please visit this page beforehand to familiarize yourself with Zoom.
<https://support.zoom.us/hc/en-us/articles/201362193-Joining-a-Meeting>

Online

<https://ebmud.zoom.us/j/97065086667?pwd=eUdZSGh5SG82akZiRDF2UDg2b0IyUT09>

Webinar ID: 970 6508 6667

Passcode: 238500

By Phone

Telephone: 1 669 900 6833

Webinar ID: 970 6508 6667

Passcode: 238500

International numbers available: <https://ebmud.zoom.us/u/adMXn1VnPp>

Providing public comment

The EBMUD 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.

If you wish to provide public comment please:

- Use the raise hand feature in Zoom to indicate you wish to make a public comment
<https://support.zoom.us/hc/en-us/articles/205566129-Raising-your-hand-in-a-webinar>
 - If you participate by phone, press *9 to raise your hand
- When prompted by the Secretary, please state your name, affiliation if applicable, and topic
- The Secretary will call each speaker in the order received
- Comments on **non-agenda items** will be heard at the beginning of the meeting
- Comments on **agenda items** will be heard when the item is up for consideration
- Each speaker is allotted 3 minutes to speak; the Board President has the discretion to amend this time based on the number of speakers
- The Secretary will keep track of time and inform each speaker when the allotted time has concluded

Submitting written comments or materials

- Email written comments or other materials for the Board of Directors to SecOffice@ebmud.com
- Please indicate the meeting date and agenda item number or non-agenda item in the subject of the email. Contact information is optional.
- **Please email by 4 p.m. the day prior to the scheduled regular meeting;** written comments and other materials submitted to the Board of Directors will be filed in the record.

To observe the public portion of the 11:00 a.m. Closed Session Meeting and the entirety of the 1:15 p.m. Regular Business Meeting, please visit: <https://www.ebmud.com/about-us/board-directors/board-meetings/>

EAST BAY MUNICIPAL UTILITY DISTRICT
Office of the General Counsel

DATE: January 20, 2022

MEMO TO: Board of Directors

FROM: Derek McDonald, General Counsel



SUBJECT: Reference Documents for the Annual Brown Act and Ethics Update Presentation

Prior to adjourning for closed session at the January 25, 2022 Board meeting, the Office of General Counsel will present to the Board its annual Brown Act and Ethics Update. Enclosed please find the packet of documents relevant to this presentation, as follows:

1. Power Point Presentation – Annual Brown Act and Ethics Update
2. Policy 6.04 – Ethics of the EBMUD Board of Directors
3. Relevant Provisions of the Brown Act
4. The Hon. Margo A. Raison, Attorney General Opinion No. 18-201
5. Regulations Regarding Behested Payments
6. Government Code § 85320 (as amended by Assembly Bill 319)
7. Hood Advice Letter, No. A-21-046
8. Hood Advice Letter, No. A-21-070
9. Byrd Advice Letter, No. A-20-134

DM:ctd

Attachments

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Document 1

Power Point Presentation

Annual Brown Act and Ethics Update

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Annual Brown Act and Ethics Update

January 25, 2022

Background and Purpose



- Board Resolution No. 33414-04, adopted March 23, 2004
 - Adopted Policy 6.04, “Ethics of the EBMUD Board of Directors”
 - Mandates: “Policy 6.04 shall be annually reviewed by the Board of Directors, together with a review of the Ralph M. Brown Act, at the first meeting of the Board in each calendar year, or as soon thereafter as practicable.”

Outline of Today's Presentation



- Review of Ethics Policy 6.04
- Update on Legal Developments in 2021
 - The Ralph M. Brown Act
 - Conflicts of Interest under the Political Reform Act
 - Conflicts of Interest under Government Code § 1090

Policy 6.04

Ethics of the EBMUD Board of Directors



- **Purpose:** “This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members’ conduct and in achievement of the EBMUD mission.”
- **References:** Summarizes the ethical duties of public office, referencing numerous legal authorities and District Policies, including (but not limited to):
 - The California Constitution
 - The Political Reform Act
 - Government Code section 1090
 - The Penal Code
 - The Elections Code
 - The Municipal Utility District Act

Policy 6.04

Ethical Duties Under Policy 6.04



- Uphold the State and Federal Constitutions and other laws applicable to the District
- Promote fair and open government
- Promote fair and equal treatment and avoid discrimination
- Safeguard the proper use of District property and resources
- Safeguard confidential information
- Avoid conflicts of interest
- Adhere to political contribution laws, the District Campaign Finance Ordinance and election laws
- Avoid holding incompatible offices
- Exercise responsible financial management
- Ensure a healthy and transparent work environment

The Ralph M. Brown Act



- Purpose of the Brown Act

[P]ublic agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be **taken openly and that their deliberations be conducted openly.**

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed so that they may retain control over the instruments they have created.**

(Gov. Code § 54950 [emphasis added].)

- A member of the public shall not be required, as a condition to attendance at a meeting ...to fulfill any condition precedent to his or her attendance.
(Gov. Code § 54953.3.)

The Ralph M. Brown Act Assembly Bill 361 (Rivas)



Amended section 54953 of the Brown Act to allow governing bodies to hold meetings solely via teleconference so long as:

1. A State of Emergency under the California Emergency Services Act has been declared and is in effect; and
2. State or local officials have imposed or recommended measures to promote social distancing; or
3. The governing body has determined that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of meeting attendees.

Required Findings under AB 361

AB 361 requires the Board to meet “not later than” every 30 days to make these findings by majority vote:

- A. The legislative body has reconsidered the circumstances of the state of emergency.
- B. Any of the following circumstances exist:
 - i. The state of emergency continues to directly impact the ability of the members to meet safely in person.
 - ii. State or local officials continue to impose or recommend measures to promote social distancing.

The Ralph M. Brown Act Attorney General Opinion 18-201



Background

- Five local agencies created the Indian Wells JPA, with one representative from each agency, to manage a Groundwater Sustainability Plan. The JPA had the authority to impose penalties for groundwater extractions in violation of the plan.
- Committee members took public comment at open meetings of their respective authorities on matters pending before the JPA and then advised their JPA representative with respect to those pending matters.

The Ralph M. Brown Act

Attorney General Opinion 18-201



- **Question 1:** Does the Brown Act prohibit JPA appointees from discussing a matter pending before JPA with their respective member agencies at those agencies' separately held open meetings?
- **Opinion:** No, because such discussions do not involve collective deliberation by a majority of members of any governing body outside its respective governing meeting.

The Ralph M. Brown Act Attorney General Opinion 18-201



- **Question 2:** Is it a violation of procedural due process if a member agency discusses with its JPA appointee at an open meeting how to decide an adjudicatory matter pending before the JPA?
- **Opinion:** No clear conclusion, but precedent suggests due process could be violated.

The member agency's discussion of how to vote a particular way could lead the appointee to rely on extrinsic evidence or prejudge the matter. And it could also create varying degrees and types of pressure on the appointee. The result could very well be a risk of actual bias or prejudgment too high to be constitutionally tolerable. (104 Ops.Cal.Atty.Gen. 34, (2021).)

Governs:

- Conflicts of interests in decisions affecting a financial interest
 - Including public disclosure of personal financial information
- Political campaign contributions, spending and advertising
- Lobbyist financial disclosures and practices

Political Reform Act Conflicts of Interest - Overview



- The Act prohibits a Board member from directly or indirectly participating in a governmental decision in which the member has a financial interest.
- Five types of interests that may result in disqualification:
 - Investment of \$2,000 or more in a business entity.
 - Real property valued at \$2,000 or more.
 - Income source of \$500 or more in prior 12 months.
 - Gifts of \$500 or more (cumulative) in prior 12 months.
 - Personal finances of official or immediate family.

Political Reform Act

Conflicts of Interest – Behested Payments



- A “behested payment” is a payment made at the behest of a candidate or elected officer for legislative, governmental or charitable purposes.
- Not considered gifts nor political contributions.
- Must be reported to FPPC within 30 days following date on which the payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made.

Political Reform Act

Conflicts of Interest – Behested Payments



New Regulations

- **2 CCR § 18424:** Requires description of relationship between recipient nonprofit and elected officer or immediate family member in disclosure.
- **2 CCR § 18424.1:** Provides a “good faith estimate” procedure when exact amount of behested payment is difficult to ascertain within 30 days of reporting requirement.
- **2 CCR § 18424.2:** Clarifies that when an elected official 1) acts in concert with a charitable organization and 2) is “featured” in a charitable fundraising solicitation, all resulting raised funds must be reported.

Political Reform Act

Campaign Finance - Assembly Bill 319 (Valladares)



- Former state law prohibited contributions and expenditures (and solicitation or receipt of such) from foreign governments and foreign “principals” in connection with state or local ballot measures.
- This bill extends the prohibition to state and local candidate elections.
- A “foreign principal” includes any person outside the United States, unless the person is a citizen of the United States or a lawfully-admitted permanent resident of the United States.

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Facts:

- City of Galt was considering adoption of a Carillion Boulevard Corridor Plan to reduce traffic and promote alternative modes of transportation along the 2.2-mile corridor.
- Project would include reduction in traffic lanes from four to two, installation of bike lanes and installation of roundabouts.
- CEQA documents noted that the project would reduce overall passenger vehicle use and thus would likely reduce traffic noise.

Political Reform Act

Carillion Boulevard Corridor Plan FPPC Advice Letters



Questions:

- May Councilmember Lozano, who owns residential property between 500 and 1000 feet from the project site, take part in decisions related to the Corridor Plan?
- May Councilmember Papineau, who owns residential property less than 500 feet from the project site, take part in decisions related to the Corridor Plan?
- May Vice Mayor Sandhu, who owns residential property less than 500 feet from the project site, take part in decisions related to the Corridor Plan?

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Analysis:

- **Basic Rule:** A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on certain specified economic interests, including “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.”

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Analysis (continued):

- A reasonably foreseeable effect of a governmental decision on a parcel of real estate is considered material if:
 - It involves property less than 500 feet from the official's parcel, unless there is "clear and convincing" evidence the decision will not have a measurable impact on the parcel; or
 - It involves property located more than 500 feet but less than 1,000 feet from the property line of the official's parcel, and the decision would change the parcel's: (A) Development potential; (B) Income producing potential; (C) Highest and best use; (D) Character, by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or (E) Market value.

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Analysis (continued):

- Councilmember Lozano:
 - Property is located between 500 and 1000 feet from the project site.
 - Corridor Plan would not affect the development potential, highest or best use, market value or income producing potential of property. It would not substantially alter traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality, as evidenced by the findings of the Initial Study/Mitigated Negative Declaration.
 - **Conclusion:** Decisions would not have a reasonably foreseeable, material financial effect on Councilmember Lozano's real property and, therefore, he may take part in the decisions pertaining to the Corridor Plan.

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Analysis (continued):

- Councilmember Papineau and Vice Mayor Sandhu:
 - Properties are located less than 500 feet from the project site, so a heightened standard applies.
 - CEQA documents noted a reduction in traffic noise, congestion and traffic idling, and improved safety and increased bicycle access, which could affect market values of nearby properties.
 - **Conclusion:** There is no clear and convincing evidence Corridor Plan would not have a measurable affect on properties and so Councilmember Papineau and Vice Mayor Sandhu have disqualifying interests and must recuse themselves from decisions pertaining to the project.

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Question:

- Would the “public generally” exception allow Vice Mayor Sandhu to participate in decisions related to the Corridor Project?

Analysis:

- A governmental decision’s financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally if the official establishes that
 - A significant segment of the public is affected and
 - The effect on his or her financial interest is not unique compared to the effect on the significant segment.
- A significant segment of the public includes “[a]t least 15 percent of residential real property within the official’s jurisdiction if the only interest an official has in the governmental decision is the official’s primary residence.”

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Analysis (continued)

- 15 percent of the City's residential real property is located less than (at most) 750 feet from Carillion Boulevard.
- The Vice Mayor's property is located over 300 feet from the project but involves several turns on residential streets to reach and is separated from the project by a sound wall.
- Considering the size and scope of the project, its "less than significant" impacts on noise and traffic levels, as well as the distance and physical barriers between the Vice Mayor's property and Carillion Boulevard, there would be no distinguishable difference in impacts on his property compared to other residences within 750 feet from Carillion Boulevard.

Political Reform Act

Carillion Boulevard Corridor Plan FPCC Advice Letters



Analysis (continued)

- Similarly, given the distance, physical barriers, and several turns, any potential effect on the market value of Vice Mayor Sandhu's real property would be indistinguishable from the effect on other properties within 750 feet from Carillion Boulevard.
- **Conclusion:** The foreseeable effect on Vice Mayor Sandhu's residence is indistinguishable from the effect on the public generally and he may participate in decisions related to the Project.

Hood Advice Letter, No. A-21-070

Government Code § 1090

Purpose



- Prohibits a public official or employee from making a contract in which the official or employee has a “financial interest.”
 - “Participating in making a contract” is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids.
- Prohibits the entire governing body from approving a contract when one member has a financial interest.
- This prohibition applies even if the “interested” member of the governing body abstains from participation.

Government Code § 1090

Byrd Advice Letter, No. A-20-134



Facts:

- Modesto Irrigation District (MID) Board member Larry Byrd voted to adopt a groundwater replenishment program (GRP) to protect groundwater basin.
- GRP allowed farms of at least 10 acres outside MID's boundaries but within its sphere of influence to apply to receive irrigation water from MID at \$60/af in lieu of groundwater pumping.
- Byrd is a partner in almond grower AB La Grange.

Government Code § 1090

Byrd Advice Letter, No. A-20-134



Question:

- Does Section 1090 prohibit Board Member Byrd from taking part in, and MID from entering into, any contract with AB La Grange to participate in a groundwater replenishment program?

Conclusion:

- Section 1090 would prohibit Board Member Byrd from taking part in, and MID from entering into, any contract with AB La Grange involving the GRP because of his prohibitory financial interest in any such contract.

Government Code § 1090

Byrd Advice Letter, No. A-20-134



Analysis:

- “Participation” in making a contract includes an official’s participation in a policy decision to create the program under which a contract will later be executed.
- Since Byrd participated in adoption of GRP, he would have a prohibited financial interest in any contract between MID and AB La Grange under the program, and both he and MID would be prohibited from entering into any such contract.

Analysis – Exception Does Not Apply:

- Under the “Public Services Generally” exemption, an officer is deemed not to have an interest in a contract for services generally provided by the public body on the same terms and conditions as if the officer was not a member of the public body.
- Exception applies only to services provided uniformly to all customers, and for which rates and charges have been clearly established.
- The exception does not apply where administering officials are required to exercise discretion and judgment in providing the service.
- Here, the GPR application contained limiting criteria not applicable to all customers, such that exception would not apply.

Conclusion



- Ethics laws are many, multi-layered, and complex.
- Consult early with the Office of General Counsel and/or FPPC.

(1-866-ASK-FPPC)

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Document 2

Policy 6.04

Ethics of the EBMUD Board of Directors



Policy 6.04

EFFECTIVE 27 APR 21

SUPERSEDES 26 FEB 19

ETHICS OF THE EBMUD BOARD OF DIRECTORS

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

Promote ethical behavior in the conduct of District business.

Purpose and Scope The proper operation of EBMUD requires that Board members remain objective and responsive to the needs of the public, make decisions within the proper channels of governmental structure, and not use public office for personal gain. To further these objectives, certain ethical principles govern the conduct of each member of the East Bay Municipal Utility District Board of Directors.

This policy promotes awareness of ethics, integrity and fidelity as critical elements in Board members' conduct and in achievement of the EBMUD mission. It references relevant policies, practices, and procedures that provide the legal framework and operational guidelines for addressing ethical issues.

Responsibilities of Public Office EBMUD Board members are dedicated to the concepts of effective and democratic government by responsible elected officials. Board members:

- Uphold the Constitution of the United States and the Constitution of the State of California, and carry out the laws of the nation, the state and local governmental agencies;
- Comply with applicable laws regulating their conduct, including open government, conflict of interest, and financial disclosure laws;
- Fulfill all applicable training requirements, including attending two (2) hours of ethics training (AB 1234) and two (2) hours of sexual harassment prevention training and education (AB 1661) every two (2) years; and
- Work in full cooperation with other public officials, unless they are legally prohibited from doing so.

[California Government Code Section 1360; California Government Code 53235; California Government Code Section 87200; California Government Code Section 53237; Article 20, Section 3 of the California Constitution.]

Fair and Open Processes Involving the Public EBMUD Board members promote fair and open public processes. Board members, and persons elected but who have not yet assumed office as members of the Board, fully comply with California's open meeting law for public agencies (the Brown Act).

[California Government Code Section 54950 and following; California Government Code Section 54952.1; California Government Code Section 54959.]

Fair and Equal Treatment EBMUD Board members promote diversity and equality in personnel matters and in contracting, consistent with state and federal laws.

- Board members, in performance of their official duties and responsibilities, will not discriminate against or harass any person on the basis of race, color, religion, creed, sex, gender (including breastfeeding), gender identity (including transgender status), gender expression, marital or registered domestic partnership status, age for individuals forty or older, national origin, ancestry, disability (mental and physical), medical condition (cancer and genetic characteristics), genetic information, sexual orientation, military and veterans status, family or medical leave status, pregnancy (including childbirth or related medical condition), pregnancy disability leave status, or any other status protected by federal, state and/or local laws.
- Board members will not grant any special consideration, treatment, or advantage to any person or group beyond that available to every other person or group in similar circumstances.
- Board members will cooperate in achieving the equal opportunity objectives of EBMUD.

[See, e.g., Article 1, Section 31 of the California Constitution; Age Discrimination in Employment Act of 1967; Americans with Disabilities Act Amendments Act of 2008; Fair Employment and Housing Act; Rehabilitation Act of 1973; Title VII of the Civil Rights Act of 1964; California Labor Code Section 1102. See also EBMUD's Policy 6.06, Equal Employment Opportunity (EEO); Policy 6.08, Contract Equity Program; Policy 2.26, Prevention of Workplace Harassment; and Policy 2.02, Accommodation for Individuals with Disabilities in the Workplace.]

**Proper Use and
Safeguarding of
EBMUD Property
and Resources**

EBMUD Board members exercise responsible management of District property and resources in the conduct of District business.

- Board members will safeguard EBMUD property, equipment, moneys, and assets against unauthorized use or removal, as well as from loss including criminal acts or breach of trust.
- A Board member will not ask or require an EBMUD employee to perform services for the personal benefit or profit of a Board member or employee.
- Each Board member will protect and properly use any EBMUD asset within his or her control, including information recorded on paper or in electronic form.
- Board members will maintain written records, including expense accounts, in sufficient detail to reflect accurately and completely all transactions and expenditures made on EBMUD's behalf.
- Board members will adhere to District policies.

[Article 16, Section 6 of the California Constitution; Penal Code Section 424. See also EBMUD Policy 7.04, Access to District Property for Tours; Policy 7.06, Pardee Conference and Lodging Facility Use; Policy 7.11, Use of District Bay Area Facilities; Policy 4.14, Reimbursement of Director Expenses; Policy 4.20, Use of District Technology Resources]

**Use of Confidential
Information**

Board members will safeguard confidential information.

Board members will not disclose information that legally qualifies as confidential to unauthorized persons without approval of the Board of Directors. This includes information that (1) has been received for, or during, a closed session Board meeting, (2) is protected

from disclosure under the attorney/client or other evidentiary privilege, or (3) is not disclosable under the California Public Records Act.

A Board member may make a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury necessary to establish the alleged illegality of a District action. Prior to disclosing confidential information, however, a Board member will first bring the matter to the attention of either the President of the Board or the full Board, in a lawful and appropriate manner, to provide an opportunity to cure an alleged violation.

[California Government Code Section 54963; California Government Code Section 1098]

Conflict of Interest

Board members avoid both actual conflicts of interest and the appearance of conflicts of interest with the District.

- A Board member will not have a financial interest in a contract with the District, or be purchaser at a sale by the District or a vendor at a purchase made by the District, unless his or her participation is legally authorized.
- A Board member will not participate in the discussion, deliberation or vote on a matter before the Board, or in any way attempt to use his or her official position to influence a decision of the Board, if he or she has a prohibited interest with respect to the matter under California law.
- A Board member will not accept any honoraria.
- A Board member will not accept gifts that exceed the limitations specified in California law. Board members will report all gifts, campaign contributions, income and financial information as required under the District's Conflict of Interest Code and the provisions of the Fair Political Practices Act and Regulations.
- A Board member will not recommend the employment of a relative to the District or to any person known by the Board member to be bidding for or negotiating a contract with the District.

[California Government Code Section 87100 and following; California Government Code Section 1090 and following; California Government Code Section 81000 and following; California Government Code Section 87105; California Government Code Section 89502; Penal Code Sections 68 and 70, and EBMUD Conflict of Interest Code.]

**Soliciting Political
Contributions**

Board members will not solicit political funds or contributions of in-kind services at EBMUD facilities or use EBMUD equipment.

- A Board member will not solicit or direct a political contribution or in-kind services from District officers, employees, consultants or contractors, or from vendors or consultants that have a material financial interest in a contract or other matter while that matter is pending before EBMUD.
- A Board member will not use EBMUD's seal, trademark, stationary, or other indicia of EBMUD's identity or facsimile thereof in any solicitation for political contributions.

[California Government Code Section 3205 and EBMUD Campaign Finance Reform Ordinance.]

**Incompatible
Offices**

Except as expressly permitted by law, Board members appointed or elected to another public office, the duties of which may legally require action contradictory or inconsistent with the interests of the first entity, will resign from the former Board.

(See, generally, 73 Cal. Op. Atty. Gen. 357 (1990). See also California Government Code Section 53227, under which a special district employee may not be sworn into office as an elected or appointed member of the same special district unless he or she resigns as an employee.)

**Board Member-
General Manager
Relationship**

The Board sets District policy and the General Manager is responsible for execution of policy.

- The Board provides policy direction and instructions to the General Manager on matters within the authority of the Board by majority vote of the Board during duly convened Board and Board committee meetings.
- Members of the Board deal with matters within the authority of the General Manager through the General Manager, except when it pertains to the functions of the General Counsel.

[Municipal Utility District Act (MUD Act) Sections 11883, 11937 and 11939.]

**Exercise
Responsible
Financial
Management**

The Board ensures the District exercises responsible financial management.

- The Board ensures that EBMUD maintains a system of auditing and accounting that completely and at all times shows the financial condition of the District in accordance with generally accepted accounting principles and legal requirements.
- The Board retains an independent auditor who conducts an annual audit of the District's books, records and financial affairs. The auditor will meet with the Board's Finance/Administration Committee at the conclusion of the audit each year to review the audit results and recommendations.

[MUD Act Section 11889.]

**Improper Activities
and the Reporting
of Such Activities;
Protection of
Whistleblowers**

The Board ensures that EBMUD maintains a healthy and transparent work environment.

- The General Manager has primary responsibility for ensuring compliance with the District's personnel policies and procedures, and ensuring that District employees do not engage in improper activities, for investigating allegations of improper activities, and for taking appropriate corrective and disciplinary actions. The Board ensures that the General Manager is operating the District according to law and the policies approved by the Board.
- Board members will disclose to the General Manager, to the extent not expressly prohibited by law, improper activities within their knowledge. Board members will not interfere with the General Manager's responsibilities in identifying, investigating and correcting improper activities, unless the Board determines the General Manager is not properly carrying out these responsibilities.
- A Board member will not directly or indirectly use or attempt to use the authority or influence of his or her position to intimidate, threaten, coerce, command or influence any other person for the purpose of preventing such person from acting in good faith to bring to the attention of the General Manager or the Board any information that, if

true, would constitute: a work-related violation by a Board member or District employee of any law or regulation, gross waste of District funds, gross abuse of authority, a specified and substantial danger to public health or safety due to an act or omission of a District official or employee, use of a District office or position or of District resources for personal gain, or a conflict of interest of a District Board member or District employee.

[Labor Code Section 1102.5 and following; California Government Code Section 53298 and 53298.5; and EBMUD Equal Employment Opportunity (EEO) Policy 6.06.]

**Directors'
Compensation and
Expense
Reimbursement**

EBMUD Board members receive a monthly stipend for their public service and the amount of that stipend is reviewed annually. EBMUD reimburses Board members for actual reasonable and necessary expenses incurred in the performance of duties authorized or requested by the Board.

- EBMUD Board members receive monthly compensation in an amount set at a public meeting of the Board of Directors. Board members must attend a minimum of 50% of their assigned meetings. Meetings include regular business meetings, standing committee meetings, special meetings, joint powers authority meetings, retirement board meetings, and closed session meetings. Salary shall not be paid to a director for any month in which he or she has not attended the minimum number of meetings unless the Board President excuses the absence(s) for good cause. Good cause includes, but is not limited to, a Board member's illness, family emergency, or schedule conflict directly related to the business and interests of the District.
- Any Board member arriving 15 or more minutes late for a Board or Committee meeting will be considered absent from that meeting. Such absences will be taken into account when determining the minimum number of meetings attended for compensation during that period. Committee chairs or presiding officers may excuse late arrivals, at their discretion, due to unforeseen circumstances.
- Each Board member is encouraged to participate in outside activities and organizations that further the interests of the District. Board members do not receive compensation for attendance at non-District activities. Expenses incurred by Board members in connection with such activities are reimbursable, where authorized in advance or subsequently ratified by the Board President. No personal gain or loss to a Board member is intended. The following rules apply:
 - a) All expenses must be incurred in compliance with Policy 4.14, *Reimbursement of Director Expenses*. Any expense that is not specified in Policy 4.14 must be approved in a public meeting by the Board, before it is incurred.
 - b) All expenses must be reasonable and necessary and Board members will exercise prudence in all expenditures, including transportation, food, lodging, telephone, and technology-related charges.
 - c) Each Board member must use government and group rates offered by a transportation or lodging provider when available.
 - d) EBMUD does not provide credit cards to Board members. Upon incurring expenses, Board members will submit a reimbursement request, accompanied by evidence of payment of such expenses that will meet the District's requirements.
 - e) At the next Board of Directors meeting, each official shall briefly report on meetings attended at District expense. If multiple officials attended, a joint report may be made.

[MUD Act Sections 11908 and 11908.1; Resolution No. 35000-16, August 9, 2016; Policy 4.14, Reimbursement of Director Expenses; California Government Code Section 53232.2.]

**Candidate's
Statement**

A Board member will not include false or misleading information in a candidate's statement for a general District election filed pursuant to Section 13307 of the Elections Code.

[Elections Code Sections 13307 and 13313; EBMUD Campaign Finance Reform Ordinance.]

**Violation of Ethics
Policy**

A perceived violation of EBMUD's ethics policy by a Board member should be referred to the Board President for investigation and consideration of any appropriate action warranted. In the case of a perceived violation by the Board President, the matter should be referred to the Board Vice President. A violation of this policy may be addressed by remedies available by law, including but not limited to:

- Adopting a resolution expressing disapproval of the conduct of the Board member who has violated this policy,
 - Injunctive relief, or
 - Referral of the violation to the California Fair Political Practices Commission, District Attorney and/or the Grand Jury.
-

Authority

Resolution No. 33414-04, March 23, 2004.
As amended by Motion No. 041-05, March 8, 2005
As amended by Resolution No. 33577-07, January 9, 2007
As amended by Resolution No. 33883-12, June 26, 2012
As amended by Resolution No. 35008-16, October 25, 2016
As amended by Resolution No. 35132-19, February 26, 2019
As amended by Resolution No. 35221-21, April 27, 2021

References

See footnotes in above sections.
References are available for public review in the Office of the District Secretary.
Resolution No. 35000-16, August 9, 2016

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Document 3

Relevant Provisions of the Brown Act

West's Annotated California Codes
Government Code (Refs & Annos)
Title 5. Local Agencies (Refs & Annos)
Division 2. Cities, Counties, and Other Agencies (Refs & Annos)
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos)
Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54950

§ 54950. Declaration, intent; sovereignty

Currentness

In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.

The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Credits

(Added by Stats.1953, c. 1588, p. 3270, § 1.)

West's Ann. Cal. Gov. Code § 54950, CA GOVT § 54950
Current with all laws through Ch. 770 of 2021 Reg.Sess.

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West's Annotated California Codes
Government Code (Refs & Annos)
Title 5. Local Agencies (Refs & Annos)
Division 2. Cities, Counties, and Other Agencies (Refs & Annos)
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos)
Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54953

§ 54953. Meetings to be open and public; attendance; teleconferencing

Effective: September 16, 2021

Currentness

<Section operative until Jan. 1, 2024. See, also, § 54953 operative Jan. 1, 2024.>

<For Executive Order N-15-21 (2021 CA EO 15-21), relating to the applicability of Assembly Bill 361 and provisions governing teleconference meetings, in light of the COVID-19 pandemic, see Historical and Statutory Notes under Education Code § 89305.6.>

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.

(b)(1) Notwithstanding any other provision of law, the legislative body of a local agency may use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law. The teleconferenced meeting or proceeding shall comply with all otherwise applicable requirements of this chapter and all otherwise applicable provisions of law relating to a specific type of meeting or proceeding.

(2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.

(3) If the legislative body of a local agency elects to use teleconferencing, it shall post agendas at all teleconference locations and conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties or the public appearing before the legislative body of a local agency. Each teleconference location shall be identified in the notice and agenda of the meeting or proceeding, and each teleconference location shall be accessible to the public. During the teleconference, at least a quorum of the members of the legislative body shall participate from locations within the boundaries of the territory over which the local agency exercises jurisdiction, except as provided in subdivisions (d) and (e). The agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to [Section 54954.3](#) at each teleconference location.

(4) For the purposes of this section, “teleconference” means a meeting of a legislative body, the members of which are in different locations, connected by electronic means, through either audio or video, or both. Nothing in this section shall prohibit a local agency from providing the public with additional teleconference locations.

(c)(1) No legislative body shall take action by secret ballot, whether preliminary or final.

(2) The legislative body of a local agency shall publicly report any action taken and the vote or abstention on that action of each member present for the action.

(3) Prior to taking final action, the legislative body shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in [subdivision \(d\) of Section 3511.1](#), during the open meeting in which the final action is to be taken. This paragraph shall not affect the public's right under the California Public Records Act (Chapter 3.5 (commencing with [Section 6250](#)) of Division 7 of Title 1) to inspect or copy records created or received in the process of developing the recommendation.

(d)(1) Notwithstanding the provisions relating to a quorum in paragraph (3) of subdivision (b), if a health authority conducts a teleconference meeting, members who are outside the jurisdiction of the authority may be counted toward the establishment of a quorum when participating in the teleconference if at least 50 percent of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting and the number and access codes are identified in the notice and agenda of the meeting.

(2) Nothing in this subdivision shall be construed as discouraging health authority members from regularly meeting at a common physical site within the jurisdiction of the authority or from using teleconference locations within or near the jurisdiction of the authority. A teleconference meeting for which a quorum is established pursuant to this subdivision shall be subject to all other requirements of this section.

(3) For purposes of this subdivision, a health authority means any entity created pursuant to [Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605 of the Welfare and Institutions Code](#), any joint powers authority created pursuant to Article 1 (commencing with [Section 6500](#)) of Chapter 5 of Division 7 for the purpose of contracting pursuant to [Section 14087.3 of the Welfare and Institutions Code](#), and any advisory committee to a county-sponsored health plan licensed pursuant to Chapter 2.2 (commencing with [Section 1340](#)) of Division 2 of the Health and Safety Code if the advisory committee has 12 or more members.

(e)(1) A local agency may use teleconferencing without complying with the requirements of paragraph (3) of subdivision (b) if the legislative body complies with the requirements of paragraph (2) of this subdivision in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(2) A legislative body that holds a meeting pursuant to this subdivision shall do all of the following:

(A) The legislative body shall give notice of the meeting and post agendas as otherwise required by this chapter.

(B) The legislative body shall allow members of the public to access the meeting and the agenda shall provide an opportunity for members of the public to address the legislative body directly pursuant to [Section 54954.3](#). In each instance in which notice of the time of the teleconferenced meeting is otherwise given or the agenda for the meeting is otherwise posted, the legislative body shall also give notice of the means by which members of the public may access the meeting and offer public comment. The agenda shall identify and include an opportunity for all persons to attend via a call-in option or an internet-based service option. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(C) The legislative body shall conduct teleconference meetings in a manner that protects the statutory and constitutional rights of the parties and the public appearing before the legislative body of a local agency.

(D) In the event of a disruption which prevents the public agency from broadcasting the meeting to members of the public using the call-in option or internet-based service option, or in the event of a disruption within the local agency's control which prevents members of the public from offering public comments using the call-in option or internet-based service option, the body shall take no further action on items appearing on the meeting agenda until public access to the meeting via the call-in option or internet-based service option is restored. Actions taken on agenda items during a disruption which prevents the public agency from broadcasting the meeting may be challenged pursuant to [Section 54960.1](#).

(E) The legislative body shall not require public comments to be submitted in advance of the meeting and must provide an opportunity for the public to address the legislative body and offer comment in real time. This subparagraph shall not be construed to require the legislative body to provide a physical location from which the public may attend or comment.

(F) Notwithstanding [Section 54953.3](#), an individual desiring to provide public comment through the use of an internet website, or other online platform, not under the control of the local legislative body, that requires registration to log in to a teleconference may be required to register as required by the third-party internet website or online platform to participate.

(G)(i) A legislative body that provides a timed public comment period for each agenda item shall not close the public comment period for the agenda item, or the opportunity to register, pursuant to subparagraph (F), to provide public comment until that timed public comment period has elapsed.

(ii) A legislative body that does not provide a timed public comment period, but takes public comment separately on each agenda item, shall allow a reasonable amount of time per agenda item to allow public members the opportunity to provide public comment, including time for members of the public to register pursuant to subparagraph (F), or otherwise be recognized for the purpose of providing public comment.

(iii) A legislative body that provides a timed general public comment period that does not correspond to a specific agenda item shall not close the public comment period or the opportunity to register, pursuant to subparagraph (F), until the timed general public comment period has elapsed.

(3) If a state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference without compliance with paragraph (3) of subdivision (b), the legislative body shall, not later than 30 days after teleconferencing for the first time pursuant to subparagraph (A), (B), or (C) of paragraph (1), and every 30 days thereafter, make the following findings by majority vote:

(A) The legislative body has reconsidered the circumstances of the state of emergency.

(B) Any of the following circumstances exist:

(i) The state of emergency continues to directly impact the ability of the members to meet safely in person.

(ii) State or local officials continue to impose or recommend measures to promote social distancing.

(4) For the purposes of this subdivision, “state of emergency” means a state of emergency proclaimed pursuant to Section 8625 of the California Emergency Services Act (Article 1 (commencing with [Section 8550](#)) of Chapter 7 of Division 1 of Title 2).

(f) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

Credits

(Added by Stats.1953, c. 1588, p. 3270, § 1. Amended by Stats.1988, c. 399, § 1; Stats.1993, c. 1136 (A.B.1426), § 4, operative April 1, 1994; Stats.1993, c. 1137 (S.B.36), § 4, operative April 1, 1994; Stats.1994, c. 32 (S.B.752), § 4, eff. March 30, 1994, operative April 1, 1994; Stats.1997, c. 253 (S.B.138), § 2; Stats.1998, c. 260 (S.B.139), § 1; Stats.2005, c. 540 (A.B.1438), § 1; Stats.2012, c. 209 (S.B.475), § 1; Stats.2013, c. 257 (S.B.751), § 1; Stats.2016, c. 175 (S.B.1436), § 1, eff. Jan. 1, 2017; Stats.2017, c. 137 (A.B.428), § 1, eff. Jan. 1, 2018; Stats.2021, c. 615 (A.B.474), § 204, eff. Jan. 1, 2022, operative Jan. 1, 2023; Stats.2021, c. 165 (A.B.361), § 3, eff. Sept. 16, 2021.)

West's Ann. Cal. Gov. Code § 54953, CA GOVT § 54953
Current with all laws through Ch. 770 of 2021 Reg.Sess.

West's Annotated California Codes
Government Code (Refs & Annos)
Title 5. Local Agencies (Refs & Annos)
Division 2. Cities, Counties, and Other Agencies (Refs & Annos)
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies (Refs & Annos)
Chapter 9. Meetings (Refs & Annos)

West's Ann.Cal.Gov.Code § 54953.3

§ 54953.3. Conditions to attendance

Currentness

A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

Credits

(Added by Stats.1957, c. 85, p. 664, § 1. Amended by Stats.1981, c. 968, § 28.)

West's Ann. Cal. Gov. Code § 54953.3, CA GOVT § 54953.3

Current with all laws through Ch. 770 of 2021 Reg.Sess.

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Document 4

The Hon. Margo A. Raison,
Attorney General Opinion No. 18-201

104 Ops. Cal. Atty. Gen. 34 (Cal.A.G.), 2021 WL 4395135

Office of the Attorney General

State of California
Opinion No. 18-201
September 17, 2021

***1** THE HONORABLE MARGO A. RAISON
COUNSEL FOR THE COUNTY OF KERN

THE HONORABLE MARGO A. RAISON, COUNSEL FOR THE COUNTY OF KERN, has requested an opinion on the following questions related to the application of public meeting and procedural due process requirements to a joint powers authority.

QUESTIONS PRESENTED AND CONCLUSIONS

1. Would it violate the Ralph M. Brown Act for appointees to a joint powers authority to discuss a matter that is pending before that authority with their respective member agencies, at those agencies' separately held open meetings?

No. The contemplated discussions would not violate the Act because they would occur at open, public meetings, and there would be no collective deliberation by a majority of the members of any legislative body outside of such a meeting.

2. Would it violate procedural due process for a member agency of a joint powers authority to discuss with its appointee to that authority, at the member agency's open meeting, how to decide or vote a particular way on an adjudicative matter that is pending before the authority?

Depending on the particular circumstances, such discussion could violate procedural due process by infringing on a party's right to a neutral, impartial decision-maker.

BACKGROUND

A joint powers authority is an entity created when public agencies agree to exercise a power shared by the agencies.¹ The agencies creating a joint powers authority may come from different levels of government and be subject to different statutory requirements. In this Opinion, we address questions related to a joint powers authority called the Indian Wells Valley Groundwater Sustainability Agency (Indian Wells).

The agreement creating this joint powers authority states that its purpose is to manage local groundwater pursuant to the Sustainable Groundwater Management Act, by adopting and implementing a Groundwater Sustainability Plan and providing technical and financial assistance to local groundwater agencies.² Among other powers and responsibilities, the Indian Wells joint powers authority may impose a penalty for groundwater extraction in violation of the Plan.³

Five local agencies created the Indian Wells joint powers authority and comprise its voting members.⁴ Each member agency has appointed a representative to serve on the joint powers authority's board of directors.⁵ We are informed that in advance of the joint powers authority's board meetings (but after the agenda for those meetings is posted), two member agencies have held their own respective open meetings at which they took public comment on matters that were pending before the authority, and then advised or directed their respective appointees to the authority with respect to those pending matters.⁶ We assume for the

purpose of our analysis that the appointee was the only one from the Indian Wells joint powers authority board of directors who was present at the member agency's open meeting.

ANALYSIS

Question 1

*2 We first consider whether the Brown Act prohibits members of the Indian Wells joint powers authority board of directors from discussing matters that are pending before the board when they attend open public meetings of the member agency that appointed them to the board.⁷

1. The Brown Act's open meeting requirements

The objective of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation.⁸ Public agencies “exist to aid in the conduct of the people's business,” and the intent underlying the Act is that public agencies’ “actions be taken openly and that their deliberations be conducted openly.”⁹ Because the Act is a remedial statute that seeks to protect the public, courts interpret it broadly to effectuate its purpose.¹⁰

The Brown Act applies to “[a]ll meetings of the legislative body of a local agency.”¹¹ And it is expressly incorporated in the agreement creating the Indian Wells joint powers authority.¹² Except as the Act otherwise provides, all meetings of local legislative bodies are required to be “open and public, and all persons shall be permitted to attend.”¹³ A “meeting” is “any congregation of a majority of the members of a legislative body at the same time and location ... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.”¹⁴

To further the Act's purpose of facilitating public participation in local government decision-making, the legislative bodies of local agencies must give public notice of their meetings by providing the time, place, and agenda.¹⁵ Additionally, the public must have an opportunity at meetings “to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item.”¹⁶ The Act prohibits local legislative bodies from taking action by secret ballot.¹⁷ It also prohibits them from holding closed sessions, with certain statutory exceptions.¹⁸ Further, the Act's open meetings requirement may not be evaded through “serial” meetings.¹⁹ Specifically, outside of a meeting held in compliance with the Act, the Act prohibits a majority of members of a legislative body from using “a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”²⁰

2. In the scenario presented by the requestor, there is no collective deliberation by members of any legislative body outside of a public meeting

*3 The scenario we confront here is one in which the legislative body of a joint powers authority is composed of one appointee from each of the member agencies. The requestor has asked us whether it violates the Brown Act for these appointees to discuss matters that are pending before the joint powers authority, while attending an open meeting of the legislative body of their own member agency. We assume for the sake of our analysis that no other member of the legislative body of the joint powers authority is present at the member agency meeting.²¹

We recognize that the Brown Act “does not purport to regulate the *individual* conduct of individual” members of any legislative body.²² Instead, the Act is concerned with collective deliberation among a majority of the members of a legislative body.²³ As the California Supreme Court has observed, some sort of collective decision-making of the body must be at stake:

[T]he action of one public official is not a “meeting” ... because the [[Brown Act] uniformly speaks in terms of collective action, and because the term “meeting,” as a matter of ordinary usage, conveys the presence of more than one person, it follows that under [the Act], the term “meeting” means that “two or more persons are required in order to conduct a ‘meeting’ within the meaning of the Act.”²⁴

The scenario presented here does not involve any collective deliberation by a majority of any legislative body outside of its open meeting. The deliberation by each of the member agencies occurs at the open meeting of that agency's legislative body. And that deliberation is not among a majority of the board of directors of the Indian Wells joint powers authority because there is only one board member on each member agency's legislative body—the appointee.²⁵ Indeed, even if every appointee deliberated with their appointing agency at its open meeting, that would not add up to a prohibited collective deliberation by the Indian Wells joint powers authority under the Brown Act because the appointees would not be deliberating with each other.

3. Consideration of opposing views does not alter our conclusion

We have considered and evaluated opposing views submitted to our Office. Ultimately, however, those views do not change our conclusion.

First, we address a concern that it would undermine the public's opportunity to participate in decision-making on matters pending before a joint powers authority if those matters were previously discussed by the legislative bodies of the member agencies. Proponents of this view reason that, if a number of appointees to the joint powers authority sufficient for a majority vote were to definitively reach the same decision based on discussions with their member agencies, it would render the public input at the joint powers authority's own meeting irrelevant and unlawfully pre-determine a matter pending before the joint powers authority. They assert that an earlier Attorney General opinion supports this reasoning.

*4 We disagree. The situation addressed by that earlier opinion is unlike the situation we consider here. It involved collective deliberation by a majority of the members of the same legislative body at that body's advisory subcommittee meeting.²⁶ The members of that subcommittee comprised three of the legislative body's seven members. We concluded that no additional members of the parent legislative body could attend the subcommittee meetings because otherwise those meetings would be attended by a majority of the members of the parent body.²⁷ As we described, a Brown Act problem arose because the unanticipated presence of a majority of the members of the parent body at the subcommittee meeting created the possibility that the parent body would effectively resolve matters at the subcommittee meeting, reducing the parent body's next meeting to a “rubber stamp.”²⁸ We explained:

Although the subcommittee meeting would be noticed and open to the public, the public would not anticipate that items will be resolved at that meeting due to the less than a quorum composition of the subcommittee. Members of the public wishing to present their views when the item is to be decided will attend the legislative body's meeting only to find that the decision has in effect already been made. The public will effectively be denied the right to present views prior to the legislative body's actual determination. Such result would undermine the Legislature's purposes in requiring notice, a posted agenda, and public participation prior to the resolution of a matter by a legislative body.²⁹

Following our Opinion, the Legislature amended the Brown Act to allow a majority of the members of a legislative body to attend committee meetings, “provided that the members of the legislative body who are not members of the standing committee attend only as observers.”³⁰ Further, the situation described in Question 1 is quite different from that addressed in our prior opinion. The member agencies who appoint the board of directors of the joint powers authority are independent legislative bodies—not advisory subcommittees of the joint powers authority. And they are not comprised solely of members of the board of directors of the joint powers authority. Instead, there is only one member in common between each of the member agencies'

legislative bodies and the board of directors of the joint powers authority. So the problematic situation in our earlier opinion is not present.

Second, we consider a suggestion that a Brown Act violation may be found on these facts because reports and media broadcasts of the meetings of member agencies would allow the appointed members of the board of directors of the joint powers authority to gain knowledge of each other's deliberations that occurred at the meetings of their respective member agencies. We do not see how this could be grounds for a Brown Act violation. An enumerated exception to the Act allows members of one legislative body to attend meetings of another legislative body—and, consequently, to gain first-hand knowledge of those meetings.³¹ Specifically, the exception states that the Act does not apply to

**5 [t]he attendance of a majority of the members of a legislative body at an ... open and noticed meeting of a legislative body of another local agency, provided that a majority of the members do not discuss among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of the legislative body of the local agency.*³²

If members of the board of directors of a joint powers authority may *attend* a member agency meeting without violating the Brown Act, it follows that they may also read or listen to second-hand media reports of such a meeting without running afoul of the Act.

Finally, we consider a suggestion that another Attorney General opinion, dealing with a joint powers authority, supports the conclusion that the circumstances here violate the Brown Act. That opinion concluded that a vote by an appointee to a joint powers authority was valid even though the appointee's vote was contrary to the appointing agency's position on the matter.³³ We recognized that a member of a joint powers authority's legislative body has independent discretion when voting on authority matters.³⁴ If anything, that earlier opinion supports—rather than undercuts—the conclusion we reach here. Because an appointee to the legislative body of a joint powers authority is not bound by the appointing agency's position, an opportunity would remain for public participation in the appointee's decision-making at the meeting of the joint powers authority.

Question 2

The second question asks whether a procedural due process violation would occur if a member agency at its open meeting discussed with its appointee to a joint powers authority how to decide or vote a particular way on an adjudicative matter that comes before the authority. A matter is “adjudicative” if it involves “the actual application of already existing rules to a specific set of existing facts,” in the manner of a tribunal, as opposed to the development of legislative rules to apply to future cases.³⁵ In the scenario presented by Question 2, then, the appointed directors of the joint powers authority would “act in a quasi-adjudicatory capacity similar to judges.”³⁶

When “an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal.”³⁷ This requirement derives from both the federal and state Constitutions, which prohibit a governmental agency from depriving any person of property without due process of law.³⁸ “The touchstone of due process is fundamental fairness.”³⁹ Due process therefore requires (among other things) an impartial adjudicator who is “free of bias for or against a party.”⁴⁰

**6* To be sure, due process requirements in administrative adjudications “allow[] more flexibility” than in the context of judicial proceedings.⁴¹ In applying due process principles to administrative proceedings, our state court of appeal has emphasized that “the question is simply what process is due in a given circumstance.”⁴² “The standard of impartiality required at an administrative hearing is less exacting than that required in a judicial proceeding.”⁴³ But due process “always requires a relatively level playing field, the ‘constitutional floor’ of a ‘fair trial in a fair tribunal.’”⁴⁴ “[I]n other words,” it requires “a fair hearing before a neutral or unbiased decision-maker.”⁴⁵

When analyzing claims of a prohibited bias, the balancing inquiry called for in most procedural due process cases does not apply.⁴⁶ “[T]he unfairness that results from biased decisionmakers strikes so deeply at our sense of justice that it differs qualitatively from the injury that results from insufficient procedures.”⁴⁷ The fact that a decision-maker with a prohibited bias participated in an adjudicatory decision is enough to invalidate the decision.⁴⁸ And if a legislative body performs the adjudication, the participation of one member with demonstrable bias generally taints the adjudication, because it is impossible to know what effect it had on other members of the body.⁴⁹

A due process violation can be established “by proof of actual bias” or by “showing a situation ‘in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.’”⁵⁰ Whether such a situation exists is determined “based on an objective assessment of the circumstances in the particular case.”⁵¹ The focus of that assessment is whether, “under a realistic appraisal of psychological tendencies and human weakness,” the situation “poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.”⁵²

Bias may result from an adjudicator’s financial interests or other circumstances.⁵³ When a decision maker has a “financial interest [that] would offer a possible temptation to the average person as judge not to hold the balance nice, clear and true,” that violates due process.⁵⁴ But “[a]bsent a financial interest, adjudicators are presumed impartial.”⁵⁵ This “presumption of impartiality can be overcome only by specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias.”⁵⁶ A mere subjective appearance of bias is not grounds for disqualification.⁵⁷ Ultimately, bias “must be established with concrete facts rather than inferred from mere appearances.”⁵⁸

*7 We are asked whether, in light of the above principles, it would violate procedural due process for a member agency to discuss with its appointee to the board of directors of a joint powers authority how to decide or vote a particular way on an adjudicative matter that is pending before the authority. We have not found any judicial precedent addressing this precise scenario. And we recognize that a member agency’s instruction to vote a certain way would not legally bind an appointee during the adjudication before the joint powers authority.⁵⁹ Nevertheless, existing precedent suggests that the member agency’s discussion of the pending matter could compromise the appointee’s neutrality in at least two ways.

First, a member agency’s consideration of a matter could, in some circumstances, create a situation where the appointee relies on evidence outside the record that is before the joint powers authority, or prejudices the matter prior to the adjudicatory proceeding by the joint powers authority. The requestor’s legal analysis focuses on this possibility, reasoning that the member agency’s deliberations about the matter would effectively be a separate hearing at which the appointee would hear evidence and testimony that the appointee would later rely on during the adjudicatory proceeding before the joint powers authority. We agree that it could violate due process if the appointee voted based on evidence presented to the member agency—but not to the joint powers authority—or on other “information of which the parties were not apprised and which they had no opportunity to controvert.”⁶⁰ The right to a fair hearing “would be meaningless if the tribunal were permitted to base its determination upon information received without the knowledge of the parties.”⁶¹ We also take seriously the concern that the appointee might prejudice the matter as a result of the proceedings before the member agency. We recognize that courts have upheld a variety of administrative procedures where agency decision makers investigate, hold hearings, and even form tentative views before adjudicating a matter.⁶² “[A]dvance knowledge of adjudicative facts that are in dispute ... does not disqualify the members of an adjudicatory body from adjudicating a dispute.”⁶³ But if it were demonstrated that the appointee was unwilling to reconsider the recommendation of the member agency, that could violate due process.⁶⁴

Second, we believe that a member agency's discussion with its appointee about how to vote in a particular way in an adjudicative matter, coupled with the agency's position of influence over the appointee, could create independent due process concerns. As a general matter, procedural due process concerns can arise when someone with an interest in a proceeding has disproportionate influence over the decision maker. In *Caperton v. A.T. Massey Coal Company* (2009) 556 U.S. 868, for instance, the United States Supreme Court held that it violated due process for a judge to hear an appeal brought by a company whose chairman made massive contributions to the judge's election campaign shortly before the company filed the appeal. The Court reasoned that “there is a serious risk of actual bias— based on objective and reasonable perceptions— when a person with a personal stake in a particular case *had a significant and disproportionate influence in placing the judge on the case* by raising funds or directing the judge's election campaign when the case was pending or imminent.”⁶⁵ In a similar vein, courts in other states have repeatedly disapproved of the appearance at the hearing on behalf of a party by one who appoints the adjudicator.⁶⁶

*8 Courts have also recognized that, in certain circumstances, an appointee's desire to appease other government officials creates an unacceptable risk of bias. In *Jarrott v. Scrivener* (D.D.C. 1964) 225 F.Supp. 827, for example, the court found a due process violation based on secret communications from highly placed government officials to members of a zoning board. The two board members, both “relatively subordinate government employees,” were informed “that a favorable decision” on a zoning matter “would be pleasing, and an unfavorable decision displeasing, to persons in very high governmental brackets.”⁶⁷ The court found that these communications created pressure that was real, “and the Board members contacted could not fail to be aware that they would incur administrative displeasure if they decided the appeal unfavorably.”⁶⁸ The court added that there “might be room” for a different conclusion if the communications had been public.⁶⁹

The question presented here potentially implicates the general concerns underlying these cases, but the factual scenario is obviously different from the ones discussed above. Unlike *Jarrott*, we assume that any discussion on how to vote would be communicated to the appointee in the context of an open meeting of the member agency. And unlike *Caperton*, there is no indication that anyone at the member agency holds a personal stake in the matter or made the appointment with a particular matter in mind. Nonetheless, we recognize that the scenario contemplated in the question presented could potentially exert a substantial external influence on the appointee's decision with respect to an adjudicative matter. For example, an appointee could face significant political repercussions for breaking with the member agency's direction, including the possibility of losing the appointment on the joint powers authority board. And the appointee might even face financial pressure if, for example, the appointee receives remuneration for the appointment.

Ultimately, more facts would be needed to assess bias in any given case. A recent state court of appeal decision further illustrates the fact-specific nature of the inquiry that would be required. In *Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, the court considered an adjudicatory hearing conducted by a city council about a conditional use permit for a gas station. One of the city councilmembers lived in a neighborhood near the proposed station, belonged to a neighborhood association that opposed the station, and made statements opposing it.⁷⁰ The court held that these facts, standing alone, did not demonstrate an unacceptable probability of bias, but that the councilmember “crossed the line into advocacy against the project” in specific actions leading up to the hearing.⁷¹ The “concrete facts” showing bias included “affirmative steps to assist opponents of the gas station conditional use permit” and the councilmember's work to organize opposition at the very hearing where he was supposed to be a neutral decision maker.⁷²

*9 The question before us today is framed in general terms and, as illustrated, procedural due process analysis requires a careful inquiry into “the circumstances in the particular case.”⁷³ As a general matter, however, we believe that the scenario presented here could create a substantial risk of infringing a party's due process right to a neutral, impartial decision-maker in the adjudicatory proceeding. The member agency's discussion of how to vote a particular way could lead the appointee to rely on extrinsic evidence or prejudge the matter. And it could also create varying degrees and types of pressure on the appointee. The result could very well be a risk of actual bias or prejudice too high to be constitutionally tolerable.⁷⁴

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Footnotes

- 1 See *Gov. Code*, §§ 6500 et seq. (Joint Exercise of Powers Act).
- 2 Indian Wells Valley Groundwater Authority Joint Exercise of Powers Agreement (Agreement), pp. 1-2, available at < <https://static1.squarespace.com/static/5a70e98dd55b41f44cbb2be0/t/5ae205a4575d1f737b70678e/1524762023428/Full+JPA+Agreement.pdf> > [as of September 17, 2021]; see also *Wat. Code*, §§ 10720-10737.8 (Sustainable Groundwater Management Act), 10723.6, subd. (a)(1) (authorizing formation of groundwater sustainability agency by joint powers agreement).
- 3 See *Wat. Code*, § 10732, subd. (b)(2) (authorizing groundwater sustainability agency to impose certain civil penalties after providing notice and opportunity for hearing).
- 4 These member agencies are the Counties of Kern, Inyo, and San Bernardino, the City of Ridgecrest, and the Indian Wells Valley Water District. (Agreement, *supra*, pp. 6-7, 9 & Exh. A.) There are also two non-voting member agencies: the United States Bureau of Land Management and the United States Naval Air Weapons Station China Lake. (Agreement, *supra*, p. 7 & Exh. B.)
- 5 Agreement, *supra*, pp. 6-7, 9 & Exh. A. Some, but not all, member agencies are required to select their appointees to the Indian Wells board of directors from the agency's own legislative body. (Agreement, *supra*, p. 7; see also *Gov. Code*, § 6508 [authorizing such provision in joint powers authority agreement].) In practice, each agency has selected its appointee from its own legislative body whether or not it is required to do so.
- 6 These two member agencies—the City of Ridgecrest and the Indian Wells Valley Water District—have special voting status at the joint powers authority, and at least one of them must vote in favor of a proposed action for the Board to approve the action. (Agreement, *supra*, p. 9.)
- 7 The Brown Act is set forth in *Government Code* sections 54950-54963. (See *Gov. Code*, § 54950.5 [naming those sections the Brown Act].)
- 8 *Galbiso v. Orosi Public Utility Dist.* (2008) 167 Cal.App.4th 1063, 1075-1076.
- 9 *Gov. Code*, § 54950; see also *ibid.* (“The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.”).
- 10 See *Golightly v. Molina* (2014) 229 Cal.App.4th 1501, 1512.
- 11 *Gov. Code*, § 54953; see, e.g., *McKee v. Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force* (2005) 134 Cal.App.4th 354, 362; see *Gov. Code*, § 54952 (defining “legislative body” to include “governing body of a local agency or any other local body created by state or federal statute”).
- 12 Agreement, *supra*, pp. 8-9.
- 13 *Gov. Code*, § 54953, subd. (a); see also *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors* (1968) 263 Cal.App.2d 41, 47-48; 63 Ops.Cal.Atty.Gen. 820 (1980).
- 14 *Gov. Code*, § 54952.2.
- 15 *Gov. Code*, §§ 54954, 54954.2.
- 16 *Gov. Code*, § 54954.3, subd. (a).
- 17 *Gov. Code*, § 54953, subd. (c)(1).
- 18 *Gov. Code*, § 54962; see, e.g., *Gov. Code*, §§ 54956.9 (allowing closed session relating to litigation, as specified), 54957, subd. (b) (allowing closed session relating to personnel matters, as specified); see also *Gov. Code*, § 54957.7 (requiring body to disclose items that will be discussed in closed session, limiting discussion to those items during closed session, and requiring body to reconvene in open session and report certain actions and votes taken in closed session).
- 19 *Gov. Code*, § 54952.2, subd. (b).
- 20 *Gov. Code*, § 54952.2, subd. (b)(1); see *Page v. MiraCosta Community College Dist.* (2009) 180 Cal.App.4th 471, 503-504.
- 21 If we were instead presented with a scenario where more than one director of the joint powers authority board attended the meeting of a particular member agency, we would look to *Government Code* section 54952.2, subdivision (c)(4), which explicitly allows a majority of one legislative body to attend and participate at another legislative body's meeting. See footnotes 32-33 and accompanying text.
- 22 65 Ops.Cal.Atty.Gen. 63, 66 (1982).

- 23 Gov. Code, § 54952.2, subds. (a) (providing that Brown Act applies to congregation of majority of legislative body's members to hear, discuss, deliberate, or take action on item within body's jurisdiction), (c)(1) (exempting from Act “[i]ndividual contacts or conversations between a member of a legislative body and any other person,” so long as the contacts are not used to conduct a “serial” meeting by a majority of members of that body); see *Golightly v. Molina*, *supra*, 229 Cal.App.4th at p. 1514 (“[I]t is collective decisionmaking by a legislative body, not the solitary decisionmaking of an individual public official, which is subject to the Brown Act”).
- 24 *Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 375-376, quoting *Wilson v. San Francisco Municipal Ry.* (1973) 29 Cal.App.3d 870, 879.
- 25 See Gov. Code, § 54952.2, subds. (a)-(b); *Golightly v. Molina*, *supra*, 229 Cal.App.4th at pp. 1513-1514; *Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors*, *supra*, 263 Cal.App.2d at pp. 47-48.
- 26 79 Ops.Cal.Atty.Gen. 69, 69 (1996).
- 27 *Id.* (“A fourth member of a seven member legislative body of a local agency may not attend, as a member of the public, an open and noticed meeting of a less than a quorum advisory committee of that body, without violating the notice, agenda, and public participation requirements of the Ralph M. Brown Act applicable to meetings of the parent legislative body.”).
- 28 79 Ops.Cal.Atty.Gen., *supra*, at pp. 75-76.
- 29 *Ibid.*
- 30 Gov. Code, § 54952.2, subd. (c)(6) (added by 1997 Cal. Stat., ch. 253, § 1).
- 31 See Gov. Code, § 54952.2, subd. (c)(4). The members are limited to observing the meeting only when the majority is attending a meeting of its own standing committee. (See Gov. Code, § 54952.2, subd. (c)(6).)
- 32 Gov. Code, § 54952.2, subd. (c)(4), italics added.
- 33 See 83 Ops.Cal.Atty.Gen. 267, 267-268 (2000).
- 34 *Id.* at p. 268, citing *Harbach v. El Pueblo De Los Angeles etc. Com.* (1971) 14 Cal.App.3d 828, 834, and finding nothing to the contrary in the relevant statute, ordinances, resolutions, or joint powers agreement.
- 35 *Meridian Ocean Systems, Inc. v. State Lands Com.* (1990) 222 Cal.App.3d 153, 167.
- 36 *Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973.
- 37 *Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737. Our due process analysis is limited to constitutional principles that would govern any joint powers authority. A particular joint powers authority may also be governed by a statute that provides additional procedural rules. (See, e.g., Gov. Code, § 11400, subd. (a) [identifying “administrative adjudication provisions of the Administrative Procedure Act”]; see also Gov. Code, §§ 11410.10-11410.30 [applicability of administrative adjudication provisions].)
- 38 U.S. Const., 14th Amend., § 1; Cal. Const., art. 1, § 7, subd. (a).
- 39 *People v. Lemcke* (2021) 11 Cal.5th 644, 655; see *id.* at p. 659, fn. 7 (“While the protections afforded under the due process clauses of the California Constitution and the federal Constitution are not coterminous [[citations], we have previously acknowledged that, as with the federal Constitution, the ‘essence’ of our state due process clause is ‘fundamental[[[] fair[ness in the] decision-making process.’ [Citations.]”).
- 40 *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, *supra*, 45 Cal.4th at p. 737; see *Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 214 (discussing due process in administrative adjudications); *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612 (procedural due process applies to administrative but not legislative matters); *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 482 (same); 78 Ops.Cal.Atty.Gen. 77, 78 (1995).
- 41 *Today's Fresh Start, Inc. v. Los Angeles County Office of Education*, *supra*, 57 Cal.4th at p. 214 (noting that while the “bar against financially interested adjudicators applies with as much force to administrative adjudicators as to judicial officers” in other respects, “administrative hearings need not be conducted with the same rigor demanded of judicial proceedings,” citing *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1027 and *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219).
- 42 *Nightlife Partners v. City of Beverly Hills* (2003) 108 Cal.App.4th 81, 90.
- 43 *Gai v. City of Selma*, *supra*, 68 Cal.App.4th at p. 219; see, e.g., *Withrow v. Larkin* (1975) 421 U.S. 35, 56 (recognizing that it does not violate due process for an agency decision maker “to receive the results of investigations, to approve the filing of charges or formal complaints instituting enforcement proceedings, and then to participate in the ensuing hearings”).
- 44 *Nightlife Partners*, *supra*, 108 Cal.App.4th 81, 90, original emphasis.
- 45 *Ibid.*
- 46 *Haas v. County of San Bernardino*, *supra*, 27 Cal.4th at p. 1035. Generally, courts analyze federal due process claims by balancing three factors: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally,

the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” (*Mathews v. Eldridge* (1976) 424 U.S. 329, 335.) Due process analysis under the California Constitution also weighs a fourth factor: “the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official.” (*People v. Allen* (2008) 44 Cal. 4th 843, 862-863, 868.)

47 *Haas v. County of San Bernardino*, *supra*, 27 Cal.4th at p. 1036. “In Justice Holmes famous phrase, ‘even a dog distinguishes between being stumbled over and being kicked.’” (*Ibid.*)

48 *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022-1023; *Nasha v. City of Los Angeles*, *supra*, 125 Cal.App.4th at p. 485 (“Because the Planning Commission's decision was tainted by bias and must be vacated, it is unnecessary to address Nasha's other contentions”).

49 *Cinderella Career & Finishing Schools, Inc. v. FTC* (D.C. Cir. 1970) 425 F.2d 583, 592 (“Litigants are entitled to an impartial tribunal whether it consists of one [person] or twenty and there is no way which we know of whereby the influence of one upon the others can be quantitatively measured”); see, e.g., *Nasha v. City of Los Angeles*, *supra*, 125 Cal.App.4th at pp. 478, 485 (bias of one of three planning commissioners tainted commission's decision).

50 *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, *supra*, 45 Cal.4th at p. 737, quoting *Withrow*, *supra*, 421 U.S. at p. 47; see *Golden Day Schools, Inc. v. State Dept. of Educ.* (2000) 83 Cal.App.4th 695, 709.

51 See *People v. Peoples* (2016) 62 Cal.4th 718, 788.

52 *Withrow*, *supra*, 421 U.S. at p. 47.

53 See *Caperton v. A.T. Massey Coal Co.* (2009) 556 U.S. 868, 876-877.

54 *Haas v. County of San Bernardino*, *supra*, 27 Cal.4th at p. 1026.

55 *Today's Fresh Start, Inc. v. Los Angeles Cty. Off. of Educ.*, *supra*, 57 Cal. 4th at p. 219.

56 *Morongo Band of Mission Indians v. State Water Resources Control Bd.*, *supra*, 45 Cal.4th at p. 741; see also *Lent v. California Coastal Commission* (2021) 62 Cal.App.5th 812, 855 (“A party must allege concrete facts that demonstrate the challenged judicial officer is contaminated with bias or prejudice. ‘Bias and prejudice are never implied and must be established by clear averments,’” quoting *Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 792).

57 *Andrews v. Agricultural Labor Relations Bd.*, *supra*, 28 Cal.3d at pp. 791-794.

58 *Petrovich Development Co.*, *supra*, 48 Cal.App.5th at p. 974, quoting *Independent Roofing Contractors v. California Apprenticeship Council* (2003) 114 Cal.App.4th 1330, 1340.

59 See 83 Ops.Cal.Atty.Gen., *supra*, at p. 267.

60 *English v. City of Long Beach* (1950) 35 Cal. 2d 155, 158.

61 *Id.* at p. 159; see also *ibid.* (“A hearing requires that the party be apprised of the evidence against [it] so that [it] may have an opportunity to refute, test, and explain it, and the requirement of a hearing necessarily contemplates a decision in light of the evidence there introduced”), *Vollstedt v. City of Stockton* (1990) 220 Cal. App. 3d 265, 269 (holding that a city manager violated due process by upholding a demotion based on information received from the city's personnel director instead of from the hearing before the city's civil service commission).

62 *Today's Fresh Start, Inc. v. Los Angeles Cty. Off. of Educ.*, *supra*, 57 Cal. 4th at pp. 226-227 (rejecting the view “that engaging in an administrative investigation and forming opinions based on the fruits of that investigation yields the sort of extrinsic bias the due process clause was intended to prohibit”).

63 *State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 841, quoting *Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1236.

64 *Id.* (“There must be ... a commitment to a result (albeit, perhaps, even a tentative commitment), before the process will be found violative of due process”); see, e.g., *Furtney v. Simsbury Zoning Comm'n* (1970) 159 Conn. 585, 594 (“The decisive question in the instant case is whether Eno [a commissioner] had actually made up his mind, in advance of the public hearing, that he was going to approve the proposed change of zone regardless of any changes or arguments in opposition which might be urged at the hearing”); cf. *Today's Fresh Start*, *supra*, 57 Cal. 4th at p. 227, discussing the United States Supreme Court's decision in *Trade Comm'n. v. Cement Institute* (1948) 333 U.S. 683 (“Even assuming that the entire commission had formed the view, based on its investigation, that the cement industry was engaged in unlawful price fixing, that view did not prevent members of the cement industry from producing voluminous evidence, presenting testimony and argument, and persuading the commission to revise its conclusions”).

65 *Caperton*, *supra*, 556 U.S. at 884, italics added.

66 See, e.g., *Place v. Board of Adjustment of Borough of Saddle River* (1964) 42 N.J. 324, 332 (declaring this practice “patently improper”); *Barkey v. Nick* (Mich. Ct. App. 1968) 11 Mich.App. 381, 384-385 (voiding a decision “made pursuant to an argument by

one charged in part with the appointment of that administrative body,” and finding it imposed “duress on the members of the board, not as a matter of fact, but as a matter of law”).

67 *Jarrott v. Scrivener* (D.D.C. 1964) 225 F.Supp. 827, 834.

68 *Ibid.*

69 *Ibid.*

70 *Petrovich Development Co., LLC v. City of Sacramento, supra*, 48 Cal.App.5th at p. 974.

71 *Ibid.*

72 *Id.* at 976.

73 *People v. Peoples, supra*, 62 Cal.4th at p. 788.

74 See *Morongo Band of Mission Indians v. State Water Resources Control Bd., supra*, 45 Cal.4th at p. 737.

104 Ops. Cal. Atty. Gen. 34 (Cal.A.G.), 2021 WL 4395135

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Document 5

Regulations Regarding Behested Payments

West's Annotated California Codes
Government Code (Refs & Annos)
Title 9. Political Reform (Refs & Annos)
Chapter 2. Definitions (Refs & Annos)

West's Ann.Cal.Gov.Code § 82004.5

§ 82004.5. Behested payment

Effective: January 1, 2018

[Currentness](#)

“Behested payment” means a payment that is made at the behest of a committee, an elected officer, a member of the Public Utilities Commission, or an agent thereof, under any of the following circumstances:

- (a) Full and adequate consideration is received from the committee or elected officer.
- (b) The payment is made to a different candidate or to a committee not controlled by the behesting candidate.
- (c) As to an elected officer, it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the officer's seeking or holding of elective office. For purposes of this subdivision, a payment is made for purposes related to an elected officer's seeking or holding of elective office if all or a portion of the payment is used for election-related activities, as defined in [Section 82022.5](#). The following types of payments are presumed to be for purposes unrelated to an elected officer's seeking or holding of elective office:
 - (1) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of [Section 82028](#). Payments that are otherwise subject to the limits of [Section 86203](#) are presumed to be principally for personal purposes.
 - (2) A payment made by a state, local, or federal governmental agency.
 - (3) A payment made by a nonprofit organization that is exempt from taxation under [Section 501\(c\)\(3\) of the Internal Revenue Code](#).¹
 - (4) A payment made principally for charitable purposes.
 - (5) A payment made principally for legislative or governmental purposes by a person other than a state, local, or federal governmental agency.

Credits

(Added by [Stats.2017, c. 749 \(A.B.867\)](#), § 2, eff. Jan. 1, 2018.)

Footnotes

1 Internal Revenue Code sections are in Title 26 of the U.S.C.A.
West's Ann. Cal. Gov. Code § 82004.5, CA GOVT § 82004.5
Current with all laws through Ch. 770 of 2021 Reg.Sess.

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Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 4. Campaign Disclosure (Refs & Annos)

2 CCR § 18424

§ 18424. Behested Payment Reporting. Additional Information.

To the extent the information is known to the elected officer or Public Utilities Commission (“PUC”) member, the behested payment report filed pursuant to Section 84224 shall include the following:

(a) A brief description of any relationship of the nonprofit organization payee to the elected officer, PUC member, or a member of their immediate family, or member of their campaign or officeholder staff. The brief description shall include the following information about any individual listed above:

- (1) Any decision-making capacity within the organization, such as a board member or executive officer position.
- (2) Salaried employment at the organization.
- (3) Status as a founding member of the organization.
- (4) A position on an honorary or advisory board of the organization.

(b) A brief description of any proceeding before the elected officer's or PUC member's agency at the time of a reported payment or within the 12 months prior to the reported payment in which the payor is the named party or subject of the decision.

- (1) A “proceeding” for purposes of subdivision (b) includes decisions on a contract, license, permit, or other entitlement and matters of nongeneral legislation. A “proceeding” does not include decisions on general legislation.
- (2) A proceeding is considered “before the elected officer's or PUC member's agency” if it has been placed on the agency's formal agenda, or if the official has knowledge that the matter has been submitted to the agency for decision and the official may make, participate in making, or otherwise use official position to influence the agency's decision on the matter, as those terms are defined in Regulation 18704.

Note: Authority cited: [Section 83112, Government Code](#). Reference: [Sections 82004.5, 82041.3 and 84224, Government Code](#).

HISTORY

1. New section filed 11-8-2021; operative 12-8-2021 pursuant to [Cal. Code Regs., tit. 2, section 18312\(e\)](#). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 46).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424, 2 CA ADC § 18424

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Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 4. Campaign Disclosure (Refs & Annos)

2 CCR § 18424.1

§ 18424.1. Behested Payment Reporting. Good Faith Estimate.

A good faith estimate of a behested payment amount, payment date or both will meet the reporting requirements under Section 84224 where each of the following are met:

(a) The elected officer or Public Utilities Commission (“PUC”) member practiced reasonable efforts to obtain the required information and is unable to ascertain the exact amount or date of the behested payment from the payee prior to the reporting deadline. For purposes of this regulation, reasonable efforts include sending a written request to the payee for the required information prior to the 30 day filing deadline.

(b) The elected official or PUC member states the payment information is an estimated amount or estimated date that reflects the best efforts of the elected officer or PUC member to ascertain the accurate information and states the reason the official is unable to provide the information.

(c) An amended report with corrected information is filed within 10 days of the elected officer or PUC member receiving the payment information from the payee.

Note: Authority cited: [Section 83112, Government Code](#). Reference: [Sections 82004.5, 82041.3 and 84224, Government Code](#).

HISTORY

1. New section filed 11-8-2021; operative 12-8-2021 pursuant to [Cal. Code Regs., tit. 2, section 18312\(e\)](#). Submitted to OAL for filing pursuant to [Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 \(FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL\) \(Register 2021, No. 46\)](#).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424.1, 2 CA ADC § 18424.1

Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 4. Campaign Disclosure (Refs & Annos)

2 CCR § 18424.2

§ 18424.2. Behested Payment Reporting. Charitable Organization Fundraising Solicitations.

(a) A payment made in response to a fundraising solicitation from a charitable organization is a reportable payment “made at the behest of” the elected officer or Public Utilities Commissioner (“PUC”) member in the following circumstances:

- (1) The solicitation is sent under the control or at the direction of, in cooperation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the elected officer, PUC member, or agent thereof; and
- (2) The solicitation “features” the elected officer or PUC member.

(b) For purposes of this regulation, a solicitation “features” the elected officer or PUC member if either applies:

- (1) The solicitation includes the elected officer or PUC member's photograph or signature or singles out the name or office of the officer or member by the manner of display in the layout of the document, such as by headlines, captions, type size, typeface, or type color.
- (2) The solicitation includes a roster or letterhead listing its governing board, the elected officer or PUC member is listed as a board member, and the board includes a majority of elected officers or PUC members.

Note: Authority cited: [Section 83112, Government Code](#). Reference: [Sections 82004.5, 82041.3 and 84224, Government Code](#).

HISTORY

1. New section filed 11-8-2021; operative 12-8-2021 pursuant to [Cal. Code Regs., tit. 2, section 18312\(e\)](#). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, unpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 46).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424.2, 2 CA ADC § 18424.2

Barclays Official California Code of Regulations Currentness
Title 2. Administration
Division 6. Fair Political Practices Commission
Chapter 4. Campaign Disclosure (Refs & Annos)

2 CCR § 18424.3

§ 18424.3. Behested Payment Reporting. Payments from Donor Advised Funds.

(a) The “name of payor” reported in a behested payment report under Section 84224 for a payment from a sponsoring organization utilizing a donor advised fund must include the following information to the extent it is known by the elected officer or Public Utility Commission (“PUC”) member filing the report:

(1) The name of the sponsoring organization.

(2) The name of the donor advised fund. If the sponsoring organization withholds the name of the donor advised fund, the official shall report this name as “anonymous donor advised fund.”

(3) The name of the donor. Where a donor advised fund has more than one donor, the name of the donor, or donors, who exercised advisory privileges over the donor advised fund for the payment may be provided in lieu of naming each donor. Where a donor's advisor exercised discretion in the making of a behested payment, the official must provide the name of the donor's advisor for this payment, in addition to the donor. If the sponsoring organization withholds the donor information, the official shall report the name as “anonymous donor” and to the extent known, the donor's advisor.

(b) It is the duty of the elected officer or Public Utilities Commission member to identify and report the information required by subdivision (a) with as much specificity as the official knows or can determine by inquiring with the sponsoring organization. If the official learns the identity of the donor or donor advised fund with greater specificity after the report filing date, the official has a duty to amend the behested payment report with the information within 10 days of the official receiving the additional information.

(c) The “single source” of the payment for purposes of determining the \$5,000 threshold triggering a behested payment report, and any subsequent reporting requirements is the following:

(1) Where an individual donor is identified under subdivision (a)(3), the donor is the “single source” of the payment.

(2) Where multiple donors are identified under subdivision (a)(3), each donor is a “single source” for an equal portion of the payment.

(3) Where a sponsoring organization withholds the name of the donor, the donor advised fund identified under subdivision (a)(2) is the “single source” of the payment. If the donor advised fund is an anonymous donor advised fund:

(A) To the extent the sponsoring organization provides, and the official discloses, sufficient information to attribute the payment to a specific anonymous donor advised fund, the anonymous donor advised fund is the single source.

(B) For all other anonymous donor advised fund payments, the official shall aggregate and report all behested payments from an anonymous donor advised fund of the same sponsoring organization and shall consider this as a “single source.”

(d) For purposes of this regulation:

(1) The “donor” is the person or persons who funded the donor advised fund and retains advisory privileges over the donor advised fund, including the ability to designate an advisor.

(2) A “donor advised fund” is as defined in [section 4966\(d\)\(2\) of Title 26 of the United States Code](#).

(3) The “donor's advisor” is the person designated by the donor who exercised advisory privileges over the donor advised fund for this payment.

(4) A “sponsoring organization” is as defined in [section 4966\(d\)\(1\) of Title 26 of the United States Code](#).

Note: Authority cited: [Section 83112, Government Code](#). Reference: [Section 84224, Government Code](#).

HISTORY

1. New section filed 11-22-2021; operative 12-22-2021 pursuant to [Cal. Code Regs., tit. 2, section 18312\(e\)](#). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2021, No. 48).

This database is current through 12/24/21 Register 2021, No. 52

2 CCR § 18424.3, 2 CA ADC § 18424.3

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Document 6

Government Code section 85320

(As Amended by Assembly Bill 319)

West's Annotated California Codes
Government Code (Refs & Annos)
Title 9. Political Reform (Refs & Annos)
Chapter 5. Limitations on Contributions (Refs & Annos)
Article 3. Contribution Limitations (Refs & Annos)

West's Ann.Cal.Gov.Code § 85320

§ 85320. Foreign government or foreign principal; violations; exception; punishment

Effective: January 1, 2022

[Currentness](#)

(a) A foreign government or foreign principal shall not make, directly or through any other person, a contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local ballot measure or in connection with the election of a candidate to state or local office.

(b) A person or a committee shall not solicit or accept a contribution from a foreign government or foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure or in connection with the election of a candidate to state or local office.

(c) For the purposes of this section, a “foreign principal” includes the following:

(1) A foreign political party.

(2) A person outside the United States, unless either of the following is established:

(A) The person is an individual and a citizen of the United States.

(B) The person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States.

(3) A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.

(4) A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the United States nor a lawfully admitted permanent resident of the United States.

(d) This section shall not prohibit a contribution, expenditure, or independent expenditure made by a lawfully admitted permanent resident.

(e) Any person who violates this section shall be guilty of a misdemeanor and shall be fined an amount equal to the amount contributed or expended.

Credits

(Added by Stats.1997, c. 67 (S.B.109), § 1. Amended by Stats.2000, c. 349 (A.B.746), § 1; Stats.2021, c. 313 (A.B.319), § 1, eff. Jan. 1, 2022.)

West's Ann. Cal. Gov. Code § 85320, CA GOVT § 85320
Current with all laws through Ch. 770 of 2021 Reg.Sess.

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Document 7

Hood Advice Letter, No. A-21-046



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

April 22, 2021

Kimberly Hood
Interim City Attorney
City of Galt
Best Best & Krieger
500 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-21-046

Dear Ms. Hood:

This letter responds to your request for advice on behalf of Galt City Councilmembers Kevin Papineau and Rich Lozano and Vice Mayor Paul Sandhu regarding the conflict of interest provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

1. Under the Act, may Councilmember Lozano take part in decisions regarding the Carillion Boulevard Corridor Plan, which would include various street improvements, given that his residential real property is between 500 and 1,000 feet of Carillion Boulevard?
2. Under the Act, may Councilmember Papineau and Vice Mayor Sandhu take part in decisions regarding the Corridor Plan, given that their respective residential real properties are located within 500 feet of Carillion Boulevard?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

CONCLUSION

1. Yes. Given the scope of the Corridor Plan and physical barriers between the project site and his residential real property located between 500 and 1,000 feet away, the Corridor Plan would not appear to affect the development potential, income producing potential, highest and best use, character, or market value of Councilmember Lozano's real property and he may take part in the Corridor Plan decisions.
2. No. Because the residences are located less than 500 feet from the project site, they are subject to a stricter standard that requires clear and convincing evidence the Corridor Plan would have no measurable effect on the residential real property. Given that the Corridor Plan would reduce a current four-lane facility into a two-lane facility and is intended to reduce noise, overall traffic, and the speed of traffic near the residences, there is no clear and convincing evidence the project would not have a measurable effect on the properties. Accordingly, Councilmember Papineau and Vice Mayor Sandhu have disqualifying conflicts of interests under the Act.

FACTS AS PRESENTED BY REQUESTER

The City of Galt ("City") was awarded a grant from the California Energy Commission (CEC) in response to its Grant Funding Opportunity Local Government Challenge notice in 2017 to prepare a Climate Action Plan, Corridor Plan and Master Plan that support the City's 2030 General Plan implementation policies and goals, in addition to regional and statewide climate and transportation policies and directives. The Carillion Boulevard Corridor Plan ("Corridor Plan") is a high-level planning level document that identifies proposed improvements that could be made when traffic demands warrant. These improvements would take place well into the future and incrementally, as warranted by traffic conditions and funding availability. The Corridor Plan contains two proposed planning options for traffic improvements, Alternative 1 and Alternative 2, though the City Council is not required to select either of these options. However, the City does not have to formally adopt or implement either Alternative contained in the Plan at this time. An environmental analysis of potential impacts was also prepared in the form of an Initial Study and Mitigated Negative Declaration.

Carillion Boulevard is a 2.2-mile corridor located east of Highway 99 between Twin Cities Road and Simmerhorn Road. Carillion is a four-lane arterial that primarily services residential housing with limited access points from collector streets. The focus of the Corridor Plan is to encourage less use of automobile travel by enhancing transportation modes, such as walking and cycling, to create a "Complete Street" road. As such, one of the Alternatives in the Plan includes a "road diet" and roundabouts or controlled signals to promote traffic calming with buffered bike lanes. However, none of the Plan Alternatives are designed to change the traffic capacity and none of the Plan Alternatives propose to increase the right-of-way along Carillion Boulevard. The environmental study for the Plan did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives, nor is the Plan anticipated to divert traffic into the neighborhoods, which consist of residential streets and cul-de-sacs accessed by other arterial and collector streets from Carillion. No residences front Carillion in the Plan area and the adjacent residential neighborhoods are separated from Carillion by 6-foot sound walls and approximately 20-foot landscape buffers.

Councilmember Papineau owns a single-family residence that is within 500 feet of Carillion Boulevard by straight line and one side of his property line abuts the sound wall along Carillion Boulevard. However, he does not have direct access to Carillion Boulevard from his residential subdivision. His property requires several turns along residential streets to access a collector street that connects to Carillion. Specifically, he has two routes to access Carillion Boulevard via the following collector streets: via Walnut Avenue, which is 1/2 mile and six turns; and (2) via Elk Hills Drive which is just over 1/3 mile and involves three turns to access Carillion Boulevard.

Councilmember Lozano owns a residential property in a residential subdivision that is more than 500 feet but within 1,000 feet via a direct line to Carillion Boulevard. However, numerous residences are between his residence and Carillion Boulevard and accessing Carillion from his property requires one turn on a residential street to access a collector street that then connects to Carillion Boulevard.

Finally, Vice Mayor Sandhu owns a residential property on an interior cul-de-sac. The real property is located approximately 304 feet from Carillion Boulevard via a straight line. However, Vice Mayor Sandhu's property has numerous residences between it and Carillion Boulevard and requires access on other residential streets before connecting to Carillion.

The Plan Alternatives for Carillion Boulevard will not change the width of the traveled right-of-way and are not anticipated to increase traffic on Carillion Boulevard or in the residential streets within the neighboring residential subdivision where the residential properties of Councilmembers Papineau and Lozano and Vice Mayor Sandhu are located. As noted above, the residential subdivisions do not have direct access to Carillion Boulevard and are separated from Carillion by a sound wall and landscaping areas. Additionally, the environmental study (Initial Study/Mitigated Negative Declaration) prepared by independent contractor, Raney Planning & Management, Inc., for the Plan did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives.

In a follow-up email, you provided a link to the Initial Study/Mitigated Negative Declaration. The Initial Study/Mitigated Negative Declaration explains that the road diet would convert the current four-lane facility into a two-lane facility and allow room for a buffered bike lane in each direction. Between Vauxhall Road and Simmerhorn Boulevard, the project would include future widening of the existing two-lane roadway to accommodate buffered bike lanes and sidewalks. Limited right-of-way expansions would be necessary in some locations, resulting in disturbance of areas that are not currently paved. The Initial Study/Mitigated Negative Declaration also states:

Upon completion of the proposed improvements, the project would not include any increases in operational noise sources relative to existing conditions. The project would not result in increased vehicle travel within the City; rather, . . . , the proposed roundabouts would reduce vehicle idling times, while the lane reductions included in the proposed road diet would reduce mid-block travel speeds. In addition, given that the proposed improvements would prioritize pedestrian and bicycle modes of transport consistent with the City's Complete Streets policies, the project would likely result in an overall decrease in passenger vehicle use within the City. Thus, traffic noise would likely be reduced as a result of the project.

A map included in the Initial Study/Mitigated Negative Declaration indicates the project includes 11 proposed roundabouts throughout the length of Carillion Boulevard, spanning numerous city blocks.

ANALYSIS

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103.) Among those specified economic interests are “[a]ny real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.” (Section 87103(b).) Councilmembers Papineau and Lozano and Vice Mayor Sandhu have economic interests in their respective real property.

Regulation 18701(a) provides the applicable standard for determining the foreseeability of a financial effect on an economic interest explicitly involved in the governmental decision. It states, “[a] financial effect on a financial interest is presumed to be reasonably foreseeable if the financial interest is a named party in, or the subject of, a governmental decision before the official or the official’s agency. A financial interest is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the financial interest, and includes any governmental decision affecting a real property financial interest as described in Regulation 18702.2(a)(1)-(6).” The residential real property of the Councilmembers and Vice Mayor Sandhu are not explicitly involved in the governmental decisions relating to the Corridor Plan.

Where an official’s economic interest is not explicitly involved in the governmental decision, the applicable standard for determining the foreseeability of a financial effect on the economic interest is found in Regulation 18701(b). That regulation provides, “[a] financial effect need not be likely to be considered reasonably foreseeable. In general, if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable. If the financial result cannot be expected absent extraordinary circumstances not subject to the public official’s control, it is not reasonably foreseeable.”

The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is material whenever the governmental decision involves property located 500 feet or less from the property line of the parcel unless there is clear and convincing evidence that the decision will not have any measurable impact on the official’s property. (Regulation 18702.2(a)(7).) The reasonably foreseeable financial effect of a governmental decision on a parcel of real property in which an official has a financial interest, other than a leasehold interest, is also material whenever the governmental decision involves property located more than 500 feet but less than 1,000 feet from the property line of the parcel, and the decision would change the parcel’s:

- (A) Development potential;
- (B) Income producing potential;
- (C) Highest and best use;
- (D) Character by substantially altering traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality; or
- (E) Market value.

(Regulation 18702.2(a)(8).)

Because Councilmember Lozano's real property is located between 500 and 1,000 feet from the project site, the relevant materiality standard is Regulation 18702.2(a)(8). The development of the Corridor Plan would not affect the development potential or highest or best use of Councilmember Lozano's real property, nor would it affect the property's market value or income producing potential. Additionally, the Corridor Plan would not substantially alter traffic levels, intensity of use, parking, view, privacy, noise levels, or air quality, as evidenced by the findings of the Initial Study/Mitigated Negative Declaration. Accordingly, under the Act, the decisions at issue would not have a reasonably foreseeable, material financial effect on Councilmember Lozano's real property and, therefore, he may take part in the decisions pertaining to the Corridor Plan.

Councilmember Papineau and Vice Mayor Sandhu own real property located less than 500 feet from the project site and, therefore, the relevant materiality standard is Regulation 18702.2(a)(7). Under that heightened standard, there must be clear and convincing evidence there will be no measurable impact on the official's real property. Based on the facts provided, that standard is not met. Although the Initial Study/Mitigated Negative Declaration indicates the Plan Alternatives would have "no impact" or "less-than-significant impacts" on traffic, aesthetics/views, noise, or air quality generally, those conclusions do not end our analysis. As the Initial Study/Mitigated Negative Declaration states, a "less-than-significant impact" refers to "[a]ny impact that would not be considered significant under CEQA relative to existing standards." These determinations can be influential in our analysis of facts with respect to the Act, particularly when considering whether a project's impact would be "substantial" under Regulation 18702.2(a)(8), but Regulation 18702.2(a)(7) requires clear and convincing evidence of no measurable effect on an official's real property.

Here, despite concluding that the Corridor Plan would have "less-than-significant-impact" on noise for purposes of CEQA, it also states that "traffic noise would likely be reduced as a result of the project." Likewise, although the Initial Study anticipates a less-than-significant impact on transportation, one of the Corridor Plan's primary purposes is "traffic calming" through the introduction of a "road diet" and roundabouts. The Initial Study notes that the Corridor Plan may reduce passenger vehicle use in the City, congestion, mid-block travel speeds, and vehicle idling times. In addition to potential measurable effects on noise and traffic levels, additional changes such as the replacement of vehicle lanes with bicycle lanes and improved pedestrian safety measures could also affect the market value of nearby properties. For these reasons, we do not find clear and convincing evidence that the Corridor Plan would have no measurable effect on the real properties owned by Councilmember Papineau and Vice Mayor Sandhu. Accordingly, under the Act, they have disqualifying conflicts of interest with respect to the Corridor Plan and must recuse themselves from decisions pertaining to the project.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:dkv

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Document 8

Hood Advice Letter, No. A-21-070



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

May 27, 2021

Kimberly Hood
Interim City Attorney
City of Galt
Best Best & Krieger
500 Capital Mall, Suite 1700
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-21-070

Dear Ms. Hood:

This letter responds to your request for advice on behalf of Galt Vice Mayor Paul Sandhu regarding the conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Would the effect of the City’s Corridor Plan on Vice Mayor Sandhu’s residential real property be indistinguishable from the effect on the public generally, such that he may take part in decisions concerning the Corridor Plan, despite being otherwise disqualified?

CONCLUSION

Yes, given the minimal effects, as well as the distance and physical barriers between his residence and the project site, the foreseeable effect on Vice Mayor Sandhu’s residence is indistinguishable from the effect on the public generally.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS AS PRESENTED BY REQUESTER

The City of Galt (“City”) was awarded a grant from the California Energy Commission (“CEC”) in response to its Grant Funding Opportunity Local Government Challenge notice in 2017 to prepare a Climate Action Plan, Corridor Plan, and Master Plan that support the City’s 2030 General Plan implementation policies and goals, in addition to regional and statewide climate and transportation policies and directives.

The Corridor Plan is a high-level planning document that identifies proposed improvements to Carillion Boulevard that could be made when traffic demands warrant. Carillion Boulevard is a 2.2-mile corridor located east of Highway 99 between Twin Cities Road and Simmerhorn Road. Carillion is primarily a four-lane arterial that services mainly residential housing with limited access points from collector streets. The Corridor Plan contains two proposed planning options for traffic improvements—Alternatives 1 and 2—though the City Council is not required to select either of these options and will simply be considering whether to accept the Corridor Plan as complete to satisfy the CEC grant requirements. The City does not have to formally adopt or implement either Alternative contained in the Plan at this time. An environmental analysis of potential impacts was also prepared in the form of an Initial Study/Mitigated Negative Declaration (“IS/MND”), which did not identify any significant impacts to traffic, aesthetics/views, noise, or air quality as a result of the Plan Alternatives. Nor is the Corridor Plan anticipated to divert traffic into the neighborhoods, which consist of residential streets and cul-de-sacs accessed by other arterial and collector streets from Carillion Boulevard.

Acceptance of the Corridor Plan does not require completion of any of the proposed improvements and does not bind the City or future City Councils to implementing any of the alternatives. Instead, any improvements to Carillion Boulevard would take place at some future date and incrementally, as warranted by traffic conditions and funding availability and pursuant to any future or more specific studies that the City may conduct beyond the high-level Corridor Plan.

There are approximately 7,045 residential parcels in the City and at least 15% of those parcels are located about 700-750 feet from Carillion Boulevard.

Vice Mayor Sandhu’s property is not directly adjacent to and does not directly abut Carillion Boulevard. Rather, his property is located approximately 304 feet from the eastern property line to Carillion Boulevard. His residence is located on an interior cul-de-sac over 300 feet “as the crow flies,” but involves several turns on other residential streets to reach Carillion Boulevard. Under either Alternative, the traveled roadway will remain the same with the existing sound wall limiting any changes in noise that may result for those properties. The “less than significant impacts” and benefits identified in the IS/MND and *Hood* Advice Letter, No. A-21-046 would impact at least 15% of the Cities residential properties equally, including Vice Mayor Sandhu’s residential property, without any measurable difference for properties that are 300 or 700 feet from Carillion Boulevard. The City is not aware of any other facts indicating that Vice Mayor Sandhu’s residential real property would be uniquely affected as compared to the significant segment of the public pursuant to Regulation 18703(b)(2).

ANALYSIS

In *Hood* Advice Letter, No. A-21-046, we advised, based on the facts provided, that there was not clear and convincing evidence that the Corridor Plan would have no measurable effect on the residential real property owned by Vice Mayor Sandhu. Accordingly, we advised that Vice Mayor Sandhu had a disqualifying conflict of interest under the Act and must recuse himself from decisions pertaining to the project. With additional information regarding the number of residential real properties near Carillion Boulevard, we now advise on whether the “public generally exception” applies, such that Vice Mayor Sandhu may still take part in decisions pertaining to the project.

Under Section 87100 of the Act, “[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.” “A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, *distinguishable from its effect on the public generally*, on the official, a member of his or her immediate family,” or on certain specified economic interests. (Section 87103 (emphasis added).)

A governmental decision’s financial effect on a public official’s financial interest is indistinguishable from its effect on the public generally if the official establishes that a significant segment of the public is affected and the effect on his or her financial interest is not unique compared to the effect on the significant segment. (Regulation 18703(a).) A significant segment of the public includes “[a]t least 15 percent of residential real property within the official’s jurisdiction if the only interest an official has in the governmental decision is the official’s primary residence.” (Regulation 18703(b)(2).) Here, 15 percent of the City’s residential real property is located less than (at most) 750 feet from Carillion Boulevard.

In this case, considering the size and scope of the project, the “less than significant” (though not necessarily immeasurable) impacts on noise and traffic levels, as well as the distance and physical barriers between his property and Carillion Boulevard, it appears there would be no distinguishable difference on Vice Mayor Sandhu’s property compared to other residences within 750 feet from Carillion Boulevard, all of which would experience similar impacts. Similarly, given the distance, physical barriers, and several turns it takes to reach Carillion Boulevard from Vice Mayor Sandhu’s real property, it also appears that any potential effect on the market value of Vice Mayor Sandhu’s real property would be indistinguishable from the effect on other properties within 750 feet from Carillion Boulevard.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Kevin Cornwall
Counsel, Legal Division

KMC:dkv

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Document 9

Byrd Advice Letter, No. A-20-134



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

February 23, 2021

Larry Byrd
Modesto Irrigation District (MID)
Stanislaus County
2100 Tim Bell Road
Waterford, CA 95386

Re: Your Request for Advice
Our File No. A-20-134

Dear Mr. Byrd:

This letter responds to your request for advice on behalf of Modesto Irrigation District (“MID”) Board Member Larry Byrd regarding Government Code Section 1090, et seq.¹ Please note that we are only providing advice under Section 1090, not under other general conflict of interest prohibitions such as common law conflict of interest, including Public Contract Code.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice. Lastly, the Commission does not provide advice with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

In regard to our advice on Section 1090, we are required to forward your request and all pertinent facts relating to the request to the Attorney General’s Office and the Stanislaus County District Attorney’s Office, which we have done. (Section 1097.1(c)(3).) We did not receive a written response from either entity. (Section 1097.1(c)(4).) We are also required to advise you that, for purposes of Section 1090, the following advice “is not admissible in a criminal proceeding against any individual other than the requestor.” (See Section 1097.1(c)(5).)

QUESTION

Does Section 1090 prohibit Board Member Byrd from taking part in, and the MID from entering into, any contract with AB La Grange to participate in a groundwater replenishment program?²

¹ All further statutory references are to the Government Code, unless otherwise indicated.

² We cannot provide advice as to whether Board Member Byrd has a conflict in the decision to renew the GWP because this involves past conduct, as prior votes authorizing the program have already occurred. We address only the question of entering the contract after taking part in decision regarding the program.

CONCLUSION

Section 1090 would prohibit Board Member Byrd from taking part in, and the MID from entering into, any contract with AB La Grange involving the GRP because of his prohibitory financial interest in any such contract.

FACTS AS PRESENTED BY REQUESTER

Larry Byrd serves as one of the five Directors of the Modesto Irrigation District (“MID”), a public entity that provides electrical power and water in portions of Stanislaus County, California. In 2017, 2018 and 2019, the MID Board (including board member Byrd) voted for a groundwater replenishment program (“GRP”) to allow farms consisting of at least 10 acres within the MID sphere of influence and the Modesto Groundwater Sub-Basin but outside MID’s irrigation boundaries (about 41,764 total acres) to purchase water from the MID to substitute for groundwater pumping. Approximately 400 farms meet those criteria. In a subsequent email, you explain that the 10-acre minimum requirement for participation in the groundwater replenishment program was recommended by staff and adopted by the Board because Stanislaus County established 10 acres as the minimum acre requirement for enrollment of prime farmland into a Williamson Act contract. Stanislaus County considers 10 acres the minimum parcel size that is large enough to sustain agricultural uses. 89 parcels totaling 278 acres within the area that is covered by the program (within MID’s sphere of influence, within the Modesto Groundwater Sub-Basin, but outside MID’s annexed area) do not meet this criterion.

The purpose of the program is to replenish the Modesto Sub-Basin aquifer by shutting off groundwater pumping and apply MID water to qualified lands. Participation in this program is voluntary and requires the submission of an Application and Agreement (“Agreement”) along with a \$100 non-refundable application fee. Landowners who are approved to participate in the GRP must pay to MID \$60 for each acre-foot of water delivered under the program and comply with all terms and conditions set forth in the Agreement.

Receipt and use of replenishment water through the GRP is limited to use upon the Applicable Land specified in this Application and Agreement, all of which must be currently developed agricultural lands solely reliant upon groundwater from the Modesto Sub-basin. The receipt and use of replenishment water must be for agricultural irrigation purposes only, and the Landowner must warrant that the water received is put to reasonable and beneficial uses at all times. Non-beneficial uses include, but are not limited to, water used for lawns, pasture without livestock benefit, hunting and/or wildlife habitat, recreational ponds, and other uses or practices as determined solely by MID. Water must not be used directly or indirectly for any domestic, commercial or industrial purposes.

Board Member Byrd is a general partner in AB La Grange, a California general partnership, which farms almonds in Stanislaus County. Tyler C. Angle Business Ventures, LP, (“Angle”) as well as Tim Byrd are the other general partners in AB La Grange. Board Member Byrd does not

have any interest in Angle, which owns and operates other farming enterprises. AB La Grange did not participate in the GRP because of board member Byrd's role as an MID board member.

ANALYSIS

Section 1090

Section 1090 generally prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. Section 1090 is concerned with financial interests, other than remote or minimal interests, that prevent public officials from exercising absolute loyalty and undivided allegiance in furthering the best interests of their agencies. (*Stigall v. Taft* (1962) 58 Cal.2d 565, 569.) Section 1090 is intended "not only to strike at actual impropriety, but also to strike at the appearance of impropriety." (*City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 191, 197.)

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest." (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) A contract that violates Section 1090 is void. (*Thomson v. Call* (1985) 38 Cal.3d 633, 646.) When an officer with a proscribed financial interest is a member of the governing body of a public entity, the prohibition of Section 1090 also extends to the entire body, and it applies regardless of whether the terms of the contract are fair and equitable to all parties. (*Id.* at pp. 646-649.)

MID Directors are public officials subject to Section 1090. Additionally, this matter involves a contract between the MID and applicants who qualify for participation in the GRP. Under Section 1090, transactions are viewed in a broad manner to avoid narrow or technical definitions of a contract. (*People v. Honig, supra*, at p. 351 citing *Stigall, supra*, at pp. 569, 571.) Further, when members of a public board, commission or similar body have the power to execute contracts, each member is conclusively presumed to be involved in the making of all contracts by his or her agency regardless of whether the member actually participates in the making of the contract. (*Thomson v. Call, supra* at pp. 645 & 649; *Fraser-Yamor Agency, Inc. v. County of Del Norte* (1977) 68 Cal.App.3d 201; 89 Ops.Cal.Atty.Gen. 49 (2006).)

Section 1090 casts a wide net to capture those officials who participate in any way in the making of the contract. (*People v. Sobel* (1974) 40 Cal.App.3d 1046, 1052.) Therefore, for purposes of Section 1090, participating in making a contract is defined broadly as any act involving preliminary discussions, negotiations, compromises, reasoning, planning, drawing plans and specifications, and solicitations for bids. (*Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237; see also *Stigall, supra*, at p.569.) Thus, the final execution of a contract, which is the time when the contract is technically made, is not the only time when a conflict of interest may be presented. We must look to whether the official had the opportunity and did participate in the policy decision to create the government program under which the contract would later be executed. (See, e.g., 81 Ops.Cal.Atty.Gen. 317 (1998) [council member could not participate in the establishment of a loan program and then leave office and apply for a loan].)

Under Section 1090, "the prohibited act is the making of a contract in which the official has a financial interest" (*People v. Honig* (1996) 48 Cal.App.4th 289, 333), and officials are deemed to

have a financial interest in a contract if they might profit from it in any way. (*Ibid.*) Although Section 1090 nowhere specifically defines the term “financial interest,” case law and Attorney General opinions state that prohibited financial interests may be indirect as well as direct, and may involve financial losses, or the possibility of losses, as well as the prospect of pecuniary gain. (See, e.g., *Thomson, supra*, at pp. 645, 651-652.)

Since Board Member Byrd has already taken part in previous votes on the GRP, he would have a prohibitory financial interest in any contract between MID and AB La Grange involving the GRP and Section 1090 would prohibit him from taking part in, and the MID from entering into, any such contract.³

The Legislature has created various statutory exceptions to Section 1090's prohibition where the financial interest involved is deemed to be a “remote interest,” as defined in Section 1091, or a “noninterest,” as defined in Section 1091.5. However, none of the statutory exceptions to Section 1090 are relevant here. Section 1091.5(a)(3) states that “[a]n officer or employee shall not be deemed to be interested in a contract if his or her interest is ... “[t]hat of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she was not a member of the body or board.” Attorney General opinions and case law make clear that the exception is intended to apply only to services that are uniformly provided to all customers and for which rates and charges have been clearly established, such as public utilities (such as water, gas, and electricity), and the renting of hangar space in a municipal airport on a first come, first served basis. (See, e.g., 81 Ops.Cal.Atty.Gen. at p. 319).

In contrast, where administering officials are required to exercise judgment or discretion, the exception has been found not to apply. While the application form for participation in the GRP contains standardized terms and conditions, including a standard rate per acre-foot of water delivered, there are also various limiting criteria approved by the Board when it established the GRP. Namely, qualifying properties must be at least 10 acres in size, located within the MID sphere of influence and the Modesto Groundwater Sub-Basin but outside MID’s irrigation boundaries, and the water must be used for agricultural irrigation purposes only. On balance, we conclude that the GRP does not fit within the parameters of Section 1091.5(a)(3), and the exception does not apply.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

Zachary W. Norton

³ We note that Section 1090 would not preclude Board Member Byrd from taking part in, and the MID from entering into, a contract with any other entity involving the GRP (such as Angle) where Board Member Byrd does not have a financial interest in the contracting party.

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 20, 2022

MEMO TO: Board of Directors

FROM: Doug A. Linney, President



SUBJECT: Proposed 2022 Board Committee Assignments

Listed below are the proposed 2022 Board committee assignments.

Planning

Director Young, Chair
Director McIntosh
Director Mellon

2nd Tuesday of the month at 9:15 a.m.
Administration Center Building
Training Resource Center, 2nd Floor

Legislative/Human Resources

Director McIntosh, Chair
Director Coleman
Director Patterson

2nd Tuesday of the month at 10:15 a.m.
Administration Center Building
Training Resource Center, 2nd Floor

Finance/Administration

Director Patterson, Chair
Director Coleman
Director Katz

4th Tuesday of the month at 10:00 a.m.
Administration Center Building
Training Resource Center, 2nd Floor

Sustainability/Energy

Director Young, Chair
Director Katz
Director Mellon

4th Tuesday, quarterly, time to be determined
Administration Center Building
Training Resource Center, 2nd Floor

DSRSD/EBMUD Recycled Water Authority (DERWA)

Director Coleman
Director Mellon
Director Young, Alternate

1st Monday in Feb.;
3rd Monday in May;
4th Monday in March, July, Sept., and Nov.
meets at 6:00 p.m.
Contact: Florence T. Wedington, Tel: 287-1625

Freeport Regional Water Authority

Director Coleman
Director Patterson
Director Katz, Alternate

*2nd Thursday, quarterly at 10:00 a.m.,
location to be announced*

Los Vaqueros Reservoir Joint Powers Authority

Director Coleman
Director McIntosh (Alternate)

*2nd Wednesday of the month at 9:30 a.m.,
location to be determined*
Contact: Bradley M. Ledesma, Tel: 287-1053

Retirement Board

Director Mellon
President Young

3rd Thursday odd numbered months at 8:30 a.m.
Administration Center Building
Training Resource Center, 2nd Floor

Upper Mokelumne River Watershed Authority

Director Coleman
Director Patterson, Alternate
Director Katz, Alternate
Director Young, Alternate

4th Friday, quarterly at 1:30 p.m.
McLean Hall, Pardee Center

Business Forum (Ad Hoc)

Director Coleman
Director Katz
Director Patterson
Director Mellon, Alternate

Meeting dates, times, and location to be determined

EBMUD/EBRPD Liaison

Director Katz
Director Mellon
Director Young, Alternate

Meeting dates, times, and location to be determined

Oakland Chamber of Commerce

Director Young
Director Katz, Alternate
Director Patterson, Alternate

Special Districts Association of Alameda County/Special Districts Selection Committee

Director Mellon, Member
Director Katz, Alternate
Director Patterson, Alternate

Special Districts Association of Contra Costa County

Director McIntosh, Member
Director Mellon, Alternate
Director Coleman, Alternate

DAL:rsc

MINUTES

Tuesday, January 11, 2022
East Bay Municipal Utility District
Board of Directors
375 Eleventh Street
Oakland, California
****Virtual****

Regular Closed Session Meeting

President Doug A. Linney called to order the Regular Closed Session Meeting of the Board of Directors at 10:31 a.m. He announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. All Directors participated remotely.

Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Engineering and Construction Olujimi O. Yoloye (Item 1a), Engineering Manager Elizabeth Z. Bialek (Item 1a), Meyers Nave representatives Camille Hamilton Pating and Suzanne Ruten (Items 1b and 2), Director of Operations & Maintenance David A. Briggs (Item 3), Interim Director of Human Resources Winnie W. Anderson (Items 3 and 4), Assistant General Counsel Lourdes Matthew (Item 4), and IEDA representatives Jeff Bailey and Gregory Ramirez (Item 4). General Counsel Derek T. McDonald did not participate in discussions regarding Items 1b. and 2.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Eddie Cheung, Treasurer, AFSCME Local 444, commented on wages, the cost of living, Local 444's wage proposal, and an equity adjustment for Janitors; 2) Eric O. Larsen, President, AFSCME Local 444, commented on the cost of living, impacts from the COVID-19 pandemic, and Local 444's wage proposal; 3) Tyrell Jackson, AFSCME Local 444 Contract Negotiations team member, commented on inflation and impacts from the COVID19 pandemic and asked the Board to accept Local 444's wage proposal; 4) George Cleveland, Chief Steward, AFSCME Local 2019, commented on an internal District investigation involving Local 2019 members; 5) Brandon Batteate, Second Vice-President, AFSCME Local 444, commented on the cost of living and negotiations; 6) Randy Hernandez, AFSCME Local 444 Contract Negotiations team member, commented on the essential work performed by Local 444 members and negotiations; 7) Jason Pearson, EBMUD Water Distribution Plumber III, commented on the cost of living in the Bay Area; 8) Joe Pangelinan, Chief Steward, AFSCME Local 444, commented on the cost of living and negotiations; 9) Michael Morgan, EBMUD Water Distribution Plumber III, commented on the cost of living and asked the Board to consider a fair wage package; 10) Ivette Rivera, EBMUD Gardener Foreman, commented on the District's Diversity, Equity, and Inclusion Strategic Plan, the tenure of the current Board members, and similarities between the McIntoch and Irving v EBMUD case and the lawsuits filed by Saji Pierce and Ayriel Bland; 10) Kyle Terry, EBMUD Instrument Technician, commented on the

duties of the Instrument Technician, the cost of living, and negotiations; 11) Patrick Virgin, EBMUD Plant Maintenance Mechanic, commented on the cost of living, staffing and the loss of institutional knowledge, and asked the Board to consider a reasonable wage package; 12) Joey D. Smith, President, AFSCME Local 2019, commented on the cost of living and asked the Board to consider Local 2019's wage proposal; 13) Brian Dominguez, EBMUD Heavy Equipment Operator, commented on the cost of living, inflation, the essential work of Heavy Equipment Operators and asked the Board to consider a fair wage increase; 14) Yu commented on the cost of living, reasonable wages, and diversity, and thanked staff for working to ensure staff safety during the COVID-19 pandemic; 15) Jennifer Grey, EBMUD Heavy Transport Operator, commented on the cost of living, the work performed by EBMUD crews, and asked the Board to consider a fair wage package; 16) Miguel Lugo, EBMUD Heavy Transport Operator, commented on the cost of living and asked the Board to consider a fair wage package; 17) Evan Kline-Corman, EBMUD Wastewater Treatment Operator I, commented on the cost of living, the length of negotiations, and staff responding to wet weather events, and asked the Board to consider Local 444's wage proposal; 18) Zubin Engineer, EBMUD Plant Mechanic, expressed support for Local 444's wage proposal; and 19) Ken Huynh, EBMUD Maintenance Machinist, asked the Board to accept Local 444's wage proposal. Secretary of the District Rischa S. Cole said the following comments would be filed with the record: 1) Email from Amy Bowman, EBMUD Information Systems Specialist III, regarding COVID test sites; and 2) Email from Diane Eggering, EBMUD Accounting Technician regarding Local 2019 negotiations.

President Linney thanked the speakers for attending and providing comments regarding negotiations.

BROWN ACT BRIEFING

General Manager Clifford C. Chan said that due to time constraints, the Brown Act briefing would be provided at a future meeting.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President Linney announced the closed session agenda and convened for discussion (remotely).

Regular Business Meeting

At 1:05 p.m. General Manager Clifford C. Chan informed Secretary of the District Rischa S. Cole that due to an extended Closed Session Meeting, the Regular Business Meeting would start at 1:30 p.m. At 1:20 p.m. General Manager Chan informed the Secretary the Regular Business Meeting would start at 1:45 p.m. President Doug A. Linney called to order the Regular Business Meeting of the Board of Directors at 1:47 p.m. He announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting.

ROLL CALL

Directors John A. Coleman, Andy Katz, Lesa R. McIntosh, Frank Mellon, William B. Patterson, Marguerite Young, and President Doug A. Linney were present at roll call. All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, and Secretary of the District Rischa S. Cole.

BOARD OF DIRECTORS

President Linney led the Pledge of Allegiance.

Election of President of the Board

President Linney opened the floor for nominations for President of the Board for 2022.

- Motion by Director Coleman, seconded by Director Katz, to nominate Director Doug A. Linney for President of the Board of Directors for 2022.

President Linney called for additional nominations, and none came forward. Motion by Director Mellon, seconded by Director Patterson to close the nomination period. The motions to close the nomination period and to elect Director Doug A. Linney as President of the Board for 2022, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, Linney, Mellon, McIntosh, Patterson, and Young); NOES (None); ABSTAINED (None); ABSENT (None).

Motion No. 001-22 – Elected Director Doug A. Linney as President of the Board of Directors for 2022.

President Linney thanked the Board for the vote of confidence and expressed appreciation for the work Board members do to make the job of the President easier.

Election of Vice-President of the Board

President Linney opened the floor for nominations for Vice-President of the Board for 2022.

- Motion by President Linney, seconded by Director Mellon, to nominate Director John A. Coleman for Vice-President of the Board of Directors for 2022.

President Linney called for additional nominations, and none came forward. Motion by Director Mellon, seconded by Director Patterson to close the nomination period. The motions to close the nomination period and to elect Director John A. Coleman as Vice-President of the Board for 2022, carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAINED (None); ABSENT (None).

Motion No. 002-22 – Elected Director John A. Coleman as Vice-President of the Board of Directors for 2022.

Vice-President Coleman acknowledged President Linney and Past-President Director Young for their leadership as Board President and said he is honored to serve with the Board.

Committee Assignments

President Linney announced the Board received a memorandum via email requesting 2022 Committee assignment preferences and asked Board members to submit their preferences to the Secretary by January 14. Committee assignments will be presented for Board consideration at the January 25 meeting. Directors Mellon and McIntosh requested another copy of the 2022 Committee assignment preferences form.

ANNOUNCEMENTS FROM CLOSED SESSION

There were no announcements required from closed session.

PUBLIC COMMENT

- Addressing the Board were the following: 1) Nick Lawrence, Orinda, commented on dangerous conditions on Tappan Terrace; 2) Kasie Evans commented on negotiations and thanked the Board for listening to staff; 3) Gary Walters II, EBMUD Engineering Designer II, thanked the District's Emergency Operations Team Director and Regulatory Compliance staff for their work during the pandemic and commented on potential impacts from recent and upcoming vacancies in managerial positions in the Human Resources Department; 4) Ivette Rivera, EBMUD Gardener Foreman, commented on the District's Diversity, Equity and Inclusion Strategic Plan, recent filings in the Saji Pierce and Ayriel Bland case, and the McIntoch and Irving v EBMUD case, and read excerpts from the McIntoch and Irving v EBMUD case; and 5) Jennifer Grey, EBMUD Heavy Transport Operator, commented on work conditions for District crews and the cost of living, and asked the Board to come to the negotiations table with a helpful offer.

CONSENT CALENDAR

- Item 13 was pulled from the Consent Calendar for separate discussion.
 - Motion by Director McIntosh, seconded by Director Coleman to approve the recommended actions for Items 1-12 and 14-16 on the Consent Calendar carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
1. **Motion No. 003-22** – Approved the Regular Meeting Minutes of December 14, 2021
 2. The following correspondence was filed with the Board: **1)** Presentation entitled, “Annual Brown Act and Ethics Update” dated January 11, 2022; **2)** Presentation entitled, “Resolution Continuing Virtual Meetings of the Board,” dated January 11, 2022; **3)** Presentation entitled, “Emergency Declaration for Repairs to a Portion of the South Interceptor,” dated January 11, 2022; **4)** Presentation entitled, “2021-2022 Redistricting Update Redistricting Proposals,” dated January 11, 2022; **5)** Presentation entitled, “Water Supply Update,” dated January 11, 2022; **6)** Presentation entitled, “EBMUD Biennial Report 2020-2021,” dated January 11, 2022; **7)** Memorandum from Doug A. Linney, President of the Board to the Board of Directors dated January 11, 2022 regarding 2022 Board Committee Assignment Preferences; **8)** Email from Amy Bowman dated January 4, 2022 regarding COVID test sites; and **9)** Email from Diane Eggering dated January 11, 2022 regarding Local 2019 negotiations.

- 3a.-3b. **Motion No. 004-22** – Awarded contracts to the following vendors for supplying automobile, truck, and heavy equipment tires for District vehicles and equipment beginning on or after January 11, 2022 for five years, in an aggregate amount not to exceed \$3,000,000: Brannon Tire; Bridgestone Americas Tire Operations, LLC; Don’s Tire Service, Inc.; Dusty and Sons Tires; East Bay Tire Co.; George Oren Tire Specialist; Hernandez Tires Service; J&O’s Commercial Tire Center; Jackson Tire Service Inc.; Morgan Tire of Sacramento, Inc.; Thiel’s Tires; and Wingfoot Commercial Tire Systems dba Goodyear Commercial Tire + Service Center; and authorized additional contracts for supplying automobile and light, medium, and heavy truck tires on an as-needed basis, with vendors that meet District standards and offer pricing at or below the range in the proposed contracts with the vendors above to increase flexibility and ensure vendor availability.
4. **Motion No. 005-22** – Awarded a sole source contract to Hydranautics for supplying 1,280 reverse osmosis membrane elements for the Richmond Advanced Recycled Expansion Water Project for one year, beginning on or after January 11, 2022 with one option to renew for an additional one-year period for a total cost, after the addition of taxes, including option years, not to exceed \$600,000.
5. **Motion No. 006-22** – Authorized an agreement beginning on or after January 11, 2022 with Black & Veatch Corporation in an amount not to exceed \$112,538 to evaluate the business case for a District-wide Advanced Metering Infrastructure project.
6. **Motion No. 007-22** – Authorized an agreement beginning on or after January 11, 2022 with Cornerstone OnDemand, Inc., for \$40,000 for one year with two options to renew for additional one-year periods for a total amount, including option years, not to exceed \$125,481 for an online learning management system.
7. **Motion No. 008-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 079-13 with the City of Emeryville (Emeryville) to include a 35 percent sewer service charge credit for Emeryville customers participating in the District’s Customer Assistance Program.
8. **Motion No. 009-22** – Authorized an amendment to the Power Purchase Agreement previously authorized under Board Motion No. 118-20 with Solar Star Bear Creek, LLC to increase the agreement amount by \$517,000 to a total amount not to exceed \$700,000 for Photovoltaic-generated electricity.
- 9a. **Motion No. 010-22** – Authorized an agreement beginning on or after January 11, 2022 with Sage Method in an amount not to exceed \$338,395 for implementation services to replace the District’s current construction management information system.
- 9b. **Motion No. 011-22** – Authorized an agreement beginning on or after January 11, 2022 with Kahua, Inc., for \$1,172,500 for five years with five options to renew for additional one-year periods for a total amount, including option years, not to exceed \$2,747,504 for software licensing and support for the construction management information system.

10. **Motion No. 012-22** – Authorized an agreement with Dynamic Systems, Inc., for Oracle database software and hardware technical support services during the period of January 2022 to July 2023 with one option to renew for an additional one-year period for a total amount, including the option year, not to exceed \$1,650,000.
- 11a.- **Motion No. 013-22** – Authorized agreements with the following service providers for welding services during the period January 12, 2022 to June 30, 2023, in an aggregate amount not to exceed \$250,000: Eyeball Enterprise, Inc.; Ferguson Welding Service, Inc.; John Arthur Welding, Inc.; Larsson Welding; Mid Mountain Mechanical, Inc.; Nicole Welding, Inc.; and Woods Welding; and authorized additional agreements for welding services, on an as-needed basis, with service providers that meet District standards and offer pricing at or below the range in the proposed agreements with the service providers above to increase flexibility and ensure service provider availability.
- 11b.
- 12.1. **Motion No. 014-22** – Authorized an amendment to the agreement previously authorized under Board Motion No. 066-19 with Tait Environmental Services, Inc., to increase the agreement amount by \$1,558,270 to a total amount not to exceed \$2,502,056 for engineering support during construction and construction oversight under the Fuel System Improvements Project.
- 12.2. **Motion No. 015-22** – Awarded a contract to the lowest responsive/responsible bidder, Mitchell Engineering, in the amount of \$15,499,000 for construction of Fuel System Improvements under Specification 2147.
13. **Motion No. 016-22** – Authorized the General Manager to execute a one-year temporary water transfer option agreement with Yuba County Water Agency (YCWA) and Contra Costa Water District. This agreement provides EBMUD the option to purchase up to 10 thousand acre-feet of transfer water from YCWA in calendar year 2022 plus any additional YCWA water which becomes available to EBMUD, and to spend up to \$300,000 to prepare for the potential water transfer, while reserving for the Board the authority to determine whether to exercise the water purchase option at a future public meeting.
 - Director Coleman pulled Item 13 to ask if the District could purchase the YCWA water and either resell it, store it in Los Vaqueros Reservoir for future use, store it in the Bayside Groundwater Project, or store it in the Demonstration Recharge, Extraction and Aquifer Management (DREAM) Project if the water was not needed for supplemental supply. He also asked how much runoff would be needed for the District to determine if it will need to purchase the YCWA water and how much has been spent to date on the YCWA agreement. Director of Water and Natural Resources Michael T. Tognolini and Director of Operations and Maintenance David A. Briggs responded.
 - Motion by Director Coleman, seconded by Director Patterson to approve the recommended actions for Item 13 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).
14. **Motion No. 017-22** – Approved the assignment of the agreement previously authorized under Board Motion No. 124-19 from G4S Secure Solutions (USA), Inc., to Universal Protection Service, LP dba Allied Universal Security Services for contract security services.

15. **Motion No. 018-22** – Approved the assignment and transfer of the agreement previously authorized under Board Motion No. 205-07 from Ginn & Crosby, LLP to GinnLaw, PC for specialized legal services related to construction, public contracts and procurement, claims, and litigation.
16. **Motion No. 019-22** – Approved indemnification of Alameda County as part of the conditional use permit application for the Quarry Site Restoration Project.

DETERMINATION AND DISCUSSION

17. Appoint Manager of Distribution Maintenance and Construction.

General Manager Clifford C. Chan pulled Item 17 from the agenda and said it would be presented at a future meeting.

18. Legislative Update.

Manager of Legislative Affairs Marlaigne K. Dumaine introduced Eric Sapirstein of ENS Resources, Inc. The Board acknowledged Mr. Sapirstein for providing legislative and regulatory information-gathering, analysis, representation, and liaison services to the District over the last 30 years. Mr. Sapirstein commented on the District's proposed federal initiatives for 2022 and provided an update on federal legislative activities, the federal budget, issues pending in Congress, the Build Back Better Plan, and the status of federal earmarks. He responded to Board questions regarding funding for climate change including assistance for disaster response and pre-disaster mitigation.

Next, Ms. Dumaine presented five federal initiatives for 2022: 1) Climate Change Resiliency – Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water services; 2) Contaminants of Emerging Concern – Advance EBMUD's interests in discussions on contaminants of emerging concern in the context of water supply and wastewater treatment; 3) Cybersecurity – Advance EBMUD's interests in discussions on cybersecurity-related legislation and policies in the water and wastewater sectors; 4) Funding to Support Infrastructure Investment and Ratepayer Assistance – Pursue direct federal funding opportunities for EBMUD projects and infrastructure through new and existing federal programs, including national infrastructure initiatives; and 5) Water Supply Reliability and Natural Resources Protection – Advance EBMUD's interests in water supply reliability and supporting the Mokelumne River fishery. Legislative/Human Resources Committee Chair John A. Coleman announced the Committee met earlier in the day and supported the federal initiatives for 2022. Ms. Dumaine responded to a question raised during the Legislative/Human Resources Committee meeting on whether State timber management requirements apply to federal lands. She confirmed the State requirements apply to private landowners and timber management on federal lands is governed by the National Environmental Policy Act. Director Coleman said he is willing to partner with another Board member to work with stakeholders to develop a framework for addressing timber management. Staff was asked to seek opportunities to engage timber management solutions applicable to federal lands in the Mokelumne watershed. In conclusion, Ms. Dumaine provided an update on state legislative activities. The Board asked staff to look for opportunities for the District to be a resource during discussions at the state and federal levels on workers transitioning out of the petroleum sector and to

advocate to have public water and wastewater sectors specifically recognized as employers with green jobs for transitioning workers.

- Motion by Director Coleman, seconded by Patterson to approve the recommended actions for Item 18 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 020-22 – Approved the following Federal Initiatives for 2022: 1) Climate Change Resiliency – Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water services; 2) Contaminants of Emerging Concern – Advance EBMUD’s interests in discussions on contaminants of emerging concern in the context of water supply and wastewater treatment; 3) Cybersecurity – Advance EBMUD’s interests in discussions on cybersecurity-related legislation and policies in the water and wastewater sectors; 4) Funding to Support Infrastructure Investment and Ratepayer Assistance – Pursue direct federal funding opportunities for EBMUD projects and infrastructure through new and existing federal programs, including national infrastructure initiatives; and 5) Water Supply Reliability and Natural Resources Protection – Advance EBMUD’s interests in water supply reliability and supporting the Mokelumne River fishery.

19. **Make requisite findings and adopt a resolution to continue to hold meetings of the Board of Directors via teleconference under Government Code section 54953(e) until such time as the State of Emergency resulting from the COVID-19 pandemic no longer impacts the ability of Board members to meet safely in person.**

- Motion by Director Young, seconded by Director Patterson to approve the recommended actions for Item 19 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35263-22 – Authorizing Continued Utilization of Teleconferencing for Meetings of the East Bay Municipal Utility Board of Directors.

- 20.1.- **Ratify the General Manager’s January 4, 2022 declaration of a District emergency in**
20.2. **accordance with Policy 7.03 – Emergency Preparedness/Business Continuity because of a catastrophic failure of a portion of the District’s South Interceptor; and authorize expenditure of sums as needed in response to such emergency.**

Director of Wastewater Eileen M. White outlined the need to declare a District emergency to address the catastrophic failure of a portion of the District’s South Interceptor. On January 3, 2022, the City of Oakland notified the District and staff confirmed a portion of the South Interceptor near the Oakland Coliseum had collapsed and formed a sinkhole. The South Interceptor serves the Oakland International Airport and a portion of East Oakland and provides essential wastewater conveyance for critical customers. On January 4, to expedite stabilization of the sinkhole and repairs to the damaged interceptor, the General Manager, in consultation with the Board President, declared a “District Emergency” in accordance with District Policy 7.03. Ms. White reviewed the incident location, photos of the damage, and the repair plan. Following the General Manager’s emergency declaration, the District secured a contractor to immediately stabilize the sinkhole, clean the debris out of the pipe, and repair the collapsed portion of the pipeline. Staff estimates repair costs to be more than \$500,000 and repairs to be completed by the

end of January. The Board will be updated on any additional contracts that may be awarded. She noted staff has been proactively coordinating with various regulatory agencies and stakeholders during the repair process and expressed appreciation for Wastewater Department staff for their work to address the emergency especially as there was an event scheduled at the Coliseum on January 8 and 9. Ms. White responded to Board questions on the age of the pipeline, projected total repair costs, and the District's options if a venue is required to cancel or postpone a scheduled event to allow the District to perform emergency repairs on its infrastructure. Staff was asked to consider ways to use the South Interceptor emergency to highlight the District's need to invest in its aging infrastructure.

- Motion by Director McIntosh, seconded by Director Patterson, to approve the recommended actions for Items 20.1 and 20.2 carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Resolution No. 35264-22 – Ratifying General Manager's Declaration of the Existence of a District Emergency and Authorizing Expenditure of Sums as Needed in Response to Such Emergency.

- 21a. **Consider and accept Redistricting Proposal 1 (Proposal 1) as recommended by the Redistricting Ad Hoc Committee for review and presentation at upcoming noticed public hearings.**

Secretary of the District Rischa S. Cole and Senior Software Engineer George F. McQuary presented an overview of EBMUD redistricting efforts since February 2021 and three proposals presented to the Redistricting Ad Hoc Committee which is comprised of Directors Coleman, Linney, and Young. The District is legally required to adjust its ward boundaries to accommodate population shifts reflected in the federal decennial census, and to keep its wards as equal as possible in population. The 2020 census data indicates that compared to 2010, EBMUD's service area population increased from 1,337,782 to 1,477,418 and the target ward population increased from 191,112 to 211,060. The final census data indicates Ward 5 (cities of Alameda and San Lorenzo; West Oakland and Oakland Airport Area, and a portion of San Leandro) with a ward population of 217,878 is above the Board adopted target ward population deviation of 3 percent at 3.23 percent and that Ward 7 (Castro Valley; portions of San Leandro and Hayward; communities of Cherryland and Fairview; and a portion of San Ramon) with a ward population of 207,016 has the second highest deviation at -1.92 percent. All other District wards remain within the 3 percent target ward population deviation (+/- 6332 or between 204,728 and 217,392). Staff presented the following three proposals to the Redistricting Ad Hoc Committee on October 26, 2021 and November 23, 2021 to adjust the boundaries between Wards 5 and 7 to bring both wards within 3 percent of the target ward population of 211,060:

- **Proposal 1:** move an area of San Lorenzo that is east of Highway 880 from Ward 5 to Ward 7. This area is south of San Lorenzo Creek between 880 and the Southern Pacific Railroad and has a population of 4,637. This proposal would decrease the Ward 5 population from 217,878 to 213,241 and increase the Ward 7 population from 207,016 to 211,653.

- **Proposal 2:** move an area of San Lorenzo that is east of Highway 880 and south of Lansing Way from Ward 5 to Ward 7. This area is a subset of Proposal 1 and would move one census block with a population of 508 from Ward 5 to Ward 7. This proposal would decrease the Ward 5 population from 217,878 to 217,370 and increase the Ward 7 population from 207,016 to 207,524.
- **Proposal 3:** move the Greenhouse Marketplace area in San Leandro from Ward 5 to Ward 7 which extends along San Lorenzo Creek. The City of San Leandro is already divided between Wards 5 and 7 by Highway 880. This proposal would decrease the Ward 5 population from 217,878 to 217,271 and increase the Ward 7 population from 207,016 to 207,623.

At its October 26 meeting, the Redistricting Ad Hoc Committee recommended the Board accept Proposal 1 for review and comment during public hearings in February and March 2022 and reaffirmed this recommendation at its meeting on November 23. If the Board accepts Proposal 1, in accordance with Elections Code section 22001, the District will conduct a public hearing on February 8 to receive public comment and a public hearing on March 8 for the Board to consider approving Proposal 1 for inclusion in the District's legal ward boundaries. The Board would consider adopting the legal ward boundaries and final ward map at its meeting on April 12. Staff would submit the adopted legal ward boundaries and final ward map to Alameda and Contra Costa counties by April 17 for the November 2022 elections. Ms. Cole highlighted planned public outreach efforts for the public hearings and confirmed that the District received one public comment on redistricting at the November 23 Redistricting Ad Hoc Committee meeting.

- Motion by Director McIntosh, seconded by Director Coleman to approve the recommended actions for Item 21a carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 021-22 – Considered and accepted Redistricting Proposal 1 (Proposal 1) as recommended by the Redistricting Ad Hoc Committee for review and presentation at upcoming noticed public hearings.

21b. **In accordance with California Elections Code section 22001, set a public hearing for February 8, 2022, to present Proposal 1 as recommended by the Redistricting Ad Hoc Committee for public review and comment, and a public hearing for March 8, 2022, where the Board of Directors will consider adopting Proposal 1 to establish the East Bay Municipal Utility District ward boundaries as a result of the 2020 federal census.**

- Motion by Director Young, seconded by Director McIntosh to approve the recommended actions for Item 21b carried (7-0) by the following roll call vote: AYES (Coleman, Katz, McIntosh, Mellon, Patterson, Young, and Linney); NOES (None); ABSTAIN (None); ABSENT (None).

Motion No. 022-22 – In accordance with California Elections Code section 22001, set a public hearing for February 8, 2022, to present Proposal 1 as recommended by the Redistricting Ad Hoc Committee for public review and comment, and a public hearing for March 8, 2022, where the Board of Directors will consider adopting Proposal 1 to establish the East Bay Municipal Utility District ward boundaries as a result of the 2020 federal census.

22. **General Manager's Report.**

Water Supply Update

Director of Operations and Maintenance David A. Briggs presented an update as of January 6 on the District's current water supply including gross water production; precipitation in the Mokelumne watershed which was 29.74 inches or 157 percent of average; precipitation in the East Bay which was 18.47 inches or 169 percent of average; the snow depth at Caples Lake which was 62 inches or 145 percent of average; and total system storage which was 500,980 acre-feet or 90 percent of average and 65 percent of capacity. He reviewed data on the state's water supply as of January 7, national precipitation forecasts for January 2022 through March 2022 and concluded with projected precipitation in the Mokelumne for Rainfall Year 2022 and the District's projected total system storage for Water Year 2022. Mr. Briggs responded to Board questions regarding the baseline years used in factoring gross water production averages; contacting Redwood Canyon Golf Course about potential impacts if the District is required to begin spilling at local reservoirs; and potential impacts to fisheries below Camanche Reservoir if current water trends continue.

- Addressing the Board was Eric O. Larsen, President, AFSCME Local 444, who commented staff did not provide a COVID-19 update in the General Manager's Report. He commented on the current number of COVID-19 cases at the District and among Local 444 members and said the District should consider expanding COVID-19 testing for staff to five days a week.

EBMUD Biennial Report for Fiscal Years 2020-2021

Senior Public Information Representative Andrea A. Pook presented the report which is entitled "On the Front Lines: A Report to Our Community 2020-2021." The report was redesigned and is completely digital and mobile-friendly. It includes interactive hyperlinks and videos, complies with accessibility requirements in the Americans with Disabilities Act and is available for printing from the District's website. Ms. Pook acknowledged Graphic Designer II Eric D. Fiebig and Public Information Representative III Tracie D. Morales for their work on the project. Ms. Pook responded to questions from the Board and confirmed staff tracks visitors to the District's website but does not have data on the number of views for the biennial report. Staff is exploring ways to inform the public about the report since prior editions were printed and distributed during outreach events. The Board requested a hyperlink to the report and for staff to provide a banner with hyperlinks to key items for Board members' email signature blocks.

General Manager Clifford C. Chan announced the Board received the following information and that he was available to respond to questions: 1) Six-Month Forecast of Board Committee and Workshop Agenda Topics for 2022 and Summary of 2021 Committee and Workshop Topics; 2) 2021 Interdepartmental Committees Annual Report; and 3) December 2021 Monthly Report. He pointed out the monthly report includes information on the District's efforts to secure funding for customer arrearages. The District submitted its California Water and Wastewater Arrearage Payment Program application to the State Water Resources Control Board for \$9,631,323.40 in drinking water arrearages for 10,900 customers in arrears and an additional 9,450 accounts that received assistance via the District's Customer Assistance Program during the pandemic. He also reported the state's moratorium for water shutoffs ended on December 31, 2021 but the District does not plan to transition to implementing flow restrictors on past due accounts until arrearages are paid and staff provides an additional update to the Board.

REPORTS AND DIRECTOR COMMENTS

23. Committee Reports.

- Filed with the Board were the Minutes for the December 14, 2021 Planning and Legislative/Human Resources Committee Meetings.
- Planning Committee Chair Marguerite Young reported the Committee met earlier (remotely) and received the Wet Weather Consent Decree Implementation Update.
- Legislative/Human Resources Committee Chair John A. Coleman reported the Committee met earlier (remotely) and received updates on the Federal Initiatives for 2022 and the Diversity, Equity, and Inclusion Strategic Plan Draft.

24. Other Items for Future Consideration.

None.

25. Director Comments.

- Director Coleman reported plans to participate in the following virtual events: Los Vaqueros JPA Board Meeting on January 12; FRWA Board Meeting on January 13; presentation to the Walnut Creek Rotary on January 18; UMRWA Board Meeting on January 28; and the Los Vaqueros JPA Board Meeting on February 9.
- Director Patterson reported former football coach and NFL sports commentator John Madden was honored in Congress today with a special tribute from Representative Eric Swalwell. He requested a letter be sent to the Madden family on behalf of the Board to acknowledge Mr. Madden's contributions to Oakland.
- President Linney and Directors Katz, Mellon, McIntosh, and Young had no reports.

ADJOURNMENT

President Linney adjourned the meeting at 4:27 p.m.

SUBMITTED BY:

Rischa S. Cole, Secretary of the District

APPROVED: January 25, 2022

Doug A. Linney, President of the Board



AGENDA NO. 3.1
MEETING DATE January 25, 2022

TITLE ORINDA WATER TREATMENT PLANT DISINFECTION AND CHEMICAL SYSTEMS SAFETY IMPROVEMENTS PROJECTS

TYPE	<input checked="" type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Award a contract to the lowest responsive/responsible bidder, Flatiron West, Inc., in the amount of \$267,721,132 for construction of the Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements Projects under Specification 2139.

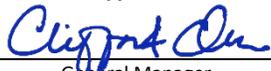
SUMMARY

This contract will install an ultraviolet (UV)/chlorine contact basin (CCB) disinfection system, an above-ground maintenance and UV electrical building, a grounds maintenance storage building, electrical system and raw water channel improvements, and new chemical storage and feed systems at the Orinda WTP. This project was discussed at the June 3, 2017, August 8, 2017, October 10, 2017, February 13, 2018, July 9, 2019, March 10, 2020, and September 14, 2021 Planning Committee meetings and the May 26, 2020 Long-Term Financial Stability, Strategic Plan Update and Mid-Cycle Budget Workshop.

DISCUSSION

The Orinda WTP does not currently have a dedicated disinfection process and relies on pre-chlorination in the Lafayette Aqueducts. The pre-chlorination process can be operationally challenging due to variations in raw water quality, sometimes resulting in the formation of high levels of disinfection by-products (DBPs). The new UV disinfection and CCB facility will improve disinfection reliability, provide a multi-barrier treatment process, reduce DBPs and increase resilience against water quality impacts from climate change.

The new chemical storage and feed systems will improve safety and reliability at the Orinda WTP by replacing chemical piping, metering pumps and storage tanks and adding emergency life systems to the chemical and emergency power systems to ensure continued operations during power outages. Temporary facilities will allow the plant to continue operations throughout construction and tie-in of the new permanent facilities.

Funds Available: FY22/23, CIP#0000437; Page 47	Budget Coding: 570/2012253/2012269/39/7000090	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department Engineering and Construction	Department Director or Manager Olujimi O. Yoloye	Approved  General Manager
Attachment(s): Location Map; Bid Summary; Bid Protest Letters; District Response Letter; P-035, P-061		

Other project elements will improve operations and maintenance at the Orinda WTP including: electrical rehabilitation of the Los Altos Pumping Plant; standby power generation systems for the Orinda WTP and the Los Altos Pumping Plant during power outages (e.g., Public Safety Power Shutoffs); new maintenance facilities for the District's electrical, grounds maintenance, and maintenance machinist staff who currently report to the Orinda WTP; improvements to the backwash treatment system to address deficiencies in the ability to dechlorinate; and improvements to the raw water conveyance system used to transfer Freeport project water to the San Pablo Reservoir.

Construction is expected to start in summer 2022 with an estimated construction duration of approximately four to five years. This project supports the District's Long-Term Infrastructure Investment and Water Quality and Environmental Protection Strategic Plan goals.

BID RESULTS

Bid documents were posted on the District's website and issued to 21 resource organizations and 12 prospective bidders. The District prequalified general contractors and specialty sub-contractors who have the required experience and qualifications to successfully complete projects of similar size and complexity. Two bids were received, ranging from \$267,721,132 to \$270,502,657. The bid summary is attached. The engineer's estimate for this work is \$220,546,851.

The range of bids is higher than the engineer's estimate due to uncertainties in market conditions with respect to materials costs and supply chain challenges, and increased operations costs for the contractors. The construction industry experienced a materials shortage due to the pandemic, and most material costs have remained high due to significant uncertainty about future costs and availability. In addition, the size, complexity, risk and duration of Specification 2139 may also have contributed to the higher bid costs and smaller bidder pool.

On December 22, 2021, Shimmick/CEC Joint Venture (Shimmick) protested the low bid submitted by Flatiron West, Inc. (Flatiron). On December 23, 2021, Shimmick submitted a follow-up letter to support its claim, asserting that Flatiron did not comply with the Contract Equity Program & Equal Employment Opportunity (CEP & EEO) Guidelines and pre-qualification contract document requirements relating to key personnel. The District reviewed and investigated the points raised in the protest and determined that Flatiron's bid complies with the CEP & EEO Guidelines and Flatiron's pre-qualification application meets the requirement to list key personnel. Shimmick's protest was therefore denied. Copies of the bid protest letters and the District's response are attached.

The lowest responsive/responsible bidder, Flatiron West, Inc., is licensed to perform work in California, and is not on the State Department of Industrial Relations (DIR) debarment list. Flatiron West, Inc. and its listed subcontractors are properly registered with the State DIR. In the past five years, Flatiron West, Inc. has not filed a Government Code Claim against the District, nor initiated any litigation against the District.

SUSTAINABILITY

Economic

Funds are available in the FY22/23 adopted capital budget for the Treatment Plant Upgrades Project.

Social

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

Local 444 was notified of this contract on June 3, 2020 and did not raise any specific issues related to this contract.

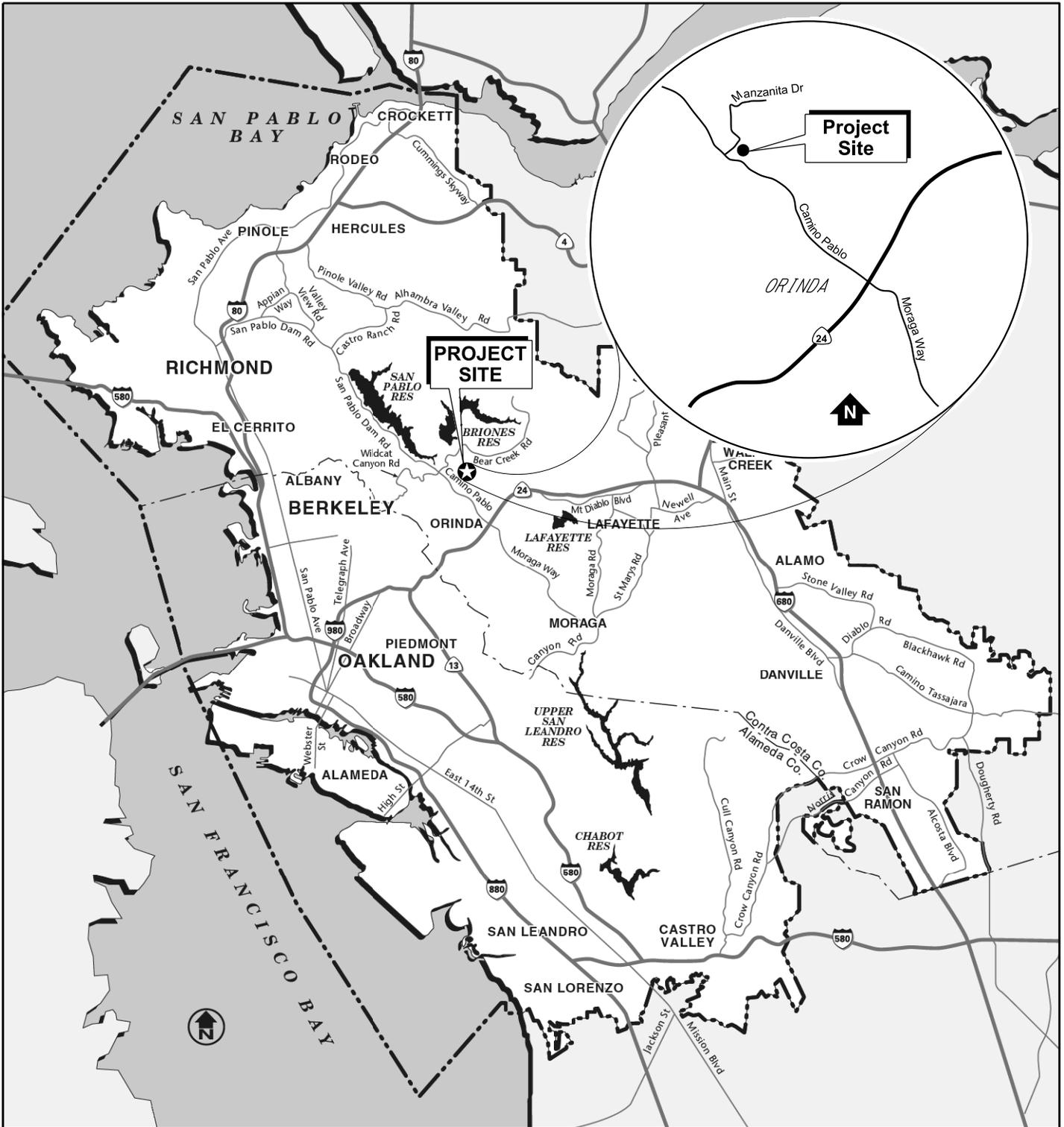
Environmental

An Environmental Impact Report for the Water Treatment and Transmission Improvements Program was certified by the Board on December 19, 2006 under Resolution No. 33576-06. A Supplemental Environmental Impact Report for the disinfection improvements portion was certified by the Board on December 8, 2020 under Resolution No. 35210-20. The chemical system safety improvements portion is categorically exempt from the requirements of the California Environmental Quality Act (CEQA) and a Notice of Exemption was filed with the Contra Costa County clerk on March 8, 2021.

ALTERNATIVES

Do not complete the project. This alternative is not recommended because this project is required to improve the safety and reliability of the Orinda WTP.

Perform the work with District forces. This alternative is not recommended because staff does not possess the resources needed to perform a project of this scale.



**PROJECT SITE
LOCATION MAP**

NOT TO SCALE

EAST BAY MUNICIPAL UTILITY DISTRICT

ORINDA WATER TREATMENT PLANT

SPECIFICATION 2139

EAST BAY MUNICIPAL UTILITY DISTRICT

SPECIFICATION 2139

**Orinda Water Treatment Plant Disinfection
and Chemical Systems Safety Improvements**

Bids Opened December 15, 2021

	BIDDER	TOTAL AMOUNT BID
1.	Flatiron West, Inc. 2100 Goodyear Rd. Benicia, CA 94510 (707) 742-6000	\$267,721,132
2.	Shimmick/CEC Joint Venture 8201 Edgewater Dr., Ste. 202 Oakland, CA 94621 (707) 759-6858	\$270,502,657

Engineer's Estimate:

\$220,546,851

December 22, 2021

By USPS Mail, Fedex, Hand Delivery, and By Email

Director of Engineering and Construction
East Bay Municipal Utility District
P.O. Box 24055
Oakland, California 94623-1055

Specifications and Engineering Support Section (MS #503)
East Bay Municipal Utility District
375 11th Street
Oakland, CA 94607

Re: **Bid Protest – Orinda Water Treatment Plant Disinfection and
Chemical Systems Safety Improvements, Specification 2131
Bid Opening Date: December 15, 2021
Protest of Award to Flatiron West, Inc.**

Dear Madam or Sir:

Please consider this letter to be a formal protest of the award of the above contract to any bidder other than Shimmick/CEC Joint Venture (Shimmick/CEC), which submitted the lowest responsive bid from a responsible contractor.

Shimmick/CEC specifically protests an award to Flatiron West, Inc. (FWI), on the grounds stated below.

A. Name, Address, and Contact Person for Protesting Party

Attention: John White
Shimmick/CEC Joint Venture
1 Harbor Center, Suite 200
Suisun City, CA 94585
Direct: (916) 417-8057
jwhite@shimmick.com

and/or:

Attention: Trace Porter
Shimmick/CEC Joint Venture
1 Harbor Center, Suite 200
Suisun City, CA 94585
Direct: (510) 715-3974

tporter@shimmick.com

B. Statement of Basis for Protest

1. Failure of FWI to Comply With Contract Equity Requirements

The District's bidding documents included contract equity participation requirements. Bidders are required to achieve the following levels of participation:

CONTRACTING OBJECTIVES			
AVAILABILITY GROUP	CONTRACTING CATEGORIES		
	Construction	Professional or General Services	Materials & Supplies
White Men	25%	25%	25%
White Women	9%	6%	2%
Ethnic Minorities (Men and Women)	25%	25%	25%

Alternatively, if a bidder fails to meet the above levels of participation, then it must demonstrate good faith efforts by engaging in and documenting good faith efforts. Specifically, the bidder must have:

1. ***signed*** and submitted the Contract Equity Program Guidelines Certification;
2. ***identified*** and selected specific subcontracting, supplying, and trucking areas of the contract to be performed by business enterprises in all availability groups as defined herein;
3. ***advertised*** not less than 10 calendar days before the date the bids/proposals are due, in one or more daily or weekly newspapers, minority, women or other association publications, trade-oriented journals, or other media, specified by the District, for all business enterprises that may be interested in participating in the contract;
4. ***provided*** written notice of interest in bidding/proposing on the contract to a reasonable number of enterprises in all availability groups not less than 10 calendar days before the date the bids/proposals are due.
5. ***followed up*** initial solicitations of interest by contacting the business enterprises to determine with certainty whether the enterprises are interested in performing specific items of the project;

6. ***provided*** interested business enterprises with information about the proposal, plans, specifications, and requirements for the selected subcontracting or material supply work;
7. ***requested*** assistance from community organizations or contractor groups; local, state, or federal business assistance offices, or other organizations that provide assistance in the recruitment and placement of business enterprises, if any is available;
8. ***negotiated*** in good faith with the business enterprises in all availability groups, and did not unjustifiably reject as unsatisfactory bids/proposals prepared by any such business enterprises, as determined by the District;
9. ***advised and/or made*** efforts, where applicable, to assist interested business enterprises in all availability groups in obtaining bonds, lines of credit, or insurance required by the District or potential contractor; and
10. ***implemented*** efforts that the District could reasonably expect to obtain business enterprise participation reflective of the broad diversity of contractors in the marketplace.

(Contract Equity Program and Equal Employment Opportunity Guidelines)

Shimmick/CEC met the District's Contract Equity participation objectives. However, we are informed and believe that FWI did not meet the District's objectives and failed to engage in and provide documentation of good faith efforts. Shimmick/CEC requested copies of FWI's good faith efforts documentation to confirm that FWI did not either meet the District's objectives or demonstrate good faith efforts. However, the District has not provided FWI's documentation sufficiently in advance of the deadline for a protest to allow examination of those materials. Shimmick/CEC therefore files this protest to preserve its rights.

2. Failure of FWI to Comply with Prequalification and Key Personnel Requirements

The District required bidders to prequalify and to identify key personnel as part of the prequalification process. The Request for Statements of Pre-Qualifications provides that a bidder must identify certain personnel who will be assigned to this Project. The use of the words "will be assigned" indicates that this is a mandatory requirement. *See Judith P. v. Superior Court*, 106 Cal. App. 4th 535, 550 (2002). The District's bidding documents emphasize the mandatory nature of this requirement. Specification 00 72 00, General Condition 4.3.2 requires that if the "Contractor proposed specific key personnel during prequalification, or in response to an invitation to bid, the Contractor shall provide the same personnel at the same level of effort and for the same duration and amounts of time per week."

To the extent the Request for Statements of Pre-Qualifications allows Prospective Bidders to submit an alternate name for a position, the Prospective Bidder shall complete and submit another experience form for that individual with this GC-SOPQ package

In its prequalification documentation, we believe FWI may not meet one or more of the Key personnel requirements because key personnel have left the organization.-If FWI elected not to identify alternates, ~~which means~~ it assumed the risk that it would no longer qualify if its proposed key personnel left the company. Shimmick/CEC requested copies of FWI's GC-SOPQ package to confirm that FWI had current qualified personnel or approved alternates. However, the District has not provided FWI's documentation sufficiently in advance of the deadline for a protest to allow examination of those materials. Shimmick/CEC therefore files this protest to preserve its rights and may supplement the protest as it receives further information.

Because of key personnel departure, FWI no longer meets the prequalification requirements for the Project unless alternates were submitted and approved to take their place. In this scenario, FWI does not have an individual associated with the project who has the level of experience required by the District's bidding requirements. Accordingly, FWI's bid is nonresponsive, and FWI is not a responsible bidder.

In *E.W. Tompkins Co. v. State Univ. of N.Y.*, 61 A.D.3d 1248, 1250-1251 (2009), the Court upheld a decision "to reject petitioner's bid as nonresponsive" where the bidder had failed to list three recent projects that met the criteria of the bidding documents. Here, during the prequalification process, the District required the listing of personnel to demonstrate the bidder would be able to perform the project successfully. To award the project to a bidder key individual no longer will be part of the bidder's team would render the prequalification process meaningless. Accordingly, as FWI no longer meets the prequalification criteria, its bid should be considered nonresponsive.

Additionally, a bidder is responsible only if it has demonstrated the "fitness, capacity, and experience to satisfactorily perform" a public works contract in accordance with its plans and specifications. Pub. Contract Code § 1103; *City of Inglewood-LA County Civic Center v. Superior Court*, 7 Cal. 3d 861, 867 (1972). The District, through the prequalification process, determined the criteria for responsibility. FWI no longer meets those criteria.

It would entirely unjust and completely improper for the District to change the criteria for a responsive bid and for responsibility after the fact to allow FWI's bid to be considered. First, FWI has obtained an improper advantage over other bidders; FWI is seeking to be awarded the contract despite not employing an individual with the level of experience required by the District's bidding requirements. Other contractors who lacked

qualified personnel were prohibited from bidding; FWI is seeking to be given a significant and improper advantage over all other potential bidders.

Second, to waive the key personnel requirements and the experience and personnel requirements of the prequalification process after bids were opened would be illegal. In *Eel River Disposal & Resource Recovery, Inc.*, 221 Cal. App. 4th 209, 238 (2013), the Court of Appeal addressed a situation very similar to the one here. In *Eel River*, as in this matter, the bidding requirements addressed the qualifications that the bidders had to possess. In awarding a contract, the governing body for the agency had emphasized that the company that received the contract was a local employer. Effectively, the governing body had changed the qualifications for a successful bid. The Court of Appeal determined that award of the contract was illegal, ruling that a contract must be “set aside where specifications are changed after the bidding has been closed.” See *Valley Crest Landscape, Inc. v. Davis*, 41 Cal. App. 4th 1432 (1996)

Waiving the requirements of the specifications to allow FWI’s bid to be considered would introduce an improper and unfair element of subjectivity into the bid process. *City of Inglewood-LA County Civic Center v. Superior Court*, 7 Cal. 3d 861, 867 (1972). To fail to enforce the District’s prequalification bidding requirements uniformly would be arbitrary, capricious, and grounds for setting aside an award of the project. *Id.*

C. Request for Public Records

Following up on our prior requests, and pursuant to Section 6250 et seq. of the Government Code, the Public Records Act, Shimmick/CEC requests copies of the following records:

- Prequalification documentation for FWI in connection with Specification 2131;
- All documents relating to any Contract Equity good faith efforts by FWI in connection with Specification 2131;
- Documents relating to any change or substitution in key personnel who were identified in FWI’s prequalification.

D. Conclusion

On behalf of Shimmick/CEC, we respectfully request that the protest be sustained. A contract awarded FWI would be inconsistent with the District’s own bidding requirements and would give FWI an unearned, illegal, and unfair advantage over other bidders. Inasmuch as the bid prices of Shimmick/CEC and FWI are extremely close, it would not be in the interest of the District or its rate payers to overlook the discrepancies in FWI’s bid and that FWI no longer employs the project manager upon which FWI’s prequalification was based.

East Bay Municipal Utility District

December 22, 2021

Page 6 of 6

Thank you for your careful consideration of this matter. We look forward to the District's determination in connection with the protest.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'John White', with a long horizontal flourish extending to the right.

John White
Shimmick/CEC Joint Venture

December 23, 2021

By Fedex, Hand Delivery, and By Email

Director of Engineering and Construction
East Bay Municipal Utility District
P.O. Box 24055
Oakland, California 94623-1055

Specifications and Engineering Support Section (MS #503)
East Bay Municipal Utility District
375 11th Street
Oakland, CA 94607

Name, Address, and Contact Person for Protesting Party

Attention: John White
Shimmick/CEC Joint Venture
1 Harbor Center, Suite 200
Suisun City, CA 94585
Direct: (916) 417-8057
jwhite@shimmick.com

and/or:

Attention: Trace Porter
Shimmick/CEC Joint Venture
1 Harbor Center, Suite 200
Suisun City, CA 94585
Direct: (510) 715-3974
tporter@shimmick.com

Re: **Bid Protest – Orinda Water Treatment Plant Disinfection and
Chemical Systems Safety Improvements, Specification 2131
Bid Opening Date: December 15, 2021
Protest of Award to Flatiron West, Inc.**

Dear Madam or Sir:

On December 22, 2021, Shimmick/CEC Joint Venture (Shimmick/CEC) submitted a protest of the bid submitted by Flatiron West, Inc. (FWI). Since submission of the protest, the District produced records that further confirm that FWI did not meet

East Bay Municipal Utility District

December 23, 2021

Page 2 of 2

the Contract Equity participation objectives for White Women and Ethnic Minorities and also failed to engage in and to document good faith outreach efforts.

The District's Contract Equity Program and Equal Employment Opportunity Guidelines, Section 00 43 39, state that "to demonstrate Good Faith Outreach Efforts in each of the ten areas, the bidder/proposer shall have ... negotiated in good faith with the business enterprises in all availability groups" and not "unjustifiably reject as unsatisfactory bids/proposals prepared by any such business enterprises, as determined by the District." Additionally, bidders must have "advised and/or made efforts, where applicable, to assist interested business enterprises in all availability groups in obtaining bonds, lines of credit, or insurance."

The post-bid documents submitted by FWI do not provide a summary of discussions and negotiations with rejected subcontractors and do not describe specific assistance offered to subcontractors or suppliers. Accordingly, the documentation furnished by FWI fails to establish compliance with the District's good faith outreach efforts requirements.

Shimmick/CEC therefore respectfully requests that the protest be sustained.

Very truly yours,

A handwritten signature in black ink, appearing to read 'John White', with a stylized flourish extending to the right.

John White
Shimmick/CEC Joint Venture

VIA USPS and EMAIL

January 5, 2022

Mr. John White
Shimmick/CEC Joint Venture
1 Harbor Center, Suite 200
Suisun City, CA 94585

Subject: Specification 2139 – Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements Bid Protest

Dear Mr. White:

We have reviewed the points raised in your bid protest letter dated December 22, 2021 and have determined that there is no basis for deeming Flatiron West, Inc.'s bid non-responsive. Specifically, you allege that 1) Flatiron West, Inc. (Flatiron) did not comply with the Contract Equity Program & Equal Employment Opportunity Guidelines Part I Section B.1, which requires bid to either meet the contracting objectives or implement all ten of the Good Faith Outreach Efforts listed in Part I Section A. 2) Flatiron did not comply with the Request for Statements of pre-qualifications which require contractors to identify key personnel. You believe that the key personnel listed on Flatiron's pre-qualification application may have left the organization and Flatiron did not list alternate key personal in the application. You also believe that Flatiron is not allowed to replace key personnel.

Our findings are as follows:

- 1) The District has reviewed the Good Faith Outreach Efforts documentation submitted by Flatiron and has determined that Flatiron is in compliance with the program's guidelines and meets the District's Contract Objectives by adequately implementing the Good Faith Outreach Efforts.
- 2) A review of Flatiron's pre-qualification package confirmed that Flatiron listed key personnel and their alternates. We also received a letter from Flatiron stating that all key personnel listed on the pre-qualification application are still employed with Flatiron. In addition, as stated in Article 4.3.2 of the General Conditions, there are conditions where the Contractor may substitute key personnel, with written consent from the Engineer. As such, we find no basis to deem Flatiron's bid non-responsive as related to their submitted key personnel.

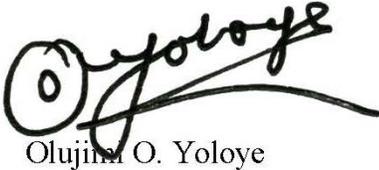
SPECIFICATION 21 39 – Orinda Water Treatment Plant Disinfection and Chemical
Systems Safety Improvements Bid Protest

January 5, 2022

Page 2

Based on these findings, Shimmick/CEC Joint Venture's bid protest is hereby denied. Should you wish to file an appeal of this determination, you have five work days from the receipt of this letter to set forth your grounds for appeal in accordance with Article 27 of the Instructions to Bidders.

Sincerely,

A handwritten signature in black ink, appearing to read "Olujimi O. Yoloje". The signature is stylized with a large initial "O" and a long, sweeping underline.

Olujimi O. Yoloje

OOY:JKT:jkt

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CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE SPECIFICATION NO.: 2139 Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements						DATE: January 5, 2022						
CONTRACTOR: Flatiron West, Inc. Benicia, CA94510				PERCENTAGE OF CONTRACT DOLLARS								
BID/PROPOSER'S PRICE: \$267,721,132				FIRM'S OWNERSHIP		White Men		25%		26.1%		
Ethnicity: Foreign Gender: -				White Women		9%		6.8%		4.4%		
Ethnicity: Foreign Gender: -				Ethnic Minorities		25%		25%		4.4%		
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: Flatiron West, Inc.	\$161,545,723	Foreign										60.3%
SUBS: CMC Rebar	\$6,200,000	Publicly Held								2.3%		
FD Thomas, Inc.	\$1,700,000	Alaskan	X					0.6%				
Blocka Construction, Inc.	\$2,680,000	White		X		1.0%						
Helix Electric, Inc.	\$46,400,000	White	X		17.3%							
Drill Tech Drilling & Shoring, Inc.	\$14,800,000	White		X		5.5%						
Golden State Boring & Pipe Jacking, Inc.	\$1,400,000	White	X		0.5%							
Sprung Instant Structures, Inc.	\$365,216	White	X		0.1%							
Frank A. Olsen Company, LLC	\$1,300,000	White	X		0.5%							
G3 Engineering	\$784,001	White	X		0.3%							
TOTAL	\$267,721,132				26.1%	6.8%	4.4%	0.0%	2.3%	0.0%		60.3%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
					White Men	White Women	Ethnic Minorities	Total Employees				
No. of Employees:					141	26	104	271				
Percent of Total Employees:					52.0%	9.6%	38.4%					
MSA Labor Market %:					32.3%	27.8%	39.9%					
MSA Labor Market Location:	9 Bay Area Counties											
COMMENTS												
Contract Equity Participation - 26.1% White Men, 6.8% White Women, and 4.4% Ethnic Minority Participation.												
Workforce Profile & Statement of Nondiscrimination Submitted					Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
NA					YES							

CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Specification No.: 2139 Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements	DATE January 5, 2022
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CONTRACT EQUITY PARTICIPATION (cont. from page one)

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
SUBS:											
Ponton Industries	\$100,000	White	X		0.0%						
Shape Inc.	\$110,000	White	X		0.0%						
Steel Structures Inc.	\$222,000	White	X		0.1%						
Burlingame Engineers	\$849,886	White	X		0.3%						
Wedeco	\$2,364,572	White	X		0.9%						
ProMinent	\$483,483	Asian	X					0.2%			
Flo Line Technology	\$120,000	White	X		0.04%						
Gonzales Construction Co.	\$704,389	Hispanic	X					0.3%			
TK Elevator	\$200,000	White	X		0.1%						
SV Group	\$300,000	White	X		0.1%						
Elite Waterproofing & Epoxy Flooring	\$354,000	Asian	X					0.1%			
Alcal Specialty Contracting Inc.	\$180,000	White	X		0.1%						
Opening Technologies	\$272,438	White	X		0.1%						
United California Glass and Door	\$154,710	White	X		0.1%						
Progress Glass	\$525,426	White	X		0.2%						
O'Donnell Plastering Inc.	\$234,400	White		X				0.1%			
Active Treatment Systems, Inc.	\$250,000	White	X		0.1%						
Morgner Construction Management	\$626,933	Hispanic		X				0.2%			
ISI Inspection Services, Inc.	\$980,711	Asian		X				0.4%			
Western Oilfields Supply Co. dba Rain for Rent	\$150,000	White	X		0.1%						
Cemex Construction Materials Pacific, LLC	\$4,000,000	White	X		1.5%						
Gonsalves & Santucci Inc. dba Conco Pumping	\$400,000	White	X		0.1%						
Integra Steel Truss, Inc.	\$223,909	White	X		0.1%						
B.L. Wilcox & Associates	\$130,684	White		X				0.05%			
Presidential Fire Protection, Inc.	\$133,000	White	X		0.05%						

CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Specification No.: 2139 Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements	DATE January 5, 2022
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CONTRACT EQUITY PARTICIPATION (cont. from page one)

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
SUBS:											
Ferguson Enterprises, LLC	\$145,000	White	X		0.1%						
Marina Landscape, Inc.	\$170,651	White	X		0.1%						
Hallmark Industrial Supply	\$6,450,000	Asian	X					2.4%			
Cell-Crete Corporation	\$80,000	White	X		0.03%						
ACT Equipment Sales	\$190,000	White		X			0.1%				
Piping Service Inc.	\$200,000	White	X		0.1%						
Piping Technology & Products	\$300,000	Asian	X					0.1%			
Capital Flow	\$150,000	White	X		0.1%						
Discount Ramps LLC	\$500,000	White	X		0.2%						
GTE Metal	\$2,700,000	White	X		1.0%						
MAG Trucking	\$4,000,000	White	X		1.5%						
Harrington Industrial Plastic	\$650,000	White	X		0.2%						
Core and Main	\$90,000	White	X		0.03%						
Acrow Corp of America	\$450,000	White	X		0.2%						
Oliveira Fence	\$400,000	White		X			0.1%				
Total	See page 1 for total										



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
Spec. No.: 2139	DATE:								
		1/5/2022	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	Foreign	Company Wide	8	45	25	0	78	28.8%	53.9%
Flatiron West, Inc. Jamie Strumberger 2100 Goodyear Road Benicia, CA 94510 720-494-8194		Manager/Prof	5	4	12	0	21	19.4%	
		Technical/Sales	1	10	6	0	17	33.3%	
		Clerical/Skilled	1	8	6	0	15	26.3%	
		Semi/Unskilled	1	23	1	0	25	45.5%	
		Bay Area	8	45	25	0	78	28.8%	39.9%
		AA Plan on File:	NA		Date of last contract with District:		NA		
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide:		271	Bay Area: 271	
S	PHC	Company Wide	INFORMATION NOT PROVIDED						
CMC Rebar Jessica Carpenter 6565 N. MacArthur Blvd., Suite 800 Irving, TX 75039 480-396-7262		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	AN	Company Wide	5	27	2	3	37	34.9%	27.3%
F.D. Thomas, Inc. Terra Wells 217 Bateman Drive Central Point, OR 97502 541-664-3010		Manager/Prof	0	2	0	2	4	22.2%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	5	25	1	1	32	38.6%	
		Semi/Unskilled	0	0	1	0	1	20.0%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		106	Bay Area: 0	
S	WW: LBE	Company Wide	3	13	3	0	19	31.7%	48.4%
Blocka Construction Patricia Jean Blocka 445 Boulder Court Pleasanton, CA 94566 510-657-3686		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	2	1	0	3	30.0%	
		Clerical/Skilled	3	10	2	0	15	34.9%	
		Semi/Unskilled	0	1	0	0	1	33.3%	
		Bay Area	3	9	3	0	15	33.3%	39.9%
		Co. Wide MSA:	California		# Employees-Co. Wide:		60	Bay Area: 45	
S	WM	Company Wide	108	553	89	3	753	53.7%	27.3%
Helix Electric, Inc. Andrew Wells 6795 Flanders Drive San Diego, CA 92121 858-535-0505		Manager/Prof	51	359	40	1	451	61.1%	
		Technical/Sales	6	43	1	0	50	53.8%	
		Clerical/Skilled	42	133	31	2	208	50.0%	
		Semi/Unskilled	9	18	17	0	44	28.6%	
		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		1,401	Bay Area: 0	
S	WW: LBE	Company Wide	17	229	12	0	258	46.1%	27.3%
Drill Tech Drilling & Shoring, Inc. Scott Preble 2200 Wymore Way Antioch, CA 94509 925-978-2060		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	5	0	5	10.4%	
		Clerical/Skilled	4	9	5	0	18	12.9%	
		Semi/Unskilled	13	220	2	1	236	65.6%	
		Bay Area	15	194	10	1	220	53.7%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		560	Bay Area: 410	

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)



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
Spec. No.: 2139		DATE:	1/5/2022						
		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 %
S	WM	Company Wide	0	13	0	0	13	41.9%	51.1%
Golden State Boring & Pipe Jacking, Inc. Lexi Michalek 7000 Merrill Avenue, Box 40 Chino, CA 91710 909-930-5811		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	3	0	0	3	27.3%	
		Semi/Unskilled	0	10	0	0	10	55.6%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA: San Bernardino	# Employees-Co. Wide: 31				Bay Area: 0		
S	WM	Company Wide	1	20	0	0	21	24.7%	27.3%
Sprung Instant Structures, Inc. George Van Loon 5711 West Dannon Way West Jordan, UT 84081 403-601-2292		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	1	0	0	1	14.3%	
		Semi/Unskilled	1	19	0	0	20	57.1%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 85				Bay Area: 0		
S	WM: L/SBE	Company Wide	0	15	0	0	15	50.0%	48.4%
Frank A. Olsen Company, LLC Sharon Viramontes 286 Rickenbacker Circle Livermore, CA 94551 925-961-8888		Manager/Prof	0	5	0	0	5	50.0%	
		Technical/Sales	0	4	0	0	4	50.0%	
		Clerical/Skilled	0	3	0	0	3	50.0%	
		Semi/Unskilled	0	3	0	0	3	50.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA: California	# Employees-Co. Wide: 30				Bay Area: 0		
S	WM	Company Wide	INFORMATION NOT PROVIDED						
G3 Engineering Charles Kantureck 5905 Granite Lake Drive Granite Bay, CA 95746 925-408-7818		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Ponton Industries Kevin Simpson 22901 Savi Ranch Pkwy # B Yorba Linda, CA 92887 714-998-9073		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							
S	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
Shape Inc. Nick Chavez 5115-A Johnson Drive Pleasanton, CA 94588 925-485-9720		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							
		Co. Wide MSA:							

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)



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Orinda Water Treatment Plant Disinfection and Chemical Systems Safety Improvements		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
Spec. No.: 2139		DATE: 1/5/2022	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
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 %
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Steel Structures Inc. Andy Ehrhart 28777 Avenue, 15 1/2 Madera, CA 93638		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
559-673-8021		Bay Area							
		Co. Wide MSA:							
S	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
Burlingame Engineers Peter Ruszel 1225 David Avenue Concord, CA 95418		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
925-943-5200		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Wedeco Pedro Gochicoa 500 West 5th Kansas City, MO 64105		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
980-312-1365		Bay Area							
		Co. Wide MSA:							
S	EMM: A/PI	Company Wide	INFORMATION NOT PROVIDED						
ProMinent Christian LaCour 136 Industry Drive Pittsburgh, PA 15275		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
408-896-5319		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Flo Line Technology Matt Starkey 11822 Kemper Road Auburn, CA 95603		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
530-613-6080		Bay Area							
		Co. Wide MSA:							
S	EMM: H - SBE	Company Wide	0	2	0	0	2	100.0%	63.5%
Gonzales Construction Co. Mercedes Rodriguez 21363 Lassen Street, Suite 108 Chatsworth, CA 91311		Manager/Prof	0	2	0	0	2	100.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
818-758-2490		Bay Area	0	0	0	0	0	0.0%	39.9%
		Co. Wide MSA:	Los Angeles		# Employees-Co. Wide: 2		Bay Area: 0		

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AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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		National	B	H	A/PI	AI/AN	TOTAL		
Spec. No.: 2139		DATE:							
		1/5/2022	9 Bay Area Counties	10.5	10.7	3.7	0.7	27.3	
			Alameda/CC Counties	5.5	16.2	14.2	0.4	39.9	
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 %
S	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
TK Elevator		Manager/Prof							
Paul Vaughns		Technical/Sales							
14400 Catalina Street		Clerical/Skilled							
San Leandro, CA 94577		Semi/Unskilled							
510-206-2594		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	INFORMATION NOT PROVIDED						
SV Group		Manager/Prof							
Dan Cross		Technical/Sales							
155 E. Main Avenue, Suite 110		Clerical/Skilled							
Morgan Hill, CA 95037		Semi/Unskilled							
707-292-2414		Bay Area							
		Co. Wide MSA:							
S	EMM: A/PI - L/SBE	Company Wide	0	9	0	0	9	81.8%	39.9%
Elite Waterproofing & Epoxy Flooring		Manager/Prof	0	1	0	0	1	33.3%	
Naween Wamidi		Technical/Sales	0	0	0	0	0	0.0%	
2545 W. 10th Street, Suite H		Clerical/Skilled	0	0	0	0	0	0.0%	
Antioch, CA 94509		Semi/Unskilled	0	8	0	0	8	100.0%	
925-978-4444		Bay Area	0	9	0	0	9	81.8%	39.9%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide: 11		Bay Area: 11		
S	WML: LBE	Company Wide	5	106	1	0	112	81.8%	39.9%
Alcal Specialty Contracting		Manager/Prof	0	0	1	0	1	25.0%	
Kathy Munce		Technical/Sales	0	4	0	0	4	44.4%	
42950 Osgood Road		Clerical/Skilled	5	102	0	0	107	86.3%	
Fremont, CA 94539		Semi/Unskilled	0	0	0	0	0	0.0%	
510-477-9380		Bay Area	5	106	1	0	112	81.8%	39.9%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide: 137		Bay Area: 137		
S	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
Opening Technologies		Manager/Prof							
Rosie Clyde		Technical/Sales							
5016 Forni Drive		Clerical/Skilled							
Concord, CA 94520		Semi/Unskilled							
925-674-6992		Bay Area							
		Co. Wide MSA:							
S	WM: SBE	Company Wide	3	7	0	1	11	52.4%	39.9%
United California Glass and Door		Manager/Prof	0	0	0	0	0	0.0%	
David Ticktin		Technical/Sales	3	7	0	1	11	57.9%	
745 Cesar Chavez		Clerical/Skilled	0	0	0	0	0	0.0%	
San Francisco, CA 94124		Semi/Unskilled	0	0	0	0	0	0.0%	
415-824-8500		Bay Area	3	7	0	1	11	52.4%	39.9%
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide: 21		Bay Area: 21		

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			B	H	A/PI	AI/AN	TOTAL			
Spec. No.: 2139		DATE:								
		1/5/2022								
		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		
R=Recmmd P=Prime		Number of Ethnic Minority Employees								
Company Name, Owner/Contact Person, Address, and Phone Number		B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %		
S	WM	Company Wide								
Progress Glass Henry Hernandez 1015 E Cotati Avenue Cotati, CA 94931 707-792-1562		INFORMATION NOT PROVIDED								
										Manager/Prof
										Technical/Sales
										Clerical/Skilled
										Semi/Unskilled
		Bay Area								
		Co. Wide MSA:								
S	WW	Company Wide	0	78	0	0	78	94.0%	39.9%	
O'Donnell Plastering Inc. Shawna Alvarado 2318 Lafayette Street Santa Clara, CA 95050 408-988-4965		Manager/Prof	0	0	0	0	0	0.0%		
		Technical/Sales	0	0	0	0	0	0.0%		
		Clerical/Skilled	0	78	0	0	78	100.0%		
		Semi/Unskilled	0	0	0	0	0	0.0%		
		Bay Area	0	78	0	0	16	94.0%	39.9%	
		Co. Wide MSA:	9 Bay Area Counties		# Employees-Co. Wide: 83		Bay Area: 83			
S	WM: LBE	Company Wide	0	1	0	0	1	9.1%	37.3%	
Active Treatment Systems, Inc. Tami Eden-Nutting 6301 Angelo Court, Suite 9 Loomis, CA 95650 916-652-9745		Manager/Prof	0	0	0	0	0	0.0%		
		Technical/Sales	0	1	0	0	1	12.5%		
		Clerical/Skilled	0	0	0	0	0	0.0%		
		Semi/Unskilled	0	0	0	0	0	0.0%		
		Bay Area	0	0	0	0	16	NA	39.9%	
		Co. Wide MSA:	Sacramento		# Employees-Co. Wide: 11		Bay Area: 0			
S	EMW: H - SBE	Company Wide	6	37	10	0	53	80.3%	63.5%	
Morgner Construction Management Monique Morgner Lukeman 1880 Century Park East, Suite 1402 Los Angeles, CA 90067 323-900-0030		Manager/Prof	5	24	7	0	36	81.8%		
		Technical/Sales	0	6	2	0	8	72.7%		
		Clerical/Skilled	1	7	1	0	9	81.8%		
		Semi/Unskilled	0	0	0	0	0	0.0%		
		Bay Area	0	0	0	0	0	0.0%	39.9%	
		Co. Wide MSA:	Los Angeles		# Employees-Co. Wide: 66		Bay Area: 0			
S	EMW: A/PI - L/SBE	Company Wide	10	10	9	0	29	48.3%	48.4%	
ISI Inspection Services, Inc. Leslie Sakai 1798 University Avenue Berkeley, CA 94703 510-900-2100		Manager/Prof	0	2	3	0	5	45.5%		
		Technical/Sales	0	0	1	0	1	100.0%		
		Clerical/Skilled	10	8	5	0	23	47.9%		
		Semi/Unskilled	0	0	0	0	0	0.0%		
		Bay Area	8	7	8	0	23	46.9%	39.9%	
		Co. Wide MSA:	California		# Employees-Co. Wide: 60		Bay Area: 49			
S	WM	Company Wide	49	349	17	4	419	35.3%	48.4%	
Western Oilfields Supply Co. dba Rain for Rent Fenton Moran 3404 State Road Bakersfield, CA 93308 661-387-6635		Manager/Prof	7	53	6	0	66	22.1%		
		Technical/Sales	3	29	3	0	35	16.1%		
		Clerical/Skilled	25	188	8	2	223	43.8%		
		Semi/Unskilled	14	79	0	2	95	57.9%		
		Bay Area	2	0	0	0	16	7.4%	39.9%	
		Co. Wide MSA:	California		# Employees-Co. Wide: 1,188		Bay Area: 27			

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Spec. No.: 2139		DATE: 1/5/2022	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9
R=Recmmd			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2
Company Name, Owner/Contact Person, Address, and Phone Number		Number of Ethnic Minority Employees						
		B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
S	WM: LBE	INFORMATION NOT PROVIDED						
Cemex Construction Materials Pacific, LLC Kevin Spence 7633 Southfront Road, #210 Livermore, CA 94551 925-300-7419		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						
		Co. Wide MSA:						
S	WM: LBE	Company Wide	39	806	58	11	914	61.0%
Gonsalves & Santucci Inc. dba Conco Pumping Jessica Fraser 5141 Commercial Circle Concord, CA 94520 (Local Office) 925-681-6659		Manager/Prof	0	6	4	0	10	17.5%
		Technical/Sales	2	8	14	0	24	40.0%
		Clerical/Skilled	36	784	40	11	871	65.7%
		Semi/Unskilled	1	8	0	0	9	16.4%
		Bay Area	0	0	0	0	16	0.0%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		1,498	Bay Area: 0
S	WM	Company Wide	0	18	0	0	18	62.1%
Integra Steel Truss, Inc. Jeff Greer 80 E 62nd Avenue, Suite107 Denver, CO 80216 303-868-3328		Manager/Prof	0	2	0	0	2	20.0%
		Technical/Sales	0	0	0	0	0	0.0%
		Clerical/Skilled	0	0	0	0	0	0.0%
		Semi/Unskilled	0	16	0	0	16	94.1%
		Bay Area	0	0	0	0	0	0.0%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		29	Bay Area: 0
S	WW: SBE	Company Wide	0	1	0	0	1	20.0%
B.L. Wilcox & Associates Susan Nicholas 765 Baldwin Place Whittier, CA 90608 562-693-2787		Manager/Prof	0	0	0	0	0	0.0%
		Technical/Sales	0	1	0	0	1	33.3%
		Clerical/Skilled	0	0	0	0	0	0.0%
		Semi/Unskilled	0	0	0	0	0	0.0%
		Bay Area	0	0	0	0	0	0.0%
		Co. Wide MSA:	Los Angeles		# Employees-Co. Wide:		5	Bay Area: 0
S	WM; LBE	INFORMATION NOT PROVIDED						
Presidential Fire Protection, Inc. Fabian Robles 4517 Harlin Drive Sacramento, CA 95826 916-379-9199		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						
		Co. Wide MSA:						
S	WM	Company Wide	3,558	4,574	780	240	9,152	28.2%
Ferguson Enterprises, LLC Charlotte Murch 12500 Jefferson Avenue Newport News, VA 23602 757-358-0833		Manager/Prof	429	518	253	34	1,234	17.4%
		Technical/Sales	478	1,214	210	59	1,961	21.7%
		Clerical/Skilled	851	879	317	53	2,100	27.8%
		Semi/Unskilled	1,800	1,963	0	94	3,857	44.1%
		Bay Area	60	164	64	7	295	68.0%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		32,426	Bay Area: 434

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			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2		
R=Recmmd P=Prime		Number of Ethnic Minority Employees								
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %	
S	WM	Company Wide	3	459	25	0	487	98.0%	48.4%	
Marina Landscape, Inc. Lan Nguyen 3707 West Garden Grove Blvd. Orange, CA 92868 714-939-6600		Manager/Prof	0	5	25	0	30	83.3%		
		Technical/Sales	0	0	0	0	0	0.0%		
		Clerical/Skilled	0	0	0	0	0	0.0%		
		Semi/Unskilled	3	454	0	0	457	100.0%		
		Bay Area	0	0	0	0	0.0%	39.9%		
		Co. Wide MSA:	California		# Employees-Co. Wide: 497		Bay Area: 0			
S	EMM: A/PI	Company Wide	INFORMATION NOT PROVIDED							
Hallmark Industrial Supply Gopal Thakar 5148 Lotus Street Houston, TX 77045 713-664-7890		Manager/Prof								
		Technical/Sales								
		Clerical/Skilled								
		Semi/Unskilled								
		Bay Area								
		Co. Wide MSA:								
S	WM	Company Wide	7	112	7	1	127	78.9%	48.4%	
Cell-Crete Corporation Valerie Luna 135 E Railroad Avenue Monrovia, CA 91016 626-357-3500 ext. 147		Manager/Prof	0	1	1	0	2	28.6%		
		Technical/Sales	0	1	0	1	2	20.0%		
		Clerical/Skilled	7	104	2	0	113	83.1%		
		Semi/Unskilled	0	6	4	0	10	125.0%		
		Bay Area	1	41	3	0	45	77.6%	39.9%	
		Co. Wide MSA:	California		# Employees-Co. Wide: 161		Bay Area: 58			
S	WW: LBE	Company Wide	INFORMATION NOT PROVIDED							
ACT Equipment Sales Matt Grindstaff 2190 Enterprise Blvd. West Sacramento, CA 95691 916-698-4654		Manager/Prof								
		Technical/Sales								
		Clerical/Skilled								
		Semi/Unskilled								
		Bay Area								
		Co. Wide MSA:								
S	WM	Company Wide	INFORMATION NOT PROVIDED							
Piping Service Inc. Brian Klapperich 100 W. County Rd KK Kaukauna, WI 54130 920-766-9445		Manager/Prof								
		Technical/Sales								
		Clerical/Skilled								
		Semi/Unskilled								
		Bay Area								
		Co. Wide MSA:								
S	EMM: A/PI	Company Wide	INFORMATION NOT PROVIDED							
Piping Technology & Products Vedang Patel 3701 Holmes Road, #1545 Houston, TX 77051 713-731-0030		Manager/Prof								
		Technical/Sales								
		Clerical/Skilled								
		Semi/Unskilled								
		Bay Area								
		Co. Wide MSA:								

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			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2	
R=Recmmd		Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
S	WM: LBE	Company Wide	INFORMATION NOT PROVIDED						
Capital Flow		Manager/Prof							
Sean Sutter		Technical/Sales							
7640 Wilbur Way		Clerical/Skilled							
Sacramento, CA 95828		Semi/Unskilled							
916-474-1625		Co. Wide MSA:							
		Bay Area	INFORMATION NOT PROVIDED						
Discount Ramps LLC		Manager/Prof							
Rob Hannes		Technical/Sales							
N102W19400 Willow Crk Way		Clerical/Skilled							
Germantown, WI 53022		Semi/Unskilled							
262-353-7900		Co. Wide MSA:							
		Bay Area	INFORMATION NOT PROVIDED						
GTE Metal		Manager/Prof							
Dave Powell		Technical/Sales							
24530 S Cass St Road		Clerical/Skilled							
Canby, OR 97013		Semi/Unskilled							
503-266-6433		Co. Wide MSA:							
		Bay Area	INFORMATION NOT PROVIDED						
MAG Trucking		Manager/Prof							
Debbie Ferrari		Technical/Sales							
3500 Enterprise Avenue		Clerical/Skilled							
Hayward, CA 94545		Semi/Unskilled							
510-782-8801		Co. Wide MSA:							
		Bay Area	INFORMATION NOT PROVIDED						
Harrington Industrial Plastic		Manager/Prof							
Derek Reeve		Technical/Sales							
242 S Garrard Blvd.		Clerical/Skilled							
Richmond, CA 94801		Semi/Unskilled							
510-235-2360		Co. Wide MSA:							
		Bay Area	INFORMATION NOT PROVIDED						
Core and Main		Manager/Prof							
Dan Pesta		Technical/Sales							
4318 Dudley Blvd., Bldg. 475, Suite H		Clerical/Skilled							
McClellan Prk, CA 95652		Semi/Unskilled							
916-849-9177		Co. Wide MSA:							
		Bay Area							

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			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		Number of Ethnic Minority Employees							
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT	MSA %
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Core and Main Dan Pesta 4318 Dudley Blvd., Bldg. 475, Suite H McClellan Prk, CA 95652		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
916-849-9177		Bay Area							
		Co. Wide MSA:							
S	WM	Company Wide	INFORMATION NOT PROVIDED						
Acrow Corp of America Jack Arizcuren 181 New Road, # 202 Parsippany, NJ 07054		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
360-607-1328		Bay Area							
		Co. Wide MSA:							
S	WW	Company Wide	INFORMATION NOT PROVIDED						
Oliveira Fence Valerie Freitas 293 Brokaw Rd. Santa Clara, CA 95050		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
408-727-3811		Bay Area							
		Co. Wide MSA:							
P	WM	Company Wide	155	257	81	2	495	41.4%	27.3%
Shimmick Construction Company, Inc. Michael Elfering 1 Harbor Center, Suite 200 Suisun City, CA 94585		Manager/Prof	32	55	48	0	135	27.5%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	106	150	33	1	290	48.4%	
		Semi/Unskilled	17	52	0	1	70	66.0%	
208-761-9676		Bay Area	8	53	13	1	75	47.5%	39.9%
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		1,196	Bay Area:	158

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AGENDA NO. 3.2
MEETING DATE January 25, 2022

**TITLE CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES
 FOR THE ORINDA WATER TREATMENT PLANT DISINFECTION AND
 CHEMICAL SYSTEMS SAFETY IMPROVEMENTS PROJECTS**

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement beginning on or after January 25, 2022 with Arcadis U.S., Inc. (Arcadis) for five years in an amount not to exceed \$10,000,000 for as-needed construction management (CM) and inspection services for the Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements Projects (DCSSIP).

SUMMARY

This agreement will supplement in-house CM and inspection services necessary to oversee construction of the DCSSIP on an as-needed basis. This item was discussed at the January 26, 2021 Fiscal Years 2022 and 2023 Budget Workshop No. 1 and the October 12, 2021 Planning Committee meeting.

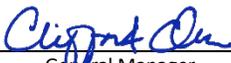
DISCUSSION

This agreement will provide supplemental construction management and inspection services including subject matter expertise in environmental compliance, construction scheduling, cost estimating, structural resident engineering, quality assurance program management, and specialized inspection in areas such as deep excavation, structural concrete, trenchless, building systems, and coatings. This agreement supports the District’s Long-Term Infrastructure Investment Strategic Plan goal.

CONSULTANT SELECTION

A request for proposals was posted on the District’s website. Two firms submitted proposals. Arcadis was selected based on their qualifications, experience, and approach to performing the services.

Work under this agreement is subject to the payment of current prevailing wages according to determinations for each craft as established by the Director of the Department of Industrial Relations (DIR) of the State of California. The consultant, Arcadis, is licensed to perform work in California, and is

Funds Available: FY22/23, CIP #000437, Page 35	Budget Coding: 576/2012253/2020028:38/ 7000090	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department Engineering and Construction	Department Director or Manager Olujimi O. Yoloje	Approved  General Manager
Attachment(s): P-035; P-061		

not on the State DIR debarment list. Arcadis and its listed subcontractors are properly registered with the State DIR.

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted capital budget for the Treatment Plant Upgrades Project.

Social

Local 2019 and Local 21 were notified of this agreement on September 28, 2021. Local 2019 issues were discussed at a meeting on October 5, 2021 and resolved on October 21, 2021. Local 21 did not raise any specific issues related to this agreement.

ALTERNATIVES

Perform the work with District staff. This alternative is not recommended because staff cannot accommodate peak workload that occurs intermittently and for limited durations on these projects.

Do not perform the work. This alternative is not recommended because CM and inspection services are needed to ensure the successful completion of the projects.



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE <i>Professional Services Agreement</i> Construction Management (CM) and Inspection Services for the Orinda Water Treatment Plant Disinfection and Chemical Safety Systems Improvement Project						DATE: December 21, 2021						
CONTRACTOR:						PERCENTAGE OF CONTRACT DOLLARS						
Arcadis U.S., Inc. Highlands Ranch, CO 80129						Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP				White Men		25%		58.0%		
		Ethnicity		Gender		White Women		6%		8.5%		
\$10,000,000 *		White		Men		Ethnic Minorities		25%		33.5%		
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
<i>PRIME:</i>												
Arcadis U.S., Inc.		\$3,800,000	White	X		38.0%						
<i>SUBS:</i>												
CPM Associates, Inc.		\$3,000,000	Asian	X				30.0%				
Joe Hill Consulting and Engineering Corporation		\$1,000,000	White	X		10.0%						
Bay Area Coating Consultants, Inc.		\$300,000	White	X		3.0%						
Saylor Consulting Group		\$500,000	White		X		5.0%					
Applied Technology & Science, A-T-S		\$350,000	White		X		3.5%					
Terra Solutions and Services, Inc.		\$350,000	Native	X				3.5%				
Fugro USA Land, Inc.		\$700,000	White	X		7.0%						
TOTAL		\$10,000,000				58.0%	8.5%	33.5%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			2,573		1,457		1,086		5,116			
Percent of Total Employees:			50.3%		28.5%		21.2%					
MSA Labor Market %:			39.0%		33.7%		27.3%					
MSA Labor Market Location:			Total USA									
COMMENTS												
<p>Contract Equity Participation - 58% White Men, 8.5% White Women, and 33.5% Ethnic Minority participation.</p> <p>Contract Duration: Five Years</p> <p>*Total not to exceed: \$10,000,000</p>												
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: Construction Management (CM) and Inspection Services for the Orinda Water Treatment Plant Disinfection and Chemical Safety Systems Improvement Project		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	
Professional Services Agreement DATE: 12/21/2021		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	225	345	0	0	570	11.1%	27.3%
Arcadis U.S., Inc. Brian Jundert 630 Plaza Drive, Suite 200 Highlands Ranch, CO 80129 510-596-9646		Manager/Prof	151	266			417	9.8%	
		Technical/Sales	45	49			94	19.3%	
		Clerical/Skilled	29	29			58	16.6%	
		Semi/Unskilled	0	1			1	0.0%	
		Bay Area	3	7	21	0	31	26.3%	39.9%
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 5,116			5,116	Bay Area: 118		
S	EMM: A/PI	Company Wide	0	4	21	0	25	42.4%	48.3%
CPM Associates, Inc. Wendy Glassett 65 McCoppin Street San Francisco, CA 94103 415-596-5399		Manager/Prof	0	3	16	0	19	45.2%	
		Technical/Sales	0	0	2	0	2	20.0%	
		Clerical/Skilled	0	1	3	0	4	57.1%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	3	21	0	24	40.7%	39.9%
		Co. Wide MSA: San Francisco	# Employees-Co. Wide: 59			59	Bay Area: 59		
S	WM: SBE	Company Wide	1	3	5	0	9	40.9%	39.9%
Joe Hill Consulting and Engineering Corporation Joe Hill 1693 Pol Street, Unit 208 San Francisco, CA 94109 415-335-7168		Manager/Prof	1	3	5	0	9	40.9%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	1	3	5	0	9	40.9%	39.9%
		Co. Wide MSA: 9 Bay Area Counties	# Employees-Co. Wide: 22			22	Bay Area: 22		
S	WM: LBE	Company Wide	113	114	111	2	340	32.0%	27.3%
Fugro USA Land, Inc. Osman El Menchawi 1777 Bothelo Street, Suite 262 Walnut Creek, CA 94596 925-949-7142		Manager/Prof	25	48	84	1	158	27.7%	
		Technical/Sales	60	41	18	1	120	34.6%	
		Clerical/Skilled	25	24	9	0	58	43.3%	
		Semi/Unskilled	3	1	0	0	4	36.4%	
		Bay Area	1	3	8	0	12	27.9%	39.9%
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 1,063			1,063	Bay Area: 43		
S	WM: SBE	Company Wide	0	3	6	2	11	57.9%	28.6%
Bay Area Coating Consultants, Inc. Ed Darrimon 5401 Powell Road Denair, CA 95316 209-669-3666		Manager/Prof	0	3	6	2	11	57.9%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	3	6	2	11	57.9%	39.9%
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 19			19	Bay Area: 19		
S	WW: SBE	Company Wide	0	0	6	0	6	31.6%	48.3%
Saylor Consulting Group Natalie Saylor 505 Montgomery Street, 11th Floor San Francisco, CA 94111 415-399-9990		Manager/Prof	0	0	5	0	5	31.3%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	1	0	1	33.3%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	6	0	6	31.6%	39.9%
		Co. Wide MSA: San Francisco	# Employees-Co. Wide: 19			19	Bay Area: 19		

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)



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Construction Management (CM) and Inspection Services for the Orinda Water Treatment Plant Disinfection and Chemical Safety Systems Improvement Project		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	
Professional Services Agreement		DATE: 12/21/2021	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 %
S	WW: SBE	Company Wide	0	2	0	0	2	11.8%	39.9%
Applied Technology & Science, A-T-S Dr. Elahe Ensanni 5 Third Street, Suite 1010 San Francisco, CA 94111 415-777-4287		Manager/Prof	0	2	1	0	3	18.8%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	1	0	1	100.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	2	2	0	4	23.5%	
		Co. Wide MSA: 9 Bay Area Counties	# Employees-Co. Wide: 17		Bay Area: 17				
S	EMM: AI	Company Wide	0	11	1	0	12	54.5%	27.3%
Terra Solutions and Services, Inc. Bradford Kordic 447-160 Lassen Avenue Herlong, CA 96113 925-250-5603		Manager/Prof	0	5	0	0	5	50.0%	
		Technical/Sales	0	1	1	0	2	100.0%	
		Clerical/Skilled	0	4	0	0	4	50.0%	
		Semi/Unskilled	0	1	0	0	1	50.0%	
		Bay Area	0	2	0	0	2	100.0%	
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 22		Bay Area: 2				
P	PHC - LBE	Company Wide	94	171	156	4	425	31.1%	27.3%
Jacobs Project Management Co. Nathan Sickels 155 Grand Avenue, Suite 800 Oakland, CA 94612 (Local office) 612-760-8774		Manager/Prof	75	144	140	4	363	30.9%	
		Technical/Sales	14	17	11	0	0	30.4%	
		Clerical/Skilled	5	10	5	0	20	37.7%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	4	7	36	0	47	49.0%	
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 1,367		Bay Area: 96				

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)

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AGENDA NO. 3.3
MEETING DATE January 25, 2022

TITLE ENGINEERING SERVICES DURING CONSTRUCTION FOR THE ORINDA WATER TREATMENT PLANT DISINFECTION IMPROVEMENTS

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement beginning on or after January 25, 2022 with Carollo Engineers, Inc. (Carollo), in an amount not to exceed \$12,499,787 for Engineering Services During Construction (ESDC) for the disinfection improvements portion of the Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements Projects (DCSSIP).

SUMMARY

This agreement will provide ESDC for the disinfection improvements portion of the Orinda WTP DCSSIP under Specification 2139. This item was discussed at the January 26, 2021 Fiscal Years 2022 and 2023 Budget Workshop No. 1 and the September 14, 2021 and October 12, 2021 Planning Committee meetings.

DISCUSSION

The agreement includes project management services; engineering site support; construction submittal and shop drawing review; responses to requests for information, design clarifications change orders; updating record drawings and 3D design models; system testing and startup services; and operations and maintenance documentation and training. This agreement supports the District’s Long-Term Infrastructure Investment and Water Quality and Environmental Protection Strategic Plan goals.

CONSULTANT SELECTION

Carollo performed the initial design for the disinfection improvements portion of the Orinda WTP DCSSIP under an agreement authorized under Board Motion No. 019-18. As the Engineer of Record for the design, Carollo is the most cost-effective option to provide ESDC services and will provide continuity with personnel that are already familiar with the work and have the required expertise in ultraviolet disinfection and deep excavations.

Funds Available: FY22/23, CIP#000437; Page #35	Budget Coding: 570/2012253/2020014:39/7000090	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department Engineering and Construction	Department Director or Manager Olujimi O. Yoloye	Approved General Manager
Attachment(s): Location Map; P-035; P-061		

SUSTAINABILITY

Economic

Funding for this item is included in the FY22/23 adopted capital budget for the Treatment Plant Upgrades Project.

Social

Local 2019 and Local 21 were notified of this agreement on September 20, 2021. Local 2019 issues were discussed at meetings on October 5, 2021, November 2, 2021, and December 7, 2021, and were resolved. Local 21 did not raise any specific issues related to this agreement.

Environmental

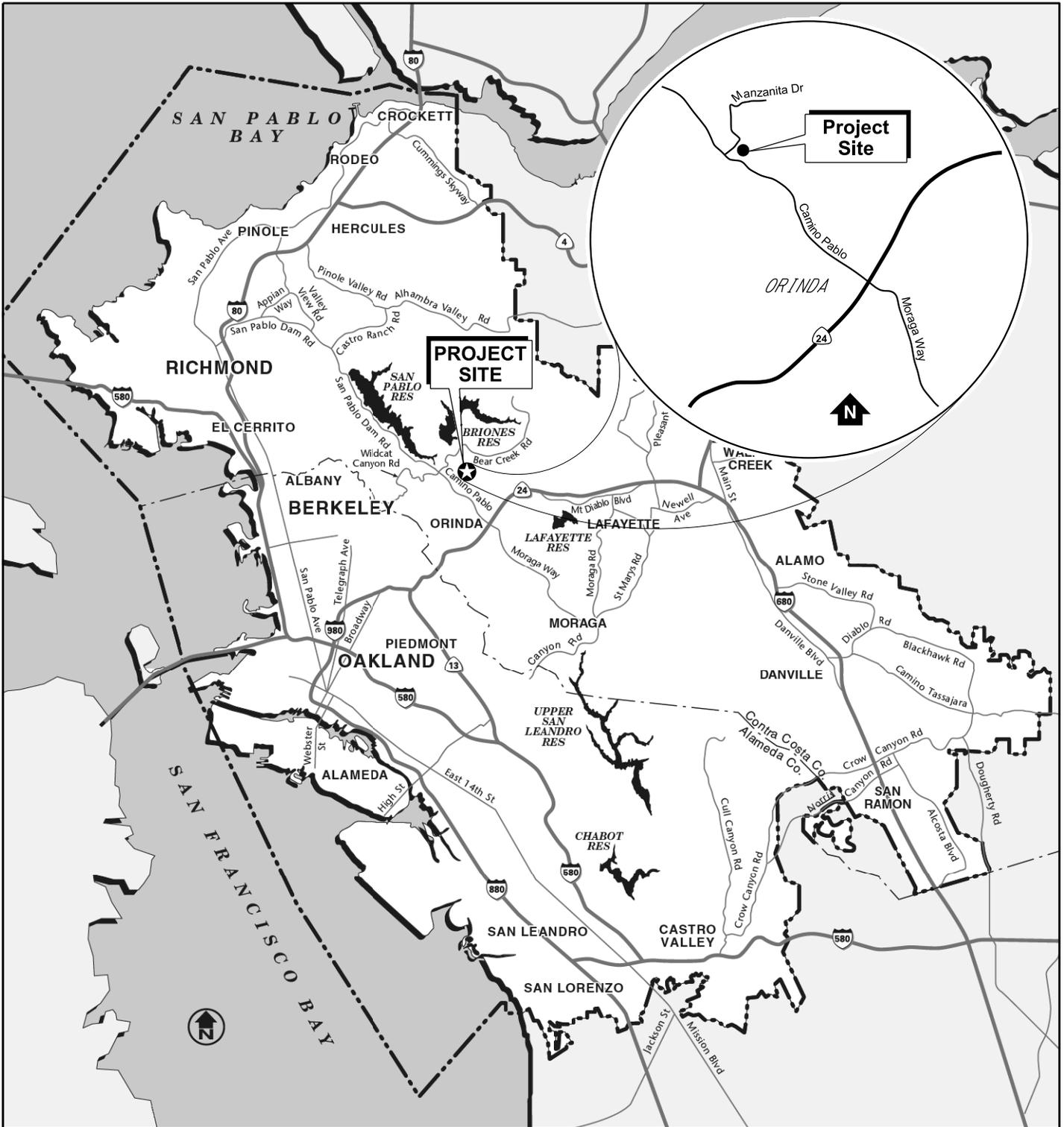
The construction of the disinfection improvements will improve operational reliability, ensure long-term compliance with National Pollutant Discharge Elimination System limits, drinking water regulations and water quality goals.

ALTERNATIVES

Select another consultant to do the work. This alternative is not recommended because it would delay the project schedule and potentially transfer liability for the design from the Engineer of Record.

Perform the work with District forces. This alternative is not recommended because staff has limited expertise in ultraviolet disinfection and deep excavations and are working on other high-priority water treatment plant reliability work.

Do not perform the work. This alternative is not recommended because this work is required to maintain consistency of design intent and provide ESDC.



**PROJECT SITE
LOCATION MAP**

NOT TO SCALE

EAST BAY MUNICIPAL UTILITY DISTRICT

**ORINDA WATER TREATMENT PLANT
DISINFECTION IMPROVEMENTS**



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE <i>Professional Services Agreement - Spec. 2139</i> Engineering Services During Construction for the Orinda Water Treatment Plant Disinfection Improvements Project						DATE: January 5, 2022							
CONTRACTOR:				PERCENTAGE OF CONTRACT DOLLARS									
Carollo Engineers, Inc. Walnut Creek, CA 94598				Local Business / Direct Award				Availability Group		Contracting Objectives		Participation	
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		98.7%					
		Ethnicity	Gender	White Women		6%		1.3%					
\$12,499,787 *		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	
<i>PRIME:</i>													
Carollo Engineers, Inc.		\$10,495,787	White	X		84.0%							
<i>SUBS:</i>													
J. Calton Engineering		\$345,000	White	X		2.8%							
Jacobs Associates, Inc. dba McMillen Jacobs Associates		\$1,400,000	White	X		11.2%							
Environmental Science Associates		\$97,000	White	X		0.8%							
Burks Toma Architects, Inc.		\$162,000	White		X		1.3%						
TOTAL		\$12,499,787				98.7%	1.3%	0.0%	0.0%	0.0%	0.0%	0.0%	
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)													
			White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:			523		283		323		1,129				
Percent of Total Employees:			46.3%		25.1%		28.6%						
MSA Labor Market %:			39.0%		33.7%		27.3%						
MSA Labor Market Location:			Total USA										
COMMENTS													
Contract Equity Participation - 98.7% White Men and 1.3% White Women participation.													
*Total not to exceed: \$12,499,787													
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: Engineering Services During Construction for the Orinda Water Treatment Plant Disinfection Improvements Project		Ethnic Minority Percentages From U.S. Census Data							
			B	H	A/PI	AI/AN	TOTAL		
Professional Services Agreement - Spec. 2139		DATE: 1/5/2022	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
R=Recmnd 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	83	124	135	2	344	30.5%	27.3%
Carollo Engineers, Inc. Erin Franklin 2795 Mitchell Drive Walnut Creek, CA 94598 602-474-4017		Manager/Prof	26	93	114	0	233	24.9%	
		Technical/Sales	50	19	13	2	84	76.4%	
		Clerical/Skilled	7	12	8	0	27	31.8%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	2	10	9	0	21	17.9%	
		AA Plan on File: NA	Date of last contract with District: NA						
		Co. Wide MSA: Total USA	# Employees-Co. Wide: 1,129				Bay Area: 117		
S	WM: SBE	Company Wide	0	0	0	0	0	0.0%	48.4%
J. Carlton Engineering John Calton 5723 Oak Creek Place Granite Bay, CA 95746 916-375-9797		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA: California	# Employees-Co. Wide: 25				Bay Area: 0		
S	WM: LBE	Company Wide	6	10	30	0	46	21.1%	44.0%
Jacobs Associates, Inc. dba McMillen Jacobs Associates Greta Miller 1350 Treat Blvd., Suite 100 Walnut Creek, CA 94105 <i>(Local Office)</i> 781-852-0463		Manager/Prof	4	6	23	1	34	18.7%	
		Technical/Sales	1	0	3	1	5	27.8%	
		Clerical/Skilled	1	4	4	1	10	55.6%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA: San Francisco	# Employees-Co. Wide: 218				Bay Area: 0		
S	WM: LBE	Company Wide	15	51	59	1	126	32.5%	48.4%
Environmental Science Associates Annette Bonilla 180 Grand Avenue, Suite 1050 Oakland, CA 94612 510-367-9141		Manager/Prof	7	40	37	2	86	26.9%	
		Technical/Sales	0	0	5	0	5	38.5%	
		Clerical/Skilled	8	11	17	0	36	65.5%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	7	12	24	1	44	27.8%	
		Co. Wide MSA: California	# Employees-Co. Wide: 388				Bay Area: 158		
S	WW: L/SBE	Company Wide	0	0	0	0	0	0.0%	47.8%
Burks Toma Architects, Inc. Karen Burks 814Camelia Street Berkeley, CA 94710 510-524-4255		Manager/Prof	0	0	0	0	0	0.0%	
		Technical/Sales	0	0	0	0	0	0.0%	
		Clerical/Skilled	0	0	0	0	0	0.0%	
		Semi/Unskilled	0	0	0	0	0	0.0%	
		Bay Area	0	0	0	0	0	0.0%	
		Co. Wide MSA: Oakland	# Employees-Co. Wide: 2				Bay Area: 2		

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)

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AGENDA NO. 3.4
MEETING DATE January 25, 2022

**TITLE ENGINEERING SERVICES DURING CONSTRUCTION FOR THE ORINDA
 WATER TREATMENT PLANT CHEMICAL SYSTEMS SAFETY IMPROVEMENTS**

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement beginning on or after January 25, 2022, with Stantec Consulting Services, Inc. (Stantec) in an amount not to exceed \$3,551,248 for Engineering Services During Construction (ESDC) for the chemical systems safety improvements portion of the Orinda Water Treatment Plant (WTP) Disinfection and Chemical Systems Safety Improvements Projects (DCSSIP).

SUMMARY

This agreement will provide ESDC for the chemical system safety improvements portion of the Orinda WTP DCSSIP under Specification 2139. This item was discussed at the January 26, 2021 Fiscal Years 2022 and 2023 Budget Workshop No. 1 and the September 14, 2021 and October 12, 2021 Planning Committee meetings.

DISCUSSION

The agreement includes project management services; engineering site support; construction submittal and shop drawing review; responses to requests for information, design clarifications and change orders; updating record drawings and 3D design models; system testing and startup services; and operations and maintenance documentation and training. This agreement supports the District’s Long-Term Infrastructure Investment and Water Quality and Environmental Protection Strategic Plan goals.

CONSULTANT SELECTION

Stantec performed the initial design for the chemical systems safety improvements portion of the Orinda WTP DCSSIP under an agreement authorized under Board Motion No. 198-17. As the Engineer of Record for the design, Stantec is the most cost-effective option to provide ESDC services and will provide continuity with personnel that are already familiar with the work and have the required expertise in chemical systems safety.

Funds Available: FY22/23, CIP#000437; Page #35	Budget Coding: 576/2012253/ 2020028:38/7000090	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department Engineering and Construction	Department Director or Manager Olujimi O. Yoloye	Approved General Manager
Attachment(s): Location Map; P-035; P-061		

SUSTAINABILITY

Economic

Funding for this item is included in the FY22/23 adopted capital budget for the Treatment Plant Upgrades Project.

Social

Local 2019 and Local 21 were notified of this agreement on September 20, 2021. Local 2019 issues were discussed at meetings on October 5, 2021, November 2, 2021, and December 7, 2021, and were resolved. Local 21 did not raise any specific issues related to this agreement.

Environmental

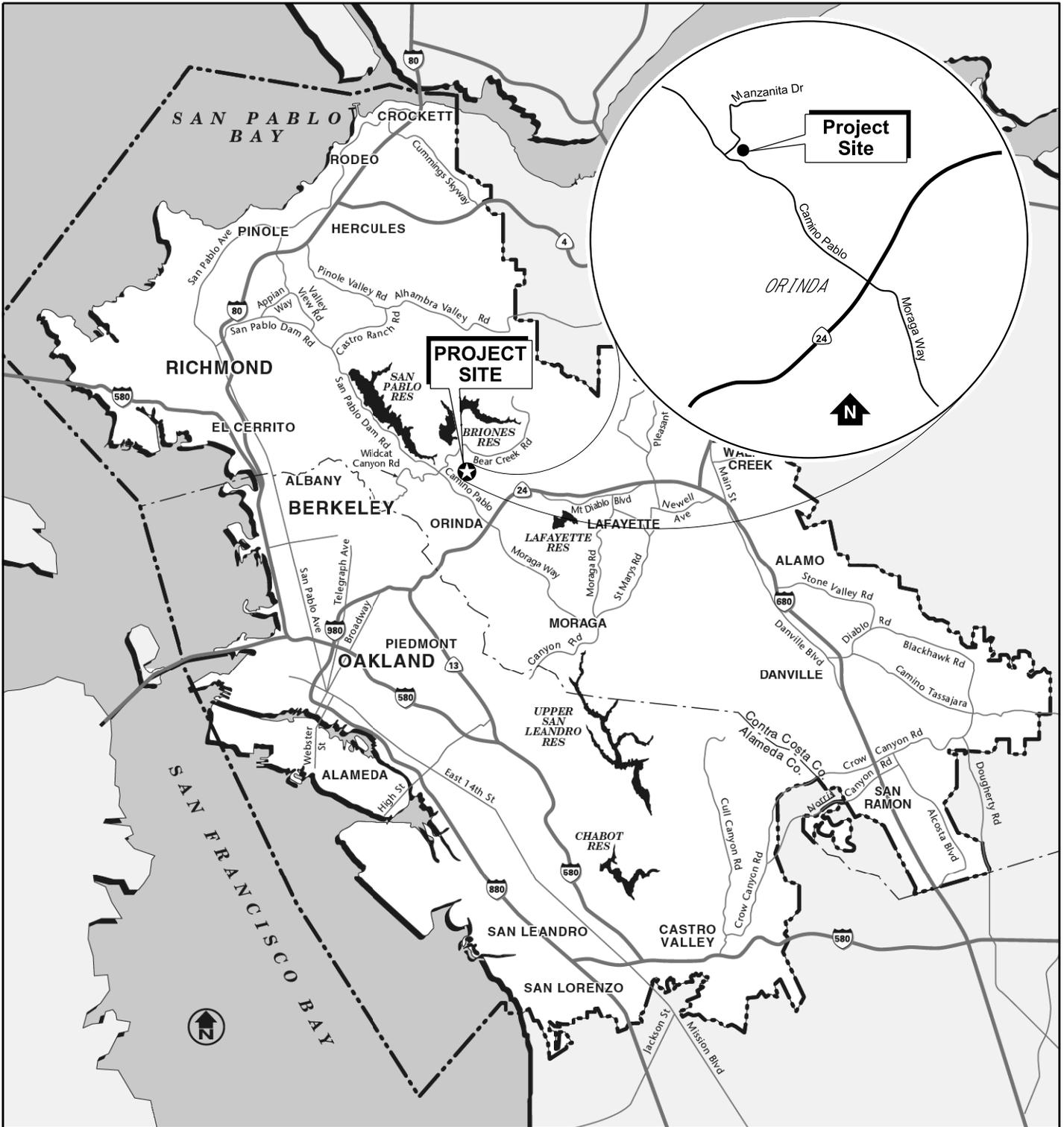
The construction of chemical system safety improvements will improve worker safety and minimize potential risks of accidental release of treatment plant chemicals into the environment.

ALTERNATIVES

Select another consultant to do the work. This alternative is not recommended because it would delay the project schedule and potentially transfer liability of the design from the Engineer of Record.

Perform the work with District forces. This alternative is not recommended because staff has limited expertise in chemical systems safety and are working on other high-priority water treatment plant reliability work.

Do not perform the work. This alternative is not recommended because this work is required to maintain consistency of design intent and provide ESDC.



**PROJECT SITE
LOCATION MAP**

NOT TO SCALE

EAST BAY MUNICIPAL UTILITY DISTRICT

**ORINDA WATER TREATMENT PLANT
CHEMICAL SYSTEMS
SAFETY IMPROVEMENTS**



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Professional Services Agreement - Spec. 2139 Engineering Services During Construction for the Orinda Water Treatment Plant Chemical Systems Safety Improvement Project						DATE: January 10, 2022						
CONTRACTOR:						PERCENTAGE OF CONTRACT DOLLARS						
Stantec Consulting Services, Inc. Walnut Creek, CA 94596			Local Business / Direct Award			Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP				White Men		25%		99.5%		
		Ethnicity		Gender		White Women		6%		0.5%		
\$3,551,248 *		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:												
Stantec Consulting Services, Inc.		\$3,462,168	White	X		97.5%						
SUBS:												
Fiberglass Structural Engineering		\$66,300	White	X		1.9%						
Potter Fire Protection, Inc.		\$16,100	White		X		0.5%					
Jensen Hughes		\$6,680	White	X		0.2%						
TOTAL		\$3,551,248				99.5%	0.5%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			3,963		1,958		1,413		7,334			
Percent of Total Employees:			54.0%		26.7%		19.3%					
MSA Labor Market %:			39.0%		33.7%		27.3%					
MSA Labor Market Location:			Total USA									
COMMENTS												
Contract Equity Participation - 99.5% White Men and 0.5% White Women participation.												
*Total not to exceed: \$3,551,248												
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: Engineering Services During Construction for the Orinda Water Treatment Plant Chemical Systems Safety Improvement Project		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									
Professional Services Agreement - Spec. 2139		DATE:														
		1/10/2022														
		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: LBE	Company Wide	153	550	550	12	1,265	17.2%	27.3%							
Stantec Consulting Services, Inc. Yolanda Jones 2121 N. California Blvd., Suite 600 Walnut Creek, CA 94596 925-627-4500		Manager/Prof	18	66	68	3	155	9.9%								
		Technical/Sales	135	437	466	3	1,041	19.2%								
		Clerical/Skilled	0	47	16	6	69	19.9%								
		Semi/Unskilled	0	0	0	0	0	0.0%								
		Bay Area	0	12	41	2	55	26.7%	39.9%							
		AA Plan on File:	NA		Date of last contract with District:		7/9/2020									
		Co. Wide MSA:	Total USA		# Employees-Co. Wide:		7,334	Bay Area: 206								
S	WM	Company Wide	INFORMATION NOT PROVIDED													
Fiberglass Structural Engineering Dan Sturtz 1511 Cornwall Avenue Bellingham, WA 98225 360-255-7768		Manager/Prof														
		Technical/Sales														
		Clerical/Skilled														
		Semi/Unskilled														
		Bay Area														
		Co. Wide MSA:														
S	WW: L/SBE	Company Wide								INFORMATION NOT PROVIDED						
Potter Fire Protection, Inc. John Downing 22156 Meekland Avenue Hayward, CA 94541 510-581-3473		Manager/Prof														
		Technical/Sales														
		Clerical/Skilled														
		Semi/Unskilled														
		Bay Area														
		Co. Wide MSA:														
S	WM	Company Wide	INFORMATION NOT PROVIDED													
Jenson Hughes Patrick Ward 1220 Concord Avenue, Suite 400 Concord, CA 94520 925-208-0738		Manager/Prof														
		Technical/Sales														
		Clerical/Skilled														
		Semi/Unskilled														
		Bay Area														
		Co. Wide MSA:														

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)

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AGENDA NO. 4.
MEETING DATE January 25, 2022

TITLE CATIONIC POLYMER FOR WATER TREATMENT

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input checked="" type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Award a contract to the lowest responsive/responsible bidder, Polydyne, Inc., for supplying cationic polymer (Clarifloc C-308P) for the District’s water treatment plants for two years, beginning on or after January 25, 2022 with three options to renew for additional one-year periods for a total cost, after the addition of taxes, including options years, not to exceed \$6,181,035 under Request for Quotation (RFQ) No. 2203.

SUMMARY

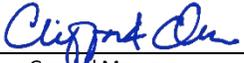
Cationic coagulant is used to reduce turbidity and total organic carbon in raw water at District water treatment plants to meet state and federal regulations. Use of this polymer is required for proper water treatment.

DISCUSSION

This essential water treatment chemical is used to treat raw water. Bidders were informed that they were required to submit samples which would be analyzed in a laboratory to ensure the successful bidder’s product met all District requirements. Purchases under the recommended contract will be made to meet actual District needs; estimated quantities are based on historical data and departmental projections. This contract supports the District’s Water Quality and Environmental Protection Strategic Plan goal.

VENDOR SELECTION

The RFQ was posted on the District’s website, sent to three resource organizations and 19 potential bidders, and advertised in the Oakland Tribune. One bid was received from Polydyne, Inc.

Funds Available: FY22/23	Budget Coding: 778/VAR/53610	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachments: P-035; P-061		

SUSTAINABILITY

Economic

The estimated year one contract cost is \$1.2 million. The contract allows escalation of the unit price of the cationic polymer based on documented proof of cost increases incurred by the vendor.

The FY22/23 adopted operating budget includes funding for the first two years of this multi-year contract. Funding for the additional years will be considered as part of the associated budget development process.

Environmental

Polydyne, Inc. has implemented policies to reduce its greenhouse gas emissions. These include optimizing its consumption of raw materials, energy, and natural resources along with improvements in production units, process modifications, and installation of effluent treatment units.

ALTERNATIVES

Use a different chemical or mix of chemicals. This alternative is not recommended because cationic polymer is more effective and less expensive than other known coagulants.

Purchase this chemical on the open market. This alternative is not recommended because the long-term contract allows the District to take advantage of more favorable pricing.



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE <i>Materials and Supplies - RFQ No.: 2203</i> Cationic Polymer for Water Treatment						DATE: December 21, 2021						
CONTRACTOR: Polydyne, Inc. Riceboro, GA 31323				Sole Bidder		PERCENTAGE OF CONTRACT DOLLARS						
BID/PROPOSER'S PRICE:		FIRM'S OWNERSHIP		White Men		25%		98.9%				
\$6,181,035 *		White	Men	White Women		2%		1.1%				
		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: Polydyne, Inc.		\$6,110,035	White	X		98.9%						
SUBS: Bulk Carrier Services, Inc.		\$71,000	White		X		1.1%					
TOTAL		\$6,181,035				98.9%	1.1%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
		White Men		White Women		Ethnic Minorities		Total Employees				
No. of Employees:		688		120		835		1,643				
Percent of Total Employees:		41.9%		7.3%		50.8%						
MSA Labor Market %:		39.0%		33.7%		27.3%						
MSA Labor Market Location:		Total USA										
COMMENTS												
Contract Equity Participation - 98.1% White Men and 1.1% White Women participation. Contract Duration: Two-Years with 3 One-Year Renewal Options *Total not to exceed: \$6,181,035												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AGENDA NO. 5.
MEETING DATE January 25, 2022

TITLE OPERATIONS AND MAINTENANCE ELECTRICAL ENGINEERING AND RELATED SERVICES

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input checked="" type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Authorize an agreement beginning on or after January 25, 2022 with EETS Inc. for two years in an amount not to exceed \$400,000 for professional electrical engineering services to support repairs and upgrades of water system facilities.

SUMMARY

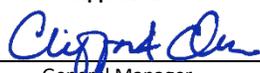
Professional engineering services are needed to supplement maintenance engineering staff resources and provide specialized knowledge. EETS Inc.’s services will be utilized on an as-needed basis to assist with specialized medium voltage electrical equipment and protection schemes within the water supply and water distribution systems. In addition, they will assist the District with reducing the backlog of arc flash studies and analysis required for California Division of Occupational Safety and Health (Cal/OSHA) compliance.

DISCUSSION

This agreement provides the District with a resource for specialized electrical engineering knowledge. Circumstances requiring consultant support could include medium and high-voltage equipment selection, hydro-generator protection and control, transmission line protection, arc flash studies and analysis, as well as on-call support for emergencies when they arise.

The District recently hired three electrical engineers responsible for performing or managing this type of work. While staff receives training and gains the needed skills, the District still requires additional electrical engineering support to address urgent repair and maintenance work, and complete arc flash studies throughout the water system. In addition, the agreement with EETS Inc. provides engineering support for up to two years enabling maintenance engineering staff, with assistance from the consultant, to repair or upgrade specialized electrical equipment not customarily performed by District staff.

This agreement supports the District’s Long-Term Infrastructure Investment Strategic Plan goal.

Funds Available: FY22/23	Budget Coding: 11/734/8856700/52310	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Operations and Maintenance	David A. Briggs	 General Manager
Attachment(s): P-035, P-061		

CONSULTANT SELECTION

A request for proposals (RFP) was posted on the District's website. One firm submitted a proposal. EETS Inc., was selected based on their qualifications, experience, and RFP responses. EETS Inc., has previously worked for the District and has performed satisfactorily on their assigned tasks.

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted operating budget.

Social

Local 2019 and Local 21 were notified of this agreement on September 22, 2021 and did not raise any specific issues related to this agreement.

Environmental

If required, a California Environmental Quality Act Notice of Exemption will be completed prior to any maintenance or construction activities.

ALTERNATIVES

Perform the work with District forces. This alternative is not recommended because the District does not presently have enough electrical engineering resources or expertise to perform this work.

Do not perform the engineering work. This alternative is not recommended because the systems and equipment requiring upgrade and/or repair are critical to the operation of the District's facilities.



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Professional Services Agreement Operation and Maintenance Electrical Engineering and Related Services						DATE: January 4, 2022						
CONTRACTOR: EETS Inc. Citrus Heights, CA 95610				Sole Proposer / Small / Local Business		PERCENTAGE OF CONTRACT DOLLARS						
BID/PROPOSER'S PRICE: \$400,000 *		FIRM'S OWNERSHIP		White Men		25%		25.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
		Asian	Women	Ethnic Minorities		25%		75.0%				
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: EETS Inc.		\$300,000	Asian		X			75.0%				
SUBS: ADKO Engineering, Inc.		\$40,000	White	X		10.0%						
American River Civil Engineering Svc.		\$60,000	White	X		15.0%						
TOTAL		\$400,000				25.0%	0.0%	75.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			2		0		2		4			
Percent of Total Employees:			50.0%		0.0%		50.0%					
MSA Labor Market %:			19.2%		18.0%		62.8%					
MSA Labor Market Location:			Sacramento									
COMMENTS												
Contract Equity Participation - 25% White Men and 75% Ethnic Minority participation. Contract Duration: Two years *Total not to exceed: \$400,000												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AGENDA NO. 6.
MEETING DATE January 25, 2022

TITLE AMEND COVID-19 CONTACT TRACING SERVICES AGREEMENT

TYPE	<input type="checkbox"/> Construction	<input checked="" type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Authorize an amendment to the agreement previously authorized under Board Resolution No. 35171-20 with Axiom Medical Consulting, LLC (Axiom) to increase the agreement amount by \$400,000 to a total amount not to exceed \$900,000 to provide COVID-19 contact tracing services, employee interviews, and recordkeeping for COVID-19 positive employees.

SUMMARY

This amendment provides COVID-19 contact tracing services, employee interviews, and recordkeeping for COVID-19 positive employees.

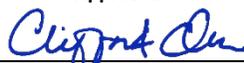
DISCUSSION

On March 17, 2020, the District declared an emergency in response to the COVID-19 pandemic. The emergency declaration was later ratified under Board Resolution No. 35171-20. Under delegated authority, and consistent with Policy 7.03 – Emergency Preparedness/Business Continuity, the General Manager executed an emergency contract not to exceed \$500,000 with Axiom to provide COVID-19 employee contact tracing and case management support without bids or notice.

Axiom was first used by the District in January 2021 to provide contact tracing, employee interviews, and recordkeeping for COVID-19 positive employees during a high infection period of the pandemic. Contact tracing is needed to slow the spread of COVID-19 and to comply with Cal/OSHA, Centers for Disease Control and Infection, the California Department of Public Health, and county regulations and guidance. Contact tracing and the required quarantine period reduces the likelihood of employee-to-employee transmission of the coronavirus. The cost of the program through December 2021 was \$515,835. This agreement supports the District’s Workforce Planning and Development Strategic Plan goal.

CONSULTANT SELECTION

Axiom was selected based on their ability to provide the unique service with enough resources to handle high-volume workload with the required response time.

Funds Available: FY22/23	Budget Coding: 11.790. 8859200.53120	Contract Equity Forms? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Operations and Maintenance	David A. Briggs	 General Manager
Attachment(s): P-035; P-061		

SUSTAINABILITY

Economic

Funding for this work is available in the FY22/23 adopted operating budget.

Social

This amendment will provide COVID-19 contact tracing services to protect employees, customers, visitors, and the community at large.

ALTERNATIVES

Do not amend the agreement to provide COVID-19 contact tracing services. This alternative is not recommended because contact tracing is required by regulations and guidance to help slow the spread of COVID-19.

Provide contact tracing services utilizing District resources. This alternative is not recommended because the District does not have the resources to perform this type of work and the recent COVID-19 positive spike has created an immediate need.



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE General Services Agreement - Amendment Amend Covid-19 Contact Tracing Services						DATE: January 19, 2022						
CONTRACTOR: Axiom Medical Consulting , LLC Woodlands, TX 77381				Direct Award		PERCENTAGE OF CONTRACT DOLLARS						
BID/PROPOSER'S PRICE: \$400,000 *		FIRM'S OWNERSHIP		White Men		25%		100.0%				
		Ethnicity	Gender	White Women		6%		0.0%				
		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
PRIMES: Axiom Medical Consulting , LLC		\$400,000	White	X		100.0%						
SUBS: None												
TOTAL		\$400,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCE PROFILE (From P-025 Form)												
			White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:			INFORMATION NOT PROVIDED									
Percent of Total Employees:												
MSA Labor Market %:												
MSA Labor Market Location:												
COMMENTS												
Contract Equity Participation: 100% White Men participation.												
*Total not to exceed: \$900,000 = \$500,000 (Original) + \$400,000 (Amendment)												
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended				
NA				NA								



AGENDA NO. 7.
MEETING DATE January 25, 2022

TITLE MONTHLY INVESTMENT TRANSACTIONS REPORTS

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
ACTION	<input checked="" type="checkbox"/> MOTION	<input type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Approve the November and December 2021 Monthly Investment Transactions Reports.

SUMMARY

In accordance with Policy 4.07 – Investment Policy, staff prepares a monthly transactions report for the Finance/Administration Committee to review and for the Board to consider each month. The December 28, 2021 and January 25, 2022 Finance/Administration Committee meetings were cancelled so staff is providing the November 2021 and December 2021 reports to the Board for consideration.

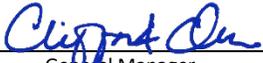
DISCUSSION

Pursuant to Policy 4.07, staff generates a monthly report of investment transactions (buys, sales, deposits, withdrawals) as well as transactions that occur as a feature of the securities held (interest, calls, maturities). Information on portfolio performance, balances, and other factors is presented in the quarterly investment report.

In November 2021, the portfolio decreased from \$772.1 million to \$732.7 million due in part to the funding of the District’s semi-annual revenue bond interest payment. Interest received added \$2.9 million to the portfolio. Net transactions decreased the total by \$42.3 million. With respect to transactions, deposits into short-term liquidity funds totaled \$80.8 million, and \$123.4 million was withdrawn. The District purchased \$285.0 million in securities, \$271.4 million in securities matured, and \$0.5 million in securities were called. No securities were sold. Net transactions at the District’s commercial bank resulted in a decrease of \$12.8 million.

In December 2021, the portfolio increased from \$732.7 million to \$767.7 million. Interest received added approximately \$0.2 million to the portfolio. Net transactions increased the total by \$34.8 million. With respect to transactions, deposits into short-term liquidity funds totaled \$63.4 million, and \$146.3 million was withdrawn. The District purchased \$110.0 million in securities. No securities were called, matured or sold. Net transactions at the District’s commercial bank resulted in an increase of \$7.8 million.

I:\Sec\2022 Board Related Items\012522 Board Agenda Items\FIN - Monthly Investment Transactions Reports 012522.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Finance	Sophia D. Skoda	 General Manager
Attachments: November 2021 and December 2021 Monthly Investment Transactions Reports		

Monthly Investment Transactions Report
November 2021

This report is presented to the Board pursuant to Government Code Section 53607 and in accordance with the District's Investment Policy 4.07.

The attached report details transactions in the District's portfolio as follows:

- **Monthly Investment Transactions Summary** **Page 1**
- **Monthly Investment Activity** **Page 2**
 - Buys Page 3
 - Deposits Page 4
 - Matured Page 5
 - Calls Page 6
 - Sales Page 7
 - Withdrawals Page 8
- **Monthly Interest Activity** **Page 9**
 - Interest Received (Transferred to Wells Fargo) Page 10
 - Interest Received (Reinvested) Page 11


Approved by: Sophia D. Skoda, Finance Director

12/7/2021
Date

SDS:AMM:lm



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Transactions Summary
November 2021

Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	598,854,627.44	(21,360,000.00)	4,420.92	577,499,048.36
007 - Wastewater Consolidated	110,899,936.61	(5,547,000.00)	1,220.23	105,354,156.84
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,262,600.00	-	-	2,262,600.00
015 - DERWA	1,000,000.00	-	-	1,000,000.00
002 - FRWA	1,000,000.00	-	-	1,000,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	18,057,502.04	(2,568,000.00)	-	15,489,502.04
099 - Wells Fargo**	37,814,345.68	(12,846,753.37)	2,901,847.19	27,869,439.50
Total	772,103,511.77	(42,321,753.37)	2,907,488.34	732,689,246.74

* Portfolio balance presented at face value.

**Wells Fargo's month-end available balance per bank statement. Gross amount; not allocated by fund and not included in balances above.

Leanne Maloney
 Prepared by: Leanne Maloney, Accountant III

Kirk Hutchins
 Reviewed by: Kirk Hutchins, Accounting Supervisor

Andrea Miller
 Approved by: Andrea M. Miller, Controller

12/03/2021
 Date

12/06/2021
 Date

12/6/2021
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
November 2021

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	257,000,000.00	72,000,000.00	(267,360,000.00)	-	-	(83,000,000.00)	-	(21,360,000.00)
007 - Wastewater Consolidated	28,000,000.00	-	(4,047,000.00)	(500,000.00)	-	(29,000,000.00)	-	(5,547,000.00)
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	8,818,000.00	-	-	-	(11,386,000.00)	-	(2,568,000.00)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
Investment Activity Total	285,000,000.00	80,818,000.00	(271,407,000.00)	(500,000.00)	-	(123,386,000.00)	-	(29,475,000.00)
099 - Wells Fargo	(285,000,000.00)	(80,818,000.00)	271,407,000.00	500,000.00	-	123,386,000.00	(42,321,753.37)	(12,846,753.37)
Total	-	-	-	-	-	-	(42,321,753.37)	(42,321,753.37)

*Non-investment transactions are net receipts and expenditures in Wells Fargo resulting from activities other than investment and interest transactions detailed in this report.


 Reviewed by: Steven Goodman-Leibof, Principal Mgmt Analyst

12/7/2021
 Date


 Approved by: Robert L. Hannay, Treasury Manager

12/7/2021
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Buys										
001 - Water System Consolidated	US Treasuries	T-Note 1.625 11/15/2022	912828TY6	10/29/2021	11/1/2021	11/15/2022	40,000,000.00	40,612,500.00	300,271.74	40,912,771.74
001 - Water System Consolidated	US Treasuries	T-Note 1.625 11/15/2022	912828TY6	11/4/2021	11/5/2021	11/15/2022	8,000,000.00	8,120,937.50	61,467.39	8,182,404.89
001 - Water System Consolidated	US Treasuries	T-Bill 0 5/5/2022	912796P45	11/2/2021	11/4/2021	5/5/2022	40,000,000.00	39,986,855.56	0.00	39,986,855.56
001 - Water System Consolidated	US Treasuries	T-Note 1.75 5/15/2023	912828VB3	11/29/2021	11/30/2021	5/15/2023	38,000,000.00	38,794,140.62	27,555.25	38,821,695.87
001 - Water System Consolidated	US Treasuries	T-Note 2.75 11/15/2023	912828WE6	11/29/2021	11/30/2021	11/15/2023	34,000,000.00	35,499,453.13	38,743.09	35,538,196.22
001 - Water System Consolidated	US Treasuries	T-Note 1.625 11/15/2022	912828TY6	11/23/2021	11/24/2021	11/15/2022	7,000,000.00	7,097,617.19	2,828.04	7,100,445.23
001 - Water System Consolidated	US Treasuries	T-Note 1.75 5/15/2023	912828VB3	11/23/2021	11/24/2021	5/15/2023	70,000,000.00	71,378,125.00	30,455.80	71,408,580.80
001 - Water System Consolidated	US Treasuries	T-Note 1.75 5/15/2023	912828VB3	11/22/2021	11/23/2021	5/15/2023	20,000,000.00	20,390,625.00	7,734.81	20,398,359.81
Total							257,000,000.00			
007 - Wastewater Consolidated	US Treasuries	T-Note 1.625 11/15/2022	912828TY6	11/4/2021	11/5/2021	11/15/2022	8,000,000.00	8,120,937.50	61,467.39	8,182,404.89
007 - Wastewater Consolidated	US Treasuries	T-Note 1.75 5/15/2023	912828VB3	11/22/2021	11/23/2021	5/15/2023	10,000,000.00	10,195,312.50	3,867.40	10,199,179.90
007 - Wastewater Consolidated	US Treasuries	T-Note 1.75 5/15/2023	912828VB3	11/29/2021	11/30/2021	5/15/2023	10,000,000.00	10,208,984.38	7,251.38	10,216,235.76
Total							28,000,000.00			

285,000,000.00 290,405,488.38 541,642.29 290,947,130.67



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Deposits										
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	11/12/2021	11/12/2021	N/A	4,410,000.00	4,410,000.00	0.00	4,410,000.00
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	11/24/2021	11/24/2021	N/A	4,408,000.00	4,408,000.00	0.00	4,408,000.00
					Total		8,818,000.00			
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	11/30/2021	11/30/2021	N/A	72,000,000.00	72,000,000.00	0.00	72,000,000.00
					Total		72,000,000.00			

80,818,000.00 80,818,000.00 0.00 80,818,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Matured										
001 - Water System Consolidated	US Treasuries	T-Note 1.25 10/31/2021	912828T67	10/31/2021	10/31/2021	10/31/2021	34,000,000.00	34,000,000.00	0.00	34,000,000.00
001 - Water System Consolidated	US Treasuries	T-Note 1.5 10/31/2021	912828YP9	10/31/2021	10/31/2021	10/31/2021	34,000,000.00	34,000,000.00	0.00	34,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.95 11/2/2021	3133EHP31	11/2/2021	11/2/2021	11/2/2021	1,000,000.00	1,000,000.00	0.00	1,000,000.00
001 - Water System Consolidated	US Treasuries	T-Note 2.875 11/15/2021	9128285L0	11/15/2021	11/15/2021	11/15/2021	34,000,000.00	34,000,000.00	0.00	34,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.625 11/19/2021	3130AHJY0	11/19/2021	11/19/2021	11/19/2021	7,260,000.00	7,260,000.00	0.00	7,260,000.00
001 - Water System Consolidated	US Treasuries	T-Bill 0 11/26/2021	912796H77	11/26/2021	11/26/2021	11/26/2021	30,000,000.00	30,000,000.00	0.00	30,000,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.875 11/29/2021	3130AABG2	11/29/2021	11/29/2021	11/29/2021	47,100,000.00	47,100,000.00	0.00	47,100,000.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 0.09 11/30/2021	3130AKHN9	11/30/2021	11/30/2021	11/30/2021	12,000,000.00	12,000,000.00	0.00	12,000,000.00
001 - Water System Consolidated	US Treasuries	T-Note 1.5 11/30/2021	912828YT1	11/30/2021	11/30/2021	11/30/2021	34,000,000.00	34,000,000.00	0.00	34,000,000.00
001 - Water System Consolidated	US Treasuries	T-Note 1.75 11/30/2021	912828U65	11/30/2021	11/30/2021	11/30/2021	34,000,000.00	34,000,000.00	0.00	34,000,000.00
					Total		267,360,000.00			
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 1.625 11/19/2021	3130AHJY0	11/19/2021	11/19/2021	11/19/2021	2,230,000.00	2,230,000.00	0.00	2,230,000.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 0.1 11/30/2021	3133EMHS4	11/30/2021	11/30/2021	11/30/2021	1,817,000.00	1,817,000.00	0.00	1,817,000.00
					Total		4,047,000.00			

CUSIP# 912828T67 for \$34MM & CUSIP# 912828YP9 for \$34MM both Matured 10/31 transferred to WFB 11/1 . Total maturities for 10/31 total \$68MM

271,407,000.00 271,407,000.00 0.00 271,407,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 1.79 11/12/2024-21	3133EK6L5	11/12/2021	11/12/2021	11/12/2024	500,000.00	500,000.00	0.00	500,000.00
					Total		500,000.00			

500,000.00 500,000.00 0.00 500,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Sales										

No Transactions this Period

0.00 0.00 0.00 0.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Withdrawals										
001 - Water System Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST9230		11/1/2021	11/1/2021	N/A	7,000,000.00	7,000,000.00	0.00	7,000,000.00
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP CAMP6035		11/22/2021	11/22/2021	N/A	20,000,000.00	20,000,000.00	0.00	20,000,000.00
001 - Water System Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST9230		11/23/2021	11/23/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP CAMP6035		11/23/2021	11/23/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP CAMP6035		11/23/2021	11/23/2021	N/A	30,000,000.00	30,000,000.00	0.00	30,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	11/23/2021	11/23/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley	MM0852	11/23/2021	11/23/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
					Total		83,000,000.00			
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	11/30/2021	11/30/2021	N/A	11,386,000.00	11,386,000.00	0.00	11,386,000.00
					Total		11,386,000.00			
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP CAMP6035		11/22/2021	11/22/2021	N/A	10,000,000.00	10,000,000.00	0.00	10,000,000.00
007 - Wastewater Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST9230		11/23/2021	11/23/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP CAMP6035		11/23/2021	11/23/2021	N/A	13,000,000.00	13,000,000.00	0.00	13,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	11/23/2021	11/23/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley	MM0852	11/23/2021	11/23/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
					Total		29,000,000.00			
							123,386,000.00	123,386,000.00	0.00	123,386,000.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
November 2021

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	2,790,875.07	(2,786,454.15)	4,420.92
007 - Wastewater Consolidated	116,613.27	(115,393.04)	1,220.23
049 - Ferc Partnership	-	-	-
009 - BACWA	-	-	-
015 - DERWA	-	-	-
002 - FRWA	-	-	-
014 - IICP	-	-	-
010 - UMRWA	-	-	-
003 - Employees Retirement	-	-	-
065 - Water S2008A DSRF	-	-	-
068 - Water 2010A DSRF	-	-	-
Interest Transactions Total	2,907,488.34	(2,901,847.19)	5,641.15
099 - Wells Fargo	-	2,901,847.19	2,901,847.19
Total	2,907,488.34	-	2,907,488.34

*Coupon and other interest received; reinvestment unavailable.

**Coupon and other interest payments reinvested in specific portfolio.

Leanne Maloney
 Prepared by: Leanne Maloney, Accountant III
Kirk Hutchins
 Reviewed by: Kirk Hutchins, Accounting Supervisor
Andrea Miller
 Approved by: Andrea M. Miller, Controller

12/03/2021
 Date
12/06/2021
 Date
12/6/2021
 Date



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
November 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Transferred to Wells Fargo)										
001 - Water System Consolidated	US Treasuries	T-Note 1.25 10/31/2021	912828T67	10/31/2021	10/31/2021	10/31/2021	0.00	0.00	212,500.00	212,500.00
001 - Water System Consolidated	US Treasuries	T-Note 1.5 10/31/2021	912828YP9	10/31/2021	10/31/2021	10/31/2021	0.00	0.00	255,000.00	255,000.00
001 - Water System Consolidated	Medium Term Notes	MICROSOFT CORP 2.375 5/1/2023-23	594918AT1	11/1/2021	11/1/2021	5/1/2023	0.00	0.00	49,459.38	49,459.38
001 - Water System Consolidated	Federal Agency Issues Coupon	FFCB 1.95 11/2/2021	3133EHP31	11/2/2021	11/2/2021	11/2/2021	0.00	0.00	9,750.00	9,750.00
001 - Water System Consolidated	Medium Term Notes	APPLE INC 2.4 5/3/2023	037833AK6	11/3/2021	11/3/2021	5/3/2023	0.00	0.00	60,000.00	60,000.00
001 - Water System Consolidated	Medium Term Notes	Apple Inc 2.3 5/11/2022	037833CQ1	11/11/2021	11/11/2021	5/11/2022	0.00	0.00	51,106.00	51,106.00
001 - Water System Consolidated	Medium Term Notes	Apple Inc 2.7 5/13/2022	037833BF6	11/13/2021	11/13/2021	5/13/2022	0.00	0.00	211,234.50	211,234.50
001 - Water System Consolidated	US Treasuries	T-Note 1.625 11/15/2022	912828TY6	11/15/2021	11/15/2021	11/15/2022	0.00	0.00	390,000.00	390,000.00
001 - Water System Consolidated	US Treasuries	T-Note 2.875 11/15/2021	9128285L0	11/15/2021	11/15/2021	11/15/2021	0.00	0.00	488,750.00	488,750.00
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.625 11/19/2021	3130AHJY0	11/19/2021	11/19/2021	11/19/2021	0.00	0.00	58,987.50	58,987.50
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 1.875 11/29/2021	3130AABG2	11/29/2021	11/29/2021	11/29/2021	0.00	0.00	441,562.50	441,562.50
001 - Water System Consolidated	Federal Agency Issues Coupon	FHLB 0.09 11/30/2021	3130AKHN9	11/30/2021	11/30/2021	11/30/2021	0.00	0.00	5,400.00	5,400.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	11/30/2021	11/30/2021	N/A	0.00	0.00	204.27	204.27
001 - Water System Consolidated	US Treasuries	T-Note 1.5 11/30/2021	912828YT1	11/30/2021	11/30/2021	11/30/2021	0.00	0.00	255,000.00	255,000.00
001 - Water System Consolidated	US Treasuries	T-Note 1.75 11/30/2021	912828U65	11/30/2021	11/30/2021	11/30/2021	0.00	0.00	297,500.00	297,500.00
								Total		2,786,454.15
007 - Wastewater Consolidated	Medium Term Notes	Microsoft Corp 2.65 11/3/2022	594918BH6	11/3/2021	11/3/2021	11/3/2022	0.00	0.00	9,937.50	9,937.50
007 - Wastewater Consolidated	Medium Term Notes	Apple Inc 2.3 5/11/2022	037833CQ1	11/11/2021	11/11/2021	5/11/2022	0.00	0.00	11,500.00	11,500.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 1.79 11/12/2024-21	3133EK6L5	11/12/2021	11/12/2021	11/12/2024	0.00	0.00	4,475.00	4,475.00
007 - Wastewater Consolidated	Medium Term Notes	Apple Inc 2.7 5/13/2022	037833BF6	11/13/2021	11/13/2021	5/13/2022	0.00	0.00	5,400.00	5,400.00
007 - Wastewater Consolidated	US Treasuries	T-Note 1.625 11/15/2022	912828TY6	11/15/2021	11/15/2021	11/15/2022	0.00	0.00	65,000.00	65,000.00
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FHLB 1.625 11/19/2021	3130AHJY0	11/19/2021	11/19/2021	11/19/2021	0.00	0.00	18,118.75	18,118.75
007 - Wastewater Consolidated	Federal Agency Issues Coupon	FFCB 0.1 11/30/2021	3133EMHS4	11/30/2021	11/30/2021	11/30/2021	0.00	0.00	908.50	908.50
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	11/30/2021	11/30/2021	N/A	0.00	0.00	53.29	53.29
								Total		115,393.04
							0.00	0.00	2,901,847.19	2,901,847.19

CUSIP# 912828T67 paid \$212,500 & CUSIP# 912828YP96 paid \$255,000 interest 10/31 transferred to WFB 11/1 . Total interest for 10/31 total \$467,500



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
November 2021

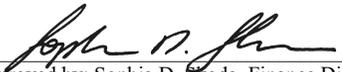
Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Reinvested)										
001 - Water System Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST923C		11/30/2021	11/30/2021	N/A	0.00	0.00	308.59	308.59
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	11/30/2021	11/30/2021	N/A	0.00	0.00	3010.11	3010.11
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	11/30/2021	11/30/2021	N/A	0.00	0.00	564.74	564.74
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley IMM0852		11/30/2021	11/30/2021	N/A	0.00	0.00	537.48	537.48
								Total		4,420.92
007 - Wastewater Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST923C		11/30/2021	11/30/2021	N/A	0.00	0.00	73.85	73.85
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	11/30/2021	11/30/2021	N/A	0.00	0.00	861.26	861.26
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	11/30/2021	11/30/2021	N/A	0.00	0.00	145.72	145.72
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley IMM0852		11/30/2021	11/30/2021	N/A	0.00	0.00	139.4	139.4
								Total		1,220.23
							0.00	0.00	5,641.15	5,641.15

**Monthly Investment Transactions Report
December 2021**

This report is presented to the Board pursuant to Government Code Section 53607 and in accordance with the District's Investment Policy 4.07.

The attached report details transactions in the District's portfolio as follows:

- **Monthly Investment Transactions Summary** **Page 1**
- **Monthly Investment Activity** **Page 2**
 - Buys Page 3
 - Deposits Page 4
 - Matured Page 5
 - Calls Page 6
 - Sales Page 7
 - Withdrawals Page 8
- **Monthly Interest Activity** **Page 9**
 - Interest Received (Transferred to Wells Fargo) Page 10
 - Interest Received (Reinvested) Page 11


Approved by: Sophia D. Skoda, Finance Director

1/12/2022
Date

SDS:AMM:lm



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Transactions Summary
December 2021

Portfolio	Beginning Balance*	Monthly Net Transaction Activity	Monthly Interest Activity	Ending Balance
001 - Water System Consolidated	577,499,048.36	20,728,484.82	4,168.02	598,231,701.20
007 - Wastewater Consolidated	105,354,156.84	8,877,199.57	604.57	114,231,960.98
049 - Ferc Partnership	2,000,000.00	-	-	2,000,000.00
009 - BACWA	2,262,600.00	-	-	2,262,600.00
015 - DERWA	1,000,000.00	-	-	1,000,000.00
002 - FRWA	1,000,000.00	-	-	1,000,000.00
014 - IICP	150,500.00	-	-	150,500.00
010 - UMRWA	64,000.00	-	-	64,000.00
003 - Employees Retirement	15,489,502.04	(2,599,441.21)	-	12,890,060.83
099 - Wells Fargo**	27,869,439.50	7,763,719.00	212,937.62	35,846,096.12
Total	732,689,246.74	34,769,962.18	217,710.21	767,676,919.13

* Portfolio balance presented at face value.

**Wells Fargo's month-end available balance per bank statement. Gross amount; not allocated by fund and not included in balances above.

Leanne Maloney
 Prepared by: Leanne Maloney, Accountant III

01/05/2022
 Date

Kevin Ma
 Reviewed by: Kevin Ma, Accounting Supervisor

01/06/2022
 Date

Andrea Miller
 Approved by: Andrea M. Miller, Controller

01/12/2022
 Date



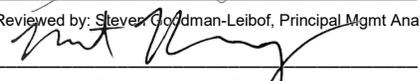
EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
December 2021

Portfolio	Buys	Deposits	Matured	Calls	Sales	Withdrawals	Non-Investment Transactions*	Net Transaction Activity
001 - Water System Consolidated	86,000,000.00	43,541,352.43	-	-	-	(108,812,867.61)	-	20,728,484.82
007 - Wastewater Consolidated	24,000,000.00	11,010,184.87	-	-	-	(26,132,985.30)	-	8,877,199.57
049 - Ferc Partnership	-	-	-	-	-	-	-	-
009 - BACWA	-	-	-	-	-	-	-	-
015 - DERWA	-	-	-	-	-	-	-	-
002 - FRWA	-	-	-	-	-	-	-	-
014 - IICP	-	-	-	-	-	-	-	-
010 - UMRWA	-	-	-	-	-	-	-	-
003 - Employees Retirement	-	8,798,558.79	-	-	-	(11,398,000.00)	-	(2,599,441.21)
065 - Water S2008A DSRF	-	-	-	-	-	-	-	-
068 - Water 2010A DSRF	-	-	-	-	-	-	-	-
Investment Activity Total	110,000,000.00	63,350,096.09	-	-	-	(146,343,852.91)	-	27,006,243.18
099 - Wells Fargo	(110,000,000.00)	(63,350,096.09)	-	-	-	146,343,852.91	34,769,962.18	7,763,719.00
Total	-	-	-	-	-	-	34,769,962.18	34,769,962.18

*Non-investment transactions are net receipts and expenditures in Wells Fargo resulting from activities other than investment and interest transactions detailed in this report.


 Reviewed by: Steven Goodman-Leibof, Principal Mgmt Analyst

1/12/2022
 Date
 1/12/2022


 Approved by: Robert L. Hannay, Treasury Manager

Date



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Investment Activity
 December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Buys										
001 - Water System Consolidated	US Treasuries	T-Note 0.25 11/15/2023	91282CAW1	12/10/2021	12/13/2021	11/15/2023	22,000,000.00	21,833,281.25	4,254.14	21,837,535.39
001 - Water System Consolidated	US Treasuries	T-Note 1.875 9/30/2022	9128282W9	12/21/2021	12/22/2021	9/30/2022	16,000,000.00	16,203,125.00	68,406.59	16,271,531.59
001 - Water System Consolidated	US Treasuries	T-Note 2.125 12/31/2022	912828N30	12/21/2021	12/22/2021	12/31/2022	16,000,000.00	16,286,250.00	161,684.78	16,447,934.78
001 - Water System Consolidated	US Treasuries	T-Bill 0 3/24/2022	912796F38	12/21/2021	12/23/2021	3/24/2022	16,000,000.00	15,997,573.34	0.00	15,997,573.34
001 - Water System Consolidated	US Treasuries	T-Bill 0 6/23/2022	912796R43	12/21/2021	12/23/2021	6/23/2022	16,000,000.00	15,987,260.00	0.00	15,987,260.00
					Total		86,000,000.00			
007 - Wastewater Consolidated	US Treasuries	T-Note 0.25 11/15/2023	91282CAW1	12/10/2021	12/13/2021	11/15/2023	8,000,000.00	7,939,375.00	1,546.96	7,940,921.96
007 - Wastewater Consolidated	US Treasuries	T-Note 1.875 9/30/2022	9128282W9	12/21/2021	12/22/2021	9/30/2022	4,000,000.00	4,050,781.25	17,101.65	4,067,882.90
007 - Wastewater Consolidated	US Treasuries	T-Note 2.125 12/31/2022	912828N30	12/21/2021	12/22/2021	12/31/2022	4,000,000.00	4,071,562.50	40,421.20	4,111,983.70
007 - Wastewater Consolidated	US Treasuries	T-Bill 0 3/24/2022	912796F38	12/21/2021	12/23/2021	3/24/2022	4,000,000.00	3,999,393.33	0.00	3,999,393.33
007 - Wastewater Consolidated	US Treasuries	T-Bill 0 6/23/2022	912796R43	12/21/2021	12/23/2021	6/23/2022	4,000,000.00	3,996,815.00	0.00	3,996,815.00
					Total		24,000,000.00			

110,000,000.00 110,365,416.67 293,415.32 110,658,831.99



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Deposits										
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	12/10/2021	12/10/2021	N/A	4,407,000.00	4,407,000.00	0.00	4,407,000.00
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	12/23/2021	12/23/2021	N/A	4,391,558.79	4,391,558.79	0.00	4,391,558.79
					Total		8,798,558.79			
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	12/16/2021	12/16/2021	N/A	4,000,000.00	4,000,000.00	0.00	4,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	12/17/2021	12/17/2021	N/A	15,541,352.43	15,541,352.43	0.00	15,541,352.43
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley MM	MVRXX	12/17/2021	12/17/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley MM	MVRXX	12/30/2021	12/30/2021	N/A	16,000,000.00	16,000,000.00	0.00	16,000,000.00
					Total		43,541,352.43			
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	12/16/2021	12/16/2021	N/A	1,000,000.00	1,000,000.00	0.00	1,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	12/17/2021	12/17/2021	N/A	4,010,184.87	4,010,184.87	0.00	4,010,184.87
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley MM	MVRXX	12/17/2021	12/17/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley MM	MVRXX	12/30/2021	12/30/2021	N/A	4,000,000.00	4,000,000.00	0.00	4,000,000.00
					Total		11,010,184.87			
							63,350,096.09	63,350,096.09	0.00	63,350,096.09



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
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Matured

No Transactions this Period

0.00 0.00 0.00 0.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
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Calls

No Transactions this Period

0.00 0.00 0.00 0.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
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Sales

No Transactions this Period

0.00 0.00 0.00 0.00



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Investment Activity
December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Withdrawals										
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/2/2021	12/2/2021	N/A	4,000,000.00	4,000,000.00	0.00	4,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/8/2021	12/8/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	12/9/2021	12/9/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	12/16/2021	12/16/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/17/2021	12/17/2021	N/A	15,464,725.80	15,464,725.80	0.00	15,464,725.80
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	12/20/2021	12/20/2021	N/A	3,000,000.00	3,000,000.00	0.00	3,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley	MM0852	12/20/2021	12/20/2021	N/A	19,312,001.27	19,312,001.27	0.00	19,312,001.27
001 - Water System Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST9230		12/21/2021	12/21/2021	N/A	5,036,140.54	5,036,140.54	0.00	5,036,140.54
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	12/22/2021	12/22/2021	N/A	22,000,000.00	22,000,000.00	0.00	22,000,000.00
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	12/23/2021	12/23/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	12/23/2021	12/23/2021	N/A	8,000,000.00	8,000,000.00	0.00	8,000,000.00
					Total		108,812,867.61			
003 - Employees Retirement	LAIF	LAIF LGIP	LGIP1005	12/30/2021	12/30/2021	N/A	11,398,000.00	11,398,000.00	0.00	11,398,000.00
					Total		11,398,000.00			
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/2/2021	12/2/2021	N/A	1,000,000.00	1,000,000.00	0.00	1,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/8/2021	12/8/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	12/9/2021	12/9/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	12/16/2021	12/16/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/17/2021	12/17/2021	N/A	4,086,811.50	4,086,811.50	0.00	4,086,811.50
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investme	MM4022	12/20/2021	12/20/2021	N/A	1,000,000.00	1,000,000.00	0.00	1,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley	MM0852	12/20/2021	12/20/2021	N/A	5,045,958.86	5,045,958.86	0.00	5,045,958.86
007 - Wastewater Consolidated	Local Government Investment Pool	CalTRUST LGIP CALTRUST9230		12/21/2021	12/21/2021	N/A	2,000,214.94	2,000,214.94	0.00	2,000,214.94
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	12/22/2021	12/22/2021	N/A	3,000,000.00	3,000,000.00	0.00	3,000,000.00
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	12/23/2021	12/23/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	GOFXX	12/23/2021	12/23/2021	N/A	2,000,000.00	2,000,000.00	0.00	2,000,000.00
					Total		26,132,985.30			
							146,343,852.91	146,343,852.91	0.00	146,343,852.91



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
December 2021

Portfolio	Total Interest Received	Interest Transferred to Wells Fargo*	Net Interest Activity (Reinvested)**
001 - Water System Consolidated	174,505.33	(170,337.31)	4,168.02
007 - Wastewater Consolidated	43,204.88	(42,600.31)	604.57
049 - Ferc Partnership	-	-	-
009 - BACWA	-	-	-
015 - DERWA	-	-	-
002 - FRWA	-	-	-
014 - IICP	-	-	-
010 - UMRWA	-	-	-
003 - Employees Retirement	-	-	-
065 - Water S2008A DSRF	-	-	-
068 - Water 2010A DSRF	-	-	-
Interest Transactions Total	217,710.21	(212,937.62)	4,772.59
099 - Wells Fargo	-	212,937.62	212,937.62
Total	217,710.21	-	217,710.21

*Coupon and other interest received; reinvestment unavailable.

**Coupon and other interest payments reinvested in specific portfolio.

Leanne Maloney

Prepared by: Leanne Maloney, Accountant III

Kevin Ma

Reviewed by: Kevin Ma, Accounting Supervisor

Andrea Miller

Approved by: Andrea M. Miller, Controller

01/05/2022

Date

01/06/2022

Date

01/12/2022

Date



EAST BAY MUNICIPAL UTILITY DISTRICT
 Monthly Interest Activity
 December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Transferred to Wells Fargo)										
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	12/2/2021	12/2/2021	N/A	0.00	0.00	190.00	190.00
001 - Water System Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	12/20/2021	12/20/2021	N/A	0.00	0.00	65.87	65.87
001 - Water System Consolidated	Local Government Investment Pool	CalTRUST LGIP	CALTRUST923	12/31/2021	12/31/2021	N/A	0.00	0.00	81.44	81.44
001 - Water System Consolidated	US Treasuries	T-Note 2.125 12/31/2022	912828N30	12/31/2021	12/31/2021	12/31/2022	0.00	0.00	170,000.00	170,000.00
									Total	170,337.31
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	12/2/2021	12/2/2021	N/A	0.00	0.00	50.00	50.00
007 - Wastewater Consolidated	Money Market Mutual Funds	Fidelity Investments MM	MM4022	12/20/2021	12/20/2021	N/A	0.00	0.00	17.97	17.97
007 - Wastewater Consolidated	Local Government Investment Pool	CalTRUST LGIP	CALTRUST923	12/31/2021	12/31/2021	N/A	0.00	0.00	32.34	32.34
007 - Wastewater Consolidated	US Treasuries	T-Note 2.125 12/31/2022	912828N30	12/31/2021	12/31/2021	12/31/2022	0.00	0.00	42,500.00	42,500.00
									Total	42,600.31
							0.00	0.00	212,747.62	212,937.62



EAST BAY MUNICIPAL UTILITY DISTRICT
Monthly Interest Activity
December 2021

Portfolio Name	Asset Class	Description	CUSIP/Ticker	Trade Date	Settlement Date	Maturity Date	Face Amount/Shares	Principal	Interest/Dividends	Total
Interest Received (Reinvested)										
001 - Water System Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/17/2021	12/17/2021	N/A	0.00	0.00	210.9	210.9
001 - Water System Consolidated	Money Market Mutual Funds	Morgan Stanley IMM0852	IMM0852	12/20/2021	12/20/2021	N/A	0.00	0.00	261.23	261.23
001 - Water System Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	12/31/2021	12/31/2021	N/A	0.00	0.00	3695.89	3695.89
								Total		4,168.02
007 - Wastewater Consolidated	Money Market Mutual Funds	Federated MM	MM3767	12/17/2021	12/17/2021	N/A	0.00	0.00	54.89	54.89
007 - Wastewater Consolidated	Money Market Mutual Funds	Morgan Stanley IMM0852	IMM0852	12/20/2021	12/20/2021	N/A	0.00	0.00	68.26	68.26
007 - Wastewater Consolidated	Local Government Investment Pool	CAMP LGIP	CAMP6035	12/31/2021	12/31/2021	N/A	0.00	0.00	481.42	481.42
								Total		604.57
							0.00	0.00	4,772.59	4,772.59

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AGENDA NO. 8.
MEETING DATE January 25, 2022

TITLE CONFIRM BOARD OF DIRECTORS STANDBY OFFICERS FOR CALENDAR YEAR 2022

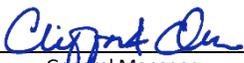
TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grant Acceptance	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER

ACTION	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE
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RECOMMENDED ACTION

Adopt a resolution to confirm the following individuals as Standby Officers for the East Bay Municipal Utility District Board of Directors for Calendar Year 2022 as outlined in the Director’s Emergency Succession Plan (Plan).

Ward No. 1	1) Celia S. McCoy 2) Linda Jackson-Whitmore 3) Lynelle Lewis
Ward No. 2	1) Dennis Diemer 2) Carol June Rowley 3) Robert Dean
Ward No. 3	1) Jennifer Jackson 2) Peter T. Vorster 3) Alexander R. Coate
Ward No. 4	1) Margo Schueler 2) Xanthe M. Berry 3) Helen Burke
Ward No. 5	1) Heinrich Albert 2) James C. Prola 3) Ronald Stork
Ward No. 6	1) Robert Harris 2) Jose Guzman 3) Kevin Blackburn
Ward No. 7	1) Calvin Sakamoto 2) Gene Ashford Jr. 3) Gregory Chan

Funds Available: NA	Budget Coding: NA	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department Office of the Secretary	Department Director or Manager Rischa S. Cole	Approved  General Manager
Attachment(s): Emergency Succession Plan for Board; Resolution		

SUMMARY

The Plan, adopted on May 23, 2017, ensures the ongoing governance and sustainability of the District if one or more Board members become unavailable following a state of war emergency, in the event of a state of emergency, or in a local emergency in accordance with the California Emergency Services Act (CESA). The Plan fulfills the standards and process to implement District Policy 7.03 - Emergency Preparedness/Business Continuity, for Board members regarding designation of Standby Officers in compliance with CESA. The Board may fill vacancies under the provisions of the Municipal Utility District Act or CESA, depending on necessity and expediency as the situation warrants. The District's list of Standby Officers is reviewed annually to verify the continuing availability of each Standby Officer. Confirmation of designated Standby Officers shall be made by resolution annually.

DISCUSSION

The Board of Directors has the critical task of setting policies and authorizing staff actions that support District operations. The Plan was established for Board members to safeguard District functions against unplanned and unexpected absence(s) during an emergency. The Plan outlines the process for the Board to select, appoint, and establish service expectations, duties, and compensation for Standby Officers that meet the following criteria: 1) 18 years of age and a lawful resident of California; 2) not a current District employee; and 3) no conflicts of interest with the District based on a position held with a private or public entity, or financial interest in any company or agency that has a contract with the District or possibility of having a contract with the District during the term of the Standby Officer's service.

In late 2021, the Secretary of the District verified the current Standby Officers are eligible and available to continue serving for Calendar Year 2022. Standby Officers will serve in their posts at the pleasure of the Board and may be removed and replaced at any time with or without cause, before, during, or after an emergency. State law requires Standby Officers to complete and submit a Fair Political Practices Commission (FPPC) Statement of Economic Interests-Form 700 to the FPPC and the Office of the Secretary within 30 days of appointment, and annually, thereafter. Having Standby Officers available in the event of an emergency (as defined by CESA), supports the District's Customer and Community Services Strategic Plan goal.

SUSTAINABILITY

Economic

There is no fiscal impact associated with this action. However, Standby Officers seated on the Board following an emergency will be entitled to financial compensation as outlined in the Plan.

Social/Environmental

Standby Officers allow the District to increase the reliability of its governance and reduce potential impacts to customers and to the environment.

Confirm Board of Directors Standby Officers for Calendar Year 2022

January 25, 2022

Page 3

ALTERNATIVE

Do not confirm Standby Officers for Calendar Year 2022. This alternative is not recommended. The Standby Officers listed meet the criteria outlined in the Plan and their qualifications to continue serving have been reviewed and verified.

F:\Sec\2022 Board Related Items\012522 Board Agenda Items\OGM – Confirm BOD Standby Officers for CY2022.docx

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APPENDIX TO THE OFFICE OF THE GENERAL MANAGER'S BUSINESS CONTINUITY PLAN

Emergency Succession Plan for Board of Directors

Purpose

The purpose of this Emergency Succession Plan is to ensure continuous coverage of the Board of Directors' duties, critical to the ongoing operations and sustainability of the District, in the event one or more Board Members is unavailable following a state of war emergency or in the event of a state of emergency or a local emergency.

Definitions

The following definitions shall apply to this Emergency Succession Plan.

"Emergency" means:

- A State of War Emergency, being the condition which exists immediately whenever the state or nation is attacked by an enemy of the United States, or upon receipt by the state of a warning from the federal government indicating that such an enemy attack is probable or imminent. No proclamation by the Governor is necessary for the existence of a State of War Emergency.
- A State of Emergency, being the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or conditions other than those causing a "State of War Emergency." A State of Emergency must be declared by the Governor.
- A Local Emergency, being the existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake. A Local Emergency must be declared by the governing body of a county, city and county, or city or by an official designated by ordinance adopted by that governing body.

For the purposes of this Emergency Succession Plan in order to comply with statutory requirements for Board emergency succession, "Emergency" shall not include a District-declared emergency as defined in District Policy 7.03 – Emergency Preparedness/Business Continuity.

“Regular Officer” is the term applicable during an Emergency to a Board Member elected or appointed under the California Municipal Utility District (MUD) Act.

“Standby Officer” means a person appointed by the District Board of Directors to serve on the Board in the event of the unavailability of a Board Member.

“Unavailable” means that as a result of an Emergency a Board Member is either killed, missing, or so seriously injured as to be unable to attend meetings and otherwise perform his or her duties. A Board Member may declare himself or herself to be unavailable for the purposes of this Emergency Succession Plan, but should inform the General Manager of the estimated time during which he or she will be unavailable.

Selection and Appointment of Standby Officers

Each Board Member shall submit to the Office of the Secretary a list of three Standby Officers and their contact information, to serve in his or her place in the event of the Board Member’s unavailability under this procedure. No more than three Standby Officers may be selected for each Board Member. Standby Officers shall be designated Standby Officer No. 1, Standby Officer No. 2, and Standby Officer No. 3.

In selecting prospective Standby Officers, the Board shall give consideration to their places of residence and work in order to maximize the probability of survivorship for each Board position for which Standby Officers are appointed. Criteria to be considered include:

- The location of the Standby Officer’s residence and place of work in relation to such natural hazards as fault lines;
- The proximity of the Standby Officer’s residence to the Regular Officer’s residence; and
- The proximity of the Standby Officer’s place of work to the Regular Officer’s place of work.

Standby Officers No. 1 and No. 2 shall reside within the same ward as the Regular Officer recommending the Standby Officer. Standby Officer No. 3 shall reside outside the same ward as the Regular Officer recommending the Standby Officer, and may reside outside the District’s service area.

Each selected Standby Officer shall meet the following criteria:

- Standby Officers shall be at least 18 years old and a lawful resident of the State of California;
- Standby Officers shall not be an employee of the District;
- Standby Officers shall not be a member of the Regular Officer’s immediate family;
- Standby Officers shall have no financial interest in any company or agency that has a contract with the District or is reasonably possible to have a contract with the District during the term of the Standby Officer’s service; and
- Standby Officers shall not serve as an officer or employee of any public entity that has a competing interest with the District.

Each recommended Standby Officer shall provide a resume to the Office of the Secretary. The Office of the Secretary shall carefully investigate and verify the qualifications of the recommended Standby Officers. Upon approval of the lists of Standby Officers by the Director of Operations and Maintenance, they will be appointed by the Board through a Board Resolution to serve until removal or replacement by the Board.

Each appointed Standby Officer shall take the oath of office required of a Board Member.

The District's list of Standby Officers as stated in the appointing Board Resolution shall be reviewed on an annual basis by each Member of the Board in order to verify the continuing availability of each Standby Officer to serve. Confirmation of the designated Standby Officers shall be made by Board Resolution annually. Persons appointed as Standby Officers shall serve in their posts as Standby Officers at the pleasure of the Board and may be removed and replaced at any time with or without cause, before, during, or after an Emergency.

Duties of Standby Officers

Each Standby Officer shall:

- Remain informed of the duties of the Board Member he or she will replace. Officers and employees of the District shall assist the Standby Officer, who shall be provided with a copy of Article 15 of the California Emergency Services Act (CESA).
- Remain informed of the business and affairs of the District to the extent necessary to enable the Standby Officer to fill his or her post competently. Officers and employees of the District shall assist the Standby Officer in remaining informed by providing Standby Officers with links to Board documents on the District's website and informing Standby Officers of any developments the Board deems necessary.
- Be prepared to immediately report for duty at the direction of the General Manager in the event of an Emergency at the place and in the method previously designated by the District, in the order of his or her succession.
- Fill the post of the Board Member position for which he or she has been appointed when the regular Board Member is unavailable during an Emergency.

Determination of Unavailability of a Board Member

The Board may fill vacancies under the provisions of the MUD Act or CESA, depending on necessity and expediency as the situation warrants.

MUD Act Appointments with CESA Contingency

Upon declaration of an Emergency that upon determination of the General Manager has the potential to render Regular Officers unavailable, all available Regular Officers shall meet as soon as possible. The General Manager shall contact Standby Officer No. 1 for each Board position regardless of the availability of the Board Member and inform the Standby Officer of his or her duty to appear at the first Board meeting. If Standby Officer No. 1 is unavailable or unwilling to serve, Standby Officers Nos. 2 and 3 shall substitute in succession for Standby Officer No. 1 in the same way that Standby Officer No. 1 is substituted in place of the Regular Officer.

The General Manager shall determine and report to the Board the availability of those Regular Officers not present at the first meeting. If five Regular Officers are available, the Regular Officers shall proceed to conduct the business of the Board, and within 60 days of the effective date of a vacancy shall appoint Board Members to fill those positions for which a Regular Officer is determined to be unavailable, in accordance with the provisions of the MUD Act. The Board shall reserve the right to select Standby Officers to fill the vacant positions in accordance with the procedures of CESA.

If five Regular Officers are not available, the Standby Officers shall serve in place of the unavailable Regular Officers.

CESA-Only Appointments

Upon declaration of an Emergency that upon determination of the General Manager has the potential to render Regular Officers unavailable, all available Regular Officers shall meet as soon as possible. The General Manager shall contact Standby Officer No. 1 for each Board position regardless of the availability of the Board Member and inform the Standby Officer of his or her duty to appear at the first Board meeting. If Standby Officer No. 1 is unavailable or unwilling to serve, Standby Officers Nos. 2 and 3 shall substitute in succession for Standby Officer No. 1 in the same way that Standby Officer No. 1 is substituted in place of the Regular Officer.

The General Manager shall determine and report to the Board the availability of each Regular Officer not present. For each Regular Officer who is confirmed by the Board to be unavailable, the Standby Officers shall serve in place of the unavailable Regular Officers.

Service of Standby Officers During and After an Emergency

Standby Officers serving during an Emergency shall have all of the powers and duties of a Board Member as delineated under Chapter 3, Article 4 of the MUD Act.

Succession for the executive positions of the Board shall be as follows: If the President is unavailable, the Regular Officer Vice President shall serve as President in his or her place. If the

Vice President is unavailable or serving as President, the Vice President position shall be filled by the available Regular Officer with the most seniority on the Board. If no Regular Officers are available to fill any executive positions, the position shall be filled by the Standby Officer for the unavailable Regular Officer for that position. Because the President of the Board cannot serve on a Standby Committee, the Standby Officer for the President shall serve on any committee on which the replacement officer for the President sits.

The Standby Officer shall serve until the Regular Officer becomes available, the election or appointment of a new Regular Officer in accordance with the election and appointment laws of the MUD Act, or the dismissal of the Standby Officer.

Compensation of Standby Officers

After reporting for duty at the direction of the General Manager in the event of an Emergency, each Standby Officer shall be entitled to financial compensation. Standby Officers serving less than one month shall be compensated for each meeting attended based on a pro-rated percentage of the salary of a Regular Officer. Standby Officers serving one month or longer shall be entitled to the salary of a Regular Officer. Standby Officers shall not be entitled to compensation for leave. Standby Officers shall not be entitled to health or retirement benefits unless and until they are elected or appointed to a Regular Officer position under the procedures of the MUD Act. This date of election or appointment shall serve as the effective date of employment for all Regular Officers for the purposes of receiving the health and retirement benefits of a Regular Officer.

Legal Authority

California Emergency Services Act, Government Code § 8635 *et seq.*
Municipal Utility District Act, Chapter 3, Article 4 (Public Utilities Code § 11881 *et seq.*)

Other References

EBMUD Policy 7.03 – Emergency Preparedness/Business Continuity
EBMUD Emergency Operations Plan
Office of the General Manager Business Continuity Plan

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RESOLUTION NO. _____

CONFIRMING APPOINTMENT OF STANDBY OFFICERS FOR THE BOARD OF
DIRECTORS UNDER THE EMERGENCY SUCCESSION PLAN FOR
THE BOARD OF DIRECTORS

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, Article 15 of the State of California Emergency Services Act (CESA) provides for the preservation of local government in the event of enemy attack, state of emergency or local emergency; and

WHEREAS, CESA permits the governing body of a political subdivision to appoint up to three Standby Officers for each member of the governing body; and

WHEREAS, the Board of Directors of the East Bay Municipal Utility District (Board) adopted the Emergency Succession Plan (Plan) for the Board on May 23, 2017; and

WHEREAS, the Plan provides a process under which Standby Officers for the Board are selected, vetted and affirmed; and

WHEREAS, pursuant to the Plan, the Board has appointed 21 Standby Officers, with up to three Standby Officers to serve in the place of each Board member in the event of an emergency under CESA; and

WHEREAS, the Plan requires the Secretary of the District to verify each year the continuing availability of each appointed Standby Officer to serve as a Standby Officer; and

WHEREAS, following this verification, the Plan requires the Board to confirm the appointment of Standby Officers; and

WHEREAS, the Secretary of the District has confirmed the availability and willingness to serve of each of the Standby Officers heretofore appointed; and

WHEREAS, the Standby Officers continue to meet the criteria to serve as stated in the Plan; and

WHEREAS, each Standby Officer for a Board member shall be designated Numbers 1, 2 and 3 and shall serve in their numerical order if called to do so;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of the East Bay Municipal Utility District hereby confirms the appointment of the following Standby Officers, who shall serve in their posts as Standby Officers at the pleasure of the East Bay Municipal Utility District until removal or replacement:

- | | |
|------------|---------------------------|
| Ward No. 1 | 1) Celia S. McCoy |
| | 2) Linda Jackson-Whitmore |
| | 3) Lynelle Lewis |

- Ward No. 2 1) Dennis Diemer
 2) Carol June Rowley
 3) Robert Dean

- Ward No. 3 1) Jennifer Jackson
 2) Peter T. Vorster
 3) Alexander R. Coate

- Ward No. 4 1) Margo Schueler
 2) Xanthe M. Berry
 3) Helen Burke

- Ward No. 5 1) Heinrich Albert
 2) James C. Prola
 3) Ronald Stork

- Ward No. 6 1) Robert Harris
 2) Jose Guzman
 3) Kevin Blackburn

- Ward No. 7 1) Calvin Sakamoto
 2) Gene Ashford, Jr.
 3) Gregory Chan

ADOPTED this 25th day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____ President

ATTEST:

_____ Secretary

APPROVED AS TO FORM AND PROCEDURE:

_____ General Counsel



AGENDA NO. 9.1.-9.2.
MEETING DATE January 25, 2022

TITLE RAILROAD EASEMENT ACQUISITION - INITIATION OF EMINENT DOMAIN PROCEEDINGS

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER

ACTION	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE
---------------	---------------------------------	--	------------------------------------

RECOMMENDED ACTION

1. Conduct a public hearing to receive comments on a Resolution of Necessity to acquire a Temporary Construction Easement (TCE) on a Union Pacific Railroad Company property (APN: 74-906-41-1), adjacent to Barnhill Marina, in support of the Oakland Inner Harbor Pipeline Crossing Project.
2. Adopt a Resolution of Necessity for eminent domain proceedings for the acquisition of a TCE from Union Pacific Railroad Company; and authorize the General Counsel to prepare and proceed with such proceedings.

SUMMARY

The District plans to replace its current Alice Street water pipeline crossing underneath the Oakland Inner Harbor, from Oakland to Alameda, to provide reliable water service to the City of Alameda (“Project”). As part of the Project, the Alice Street Crossing will be abandoned once the new harbor crossing is completed and in service. The Barnhill Marina domestic water and fire service pipelines are connected to the existing Alice Street Crossing. Before the current Alice Street Crossing is abandoned, those services and laterals will need to be relocated and installed through a portion of the property owned by Union Pacific Railroad Company (“Union Pacific”) adjacent to Barnhill Marina in Alameda.

On May 26, 2020, the Board adopted Resolution No. 35179-20, which authorized the Office of General Counsel (OGC) to initiate eminent domain proceedings against Union Pacific to acquire a 295 square foot utility easement on Union Pacific property in the city of Alameda (APN: 74-906-41-1) (“Property”). Following adoption of Board Resolution No. 35179-20, OGC filed an eminent domain action against Union Pacific in Alameda County Superior Court. The litigation remains active.

Subsequent to the adoption of Board Resolution No. 35179-20, the District identified the need to acquire a TCE on the Property. The TCE is described and depicted on Exhibits A and B to the Resolution of Necessity. The TCE will support the installation and construction of the new water and fire service pipelines and related activities, including equipment storage, within the Property. The TCE will be 830

Funds Available: FY22	Budget Coding: 326/7999/ 012623:27/ 5501	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Customer and Community Services	Andrew L. Lee	 General Manager
Attachment(s): PROP-167 - Union Pacific TCE Acquisition; Prop-167 Railroad Barnhill TCE Legal Description; Resolution		

square feet located directly above the underground easement subject to the prior eminent domain action authorized under Board Resolution No. 35179-20 and will be needed for two weeks.

Because the TCE was not a part of the original eminent domain proceeding, the Board must consider and adopt a new Resolution of Necessity supporting the acquisition of the TCE through eminent domain, after conducting a public hearing in which the property owner may address the Board regarding the Board's consideration of the first three necessity findings below. Notifications of the public hearing and the Board's consideration of initiating condemnation were sent to Union Pacific by Federal Express on January 10, 2022.

Following the public hearing, the Board will be asked to consider adopting a Resolution of Necessity. In this resolution, the Board must make the following four findings:

- 1) The Project is necessary
- 2) The property rights are necessary for the Project
- 3) The Project will accomplish least private injury and most public good
- 4) An offer of just compensation has been made to the owner whose property is being condemned

The resolution will also authorize the District's General Counsel to undertake eminent domain proceedings against Union Pacific for acquisition of the TCE. Here, unless the District settles the matter with Union Pacific, a court will eventually determine the appropriate just compensation for the TCE.

DISCUSSION

The Project is Necessary

The Project is necessary in order to ensure long-term water service reliability, meet existing and future water needs, and facilitate repair and replacement of aging infrastructure.

The Property Rights are Necessary for the Project

The District has explored all possible relocation options to avoid the Union Pacific property, but all relocation alternatives were deemed infeasible due to existing utility congestion in the street and site conflicts along the frontage of the Property. Additionally, the Union Pacific property physically separates the Barnhill Marina from the District's existing water main located in Marina Village Parkway; therefore, the relocation work cannot be completed without a TCE from Union Pacific. Acquiring a TCE from Union Pacific is essential because the existing Alice Street Crossing cannot be abandoned until the Barnhill Marina's water services are relocated. To allow for the abandonment, the District must relocate the water services serving the Barnhill Marina to another water main through the Union Pacific property.

The Project Will Accomplish Least Private Injury and Most Public Good

The acquisition of the TCE from Union Pacific will have no impact on its current operations. The Property provides no track services, and Marina Village Parkway splits the Property. The portion of the Property north of the Parkway, in which the TCE will be located, is currently vacant and encumbered by a storm drain and sewer. The TCE will provide significant public benefit by supporting the installation and

construction of the new water and fire service pipelines as a part of the Project. When the Project is completed, it will provide enhanced service reliability for approximately 80,000 Alameda residents.

Offers of Just Compensation Have Been Made

On January 5, 2022, the District made a formal offer of \$1,000 to Union Pacific for the two-week TCE. To date, this offer has not been accepted.

SUSTAINABILITY

Economic

The offer of compensation for this easement is estimated at \$1,000. Ensuring long-term water service reliability for Alameda residents will offer substantial benefits to those residents.

Social

The acquisition of the TCE for the Project is necessary for the construction of the Project. The Project will provide significant public benefit. The current Alice Street Crossing was constructed in soft soils and is susceptible to failure during a large seismic event. The TCE is needed for the construction of the pipelines that are critical for the design of the Project to ensure water service is uninterrupted for approximately 80,000 Alameda residents.

Environmental

On December 13, 2016 the Board certified the Final Environmental Impact Report (EIR) and approved the Project under Resolution No. 35020-16.

ALTERNATIVE

Do not proceed with the initiation of eminent domain. This alternative is not recommended because the District would not be able install the pipelines in the easement area it seeks from Union Pacific and would be unable to abandon the Alice Street Crossing, a key component of the Project.

Union Pacific TCE Acquisition

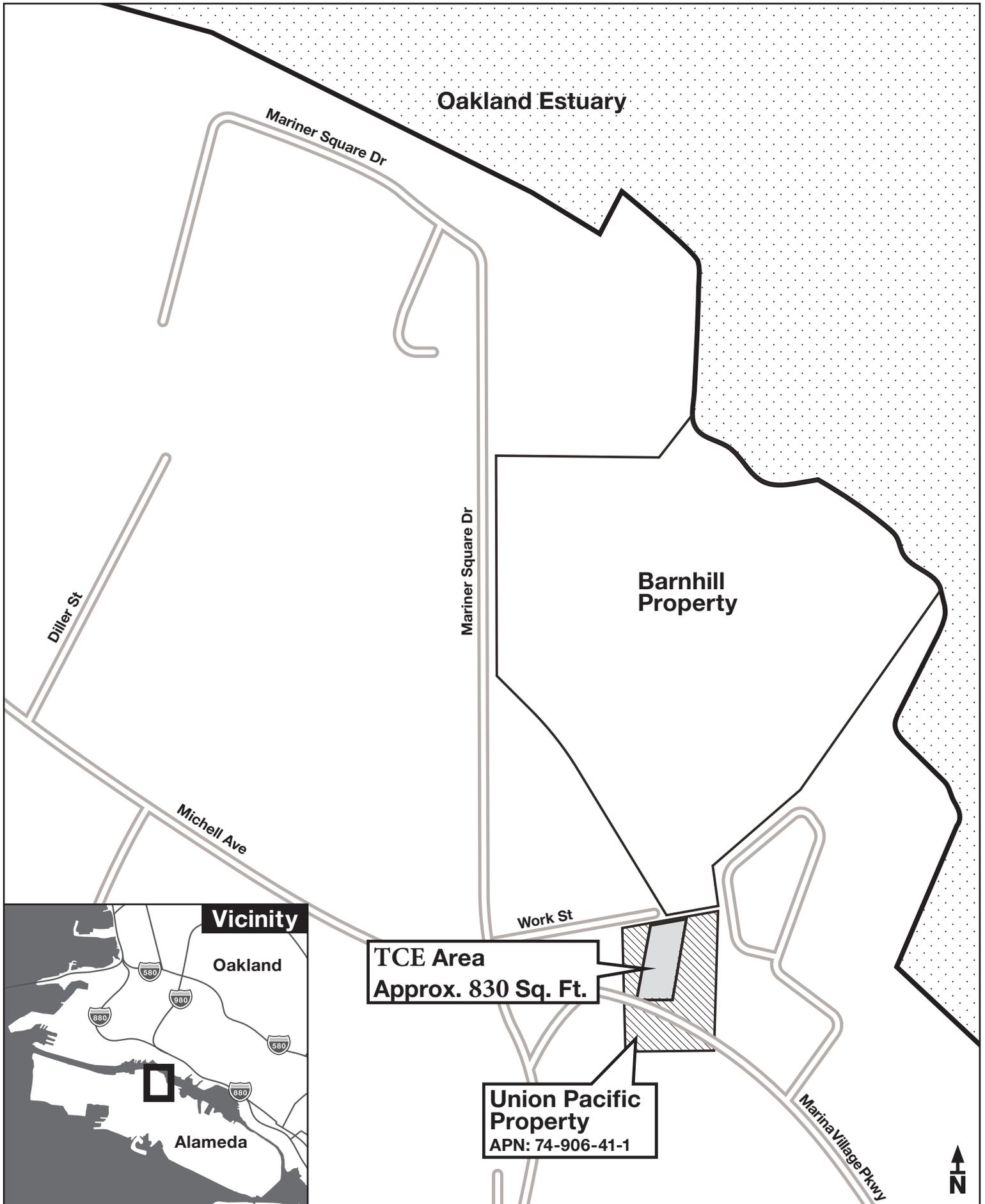


EXHIBIT "A"

LEGAL DESCRIPTION

Real property situated in the City of Alameda, County of Alameda, State of California, being a portion of Tract 31, as shown on that certain map entitled "Map of Alameda Marsh Lands, as partitioned among the owners thereof in Suit No. 8932" filed July 30, 1900, in Book 25 of Maps at Pages 74, 76, and 78, Alameda County Records, described as follows,

A strip of land, 10.00 feet wide, lying 3.50 feet westerly and 6.50 feet easterly of the following described line:

COMMENCING at a found 2" brass disk stamped "EBMUD DISCHARGE LS 6608 80+48.66" as shown on Record of Survey map "RS No. 1765", filed January 29, 2002, in Book 27 of Records of Survey at Pages 20 through 23, Alameda County Records; thence South 4°22'11" West 804.30 feet to a found 4" diameter brass disk with a punch mark stamped "WEB TUBE" at the intersection of Mariner Square Drive and Marina Village Parkway, as shown on Record of Survey map R/S No. 2468, filed September 26, 2013 in Book 38 of Records of Survey at Pages 98 through 100, Alameda County Records; thence North 56°40'52" East 299.60 feet; thence South 69°26'47" East 2.50 feet to the **POINT OF BEGINNING** for this description; thence North 20°33'13" East 81.82 feet to the **POINT OF TERMINATION**, said point being on the southerly line of that parcel of land described in the Grant Deed from Union Pacific Railroad Company to Barnhill Mariner Square LLC, recorded June 7, 2001 as Instrument Number 2001-194212, Alameda County Records;

The sidelines of said strip of land shall be lengthened or shortened to terminate at the southerly line of the land described in said Grant Deed to Union Pacific Railroad Company.

Containing 830 square feet, more or less.

Bearings and Distances shown herein are based on the California Coordinate System of 1983, (CCS83), Zone 3. Distances are grid, to obtain ground distances, multiply grid distances by: 1.0000658.

Exhibit "B" is attached and by this reference made a part hereof.

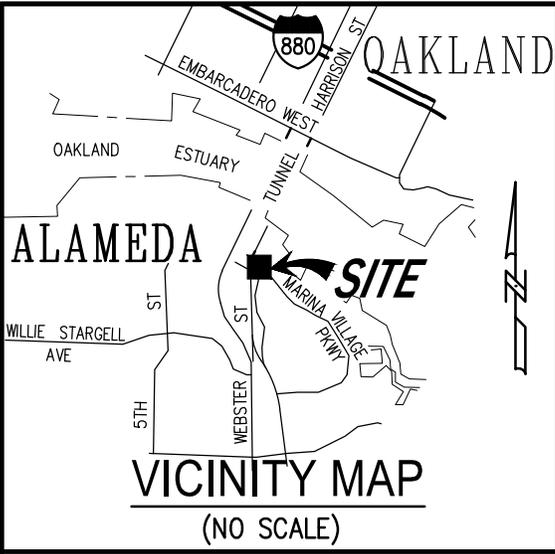
THIS LEGAL DESCRIPTION WAS PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT, IN NOVEMBER 2021.



11/4/2021

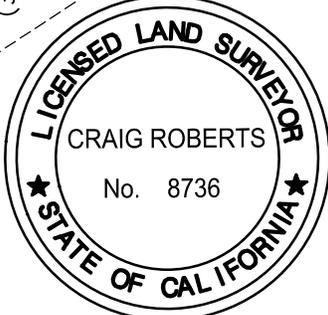
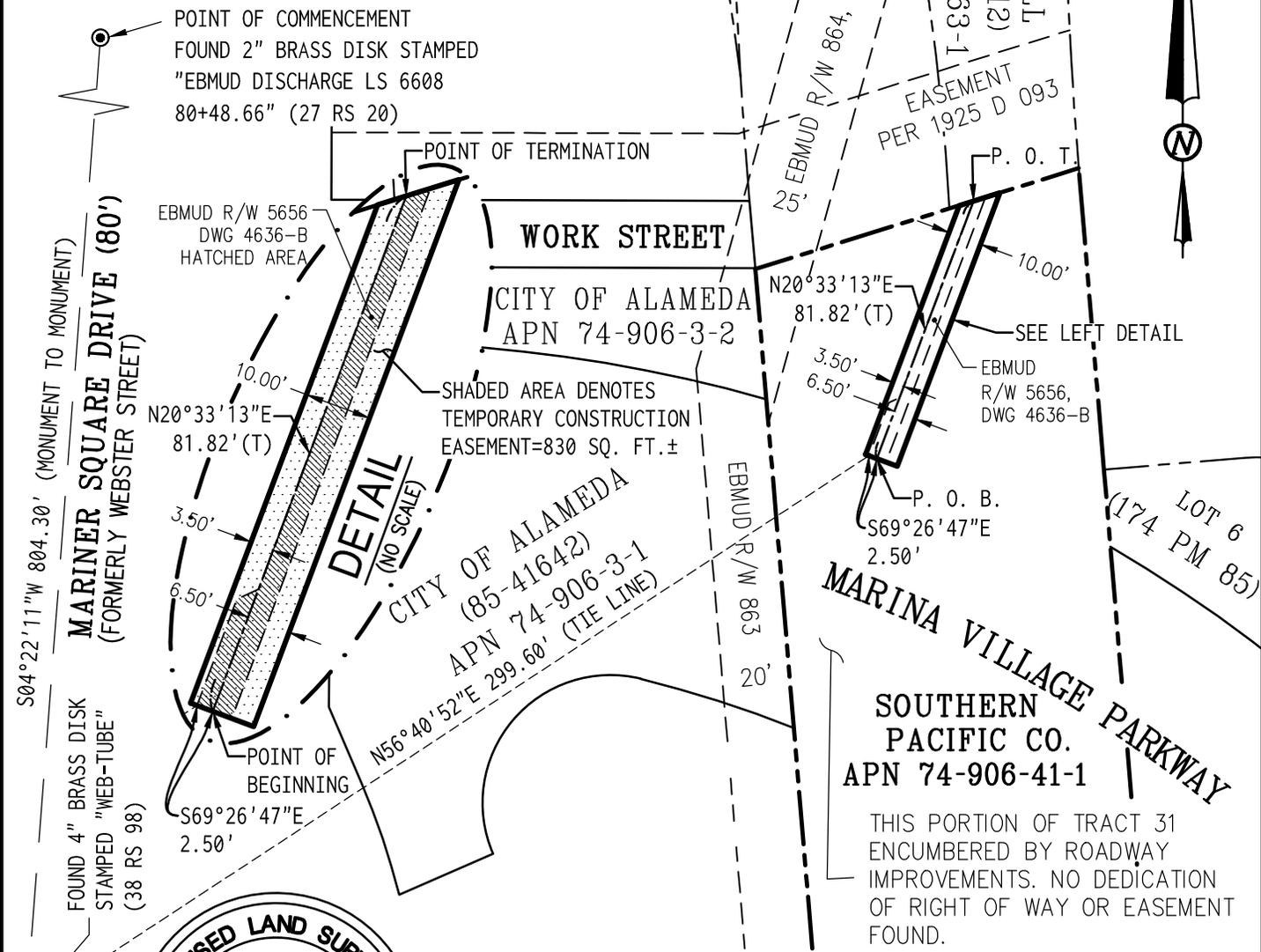
CRAIG ROBERTS, LS 8736

DATE



NOTE:

BEARINGS AND DISTANCES SHOWN HEREON ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, (CCS83), ZONE 3.



DRAWN BY	C. CHOU
CHECKED BY	R. HOLMAN
APPROVED	ASSISTANT SURVEYING SUPVR. L.S. NO. 8736

EAST BAY MUNICIPAL UTILITY DISTRICT OAKLAND, CALIFORNIA	
TEMPORARY CONSTRUCTION EASEMENT	
BARNHILL MARINA	
CITY OF ALAMEDA - ALAMEDA COUNTY	
SCALE :	1" = 50'
DATE :	4 NOVEMBER 2021
EXHIBIT "B"	

H:\00_JOB-2009\2011561\MARINA VILLAGE PKWY-UNION PACIFIC CONDEMNATION\RES\DWG\TCE.DGN

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RESOLUTION NO. _____

RESOLUTION OF NECESSITY FOR THE ACQUISITION BY EMINENT DOMAIN
OF A TEMPORARY CONSTRUCTION EASEMENT IN THE UNION PACIFIC RAILROAD
COMPANY PROPERTY ADJACENT TO BARNHILL MARINA IN ALAMEDA,
CALIFORNIA, AND AUTHORIZING CONDEMNATION PROCEEDINGS

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, to ensure long-term water service reliability and redundancy for approximately 80,000 Alameda residents, East Bay Municipal Utility District (District) plans as part of the Inner Oakland Harbor Pipeline Crossing (Project) to replace the Alice Street Crossing, one of the four underwater pipeline crossings that provides water service to Alameda residents; and

WHEREAS, on December 13, 2016, the District's Board of Directors (Board) certified the Final Environmental Impact Report for the Project via Resolution No. 35020-16; and

WHEREAS, Union Pacific Railroad Company (Union Pacific) owns property (APN:74-906-41-1) (Property) located off Marina Village Parkway, Alameda, California; and

WHEREAS, the Barnhill Marina (Barnhill) domestic water and fire service pipelines are connected to the Alice Street crossing, and the District must maintain water services to Barnhill without interruption; and

WHEREAS, to allow for the abandonment of the Alice Street Crossing, domestic water and fire service pipelines will need to be relocated and installed through a 295-square foot easement (Easement) across the Property before the crossing is abandoned; and

WHEREAS, on May 26, 2020, the Board adopted Resolution No. 35179-20, which authorized the Office of General Counsel to initiate an eminent domain proceeding against Union Pacific to acquire the Easement, and the District remains in active proceedings against Union Pacific to acquire the Easement; and

WHEREAS, subsequent to the adoption of Resolution No. 35179-20, the District has identified the need to acquire an 830 square foot, two-week Temporary Construction Easement (TCE) on the Property, as more particularly described in the documents attached as Exhibit 1, including Exhibits A and B to Exhibit 1, to this Resolution, to support the installation and construction of the domestic water and fire service pipelines within the Easement and related activities, including equipment storage; and

WHEREAS, any right to the TCE, as more particularly described in the documents attached as Exhibit 1, including Exhibits A and B to Exhibit 1, to this Resolution, shall expire by January 25, 2027; and

WHEREAS, District representatives have offered Union Pacific \$1,000 above the appraised value for the TCE, but, to date, Union Pacific has not accepted the District's offer; and

WHEREAS, it is therefore necessary for the District to acquire, by eminent domain, the TCE described in this Resolution; and

WHEREAS, the District may exercise the right of eminent domain pursuant to Public Utilities Code section 12703; and

WHEREAS, via letter sent by Federal Express on January 10, 2022 , the District notified Union Pacific, as required by law, of the Board's intention to conduct a public hearing and thereafter adopt a Resolution of Necessity for acquisition by eminent domain of the TCE interest in real property located in Alameda, California, as more particularly described in Exhibit 1, including Exhibits A and B to Exhibit 1, to this Resolution, attached hereto and incorporated herein, on January 25, 2022, at the regularly scheduled Board meeting that begins at 1:15 p.m., and of their right to file with the District a written request to appear and to be heard at said time; and

WHEREAS, due to COVID-19 and in accordance with Government Code section 54953(e), this meeting was conducted via teleconference only, and Union Pacific was directed on how to participate telephonically; and

WHEREAS, the hearing was held at that time and all interested parties were heard, and based upon the evidence presented;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of the East Bay Municipal Utility District finds and determines and hereby declares the following:

1. The public interest and necessity require the acquisition of the Project.
2. The Project is planned or located in a manner that will be most compatible with the greatest public good and the least private injury.
3. The property described in Exhibit 1, including Exhibits A and B to Exhibit 1, attached hereto is necessary for the Project.
4. The offer required by Government Code section 7267.2 has been made to the owner of record.
5. The District has complied with all conditions and statutory requirements, including those prescribed by the California Environmental Quality Act that are necessary to exercise the power of eminent domain to acquire the property that is the subject of this action.

BE IT FURTHER RESOLVED that the property is being acquired for a compatible use under Code of Civil Procedure section 1240.510 in that the District's use of the property will not interfere with or impair the continued public use as it now exists or may reasonably be expected to exist in the future, or, in the alternative, for a more necessary public use under Code of Civil Procedure section 1240.610 in that the District's use of the property is a more necessary public

use than the use to which the property is appropriated.

BE IT FURTHER RESOLVED that the General Counsel is hereby authorized and directed to do the following:

1. To acquire in the District's name, by condemnation, an 830-square foot temporary construction easement for a period of two weeks on a Union Pacific Railroad Company property (APN: 74-906-41-1), adjacent to Barnhill Marina in Alameda, California, as shown and described on Exhibit 1, including Exhibits A and B to Exhibit 1, to this Resolution, in accordance with the provisions for eminent domain in Public Utilities Code section 12703, Code of Civil Procedure section 1240.010 *et seq.*, and the Constitution of the State of California; and
2. To prepare and prosecute in the District's name such proceedings in the proper courts as are necessary for such acquisition.

BE IT FURTHER RESOLVED that all other officers of the District are hereby authorized to perform such duties as may be required for the successful completion of said condemnation proceedings.

ADOPTED this 25th day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

{00068309;9}

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EXHIBIT 1

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**EAST BAY MUNICIPAL UTILITY DISTRICT
TEMPORARY CONSTRUCTION EASEMENT AND AGREEMENT**

THIS AGREEMENT, made by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter called the "Grantor", and EAST BAY MUNICIPAL UTILITY DISTRICT, a public corporation organized and existing under the laws of the State of California, its contractors and their authorized agents, hereinafter called the "Grantee",

RECITAL

WHEREAS The District plans to replace its current Alice Street water pipeline crossing underneath the Oakland Inner Harbor, from Oakland to Alameda, to provide reliable water service to the City of Alameda.

WHEREAS the Alice Street crossing will be abandoned once the new crossing is completed and in-service.

WHEREAS the Barnhill Marina domestic water and fire service pipelines are connected to the Alice Street crossing and will need to be relocated and installed through a portion of the Grantor's property, located off of Marina Village Parkway, Alameda, APN:74-906-41-1, before the crossing is abandoned. ("Project")

WHEREAS the District will require for the Project, a Temporary Construction Easement (TCE) during the installation and construction of the Project.

NOW THEREFORE, the parties hereto agree to the following terms and conditions as follows:

Grantor hereby grants to Grantee for a period of two (2) weeks, a TCE for the purpose of ingress and egress over and upon said area for all purposes connected with the lay down, construction and installation of facilities necessary for the transmission of utilities associated with the Project. Grantee shall notify the Grantor, in writing, a minimum of thirty (30) days prior to commencement of use of said TCE area. The rent shall be One Thousand Dollars (\$1,000.00) payable before the start of the two (2) week period.

The property granted for this use covers approximately 830 sq. ft. as depicted in **Exhibit "A"** and **"B"**, made a part hereof ("the Property") along with the existing drive aisles to be used for access to the Property. The Grantee may elect to install temporary fencing around the Property to delineate the area from the rest of the property that will continue to be used by the Grantor and other users.

Grantee agrees to indemnify, defend and hold Grantor, its officers, agents, and employees harmless from and against any and all loss, liability, expense, claims, costs, suits, damages and attorney's fees, arising directly out of the Grantee's negligent operation or performance under this Agreement.

Grantee agrees upon the completion of its work to restore as near as possible the surface of the ground within the Property and the drive aisles required for access to the condition in which they were prior to the commencement of said work.

The performance of this Agreement in furtherance of the completion of the Project constitutes the entire consideration for this temporary construction easement and shall relieve Grantee of all future obligations or claims on this account.

IN WITNESS WHEREOF, the Grantor has executed this indenture this __ day of _____, 2022.

EAST BAY MUNICIPAL UTILITY DISTRICT UNION PACIFIC RAILROAD COMPANY

By: _____

**Matt Elawady
Manager of Real Estate Services**

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT "A"

LEGAL DESCRIPTION

Real property situated in the City of Alameda, County of Alameda, State of California, being a portion of Tract 31, as shown on that certain map entitled "Map of Alameda Marsh Lands, as partitioned among the owners thereof in Suit No. 8932" filed July 30, 1900, in Book 25 of Maps at Pages 74, 76, and 78, Alameda County Records, described as follows,

A strip of land, 10.00 feet wide, lying 3.50 feet westerly and 6.50 feet easterly of the following described line:

COMMENCING at a found 2" brass disk stamped "EBMUD DISCHARGE LS 6608 80+48.66" as shown on Record of Survey map "RS No. 1765", filed January 29, 2002, in Book 27 of Records of Survey at Pages 20 through 23, Alameda County Records; thence South 4°22'11" West 804.30 feet to a found 4" diameter brass disk with a punch mark stamped "WEB TUBE" at the intersection of Mariner Square Drive and Marina Village Parkway, as shown on Record of Survey map R/S No. 2468, filed September 26, 2013 in Book 38 of Records of Survey at Pages 98 through 100, Alameda County Records; thence North 56°40'52" East 299.60 feet; thence South 69°26'47" East 2.50 feet to the **POINT OF BEGINNING** for this description; thence North 20°33'13" East 81.82 feet to the **POINT OF TERMINATION**, said point being on the southerly line of that parcel of land described in the Grant Deed from Union Pacific Railroad Company to Barnhill Mariner Square LLC, recorded June 7, 2001 as Instrument Number 2001-194212, Alameda County Records;

The sidelines of said strip of land shall be lengthened or shortened to terminate at the southerly line of the land described in said Grant Deed to Union Pacific Railroad Company.

Containing 830 square feet, more or less.

Bearings and Distances shown herein are based on the California Coordinate System of 1983, (CCS83), Zone 3. Distances are grid, to obtain ground distances, multiply grid distances by: 1.0000658.

Exhibit "B" is attached and by this reference made a part hereof.

THIS LEGAL DESCRIPTION WAS PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT, IN NOVEMBER 2021.

 _____ 11/4/2021
CRAIG ROBERTS, LS 8736 DATE



NOTE:
 BEARINGS AND DISTANCES SHOWN HEREON ARE BASED ON THE CALIFORNIA COORDINATE SYSTEM OF 1983, (CCS83), ZONE 3.

POINT OF COMMENCEMENT
 FOUND 2" BRASS DISK STAMPED
 "EBMUD DISCHARGE LS 6608
 80+48.66" (27 RS 20)

POINT OF TERMINATION

WORK STREET
 CITY OF ALAMEDA
 APN 74-906-3-2

SHADED AREA DENOTES
 TEMPORARY CONSTRUCTION
 EASEMENT=830 SQ. FT.±

DETAIL
 (NO SCALE)
 CITY OF ALAMEDA
 (85-41642)
 APN 74-906-3-1
 N56°40'52"E 299.60' (TIE LINE)

TRACT 31
 (25 M 78)
 APN 74-1363-1
 (2001-194212)
 BARNHILL

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 P. O. T.

SEE LEFT DETAIL

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 R/W 5656,
 DWG 4636-B

P. O. B.
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 2.50'

MARINA VILLAGE PARKWAY
 SOUTHERN
 PACIFIC CO.
 APN 74-906-41-1

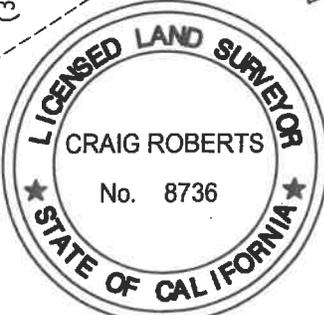
THIS PORTION OF TRACT 31
 ENCUMBERED BY ROADWAY
 IMPROVEMENTS. NO DEDICATION
 OF RIGHT OF WAY OR EASEMENT
 FOUND.

EAST BAY MUNICIPAL UTILITY DISTRICT
 OAKLAND, CALIFORNIA

TEMPORARY CONSTRUCTION EASEMENT
BARNHILL MARINA
 CITY OF ALAMEDA - ALAMEDA COUNTY

SCALE : 1" = 50'
 DATE : 4 NOVEMBER 2021

EXHIBIT "B"



DRAWN BY C. CHOU
 CHECKED BY R. HOLMAN
 APPROVED ASSISTANT SURVEYING SUPVR.
 L.S. NO. 8736

H:\00_JOB-2009\2011561\MARINA VILLAGE PKWY-UNION PACIFIC CONDEMNATION\RES\DWG\TCE.DGN

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AGENDA NO. 10.
MEETING DATE January 25, 2022

TITLE APPOINTMENT TO THE POSITION OF ASSISTANT ATTORNEY

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
ACTION	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

Appoint Timothy S. Kline to the position of Assistant Attorney of the District with the title of Attorney II effective February 14, 2022.

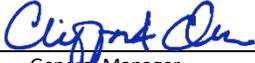
DISCUSSION

Timothy S. Kline is recommended for appointment as Assistant Attorney of the District with the title of Attorney II, to be effective February 14, 2022. The Attorney II position is exempt from civil service provisions of the Municipal Utility District Act in accordance with Section 12055(b), which excludes officers, assistant officers, and other persons and employees appointed by the Board of Directors.

Mr. Kline received his law degree from the University of California, Berkeley, School of Law and his Bachelor of Arts Degree in Society and Environment, with minors in Forestry, and Conservation and Resource Studies from the University of California, Berkeley. Since graduating from law school, he has spent his legal career as a litigator and served in an advisory role on regulatory law issues. As an attorney with the law firm of Morrison & Foerster, his litigation work focused on defending against various environmental and land use claims. He also advised on environmental compliance, including air and water quality permitting and the land use entitlement process with local governments, and supported the firm’s transactional work, evaluating potential environmental liabilities associated with large mergers and acquisitions. While in law school, he interned at the California Department of Justice, Office of the Attorney General. Prior to law school, he worked at the California Fire Science Consortium performing a variety of duties supporting scientific research.

Mr. Kline’s litigation and environmental advisory and field experience, combined with a demonstrated interest to expand his work in areas of importance to the District, make him an excellent candidate for the position of Attorney II.

I:\Sec\2022 Board Related Items\012522 Board Agenda Items\HRD\Appointment to the Position of Assistant Attorney.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Human Resources	Winnie W. Anderson	 General Manager
Attachment(s): Resolution		



RESOLUTION NO. _____

APPOINTING TIMOTHY S. KLINE TO THE POSITION OF ASSISTANT ATTORNEY OF THE DISTRICT WITH THE TITLE OF ATTORNEY II

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, the Board of Directors has established the position of Assistant Attorney of the District with the title of Attorney II and such position has been assigned a salary range under the Management Salary Plan established for District officers, assistant officers, civil service exempt and certain civil service classes; and

WHEREAS, the Attorney II is exempt from civil service provisions of the Municipal Utility District Act in accordance with Section 12055(b), which excludes officers, assistant officers, and other persons and employees appointed by the Board of Directors;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that Timothy S. Kline is hereby appointed to the position of Assistant Attorney of the District with the title of Attorney II, effective February 14, 2022.

ADOPTED this 25th day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel



AGENDA NO. 11.
MEETING DATE January 25, 2022

TITLE RECOGNITION OF THE LIFE AND SERVICE OF GAIL BERKLEY-ARMSTRONG

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER

ACTION	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE
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RECOMMENDED ACTION

Adopt a resolution in observance of the life and public service of Gail Berkley-Armstrong, award-winning Bay Area journalist and Sun-Reporter editor.

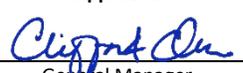
DISCUSSION

On December 26, 2021, Ms. Berkley-Armstrong passed away peacefully in Oakland at the age of 74 surrounded by family.

The attached resolution recognizes Ms. Berkley-Armstrong’s legacy as a trailblazing journalist and community activist who served the East Bay for over four decades. It also recognizes her lifetime commitment to public service, to the Black Press, and to giving voice to the African American community throughout the country.

This action supports the District’s goal to recognize the contributions of women in leadership, community action, and service to the East Bay.

I:\Sec\2022 Board Related Items\012522 Board Agenda Items\OGM-Gail Berkley-Armstrong.docx

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department	Department Director or Manager	Approved
Office of the General Manager - Communications	Kelly A. Zito	 General Manager
Attachment(s): Resolution		

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RESOLUTION NO. _____

COMMENDING GAIL BERKLEY-ARMSTRONG FOR HER LIFETIME COMMITMENT
TO GIVING VOICE TO THE AFRICAN AMERICAN COMMUNITY

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, Gail Berkley-Armstrong, a legendary award-winning Bay Area journalist and Sun-Reporter Editor, was born January 5, 1947, in Berkeley, California, to attorney and Oakland Post founder, Thomas Berkley, and Etta Jordan Hill, an educator and artist; and

WHEREAS, Gail Berkley-Armstrong served for 32 years as her father's assistant at the Oakland Post and went on to become the editor of the Sun-Reporter newspaper in San Francisco for another 16 years, where she worked to highlight the milestones and contributions of those too often left unrecognized in other media; and

WHEREAS, Gail Berkley-Armstrong made it her mission to ensure the news and information important to the African American community is available each week and that the voices, perspectives, and opinions of our community, the leaders, and citizens working for change have an outlet in the Bay Area; and

WHEREAS, Gail Berkley-Armstrong was a founding member of New California Media (now New America Media) and a member of the Patrons of the Arts and Humanities of the Bay Area, the African American Museum and Library Coalition, and the Oakland Museum Cultural and Ethnic Affairs Guild's Black Filmmakers Hall of Fame Committee; and

WHEREAS, Gail Berkley-Armstrong also gave her time and talent to community organizations and served as President of the African Sister City Cultural Center, Inc., where she led the non-profit organization in its mission to support Oakland's Sister City relationship with the twin cities of Sekondi-Takoradi in Ghana, providing fresh water and sanitation to children; and

WHEREAS, Gail Berkley-Armstrong received many awards for her community work over the years, including the Pioneer Award from New America Media, recognition from the State of California Legislature, City and County of San Francisco, Alameda County, Delta Sigma Theta Sorority, Allen Temple Baptist Church, East Bay Women's Political Action Committee, Ebony Museum of California, Today's Women, Inc., College Bounders Committee and the East Bay Area Seon of the National Council of Negro Women; and

WHEREAS, as a veteran journalist, Gail Berkley-Armstrong was committed to the mission of the Black Press of America, saying, "Too long have others spoken for us...we wish to plead our own cause.";

NOW, THEREFORE, BE IT RESOLVED that the East Bay Municipal Utility District Board of Directors hereby expresses its gratitude to the family of Gail Berkley-Armstrong for her lifetime commitment to giving voice to the African American community, not only in the Bay Area, but throughout the country. May her life's work shine as inspiration for public service.

ADOPTED this 25th day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

President

Secretary

APPROVED AS TO FORM AND PROCEDURE

General Counsel



AGENDA NO. 12.
MEETING DATE January 25, 2022

TITLE MEMORANDUM OF UNDERSTANDING WITH INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 39; AND SALARY AND OTHER BENEFITS REVISIONS FOR SENIOR MANAGEMENT TEAM MEMBERS, MANAGERS, CONFIDENTIALS, AND NON-REPRESENTED EMPLOYEES

TYPE	<input type="checkbox"/> Construction	<input type="checkbox"/> General Services	<input type="checkbox"/> Materials & Supplies	<input type="checkbox"/> Professional Services
	<input type="checkbox"/> CEQA	<input type="checkbox"/> Grants	<input type="checkbox"/> Water Supply Assessment	<input checked="" type="checkbox"/> OTHER
ACTION	<input type="checkbox"/> MOTION	<input checked="" type="checkbox"/> RESOLUTION	<input type="checkbox"/> ORDINANCE	

RECOMMENDED ACTION

- Approve the 2021-2025 Memorandum of Understanding (MOU) and other special agreements between the District and the International Union of Operating Engineers Local 39 and approve the salary and other benefits revisions for Senior Management Team members, managers, confidential employees, and non-represented employees.
- Approve revisions to District salary schedules.
- Amend all existing Civil Service Rules, Policy Statements and Procedures, and other pertinent resolutions to conform to revisions contained in the MOU and in the resolution.

SUMMARY

Staff recently concluded negotiations with Local 39 resulting in a four (4) year MOU (April 26, 2021 through April 20, 2025). This resolution approves that MOU, which applies to approximately 49 employees, and salary and other benefits revisions for Senior Management Team members, managers, confidential employees, and non-represented employees.

DISCUSSION

Significant terms of the recently concluded MOU with Local 39, as well as recommended changes for Senior Management Team members, managers, confidential employees, and non-represented employees are summarized below and are effective upon Board adoption, unless otherwise specified.

Should the District extend to any other bargaining unit, across the board general salary increases more favorable to that bargaining unit than the compensation set forth above, or a one-time payment greater than one thousand dollars (\$1,000), or improvement to longevity-based compensation or employer contribution to employees' deferred compensation accounts, such terms shall automatically extend to all eligible employees covered in this resolution.

Funds Available: N/A	Budget Coding: N/A	Contract Equity Forms? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Originating Department Human Resources	Department Director or Manager Winnie W. Anderson	Approved  General Manager
Attachment(s): Resolution		

- **General Salary Increases:** Provides general salary increases over the four (4) year term:

First Year: 4.0%, effective April 26, 2021.

Second Year: 4.5%, effective April 25, 2022.

Third Year: Effective April 24, 2023, CPI-W plus 0.5%. (If CPI-W plus 0.5% is below 2%, the increase shall be 2%. If the CPI-W plus 0.5% is above 6.5%, the increase shall be 6.5%).

Fourth Year: Effective April 22, 2024, CPI-W plus 0.5%. (If the CPI-W plus 0.5% is below 2%, the increase shall be 2%. If the CPI-W plus 0.5% is above 6.5%, the increase shall be 6.5%).

Unless specifically indicated otherwise, the monthly salaries established effective April 26, 2021 shall be effective for all such employees on the payroll on January 25, 2022 and for all such employees who retired from the District on or after April 26, 2021 up to and including January 25, 2022.

- **Supplemental Benefits Program:** Effective January 1, 2022, the supplemental benefits program under IRS Code Section 125 will increase from \$910 to \$1,000.
- **Deferred Compensation Administrative Fees:** Increase payment of fees by the District from \$105,000 to \$150,000 annually.
- **Deferred Compensation Match for Employees Subject to the Public Employee's Pension Reform Act (PEPRA):** Effective January 1, 2023, only for eligible employees subject to PEPRA, the District shall make a matching contribution up to \$1,000 annually to participating employees' 401(k) deferred compensation account.
- **Increase the Over-Certification Premium for Senior Water Treatment Operators/Water Treatment Operators and Senior Water Distribution Operators/Water Distribution Operators:** Provide an increase to eligible employees from \$75 to \$95 for the first higher level than required certification. Maximum total increased from \$150 to \$190.
- **Vacation Sell Back:** The maximum number of hours any employee may choose to sell back to the District during the payroll year is increased from 120 to 200.
- **Safety Shoes:** Provides an increase to the benefit from \$215 to \$265.
- **Holiday:** Effective at adoption of MOU, add Juneteenth (June 19) as a new District holiday.

Non-MOU Items

- **One-time Pandemic Compensation Consideration:** Provide a one-time payment of \$1,000 to all employees actively employed by the District, as of January 25, 2022, as recognition of their service to the public throughout the COVID-19 pandemic. The District will issue payment on payroll on the second full pay period after adoption of the resolution.

SUSTAINABILITY

Economic

The FY22/23 adopted operating budget does not include funding for the first and second year fiscal obligations under the proposed MOU. The fiscal impact associated with this action will be absorbed within the existing budget appropriation. Funding for the additional years will be considered as part of the associated budget development process.

Social

Local 39 ratified its MOU on January 5, 2022.

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RESOLUTION NO. _____

APPROVE IMPLEMENTATION OF THE 2021-2025 MEMORANDUM OF UNDERSTANDING AND OTHER SPECIAL AGREEMENTS WITH INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 39 (IUOE LOCAL 39); AMEND POSITION RESOLUTION; REVISE SALARY RANGES, SALARIES AND WAGE RATES AND OTHER BENEFITS FOR EMPLOYEES REPRESENTED BY IUOE LOCAL 39, AND FOR SENIOR MANAGEMENT TEAM MEMBERS, MANAGERS, CONFIDENTIAL AND NON-REPRESENTED EMPLOYEES

Introduced by Director _____ ; Seconded by Director _____

WHEREAS, the Board of Directors of the East Bay Municipal Utility District (District) is charged with the responsibility to determine the number and character of positions required to carry on the functions of the District, and to establish an appropriate salary, salary range or wage for each position so created; and

WHEREAS, the District and the International Union of Operating Engineers, Local 39 (Local 39) have engaged in labor negotiations and have reached a tentative agreement on all terms contained in the Memorandum of Understanding between the District and Local 39 (Local 39 MOU); and

WHEREAS, Local 39 ratified the tentative agreement by a majority of its members on January 5, 2022; and

WHEREAS, the General Manager recommends that the Local 39 MOU be approved by the Board of Directors and that provisions of the MOU be implemented effective immediately, insofar as practicable, and made effective April 26, 2021, except as otherwise specified; and

WHEREAS, the General Manager recommends that the classification titles of Manager of Human Resources, Manager of Customer & Community Services, and Manager of Information Systems be re-titled to Director of Human Resources, Director of Customer & Community Services, and Chief Information Officer, respectively; and

WHEREAS, the General Manager recommends an increase in the wages and salaries for, and a change in benefits of Senior Management Team Members, Managers, Confidential and Non-Represented employees outlined in Exhibit B attached hereto;

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

Section 1. Ratification of MOU with Local 39

- a. The 2021-2025 MOU and other special agreements between the District and Local 39, a copy of which is attached hereto and incorporated herein as **Exhibit A**, is hereby approved.
- b. The Local 39 Salary Schedule appears as Appendix A of the Local 39 MOU, and shall be implemented with an effective date of April 26, 2021, and any interim amendments to District rules, regulations and policy statements required by the MOU shall be implemented with an effective date of January 25, 2022, except as otherwise specified herein or in Exhibit A.

Section 2. Salary Ranges—Local 39

- a. Section 4 of Board Resolution No. 35170-20 “Revise District Salary Ranges, Salaries, and Wage Rates” is amended and the monthly salaries of all employees occupying positions in classifications represented by Local 39 shall be adjusted and increased by 4% in accordance with the classifications and monthly wage rates listed in the salary schedule effective April 13, 2020, a copy of which is on file with the Secretary of the District.
- b. Unless specifically indicated otherwise, the monthly salaries established herein shall be effective April 26, 2021 for all such employees on the payroll on January 25, 2022 and for all such employees who retired from the District on or after April 26, 2021, up to and including January 25, 2022.

Section 3. One-Time Pandemic Compensation Consideration

A one-time payment of \$1,000 shall be made to members of Local 39, Senior Management Team members, managers, confidential employees and non-represented employees actively employed by the District as of January 25, 2022 as recognition of their service to the public throughout the COVID-19 pandemic. The District shall issue payment on the second full pay period after January 25, 2022.

Section 4. Amend Position Resolution No. 35227-21 to Authorize Changes in Job Classification Titles

Position Resolution No. 35227-21 shall be amended to authorize changes in the job classification titles of Human Resources Manager, Customer & Community Services Manager and Manager of Information Systems to Director of Human Resources, Director of Customer & Community Services, and Chief Information Officer, respectively. Except as set forth in this Resolution, there have been no changes to the wages and salaries assigned to these classifications resulting from the title changes.

Section 5. Implementation of Changes in Wages, Salaries and Benefits for Senior Management Team Members, Managers, Confidential and Non-Represented Employees

- a. The recommendation to increase the ranges, monthly salary rates and wage rates, and to

change the benefits for the employee groups designated below, as summarized in the report submitted by the General Manager, attached hereto and incorporated herein as **Exhibit B**, is hereby approved:

- i. Employees assigned to part-time, temporary construction, limited term, and other related non-represented classifications;
 - ii. Confidential employees in classifications that are subject to Merit Pay policy and procedure;
 - iii. District officers, assistant officers, civil service exempt and certain civil service management classifications assigned to the Management Salary Plan and including the following members of the Senior Management Team: General Manager, General Counsel, the Secretary of the District, the Director of Customer & Community Services, Director of Engineering & Construction, Director of Finance, Director of Human Resources, Director of Operations & Maintenance, Director of Wastewater, Director of Water & Natural Resources, Special Assistant III (Office of Diversity, Equity and Culture), Special Assistant IV (Legislative Affairs) and Special Assistant IV (Public Affairs).
- b. The salary schedules affected by the recommendations reflected in Exhibit B shall be amended and implemented with an effective date of April 26, 2021 and certain amendments to District rules, regulations and policy statements required by the recommendations shall be implemented with an effective date of January 25, 2022, except as otherwise specified herein or in Exhibit B.

Section 6. Salary Ranges for Confidential Classifications Subject to Merit Pay Policy and Procedure

- a. Section 5 of Resolution No. 35170-20 is amended and the monthly salary ranges shall be adjusted and increased by 4% in accordance with the confidential job classifications and monthly salary rates listed in the salary schedule effective April 13, 2020, a copy of which is on file with the Secretary of the District.
- b. The monthly wage rates established herein shall be effective April 26, 2021 for all employees on the payroll on January 25, 2022 and for all such employees who retired from the District on or after April 26, 2021, up to and including January 25, 2022.

Section 7. Monthly Wage Rates for Temporary, Temporary Construction, Part-Time, Limited Term and Other Related Non-Represented Classes

- a. Section 6 of Resolution No. 35170-20 is amended and the monthly wage rates for all employees assigned to temporary, temporary construction, part-time, limited term and other related non-represented classes shall be adjusted and increased by 4% in accordance with the classifications and monthly wage rates listed in the salary schedule effective April 13, 2020, a copy of which is on file with the Secretary of the District.

- b. The monthly wage rates established herein shall be effective April 26, 2021 for all such employees on the payroll on January 25, 2022 and for all such employees who retired from the District on or after April 26, 2021, up to and including January 26, 2022.

Section 8. Management Salary Plan

- a. Section 7 of Resolution No. 35170-20, which provides for compensation for District officers, assistant officers, civil service exempt and certain civil service management classes assigned to the Management Salary Plan and including the following members of the Senior Management Team: General Manager, General Counsel, Secretary of the District, Director of Customer & Community Services, Director of Engineering & Construction, Director of Finance, Director of Human Resources, Director of Operations & Maintenance, Director of Wastewater, Director of Water & Natural Resources, Special Assistant III (Office of Diversity, Equity and Culture), Special Assistant IV (Legislative Affairs) and Special Assistant IV (Public Affairs), is amended and the salary ranges for these classes in the Management Salary Plan shall be increased by 4% in accordance with the classifications and monthly wage rates listed in the salary schedule effective April 13, 2020, a copy of which is on file with the Secretary of the District.
- b. The monthly salaries established herein shall be effective April 26, 2021 for all such employees on the payroll on January 25, 2022 and for all such employees now retired from the District on or after April 26, 2021, up to and including January 25, 2022.

Section 9. Personnel Policies and Benefit Plans

- a. All existing Civil Service Rules, Policy Statements and Procedures, and other pertinent Resolutions shall be and hereby are amended to conform to the provisions referred to in this Resolution. The District will execute any and all further documents and perform any and all further acts reasonably necessary in carrying out the provisions of this section.
- b. The General Manager is hereby authorized to amend any and all existing group benefit contracts in order to conform to the negotiated agreements ratified herein for the term of those agreements without further action required from the Board provided, however, that the General Manager will comply with Resolution No. 31902, Motion 026-95 and Motion 221-97, which require Board approval for any subsequent substantive changes in benefits and for any rate increase that exceeds fifteen percent (15%).

BE IT FURTHER RESOLVED that any provision in any Resolution in conflict herewith is hereby superseded.

BE IT FURTHER RESOLVED that the budgets for Fiscal Years 2022 and 2023 and the terms and conditions for the payment of demands as previously established by proper Resolutions

of this Board, and as the same may have been from time to time amended, shall be adjusted as necessary in accordance with this Resolution.

ADOPTED this 25th day of January, 2022 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

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PREAMBLE

This Memorandum of Understanding (hereinafter referred to as Memorandum) entered into by East Bay Municipal Utility District (hereinafter referred to as the District) and International Union of Operating Engineers, Stationary Engineers, Local 39, (hereinafter referred to as the Union) has as its purpose the promotion of harmonious relationships between the District and the Union; establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work and other conditions of employment.

The provisions of this Memorandum supersede all previous agreements and understandings, whether written or oral, between the parties.

ARTICLE I. RECOGNITION

A. Exclusive Representation.

The District recognizes the Union as the exclusive representative of all regular, probationary, limited term (LT), temporary construction (TC) and part-time employees (except Worker Trainees) within the class titles of the formally recognized unit as enumerated in Attachment A, "Class Titles/Salary Ranges", which is attached hereto and made a part hereof.

The District shall furnish monthly a list of all employees appointed within the foregoing unit, and shall notify each new employee of the District's recognition of the Union as the exclusive representative in said unit. The monthly list shall contain the following information:

- 1) employee's full name;
- 2) hire date;
- 3) class title;
- 4) salary step;
- 5) hourly rate;
- 6) appointment type;
- 7) department;
- 8) mail stop (assigned work location);
- 9) home and personal mobile phone number;
- 10) personal email address; and
- 11) home and mailing address

In addition, if an employee is in unpaid status, transfers into or out of the bargaining unit, or is no longer employed by the District, the District agrees to include the following information in the monthly report.

- 12) identify employees in unpaid status;
- 13) identify employees on unauthorized leave;

- 14) reason no longer employed (retired, resigned, dismissed, etc.);
- 15) reason transferred into or out of the bargaining unit (promotion, demotion, transfer, etc.); and
- 16) effective date of change in status

Lists provided shall be in an excel spreadsheet or similar format agreed to by the Union and the District.

B. Representation of Employees in Limited Term and Temporary Construction Appointments.

The following applies to employees in LT and TC appointments in classifications represented by Local 39:

Employees who have Civil Service status in a District classification and who are promoted or transferred continue to retain rights to a position in their former Civil Service classification when the LT or TC position is completed.

The District has the obligation to assign such employees back to a position in their former Civil Service classification. Ending LT or TC appointments shall not be grievable.

LT/TC employees with Civil Service status will retain the benefits they were receiving at the time of acceptance of the LT/TC appointment. LT/TC employees without Civil Service status will be provided all District benefits except retirement.

An employee who promotes or transfers to an LT or TC position shall, while in an LT or TC position, receive continuous service credit for purposes of this Memorandum.

LT and TC employees are subject to all Memorandum provisions unless specifically exempted.

C. Automatic Payroll Deduction and Remittance

The District agrees to maintain the Union rights to payroll deduction and maintenance of membership.

Upon certification by the Union that an employee has signed a deduction authorization, the District will deduct the appropriate dues and or initiation fees from the employee's pay, as established and may be changed from time to time by the Union, and remit such dues to the Union. Employee requests to cancel or change deductions must be directed to the Union rather than the District. Deductions will continue unless the employee mails a written revocation to the Union in accordance with the terms of the authorization form, or absent any such terms, by mailing a written revocation to the Union that is postmarked during the thirty (30) calendar day period immediately prior to the annual anniversary on which the employees signed the authorization form.

The effective date of the dues deductions for employees shall be made from the pay due employees on the first payday of each calendar month following the Union's notification to the District of the dues deduction authorization. The effective date of any revocation to an existing authorization will be effective on the first pay day of the next calendar month following the Union's written notice of revocation no less than seven (7) calendar days prior to the first payday of the month. Requests to begin or revoke dues that are received with less than seven (7) calendar days prior to the first payday of each month will be processed the following month.

D. **Indemnification**

The District shall not be liable to the Union by reason of the requirements of this Article for the remittance or payment of any sum other than that constituting actual deductions made from the pay earned by the employee. In addition, the Union shall indemnify and save the District harmless from any liability resulting from any and all claims, demands, suits, or any other action arising from compliance with this Article, or in reliance on any list, notice, certification, or authorization furnished under this Article. The Union agrees to refund to the District any amounts paid to it in error.

ARTICLE II. DISTRICT RIGHTS

- A. **Definition of Rights.** The rights of the District include, but are not limited to, the exclusive right to determine the missions of its constituent departments and divisions; set standards of services; determine the procedures and standards of selection for employment and promotion; direct and assign its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of District operations; determine the methods, means and personnel by which District operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work provided , however, that the exercise of such District rights shall not conflict with the express provisions of this Memorandum.

District and Union mutually intend and agree that District may unilaterally exercise any and all rights reserved by this Article without further meeting and conferring with the Union. It is further mutually agreed that Union and District have met and conferred on all matters reserved to District by this Article and Union does expressly waive any and all rights to further meet and confer on such issues, or any of them, during the period of this Memorandum. Any dispute concerning the interpretation or application of District's rights shall be deemed a grievance and must be processed under Article .

The District agrees to apply the rights reserved by this Article in a prudent and reasonable manner; furthermore, the District shall consider the impact that the application of these rights may have on the work force, before applying these rights. The District agrees to make reasonable efforts to mitigate any significant impacts arising out of the application of any and all rights reserved by this Article 15.

ARTICLE III. NO DISCRIMINATION/HARASSMENT

- A. **No Discrimination.** There shall be no discrimination of any kind by the Union or the District against any employee, to the extent the applicable law prohibits such discrimination because of gender identity or expression, race, color, religious creed, national origin, ancestry, age, physical or mental disability (including AIDS and HIV), medical condition (cancer), genetic information, marital or domestic partnership status, sexual orientation, veterans or any other status protected by state and federal laws.

To the extent applicable law prohibits, there shall be no discrimination because of lawful Union activity, Union membership, or non-membership. Grievances alleging discrimination because of political affiliation, Union membership, non-membership, or any lawful union activity, are filed with the Manager of Employee Relations. Grievances alleging discrimination based on an EEO protected category are filed in accordance with District Procedure 227.

- B. **Harassment, Disparate Treatment and Inappropriate Behavior.** In addition to behavior violations of Section A. above, the following behavior will not be permitted, tolerated, nor condoned:

- (1) Dishonesty, including providing false information to District Management about the performance of an employee or circulation of private personnel files;
- (2) Abusive, threatening, or intimidating behavior, gestures or language;
- (3) Physical threats or physical striking of an employee;
- (4) Repeated threats of discipline without counseling warning, investigations, or a progressive disciplinary approach, including untimely discipline.
- (5) Inequitable treatment regarding the application of District policies, District rules, this MOU, or those items listed in Section A above;
- (6) Disrespect toward each other, regardless of position, status, or job responsibilities.

- C. **Accommodation for Disabled Employees.** The Union understands that the District has a lawful obligation under Federal and State law to make reasonable accommodations for qualified individuals with disabilities. Any accommodation will be on a case-by-case basis, and will not be precedential, or constitute a past practice for anyone other than a qualified individual with a disability.

ARTICLE IV. UNION ACTIVITIES

- A. **Union Stewards.** Employees selected by the Union to act as Union representatives shall

be known as "stewards". The Union may select six stewards. The names of employees so selected and the areas to which they are assigned shall be certified in writing to the District by the Union Business Representative. In the absence of the steward, an alternative may be appointment by the Union. Stewards' duties, functions, and responsibilities shall be limited to investigation activities sufficient to report the matter to the appropriate Business Representative and attending new employee orientation and meetings with the District. Only these activities will be paid District time. Stewards during the regular working hours, shall be permitted to investigate activities without loss of time or pay, provided that this is done in a manner consistent with the District operating requirements, and the steward is first excused by their District supervisor. Permission to perform steward functions shall not be unreasonably denied.

B. District Board Meetings.

1. Attendees.

- a. Consistent with District operating requirements, the Union may designate two (2) employee representatives to attend each District Board meeting and workshop (which meeting is otherwise open to the public), including the Retirement Board meeting, without loss of time or pay, during their regular scheduled work hours provided that the employee attends the meeting. The Union may designate one employee representative from each organization (Treatment and Distribution).

Authorization to attend such Board meetings must be obtained from the Manager of Employee Relations no later than three (3) regular business days (M-F) prior to the time of such meetings.

- b. District employees who are official representatives of the Union shall be given reasonable time off without loss of time or pay to attend meetings with management representatives where matters within the scope of representation are being considered.
- c. 401(k)/457 Committee. In addition, the Union may designate two (2) employees to serve on the 401(k)/457 Deferred Compensation Committee without loss of time or pay. The Union may designate one employee representative from each organization (Treatment and Distribution).

2. District Vehicle Use. Union representatives are encouraged to use a District sedan or pick-up truck, when available, to attend these meetings. When a District vehicle is not available, the employee shall drive their own vehicle and will be eligible for reimbursement as described in Article VI, Section I.

C. Communication with Employees. The Union shall have designated for official Union business a specific portion of District bulletin boards with space adequate for the posting of 4 sheets of paper (8.5 inches by 11 inches) or a contiguous area approximately 17

inches wide by 22 inches long. Items placed in the Union section of District bulletin boards shall be signed by an officer of the Union and shall not contain salacious or inflammatory material that is derogatory towards the District, its employees, or its policies. The Union may distribute materials to employees within the classifications it represents through District mail and email distribution channels, with all such mailings subject to the prior approval of the Manager of Employee Relations. These provisions may be revoked in the event of abuse after the Manager of Employee Relations consults with the Union.

- D. Visits by Union Representatives.** The District agrees that accredited non-employee representatives of the Union, whether local, district council, or international representatives, shall have access to District premises for the purpose of meeting with Union officials or employees when investigating grievances or determining compliance with this Memorandum. Arrangements for visits to District premises for these purposes shall be made through the Manager of Employee Relations. Employee meetings with non-employee Union representatives shall not be paid for by the District.
- E. Limitations on Union Activities.** Activities involving internal management of the Union such as collection of dues, assessment of other funds, membership meetings, campaigns for office, distribution of literature or conducting of membership drives, shall not be conducted during working hours, in District work areas, or on District property without prior approval of the Manager of Employee Relations. The election of stewards on non-working time may be conducted at work sites when it does not interfere with the operations of the District. Prior notice of two (2) work days shall be given to the work unit supervisor.
- F. New Employee Orientation.** The District agrees to provide the Union notice of all new employee orientations (no matter how few participants) at their earliest opportunity, but no less than ten (10) calendar days prior to each event. The District further agrees to provide the Union a list of unit employees scheduled to attend at least five (5) business days prior to the event. The list shall include all employee's information contained in Article I Recognition. A. Exclusive Representations. Items 1-11. New employees will be scheduled to attend New Employee Orientation, which is held every two months. The District will make every attempt to ensure that employees are advised of their scheduled New Employee Orientation date within thirty (30) days of hire. In the event that the orientation is at maximum capacity and the employee cannot be scheduled, the employee will be scheduled for the following orientation date.

As part of the District's new employee orientation, the Union shall have thirty (30) minutes to provide information and answer questions to new employees who are in classifications covered by this Memorandum of Understanding. The Union may designate one (1) employee representative to attend each new employee orientation without the loss of time or pay, during their regularly scheduled work hours. In lieu of attending the New Employee Orientation and when there is less than five (5) new employees, the Union may designate one (1) employee representative to meet with the new employees without loss of time or pay, during their regularly scheduled work hours.

ARTICLE V. SALARY AND WAGE SCHEDULE**A. Wages**

1. **First Year Increases.** Effective April 26, 2021, the monthly salary rates of District employees covered by this Memorandum of Understanding will be increased by 4.0%.
2. **Second Year Increases.** Effective April 25, 2022, the monthly salary rates of District employees covered by this Memorandum of Understanding shall be increased by 4.5%.
3. **Third Year Increases.** Effective April 24, 2023, the monthly salary rates of employees covered by this Memorandum of Understanding shall be increased by the February 2023 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) plus 0.50%. The minimum increase shall be 2% and the maximum increase shall be 6.5%.
4. **Fourth Year Increases.** Effective April 22, 2024, the monthly salary rates of employees covered by this Memorandum of Understanding shall be increased by the February 2024 San Francisco/Oakland Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) plus 0.50%. The minimum increase shall be 2% and the maximum increase shall be 6.5%.

B. Pay Period. Salaries shall be paid biweekly on Friday of the appropriate week. In the event that this day is a holiday, the preceding day shall be the payday.

C. Twenty Year Wage Adjustment.

1. Each employee who is employed by the District prior to January 1, 2013 or who is an employee covered by the 1980 Retirement Plan shall be entitled to a wage adjustment following completion of twenty (20) years of continuous full-time District service. The adjustment for such employees shall be 2.75% (plus or minus no more than one dollar per month) added to the monthly salaries set forth, exclusive of overtime, night shift differential or standby pay. Employees who receive this benefit are not eligible for the benefit listed in Section C.2.
2. Employees who are covered by the 2013 Retirement Plan shall be entitled to a salary increment of 3.75% (plus or minus no more than one dollar per month) following completion of twenty (20) years continuous full-time District service. The adjustment shall be added to the monthly salaries set forth, exclusive of overtime, night shift differential or standby pay. Employees who receive this benefit are not eligible for the benefit listed in Section C.1.

D. Work Out-of-Classification. When an employee temporarily assigned to perform the full range of duties replaces another employee in a higher classification, they shall be paid an additional 5% of their pay (including shift differential) or the beginning of the

range of the higher classification, whichever is greater, for such work. Assignments to perform the work of a higher classification pursuant to this Section, will be tracked by hours worked and shall not exceed 480 hours in a calendar year. By use of this Section, the District will not attempt to avoid District Civil Service Rules and the filling of regular full time positions. The District will make reasonable efforts to distribute work-out-of-class on an equal and rotational basis for qualified employees, beginning with the most senior unit member.

E. New Classifications. The Union recognizes the right of the District to establish new job classifications and to amend existing class descriptions to reflect changes in assigned duties and responsibilities. In the event a substantial change is made in the description of a class represented by the Union, the District will advise the Union of such change and of the salary for the class. Upon request of the Union, the parties shall meet and confer on the salary for the classification. Establishment of salary is not subject to the grievance procedure as contained in this Memorandum.

F. Payment for Licenses/Certificates.

1. General Provision. The District shall pay all normal and regular fees incurred in the obtaining of any water treatment and/or distribution licenses or certificates that are required by the District for the job classification of the employee. It is understood that any late or penalty fees, which are not caused by District action, shall not be included in normal or regular fees. The District shall pay actual fees for employees who obtain higher level licenses or certificates than required for their class but within their normal class series. Employees shall be granted paid time to take tests for any licenses or certificates required for the employee's current job classification.

2. Senior Water Treatment/Water Treatment Operators Over-Certification Premium

Payment. Employees in the Water Treatment Operator classification who obtain a Water Treatment Operator's certificate at a higher level than required for their classification shall receive a \$95.00 per month premium. If they receive a second, higher classification certificate, they will receive an additional \$95.00 per month, for a maximum total of \$190.00 per month premium. Employees on unpaid status for two (2) consecutive pay periods, due to illness or injury, will have their over-certification premium payments discontinued until they return to work. Employees who request leave without pay (LWOP) for reasons other than illness or injury, will have their over certification premium payments discontinued effective the first full pay period after their leave begins, and their payments will resume once they have returned to work.

3. Senior Water Distribution Operators/Water Distribution Operators Over-Certification Premium Payment. Employees in Water Distribution classifications who obtain a Water Distribution Operator's certificate at a higher level than required for their classification shall receive a \$95.00 per month premium. If they

receive a second, higher classification certificate, they will receive an additional \$95.00 per month, for a maximum total of \$190.00 per month premium.

Employees on unpaid status for two (2) consecutive pay periods, due to illness or injury, will have their over-certification premium payments discontinued until they return to work. Employees who request leave without pay (LWOP) for reasons other than illness or injury, will have their over certification premium payments discontinued effective the first full pay period after their leave begins, and their payments will resume once they have returned to work.

G. Salary on Promotion. The new base salary of an employee who is promoted shall be either the beginning step of the new class, or the step in the salary schedule in the new class which is at least 5% above the employee's current base salary, whichever is the greater amount, provided that in no instance shall the employee's base rate exceed the maximum salary wage rate established and in effect for the new class.

H. Adjustment for Overpayments. In the event an employee is erroneously overpaid by the District, regardless of fault, the District shall provide written notification to the affected employee detailing the date(s) the overpayment occurred, and the amount of the overpayment. Upon obtaining written authorization from that employee to make the deductions to recoup the overpayments, the District shall recover overpayment by making the agreed upon deductions from the employee's regular paycheck. Said deductions will continue for as many consecutive pay periods as necessary until full overpayment is recovered.

When the deductions are necessary to recoup insurance premiums or recover health and welfare or pension contributions, the District shall not commence recovery by payroll deductions until written notification has been given to the employee at least ten (10) working days in advance, which includes details of the overpayment, and provides the employees with an opportunity to respond before any deduction is made. If an employee disputes the overpayment, the District will meet with that employee and their chosen representative to resolve the dispute. The District shall recover overpayment by deducting from the employee's regular paycheck either the full amount of the overpayment or ten percent (10%) of the employee's gross salary, whichever is less, and continue said deductions for as many consecutive pay periods as necessary until full payment is recovered. The District shall not seek written authorization to recoup insurance premiums and/or health and welfare or pension contributions from the employee.

ARTICLE VI. DAYS AND HOURS OF WORK

A. Workday. The standard workday shall consist of eight (8) consecutive hours of work (exclusive of any unpaid meal period) within a 24-hour period beginning at 12:00 midnight except as otherwise mutually agreed.

B. Workweek. The standard workweek shall consist of five (5) consecutive workdays

within a seven (7) day period beginning at 12:01 a.m. Monday and ending at 12:00 midnight Sunday, except as otherwise mutually agreed.

- C. **Alternate Work Schedules.** Alternative work schedules shall be offered to employees as an option in accordance with the Compressed Workweek Guidelines. Notwithstanding Section A and B above, upon request of an individual employee or a group from the work unit, in accordance with the Compressed Workweek Guidelines, the District will investigate and may change the work schedules of that employee, or employees within any particular work unit, provided the work or the operation of the work unit or plant will not be unduly impaired by such adjustment. Such adjustment shall not affect the total length of the workweek. The decision of the District on granting or refusing to grant a change in the beginning and ending workday hours or workweek shall be final and conclusive and shall not be subject to the grievance procedure of this Memorandum.

When a shift pattern is requested and agreed to by the supermajority of at least 75% of employees of the classification permanently assigned within a work unit or plant and approved by the District, all new hires, transfers or promotions within the classification that work the shift pattern will be required to adhere to that schedule subject to the requirements of the Compressed Workweek Guidelines. The new permanent shift assignments shall be decided based on classification seniority among employees in the affected plant.

- D. **Continuous Operations.** In operations in which there is regularly scheduled employment for twenty-four (24) hours per day, seven (7) days per week, the hours of work shall consist of eight (8) consecutive hours per workday and, except during scheduled rotation or relief operation, five (5) consecutive days per workweek (except where alternate schedules are approved by the Division Manager for the work unit).

All members of Local 39 are considered continuous operations for the entire length of this MOU.

In continuous operations, except where such occurs on a regular, recurring basis as part of a rotating shift schedule, employees who are called back to work an eight (8) hour shift after being off their previous shift eight (8) or fewer hours shall be paid one (1) hour at the overtime rate in addition to their pay for such time worked.

When a treatment facility is shutdown as part of a planned seasonal shutdown, employees assigned to work at that facility will be moved to the day shift for the duration of the facility shutdown and will be paid their regular shift differential for the first two weeks of the plant shutdown.

Employees in continuous operations who are required to be at their work stations for eight (8) consecutive hours shall eat during working hours, and shall take their breaks in the general vicinity of their work stations.

In operations where regularly assigned work schedules are changed, the work schedule

shall be posted, and changes in schedule shall be posted a minimum of seven (7) calendar days in advance of the effective date of change. In those instances when the District does not meet this advance notice requirement, the operator shall be paid a premium of one (1) additional hour at the overtime rate for the next shift he/she works.

Penalty Pay

1. Roving Operators and unassigned Operators shall be notified 120 hours (5 days) in advance of changes in their work schedules. This advance notice shall not apply in cases of illness or other emergencies. In those instances when the District does not meet this advance notice requirement, the Roving Operator shall be paid a premium of one (1) additional hour at the overtime rate for the next shift he/she works.
2. Roving Operators and unassigned Operators shall be notified 24 hours in advance of changes in work location. In those instances when the District does not meet this advance notice requirement, the Roving Operator shall be paid a premium of one (1) additional hour at the overtime rate for the next shift he/she works.

Seniority in class will determine the assignment of shifts.

- E. Changes in Days and Hours Of Work.** It is understood that all other provisions of this Article notwithstanding, the hours of work, workday, and workweek practices in effect on the effective date of this Memorandum may be continued. Changes in such practices shall be subject to prior notification to the Union.

Notwithstanding the above, the District shall be permitted to schedule shifts one (1) hour earlier or later than current shift starting times. If such shift creates work in two (2) different calendar days, all time will be treated as if it were worked in the calendar day containing the majority of the workday. For example, if the start of the workday is changed from 12:00 midnight to 11:00 p.m., the employee will be paid as if all work commenced at 12:00 midnight.

The District will not temporarily change the scheduled workday or workweek of employees for the purpose of avoiding overtime payments. Employees shall be compensated for time worked in excess of their regularly scheduled workday or workweek as provided in Article VII, Section A of this Memorandum of Understanding. Nothing herein shall be interpreted as limiting the District's right to reschedule shifts on a long-term or permanent basis as provided in this Article.

- F. Rest Periods.** Employee work schedules shall provide for fifteen (15) minute rest periods during each one-half (1/2) of the workday. Rest periods shall be scheduled so as not to interfere with efficient operations of the District.
- G. Meal Periods.** Employees shall be granted a thirty (30) minute lunch period, without pay, except as otherwise provided, scheduled at approximately the middle of the

workday. Time taken for meals eaten away from the work location shall be unpaid time.

- H. Clean up Time.** Where the nature of the work is such that cleanup is required, work schedules shall be arranged to allow reasonable time for that purpose prior to the end of the workday. The District shall provide facilities for cleanup.
- I. Reimbursement For Use of Private Car.** The District will reimburse employees at the rate identified by the American Automobile Association (AAA) composite average per mile cost in the 15,000 miles per year category for each mile they are authorized and required to drive their private cars within the employees' normal areas of operations in the performance of their assigned duties. The District will adjust this amount to conform to the most recent published rate. This information is obtained from the Annual Edition of Your Driving Costs, published by the American Automobile Association. In the event such publication is not updated or published during the calendar year, the standard mileage rate established by the prior year's published rate will remain in effect until December 31st of the current year. Thereafter, effective January 1st of the next calendar year, the IRS standard mileage rate for that year will be in effect until such time the AAA rate is updated or published.
- J. Fatigue Time.** Employees shall receive full pay for fatigue time if they have worked overtime and the overtime has been completed with less than eight (8) hours between the completion of the overtime and the start of the employee's next regularly scheduled shift. Fatigue time can be taken at the beginning or end of the shift. Fatigue time shall be calculated as follows:
- a) Subtract the ending time of overtime from the beginning time of the next regular shift.
 - b) Subtract that figure from eight (8) hours.
 - c) The difference is the fatigue time due to the employee.

Example. OT is worked from 1:00 a.m. until 4:00 a.m. Regular shift begins at 8:00 a.m. The difference is 4 hours between the end of OT and the beginning of the next regular shift. (8 hours - 4 hours = 4 hours of fatigue time due to the employee.)

Employees shall not receive fatigue time if: (a) the overtime is completed more than eight (8) hours prior to the start of their next regularly scheduled shift, or (b) employees are called out to perform overtime work within four (4) hours of the start of their next regularly scheduled shift, or (c) they are assigned to continuous operations.

Fatigue time must be taken during the first or last part of the next regularly scheduled workday. Employees receiving fatigue time shall notify their immediate or after hours supervisor at the completion of the overtime work, if

possible, or a minimum of one (1) hour before the start of their next regularly scheduled shift when their fatigue time will be taken.

ARTICLE VII. OVERTIME

A. Rate of Pay.

1. Standard Rate of Pay. One and one-half (1-1/2) times the employee's regular hourly rate of pay shall be paid for all work performed in excess of eight (8) hours per workday or forty (40) hours per workweek except as provided in Article VI, Section B. Time worked at the overtime rate due to Call Time (as defined in Article IX) overlap of the employee's regular workday shall be counted in determining the eight (8) hours per workday or forty (40) hours per workweek required to establish a base for overtime. There shall be no pyramiding of overtime pay.

2. Holiday and Compressed Work Week:

Article VII of the MOU must be read in conjunction with the Compressed Workweek Guidelines with respect to holidays only. Compressed Work Week Holiday Work. When a holiday(s) falls on the employee's nine-hour day (or other regularly scheduled workday that is longer than 8 hours), the employee may make up the shortfall of hour(s) within the same work week and the additional hour(s) will be paid at the employee's regular rate of pay. If the employee fails to account for the additional hour(s), the hour(s) will be charged to vacation or compensatory time off on the employee's timesheet. If the employee does not have any available vacation or compensatory time off accrued the time will be unpaid.

- B. Limitation and Distribution of Overtime. No employee shall be required to work more than sixteen (16) hours in any twenty-four (24) hour period. If an employee works thirty-two (32) hours in a pay period on emergency overtime work, that employee will not be subject to non-emergency necessary overtime work in the same pay period unless the employee volunteers for such work. An employee shall be obligated to work non-emergency necessary overtime work to the extent that the employee has not worked thirty-two (32) hours in a pay period as emergency overtime work, (defined below) i.e., emergency overtime hours worked shall reduce the hours' limitation for non-emergency necessary overtime in the same pay period.

- C. Voluntary Overtime Lists. Work units having overtime work will establish lists of employees who are available to work overtime on a voluntary basis. The initial order of call when the lists are established shall be by seniority; thereafter, employees will be called on a rotating basis subject to the operating procedure of the work unit. The operating procedure for such lists shall be developed by each work unit and shall take into account the nature of the overtime work available, skills required to do the overtime

work, and the operational requirements of the work unit.

- D. **Emergency Overtime.** Emergency or unscheduled overtime is defined as overtime that is not scheduled a minimum of eight (8) or more hours in advance of the overtime work.

All employees are subject to working in emergency situations. An emergency includes, but is not limited to, situations which involve disruption of service to customers and actual or threatened danger of injury to person or damage to property or threat to public health and safety.

- E. **Non-Emergency Necessary Overtime.** The District will request volunteers for all available necessary overtime. Overtime work shall be distributed as equally as possible among qualified employees working within the same job classification, within the same work unit. No volunteer may work more than sixteen (16) consecutive hours without approval of the Division Manager.

No employee will be assigned to work more than sixteen (16) hours in any 24-hour period or to work more than thirty-two (32) hours per pay period of non-emergency necessary overtime work. The parties emphasize the distribution commitment contained in Article VII, Section B, to minimize the impact of assigned overtime on an individual employee. In the event an insufficient number of employees volunteer for necessary overtime, the District shall assign employees to fill vacancies (on a rotating basis) in inverse seniority order in the affected unit and classification. Whenever an employee is on standby, the District will not assign other overtime work to that employee unless the entire rotation of their classification has been exhausted and overtime is still necessary. However, an employee shall be permitted to volunteer for overtime during a week the employee is also on standby.

With District approval, employees may trade all overtime assignments. Until a trade is approved, all overtime assignments are part of an employee's job responsibilities.

Employees are expected to comply with overtime assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to work assigned or scheduled overtime, and who notifies the District a minimum of one (1) hour before the employee is scheduled to report to work, shall not be subjected to disciplinary action for failure to work.

- F. **Compensatory Time.** Compensatory time will be provided at 1.5 hours for each hour of overtime worked. Employees may receive a maximum of 75 hours compensatory time in lieu of paid overtime in a payroll year. Payroll year is defined as the period beginning with the first pay period for which pay is received in January and ending with the last pay period for which pay is received in December. All overtime worked after an employee has earned 75 hours of compensatory time in a payroll year will be paid at the appropriate overtime rate. All employees who have earned compensatory time at the end of the last pay period, for which pay is received in December, shall have that

compensatory time carried over as compensatory time into the next (following) payroll year. All compensatory time carried over from the last payroll year to the next must be used by the end of the next payroll year or it will be paid out to the employee at the end of the next (following) payroll year at the applicable FLSA rate. Any compensatory time used in the next (following) year will first be deducted from any compensatory time that was carried over from the last payroll year, if any. Compensatory time earned after the last full pay period of the payroll year, but prior to the end of the calendar year, will be credited and included in the accrual for the following payroll year. Use of accumulated compensatory time shall be scheduled and approved by the District so as not to disrupt the operation of the work units.

- G. **Paid Meals.** Each employee who works continuously two (2) hours or more immediately after a regular scheduled shift workday shall be paid a meal allowance of \$20.00. In the event such an employee continues to work beyond such first two (2) hours, and such work is not part of the regular shift, the employee shall be paid an additional meal allowance of \$20.00 for each successive four (4) hour period so worked. In the event an employee works overtime that is not contiguous to their regular shift, the employee shall be paid a meal allowance of \$20.00 for each four (4) hour period worked.

ARTICLE VIII. STANDBY PAY

- A. **Compensation Rates.** An employee assigned to be on call during non-working hours shall receive a premium of twenty-five percent (25%) of their base pay during the standby period, provided such employee makes themselves available and responds to all calls for work. Overtime work performed during a standby period shall be paid at the rate of one and one-half (1-1/2) times the straight-time hourly rate for the time worked exclusive of such standby premium.

In the event an employee assigned to standby is not called for overtime work because of District error, which is verified by the District, the employee shall receive payment equivalent to 2.5 hours at their overtime rate exclusive of special or premium pay provided such employee makes themselves available and responds to all standby calls for overtime work during that week.

When an employee is on standby on a day that is designated as a District holiday, the employee shall receive standby pay for three (3) eight-hour standby periods on that holiday, in addition to receiving regular holiday pay.

- B. **Compliance.** Employees are expected to comply with standby assignments and failure to do so shall subject an employee to appropriate discipline. However, an employee who, because of illness or other compelling emergency, is unable to be available for standby, and who notifies the District at the onset of the illness or at the time they become aware of the compelling emergency, shall not be subjected to disciplinary action for failure to be available. Such employee shall only be compensated for the actual time he/she was available for standby.

ARTICLE IX. CALL TIME

- A. **Minimum Call Time Period.** Employees called to work outside of their regularly scheduled shift shall be paid for a minimum of two and one-half (2-1/2) hours at the appropriate overtime rate.
- B. **Shift Overlap.** If the call-time work assignment and the employee's regular shift overlap, the following shall occur:
1. The time that the minimum call-time guarantee overlaps the employee's regular shift will be paid as a premium using a separate payroll code and will not affect the employee's regular shift or hours. Minimum call-time overlap is a premium pay and is not subject to retirement withholding and will not be counted toward retirement service credit.
 2. The District and employee will pay retirement contributions for the regular shift hours worked by the employee at the regular rate of pay and the employee will receive service credit in the Retirement System for the employee's regular shift hours.
 3. No retirement contributions will be made for overtime compensation paid to the employee for the minimum overtime guarantee and no retirement service shall be credited for overtime work.
- C. **Rest/Meal Break.** If an employee is called to start work less than two and one-half (2-1/2) hours before the start of their regularly scheduled shift, the employee shall be allowed a fifteen (15) minute break prior to the start of his/her shift. If the employee is called to start work two and one-half (2-1/2) or more hours before the start of their regularly scheduled shift, they shall receive a thirty (30) minute paid meal break prior to the start of their regular shift.

ARTICLE X. SHIFT DIFFERENTIAL

- A. **Definition and Compensation for 8-Hour Shifts:** Employees who work a scheduled eight (8) hour shift between the hours specified below shall receive shift differential as follows:
1. Scheduled shifts beginning between 12:00 p.m. through 7:59 p.m., an additional 10% of their hourly rate per hour.
 2. Scheduled shifts beginning between 8:00 p.m. through 3:59 a.m., an additional 15% of their hourly rate per hour.
- B. **Definition and Compensation for 12-Hour Shifts:** Employees who work a scheduled twelve (12) hour shift between the hours specified below shall receive shift differential

as follows:

1. Scheduled shifts beginning between 5:00 a.m. through 4:59 p.m., no shift differential.
 2. Scheduled shifts beginning between 5:00 p.m. and 4:59 a.m., an additional 15% of their hourly rate per hour.
- C. **Continuous Operations.** In continuous operations, when an employee's shift is extended by additional hours either before or after the normal shift, overtime compensation shall be based on the hourly rate for the shift that was extended or actually worked, whichever is greater.

ARTICLE XI. CONTRACTING AND SUBCONTRACTING

- A. **Right to Contract.** The rights to contract and subcontract are vested exclusively in the District; provided, however, if such contracting or subcontracting work would result in the layoff of an employee in a classification set forth in Attachment A, the District will consult with the Union, prior to such contracting or subcontracting, in an attempt to avert, by reassignment or other reasonable means, the layoff of such employee.

ARTICLE XII. LEAVE PROVISIONS

A. **Holidays.**

1. **Legal Holidays.**

(a) The following legal holidays will be granted eligible employees:

New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
Lincoln's Birthday	February 12
Washington's Birthday	Third Monday in February
Cesar Chavez' Birthday	March 31
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	
Christmas Day	December 25
Day After Christmas	December 26

Floating Holiday

See Section 4

2. Alternative Days. When a holiday falls on Sunday, the following Monday shall be observed as the holiday. When a holiday falls on Saturday, the preceding Friday shall be observed as the holiday. This paragraph does not apply to shift employees in continuous or seven (7) day operations (see paragraph XII5d).
3. Eligibility. Full-time employees shall receive the above holidays off credited as 8 hours when both the following conditions are satisfied:
 - (a) The employee works or is on Authorized Leave (with or without pay) on their scheduled workday immediately before and immediately after the holiday; and
 - (b) The employee is in a paid status for at least 8 hours within the payroll period in which the holiday falls.
4. Floating Holiday. In addition to the holidays specified above, each employee shall receive one floating holiday per calendar year. If the floating holiday is not used by the end of the payroll year, defined as the last period for which pay is received in December, it shall be forfeited for that calendar year. Use of this floating holiday after the payroll year but prior to the end of the calendar year will be charged against the following year's entitlement.
5. Holiday Pay.
 - (a) Employees who work on a designated holiday shall receive overtime pay for hours worked in addition to their regular straight time pay.
 - (b) Employees whose scheduled day off falls on a designated holiday shall receive a day's pay at the straight-time rate; such employees who work on a designated holiday shall, in addition, receive overtime for hours worked.
 - (c) In the event that a holiday falls on an employee's day off, (including an employee's compressed day off) the employee will be credited with eight (8) hours of vacation, or the employee may choose to receive holiday pay, to be added to 80 hours of regular pay (a total of 88 hours at regular rate for the pay period). If the employee does not indicate that they wish to receive holiday pay, the holiday will be added to their vacation accrual.
 - (d) In continuous operations and seven (7) day operations, the employee will receive the actual holiday according to the stated conditions, instead of the District observed holiday.

- (e) In the event that a holiday(s) falls on the employee's nine-hour day (or other regularly scheduled workday that is longer than 8 hours), the employee's ability to make up the shortfall of hour(s) shall be governed by section Article VII.A.2.

6. Holiday Pay Retirement Contributions and Career Credit

- (a) Eight Hour Work Schedule. Employees who work in a 24-hour continuous operation or a 7-day per week operation and are scheduled to work on a holiday and actually work on the holiday as specified in this MOU shall receive the following:
 - 1. Eight (8) hours of regular straight time pay for the holiday worked that will be subject to retirement contributions from both the District and employee and be counted toward retirement service credit.
 - 2. Eight (8) hours of holiday pay at the straight time rate that the employee may choose either to receive as pay or add to their vacation accruals. If taken as pay, holiday pay is a premium pay and is not subject to retirement withholding and will not be counted toward service credit.
 - 3. Four (4) hours of holiday premium at the regular straight time rate that may be paid or added to compensatory time accruals in accordance with this MOU. If taken as pay; holiday premium pay is not subject to retirement withholding and will not be counted toward service credit. The four (4) hours of holiday premium pay will be reported using a separate payroll code.
- (b) Compressed Work Week Schedule. Employees who work in a 24-hour continuous operation or a 7 day per week operation and work a compressed workweek schedule and are scheduled to work on a holiday and actually work on the holiday as specified in this MOU between the District and Local 39 shall receive the following:
 - 1. Nine (9), ten (10) or twelve (12) hours of regular straight time pay for the worked holiday depending on the duration of their regularly scheduled workday, that will be counted toward retirement service credit and be subject to retirement contributions from both the District and employee.
 - 2. Eight (8) hours of holiday pay at the straight time rate that the employee may choose either to receive as pay or add to their vacation accrual. If taken as pay, holiday pay is a premium pay

and is not subject to retirement withholding and will not be counted toward retirement service credit.

3. Holiday premium pay equal to one-half of the duration of the employee's regularly scheduled workday at their regular straight time rate that may be paid or added to their compensatory time accruals in accordance with this MOU. If taken as pay, holiday premium pay is not subject to retirement withholding and will not be counted toward retirement service credit. The holiday premium pay equal to one-half of these regularly scheduled hours worked will be reported using a separate payroll code.
4. No retirement contributions shall be taken from overtime compensation paid to the employee for holidays and no retirement service credit for overtime work.
7. Holiday During Vacation. Holidays that fall during a vacation shall not be charged against vacation credits.
8. One Day Special Birthday Float. Each employee shall be granted special leave for their birthday based on the employment status of that employee, not to exceed a total of eight (8) hours within the payroll year of their birthday. The District will make every reasonable effort to accommodate an employee's request for a specific special leave day off, subject to the operational needs of the District. This birthday float must be taken by the beginning of the last pay period in December.

B. Vacations

1. Eligibility and Allowance. Eligible employees shall accrue vacation leave on the basis of hours paid as follows:

<u>Continuous Service Years</u>	<u>Vacation Leave Hours Per Pay Period</u>	<u>Vacation Days Per Year</u>
1st through 4th	3.692	12
5th through 9th	4.616	15
10 years	5.539	18
] 1 years	5.539	18
12 years	5.539	18
13 years	5.847	19
14 years	6.154	20
15 years	6.462	21
16 years	6.770	22
17 years	7.077	23
18 years	7.385	24
19 and subsequent	7.693	25

2. Initial Use. At any time after completion of six (6) months of service, an eligible employee may use the six (6) vacation days credited for the first six (6) months of employment. Thereafter, employees may use vacation leave equal to the accrued vacation leave credited to their account.
3. Use of Vacation. A maximum of 50 vacation leave days (400 hours) may be deferred by employees annually unless there is a specific written authorization from the General Manager to exceed such limits. Any employee with deferred vacation accrued in excess of 50 days (400 hours) as of December 31 shall have their vacation leave balance adjusted and reduced to 50 vacation days (400 hours) via the two following options (or combination thereof):
 - (a) use vacation hours in excess of 400 hours as of December 31 within the first three months of the next year; and/or
 - (b) being paid for all unused hours in excess of 400 hours as of December 31 on the pay date of the second paycheck in April of the next payroll year.
4. Choice of Vacation.
 - (a) Whenever possible, vacations shall be scheduled for the time requested by the employee. In order to avoid undue disruption of work activities or to minimize conflicts with other employees' vacations, the Division Manager or designee may place reasonable seasonal or other restrictions on the use of vacation.
 - (b) Annual Vacation Bid Lists. The Water Treatment Section shall establish vacation lists by job classification for those employees that are assigned at each plant. A separate vacation list by classification shall be established for all employees who are not permanently assigned to a plant. Vacation selection will be by District seniority on plant lists.
 1. The most senior District employee on each list will make their first vacation choice and pass the list to the employee next on the seniority list. (The employee will make a selection within five (5) consecutive workdays after receiving the list. If the employee does not select vacation within the five (5) day period, he/she waives selection for that vacation cycle and the list moves on to the next most senior District employee.) The list will be complete when all employees have made up to six (6) vacation choices.
 - (c) Supervisors shall recommend the completed schedule to the Division Manager or designee. After the vacation schedule has been approved by the Division Manager or designee, an employee promoted or transferred into a unit may not "bump" another employee's previously scheduled vacation period without that employee's consent.

5. Vacation on Separation. An employee eligible for vacation who is separated from District service for any reason shall receive a lump sum payment for any unused, earned vacation.
6. Vacation Sell Back. An employee may sell back a maximum of two hundred (200) hours of vacation leave to the District in one hour increments during the payroll year. Payments to employees resulting from such sell back of vacation shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.
7. Unscheduled Vacation, Compensatory Time, and Floating Holiday Leave.
 - a. Supervisors shall approve leave requests for unscheduled (not included in annual bid) vacation, compensatory time off, and floating holiday leave if the following conditions are satisfied:
 - 1) Leave is requested at least two (2) weeks in advance.
 - 2) Coverage is available for the shift (the Roving Operator is available, there are no conflicting training requirements, or other disruptive schedule changes required for other operators).
 - 3) There is no operational need to deny the leave as determined by the supervisor.
 - 4) Leave requested less than two (2) weeks in advance will only be considered on a case-by-case basis.
 - b. Leave Requests When Another Operator Already Has Approved Leave Or When Bid Shift Coverage Is Not Available. When an employee requests leave for the same period that another employee already has approved leave or when coverage for a bid shift is not available, the supervisor will consider the following factors in evaluating the leave requests:
 - 1) Leave is requested at least two (2) weeks in advance.
 - 2) There is no operational need to deny the leave as determined by the supervisor.
 - 3) No significantly disruptive schedule changes are required for other operators.
 - 4) Controllable plant overtime is within acceptable limits.

C. Sick Leave.

1. Eligibility. Any represented employee who, through no fault of their own, is unable to be present to perform their duties due to illness, injury, medical or dental treatment, or serious medical emergency in the employee's immediate family shall be granted sick leave in accordance with the provisions of this Section.
2. Accrual. Employees shall accrue four (4) hours of sick leave for each full biweekly pay period of continuous service, to a maximum of 1040 hours (130 days). There shall be no sick leave accrual for any workday of unpaid leave in excess of twenty (20) workdays in a calendar year.
3. Use. All sick leave used shall be deducted from the employee's accrued sick leave, with the minimum chargeable time being thirty (30) minutes. When accrued sick leave is exhausted, unpaid sick leave may be granted.
4. Sick Leave/FMLA. Eligible employees who are on paid sick leave or job injury leave will be granted simultaneous leave pursuant to the Family and Medical Leave Act (FMLA).
5. Family Sick Leave. When employee absence is required due to medical reasons (e.g., illness or medical appointment) in the employee's immediate family (i.e., parents; step parents; spouse; registered domestic partner; child (biological, adopted or by marriage); or siblings) a maximum of thirteen (13) days (104 hours) of accrued sick leave may be used in a payroll year. Payroll year is defined as the period beginning with the first pay period for which pay is received in January, and ending with the last pay period for which pay is received in December.
6. Substitution of Sick Leave for Vacation. If an employee becomes ill and takes sick leave before a scheduled vacation begins, the starting date of vacation may be postponed or vacation rescheduled as approved by the District. If an employee becomes ill after their last workday before vacation begins or during vacation and the illness extends more than two (2) vacation days, accumulated sick leave shall be substituted for vacation leave for each full day involved. Each vacation leave day that an employee was hospitalized may be converted to sick leave upon submission of satisfactory evidence of hospitalization. Request for such substitution shall be made when the employee returns to work, unless they wish to extend their absence, in which case they shall contact their supervisor before they are scheduled to return to work. Request for sick leave substitution shall be accompanied by a doctor's statement or other satisfactory evidence verifying the length of time the employee was incapacitated.
7. Limitations. An employee who is unable to report for work and who fails to notify their supervisor in accordance with work unit procedures, may not qualify for paid sick leave. An employee whose illness or injury arises out of non-District employment is not entitled to sick leave. All sick leave use is subject to review,

verification and approval by the District. A doctor's certificate indicating time under doctor's care, approval for return to work, and any work limitations is required if sick leave extends to ten (10) consecutive workdays or more. Upon return to work from sick leave, the employee's supervisor and Department Director/Division Manager may require an employee to be evaluated by a District-selected physician, if there is reasonable concern about the employee's fitness for duty, or endangering the health of other employees. These evaluations will be conducted on District time.

8. Retirement Credit. Consistent with the terms and conditions of the Retirement Ordinance, when an employee's sick leave accumulation reaches the maximum of 1040 hours (130 days), any hours which would have otherwise accrued thereafter shall be accumulated without limit. Such hours, when added to the existing sick leave accumulation, become Service Extension Credit, to be applied when computing the employee's retirement allowance.
9. Service Extension Credit/Conversion. When an employee is released for return to work as shown by medical evidence satisfactory to the District, after sick leave extending for ninety (90) calendar days or more, the hours of sick leave taken shall be restored to the employee's sick leave account by deducting that number of hours from any service extension credit in the employee's account at the time of return to work to a maximum of five hundred twenty (520) hours. Such sick leave shall be credited and available for use after the employee's return to work.
10. Sick Leave Buy Back. Employees who use 18 hours or less of sick leave in a six month period are eligible to sell back 8 hours or 16 hours of sick leave to the District. Eligible employees may also convert 8 hours or 16 hours of sick leave to vacation hours.
11. Sick Leave Pay-Out in Lieu of Service Extension Credit. Employees who separate from service due to retirement shall have the option of receiving a lump sum cash payment equal to the value of fifty percent of the accrued hours in the employee's sick leave account and Service Extension Credit account, at base rate, not including shift or other differential or premiums, less applicable taxes, instead of receiving the Service Extension Credit pursuant to Article XIIC 9 and the Retirement Ordinance. Such lump sum payment shall not be considered "compensation" as defined in the Retirement Ordinance for the purpose of calculating terminal compensation.

D. Special Leave.

1. Death in Family. In the event of death in an employee's immediate family (i.e., parent, stepparent, spouse, domestic partner, child, stepchild, sibling, grandparent, grandchild or any other person sharing a comparable relationship resulting from a registered domestic partner relationship), the employee shall be granted 40 hours special leave. In the event of death of the employee's mother-in-

law or father-in-law, the employee shall be granted three (3) workdays of special leave. Leave granted for death in family may be split between the period immediately following the death and the funeral/services.

2. Funeral of Relative. An employee shall be granted eight (8) hours of special leave to attend the funeral of a close relative not in the employee's immediate family. Close relative includes, spouse's grandparent, mother-in-law, father-in-law, daughter-in-law, son-in-law, sister-in-law, brother-in-law, spouse's sister-in-law, spouse's brother-in-law, and employee's aunt, uncle, niece, nephew, and first cousin.
3. Other Deaths. An employee may request authorization by the General Manager or their designee for special leave involving deaths other than those listed in paragraphs XII D1 and XII D2 above, where the employee considers special leave justified. The decision of the General Manager is final and not subject to appeal.
4. Death in Family, Funeral of Relative, and Other Death Leave Use. This leave shall be taken immediately following the death of the person unless, because of extenuating circumstances, another specified time is required and specific written authorization is granted by the General Manager to defer such leave to another specified period of time.
5. Jury Duty. An employee shall be granted necessary special leave for jury duty as detailed in an appropriate summons or order. The employee must immediately notify the supervisor when s/he receives a jury duty summons and provide a copy of the instructions that s/he receives. Employees shall follow the instructions of the jurisdiction for which they are summoned, but must report back to work as soon as possible if not required to be present for jury duty or if released from jury duty during the workday.
6. Court Appearance. An employee subpoenaed to appear before a court or other public body on any matter not related to their work shall be granted special leave for such purposes. Such leave shall not be granted if the employee is the plaintiff or defendant or if the court appearance is in the Family Law or Juvenile Division of the Superior Court unless otherwise provided by law.
7. Military Physical Examination. An employee shall be granted special leave to take a required military physical examination.
8. Military Leave. The District shall grant military leave in accordance with applicable laws of the State of California.
9. Blood Donations. Consistent with District operating requirements, employees shall be granted special leave of two (2) hours for giving blood donations at the District, Union, accredited hospital or Red Cross blood banks.

10. Voting Time. An employee who is eligible to vote in primary and general elections shall be granted special leave, when required, if the employee is unable to cast their ballot outside of their regular working hours, not to exceed two (2) hours, at a time when the polls are open, in accordance with California State Law.

E. Job Injury Leave.

1. Eligibility. Job injury leave shall be granted an employee who is unable to report to work following an injury or industrial disease which arises out of and during the course of their employment, provided that:
 - (a) Requests for leave are accompanied by a statement from an authorized treating physician indicating the nature of the injury and an estimate of the time the employee will be incapacitated from work; and
 - (b) The reported injury or disease is accepted as compensable by the District Workers' Compensation Administrator.
2. Compensation. When a job injury leave is authorized, the District will grant paid leave or supplement payments made by the Workers' Compensation Administrator so that the employee will suffer no loss in their regular pay for a period not to exceed 480 total hours for each such authorized injury. When lost time totals 480 hours, the employee may choose to receive, or they may choose to use, their accrued sick leave and/or vacation leave and/or compensatory time to supplement their compensation payments so that they will suffer no loss in their regular pay until such accrued sick leave and/or vacation leave and/or compensatory time is exhausted.
3. Designation of Employee Personal Physician. Notwithstanding the above, pursuant to and consistent with applicable law, an employee may seek treatment from their personal physician. The employee must select their personal physician thirty (30) days prior to the injury by submitting a completed "Designation of Personal Physician". The personal physician must have treated the employee previously and maintain records of prior treatment. If a chiropractor is selected, the employee must initially see a District-designated physician.
4. Job Injury/FMLA. Job injury leave used will be applied against entitlement to leave under the Family and Medical Act (FMLA).
5. Reemployment-Preference After Job Injury. A former regular employee of the District currently not a District employee as a direct result of disabling job injury shall be granted reemployment preference as follows:
 - (a) An employee who has recovered sufficiently in the opinion of a District-selected physician to resume their former duties shall be offered the first

vacant position in the employee's former classification.

- (b) An employee as described above, or an employee who has been rehabilitated and retrained for another occupation because of a disabling job injury, who has been placed on a District employment list and is eligible for consideration for a position, shall be selected to the first vacant position.
6. The preference described above shall be in effect for a period of two (2) years beginning with the date that the employee is determined to be rehabilitated, or a total of four (4) years from the date of termination, whichever is less. The preference shall be given unless:
- (a) Mandatory selection or reinstatement of another person is required by the Civil Service Rules, the Retirement Ordinance, or law; or
 - (b) The General Manager determines that selection for a specific position would be contrary to the interests of the District.

F. Unpaid Absences

1. General Provisions.
- (a) Leave of absence without pay for any reasonable purpose shall be granted an employee for up to six (6) months whenever the work of the operation concerned will not be unduly impaired by such absence. Leave without pay may be extended for additional periods not to exceed thirty (30) days each with the approval of the General Manager. When it qualifies, unpaid leave of absence used will be applied against entitlement to leave under the Family Medical Leave Act (FMLA).
 - (b) There shall be no loss of vacation or sick leave credits for leaves without pay of 160 hours or less in a payroll year; thereafter, there shall be no accrual of vacation and sick leave for any workday of unpaid leave. All leave without pay except unpaid sick leave is deducted from an employee's service when computing retirement credits. All employees who are hired after January 1, 2004 shall not receive retirement credit after 18 months of unpaid sick or job injury leave.
 - (c) Insurance benefits at District expense for employees on unpaid sick leave shall be terminated after eighteen (18) months of unpaid sick leave.
2. Limitations on Leave. Employees must exhaust all accrued vacation before becoming eligible for unpaid leaves of absence; however, upon agreement between the employee and their supervisor, in extenuating circumstances, such unpaid leave shall not be unreasonably denied. FMLA leave, and educational leave shall be exempt from the operation of this paragraph.

3. Family Medical Leave. Leave of absence without pay shall be granted for the birth or adoption of a child or for the serious health condition of a child, parent, or spouse, in accordance with the Family Medical Leave Act (FMLA).

ARTICLE XIII. INDIRECT PAY AND ALLOWANCES

- A. **Health Insurance**. The District shall provide health plan coverage to eligible employees and dependents in one of the approved District Health Plans listed below. Employee cost share for health plan premiums are shown in the table below:

<u>Plan</u>	<u>Employee Cost Share as % of Premium</u>
Kaiser Plan (current 7002)	0% all tiers: employee only, double, and family
ACWA Anthem BC Classic PPO	0% employee only tier, 15% double and family
Health Net California Coverage ends 12/31/18	0% employee only tier, 15% double and family
Sutter Health Plus HMO Coverage begins 1/1/2019	0% employee only tier, 15% double and family

1. Kaiser Foundation Health Plan. The District shall pay the full cost of premiums for eligible employees and eligible dependents coverage in the Kaiser Foundation Health Plan. During the life of the MOU, the following co-pays and deductibles will be in effect unless a change is mandated by the provider.
 - Office visit co-pay \$20
 - Prescription co-pay \$10/\$15 for generic and brand name drug types respectively.
 - Emergency room visit \$75 (waived if admitted)
 - Hearing Aid Benefit \$1000 per ear, every three (3) years, effective January 1, 2019

2. Association of California Water Agencies/Joint Powers Insurance Authority - Blue Cross (ACWA/JPIA -BC). The District shall pay the full cost of premiums for eligible employees only in the ACWA/JPIA -BC health plan. The District will pay 85% of the costs of premiums for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the office visit co-pay for ACWA-BC will be \$15 and the prescription drug co-pay will be \$5.00/\$15.00 for generic and brand name drug types,

respectively, unless a change is mandated by the provider.

3. Health Net California. The District shall pay the full cost of premiums for eligible employees only for Health Net California health plan. The District shall pay 85% of the costs for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the following co-pays will be in effect, unless a change is mandated by the provider.
 - Office visit co-pay \$20
 - Prescription co-pay \$10/\$15/\$35 for generic, brand and non-formulary drug types respectively
 - Emergency room visit \$75 effective January 2017 (waived if admitted)
 - Hospital inpatient copay \$100 effective January 2017
 4. Sutter (Plan ML32 per 8/16/17 presentation). Effective January 2019, the District shall pay the full cost for premiums for eligible employees only. The District will pay 85% of the costs of premiums for the employee plus dependents and the remainder shall be paid by the employee by payroll deduction. During the life of the MOU, the office visit co-pay for Sutter will be \$10 and the prescription drug co-pay will be \$5/\$20/\$40 for generic, brand name, and non-formulary drug types, respectively, unless a change is mandated by the provider. Emergency room visit is \$30 and waived if admitted. Hospital inpatient co-pay - \$0.
 5. For employees without access to Kaiser Health Plan, the District will pay 100% of the medical insurance premium for the employee and dependent coverage in either of the other available District health plans (currently Health Net until December 31, 2018, ACWA Anthem Blue Cross Classic PPO or Sutter Health Plan HMO)). However, if the employee should become eligible for Kaiser, District coverage will be provided as described in paragraphs 1, 2 and 3 above.
 6. If federal or state legislation is enacted which will impact the District's health plans or practices, the parties shall reopen negotiations to the extent necessary to comply with the mandatory provisions of any legislation.
 7. The amount of the cash-in lieu provided to employees who receive medical insurance coverage through their spouse or partner and elect not to receive District-paid medical insurance is \$500 per month.
- B. Life Insurance.** The District shall pay the cost of employee premiums in the existing group life insurance plan. The face value of the basic life insurance shall be one and one-half times the employee's annual salary rounded to the nearest \$1,000. This includes double indemnity for non-occupational accidental death and dismemberment according to scheduled benefits. Increases in costs, which may occur during the term of this Memorandum, shall be borne by the District.

Effective August 1, 1998, the District shall provide supplemental life insurance at the employees' option and expense.

- C. **Dental Insurance.** Effective January 1, 2018 the District shall pay the cost of premiums for those employees and eligible dependents enrolled in the group insurance plan with Delta Dental and to provide 100 percent basic coverage (50 percent prosthodontics) to a maximum of three thousand dollars (\$3000) for PPO-Dentists and a maximum benefit of two thousand five hundred dollars (\$2500) for Non-PPO-Dentists. Non-PPO-Dentists have a deductible of \$15 for the employee and eligible dependents up to a maximum of three (3) such deductions per family unit per year. Increases in costs, which may occur during the term of this Memorandum, shall be borne by the District.

Orthodontic Benefits. The District shall provide for orthodontic benefits and coverage for all eligible employees and dependents. Such coverage shall be 50/50 co-insurance with a three thousand (\$3000) dollar lifetime maximum per patient with no deductible. Employees hired on or after July 1, 1985, will have a one-year waiting period without claims for orthodontic coverage.

- D. **Disability Insurance.** The District agrees to continue the existing salary continuation plan (voluntary group long-term disability insurance) and to pay the full cost per month toward the premium for each employee.

- E. **State Disability Insurance (SDI and Paid Family Leave.** Employees represented by Local 39 shall have the SDI premiums deducted from their individual salaries at the rate determined by the State of California. When an employee sustains an injury or illness that qualifies themselves to receive SDI payments, the employee will request SDI payments from the State. When an SDI covered employee needs to care for a parent, child, spouse or domestic partner who is seriously ill or unable to care for themselves, the employee may apply for Paid Family Leave Insurance compensation.

An employee must first use accrued sick leave (limited to 104 hours per year for family medical related leave) to supplement SDI/Paid Family Leave payments. Subsequently, vacation and/or compensatory time may also be used to supplement SDI/Paid Family Leave payments if requested in advance in writing. Coordination of vacation leave balances and/or compensatory time with SDI/Paid Family Leave will not be made retroactively. Using sick or vacation leave and/or compensatory time to supplement SDI/Paid Family Leave payments is subject to the following conditions:

- (a) The combined total of the SDI/Paid Family Leave payment and accrued leave and/or compensatory time payment does not exceed 100% of the employee's regular biweekly salary; and
- (b) The employee may be requested to provide the District with the employee's SDI wage statement so that State and District benefit payments can be coordinated as described in (a) above.

F. Insurance Providers/Self-Insurance. Except for the Kaiser Foundation Health Plan; the District may change or eliminate the carriers or providers of any of the benefits set forth in this Article or self-insure (provided that there is no decrease in benefit levels); and provide an equivalent plan under Sections A, B, C, and/or D, set forth above, provided the Union is notified in writing prior to such change. Upon written request, the District will consult with the Union concerning such change. Whenever any insurance carrier refuses to provide coverage for any specific benefit or proposes an increase in its premium of more than twenty percent (20%), the District, after consultation with the Union, may change carriers or benefits as long as a good faith, reasonable effort is made by the District to provide comparable available benefits.

G. Supplemental Benefits/Salary Reduction Plan/Deferred Compensation Plans.

1. Supplemental Benefits Program.

- (a) The District will make payments for eligible employees under IRS Code Section 125 in the amount of;
- \$910 effective January 1, 2019
 - Increase to \$1000 effective January 1, 2022
- (b) Employees will be eligible for supplemental benefits upon hire.
- (c) Program payments shall be disbursed after the second pay period each calendar year to the third party administrator if the employee has elected a Flexible Spending Account or to the employee's paycheck if the employee elected to receive cash. New employees shall have program payments disbursed in the month after they become benefit eligible.
- (d) A third party administrator will administer the pre-tax program funds including making payments or reimbursements provided for by the program and IRS Code provisions.

2. Salary Reduction Plan.

- (a) The District shall establish a salary reduction plan as provided by Section 125 of the Internal Revenue Service Code permitting employees to designate a portion of their annual salary to be withheld and subsequently used to provide pre-tax reimbursement for verified medical and dependent care expenses subject to the rules of the IRS and other governing regulations.
- (b) The maximum annual amount that may be deducted from the employee's annual salary for reimbursement of non-medical dependent care expenses is \$5,000 minus the District's contribution. The maximum amount that may be used for reimbursement for personal and dependent medical

expenses is \$5,000 plus the District's contribution.

- (c) All medical and dependent care expenses for which reimbursement is required must comply with the requirements of the IRS Code.

3. Deferred Compensation Plans

- (a) Employees represented by the Union, are eligible to participate in the District's 401(A), 401(K) and 457 plan deferred compensation program in accordance with IRS rules, regulations and District procedures.
- (b) Effective January 1, 2023. Employees hired on or after January 1, 2013 and who are not eligible for reciprocity with another California public retirement system, or who are otherwise "new employees" or "new members," as defined under the California Public Employee Pension Reform Act ("PEPRA") and participating in the Districts 401(K) plan shall be eligible for a matching contribution up to \$1000 annually to their 401(K) deferred compensation account.
- (c) Deferred Compensation Administrative Fees.
The District will pay up to a maximum of \$150,000 annually for District-wide administration of the 401A/401K/457 deferred compensation plans. Participants in each plan are responsible for administrative fees in excess of \$150,000. Fees are a percent deduction of each participant's account balance(s) based on periodic negotiations with the Third Party Administrator (TPA) and annual review by the Deferred Compensation Committee.
- (d) Exclusions. Employees who participate in any District deferred compensation plan may not defer sick leave buyback payments to their deferred compensation accounts.

H. Vision Insurance. The District shall pay the cost of premiums for those employees and eligible dependents enrolled in the group Vision Service Plan, Plan B with \$10 co-payment. Increases in costs which may occur during the term of this Memorandum shall be borne by the District.

I. Legacy Employee Retirement System

1. Eligibility for the Employee Retirement System (ERS). Local 39 represented employees are eligible to participate in the District's ERS in accordance with IRS rules and regulations and the District's "Employee Retirement System Ordinance".
2. Employee Contribution Rate.
The employee contribution rate will be 8.75% effective April 18, 2016.

3. The employee contribution rates reflected above will be fixed as of the dates specified above unless the parties agree to an improvement in current retirement benefits through the meet and confer process.

Employees hired on or after January 1, 2013 and who are not eligible for reciprocity with another California public retirement system, or who are otherwise "new employees" or "new members," as defined under the California Public Employee Pension Reform Act ("PEPRA"), will be subject to the retirement contribution required by PEPRA. As of January 1, 2013, PEPRA requires that the contribution rate shall be at least 50% of the normal cost of the pension benefit.

Information regarding the retirement plan for such employees, including the current contribution rate, can be found in the EBMUD Retirement Handbook.

4. Any improvements made by the District to current retirement benefits during the life of this agreement, such as improvements to HIB and COLA, shall be made solely at the District's expense.

ARTICLE XIV. PERSONNEL PROVISIONS

A. **Probationary Period.** There shall be a twelve (12) month probationary period for all newly hired employees, during which time employees may be discharged without cause.

B. **Personnel Files**

1. **Review of Employee Personnel File.** Employees shall have the right to review their personnel files pursuant to applicable State Law. No information shall be placed in an employee's personnel file without the employee receiving a copy of the information. The employee shall have the right to respond to any such material.
2. **Confidentiality.**
 - (a) Employee personnel files shall be held in strict confidence by the District and shall be subject to inspection only by officials of the District acting on official District business, or by the employee or Union officials in accordance with the employee's written instructions (which shall be filed in the personnel file), or as otherwise required by law (such as by subpoena).
 - (b) In the event that a prospective employer, creditor, or other person contacts any District supervisor to obtain job reference information on any former or current District employee, the information given out shall be limited to verification of employment, length of employment, and verification of salary range if the person inquiring first states a salary in the correct range

to the District.

3. Disciplinary Documents. All disciplinary documents in an employee's personnel file (with the exception of suspension letters), will be removed from the file three (3) years after date of issuance at the request of the affected employee. Letters of suspension shall be removed after three (3) years, at the request of the employee if no additional written disciplinary action (warning or suspension) has been imposed within the three (3) year period following the initial suspension. There must be a three (3) year period without any documented disciplinary action before a suspension letter shall be removed from the employee's personnel file.
4. Counseling Memos. Counseling memos will be removed from a supervisor's file after one (1) year unless the employee has not corrected the work performance or work behavior that led to the counseling memo and has received another counseling memo or been disciplined. Supervisors may specify time frames shorter than one (1) year for removal of counseling letters from the supervisory file.

C. Reduction In Force/Demotion And Appeals

1. Reasons. An employee may be separated from District employment by reduction in force due to lack of work or funds, retrenchment, or completion of work. The District shall notify the union of its intent to implement a reduction in force no less than thirty (30) calendar days prior to its effective date. The notice shall include the reason for the layoff, the classifications and positions affected, the names of the employee(s) subject to separation by reduction in force, and the seniority information associated with the reduction in force.
2. Application. Reduction in force in a given classification shall be from all positions in the classification on a District-wide basis.
3. Priority. Reduction in force shall first affect employees having provisional or probationary appointments in the classification in question. Thereafter, employees having permanent appointments in the classification shall be subject to reduction in force in inverse order to the length of their continuous service within the affected classification.
 - 3.1. Length of service for the purpose of Section 3 shall mean an employee's continuous uninterrupted service from the effective date of appointment as a probationary, part-time, or less than full-time (Intermittent) employee.
 - 3.2. An interruption in length of service within a classification shall occur as a result of any one of the following:
 - a. Discharge for cause
 - b. Voluntary resignation
 - c. Retirement for service or disability

- d. Absence from work for thirty-six (36) consecutive months because of layoff
- e. Failure to return from layoff as provided in Article XIV C 6
- f. Failure to return from an approved leave of absence upon the date specified for return at the time said approval was granted
- g. Unapproved leave of absence without pay of any length

Acting appointments to a classification shall not be construed as service in such classification unless such acting appointment was contiguous with appointment to such classification in a probationary, part-time, or less than full-time (Intermittent) status.

4. Demotion to Previously Held Classifications. An employee subject to separation by reduction in force may elect demotion to classifications in which the employee has previously held permanent civil service status during their current period of employment. In such election, the procedures of reduction in force outlined in Section 3 shall be applied to the employee being separated and to all others in the classification in question.
5. Voluntary Demotion. In accordance with Civil Service Rules governing demotions and transfers, an employee subject to separation may also be considered for voluntary demotion to other lower classifications or for transfer to classifications at the same salary level, if any vacancies exist. Any employee who is not transferred or demoted to a permanent position shall be offered appointment to any temporary position in their classification, which is currently filled at the time of their proposed termination.
6. Reinstatement List. Names of employees affected by reduction in force shall be placed on a layoff and reduction list in the order in which they have been laid off or demoted. Such list shall remain in effect for a period of two (2) years, during which time, when vacancies occur in the classification in which reduction in force took place, employees laid off or demoted shall be reinstated in the reverse order of layoff or demotion.
7. Severance Pay. Each permanent employee with a minimum of five (5) continuous years of District employment who is laid off due to a reduction in force shall receive twenty (20) workdays' severance compensation exclusive of any premium, overtime, standby, or longevity pay.
8. Demotion. The General Manager may approve the demotion of an employee for inefficiency, or as a result of reduction in force or for other cause. Except in disciplinary situations, there shall be no involuntary demotion of an employee until reasonable effort has been made to transfer or reassign the employee in accordance with applicable Civil Service Rules.
9. Transfer and Demotion Appeal. In the event of transfer or demotion in

accordance with the District's Civil Service Rules, the Manager of Human Resources shall give written notice to the employee, including the reasons for the action, and the employee shall have the same rights of appeal as employees who are discharged or suspended.

10. Reassignment in Lieu of Lay-Offs. The parties shall meet when positions are scheduled to be eliminated or substantially changed due to District-initiated changes, including but not limited to reorganization, efficiency, automation and other technological change. All feasible steps (including training and/or transfer) shall be taken to assist employees to locate and prepare to qualify for other positions in the District civil service in lieu of reduction in force; provided that this shall not restrict the District's authority to affect economies or make organizational changes to increase efficiency in District operations.

D. Civil Service Examinations

1. Recording of Oral Examinations. Oral examinations shall be recorded by audio tape recorder. All audio tape recordings shall be the property of and remain in the custody of the District provided, however, the Union shall have reasonable access thereto. Recordings shall be retained by the District for ninety (90) days after establishment of the employment list resulting from the examinations or, if there is a protest, until the protest is resolved.
2. Inspection of Examinations. Consistent with District operating requirements and with the provisions of the Civil Service Rules, employees participating in District Civil Service examinations shall be permitted reasonable time during working hours, without loss of time or pay, to inspect their examination papers.
3. Internal promotions
 - (a) Examinations will typically be opened to both public and internal competition, however, when the Manager of Human Resources determines that there are a sufficient number of qualified and interested employees having Civil Service status, an employment examination may be designated as internal only and recruiting restricted to such Civil Service employees.

The Manager of Human Resources' determination shall include consideration of such factors as the number of current and anticipated vacancies during the expected life of the employment list, the number and qualifications of potential employee applicants, and the usual or expected rate of turnover.

All employees with Civil Service status who pass the employment examination will be placed on an Internal Eligible List in rank order by final score. The top five ranks of this list will be certified to the

appointing authority.

- (b) All employees with Civil Service status who pass the examination will be placed on the Internal Eligible List in rank order by final score. All other successful candidates will be placed on the Open Eligible List. A successful candidate will be placed on only one list. The top five ranks of both lists will be certified to the appointing authority.

Hiring supervisors shall interview all candidates in the ranks certified from the internal eligible list and if they choose to interview from the open eligible list, they must interview all candidates in the ranks certified.

- (c) Employees may apply to administratively transfer without exam between classifications which have the same salary levels and identical or very similar minimum qualifications, (e.g., Senior Administrative Clerk and Senior Administrative Secretary), if they have regular status in one class.

The District may also administratively transfer employees between classifications at the same salary level provided the employee meets the minimum qualifications.

4. Duration of Eligible Lists.

- (a) The duration of employment lists shall be one (1) year unless extended, at the District's discretion, for up to one (1) additional year. All existing lists may be extended for up to one (1) additional year rather than extended for six (6) months and all new lists may be extended for one (1) additional year.
- (b) The District will review results with the Union representatives on an annual basis beginning one (1) year from the date of this MOU to determine impact on promotional opportunities for District employees.

ARTICLE XV. GRIEVANCE PROCEDURE

- A. **Intent.** The District and the Union recognize the necessity for speedy and equitable adjustment of all complaints as close as possible to the point of origin. Whenever possible, grievances should be settled with supervisors in the department/division where the grievance originates. It is the intention of the District and the Union to eliminate unnecessary grievances, and to promptly and equitably adjust all grievances which are meritorious. It is the intent of the parties that this Grievance Procedure shall be the exclusive remedy for the resolution of grievances as defined in Paragraph XV C1.a.
- B. **Appeals.** The employee and their designated representative, shall have the right to appeal a suspension or discharge either in accordance with this grievance procedure by sending a completed grievance form to the Department Manager or in accordance with Civil

Service Rule XIII, APPEALS, but in no case under both.

C. Definitions.

1. Grievance.

- (a) A grievance is defined as any dispute which involves the interpretation or application of this Memorandum or disciplinary action taken against an employee and the application of Civil Service Rules.

A dispute over the terms of this Memorandum or over the terms of rules or regulations governing personnel practices or working conditions, or over the terms of a District Rights decision on wages, hours and other terms and conditions of employment shall not constitute a grievance.

- (b) The Union shall be allowed to file a grievance on behalf of a current employee and on behalf of an identifiable group of employees. If the grievance involves employees in only one (1) section, the grievance shall be filed at Step 1; if the grievance involves employees in more than one (1) section, the grievance shall be filed at Step 2 (See procedural steps below).

2. Immediate Supervisor. The person from whom an employee receives their work assignments.
3. Work Unit Supervisor. The highest supervisor within the employee's work unit.

D. Standard Grievance Procedural Steps.

1. Step 1. Informal Discussion/Filing of Grievance Statement

- (a) The employee who has a grievance other than an EEO discrimination, suspension or termination, or Limited Civil Service complaint may, discuss the issue or concern with the supervisor in an attempt to resolve the matter.

If the initial informal discussion does not resolve the issue, the Union Business Representative may contact the Superintendent to discuss and attempt to resolve the issue.

If the grievance is not settled through informal discussion and the employee desires further review, a completed written Form PE-105 "Statement of Grievance Form", must be submitted to the Superintendent within fifteen (15) calendar days from the initial date the employee knew, or reasonably could know, of the act or omission causing the grievance.

- (1) The Statement of Grievance Form shall contain the following information: (1) a statement of the grievance and all relevant facts, (2) specific provision(s) of the Memorandum of Understanding allegedly violated, and (3) the remedy sought.
- (2) The Superintendent shall promptly discuss the matter with the employee, the work unit supervisor, and any other person who should be directly involved and attempt to arrive at a solution. The Superintendent shall provide a written answer to the employee that sets forth the Superintendent's rationale and decision within fifteen (15) calendar days of receipt by the Superintendent of the "Statement of Grievance Form". The decision of the Superintendent shall be applicable only to the grievance being reviewed and considered.

2. Step 2. Division Level Review

- (a) If the employee is not satisfied with the Step 1 written response from their Superintendent, the employee must submit the completed "Statement of Grievance Form" to the Manager of Employee Relations with the names of the Union's Board of Adjustment representatives within fifteen (15) calendar days of the Step I written response.

A Board of Adjustment meeting shall be held within fifteen (15) calendar days of the receipt of the "Statement of Grievance Form" by the Manager of Employee Relations. The Board of Adjustment shall be comprised of the Division Manager and the Manager of Employee Relations of their delegate and not more than two representatives from the bargaining unit. The Manager of Employee Relations or their delegate shall chair the Board of Adjustment.

No relatives of the grievant or members of the grievant's household may sit on the Board of Adjustment for either of the parties. Individuals named in a grievance shall not be allowed to sit on the Board of Adjustment hearing for that grievance.

- (b) The purpose of the Board of Adjustment meeting shall be (1) to review the facts of the grievance and to conduct a further investigation of the situation if appropriate, and (2) to explore alternative methods of resolving the grievance. Unless the parties mutually agree otherwise, any settlement agreement reached at the Step 2 level shall be reduced to writing within fifteen (15) calendar days. If no agreement is reached, Management's decision shall be reduced to writing within fifteen (15) calendar days.

- (c) If the Union is not satisfied with the District's response, the Union may request binding arbitration under Section XV F, within thirty (30) calendar days of the receipt of the decision.

E. Employment Suspensions, Demotions due to Discipline, and Termination Procedure.

1. A written grievance shall be filed on Form PE-105, "Statement of Grievance", with the Department Manager within fifteen (15) calendar days of the notice of suspension, demotion due to discipline, or termination. The Department Manager shall meet with the Union and the grievant and shall then respond in writing within fifteen (15) calendar days of receipt of the written grievance.
2. If the Union is not satisfied with the Department Manager's response, the Union must submit the PE-105 form to the Manager of Employee Relations with the names of the Union's Board of Adjustment representatives within fifteen (15) calendar days of the Step 1 written response.

A Board of Adjustment meeting shall be held within (15) calendar days of the receipt of the Form PE-105, "Statement of Grievance" by the Manager of Employee Relations. The Board of Adjustment shall be comprised of a Department Manager (other than the Department Manager that responded to the grievance) and the Manager of Employee Relations or their delegate and not more than two representatives from the bargaining unit. The Manager of Employee Relations or their delegate shall chair the Board of Adjustment.

No relatives of the grievant or members of the grievant's household may sit on a Board of Adjustment for either of the parties. Individuals named in a grievance shall not be allowed to sit on the Board of Adjustment hearing for that grievance.

The purpose of the Board of Adjustment meeting shall be (1) to review the facts of the grievance and to conduct a further investigation of the situation if appropriate, and (2) to explore alternative methods of resolving the grievance. Unless the parties mutually agree otherwise, any settlement agreement reached at the Step 2 level shall be reduced to writing within fifteen (15) calendar days. If no agreement is reached, Management's decision shall be reduced to writing within fifteen (15) calendar days.

3. If the Union is not satisfied with the District's response, the Union may request binding arbitration under the following section within thirty (30) calendar days of receipt of the decision.

F. Binding Arbitration.

1. If the Union is not satisfied with the Step 2 response the Union may submit the

grievance to binding arbitration in accordance with the following procedures.

2. A request for arbitration shall be in writing and addressed to the manager of Employee Relations and must be postmarked within thirty (30) calendar days after the employee's receipt of the District's Step 2 decision. The request shall clearly state the issue to be arbitrated. The District's representative, and the Union's, representative, shall jointly select an impartial arbitrator. If they are unable to agree upon an arbitrator, the District shall request a list of arbitrators from the American Arbitration Association or the California State Mediation and Conciliation Service or the Federal Mediation and Conciliation Service. The arbitrator shall be selected as mutually agreed upon, by alternately striking from a list of seven (7) arbitrators provided by one of the previously listed agencies with the first party to strike to be determined by mutual agreement within thirty (30) calendar days of receipt of the request for arbitration from the Union. The arbitrator will be requested to render a decision within ninety (90) calendar days of the receipt of briefs.
3. The arbitrator shall limit their findings and recommendations strictly to the interpretation, application and enforcement of the provisions of this Memorandum, or the interpretation or application of rules or regulations governing personnel practices or working conditions. In cases of suspension or discharge, the arbitrator shall limit their findings and recommendations strictly to the issue of cause.
 - (a) The arbitrator's hearing shall be formal and conducted in accordance with usual administrative practices, including recording of proceedings by certified reporter and testimony given under oath. If a transcript of the proceedings is ordered by either party, each party shall pay for its own copies.
 - (b) The arbitrator shall in no case make any recommendations:
 - (1) contrary to, or inconsistent with or modifying or varying in any way, the terms of the Memorandum, or the terms of rules or regulations governing personnel practices or working conditions;
 - (2) inconsistent with the District's duties, responsibilities or obligations particularly with regard to public health and safety and including the Municipal Utility District Act or any other State or Federal law to which the District is subject;
 - (3) concerning the grievance of any employee who has elected to process a grievance through any other appeal procedure established by the District;
 - (4) ordering any wage increase or decrease;

- (5) ordering the payment of back wages for more than six (6) months prior to the date a written grievance is filed;
- (6) reversing, overruling, or otherwise modifying any District decision or omission except after finding (a) the District decision violated some express provision of the Memorandum or rules and regulations governing personnel practices or working conditions; or (b) the District decision or omission was under the circumstances arbitrary, capricious or discriminatory.
- (c) Each party shall make arrangements for and pay the expenses of witnesses who are called by them. The District shall have no obligation to compensate employees, with the exception of the aggrieved in other than suspension or discharge cases, for time lost during arbitration proceedings, except when any employee is requested by the District to participate in such arbitration proceedings.
- (d) The expenses of the arbitrator and certified court reporter (if used) shall be shared equally by the District and the Union.

G. Limited Civil Service Examination Grievance Procedure.

1. Step 1. The Union may file a Limited Civil Service Examination Grievance on behalf of a current employee or group of current employees by submitting a Statement of Grievance Form to the Manager of Human Resources within the following time limits:
 - (a) Disqualification From Examination - Within seven (7) calendar days of notice of disqualification and prior to the administration of the examination.
 - (b) Examination Results - Within seven (7) calendar days of notice of examination results.
 - (c) Other Grievances Pertaining to Recruitment, Examination, or Selection as Stated in the Civil Service Rules - Within seven (7) calendar days from the initial date the employee knew, or reasonably could know, of the act or omission causing the grievance.
 - (d) Director of Human Resources shall provide a written answer to the Union setting forth their decision and rationale within seven (7) calendar days of receipt of the Statement of Grievance Form.
 - (e) The Union may request a meeting with the Director of Human Resources or designee to review and resolve the grievance.
2. Step 2. If the Union desires to appeal the Director of Human Resources' decision,

the Union shall notify the Director of Human Resources in writing within seven (7) calendar days from receipt of the Director of Human Resources' decision that it desires to submit the grievance to expedited arbitration. The expedited arbitration process for Limited Civil Service Examination Grievances shall be as described below and shall be the exclusive means for the resolution of such disputes:

- (a) Selection of Arbitrator and Scheduling of Hearing. Within seven (7) calendar days of the Union's notice to the Director of Human Resources, an impartial arbitrator shall be jointly selected by the District and union. If the parties cannot agree on an arbitrator, the Director of Human Resources will request a list of five (5) arbitrators from the California State Mediation and Conciliation Service and the parties shall select an arbitrator by mutual agreement or alternately striking names.
- (b) The hearing shall be held within fourteen (14) calendar days of the arbitrator's selection. If the arbitrator has no available date within fourteen (14) calendar days, the parties may mutually consent to a later hearing date, or another arbitrator shall be selected until an arbitrator can be found who is available within the fourteen (14) calendar day time limit.
- (c) Pre-Hearing Submission and Conduct of the Hearing.
 - (1) The District and the Union shall each submit three (3) calendar days prior to the hearing a pre-hearing statement to the arbitrator with a copy to the other party, outlining its position and appending whatever exhibits it wishes to present.
 - (2) Unless the parties mutually agree to the contrary, each party shall have up to two (2) hours to present its case, but may reserve up to one-half (1/2) hour of such time to respond to the other party's presentation. The presentation may be made by way of statement by the party's representative, presentation of witnesses or both, but the hearing shall be informal and rules of evidence shall not apply. No transcript or recording shall be made.
- (d) Decision. The arbitrator shall issue a written award within five (5) calendar days after the close of the hearing. During this period, the arbitrator may convene the parties for up to an additional two (2) hours if the arbitrator wishes to raise additional questions. The award shall be final and binding.
- (e) Costs. The fee and expenses of the arbitrator shall be shared equally by the parties.

H. Election of Remedies. It is specifically and expressly understood and agreed that taking

a grievance appeal to arbitration constitutes an election of remedies and a waiver of any and all rights by the appealing employee, the Union, and all persons it represents to litigate or otherwise contest the appealed subject matter through the District Civil Service Procedure.

Litigation or any other contest of the subject matter in any court or other available forum shall constitute an election of remedies and a waiver of the right to utilize this grievance procedure or to arbitrate the matter. This paragraph is not intended to bar an employee from pursuing any cause of action which has been established by statute.

- I. Waiver of Steps and Time Limits.** Except when otherwise provided, all steps of the grievance procedure shall be utilized unless a waiver of one (1) or more steps is mutually agreed upon in writing. If the employee or the Union fails to process a grievance within specified time limits, the grievance shall be deemed concluded on the basis of the last decision reached, unless an extension of time limits is mutually agreed upon by the parties in writing. If the District fails to respond within the specified time limits, the grievant may appeal the next step, within the specified time limits.
- J. Suspension of the Grievance Procedure.** If this Memorandum is violated by the occurrence of a strike, work stoppage, other interruption, or impending disruption of work, no grievance shall be processed while such violation continues. The grievance procedure outlined herein shall not be applicable to grievances arising in the period between the termination of this Memorandum and the effective date of its successor. However, if the parties, despite the termination of the Memorandum, are continuing to meet and confer in good faith and an impasse in the negotiations has not been reached, the grievance procedure shall continue to be applicable.

ARTICLE XVI. DISCIPLINARY PROCEEDINGS

- A. Eligibility.** An employee who has successfully passed a probationary period may be disciplined for cause by written warning, suspension or termination. Such disciplinary action(s) shall be subject to appeal through the Grievance Procedure provided for in Article XV of this Memorandum.
- B. Employee Notification.** When considering imposing major discipline (defined as a suspension of five days or more or termination), the District will notify the employee and the Union in writing of the pending disciplinary action and will provide copies of any known written materials, reports or documents upon which action is based to the employee and their representative before the scheduled pre-disciplinary meeting. The employee will be given the right to respond informally either orally, in writing, or both to the proposed charges. The District is not precluded from using information obtained in the pre-disciplinary meeting in any subsequent meeting or hearing in the event discipline is imposed. The District is also not precluded from using information obtained in investigating information and statements presented at the pre-disciplinary meeting in subsequent meetings or hearings if the discipline is imposed.

- C. **Union Notification**. An employee ordered to leave their place of work for disciplinary reasons shall, before leaving the District premises, have the right to consult with their Union representative. Consultation with a Union representative will not be required in instances in which the supervisor removes an employee from the premises in cases involving violence, willful destruction of property, or to prevent injury to the employee or others. The supervisor shall promptly notify the Union of the action taken, the reasons for, and duration of, the suspension.

ARTICLE XVII. INTERFERENCE WITH WORK

The Union agrees to refrain from engaging in, encouraging, or condoning, either directly or indirectly, any strike, work stoppage, slow-down, sit-down, stay-away, picketing, or any other forms of interference with the operations of the District during the term of this Memorandum.

The District agrees that there shall be no lock-out against employees during the life of this Memorandum.

ARTICLE XVIII. SAFETY

- A. **Safe Working Conditions**. Both the District and the Union agree to comply with all Federal and State health and safety laws and standards applicable to the District and shall devote every effort to ensure that all work is performed in a safe manner consistent with the requirements of the work to be performed.
- B. **Medical Tests on Employees**. It is understood that information pertaining to accidents or injuries is confidential. It is also understood that, where employees are exposed to carcinogens or other harmful substances, which exceed the threshold limit values, medical monitoring is required. The District will produce medical monitoring records upon demand of the employee or an authorized Union representative. The District will provide other medical test information to authorized Union representatives only with the express written consent of the involved employee.
- C. **Results of Government Inspections**. The District will provide Local 39 with Cal/OSHA notices, postings, accident investigation reports, citations, hearing decisions and other documents, which, by law, require the District to take action. It is understood the above sentence applies only to work areas and District employees, which specifically are within the representation jurisdiction of Local 39.

ARTICLE XIX. SAFETY EQUIPMENT/UNIFORMS

- A. **Safety Shoes**. The District shall provide a safety shoe allowance of \$265, on receipt of evidence of the purchase of District approved safety shoes and insoles for employees in

represented classes included in the District safety shoe program. Employees shall procure their District provided safety shoes and insoles at District identified vendors under a purchase order program. Employees can visit the selected vendors and select their shoes from the vendors provided that: 1) the shoes meet the "ASTM-F241 3-05 safety standards and 2) the after-tax cost for the shoes does not exceed \$265. Costs for shoes in excess of this amount shall be paid by the employee. Safety shoes shall not be purchased on District work time and an employee identification badge must be shown to the contract supplier to verify District employment.

It is understood that any employee utilizing the safety shoe allowance must wear such shoes while at work.

- B. Uniforms.** Uniforms will be provided to all bargaining unit members. Bargaining unit members will wear the uniform when assigned to work in the field. Bargaining unit members may wear the uniform at the employee's option when working in the Operations Control Center (OCC).

The District shall not require any employee to wear a uniform if it causes a physical or health problem until such time as the District can provide a suitable uniform.

The District shall accept employee comments and other input regarding uniform details such as material, design and maintenance needs.

- C. Safety Harnesses.** Each employee in the following classifications, shall be assigned their own safety harness at no cost to the employee:

1. Senior Water Distribution Operator
2. Water Distribution Operator
3. Water Distribution Operator Trainee

The District shall accept employee comments and other input regarding personal preferences when it is necessary to purchase fall protection equipment.

It is understood that employees are responsible for regular inspection of provided equipment and it is their responsibility to notify their supervisor of potential defects.

District-provided safety equipment shall not be removed from District's service area or used for non-District purposes.

ARTICLE XX. PART-TIME/LESS THAN FULL-TIME (INTERMITTENT) EMPLOYEES.

For purposes of defining part-time and less than full-time (intermittent) employees, a full-time position is 2080 aggregate hours in a payroll year.

1. Definition of Part-time Employees. A part-time employee is restricted from working more than forty percent (40%) of the hours worked by employees in

equivalent full-time positions or more than 832 hours in a payroll year, as defined in Article VII F. Part-time employees are exempt from civil service and cannot grieve disciplinary actions or termination of their employment.

2. Part-time Employee Benefits. Part-time employees are eligible for the following benefits:

Holidays	3.5 hours paid time for each District holiday, provided the employee works or is on authorized paid leave for a minimum of 16 hours in the pay period in which the holiday occurs.
Birthday Floater Holiday	3.5 hours paid time
Vacation	Prorated accruals based on hours worked in accordance with Article XII B – Vacations.
Sick Leave	Prorated accruals based on hours worked in accordance with Article XII C – Sick Leave.
State Disability Insurance (SDI)	As prescribed by the State
401K, 457 Deferred Compensation Plan	Eligible to participate (401K upon plan modification)
Work Out of Class	Eligible to work 192 hours per payroll year.
Job Injury Leave	Eligible for 192 Hours
Vacation Sell Back	Up to 80 hours of accrued vacation time may be sold back to the District in one (1) hour increments during the payroll year, before the last pay period of the payroll year.
Sick Leave Buyback	Up to 16 hours of sick leave may be converted to vacation or cash payment of up to 16 hours of sick leave, if the employee has not used more than 18 hours of sick leave in 6 months.
Domestic Partners	Employees who register their domestic partners are eligible for all family emergency leaves.
Transportation Subsidy	Eligible for Transportation Subsidy Program at 50% of the agreed upon amount for full time employees.

3. Definition of Less Than Full-Time (Intermittent) Employees. Less than full-time (Intermittent) employees are employees who work less than full-time but one-half or more of a standard workday or workweek, or more than 1040 aggregate hours per payroll year. Less than fulltime (Intermittent) employees are eligible to grieve

disciplinary actions.

4. Less Than Full-Time (Intermittent) Employee Benefits. Less than full-time employees are eligible for the following benefits:

Holidays	6 hours of paid time for each District holiday, provided that the employee works or is on paid authorized leave for a minimum of 16 hours in the pay period in which the holiday falls.
Birthday Floater Holiday	6 hour paid time.
Vacation	Prorated accruals based on hours worked in accordance with Article XII B – Vacations.
Sick Leave	Prorated accruals based on hours worked in accordance with Article XII C – Sick Leave.
Job Injury	Eligible for 360 hours.
Special Leave	Prorated at 75%. Jury duty: based on hours scheduled; voting time: not to exceed 2 hours; blood donation granted at 2 hours.
State Disability Insurance (SDI)	As prescribed by the State.
Health Insurance	The District will contribute 75% of the District's contribution for full-time employees for less than full time employees and their eligible dependents who participate in an approved District Health plan, provided that the Less than Full-time employees pay the remaining premium cost by payroll deduction.
Dental and Vision Insurance	District pays 75% of premium provided employees pay 25% of the composite rates by payroll deduction.
Long-term Disability Insurance (LTD)	Benefit based on salary.
Life Insurance	Benefit based on salary.
401K, 457 Deferred Compensation Plan	Eligible to participate in (401K upon plan modification)
Work Out of Class	Eligible to work 360 hours per payroll year.
Vacation Sell Back	Up to 80 hours of accrued vacation time may be sold back to the District in one (1) hour increments during the payroll year, before the last pay period of the payroll year.
Sick Leave Buyback	Up to 16 hours of sick leave may be converted to vacation or cash payment of up to 16 hours of sick leave, if the employee has not used more than 18 hours of sick leave in 6 months.
Domestic Partners	Employees who register their domestic partners are eligible for all family emergency leaves and may cover their domestic partners

	for medical insurance, dental and vision care.
Transportation Subsidy	Eligible for participation in the Transportation Subsidy Program at the agreed upon amount for full-time employees.
Medical Plan Non-Dual Enrollment Incentive	Employees who receive medical insurance coverage through their spouse or partner will receive \$112.50 a month, if they elect not to be covered under the District's medical plan.
Supplemental Life Insurance	Employees may purchase additional life insurance in addition to the insurance offered by the District through payroll deduction.
Tuition Refund	Eligible to be reimbursed 75% of the tuition reimbursement benefit per fiscal year, for classes and supplies required for job related education classes.
Supplemental Benefit Program	Eligible to participate in and receive full benefits.

ARTICLE XXI. INDEMNIFICATION

- A.** The District shall defend and indemnify its employees and former employees against liability for acts or omissions committed within the scope of their employment pursuant to the California Tort Claims Act ("Act"), Government Code sections 810 *et seq.*, unless the District determines that there exists one of the exceptions provided by the Act listing grounds for refusal to defend and/or indemnify the employee.
- B.** **Scope.** Nothing in this Article is intended to expand or limit the District's duty or discretion to defend and/or indemnify employees under the California Tort Claims Act except, however, that the District shall provide for the defense of an employee in a criminal action or proceeding brought against the employee if (i) the criminal action or proceeding is brought on account of an act or omission in the scope of their employment as an employee of the District; and (ii) the District determines that the employee acted, or failed to act, in good faith, without actual malice and in the apparent interests of the District. The District will not provide a defense to an employee in a criminal action or proceeding if (i) the employee fails to reasonably cooperate in good faith in the defense of the action or proceeding; (ii) the act or omission was not within the scope of their employment; (iii) the employee acted, or failed to act, in bad faith and with actual malice; or (iv) the defense of the action or proceeding by the District would create a specific conflict of interest between the District and the employee. For purposes of this Article, "specific conflict of interest" means a conflict of interest or an adverse or pecuniary interest, for which the District is excused from providing a defense by statute or by a rule or regulation of the District. When retention of outside counsel is necessary as deemed by the District, the District will consult with the employee in the selection of outside counsel, but reserves the right to make the final determination with respect therein. The District also reserves the right to conduct the employee's defense against the

criminal action or proceeding pursuant to an agreement with the employee reserving the District's rights against the employee.

- C. **Interpretation.** The interpretation, application and enforcement of this Article shall not be subject to the grievance and arbitration procedure of this Memorandum, or the Civil Service grievance and hearing procedures of the District's Civil Service Personnel Rules and Regulations. Nothing in this Article shall be construed to deprive an employee of the right to petition for a writ of mandate to compel the District to perform the duties imposed by the California Tort Claims Act
- D. **Employee.** For purposes of this Article, the term "employee" includes any current employee of the District and any former employee who was employed by the District at the time of the act or incident for which a criminal or civil action or proceeding has been brought against that person, in their official or individual capacity, or both.

ARTICLE XXII. OTHER TERMS AND CONDITIONS

- A. **Term.** On approval by the District's Board of Directors, this Memorandum shall be effective from April 26, 2021 through April 20, 2025. If at least ninety (90) days prior to that date either party shall not have served written notice by registered mail upon the other that it desires revision or modification of any designated provision or provisions contained herein, or termination of all such provisions, this Memorandum shall be automatically renewed for successive periods of one (1) year.
- B. **No Implied Waiver.** If at any time the Union or the District shall elect not to assert its rights under any provisions of this Memorandum in the event of a breach thereof, such lack of action in this respect shall not be construed as a continued waiver of any rights under the provisions of Memorandum.
- C. Except as otherwise expressly provided herein, this Memorandum shall be interpreted in a manner consistent with the District's Employer-Employee Relations Resolution and with all written District policies and procedures.
- D. **Savings Clause and Future Negotiations.** Should any part of this Memorandum, or any provision contained herein, be rendered or declared invalid by reason of any existing or subsequently enacted legislation, or by any decree of any court of competent jurisdiction, such invalidation of such part or portion of this Memorandum shall not invalidate the remaining portions thereof. The remaining portions or parts shall remain in full force and effect. It is mutually agreed that upon any such invalidation, the District and the Union will meet and confer with reference to the parts and provisions thus invalidated.
- E. **Scope of Agreement.** Except as otherwise specifically provided herein, this Memorandum fully and completely incorporates the understanding of the parties hereto and constitutes the sole and entire Memorandum between the parties on any and all matters contained in this Memorandum. Neither party shall, during the term of this Memorandum, demand any change therein; provided, however, that nothing herein shall

prohibit the parties from changing the terms of this Memorandum by mutual agreement.

- 1) The parties shall exclude from the scope of agreement (Article XXI E), and separately negotiate any revisions to the Civil Service Rules and District Policies and Procedures regarding mandatory subjects of bargaining that are not contained in this MOU, during the term of this Contract.

F. **Transit Subsidy.** The District will provide a transportation subsidy pursuant to the District Alternate Commute Program.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Memorandum of Understanding dated on this ____ day of _____, 2022.

EAST BAY MUNICIPAL
UTILITY DISTRICT

LOCAL 39, INTERNATIONAL UNION OF
OPERATING ENGINEERS,
STATIONARY ENGINEERS

GREGORY RAMIREZ
Chief Negotiator

JEFF GLADIEUX
President

WINNIE ANDERSON
Negotiating Team

BART FLORENCE
Business Manager

BRETT KAWAKAMI
Negotiating Team

CHARLIE SOLT
Director of Public Employees

STAN EICHENBERGER
Business Representative/Chief Negotiator

ANDREW KWAN
Negotiating Team

ARCELIO CAMACHO
Negotiating Team

ERIC GEE
Negotiating Team

JASON LITTLEFIELD
Negotiating Team

JOSHUA MOORE
Negotiating Team

KENTON GEE
Negotiating Team

ATTACHMENT A**EBMUD
LOCAL 39 SALARY SCHEDULE**

Class Code	Class Title	Salary Range	Step 1	Step 2	Step 3
8136	Senior Water Distribution Operator	68	9,840	10,332	10,849
8133	Senior Water Treatment Operator	68	9,840	10,332	10,849
8139	Water Distribution Operator	60	8,070	8,474	8,998
8134	Water Treatment Operator	60	8,070	8,474	8,998
8135	Water Treatment/Distribution Operator Trainee	52	6,227	6,958	7,306

ATTACHMENT B

APRIL 2003

SIDELETTER OF AGREEMENT

Between

EAST BAY MUNICIPAL UTILITY DISTRICT (District)

AND LOCAL 39, INTERNATIONAL UNION OF OPERATING ENGINEERS, AFL-CIO

Regarding

THE EMPLOYEE COMPUTER FINANCIAL ASSISTANCE PROGRAM

East Bay Municipal Utility District, hereinafter referred to as the District, will provide employees represented by Local 39 hereinafter referred to as the Union, interest-free loans up to twenty-five hundred (\$2,500) dollars for the purchase of personal computers. The parties agree that such loans will be provided to Local 39 represented employees in order to facilitate the development of their computer skills. The District and Local 39, agree that Local 39 employees will be subject to the following initial implementation criteria, as well as the Employee Computer Financial Assistance Program Guidelines previously established by the District. Further, the District and Local 39 agree that the program guidelines, the implementation and administration of the computer loan program are not subject to the meet and confer process, nor the Union's grievance procedure.

TIMING OF PROGRAM IMPLEMENTATION AND LOAN APPROVAL

- The Computer Loan Program will be implemented three (3) months after the execution of the 2003 contract between the District and the Union.
- Original requests for a loan will be approved within eight (8) to twelve (12) weeks after an employee submits a completed Application and Specification sheet, to the Employee Services Department, depending on the number of requests.

ELIGIBILITY

- All regular, limited term (LT), temporary construction (TC), Intermittent and Job Share employees, provided they satisfy the District's Program guidelines, are eligible to participate in the computer loan program.
- Employees must have a "satisfactory or meets expectations" or better on their last performance evaluation and cannot have been suspended in the twelve (12) months immediately preceding their application.

TERMS AND CONDITIONS

- Employees must be currently at work in order to be eligible for the computer loan program.
- Employees must repay the loan through automatic bi-weekly payroll deductions, in an amount of fifty (\$50) dollars or more, in each pay period until the loan is extinguished.
- Employees who separate from the District must repay the entire outstanding loan balance, the balance to be deducted from their final paycheck.
- Employees who are absent on leave without pay, must continue to make biweekly payments of the loan, during their unpaid leave of absence, in the amount agreed to in the Promissory Note and Authorization for Payroll Deduction.

EXHIBIT B

SENIOR MANAGEMENT TEAM, MANAGERS, CONFIDENTIALS AND NON- REPRESENTED EMPLOYEES COMPENSATION PACKAGE

2021-2025

1. GENERAL SALARY INCREASE (GSI)

- 1st Year: 4.0%, effective April 26, 2021
- 2nd Year: 4.5%, effective April 25, 2022
- 3rd Year: CPI-W plus 0.5%, minimum 2% and maximum 6.5%, effective April 24, 2023
- 4th year: CPI-W plus 0.5%, minimum 2% and maximum 6.5%, effective April 22, 2024

The monthly wage rates established herein shall be effective April 26, 2021 for all employees on the payroll on January 25, 2022 and for all such employees who retired from the District on or after April 26, 2021, up to and including January 25, 2022

2. Supplemental Benefits Program

Effective January 1, 2022, supplemental benefits program under IRS Code Section 125 will increase from \$910 to \$1000.

3. Deferred Compensation Administrative Fees

Increase payment of fees by the District from \$105,000 to \$150,000 annually.

4. Vacation Sell Back

The maximum number of hours any employee may choose to sell back to the District during the payroll year is increased from 120 to 200.

5. Safety Shoes

Provides an increase to the benefit from \$215 to \$265.

6. Holiday

Effective at adoption of MOU, add Juneteenth, June 19 of each year, as a new District holiday.

7. One-Time Pandemic Compensation Consideration

Provides a one-time payment of \$1,000 to members of the Senior Management Team, Managers, Confidential Employees and Non-represented Employees actively employed by the District as of January 25, 2022 as recognition of their service to the public throughout the COVID-19 pandemic. The District shall issue payment on the second full pay period after January 25, 2022.

8. Annual employer matching contribution to 401(k) or 457 Deferred Compensation Plans to eligible employees subject to the Public Employees' Pension Reform Act (PEPRA)

Effective January 1, 2023, only for eligible employees subject to PEPRA, the District shall make a matching contribution of up to \$1,000 annually to participating employees' 401(k) deferred compensation account.

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ITEM 13

CORONAVIRUS UPDATE

**WILL BE PROVIDED
AS AN ORAL REPORT**

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ITEM 13

WATER SUPPLY UPDATE

**WILL BE PROVIDED
AS AN ORAL REPORT**

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EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 20, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager *CCC*

FROM: Rischa S. Cole, Secretary of the District *RC*

SUBJECT: Planning Committee Minutes – January 11, 2022

Chair Marguerite Young called to order the Planning Committee meeting at 8:45 a.m. She announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Director Lesa R. McIntosh was present at roll call. Director Frank Mellon was absent (excused). Both Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Director of Wastewater Eileen M. White, Senior Civil Engineer Christopher A. Dinsmore, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Presentations/Documentation. 1) Presentation entitled “Wet Weather Consent Decree Implementation Update,” dated January 11, 2022.

Wet Weather Consent Decree Implementation Update. Senior Civil Engineer Christopher A. Dinsmore presented an update on Consent Decree compliance activities for calendar year 2021. Since September 2014, the District and its seven wastewater Satellite agencies (the Cities of Alameda, Albany, Berkeley, Oakland, and Piedmont, plus Stege Sanitary District which serves El Cerrito, Kensington and Richmond Annex) have been implementing inflow and infiltration (I&I) reduction efforts under the Consent Decree which requires the elimination of most discharges from the District’s three wet weather facilities (WWFs) – Oakport, Point Isabel and San Antonio Creek by 2036. There are three prescribed compliance check-ins: the first in September 2022, the second in 2030, and the final in 2036. Mr. Dinsmore reviewed work required by the Consent Decree under the Regional Private Sewer Later (PSL) Program, the Regional Technical Support Program (RTSP), and two capital improvement projects. Since 2011, the District has issued 47,463 PSL certificates which represents 37 percent of the parcels within the program area. The RTSP identifies sources of I&I which are not addressed by rehabilitation performed by the Satellites or private property owners via the PSL program. Using various investigative tools, staff has identified over 490 sources of significant I&I sources within the regional collection systems to date, which contribute over 31 million gallons per day of I&I during peak flows. The District constructed and is currently operating two Consent Decree-required capital projects. The Urban Runoff Diversion Project (URDP) removes pollutants from captured waters in the stormwater system which would otherwise have been discharged to San Francisco Bay without treatment. The URDP has conveyed over 461 million gallons of dry weather urban runoff since its inception in 2017. The Pump Station Q Force Main/Gravity Interceptor Reverse Flow Project was completed in December 2019 and provides additional conveyance capacity to deliver flows to the Main Wastewater Treatment Plant resulting in reduced discharge volumes from Point Isabel WWF. This project provides for the largest single reduction in discharge volumes for all work required under the Consent Decree. He explained compliance with the Consent Decree will be determined by comparing the three-year average output

ratios for each WWF against Consent Decree established benchmarks. The Consent Decree allows for a 20 percent exceedance factor at the 2022 check-in. Point Isabel WWF may meet the first compliance check-in benchmark and is likely to be within the 20 percent exceedance factor. Oakport WWF may meet the first compliance check-in benchmark and should be within the 20 percent exceedance factor. San Antonio Creek WWF may meet the first compliance check-in benchmark and is likely to be within the 20 percent exceedance factor. Mr. Dinsmore noted if a WWF does not meet the established benchmarks, the Consent Decree requires supplemental data gathering to determine steps needed to achieve compliance. While preparing for compliance check-in, staff will continue monitoring flow reductions; continue collaborating with the Satellite agencies to locate and reduce I&I; continue implementing and refining the RTSP; and continue implementing the PSL Program. Staff will keep the Board updated on progress in meeting the Consent Decree requirements. Mr. Dinsmore responded to questions on how the Fiscal Year 2011 baseline affects the accuracy of the flow standard. He also confirmed the notification process after a positive RTSP smoke test and the triggers for residential property PSL permits. It was moved by Director McIntosh, seconded by Director Young and carried (2-0) by roll call vote to accept the report. Director Mellon was absent (excused).

- Director McIntosh left the meeting at 9:02 a.m.

Adjournment. Chair Young adjourned the meeting at 9:12 a.m.

CCC:RSC

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: January 20, 2022

MEMO TO: Board of Directors

THROUGH: Clifford C. Chan, General Manager 

FROM: Rischa S. Cole, Secretary of the District 

SUBJECT: Legislative/Human Resources Committee Minutes –January 11, 2022

Chair John A. Coleman called to order the Legislative/Human Resources Committee meeting at 9:18 a.m. He announced that in accordance with Government Code section 54953(e), this meeting would be conducted by webinar and teleconference only. A physical location was not provided for this meeting. Director Patterson was present at roll call. Director McIntosh joined the meeting at 9:48 a.m. (late/excused). All Directors participated remotely. Staff participants included General Manager Clifford C. Chan, General Counsel Derek T. McDonald, Manager of Legislative Affairs Marlaigne K. Dumaine, Special Assistant III Derry L. Moten, Executive Assistant II Robyn S. Johnson, and Secretary of the District Rischa S. Cole.

Public Comment. None.

Presentations/Documentation. 1) Presentation entitled “Diversity, Equity, and Inclusion Strategic Plan Draft,” dated January 11, 2022; and 2) Document entitled “Federal Court Case 83-3037, McIntoch and Irving v EBMUD.”

Legislative Update. Manager of Legislative Affairs Marlaigne K. Dumaine discussed five federal initiatives for 2022: 1) Climate Change Resiliency – Actively assess and seek opportunities to engage in climate change policies and potential funding opportunities that promote EBMUD priorities to ensure safe, reliable, and resilient water services; 2) Contaminants of Emerging Concern – Advance EBMUD’s interests in discussions on contaminants of emerging concern in the context of water supply and wastewater treatment; 3) Cybersecurity – Advance EBMUD’s interests in discussions on cybersecurity-related legislation and policies in the water and wastewater sectors; 4) Funding to Support Infrastructure Investment and Ratepayer Assistance – Pursue direct federal funding opportunities for EBMUD projects and infrastructure through new and existing federal programs, including national infrastructure initiatives; and 5) Water Supply Reliability and Natural Resources Protection – Advance EBMUD’s interests in water supply reliability and supporting the Mokelumne River fishery. Ms. Dumaine said the District did not include wildfire prevention, forest and watershed health, and workforce transition in its state climate change resiliency initiative but did include them in the federal initiative. She responded to a question raised during the December 14, 2021 Board meeting regarding the market for timber management noting there may be future discussions on this topic at the state and federal levels. She also said she would check if timber harvesting plans required by the state are applicable on federal lands. Ms. Dumaine commented on an outstanding funding authorization from the early 2000s for an integrated recycled water program at the District and said the District may consider using the outstanding authorization to seek an appropriation for another project. She confirmed that while the outstanding funding authorization was not de-authorized by Congress, funding will need to be appropriated to the current budget. Director Coleman said he is willing to partner with another Board member to work with stakeholders to develop a framework for addressing timber management. The

Committee asked staff to seek opportunities to engage timber management solutions applicable to federal lands in the Mokelumne watershed. It was moved by Director Patterson, seconded by Director Coleman, and carried (2-0) by roll call vote to support the staff recommendations. Director McIntosh was absent (excused).

Diversity, Equity, and Inclusion (DEI) Strategic Plan. Special Assistant III Derry L. Moten presented the update. Staff developed the DEI Strategic Plan based on data collected from The Winters Group Cultural Audit, Women in the Trades Environmental Scan, EBMUD Fiscal Year 2021 Affirmative Action Plan, and input from District staff including the Diversity Committee and Equity Core Team. Mr. Moten reviewed the DEI vision, mission, and five strategic pillars which are focused on 1) leadership commitment; 2) workforce diversity; 3) inclusive culture; 4) supplier diversity; and 5) environmental justice and social responsibility. The Strategic Plan will be implemented over five years and includes desired outcomes and the goals and objectives required to achieve them and a two-year action plan that aligns goals and objectives and identifies specific actions to achieve the outcomes. The strategic pillars frame the goals, objectives, and actions to be addressed over the next five years with 114 actions scheduled to be completed in the next two years. He discussed the Strategic Plan governance model and said the plan's strategic approach is grounded in the following key principles: employee involvement and engagement; use of equity toolkits; and continuous improvement. Staff will evaluate results annually for the first two years and conduct biennial evaluations during the next three years through Board feedback, a DEI dashboard, employee survey data, toolkit evaluation, and work team feedback. Mr. Moten reviewed and asked for Committee feedback on key actions in the DEI Strategic Plan under Workforce Diversity (4.2 - diversify recruiting, outreach, and marketing efforts); Supplier Diversity (9.3 – Contract Equity education); and Community Engagement and Environmental Justice (10.2 – external community engagement). The Board is scheduled to discuss the Strategic Plan, which will include Committee feedback, in a workshop on January 25. The Committee provided feedback and he responded to questions on recruitments and promotions for internal staff; tools to measure the results of the key actions in the Strategic Plan; and confirmed Core Equity Team members do not participate on interview panels for internal and external recruitments. Addressing the Committee was 1) Ivette Rivera, EBMUD Gardener Foreman commented on the Diversity, Equity and Inclusion Strategic Plan, discrimination at EBMUD, tenure of the current Board of Directors, and read an excerpt from the 1983 civil rights lawsuit entitled “Federal Court Case 83-3037, McIntoch and Irving v EBMUD” which she also emailed to the Board; 2) Joey D. Smith, President, AFSCME Local 2019, commented on changes to the District's process for providing upcoming job opportunities to staff noting staff may miss this information because it is no longer included in an email and is now posted on the District's intranet; 3) Syed Rahman, Executive Board Member, AFSCME Local 2019 commented on baseline information in the Strategic Plan; and 4) George D. Cleveland, Chief Steward, AFSCME Local 2019 commented on a recent recruitment and potential impacts to internal staff's ability to apply because upcoming job opportunities are no longer included in an email and are now posted on the District's intranet. The Committee asked staff to develop ways to include the Office of Diversity, Equity and Culture in the District's hiring processes and to review the process for providing upcoming job opportunities to staff. It was moved by Director Patterson, seconded by Director McIntosh, and carried (3-0) by roll call vote to accept the report.

Adjournment. Chair Coleman adjourned the meeting at 10:23 a.m.

CCC:RSC