



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

375 - 11th Street, Oakland, CA 94607

Office of the Secretary: (510) 287-0440

**AGENDA
Tuesday, November 13, 2012**

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

ROLL CALL:

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

ANNOUNCEMENT OF CLOSED SESSION AGENDA:

1. Existing litigation pursuant to Government Code section 54956.9(a):
 - a. *EBMUD v. E-D Coat, Inc.*
Alameda County Superior Court, Case No. RG12650364
2. Threat to public services or facilities pursuant to Government Code section 54957: Conference with Michael J. Wallis, Director of Operations and Maintenance, and Michael R. Ambrose, Manager of Regulatory Compliance.

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

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

ROLL CALL:

BOARD OF DIRECTORS:

- Pledge of Allegiance

ANNOUNCEMENTS FROM CLOSED SESSION:

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 5 recommendations.)

1. Approve the Regular Meeting Minutes of October 23, 2012.
2. File correspondence with the Board.
3. Authorize an agreement with Trimark Associates, Inc. in an amount not to exceed \$290,000 to provide Qualified Reporting Entity services and maintenance and inspection services for the power revenue meters and monitoring equipment located at the District's two hydropower facilities and Wastewater's biogas generation facilities for the period November 15, 2012 through December 31, 2022.
4. Authorize an extension to the current agreement with AT&T under Board Motion 211-07 dated December 11, 2007 in the estimated annual amount of \$1,300,000 to purchase data and voice communication services under the CALNET II contract and authorize a second agreement with AT&T in the estimated annual amount of \$100,000 for cellular voice and data services under the State's Western States Contracting Alliance contract for a one year period beginning January 30, 2013 through January 29, 2014.
5. Authorize the Office of General Counsel to continue the employment of the law office of Remcho, Johansen and Purcell, LLP for specialized legal services related to elections and conflicts of interest matters.

DETERMINATION AND DISCUSSION:

6. Legislative Update:
 - Update on Legislative Issues of Interest to EBMUD
7. Approve actions to make changes to EBMUD Retirement Programs to comply with Assembly Bill 340 (AB 340), the California Public Employees' Pension Reform Act.
 - 7a. Amend the East Bay Municipal Utility District 415(m) Replacement Benefits Plan to comply with AB 340. (Resolution)
 - 7b. Introduction and first reading on an ordinance amending the EBMUD Employees' Retirement System Ordinance (Ordinance No. 40) in order to comply with AB 340. (First Reading - Ordinance No. 356-12)

REPORTS AND DIRECTOR COMMENTS:

8. General Manager's Report:
 - Monthly Report - October 2012
9. Committee Reports:
 - Finance/Administration
 - Sustainability/Energy
 - Legislative/Human Resources
10. Director Comments.

ADJOURNMENT:

The next Regular Meeting of the Board of Directors will be held at 1:15 p.m. on Tuesday, November 27, 2012 in the Administration Center Board Room, 375 Eleventh Street, Oakland, California.

Disability Notice

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

Document Availability

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

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BOARD CALENDAR

Date	Meeting	Time/Location	Topics
Tuesday, November 13	Sustainability/Energy Committee Katz (Chair), Foulkes, Linney	9:15 a.m. Training Resource Center	<ul style="list-style-type: none"> • Community Choice Aggregation Update • Briones In-Conduit Hydro-Generation Project • Power Generation Station Turbine Update • Port of Oakland Power Purchase Agreement Update
	Legislative/Human Resources Committee McIntosh (Chair), Katz, Mellon	10:15 a.m. Training Resource Center	
	Planning Committee Linney (Chair), Foulkes, McIntosh		
	Board of Directors	11:00 a.m. 1:15 p.m.	
Thursday November 22 & Friday, November 23	Thanksgiving Holiday Observed		<ul style="list-style-type: none"> • Offices Closed
Tuesday, November 27	Planning Committee Linney (Chair), Foulkes, McIntosh	9:15 a.m. Training Resource Center	<ul style="list-style-type: none"> • Closed Session • Regular Meeting
	Legislative/Human Resources Committee McIntosh (Chair), Katz, Mellon	10:00 a.m. Training Resource Center	
	Board of Directors	11:00 a.m. 1:15 p.m.	

MINUTES

Tuesday, October 23, 2012

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

Regular Closed Session Meeting

President John A. Coleman called to order the Regular Closed Session Meeting of the Board of Directors at 11:05 a.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, Director of Wastewater David R. Williams (Item 1a), Attorney Derek McDonald (Item 1a), Director of Administration Carol Y. Nishita (Items 2 and 3), and Assistant General Counsel Craig S. Spencer (Items 2 and 3).

PUBLIC COMMENT

There was no public comment.

ANNOUNCEMENT OF CLOSED SESSION AGENDA

President John A. Coleman announced the Closed Session agenda. The Board convened to Conference Room 8A/B for discussion.

Regular Business Meeting

President John A. Coleman called to order the Regular Business Meeting of the Board of Directors at 1:15 p.m. in the Administration Center Board Room.

ROLL CALL

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

Staff present included General Manager Alexander R. Coate, General Counsel Jylana Collins, and Secretary of the District Lynelle M. Lewis.

BOARD OF DIRECTORS

President John A. Coleman led the Pledge of Allegiance.

PRESENTATION

General Manager Coate announced that for the twelfth budget in a row, the Government Finance Officers Association of the United States and Canada (GFOA) has presented a Distinguished Budget Presentation Award to the District. To receive this award, the District's FY12-FY13 Budget document had to meet stringent guidelines and program criteria as a policy document, operations guide, financial plan, and communication device.

Mr. Coate congratulated the staff that put this winning budget together and continuously strive to make it a better product. Under the leadership of Director of Administration Carol Y. Nishita and the former Director of Finance Gary Breaux, the following employees were recognized: Management Analyst Creighton Fong, Principal Management Analyst Susan Giarrusso, Management Analyst Julie Hampton, Principal Management Analyst Richard Lou, Principal Management Analyst David Mercado, former Management Analyst Wanda Sawyer, former Principal Management Analyst Debora Wing, and Manager of Budget Jeanne Chase. On behalf of the Board, Director Mellon presented the award and the Board applauded staff for this achievement.

ANNOUNCEMENTS FROM CLOSED SESSION

The Board, in closed session, by a unanimous vote of the Directors attending, authorized the General Counsel to initiate litigation in one matter. The action, defendants and other particulars will be disclosed, upon inquiry, once the action is formally commenced. There were no other announcements from closed session.

PUBLIC COMMENT

There was no public comment.

CONSENT CALENDAR

- Motion by Director Foulkes, seconded by Director Linney, to approve Items 1-10 on the Consent Calendar, carried (7-0) by voice vote.
1. **Motion No. 132-12** -- Approved the Regular Meeting Minutes of October 9, 2012.
 2. The following correspondence was filed with the Board: 1) Slide presentation entitled "Proposed Financings for FY13," dated October 23, 2012; and 2) Slide presentation entitled "Benefits Administration Update," dated October 23, 2012.
 3. **Motion No. 133-12** -- Awarded a contract to the lowest responsive/responsible bidder, Pacific Infrastructure Corporation in the amount of \$777,000 for construction of Folsom South Canal Connection Project Post Construction Modifications under Specification 2058.

4. **Motion No. 134-12** -- Authorized an agreement with AECOM Technical Services, Inc in an amount not to exceed \$1,004,033 to prepare an Environmental Impact Report for the Chabot Dam Seismic Upgrade Project pursuant to the California Environmental Quality Act.
5. **Motion No. 135-12** -- Authorized an agreement with Telvent USA, LLC. in an amount not to exceed \$701,000 for software licenses and support services supporting the District's Supervisory Control and Data Acquisition System Operations Network at the District facilities during the period November 1, 2012 to October 31, 2017.
6. **Motion No. 136-12** -- Authorized an agreement with TranSystems Corporation in an amount not to exceed \$308,146 for design services for the widening of Engineers Road near the Main Wastewater Treatment Plant during the period from October 2012 to December 2013.
7. **Motion No. 137-12** -- Awarded a purchase order to the lowest responsible/responsive bidder, Carahsoft Technology Corporation, in the estimated total amount of \$123,000 for supplying Adobe software licenses and maintenance for new District Windows 7-based PC's for the period beginning October 24, 2012 and ending September 30, 2013 under SLP-12-70-0064C.
8. **Motion No. 138-12** -- Awarded a purchase order to the lowest responsible/responsive bidder, Dell Marketing LP, in the estimated total amount of \$986,000 for supplying Microsoft software licenses and maintenance for installation on new District Windows 7-based PC's for the period beginning October 24, 2012 and ending June 30, 2013 under SLP-11-70-0007Q.
9. **Motion No. 139-12** -- Consented to withdrawal of the low bid of Anderson Pacific Engineering Construction, Inc., and awarded a contract to the lowest responsive/responsible bidder, Monterey Mechanical Co., in the amount of \$2,662,000 for construction of the Main Wastewater Treatment Plant Oxygen Production Plant Cooling System Improvements under Specification SD 338.
10. **Resolution No. 33901-12** -- Authorizing A Memorandum Of Understanding With Solano County Water Agency And Participating Agencies For Water Conservation Project Grant Funding Awarded By The California Department Of Water Resources Under The Proposition 84 Integrated Regional Water Management Grant Funding Program.

DETERMINATION AND DISCUSSION

11. Legislative Update.

Special Assistant Marlaigne K. Dumaine reported that November 6 is the date of California's 2012 general election. She said that the statewide ballot features the 2012 presidential contest, as well as elections for U.S. Congress, state senate and state assembly, 11 statewide ballot propositions, along with some local ballot measures.

12. **Approve the execution of a remarketing agreement and related supporting documents for the \$155.4 million (to the extent not refunded in connection with the structuring of the Water Series 2012B Bonds) Water System Revenue Refunding Bonds, Series 2009A-1, and approve the appointment of Morgan Stanley and Barclays Capital as remarketing agents.**

Director of Finance Eric L. Sandler presented a status update on previously approved transactions as well as a description of two upcoming transactions. He reported that the Series 2012A (call modification) resulted in Citi paying the District a net payment of \$16.2 million which was higher than the \$10 million projection. The Series 2013A (Water 2003 forward refunding) and the Series 2012B and additional refunding bonds are scheduled for issuance next. Mr. Sandler announced that staff was seeking Board action to authorize remarketing the Water Series 2009A-1 Water Security Industry Financial Markets Association (SIFMA) Bonds. This transaction would allow the District to avoid increased costs for liquidity support of approximately \$270,000 annually. He noted that in November staff will be seeking Board approval for the replacement of liquidity facilities for Water Series 2008A-1, 2008A-2, and 2008A-3. Director Patterson reported that the Finance/Administration Committee voted unanimously to support the staff recommendation.

- Motion by Director Patterson, seconded by Director McIntosh, to approve the recommended action for Item 12, carried (7-0) by voice vote.

Resolution No. 33902-12 -- Approve The Form And Authorize The Execution Of A Remarketing Agreement In Connection With The District's Water System Revenue Refunding Bonds, Series 2009A-1; Authorize The Delivery Of A Preliminary Reoffering Circular And The Execution And Delivery Of A Final Reoffering Circular; Authorize And Ratify Certain Related Actions; And Authorize The Officers Of The District To Do All Other Things Deemed Necessary Or Advisable Relating Thereto.

REPORTS AND DIRECTOR COMMENTS

13. **General Manager's Report.**

General Manager Coate reminded the Board of the action needed to complete benefits open enrollment on the new BeneSmart System. Manager of Human Resources Delores A. Turner presented an overview of the newly implemented benefits open enrollment process which launched October 15 and runs through November 2, 2012. She highlighted key features of the new benefits administration system that will provide 24-hour employee/retiree access to perform a variety of benefits transactions. She reviewed the system benefits, communication plan for benefits administration, enrollment status and next steps. Director Mellon asked about the ability to update personal data within the BeneSmart System and Ms. Turner said staff would research this and provide an update to the Board.

Next, General Manager Coate announced the following: the District ended the water year with overall water storage of 570 acre feet; the 2012 Employee Giving Campaign kicked off on October 18; and that staff conducted a successful tour of the Mokelumne System with State Water Resources Control Board members.

14. Committee Reports.

- Filed with the Board were the Minutes of the October 9, 2012 Legislative/Human Resources and Planning Committees.

15. Director Comments.

- Director Foulkes had no comment.
- Director Katz reported attending the Emeryville Chamber of Commerce Annual Meeting on October 11.
- Director Linney had no comment.
- Director McIntosh had no comment.
- Director Mellon announced that he would be absent from the November 13 Board meeting in order to attend the International Foundation of Employee Benefits conference in San Diego which is scheduled from November 11-14, 2012.
- Director Patterson reported attending the Sacramento Metro Chamber meeting on the "Delta Panel Report" on October 19 in Sacramento; and served as a guest speaker at the McClymonds High School 50-year Class Reunion celebration on October 20 in Berkeley.
- President Coleman reported attending/participating in the following events: Freeport Regional Water Authority teleconference call on October 11; guest speaker at the San Ramon Rotary Club on October 11; meeting with constituent Tom Terrel on October 11 in Alamo; Lafayette Community Garden Ground Breaking on October 14; ACWA Executive Committee teleconference call on October 15; agenda review meeting with General Manager Coate on October 17 in Oakland; ACWA "Best of the Blue Awards" meeting on October 18 in Sacramento; Contra Costa Council Board meeting on October 19 in Concord; and DERWA Board meeting on October 22 in Dublin. He reported on plans to attend/participate in the following upcoming events: ACWA Executive Committee teleconference call on October 29; ACWA Executive Committee teleconference call on November 6; and agenda review meeting with General Manager Coate on November 7.

ADJOURNMENT

The meeting was adjourned at 2:02 p.m.

SUBMITTED BY:

Lynelle M. Lewis, Secretary of the District

APPROVED: November 13, 2012

John A. Coleman, President of the Board
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AGENDA NO.
MEETING DATE

3.
November 13, 2012

TITLE TRIMARK ASSOCIATES, INC, POWER REVENUE METER MAINTENANCE

☒ MOTION _____ ☐ RESOLUTION _____ ☐ ORDINANCE _____

RECOMMENDED ACTION

Authorize an agreement with Trimark Associates, Inc. in an amount not to exceed \$290,000 to provide Qualified Reporting Entity (QRE) services and maintenance and inspection services for the power revenue meters and monitoring equipment located at the District's two hydropower facilities and Wastewater's (SD-1) biogas generation facilities for the period November 15, 2012 through December 31, 2022.



SUMMARY

The District's three power generation stations, Pardee, Camanche and SD-1, participate in the California wholesale energy markets and trade Renewable Energy Credits (REC). In order to participate in these markets, generators are required to maintain specific metering and monitoring equipment and a contract with a QRE is required to transfer generation data for REC trading. Trimark Associates is certified to provide these services and was found to be the least-cost, responsible provider, following a formal evaluation of other California Independent System Operator (CAISO) certified meter maintenance and QRE providers.

DISCUSSION

The District terminated its long-term Mokelumne Power Sales Contract with PG&E in 1999 and began selling power, produced by the District's hydroelectric power plants, in the California wholesale electric markets. On November 1, 2012, the District's Wastewater Department's Power Generation Station (PGS) entered the wholesale markets through the recently executed Power Purchase Agreement (PPA) with the Port of Oakland.

In order to participate in these markets, generators are required to install and maintain CAISO certified revenue meters at each generator location and a Data Processing Gateway (DPG) for all generators with a capacity of greater than 10 MW. This equipment can be maintained and upgraded only by certified CAISO meter specialists who provide 24/7 response time for broken or non-responsive equipment. The District's PPAs with Sacramento Municipal Utility District (SMUD) and the Port of Oakland both include the sale of RECs with the energy. According to the terms of the PPAs, the transfer of these RECs must occur through the Western Renewable Energy Generation Information System (WREGIS), which requires

Funds Available: FY13		Budget Code:
DEPARTMENT SUBMITTING Clifford C. Chan	DEPARTMENT MANAGER or DIRECTOR  Michael J. Wallis	APPROVED  General Manager

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

generators to secure a QRE to provide meter reading, data verification, and transmittal of generation meter data to WREGIS. Currently Trimark Associates is providing both meter maintenance and QRE services under a short-term contract with the District.

Trimark Associates was one of six CAISO certified meter maintenance companies nationwide and the only company located within 100-miles of SD-1's PGS and Pardee and Camanche Powerhouses. Through a competitive bid process, Trimark Associates was selected to provide meter and DPG maintenance and WREGIS REC reporting services. Trimark's fees are paid on a monthly basis and will total approximately \$22,000 per year. A long term contract with Trimark makes sense due to factors such as the limited response from other meter maintenance contractors in previous RFP's, Trimark's history of providing quick, reliable and responsive service over the past 10-years, and their relative close proximity to our generation facilities and the CAISO offices in Folsom California. In addition, Trimark is proposing replacement of the DPG by 2014, due to aging components and future incompatibility with newer software. The cost for this upgrade will be approximately \$7,000 and is included in the new agreement. Trimark may also provide other meter repair, replacement, and data services as needed under the scope of this contract for fees of approximately \$63,000 over the contract term.

SERVICE PROVIDER SELECTION

The CAISO provided a list of six meter maintenance companies that are currently certified to perform maintenance and QRE reporting services. A request for proposals was sent to each company on the CAISO list and two proposals were received. Trimark's proposal provided the lowest overall cost, including lower pricing for maintenance and reporting services, replacement of the DPG, and lower travel cost due to their proximity to the generator sites.

CONTRACT EQUITY PROGRAM EFFORTS

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

FISCAL IMPACT

This item is included in the FY13 budget.

ALTERNATIVE

Do not authorize agreement with Trimark. This alternative is not recommended because the District will not be in compliance with the SMUD and Port of Oakland PPAs to transfer RECs via WREGIS and will be unable to participate in California's wholesale electric markets if there is a failure of the metering and monitoring equipment.

ATTACHMENTS

P-035 CEP Summary
P-061 Affirmative Action Summary



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE General Services Agreement Trimark and Associates, Power Revenue Meter Maintenance - Seven-Year Contract						DATE: October 26, 2012								
CONTRACTOR: Trimark and Associates, Inc. Folsom, CA					Local/Small Business					PERCENTAGE OF CONTRACT DOLLARS				
BID/PROPOSER'S PRICE: \$200,000		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		
PRIME: Trimark and Associates, Inc.		\$200,000	White	X		100.0%	—	—	—	—	—	—		
SUBS: None						—	—	—	—	—	—	—		
						—	—	—	—	—	—	—		
						—	—	—	—	—	—	—		
						—	—	—	—	—	—	—		
						—	—	—	—	—	—	—		
						—	—	—	—	—	—	—		
						—	—	—	—	—	—	—		
TOTAL		\$200,000				100.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%		
CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)														
		White Men		White Women		Ethnic Minorities		Total Employees						
No. of Employees:		40		6		7		53						
Percent of Total Employees:		75.5%		11.3%		13.2%								
MSA Labor Market %:		36.1%		32.3%		31.6%								
MSA Labor Market Location:		Sacramento												
COMMENTS														
Contract Equity Participation -100% White Men participation and no subcontract opportunities exist.														
Trimark Associates, Inc.'s Affirmative Action profile is less than 50% workforce diversity based on the applicable MSA. The District will notify them of their non-compliance and that future awards may be denied if the workforce diversity remains less than 50% of the MSA and if they fail to document Good Faith Efforts to increase workforce diversity. An Affirmative Action Policy Statement is on file.														
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended						
ON FILE				NA										



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Trimark and Associates, Power Revenue Meter Maintenance - Seven-Year Contract		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	
General Services Agreement		DATE: 10/26/2012	9 Bay Area Counties	5.5	16.2	14.2	0.4	39.9
			Alameda/CC Counties	10.7	15.6	15.4	0.5	46.2
R=Recommnd P=Prime S=Sub	Composition of Ownership	Number of Ethnic Minority Employees						
Company Name, Owner/Contact Person, Address, and Phone Number			B	H	A/PI	AI/AN	TOTAL	PERCENT
								MSA %
RP	WM - L/SBE	Company Wide	-	3	4	-	7	13.2%
Trimark and Associates, Inc. Mark Morosky 193 Blue Ravine Road, #120 Folsom, CA 95630 916-357-5970		Manager/Prof	-	1	3	-	4	25.0%
		Technical/Sales	-	1	1	-	2	7.7%
		Clerical/Skilled	-	-	-	-	0	0.0%
		Semi/Unskilled	-	1	-	-	1	25.0%
		Bay Area	-	-	-	-	-	NA
		AA Plan on File: 10/29/2012	Date of last contract with District: 2/1/2012					
		Co. Wide MSA: Sacramento	# Employees-Co. Wide: 53		Bay Area: 0			
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide:		Bay Area:			
P	Unclassified	Company Wide						
AMPS-DMS, Inc. Chris Barrett 5773 Venice Blvd. Los Angeles, CA 90019 323-761-7534		Manager/Prof	Information Not Provided					
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA: Los Angeles-Long Beach	# Employees-Co. Wide:		Bay Area:			
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide:		Bay Area:			
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide:		Bay Area:			
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide:		Bay Area:			

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



AGENDA NO.
MEETING DATE

4.
November 13, 2012

TITLE DATA AND VOICE COMMUNICATIONS SERVICES

☒ MOTION ☐ RESOLUTION ☐ ORDINANCE

RECOMMENDED ACTION

Authorize an extension to the current agreement with AT&T under Board Motion 211-07 dated December 11, 2007 in the estimated annual amount of \$1,300,000 to purchase data and voice communication services under the CALNET II contract and authorize a second agreement with AT&T in the estimated annual amount of \$100,000 for cellular voice and data services under the State's Western States Contracting Alliance contract for a one year period beginning January 30, 2013 through January 29, 2014.

SUMMARY

Since 2002, telecommunications services offered by contracts through the State of California (also known as CALNET) have been favorable as compared to pricing the District has been able to obtain through its own competitive bid process. The current CALNET agreement was scheduled to expire on January 30, 2012 but the state has recently exercised its option to extend for an additional two year period. The District depends on reliable telecommunication services from AT&T for connecting the majority of the District locations. The data communication services include all high-speed links from remote sites to the Administration Building for computer access and Internet services while the voice communication services include inbound and outbound telephone calls. This agreement will allow AT&T to continue to meet the critical communication needs of the District and will leverage the buying power of the State of California.

EVALUATION

Public Contract Code, Section 10298, specifically allows agencies to purchase directly from the state competitively awarded contracts without pursuing separate competitive bidding. This provides a typical savings of 10-15% over pricing the District would get if bidding on our own. The State of California has competitively awarded contracts to AT&T and staff has confirmed with the vendor that the state pricing is the lowest available to the District. For some locations, AT&T is the only service provider available.

The District currently uses AT&T for the above said services and is satisfied with their cost, experience, knowledge, and ability to meet District requirements. Finally, AT&T has the lowest overall rates for the District's specific requirements when considering telemetry and data requirements.

Funds Available FY: 13		Budget Code: WSO/252/8583/5372
DEPARTMENT SUBMITTING INFORMATION SYSTEMS	DEPARTMENT MANAGER or DIRECTOR Nicholas J. Irias	APPROVED General Manager

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

CONTRACT EQUITY PROGRAM EFFORTS

The completed P-35 and P-61 forms are attached.

FISCAL IMPACT

Funds for this contract are available in the Information Systems Department FY13 operating budget.

ALTERNATIVES

1. **Discontinue these services: Not Recommended.** These services are required to conduct almost every aspect of the District's business.
2. **Conduct a competitive process to obtain pricing and vendors: Not Recommended.** The District will likely spend higher amounts for the telecommunication services and incur additional costs of replacing equipment for each telecommunication circuit. Further, only AT&T provides the service at some locations, and installation of each replacement circuit can take months, causing a massive disruption to the District operations.



CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE					DATE:						
Amendment to General Services Agreement Data and Voice Communications Service - Two-Year Contract					October 1, 2012						
CONTRACTOR:			PERCENTAGE OF CONTRACT DOLLARS								
AT&T Mobility National Accounts LLC Hanover, MD			Availability Group		Contracting Objectives		Participation				
BID/PROPOSER'S PRICE:	FIRM'S OWNERSHIP		White Men		25%		0.0%				
	Ethnicity	Gender	White Women		6%		0.0%				
	\$1,300,000 /year	Publicly Held Corp.	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:	\$1,300,000	Publicly Held Corp.			---	---	---	---	100.0%	---	---
SUBS:					---	---	---	---	---	---	---
None					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
					---	---	---	---	---	---	---
TOTAL			\$1,300,000		0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		20,990		16,056		26,662		63,708			
Percent of Total Employees:		32.9%		25.2%		41.9%					
MSA Labor Market %:		39.0%		33.7%		27.2%					
MSA Labor Market Location:		USA									
COMMENTS											
Contract Equity Participation - Zero Contract Equity participation since firm is a publicly held corporation and no subcontract opportunities exist.											
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: Data and Voice Communications Service - Two-Year Contract		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	
General Services Agreement		DATE: 10/1/2012	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	Publicly Held Corporation	Company Wide	12,544	10,295	3,384	439	26,662	41.9%
AT&T Mobility National Accounts LLC Matthew H. Phillips 7229 Parkway Drive Hanover, MD 21076 501-633-5443		Manager/Prof	1,657	843	1,046	79	3,625	30.5%
		Technical/Sales	5,494	6,985	1,858	182	14,519	44.0%
		Clerical/Skilled	5,393	2,467	480	178	8,518	45.2%
		Semi/Unskilled	-	-	-	-	-	-
		Bay Area	2,517	1,362	671	227	4,777	52.5%
		AA Plan on File: NA	Date of last contract with District: 6/22/2011					
		Co. Wide MSA: USA	# Employees-Co. Wide: 63,708 Bay Area: 9,097					
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide: Bay Area:					
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide: Bay Area:					
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide: Bay Area:					
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide: Bay Area:					
		Company Wide						
		Manager/Prof						
		Technical/Sales						
		Clerical/Skilled						
		Semi/Unskilled						
		Bay Area						39.9%
		Co. Wide MSA:	# Employees-Co. Wide: Bay Area:					

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



AGENDA NO. _____

5.

MEETING DATE _____

November 13, 2012

TITLE AUTHORIZE CONTINUED EMPLOYMENT OF THE LAW OFFICE OF REMCHO,
JOHANSEN & PURCELL, LLP AS SPECIAL COUNSEL

☒ **MOTION** _____ ☐ **RESOLUTION** _____ ☐ **ORDINANCE** _____

RECOMMENDED ACTION

Authorize the Office of General Counsel to continue the employment of the law office of Remcho, Johansen & Purcell, LLP, in an additional amount not to exceed \$40,000 for specialized legal services related to elections and conflicts of interest matters.

DISCUSSION

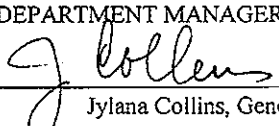
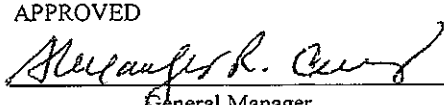
The firm of Remcho, Johansen & Purcell, LLP has been retained to assist the Office of General Counsel in public policy, elections and conflicts of interest matters. The firm will also assist the Office of General Counsel with the investigation and enforcement of East Bay Municipal Utility District's Campaign Finance Reform Ordinance. The Office of General Counsel is now requesting authorization for additional funds for services described in a separate confidential memorandum to the Board of Directors.

CONTRACT EQUITY PROGRAM EFFORTS

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

FISCAL IMPACT

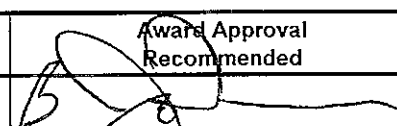
Sufficient monies have been budgeted in FY13 for this request for specialized legal assistance.

Funds Available FY: 2013		Budget Code: WSO 130 8511 5231
DEPARTMENT SUBMITTING <u>OFFICE OF GENERAL COUNSEL</u>	DEPARTMENT MANAGER or DIRECTOR  Jylana Collins, General Counsel	APPROVED  General Manager

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

CONTRACT EQUITY PROGRAM SUMMARY (P-035)

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

TITLE Amendment to Professional Services Agreement Authorize Continued Employment of the Law Office of Remcho, Johansen & Purcell, LLP as Special Counsel							DATE: October 26, 2012				
CONTRACTOR: Remcho, Johansen & Purcell, LLP Local/Small Business San Leandro, CA					PERCENTAGE OF CONTRACT DOLLARS						
					Availability Group		Contracting Objectives		Participation		
BID/PROPOSER'S PRICE: \$40,000		FIRM'S OWNERSHIP			White Men		25%		0.0%		
		Ethnicity		Gender		White Women		6%		100.0%	
		White		Women		Ethnic Minorities		25%		0.0%	
CONTRACT EQUITY PARTICIPATION											
COMPANY NAME		ESTIMATED AMOUNT	ETHNICITY	GENDER		CONTRACTING PARTICIPATION					
				M	F	White-Men	White-Women	Ethnic Minorities	Unclassified	Publicly Held Corp.	Gov't/Non Profit
PRIME: Remcho, Johansen & Purcell, LLP		\$40,000	White		X	---	100.0%	---	---	---	---
SUBS: None						---	---	---	---	---	---
						---	---	---	---	---	---
						---	---	---	---	---	---
						---	---	---	---	---	---
						---	---	---	---	---	---
						---	---	---	---	---	---
						---	---	---	---	---	---
TOTAL		\$40,000				0.0%	100.0%	0.0%	0.0%	0.0%	0.0%
CONTRACTOR'S WORKFORCES PROFILE (From P-025 Form)											
		White Men		White Women		Ethnic Minorities		Total Employees			
No. of Employees:		4		7		1		12			
Percent of Total Employees:		33.3%		58.3%		8.3%					
MSA Labor Market %:		28.0%		24.2%		47.8%					
MSA Labor Market Location:		Oakland, CA									
COMMENTS											
Contract Equity Participation - 100% White Women participation and no subcontract opportunities exist. Remcho, Johansen & Purcell LLP's Affirmative Action profile continues to be less than 50% workforce diversity based on the applicable MSA. The District will continue to urge greater implementation efforts.											
Workforce Profile & Statement of Nondiscrimination Submitted				Good Faith Outreach Efforts Requirement Satisfied				Award Approval Recommended			
ON FILE				NA							



AFFIRMATIVE ACTION SUMMARY (P-061)

(Completed by District)

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

Title: Authorize Continued Employment of the Law Office of Remcho, Johansen & Purcell, LLP as Special Counsel		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: 10/26/2012	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	WW - L/SBE	Company Wide	-	-	1	-	1	8.3%	47.8%
Remcho, Johansen & Purcell, LLP Robin Johansen 201 Dolores Avenue San Leandro, CA 94577 510-346-6200		Manager/Prof	-	-	1	-	1	12.5%	
		Technical/Sales	-	-	-	-	-	NA	
		Clerical/Skilled	-	-	-	-	-	-	
		Semi/Unskilled	-	-	-	-	-	NA	
		Bay Area	-	-	1	-	1	8.3%	39.9%
		AA Plan on File: 7/23/2009	Date of last contract with District: 3/24/2004						
Co. Wide MSA: Oakland, CA	# Employees-Co. Wide: 12	Bay Area: 12							
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:	# Employees-Co. Wide:	Bay Area:					
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:	# Employees-Co. Wide:	Bay Area:					
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:	# Employees-Co. Wide:	Bay Area:					
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:	# Employees-Co. Wide:	Bay Area:					
		Company Wide							
		Manager/Prof							
		Technical/Sales							
		Clerical/Skilled							
		Semi/Unskilled							
		Bay Area							39.9%
		Co. Wide MSA:	# Employees-Co. Wide:	Bay Area:					

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



AGENDA NO.
MEETING DATE

7a
November 13, 2012

TITLE AMEND THE EBMUD 415(M) REPLACEMENT BENEFITS PLAN TO COMPLY WITH AB 340

☐ MOTION ☒ RESOLUTION ☐ ORDINANCE

RECOMMENDED ACTION

Amend the East Bay Municipal Utility District 415(m) Replacement Benefits Plan ("the Plan") to comply with Assembly Bill 340, the California Public Employees Pension Reform Act ("AB 340").

SUMMARY

AB 340 prohibits public employers from offering a plan of replacement benefits for those whose retirement benefits are limited by Section 415 of the Internal Revenue Code and who join a public retirement system on or after January 1, 2013. The Plan must be amended to preclude those who join the EBMUD Retirement System on or after January 1, 2013 from participation in the Plan.

DISCUSSION

Section 415(b) of the Internal Revenue Code reflects a federal tax policy that limits the maximum annual amount that a tax-qualified defined benefit plan can pay to any individual. However, tax laws also provide that a public employer can pay the difference between the amount of the full retirement benefit accrued by a member and the amount that can be paid under the tax limit through a replacement benefit plan. The purpose of the replacement benefit plan is to provide benefits that exceed that limit under Section 415(b). On November 25, 2003, through Resolution No. 33382-03, the Board of Directors adopted the Plan, which provides for participation in the plan by members whose benefits are subject to the limit under Section 415(b). In 2012, the current Section 415(b) limit is \$200,000.

On September 12, 2012, Governor Jerry Brown adopted the AB 340, the California Public Employees Pension Reform Act. AB 340 includes a provision that prohibits public employers from offering participation in a benefits replacement plan to members who join a public retirement system on or after January 1, 2013. To comply with AB 340, the District must amend the plan to reflect that new members, who join the Retirement System on or after January 1, 2013, are prohibited from participating in the Plan.

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING Human Resources	DEPARTMENT MANAGER or DIRECTOR <i>Delores Turner</i> Delores Turner	APPROVED <i>William R. C...</i> General Manager

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

FISCAL IMPACT

There will be an undetermined future savings because the District will not need to fund the replacement plan for employees hired on or after January 1, 2013.

UNION NOTIFICATION

Locals 21, 39, 444 and 2019 have been notified that the District intends to amend the replacement benefit plan to comply with the requirements of AB 340. The District intends to meet and confer with the unions over any impacts of implementing this requirement of AB 340.

ALTERNATIVE

Do not approve amendments to the Plan. This alternative is not recommended because AB 340 requires the District to close the replacement benefit plan to those who become members of the Retirement System on or after January 1, 2013.

RESOLUTION NO. _____

AMENDING THE 415(m) REPLACEMENT BENEFITS PLAN TO EFFECT CHANGES
REQUIRED BY AB 340, THE CALIFORNIA PUBLIC EMPLOYEES
PENSION REFORM ACT

Introduced by Director

; Seconded by Director

WHEREAS, on November 25, 2003 by Resolution No. 33382-03, the Board of Directors adopted the East Bay Municipal Utility District Replacement Benefits Plan ("the Plan") pursuant to Internal Revenue Code Section 415(m); and

WHEREAS, Assembly Bill 340, the California Public Employees Pension Reform Act ("AB 340"), was enacted on September 12, 2012; and

WHEREAS, AB 340 prohibits public employers from offering participation in a benefits replacement plan: (1) to members who join a public retirement system for the first time on or after January 1, 2013 and (2) to members who were previously employed by a public agency prior to January 1, 2013 but who were not subject to reciprocity; and

WHEREAS, the Board of Directors, under Section 9.1 of the Plan, is authorized to amend the Plan; and

WHEREAS, the District wishes to update the Plan to comply with AB 340;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the East Bay Municipal Utility District that the Replacement Benefits Plan, attached herein as Exhibit A, is hereby amended and adopted, and that the proper officers and employees of the District are authorized and directed to take all necessary steps to implement the amendments to the Plan, effective January 1, 2013. The specific amendments are as follows:

Article 3—Participation

3.1 Retirement System Members With Benefits Limited by Section 415(b)

Participation in this Plan is limited solely to retired Members whose benefits payable by the Retirement System are limited by Section 415(b) for periods on and after the Effective Date. Participation in this Plan is further limited solely to those Members described in the preceding sentence who were either (a) first hired by the District before January 1, 2013, or (b) employed by another public employer before that date and subject to reciprocity under Section 34 of the Ordinance.

BE IT FURTHER RESOLVED that any Resolution in conflict herewith is hereby superseded and canceled.

Adopted this 13th day of November, 2012 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

President

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE:

General Counsel

EAST BAY MUNICIPAL UTILITY DISTRICT
REPLACEMENT BENEFITS PLAN
(Revised effective January 1, 2013)

EXHIBIT A

TABLE OF CONTENTS

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EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

Article 1 — Establishment and Status of Plan

1.1 Establishment

Effective January 1, 2004, the East Bay Municipal Utility District establishes and adopts a retirement plan entitled the "East Bay Municipal Utility District Replacement Benefits Plan" (the "Plan") to provide the annual retirement benefits otherwise earned by and payable to participants of the East Bay Municipal Utility District Retirement System ("Retirement System") but which are limited by the rules of Section 415(b) of the Internal Revenue Code of 1986, as amended ("Code"). The Retirement System is a tax qualified retirement plan under Section 401(a) of the Code and is a governmental plan as defined in Section 414(d) of the Code. Capitalized terms shall have the meaning set forth in Article 2.

1.2 Effective Date

This Plan shall be effective, and benefits shall be payable from this Plan, for periods beginning as of January 1, 2004, or as of such other date on which this plan is made effective by the Board of Directors of the East Bay Municipal Utility District.

1.3 "Portion of the Retirement System"

This Plan shall be deemed a "portion" of the Retirement System solely to the extent required by, and within the meaning of, Section 415(m)(3) of the Code as in effect on January 1, 2003, and not for any other purpose.

1.4 Purpose and Tax Status of this Plan

(a) In accordance with Section 415(m) of the Code, this Plan is solely for the purpose of providing to retired Members of the Retirement System, and to their Beneficiaries, that part of the annual benefit otherwise payable under the Retirement System that exceeds the limitations on benefits imposed by Section 415(b) of the Code.

(b) It is intended that this Plan be treated as an "exempt governmental deferred compensation plan" described in Section 3121(v)(3) of the Code; therefore payments under this Plan are not included as wages subject to Social Security and Medicare taxes.

(c) No assets directly or indirectly relating to this Plan shall be held in trust, or otherwise held or set aside for the exclusive benefit of Participants and their

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

Beneficiaries. This Plan shall be unfunded within the meaning of the federal income tax laws.

Article 2 — Definitions

2.1 Plan Definitions

- (a) *Beginning Date* means the first date during a Plan Year with respect to which payment begins under this Plan. The Beginning Date will generally be the first day of a Plan Year unless the Member or Beneficiary begins receiving distributions from the Retirement System on a later date.
- (b) *Beneficiary* means any person or persons nominated by a Member or Retired Member of the Retirement System to receive any benefit provided in the Retirement System, such nomination to be by written designation duly executed and filed with the Retirement Board of the Retirement System.
- (c) *Board of Directors* means the Board of Directors of the East Bay Municipal Utility District.
- (d) *Code* means the Internal Revenue Code of 1986, as amended, and any rules and regulations issued thereunder.
- (e) *Commencement Date* means the date of commencement of participation in this Plan as set out in Section 3.2 hereof.
- (f) *District* means the East Bay Municipal Utility District.
- (g) *Effective Date* means the first date on which the Plan is effective and benefits are payable as set out in Section 1.2 hereof.
- (h) *Member* means a member, as defined in the Ordinance, of the Retirement System.
- (i) *Ordinance* means the East Bay Municipal Utility District Employees' Retirement System Ordinance establishing the Retirement System.
- (j) *Participant* means a retired Member who participates in this Plan pursuant to Article 3 hereof. A Beneficiary is not a Participant in this Plan, but is a beneficiary who receives benefits under this Plan with respect to a Participant or a Member.

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

(k) *Plan* means this East Bay Municipal Utility District Replacement Benefits Plan.

(l) *Plan Administrator* means the District's Manager of Human Resources, who may allocate and delegate his or her responsibilities and duties in accordance with Section 6.1.

(m) *Plan Year* means the 12-month period beginning on January 1 and ending on December 31.

(n) *Retirement System* means the East Bay Municipal Utility District Employees' Retirement System.

(o) *Section 415* means Section 415 of the Code.

Article 3 — Participation

3.1 Retirement System Members With Benefits Limited by Section 415(b)

Participation in this Plan is limited solely to retired Members whose benefits payable by the Retirement System are limited by Section 415(b) for periods on and after the Effective Date. Participation in this Plan is further limited solely to those Members described in the preceding sentence who were either (a) first hired by the District before January 1, 2013, or (b) employed by another public employer before that date and subject to reciprocity under Section 34 of the Ordinance.

3.2 Commencement of Participation

A retired Member shall commence participation in this Plan on the first day of the Plan Year after the Effective Date (or, if later, the day of the Plan Year in which the retired Member begins receiving distributions from the Retirement System) in which it is determined that the retired Member's benefits payable by the Retirement System are, or will be, limited by Section 415(b). This date is the Commencement Date.

3.3 Cessation of Participation

Participation in this Plan shall cease as of the first date for which benefits payable to the retired Member from the Retirement System are no longer limited by Section 415(b) and therefore can be fully paid by the Retirement System. Participation shall also cease on the retired Participant's death or when the retired Participant's Retirement System benefit payments cease.

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

3.4 Recommencement of Participation

If a Member has ceased participation in this Plan but at a later date the full payment of his or her Retirement System benefits is again limited by Section 415(b), he or she shall re-commence participation as provided in Section 3.2 above and shall cease participation as provided in Section 3.3 above.

3.5 Beneficiaries

Any Beneficiary of a Member or Participant shall receive benefits under this Plan as of the first day of the Plan Year after the Effective Date (or, if later, the day of the Plan Year in which the Beneficiary begins receiving distributions from the Retirement System) in which it is determined that the benefits payable to him or her from the Retirement System cannot be fully paid because of the limits of Section 415(b). The Beneficiary's benefits paid under this Plan shall cease as of the first date for which his or her Retirement System benefit is no longer limited by Section 415(b) and therefore can be fully paid by the Retirement System or when benefit payments from the Retirement System cease. The Beneficiary's benefits paid under this Plan shall recommence at a later date if full payment of his or her Retirement System benefits is again limited by Section 415(b), and shall thereafter cease as of the next date that full payment of the Retirement System benefits is no longer limited by Section 415(b).

3.6 No One Else Shall Receive Benefits

No one other than a person described in this Article shall receive any benefits under this Plan, except as required by qualified domestic relations orders or applicable law.

Article 4 — Retirement Benefits Payable

4.1 Amount of Benefit – Initial Determination

(a) The benefit paid under this Plan in any Plan Year shall be initially determined for each Participant as of the first day of the Plan Year under the following steps.

(1) Determine the Participant's benefits payable for the Plan Year under the Retirement System without regard to the limits of Section 415(b) and after taking into account the form of Retirement System benefit selected by the Participant.

(2) Determine the amount of the Participant's Retirement System benefits (if any) attributable, as of the first day of the Plan Year, to after-tax Member contributions, rollovers and direct transfers which are excluded from the limits of

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

Section 415(b), after taking into account the form of Retirement System benefit selected by the Participant.

(3) Subtract the amount determined in (2) from the amount determined under (1); this is the amount subject to the Section 415(b) limits for the Participant.

(4) Determine the maximum benefits payable to the Participant from the Retirement System under the then current benefit payment limits of Section 415(b), ignoring any benefits determined under (2). The determination under this step (4) shall take into account items such as the applicable dollar limits, the form of benefit payment chosen, the date that the Participant first became a Member, and whether he or she qualifies for special limits under Section 415(b) such as those for certain safety participants.

(5) Subtract the amount determined under (4) from the amount determined under (3). If the amount in (3) is greater than that in (4), the difference is the benefit to be paid under this Plan for the Plan Year. If the amount in (4) is equal to or greater than the amount in (3), then no benefits are payable under this Plan.

(b) The total retirement benefit that will be paid to a Participant in any year will be the sum of the benefit paid under this Plan and the benefit paid under the Retirement System, including amounts attributable to both District and after tax Member contributions. Therefore, the total retirement benefit that will be paid to a Participant under this Plan and the Retirement System is the sum of the amounts in (2), (4) and (5) above. However, this Plan and the Retirement System shall be separate entities and shall be administered separately.

For administrative ease, the District may issue one single monthly benefit check to a Participant from the District's general checking account representing the amounts due from the Retirement System and the Plan. The amount due to the Participant from the Plan will be funded from the District's general assets. The District shall transfer the necessary amount from the District's general fund to the District's general checking account in the time and manner determined by the District and in no event shall benefits from this Plan be funded by any source other than the District's general assets. The Plan Administrator shall provide separate tax reporting for the benefits paid under this Plan; and no assets of the Retirement System shall be used, directly or indirectly, to pay for benefits, administration or any other costs of this Plan.

(c) The Plan Administrator shall rely on the determination by the Retirement System of the amounts set out under each of steps (1) through (5) in paragraph (a) of this Section.

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

4.2 Amount of Benefit – Redeterminations

(a) As of each January 1 following the Participant's Commencement Date (or the date of commencement of benefits under this Plan for any Beneficiary), the Participant's, or Beneficiary's, benefit under this Plan shall be redetermined by following each of steps (1) through (5) of Section 4.1(a), but using the then current amounts determined by applying (i) cost of living adjustments and other changes (if any) to the benefits provided under the Retirement System, and (ii) cost of living adjustments, and other changes (if any) to the maximum benefit limits established by Section 415(b).

(b) At the Plan Administrator's discretion, the amount of every Participant's and Beneficiary's benefits may be redetermined at a date other than January 1 for administrative convenience or if there is a material change in the rules governing the maximum benefit limits established under Section 415(b) or a material change in Retirement System benefits.

(c) The Plan Administrator shall rely on the redetermination by the Retirement System, for purposes of administering the Retirement System in accordance with Section 415(b), of any amounts in this Section.

4.3 Amount of Benefit – Beneficiaries

Beneficiaries shall be entitled to benefits under this Plan as follows:

(a) Beneficiaries shall be entitled to benefits under this Plan only if they are entitled to benefits that are limited by Section 415(b) under the Retirement System after the death of a Member or Participant.

(b) The benefit paid to a Beneficiary under this Plan shall be determined as if he or she were the Participant, substituting in the calculations under Sections 4.1 or 4.2, as applicable, the amounts due to the Beneficiary for the amounts due to the Participant.

4.4 Timing of Payments

(a) In any Plan Year, benefits due under this Plan shall be paid monthly throughout the Plan Year. The amount determined in Section 4.1(a)(5) shall be paid pro rata over the months between the Beginning Date and the last day of the Plan Year.

(b) The amount of benefits provided under this Plan shall be paid monthly starting as of the Beginning Date and continuing through the end of the Plan

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

Year, or (if earlier) the date that Participation ceases (or, for a Beneficiary, the date that they would cease if a Beneficiary were treated as a Participant).

(c) If a retired Participant is reemployed by the District and on reemployment his or her Retirement System benefits cease, then his or her benefits under this Plan shall cease at the same time. Benefits shall resume (if at all) under this Plan when the Participant again starts to receive benefits under the Retirement System. At that time, a recalculation shall be made under Section 4.2 hereof, treating the first month for which Retirement System benefits resume as if it were a date of recalculation under Section 4.2. Similar rules shall apply if the benefits of a Beneficiary under the Retirement System cease (or resume) under the Retirement System for any reason, including without limitation ceasing to be a Beneficiary.

4.5 Form of Benefit Paid

The benefit paid to a Participant or Beneficiary under this Plan shall be paid in the same form as benefits are paid to him or her under the Retirement System. For example, if the Retirement System benefit is paid as a 100% pension to the Member and 50% survivor benefit to his or her surviving spouse, the same benefit form shall be paid under this Plan.

4.6 Taxes

The Plan Administrator shall have full authority to withhold any and all income or employment related taxes that are or may be due from any and all amounts paid under the Plan (including but not limited to income and payroll taxes), to pay them to the appropriate government agency, and to file and distribute necessary or appropriate tax reports and forms.

4.7 Determination Solely By Plan Administrator

Subject to Sections 4.1 and 4.2 hereof, the Plan Administrator shall have sole authority and discretion to determine the amount of benefits (if any) payable under this Plan.

Article 5 — Exemption from Process; Assignments Prohibited

5.1 Prohibition Against Assignment

No benefit payable from the Plan to any Participant or Beneficiary or any other person shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be

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void. No such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to execution, attachment or any process whatsoever for or against such person, except to such extent as may be permitted by Section 704.110 of the Code of Civil Procedure or as required by law.

Nothing in this Plan shall prohibit a Participant or Beneficiary from voluntarily agreeing to the assignment of benefits payable under this Plan. Such assignment shall be in accordance with rules established by the Plan Administrator and may be by payroll withholding or any other mechanism that is approved by the Plan Administrator, at its sole discretion.

5.2 Payment Upon Marital Dissolution or Legal Separation

The provisions of Section 6.1 will not apply in the case of any property settlements upon marital dissolution or legal separation which are made in accordance with a domestic relations order ("DRO") issued in accordance with state domestic relations law. If the Retirement System receives a DRO and determines that it is a qualified domestic relations order ("QDRO"), such QDRO shall also apply to the benefits payable from this Plan unless the QDRO specifically states otherwise.

Article 6 — Administration

6.1 Powers of the Plan Administrator

The Manager of Human Resources shall administer the Plan on behalf of the District, and in such capacity shall be the Plan Administrator. In addition to the powers of the Plan Administrator specified elsewhere in the Plan, the Plan Administrator shall be responsible for the general administration and interpretation of the Plan and for carrying out its provisions, and shall have such powers as may be necessary or appropriate to discharge its duties hereunder, including, without limitation, the following:

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- (a) The Plan Administrator may adopt such Plan regulations, interpretations and procedures as it deems are necessary or appropriate for the effective operation of the Plan;
- (b) The Plan Administrator shall have the right to delegate administrative duties with regard to the management and operation of the Plan (except that no employee or agent of the District shall have the authority to modify this Plan or to make representations, warranties, or inducements that may provide benefits or any other payment other than as set forth in this Plan and the applicable Plan regulations). Any such representations, warranties, or inducements shall be null and void.
- (c) The Plan Administrator shall act with respect to this Plan separately and apart from any duties that he or she may have with respect to any other retirement plan.
- (d) The Plan Administrator shall determine all issues relating to the rights of Participants and Beneficiaries and any other persons, and any legal representatives thereof, under the terms of the Plan, including but not limited to eligibility, the amount and time of payment of the benefit (if any) and the calculation of any benefit under the Plan;
- (e) The Plan Administrator shall determine any factual questions arising in connection with the Plan's operation or administration after such investigation or hearing as the Plan Administrator deems necessary and appropriate;
- (f) The Plan Administrator may engage legal, administrative, actuarial, investment, accounting, consulting or other services as the Plan Administrator deems necessary or appropriate; and
- (g) The Plan Administrator may request and receive from Members, Participants and other appropriate persons such information as necessary or appropriate for the proper administration of the Plan, including, without limitation, information to determine each Participant's eligibility to participate in the Plan and the benefits payable to each Participant or his or her Beneficiary.

6.2 Absolute Discretion of the Administrator.

The Plan Administrator (or any individual acting on its behalf) shall, in its sole and absolute discretion, construe and interpret the terms and conditions of the Plan, and any issue arising out of, relating to, or resulting from the administration and operation of the Plan, which interpretation or construction shall be final and binding on all parties, including, without limitation, any Member, Participant or

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Beneficiary. When making a determination or calculation, the Plan Administrator shall, in its sole and absolute discretion, be entitled to rely upon information furnished by Members, Participants and Beneficiaries or other individuals acting on their behalf.

6.3 Costs of Administration

The costs of administration of the Plan shall be paid by the District. Such expenses shall include, but are not limited to, expenses for professional, legal, accounting, and other services and other necessary or appropriate costs of administration. No costs or expenses of administering this Plan shall be paid, directly or indirectly, by the Retirement System. Further, no assets of the Retirement System shall be used, directly or indirectly, to pay for benefits or administration or any other costs (direct or indirect) of this Plan.

6.4 Claims Review Procedure

Any person who has a claim for benefits under this Plan and who does not receive such benefits must make a written claim for benefits with the Plan Administrator at the time and in the form and manner determined by the Plan Administrator. The Plan Administrator shall provide notice in writing to any person whose claim for benefits under the Plan is denied, and the Plan Administrator shall provide such person a review of its decision with respect to such claim, if requested in writing by the person who has made the claim. The decision of the Plan Administrator shall be final and binding on all parties.

6.5 Correction of Errors

If an error or omission is discovered in the administration of the Plan, the Plan Administrator shall take such necessary or appropriate and equitable action as may be necessary or appropriate to correct the error. Such action shall include, but not be limited to, taking all reasonable or necessary action to recover overpayments of benefits under the Plan.

6.6 Written Communications Mailed

All written notices or communications to Participants, Beneficiaries and any other person who may be entitled to benefits under this Plan shall be effective when sent by first class United States mail to the individual's last known address. Any notice or document required to be given to or filed with the Plan Administrator shall be properly given or filed if delivered or sent by first class United States mail, postage prepaid, to the District's [Auditor-Controller].

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

Article 7 — Source of Benefits

7.1 Unfunded Plan

(a) The Plan shall be unfunded within the meaning of the federal tax laws. Ownership of any assets, whether cash or other investments which might be used to pay any amount under the Plan, shall at all times remain solely in the District. Participants, Beneficiaries and any other persons who might be entitled to amounts under this Plan shall not have any property interest, preferred claims, liens or any other beneficial interest whatsoever in any assets of the District, and shall have only general creditor status with respect to the District. Any rights created under this Plan shall be mere unsecured contractual rights against the District.

(b) Benefits due under this Plan shall be paid by the District from its general assets, which are subject to the claims of the District's general creditors. The District shall also pay all costs, charges and expenses relating to this Plan from the same asset sources.

7.2 No Employee Deferrals

No employee contributions or deferrals shall be made or allowed under the Plan at any time. In accordance with Section 415(m), no election to defer compensation under this Plan shall be provided, at any time or in any manner, to any person.

7.3 No Use of Retirement System Assets

District assets used to provide benefits under this Plan shall not be commingled with the monies of the Retirement System or any other qualified plans, nor shall this Plan ever receive or use any assets of the Retirement System.

Article 8 — Miscellaneous

8.1 Applicable Law

This Plan shall be governed by the laws of the State of California and applicable federal law.

8.2 No Service Rights

Nothing in this Plan or in any resolution or regulation concerning this Plan shall be construed as giving to a Participant any right to be retained in the service of the District.

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

8.3 Unclaimed Benefits and Accumulations

In any situation where benefits are payable under this Plan, a reasonable search, including mailing of a registered letter to the last known address, shall be made to ascertain the whereabouts of the Participant or Beneficiary.

If the person or persons entitled thereafter come forward and request payment and establish such entitlement, the amounts then due, including appropriate retroactive payments from the Commencement Date (but without payment of any interest thereon) shall be paid accordingly.

8.4 Benefit Limits

(a) Nothing in this Plan shall be construed as creating an entitlement to any benefits greater than the difference between the amount of benefits that can be paid by the Retirement System without regard to the limitations of Section 415 and the amount that can be provided by the Retirement System taking into account the limitations of Section 415.

(b) Payment of a benefit under this Plan does not create any eligibility for any additional benefits provided by this Plan, by the Retirement System or under any other program maintained by the District.

Article 9 — Amendment or Termination of Plan

9.1 Right to Amend

The District has the right to amend this Plan at any time and in any manner for any reason whatsoever and may do so in its sole discretion. However, any amendment to this Plan that affects benefits paid shall be commensurate with the purposes of this Plan to provide Participants and Beneficiaries with retirement benefits that are otherwise earned by and payable to participants of the Retirement System but which are limited by the rules of Section 415 of the Code.

9.2 Preservation of Retirement System Tax Status

This Plan shall not in any way jeopardize the tax-qualified status of the Retirement System. To maintain this qualified status, the District shall take all necessary or appropriate action, including but not limited to amending this Plan and the rules governing this Plan, solely for the purpose of complying with applicable federal tax laws and regulations.

EAST BAY MUNICIPAL UTILITY DISTRICT REPLACEMENT BENEFITS PLAN

9.3 Preservation of Section 415(m) Status

The District shall have the authority to make appropriate amendments to the Plan in order to accommodate changes in the Internal Revenue Code and United States Treasury Regulations in a manner that will preserve the status of the Plan under Section 415(m) of the Internal Revenue Code.



AGENDA NO.
MEETING DATE

76.
November 13, 2012

TITLE ORDINANCE AMENDING RETIREMENT ORDINANCE NO. 40

☐ MOTION ☐ RESOLUTION ☒ ORDINANCE

RECOMMENDED ACTION

Introduction and first reading on an ordinance amending the EBMUD Employees' Retirement System Ordinance (Ordinance No. 40) in order to comply with Assembly Bill 340, the California Public Employees' Pension Reform Act ("AB 340").

SUMMARY

AB 340 requires covered California public employers to adopt uniform pension benefit levels for new employees who become members of the East Bay Municipal Utility District Employees' Retirement System on or after January 1, 2013. The proposed ordinance amends the current Retirement Ordinance (Ordinance No. 40) to comply with AB 340.

DISCUSSION

AB 340 is the California Public Employees' Pension Reform Act and was signed into law by Governor Jerry Brown on September 12, 2012. AB 340 requires covered California public employers to modify existing defined benefit plans to implement new pension requirements for new employees first hired on or after January 1, 2013. To comply with AB 340, the Retirement Ordinance (Ordinance No. 40) must be amended to add a new Section 42, applicable to employees hired on or after January 1, 2013, which would:

1. Set the maximum benefit formula to 2.5% at age 67.
2. Limit the amount of pensionable compensation to the social security wage base rate set forth in 42 U.S. Code Section 430(b) to be adjusted annually, currently \$110,100 for 2012.
3. Prohibit the District from making contributions on any portion of compensation that exceeds the amount specified under federal law, currently \$250,000 for 2012.
4. Require that the highest average compensation for purposes of determining the retirement benefit be based on a period of at least thirty-six (36) consecutive months.
5. Require new employees to pay at least 50% of the normal cost of the defined benefit plan.

Funds Available: FY		Budget Code:
DEPARTMENT SUBMITTING Human Resources	DEPARTMENT MANAGER or DIRECTOR <i>Delores Turner</i> Delores Turner	APPROVED <i>Margaret R. Cee</i> General Manager

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

AB 340 also requires amendments to the Retirement Ordinance that are applicable to all employees which would:

1. Require forfeiture of pension benefits upon conviction of a felony offense in the course of employment.
2. Prohibit retroactive pension benefits increases.
3. Require that the normal cost of the plan be funded annually.

SCHEDULE

The amendments to the Retirement Ordinance required by AB 340 must take effect on January 1, 2013 to comply with state law. To meet this deadline, the first reading of this Ordinance is scheduled to occur at the meeting of the Board of Directors on November 13, 2012. The final action, the second reading, is scheduled to occur at the meeting of the Board of Directors on November 27, 2012. The scheduled first and second reading dates are the latest scheduled Board meeting dates at which these actions can occur to meet the deadline because ordinance amendments generally take effect 30 days after their passage and the Municipal Utility District Act requires that ordinance amendments be published once a week for two successive weeks in a newspaper of general circulation published in the district.

FISCAL IMPACT

Pension-related costs are expected to decline over time as current employees leave and/or retire and are replaced with employees who are in the new benefit tier. New employees will also contribute 50% of the normal cost of the plan, which will reduce the percentage of contributions the District will be required to contribute.

UNION NOTIFICATION

Locals 21, 39, 444 and 2019 have been notified that the District intends to amend the Retirement Ordinance in order to implement the requirements of AB 340 and comply with the law. The District intends to meet and confer with the unions regarding the impacts of implementing the requirements of AB 340.

ALTERNATIVE

Do not approve amendments to the Plan. This alternative is not recommended because AB 340 requires the District to modify the Retirement Ordinance to implement the new state law requirements as set forth above.

ORDINANCE NO. _____

AN ORDINANCE, EFFECTIVE AS OF JANUARY 1, 2013, ADDING A NEW SECTION 42
OF ORDINANCE NO. 40, WHICH IS THE EAST BAY MUNICIPAL UTILITY
DISTRICT EMPLOYEES' RETIREMENT SYSTEM ORDINANCE, WHICH
ESTABLISHES THE RETIREMENT SYSTEM

Introduced by Director

; Seconded by Director

BE IT ENACTED by the Board of Directors of the East Bay Municipal Utility District that Ordinance No. 40, which is entitled "AN ORDINANCE ESTABLISHING A RETIREMENT SYSTEM FOR EMPLOYEES OF EAST BAY MUNICIPAL UTILITY DISTRICT, PROVIDING FOR THE PAYMENT OF RETIREMENT ALLOWANCES TO MEMBERS OF THE RETIREMENT SYSTEM, FOR THE PAYMENT OF DEATH BENEFITS AND SURVIVORSHIP BENEFITS, AND FOR THE COST OF LIVING ADJUSTMENT, PRESCRIBING THE CONDITIONS UNDER WHICH SAID ALLOWANCES AND BENEFITS SHALL BE PAID, DETERMINING RATES OF CONTRIBUTION AND THE AMOUNTS OF RETIREMENT ALLOWANCES, DEATH BENEFITS AND SURVIVORSHIP BENEFITS, AND THE PERCENTAGE OF COST OF LIVING ADJUSTMENT, AND PROVIDING FOR THE ADMINISTRATION OF SAID RETIREMENT SYSTEM," as amended from time to time, is further amended as follows:

1. Section 42 shall be added to the Retirement Ordinance and shall read as follows:

Section 42

PUBLIC EMPLOYEES' PENSION REFORM ACT

(a) Overall Effect of this Section. The provisions of this section shall apply on or after January 1, 2013, and shall take precedence over any other provisions of the Ordinance to the extent and only to the extent, that such provisions are inconsistent with the provisions of this section. To the extent unchanged by this section, the remaining provisions of the Ordinance shall remain in full force and effect. The provisions of this section shall be interpreted and administered in accordance with the applicable provisions of Article 4 Chapter 21 of Division 7 of Title 1 of the Government Code, as added by the California Public Employees' Pension Reform Act of 2013 ("PEPRA"), and as amended from time to time, or its successor and any regulations or other guidance issued thereunder by any State agency with competent jurisdiction.

(b) Definitions

- (1) "Existing Member" means each Member who is not a New Member.
- (2) "New Member" means each Employee who:

(A) First becomes a Member on or after January 1, 2013, and who was not a member of any other public retirement system (as defined in section 7522.04 of the Government Code) prior to that date; or

(B) First becomes a Member on or after January 1, 2013, and who was a member of another public retirement system prior to that date, but who was not subject to reciprocity under Section 34 with that retirement system.

(c) Provisions Applicable to All Members.

(1) Retroactive Benefit Enhancements Prohibited. Any enhancement to a Member's Retirement Allowance formula or Retirement Allowance adopted on or after January 1, 2013, shall apply only to Current Service performed on or after the operative date (as defined in section 7522.44 of the Government Code) of the enhancement, and shall not be applied to any service performed prior to the operative date of the enhancement. If a change to a Member's membership classification or employment results in an enhancement to the Member's Retirement Allowance formula or Retirement Allowance, the enhancement shall apply only to Current Service performed on or after the operative date of the change and shall not be applied to any service performed prior to the operative date of the change. For purposes of this paragraph, an increase to a Retired Member's annual cost-of-living adjustment within existing statutory limits shall not be considered an enhancement to a Retirement Allowance.

(2) Felony Convictions. If a Member who is subject to sections 7522.70, 7522.72 or 7522.74 of the Government Code is convicted of a felony described in the applicable section or sections, he or she shall forfeit his or her accrued rights and benefits, and shall not accrue further benefits, in the Retirement System to the extent provided in the applicable section or sections. This subsection shall be interpreted and administered in accordance with the requirements of Sections 7522.70, 7522.72 and 7522.74, including, but not limited to, any applicable rules governing return of Member contributions, notice, and reversal of conviction, which requirements are herein incorporated by this reference.

(3) Funding.

(A) In any Fiscal Year, the District's contribution to the Retirement System, in combination with Member Retirement Contributions to the Retirement System, shall not be less than the normal cost rate, as defined in Section 42(d)(5)(B).

(B) The Board of Retirement may suspend contributions only when all of the following apply:

(i) The Retirement System is funded by more than 120%, based on the computation by the Retirement System's actuary in accordance with the Governmental Accounting Standards Board requirements that is included in the annual valuation.

(ii) The Retirement System's actuary determines, based on the annual valuation, that continuing to accrue excess earnings could result in disqualification of the Retirement System's tax-exempt status under the Internal Revenue Code.

(iii) The Retirement Board determines that the receipt of any additional contributions required by this subsection would conflict with its fiduciary responsibility set forth in Section 17 of Article XVI of the California Constitution.

(d) Provisions Applicable Only to New Members. The provisions of this subsection (d) shall apply only to New Members and shall take effect on January 1, 2013.

(1) Compensation.

(A) For each New Member, "Compensation" means the normal monthly rate of pay or base pay of the Member paid in cash to similarly situated Members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

(B) Compensation that is deferred shall be deemed "Compensation" when earned rather than when paid.

(C) "Compensation" for a New Member excludes:

(i) Any compensation that the Retirement Board determines has been paid to increase the Member's Retirement Allowance;

(ii) Compensation that (a) the District had previously paid in-kind to the Member or directly to a third-party other than the Retirement System for the benefit of the Member, and (b) was converted to, and received by the Member, in cash;

(iii) Any one-time or ad hoc payments to the Member;

(iv) Severance or any other payment that is granted or awarded to the Member in connection with, or in anticipation of, a separation from employment, but is received by the Member while employed;

(v) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid;

(vi) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise;

(vii) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms;

(viii) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code;

(ix) Employer contributions to deferred compensation or defined contribution plans;

(x) Any bonus paid in addition to the compensation described in subparagraph (A) of this paragraph;

(xi) Any other form of compensation that the Retirement Board determines is inconsistent with the requirements of subparagraph (A) of this paragraph; and

(xii) Any other form of compensation that the Retirement Board determines should not be "Compensation."

(2) Compensation Earnable. For each New Member, "Compensation Earnable" means Compensation as defined in subsection (d)(1) of this section.

(3) Compensation Limit.

(A) In addition to the annual Compensation limit under Internal Revenue Code section 401(a)(17) described in Section 2(k), the annual Compensation and Compensation Earnable of each New Member taken into account under the Retirement System for any calendar year shall not exceed the following applicable percentage of the contribution and benefit base specified in section 430(b) of Title 42 of the United States Code :

(i) 100% for a Member whose service is included under the old age, survivors, disability and health insurance provisions of the federal Social Security Act; or

(ii) 120% for a Member whose service is not included under the old age, survivors, disability and health insurance provisions of the federal Social Security Act.

(B) The Retirement System shall adjust the annual Compensation limit described in this paragraph following each actuarial valuation of the Retirement System based on changes to the Consumer Price Index for All Urban Consumers. The adjustment shall be effective annually on the January 1 following the annual valuation.

(4) Terminal Compensation. For each New Member, "Terminal Compensation" means the annual Compensation Earnable by the Member during the 36 consecutive month period that produces the highest average.

(5) Retirement Contributions.

(A) New Members must contribute at least 50% of the normal costs of the Retirement System as set forth in this paragraph. The initial rate of Retirement Contributions for New Members shall equal at least the greater of (i) 50% of the normal cost rate of the Retirement System, rounded to the nearest quarter of 1%, or (ii) the current contribution rate of similarly situated Members. The District shall not pay any portion of this contribution on any Member's behalf. For purposes of the preceding sentence, the District's pick-up of Member contributions under Section 6(i) does not constitute a payment of Member contributions by the District on a Member's behalf.

(B) Once established, the Retirement Contribution rate for New Members will be adjusted to reflect a change in the normal cost rate, but only if the normal cost rate increases by more than 1% of payroll above or below the normal cost rate in effect on the later of: (i) the date the Retirement Contribution rate is first established, or (ii) the date of the last adjustment to the Retirement Contribution rate under this paragraph. For purposes of this paragraph, the term "normal cost rate" means the annual actuarially determined normal cost for the Retirement System Plan expressed as a percentage of payroll.

(C) Retirement Contribution rate for New Members may be more than 50% of the normal cost rate, but only if the requirements of section 7522.30(e) of the Government Code are met.

(D) To the extent that its application would otherwise impair the terms of any contract or memorandum of understanding between the District and its Employees, this paragraph (5) shall not apply to the Employees subject to that contract or memorandum of understanding until its expiration. A renewal, amendment, or any other extension of that contract shall be subject to the requirements of this paragraph.

(6) Service Retirement Allowance.

(A) Each New Member who has (i) completed at least five years of Continuous Employment, (ii) attained age 52, and (iii) filed a written application with the Retirement System stating when he or she desires to retire, may retire for service and receive a Retirement Allowance.

(B) The Retirement Allowance payable to a New Member upon retirement shall equal the percentage of the Member's Terminal Compensation, as determined in accordance with the following schedule based on the Member's age at retirement, taken to the preceding quarter year, multiplied by the Member's years of Current Service.

<u>Age at Retirement</u>	<u>Percentage</u>
<u>52</u>	<u>1.000%</u>
<u>52¼</u>	<u>1.025%</u>
<u>52½</u>	<u>1.050%</u>
<u>52¾</u>	<u>1.075%</u>
<u>53</u>	<u>1.100%</u>
<u>53¼</u>	<u>1.125%</u>
<u>53½</u>	<u>1.150%</u>
<u>53¾</u>	<u>1.175%</u>
<u>54</u>	<u>1.200%</u>
<u>54¼</u>	<u>1.225%</u>
<u>54½</u>	<u>1.250%</u>
<u>54¾</u>	<u>1.275%</u>
<u>55</u>	<u>1.300%</u>
<u>55¼</u>	<u>1.325%</u>
<u>55½</u>	<u>1.350%</u>
<u>55¾</u>	<u>1.375%</u>
<u>56</u>	<u>1.400%</u>
<u>56¼</u>	<u>1.425%</u>
<u>56½</u>	<u>1.450%</u>
<u>56¾</u>	<u>1.475%</u>
<u>57</u>	<u>1.500%</u>
<u>57¼</u>	<u>1.525%</u>
<u>57½</u>	<u>1.550%</u>
<u>57¾</u>	<u>1.575%</u>
<u>58</u>	<u>1.600%</u>
<u>58¼</u>	<u>1.625%</u>
<u>58½</u>	<u>1.650%</u>
<u>58¾</u>	<u>1.675%</u>
<u>59</u>	<u>1.700%</u>
<u>59¼</u>	<u>1.725%</u>
<u>59½</u>	<u>1.750%</u>
<u>59¾</u>	<u>1.775%</u>
<u>60</u>	<u>1.800%</u>
<u>60¼</u>	<u>1.825%</u>
<u>60½</u>	<u>1.850%</u>
<u>60¾</u>	<u>1.875%</u>

<u>Age at Retirement</u>	<u>Percentage</u>
<u>61</u>	<u>1.900%</u>
<u>61$\frac{1}{4}$</u>	<u>1.925%</u>
<u>61$\frac{1}{2}$</u>	<u>1.950%</u>
<u>61$\frac{3}{4}$</u>	<u>1.975%</u>
<u>62</u>	<u>2.000%</u>
<u>62$\frac{1}{4}$</u>	<u>2.025%</u>
<u>62$\frac{1}{2}$</u>	<u>2.050%</u>
<u>62$\frac{3}{4}$</u>	<u>2.075%</u>
<u>63</u>	<u>2.100%</u>
<u>63$\frac{1}{4}$</u>	<u>2.125%</u>
<u>63$\frac{1}{2}$</u>	<u>2.150%</u>
<u>63$\frac{3}{4}$</u>	<u>2.175%</u>
<u>64</u>	<u>2.200%</u>
<u>64$\frac{1}{4}$</u>	<u>2.225%</u>
<u>64$\frac{1}{2}$</u>	<u>2.250%</u>
<u>64$\frac{3}{4}$</u>	<u>2.275%</u>
<u>65</u>	<u>2.300%</u>
<u>65$\frac{1}{4}$</u>	<u>2.325%</u>
<u>65$\frac{1}{2}$</u>	<u>2.350%</u>
<u>65$\frac{3}{4}$</u>	<u>2.375%</u>
<u>66</u>	<u>2.400%</u>
<u>66$\frac{1}{4}$</u>	<u>2.425%</u>
<u>66$\frac{1}{2}$</u>	<u>2.450%</u>
<u>66$\frac{3}{4}$</u>	<u>2.475%</u>
<u>67</u>	<u>2.500%</u>

2. This Ordinance shall become effective as of January 1, 2013.

President

I HEREBY CERTIFY that the foregoing Ordinance was duly and regularly introduced at a regular meeting of EAST BAY MUNICIPAL UTILITY DISTRICT held on November 13, 2012, at the offices of said District, 375 - 11th Street, Oakland, California, and thereupon, after being read, further action was scheduled for the regular meeting of said Board of Directors held at the same place on November 27, 2012, at which time the same was finally adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Secretary

APPROVED AS TO FORM AND PROCEDURE

General Counsel

W: 410 EBMUD BOARD\Ordinances\Retirement Ordinance-Pension Reform 2012\FINAL 1st Reading-without whereas clauses.DOCX

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: November 8, 2012

MEMO TO: Board of Directors

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

SUBJECT: Monthly Report – October 2012

HIGHLIGHTS

Mokelumne Coast to Crest Trail completed. On Saturday, October 6, forty-five trail enthusiasts hiked, ran and rode on horseback to cover all 29 miles of the completed trail. Following the morning trail excursions the group met at the midpoint of the trail – the historic Wildermuth House located at the south end of Pardee Reservoir – to unveil a plaque dedicated to the volunteers and service groups who helped complete this 20-year effort. The new trail map produced by staff was distributed to the event participants.

Work is progressing on the Richmond Wastewater Services Joint Implementation Study. The study includes an evaluation of the potential for the District to accept wastewater from the City of Richmond Water Pollution Control Plant. On October 5, 2012 the East Bay Collection System Advisory Committee (EBCSAC), representing the seven wastewater satellite collection systems that discharge to the District's interceptors, sent a letter to EBMUD's Board President identifying EBCSAC's concerns about the project, especially the importance of avoiding potential impacts to the satellite communities from accepting Richmond wastewater flows. President Coleman replied in an October 15, 2012 letter outlining the scope of the study and encouraging EBCSAC participation in the process.

WATER SUPPLY AND WATER RIGHTS PROGRAMS AND ACTIVITIES

District submits Owners Dam Safety Program (ODSP) to the Federal Regulatory Energy Commission (FERC) on October 31. The ODSP is a new FERC requirement that emphasizes the importance of licensees/owners of dams regulated by FERC having a 'robust and focused dam safety program in place to safeguard the public, the environment, and the hydroelectric facilities.' The ODSP is an overarching document which describes expectations, roles and responsibilities related to dam safety.

Precipitation. The East Bay precipitation for October was 1.14 inches (78% of average) and a season total of 1.14 inches (62% of average). The Mokelumne precipitation for October was 2.20 inches (83% of average) and a season total of 2.75 inches (70% of average).

Releases from Camanche Reservoir. Average rate of Camanche Reservoir release for October was 324 cfs (248 cfs generation, 43 cfs sluice, and 33 cfs through the hatchery), and the average flow below Woodbridge Dam was 169 cfs, both in accordance with the Joint Settlement Agreement "Below Normal" criteria for October 2012.

Mokelumne Reservoirs Storage. As of October 31, 2012, Pardee Reservoir level was at 559.9 feet or 109% of average, and the Camanche Reservoir level was at 211.9 feet or 99% of average. Combined Pardee and Camanche Reservoir storage is 440,000 acre-feet compared to 437,000 acre-feet last year.

Releases from East Bay Reservoirs. There are currently no East Bay reservoir releases.

East Bay Reservoirs Storage. As of October 31, 2012, USL Reservoir level was at 446.1 feet or 112% of average, San Pablo Reservoir was at 293.9 feet or 92% of average, and Briones Reservoir was at 567.8 feet or 106% of average. Total terminal reservoir storage was 118,000 acre-feet compared to 130,000 acre-feet last year.

Mokelumne Aqueducts and Raw Water Pumping Plants. Average rate of Mokelumne Aqueduct draft for October 2012 was 160 MGD. Walnut Creek, Moraga and Briones Raw Water Pumping Plants remained out of service for the month.

Water Production. Average rate of gross water production for October:

	October 2012	October 2011	October 2010	Average of 2005-2007
East of Hills	56 MGD	51 MGD	55 MGD	64 MGD
West of Hills	135 MGD	128 MGD	134 MGD	152 MGD
Total	191 MGD	179 MGD	189 MGD	216 MGD
Max Day Production	240 MGD (10/01/2012)	204 MGD (10/01/2011)	224 MGD (10/13/2010)	

Note: Data are all from preliminary daily operational reports and are subject to revision

CUSTOMER EVENTS AND PUBLIC OUTREACH

Tour of EBMUD Mokelumne River operations for new State Water Resources Control Board (SWRCB) members. On October 22, EBMUD hosted a tour of District facilities for the two newly appointed SWRCB members: Felicia Marcus and Steve Moore. The group visited the hydropower plant at Pardee Dam, Camanche Dam, the fish hatchery and the Woodbridge Irrigation District diversion dam and fish ladder.

Pardee Reservoir tour for nine brokers and underwriters. To familiarize the District's insurance brokers and underwriters with District facilities, staff led a tour of Pardee Reservoir providing a synopsis of the District's operations on the lake, watershed, and recreation areas, as well as the history and flora and fauna of the region.

River cleanup is a success. On October 20, 2012 eight volunteers helped collect more than 200 pounds of trash and recyclables in the Middle Bar area of Pardee Reservoir. This annual event is held in collaboration with The Foothill Conservancy, who helped coordinate additional volunteers upstream of Pardee Reservoir.

Mine tailings. The Bureau of Land Management and EBMUD sent a letter to the Central Valley Regional Water Quality Control Board (CVRWQCB) summarizing the remedial action alternatives that will be considered for the mine tailings impoundments near Camanche Reservoir. Alternatives include: 1) no action, 2) institutional controls, 3) capping, 4) excavation and off-site disposal, and 5) a phased approach that consists of capping or excavating soil, monitoring for effectiveness, and potential further action if necessary. A draft evaluation is scheduled for submittal to the CVRWQCB by January 9, 2013.

Staff presented the revised final architectural and landscape plan for the Diablo Vista Pumping Plant Replacement Project at a third meeting with City of Lafayette officials and staff and adjacent neighbors on October 22. The final plan was developed following input from two neighbor meetings and a September City of Lafayette Design Review Commission meeting.

Contract Equity outreach:

- **On October 4, the Greater Stockton Chamber of Commerce hosted its 2012 Fall Tradeshow & Passport Mixer in Stockton, connecting small businesses with corporations and government agencies.** Staff disseminated information on the District's Contract Equity Program, upcoming contract opportunities and the small business incentives. Approximately 150 participants attended.
- **On October 4, the California Public Utilities Commission and the Department of General Services in partnership with the San Joaquin Valley Hispanic Chamber of Commerce hosted its 2012 Small and Diverse Business Procurement Expo in Stockton.** Staff participated in the One-on-One Match Making Session and disseminated information on the District's Contract Equity Program, upcoming contract opportunities and the small business incentives during the Expo. Approximately 200 business owners attended.
- **On October 18, the California Public Utilities Commission and Commissioner Catherine Sandoval of the CPUC, in partnership with the California Water Association, hosted its 2012 Silicon Valley Small Business Expo and Matchmaking Fair in Mountain View.** Staff disseminated information on the Contract Equity Program,

upcoming contract opportunities and the small business incentives. Approximately 200 business owners attended.

- **Staff participated in two community events.** On October 5th the Bay Area Contract Compliance Officers Association held a California High-Speed Rail workshop in San Francisco. On October 16, the Black Economic Council held its 2nd Annual Game Changers & Bridge Builders Awards Ceremony in Oakland.

Water Conservation outreach:

- **On October 4, staff teamed up with Pacific Gas and Electric's Food Service Technology Center to host a two-hour open house at Comel's Restaurant in Berkeley.** The event focused on water and energy conservation for the food service industry. Staff discussed both indoor and outdoor water conservation practices, incentives, and technologies. Approximately 100 restaurant owner/managers participated.
- **On October 3 and 17, staff provided four hours of training each day for six Emeryville Planning Department staff on how to quickly analyze irrigation systems during the construction drawing plan check process.** Emeryville is interested in coordinating plan checks with EBMUD Section 31 Water Efficiency reviews either directly or by incorporating some of the tools EBMUD has developed for simplifying the review process.
- **On October 23, staff partnered with PG&E's Food Service Technology Center to host a two-hour open house at Bridges Restaurant in Danville.** The event introduced food service operators to their utilities and their respective water and energy efficient programs. Approximately 40 operators attended.

CAPITAL IMPROVEMENT AND FACILITIES MAINTENANCE

Phase 2A of the South Interceptor Wood Street Rehabilitation Project reached operational completion on October 18, 2012. The Wood Street Interceptor was constructed in the 1950s and Phase 2A rehabilitated the existing liner along the interceptor on Wood Street from 24th Street to the Main Wastewater Treatment Plant, approximately 2300 feet. Additional work along other parts of the interceptor will be performed during the dry seasons in 2013 and 2014.

The biogas turbine was temporarily out of service for repairs and is now back in operation. The turbine was temporarily shut down in July to repair fuel injectors and what was thought at the time to be minor collateral damage to the turbine blades. The fuel injectors were replaced and the turbine was put back in service with the plan to fix the minor damage to the turbine blades later. Concurrently the manufacturer, Solar Turbines, initiated a failure analysis to determine the cause of the fuel injector damage. During a follow-up inspection by Solar Turbines in September additional damage to the turbine blades was found and the manufacturer recommended not

operating the turbine. The manufacturer has repaired the damaged turbine blades and the turbine is back in service.

Construction continues on schedule at the Walnut Creek Raw Water Pumping Plant (WCPP) Electrical Safety Improvements project. The contractor is completing punch list items on the electrical equipment in WCPP Nos. 1 and 2. Final testing and switch over to the new remote transmitting unit and permanent power system is being delayed until punch list items are completed. Integration programming by District staff is in progress.

The East Bayshore Recycled Water Pipeline was completed on October 31. The project involved installation of 2400 feet of 12-inch diameter pipe in Shellmound Street in Emeryville and below the Interstate 80, 580 and 880 Interchange on Caltrans property in Oakland.

The Mokelumne Aqueduct No. 1 Temperature Anchor Upgrade requires an increase in the change order contingency. Recent changes to the design that increased the pier size and require steel casing for the repair of the third temperature anchor have resulted in additional costs. The additional work will be performed by Steve P. Rados, Inc. and is expected to cost \$359,093. The total change order amount is projected to be \$2,340,913 or 142.7 percent of the original contract amount of \$1,640,900.

Staff accompanied the Federal Energy Regulatory Commission to conduct the 2012 Annual Dam Safety inspection of the Mokelumne Reservoir dams and appurtenant structures. There were no major safety issues and the Mokelumne dams (Camanche, Pardee, and Jackson Spillway) are deemed safe for continued operation.

Repairs to concrete support bents on Mokelumne Aqueduct No. 1 in Trapper Slough (in San Joaquin County) were completed October 2. The connection of the timber pile foundation and concrete support bents were improved at 15 bent locations. This underwater work was performed by divers and completed by contract change order to the Aqueduct Recoating Project.

Paving. Three paving crews were assigned to the City of Alameda to better address the city's concerns during the highly visible 16-inch pipeline replacement work down Lincoln Avenue. Permanent paving was accelerated for the pipeline extensions on Washington Street and Rosewood Way and for the only two open patch paving orders in the city.

Pipeline Installations. On October 1, staff installed 1,965 feet of 16-inch pipe on Pleasant Hill Road and Barnett Terrace in Pleasant Hill. The crew will remain in Pleasant Hill to install 2,900 feet of 8-inch PVC pipe on Diablo View. On October 3rd, staff completed an infrastructure renewal job consisting of 785 feet of 12-inch pipe in the City of Richmond on Marine Street and began an 860-foot, 8-inch pipe job on Davenport Avenue in the City of Oakland on October 4.

October main breaks. The attached table lists the 32 main breaks that were repaired by staff in October, sorted by city and street. The map shows the locations of the breaks geographically.

WATER AND WASTEWATER SYSTEM OPERATIONS

There were no odor complaints at the Main Wastewater Treatment Plant (MWWTP) during this reporting period.

All discharges from the MWWTP were in compliance with the permit limits for the month of September. This is the 158th consecutive month that the Main Wastewater Treatment Plant experienced no exceedances.

Additional specialty construction inspection services for the Main Wastewater Treatment Plant Digester Upgrade Phase 2 Project. On September 13, 2011, the Board authorized a \$403,480 agreement with Harris and Associates for construction inspection and specialty inspection services. An increase of \$60,522 (15%) is required, changing the total agreement ceiling to \$464,002. The increase is for additional specialty inspection for coatings and welding for the digester rehabilitation work, which is under construction. The construction contractor, Proven Inc., is approximately six months behind schedule, which is impacting the District's construction inspection services budget on this project. Specialty inspection is required to maintain quality assurance on the project.

ORGANIZATION EFFECTIVENESS AND EFFICIENCY

Staff completed the removal of largemouth bass from Nunes Pond on the East Bay watershed. The pond was drained and pumped dry to remove invasive bass to make the pond suitable for native amphibians. A drain was installed for future management flexibility. Nunes Pond was the only pond on the East Bay watershed with fish in it.

Staff facilitated a wet weather workshop with technical and legal staff from the sewer collection system agencies, regulators, and Baykeeper. The purpose of the meeting was to summarize the outcome of a series of technical meetings held with EPA, the state and regional water boards, and Baykeeper over the last six months and to begin the negotiation process for a long-term consent decree.

Employment.

	October 2012	FY13 Totals
Retirements*	6	37
Other Separations	8	16
Hires	7	34

**Includes Vested Employees who left District employment and retired at a later date.*

Tuition Reimbursement

	October 2012	FY13 Totals
# of Employees	7	55
# of Classes	8	106
Total Reimbursed	\$4,040	\$49,789

FINANCIAL NEWS

The Net Mokelumne Power Revenue for October was \$205,170 versus \$150,480 planned. Inflows into Pardee for October were 22% lower than expected; however, generation was 133% of plan due to the lowering of the Pardee operations band. The average electricity price was as projected at \$35/MWh. Renewable power and related Renewable Energy Credits (RECs) were sold to the Sacramento Municipal Utility District under the Power Purchase Agreement. REC revenue for October was \$29,450. Total net revenue through October is \$794,420 which is 14% of the annual budgeted revenue of \$5.7 million.

FY13	Net Revenue		Inflow (Acre Feet)	
	Plan	Actual	Plan	Actual
July	\$147,410	\$144,555	28,400	29,401
August	\$443,323	\$246,500	27,000	27,255
September	\$396,576	\$198,194	26,600	26,131
October	\$150,480	\$205,170	33,600	26,300
FY13 YTD Total	\$1,137,789	\$794,420	115,600	109,987

Bold items are estimated.

There were no contracts over \$70,000 and less than \$100,000 approved by the General Manager in October 2012.

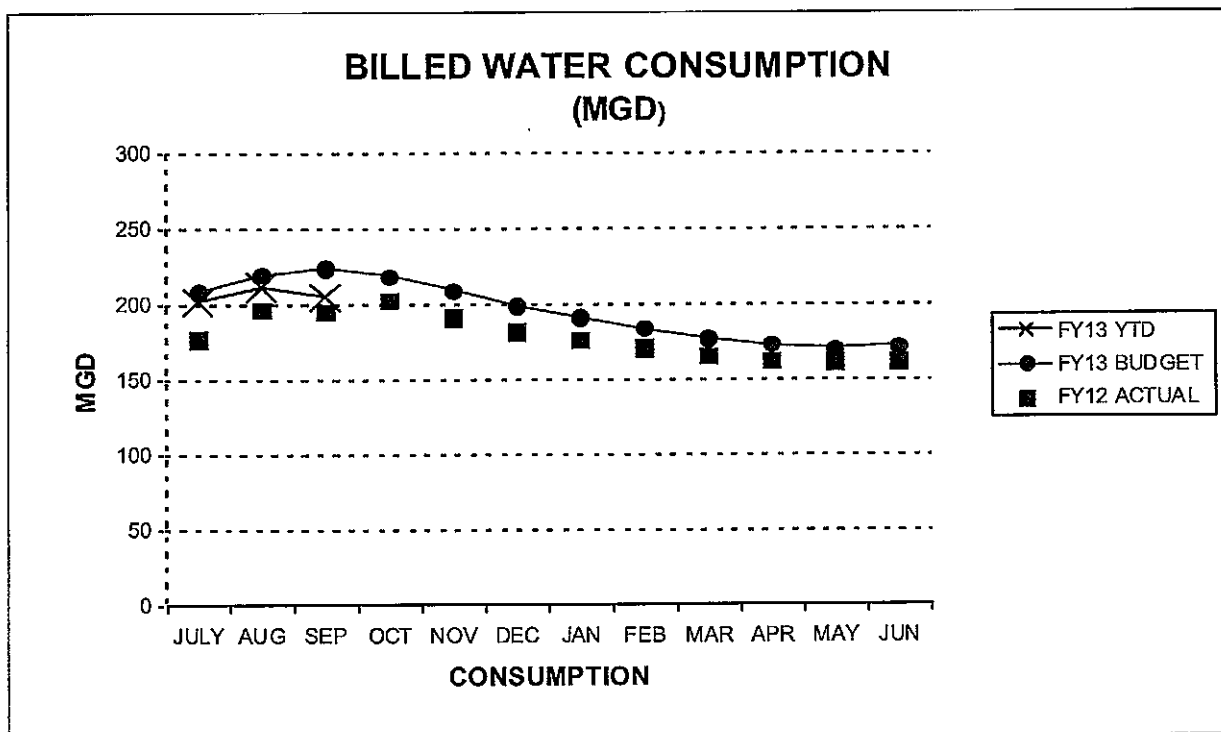
Monthly yield on all investments including reserve funds and Wastewater 2010B bond proceeds was 0.73%, a decrease of 0.10% from September 2012. There were no new investments in October. The yield on 90-day Treasury bills on October 31, 2012 was 0.09%.

Average interest cost during the month of October on outstanding commercial paper issued for the Water System was 0.24%, no change from September 2012. The average interest cost for outstanding Wastewater System commercial paper in October was 0.25%, no change from September 2012.

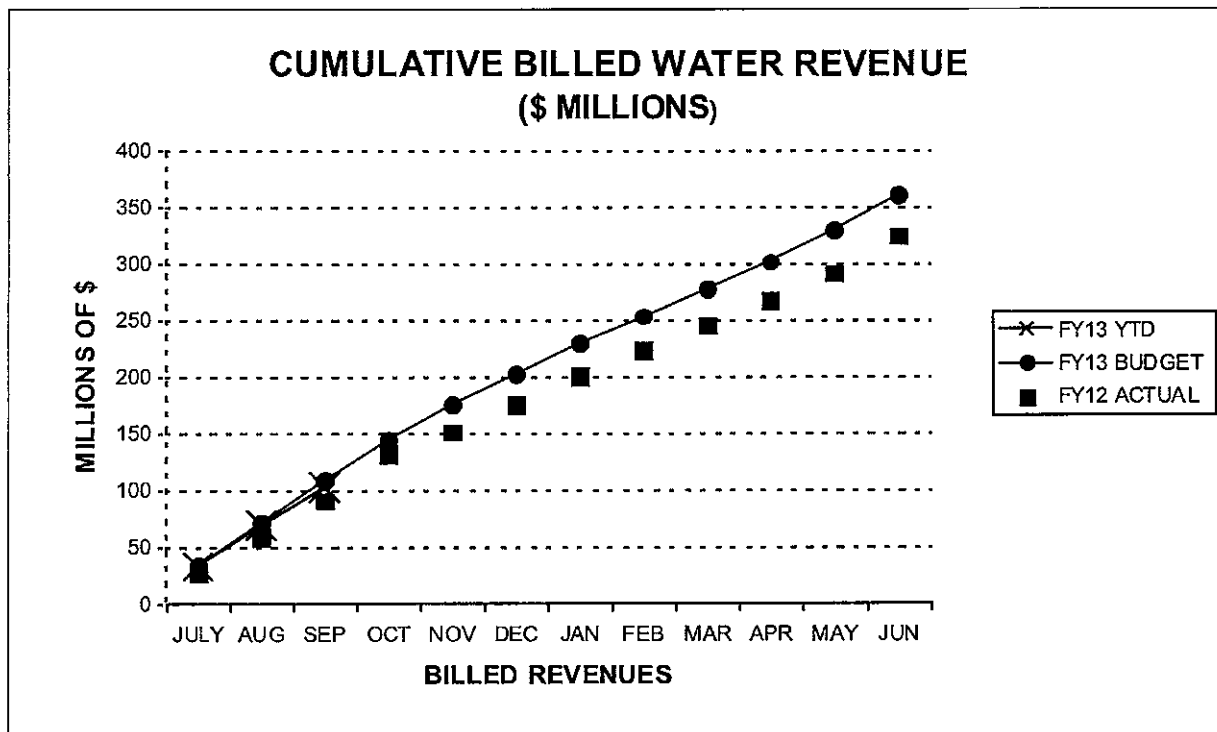
Fiscal year-to-date water consumption for water bills issued through September 2012 was 205.1 MGD, which is 5.0% more than billed consumption of 195.4 MGD at the same time last year and 8.5% less than budgeted consumption of 224.2 MGD.

Billed Water Consumption		
Usage Type	FY13 (MGD)	FY12 (MGD)
Residential	125.4	117.1
Commercial	52.5	51.2
Industrial	17.6	17.6
Public Authority	9.6	9.4
Total Billed Water Consumption	205.1	195.4

Water revenues billed for the fiscal year-to-date were \$103.0 million, which is 13.2% more than the prior year actual revenue of \$91.0 million due to increased consumption and the 6% rate increase and is 4.8% less than the fiscal year-to-date budget of \$108.2 million.



Source: Customer Information System



Source: Customer Information System

OCTOBER 2012 MAIN BREAKS

City	Bldg	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On
ALAMEDA	866		WALNUT	ST	ASBESTOS CEMENT	6	1962	2,250	10/10/12	10/10/12
ALAMO	2658		LUNADA	LN	ASBESTOS CEMENT	6	1973	1,800	10/16/12	10/16/12
ALBANY	964		VENTURA	AVE	CAST IRON	6	1928	360	10/03/12	10/04/12
BERKELEY	782		CRAGMONT	AVE	CAST IRON	6	1932	5,760	10/05/12	10/16/12
				WA						
BERKELEY	2963		DWIGHT	Y	CAST IRON	6	1935	5,760	10/04/12	10/10/12
BERKELEY	2540		LE CONTE	AVE	CAST IRON	4	1950	2,250	10/24/12	10/25/12
BERKELEY	58		ROBLE	RD	STEEL	24	1930	57,600	09/17/12	10/17/12
BERKELEY	2601		WARRING	ST	CAST IRON	20	1955	5,760	09/30/12	10/03/12
CASTRO VALLEY	17429		SAN FRANCISCAN	DR	ASBESTOS CEMENT	6	1981	900	10/06/12	10/07/12
DANVILLE	75		BETTEN	CT	ASBESTOS CEMENT	6	1958	3,600	10/11/12	10/11/12
DANVILLE	824		MATADERA	CIR	ASBESTOS CEMENT	6	1974	900	10/03/12	10/03/12
DANVILLE	1654		ST DAVID	DR	ASBESTOS CEMENT	6	1970	11,520	10/16/12	10/17/12
HAYWARD	20991		MEEKLAND	AVE	CAST IRON	6	1940	2,700	10/16/12	10/16/12
OAKLAND	1414		15TH	AVE	CAST IRON	6	1935	11,520	09/30/12	10/05/12
OAKLAND	2014	E	25TH	ST	CAST IRON	4	1933	900	10/11/12	10/12/12
OAKLAND	2452		64TH	AVE	CAST IRON	4	1913	2,250	10/18/12	10/18/12
OAKLAND	2900		CARMEL	ST	CAST IRON	12	1935	5,760	09/21/12	10/02/12
OAKLAND	1514		CHESTNUT	ST	ASBESTOS CEMENT	8	1958	720	10/13/12	10/13/12
OAKLAND	6100		CONTRA COSTA	RD	CAST IRON	6	1954	34,560	10/01/12	10/04/12
OAKLAND			HOLMES	AVE	CAST IRON	6	1955	18,000	10/01/12	10/01/12
OAKLAND	255	W	MACARTHUR	BL	CAST IRON	8	1938	900	10/03/12	10/03/12
OAKLAND	530		MIDCREST	RD	CAST IRON	6	1928	6,750	10/18/12	10/18/12
OAKLAND	6615		MOKELUMNE	AVE	CAST IRON	6	1949	5,760	09/21/12	10/04/12
OAKLAND	4055		TELEGRAPH	AVE	CAST IRON	4	1936	3,600	10/02/12	10/03/12
ORINDA	119		CAMINO DON MIGUEL		CAST IRON	4	1934	4,500	10/02/12	10/02/12
PLEASANT HILL	14		BRISTOL	CT	ASBESTOS CEMENT	6	1964	1,800	10/16/12	10/16/12
RICHMOND	3615		CERRITO	AVE	CAST IRON	6	1941	69,120	10/01/12	10/05/12
RICHMOND	2717		GOODRICK	AVE	ASBESTOS CEMENT	12	1957	13,500	10/08/12	10/09/12
SAN LEANDRO	940		ARBOR	DR	STEEL	4	1926	5,760	10/12/12	10/12/12

OCTOBER 2012 MAIN BREAKS

City	Bldg	Pre	Street	Suf	Pipe Material	Pipe Diameter	Year Installed	Est Water Loss (Gal)	Identified On	Completed On
SAN LEANDRO	2034		EVERGREEN	AVE	CAST IRON	6	1949	5,760	10/01/12	10/08/12
SAN RAMON	2859		VIA CORDOBA		ASBESTOS CEMENT	8	1975	2,700	10/13/12	10/14/12
WALNUT CREEK	2882		ACACIA	RD	CAST IRON	4	1945	1,800	10/03/12	10/03/12
TOTAL								296,820		

EAST BAY MUNICIPAL UTILITY DISTRICT

DATE: November 8, 2012

MEMO TO: Board of Directors

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

FROM: Lynelle M. Lewis, Secretary of the District *Lynelle*

SUBJECT: Finance/Administration Committee Minutes – October 23, 2012

Director Frank Mellon called to order the Finance/Administration Committee in the Training Resource Center at 10:05 a.m. Director William B. Patterson was present at roll call and Chair Andy Katz arrived at 10:15 a.m. Staff present included: General Manager Alexander R. Coate, General Counsel Jylana Collins, Director of Wastewater David R. Williams, Director of Finance Eric L. Sandler, Operations and Maintenance Department Manager Eileen M. White, Senior Civil Engineer David V. Byer, Senior Civil Engineer Sophia D. Skoda, Special Assistant to the General Manager Cheryl A. Farr, and Secretary of the District Lynelle M. Lewis.

Public Comment. None.

Wastewater Department Resource Recovery Program Annual Update FY12. Senior Civil Engineer Sophia D. Skoda reported that the close of FY12 completed eleven years of District use of excess capacity of the Main Wastewater Treatment Plant (MWWTP) through the Resource Recovery (R2) Program. The program collected annual revenues of \$9.1 million during FY12, a slight decrease from FY11 revenues. It was noted that competitive forces affected FY12 revenues and growth opportunities and some former customers have begun transporting their waste streams to facilities run by the City of Fresno and the City of Sacramento. Ms. Skoda pointed out that program marketing efforts in FY12 continued to focus on high strength wastes to supply the District's turbine.

Ms. Skoda reported on outreach activities for the City of Oakland's Zero Waste Request for Proposals process, which is currently underway and represents a major opportunity to secure a contract for digestion of local commercial organic waste materials. Ms. Skoda said the focus on initiatives to secure high energy producing materials to feed the turbine is a key priority for FY13. The Committee applauded staff for their leadership in resource recovery. The Committee also encouraged outreach to concrete companies regarding their fluid waste streams, and Director of Wastewater David R. Williams said staff would follow up.

FY12 Annual Power Sales Report. Senior Civil Engineer David V. Byer reported that the District completed its twelfth year of operation as an independent power producer. He said the FY12 net power revenue of \$4.5 million was less than the planned revenue of \$5.5 million due to less than expected runoff and lower energy prices. For FY13, Mokelumne power revenue is budgeted at \$5.7 million. Mr. Byer announced that staff is working on contract language and scope for the existing power revenue meter maintenance contract which expires in November 2012. He said staff will bring a proposed agreement to the Board for consideration in November. The Committee asked if the maintenance work could be performed in-house and Mr. Byer said it required specialized certification.

The Committee also asked whether staff is aware of natural gas deposits on EBMUD lands. General Manager Coate said staff would research this and get back to the Board.

Proposed Financings for FY13 – Update. Director of Finance Eric L. Sandler presented a status update on previously approved transactions as well as a description of two upcoming transactions. He reported that the Series 2012A (call modification) resulted in Citi paying the District a net payment of \$16.2 million which was higher than the \$10 million projection. The Series 2013A (Water 2003 forward refunding) and the Series 2012B and additional refunding bonds are scheduled for issuance next. Mr. Sandler announced that staff was seeking Board action to authorize remarketing the Water Series 2009A-1 Water Security Industry Financial Markets Association Bonds. This transaction would allow the District to avoid increased costs for liquidity support of approximately \$270,000 annually. In November staff will be seeking Board approval for the replacement of liquidity facilities for Water Series 2008A-1, 2008A-2, and 2008A-3. It was moved, seconded and carried to forward the staff-recommended action to the full Board.

Financial Quarterly Reports. Director of Finance Eric L. Sandler reported that the quarterly reports were filed in compliance with government statutes. The reports include investment transactions along with quarterly payroll, disbursements and real estate summary reports covering the period July 1, 2012 through September 30, 2012. It was noted that the investment portfolio yielded 0.81%. The Committee raised no questions.

Adjournment. Chair Katz adjourned the meeting at 11:00 a.m.

ARC/LML/slb